

FILED

1 James A. Sonne, State Bar No. 250759

2 jsonne@law.stanford.edu

3 Courtney E. Quirós, Student Bar Certification No. 32323

4 cquiros@stanford.edu

5 Paul N. Harold, Student Bar Certification No. 32321

6 pharold@stanford.edu

7 Stanford Law School Religious Liberty Clinic

8 Crown Quadrangle

9 559 Nathan Abbott Way

10 Stanford, CA 94305

11 Phone: (650) 723-1422

12 Fax: (650) 723-4426

13 Attorneys for Plaintiff

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 EASTERN DIVISION

17 ED CV 13 - 02239 VAP

18 Case No.:

19 ZAMAAD GARY ZOMALT

20 Plaintiff,

21 v.

22 JEFFREY A. BEARD, in his official
23 capacity as Secretary of the
24 California Department of Corrections
25 and Rehabilitation; and DAVID B.
26 LONG, in his official capacity as
27 Warden of Ironwood State Prison,

28 Defendants.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

1. Violation of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc-1
2. Violation of the First Amendment to the U.S. Constitution

COPY

2013 DEC -5 PM 3: 2
U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE

BY: _____

(DTB)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

Introduction

1. This action is brought under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc, and the First Amendment to the Constitution of the United States.
2. Plaintiff Zamaad Gary Zomalt is a Muslim inmate at Ironwood State Prison in Blythe, California. He seeks declaratory and injunctive relief for the deprivation of his legal rights to religious freedom.
3. Specifically, Mr. Zomalt has requested permission from prison officials to wear his see-through religious headgear, a “kufi,” at all times in accordance with his sincere religious beliefs, subject to reasonable search when deemed necessary for security reasons. Defendants have denied Mr. Zomalt’s request without compelling reason. Jewish prisoners at Ironwood are allowed to wear similar head coverings and Muslim inmates at other California prisons are allowed to wear kufis, both in the manner requested by Mr. Zomalt.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question), § 1343 (civil rights), and § 2201 (Declaratory Judgment Act).
 5. Venue is proper in this district under 28 U.S.C. § 1391(b), because one of the defendants resides within this district, and because a substantial part of
- 22
23
24
25
26
27
28

1 the events giving rise to Mr. Zomalt's claim occurred at Ironwood State
2 Prison in Blythe, California, which is in this district.

3
4 **Parties**

5 6. Plaintiff Zamaad Gary Zomalt is an inmate at Ironwood State Prison
6 ("Ironwood") in Blythe, California. He is serving a life sentence.

7
8 7. Defendant Jeffrey A. Beard is the Secretary of the California Department of
9 Corrections and Rehabilitation ("CDCR") and is sued in his official
10 capacity. As Director of CDCR, Mr. Beard is responsible for the operations
11 of all prison facilities in California, including Ironwood.

12
13 8. Defendant David B. Long is the warden at Ironwood and is sued in his
14 official capacity. As warden of Ironwood, Mr. Long is responsible for
15 monitoring and enforcing overall operations, policies, and practices of the
16 facility.
17
18

19 **Statement of Facts**

20 9. Mr. Zomalt is an observant Muslim. He converted to Islam in 2002, and
21 follows all the tenets of the faith including eating halal and observing daily
22 prayers. During his incarceration, Mr. Zomalt has led classes on Muslim
23 self-purification and has served as the president of both the interfaith
24 council at the prison and the Muslim spirituality renewal-of-the-natural-self
25 group.
26
27
28

- 1 10. As part of his religious observance, Mr. Zomalt believes he is called to wear
2 a kufi. The kufi is a see-through head covering, similar in size and shape to
3 the Jewish yarmulke. Muslims view this head covering as a “spiritual
4 crown.” It is worn in a manner similar to how Jews wear yarmulkes.
5 Muslims believe that wearing the kufi honors and shows respect to God,
6 and also shows humility. Both the Quran and Muslim jurisprudence (called
7 fiqh), as applied by the Hanafi school of law, mandate that Mr. Zomalt wear
8 his kufi at all times.
9
10
11
12 11. Mr. Zomalt sincerely believes his religious faith requires him to wear his
13 kufi at all times.
14
15 12. Ironwood permits Mr. Zomalt to wear his kufi only in the visitation area,
16 the chapel, and his cell. He is therefore unable to wear his kufi in the dining
17 hall, education area, vocational training area, medical facilities, and law
18 library, among other places.
19
20 13. Mr. Zomalt followed Ironwood’s process to request permission to wear his
21 kufi at all times in accordance with his religious beliefs. His requests were
22 rejected.
23
24 14. Mr. Zomalt has exhausted his administrative remedies.
25
26 15. On August 14, 2012, Mr. Zomalt initiated (using form CDCR 602) a formal
27 request for permission to wear his kufi in accordance with his faith. On
28

1 August 16, 2012, his request was “bypassed.” A “bypassed” request has the
2 same effect as if it were rejected. (Ex. 1.)
3

4 16. On August 24, 2012, Mr. Zomalt submitted a timely appeal (using form
5 CDCR 22) asking that his kufi request be reconsidered. (Ex. 2.) This second
6 level review was considered first by staff and then by the chief deputy
7 warden. On August 30, 2012, staff informed Mr. Zomalt his appeal would
8 be denied based on the rejection of a similar request submitted to
9 Ironwood’s Religious Review Committee 18 months earlier. That earlier
10 decision by the Religious Review Committee, however, was based on the
11 inaccurate conclusion by Ironwood’s Muslim chaplain, Imam Toure, that
12 wearing kufis at all times is never mandatory for Muslims. Staff also
13 informed Mr. Zomalt that Warden Long would not reconsider the Religious
14 Review Committee’s approach to the kufi issue.
15
16
17
18

19 17. On September 6, 2012, the chief deputy warden reviewed Mr. Zomalt’s
20 appeal and concurred with staff’s August 30 response.
21

22 18. On October 3, 2012, Mr. Zomalt’s claim was formally denied at the second
23 level of review. (Ex. 3.)
24

25 19. Mr. Zomalt then timely appealed (again using form CDCR 602) to the
26 CDCR Office of Appeals for the third level review. (Ex. 1.)
27
28

1 20. On January 3, 2013, the CDCR Office of Appeals denied Mr. Zomalt's third
2 level appeal, stating "[t]his decision exhausts the administrative remedy
3 available to [Mr. Zomalt] within CDCR." (Ex. 4.)
4

5 21. At all times relevant to the consideration of Mr. Zomalt's religious request,
6 prison officials, including Defendants, relied exclusively on the Religious
7 Review Committee's erroneous conclusion in 2011 that "Muslim religions
8 does [sic] NOT mandate that Kufi caps be worn at all times." Defendants
9 provided no other reason for barring Mr. Zomalt from wearing his kufi in
10 accordance with his faith.
11

12 22. The January 3, 2013 decision denying Zomalt's third level appeal has
13 barred him from wearing his kufi at all times in accordance with his faith.
14

15 23. Shortly after Mr. Zomalt's third level appeal was denied, he hired counsel.
16 Counsel wrote a letter to Warden Long clarifying Muslim practice and
17 again petitioning him to grant Mr. Zomalt's request to wear the kufi.
18 Warden Long never responded.
19

20 24. On October 17, 2013, Imam Toure contacted Mr. Zomalt's counsel to
21 confirm that some Muslims consider kufi-wearing to be obligatory,
22 contradicting the understanding of the Religious Review Committee.
23

24 25. On October 22, 2013, Mr. Zomalt's counsel wrote CDCR's General
25 Counsel and Ironwood's Litigation Coordinator, to inform them of Imam
26
27
28

1 Toure's call and asked them to respond within 10 days based on this
2 development.

3
4 26. Neither official has granted Mr. Zomalt's request.

5 27. Defendants will incur little or no cost or burden in permitting Mr. Zomalt to
6 wear his kufi at all times, subject to reasonable search when deemed
7 necessary for security reasons.

8
9 28. Ironwood allows Jewish inmates to wear religious headgear in the manner
10 requested by Mr. Zomalt.

11
12 29. Other CDCR prisons permit Muslim and non-Muslim inmates to wear
13 religious headgear in the manner requested by Mr. Zomalt. North Kern
14 State Prison, for example, allows Muslim inmates to wear the kufi without
15 restriction in all common areas of the prison subject to search in a respectful
16 manner. And at the California Men's Colony, Muslim, Jewish, Rastafarian,
17 and Sikh inmates are allowed to wear religious head gear at all times,
18 subject to search when deemed necessary due to security concerns.

19
20
21
22 30. CDCR receives federal financial assistance.

23 31. Ironwood receives federal financial assistance.
24
25
26
27
28

1 **Count I**
2 **Violation of the Religious Land Use and Institutionalized Persons Act**
3 **(42 U.S.C. § 2000cc)**

4 32. Mr. Zomalt re-alleges and incorporates by reference the preceding
5 paragraphs of this Complaint.

6 33. Defendants have deprived and continue to deprive Mr. Zomalt of his right
7 to the free exercise of religion, as secured by the Religious Land Use and
8 Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc (“RLUIPA”).

9 34. RLUIPA prevents the government from imposing a substantial burden on
10 the sincere religious belief of an inmate “unless the government
11 demonstrates that imposition of the burden on that person—(1) is in
12 furtherance of a compelling governmental interest; and (2) is the least
13 restrictive means of furthering that compelling governmental interest.” 42
14 U.S.C. § 2000cc-1(a).

15 35. RLUIPA applies whenever the substantial burden at issue “is imposed in a
16 program or activity that receives Federal financial assistance.” 42 U.S.C.
17 § 2000cc-1(b). Because CDCR and Ironwood receive federal financial
18 assistance, RLUIPA’s terms are binding in this case.

19 36. Mr. Zomalt has a sincere religious belief that wearing a kufi at all times is
20 mandated by his faith.
21
22
23
24
25
26
27
28

1 37. Defendants have unlawfully imposed a substantial burden on Mr. Zomalt's
2 sincere religious exercise because Defendants' refusal to allow him to wear
3 a kufi at all times, subject to reasonable search when deemed necessary for
4 security reasons, denies him the ability to practice a basic requirement of his
5 faith.
6

7
8 38. Because Mr. Zomalt is serving a life sentence, the denial of his request
9 burdens his religious practice all the more because it would bar him from
10 ever complying with a fundamental requirement of his faith.
11

12 39. No compelling governmental interest justifies the Defendants' decision. In
13 fact, there is no rational basis for denying Mr. Zomalt's request. Jewish
14 head coverings are permitted throughout Ironwood with no apparent threat
15 to safety and security. Furthermore, other CDCR institutions extend the
16 right to wear religious headgear to people of a variety of faiths, without
17 detriment to either safety or security.
18

19
20 40. Any alleged compelling governmental interest is not furthered by the least
21 restrictive means available. The sweeping ban in certain locations in the
22 prison could, for example, be replaced by a policy permitting kufis to be
23 worn, but allowing them to be subject to search in a respectful manner.
24

25
26 41. Mr. Zomalt seeks declaratory and injunctive relief under RLUIPA, per 42
27 U.S.C. § 2000cc-2.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Count II
Violation of the First Amendment to the U.S. Constitution
(42 U.S.C. §1983)

42. Mr. Zomalt re-alleges and incorporates by reference paragraphs 1 through 31 of this Complaint.

43. The First Amendment commands that Congress shall make no law “prohibiting the free exercise” of religion. U.S. Const. amend. I. The Free Exercise Clause of the First Amendment was incorporated against the States by the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U.S. 296, 303, 84 L. Ed. 1213, 1217, 1860 S. Ct. 900, 903 (1940).

44. Congress has provided a statutory vehicle to bring challenges to First Amendment violations by state actors. Under 42 U.S.C. § 1983, a person has a private right of action against any person who, under color of state law, deprives another of “any rights, privileges, or immunities secured by the Constitution.” The private right of action includes “an action at law” and a “suit in equity.” *Id.*

45. Defendants are state actors and, as such, are obliged to comply with the First Amendment.

46. Defendants have deprived and continue to deprive Mr. Zomalt of his right to the free exercise of religion, as secured by the First Amendment.

1 47. Mr. Zomalt has a sincere religious belief that wearing a kufi at all times is
2 mandated by his faith.

3
4 48. Defendants have unlawfully imposed a substantial burden on Mr. Zomalt's
5 sincere religious exercise because Defendants' refusal to allow Mr. Zomalt
6 to wear a kufi at all times, subject to reasonable search when deemed
7 necessary for security reasons, denies him the ability to practice a basic
8 requirement of his faith.

9
10 49. There is no rational basis for denying Mr. Zomalt's request. That is, no
11 legitimate penological interest justifies Defendants' unlawful restraint of
12 Mr. Zomalt's religious exercise. As indicated above, Jewish head coverings
13 are permitted throughout Ironwood with no apparent threat to safety and
14 security. And furthermore, other CDCR institutions extend the right to wear
15 religious headgear to Muslims and non-Muslims alike, without detriment to
16 either safety or security.

17
18 50. Mr. Zomalt seeks declaratory and injunctive relief under the First
19 Amendment in accordance with 42 U.S.C. § 1983.

20
21
22
23 **Remedies and Prayer for Relief**

24 51. Mr. Zomalt seeks a declaration that he is entitled to wear a kufi at all times,
25 subject to reasonable search when deemed necessary for security reasons.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

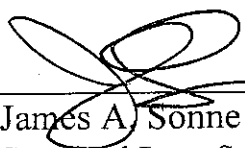
52. Mr. Zomalt seeks an injunction ordering Defendants to immediately permit him to wear a kufi at all times, subject to reasonable search when deemed necessary for security reasons.

53. Mr. Zomalt is entitled to recover attorney fees, 42 U.S.C. § 1988(b), and costs, Fed. R. Civ. P. 54(d).

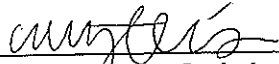
54. Accordingly, Mr. Zomalt prays that this Court grant:
- A. Declaratory and injunctive relief as set forth in this Complaint;
 - B. Reasonable attorney fees, litigation expenses, expert fees, and costs; and
 - C. All such other and further declaratory and injunctive relief as appears reasonable and just, and to which Plaintiff may be entitled.


Dated: December 4, 2013

Respectfully submitted,


James A. Sonne
Stanford Law School
Religious Liberty Clinic
559 Nathan Abbott Way
Stanford, CA 94305
(650) 723-1422
jsonne@law.stanford.edu
Counsel for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


Courtney E. Quirós
Certified Law Student
Stanford Law School
Religious Liberty Clinic
559 Nathan Abbott Way
Stanford, CA 94305
(650) 723-1422
cquiros@stanford.edu
Counsel for Plaintiff


Paul N. Harold
Certified Law Student
Stanford Law School
Religious Liberty Clinic
559 Nathan Abbott Way
Stanford, CA 94305
(650) 723-1422
pharold@stanford.edu
Counsel for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


Exhibit 1

Form CDCR 602

ZOMALT V. BEARD
COMPLAINT

STATE OF CALIFORNIA
INMATE/parolee APPEAL
CDCR 602 (REV. 08/09)

Side 1

IAB USE ONLY		Institution/Parole Region	Log #	Category
1204305 		ISP-D-18-01045		(A)
FOR STAFF USE ONLY				

You may and Rehabilitation (CDCR) decision, action, condition, policy or regulation that has a material adverse effect upon your welfare and for which there is no other prescribed method of departmental review/remedy available. See California Code of Regulations, Title 15, Section (CCR) 3084.1. You must send this appeal and any supporting documents to the Appeals Coordinator (AC) within 30 calendar days of the event that lead to the filing of this appeal. If additional space is needed, only one CDCR Form 602-A will be accepted. Refer to CCR 3084 for further guidance with the appeal process. No reprisals will be taken for using the appeal process.

Appeal is subject to rejection if one row of text per line is exceeded. WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

Name (Last, First): ZOMALT ZAMAAD	CDC Number: F35569	Unit/Cell Number: D3-204L	Assignment: A1A/UA
--------------------------------------	-----------------------	------------------------------	-----------------------

State briefly the subject of your appeal (Example: damaged TV, job removal, etc.):
DISCRIMINATORY POLICY AGAINST ISLAMIC HEADGEAR (KUFI) SPECIFICALLY "A. SCOTT-BARRON" (A/W)

A. Explain your issue (If you need more space, use Section A of the CDCR 602-A):
ALLOWING THE JEWISH YARMULKE TO BE WORN IN AREAS WHERE THE KUFI IS NOT PERMITTED IS DISCRIMINATORY (SEE PG. 1) RLUIPA STATES THAT ALLOWING ONE GROUP TO PRACTICE A RELIGIOUS EXERCISE "PRODUCES SUBSTANTIAL HARM OF THE SAME SORT THAT THE PRISON CLAIMS..."

B. Action requested (If you need more space, use Section B of the CDCR 602-A): #1) TO HAVE THE RRC (A. SCOTT-BARRON) AND ALL OTHER RRC MEMBERS REVISE THE POLICY OR REVERSE THIS POLICY (SELF IMPOSED/IN-HOUSE) AND ACKNOWLEDGE THAT THE KUFI IS MANDATED BY THE RELIGION. THANK YOU!

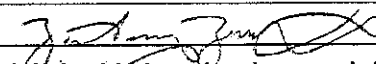
Supporting Documents: Refer to CCR 3084.3.

Yes, I have attached supporting documents.

List supporting documents attached (e.g., CDC 1083, Inmate Property Inventory; CDC 128-G, Classification Chrono):
SEE ATTACHED PAGES 1-5. 118 VOLUME 6 HANAHI/HANBALI; ISP RRC-

SPECIFICALLY: 7 OF 11 CP #119; MEETING DATED 3/2/11; 28 HWJLPP PG.11&20

No, I have not attached any supporting documents. Reason:

Inmate/Parolee Signature:  Date Submitted: 8/14/2012

By placing my initials in this box, I waive my right to receive an interview.

C. First Level - Staff Use Only

Staff - Check One: Is CDCR 602-A Attached? Yes No

This appeal has been:

- Bypassed at the First Level of Review. Go to Section E.
- Rejected (See attached letter for instruction) Date: 8-16-12 Date: _____ Date: _____
- Cancelled (See attached letter) Date: _____
- Accepted at the First Level of Review.

Assigned to: _____ Title: _____ Date Assigned: _____ Date Due: _____

First Level Responder: Complete a First Level response. Include Interviewer Name, Title, Date, Location, and complete the section below.

Date of Interview: _____

Your appeal issue is: Granted Granted in Part Denied Other: _____

See attached letter. If dissatisfied with First Level response, complete Section D.

Interviewer: _____ (Print Name) Title: _____ Signature: _____ Date completed: _____

Reviewer: _____ (Print Name) Title: _____ Signature: _____

Date received by AC: _____

AC Use Only
Date mailed/delivered to appellant ___/___/___

ISP
 AUG 15 2012
 APPEALS OFFICE
 INTO
 SEP 17 2012
 APPEALS OFFICE
 S N
 RECEIVED
 INMATE APPEALS BRANCH
 RECEIVED
 NOV - 1 2012

BYPASS

D. If you are dissatisfied with the First Level response, explain the reason below, attach supporting documents and submit to the Appeals Coordinator for processing within 30 calendar days of receipt of response. If you need more space, use Section D of the CDCR 602-A.

BYPASS

Inmate/Parolee Signature: _____

Date Submitted: _____

E. Second Level - Staff Use Only

Staff - Check One: Is CDCR 602-A Attached? Yes No

This appeal has been:

- By-passed at Second Level of Review. Go to Section G.
- Rejected (See attached letter for instruction) Date: _____ Date: _____ Date: _____
- Cancelled (See attached letter)
- Accepted at the Second Level of Review

Assigned to: AWOPS Title: _____ Date Assigned: _____ Date Due: _____

Second Level Responder: Complete a Second Level response. If an interview at the Second Level is necessary, include interviewer's name and title, interview date and location, and complete the section below.

Date of Interview: _____ Interview Location: _____

Your appeal issue is: Granted Granted in Part Denied Other: _____

See attached letter. If dissatisfied with Second Level response, complete Section F below.

Interviewer: BAIR Title: CCIA Signature: _____ Date completed: 9/21/12

Reviewer: Dr. Halbrook Title: CCIA Signature: _____

Date received by AC: OCT 03 2012

AC Use Only
Date mailed/delivered to appellant: OCT 03 2012

F. If you are dissatisfied with the Second Level response, explain reason below, attach supporting documents and submit by mail for Third Level Review. It must be received within 30 calendar days of receipt of prior response. Mail to: Chief, Inmate Appeals Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001. If you need more space, use Section F of the CDCR 602-A.

I am dissatisfied because my religious exercise is arbitrarily denied as an inhouse/wheel policy with complete disregard for the law and the facts. The kufi is comparable to the yarmulke so it doesn't present a danger or threat, and it is required to wear a head covering under Islamic Law, still, the laws protecting religious rights doesn't require an exercise to be mandated (see pg. 9).

Inmate/Parolee Signature: _____

Date Submitted: 10/7/12

G. Third Level - Staff Use Only

This appeal has been:

- Rejected (See attached letter for instruction) Date: OCT 19 2012 Date: _____ Date: _____ Date: _____
- Cancelled (See attached letter) Date: _____
- Accepted at the Third Level of Review. Your appeal issue is: Granted Granted in Part Denied Other: _____

See attached Third Level response.

Third Level Use Only
Date mailed/delivered to appellant: OCT 19 2012

Request to Withdraw Appeal: I request that this appeal be withdrawn from further review because; State reason. (If withdrawal is conditional, list conditions:)

Print Staff Name: _____ Title: _____ Signature: _____ Date: _____

IAB USE ONLY 1204305	Institution/Parole Region: Log # SP-D-12-01045	Category 11
FOR STAFF USE ONLY		

Attach this form to the CDCR 602, only if more space is needed. Only one CDCR 602-A may be used.

Appeal is subject to rejection if one row of text per line is exceeded.

WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

Name (Last, First): ZOMALT	ZOMAAD	CDC Number: F35569	Unit/Cell Number: D3-204L	Assignment: A1A/UA
-------------------------------	--------	-----------------------	------------------------------	-----------------------

A. Continuation of CDCR 602, Section A only (Explain your issue) . . . IT IS PREVENTING BY BURDENING THE PRISONER'S RELIGIOUS EXERCISE." THIS SHOWS THERE IS NO "GENUINE COMPELLING GOVERNMENTAL INTEREST.. FOR BURDENING (THE) RELIGIOUS EXERCISE" OF WEARING A KUFI (SECT, 548 #4; PG. 21 OF 89). RLUIPA DOES NOT REQUIRE A PRACTICE TO BE MANDATED TO BE PROTECTED BY THE LAW. "SUPREME COURT HAS NEVER HELD THAT RELIGIOUS CONDUCT MUST BE COMPELLED BY THE BELIEVER'S FAITH TO BE PROTECTED." (SECT. 522; PG. 12 OF 89). FURTHERMORE, ACCORDING TO THE HANAFI AND HANBALI SCHOOLS OF ISLAMIC LAW (FIQH) IT IS OBLIGATORY (WAJIB) TO ABSTAIN FROM GOING ABOUT BARE-HEADED (PG. 2) THE REASON GIVEN FOR THE RRC'S DENIAL OF WEARING THE KUFI INDOORS IS FALSE. (PG. 3).

ISP
 AUG 15 2012
 APPEALS OFFICE
 INMATE APPEALS BRANCH
 SEP 17 2012
 APPEALS OFFICE

Inmate/Parolee Signature: *[Signature]*
 8/14/2012

Date Submitted:

RECEIVED
 SEP 14 2012
 INMATE APPEALS BRANCH

B. Continuation of CDCR 602, Section B only (Action requested):

[This section is crossed out with a large diagonal line.]

RECEIVED
 NOV - 1 2012
 INMATE APPEALS BRANCH

Inmate/Parolee Signature: _____

Date Submitted: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 2

Form CDCR 22

ZOMALT V. BEARD
COMPLAINT

SECTION A: INMATE/PAROLEE REQUEST

NAME (Print): (LAST NAME) ZOMALT		(FIRST NAME) ZAMAAD		CDC NUMBER: F35569	SIGNATURE: <i>[Signature]</i>
HOUSING/BED NUMBER: D3-204L	ASSIGNMENT: A1A/UA	HOURS FROM: // // / // //		TOPIC (I.E. MAIL, CONDITION OF CONFINEMENT/PAROLE, ETC.): DISCRIMINATORY POLICY AGAINST ISLAMIC HEADGEAR (KUFI), A-SCOTT BARRON	

CLEARLY STATE THE SERVICE OR ITEM REQUESTED, OR REASON FOR INTERVIEW:
 THE CURRENT POLICY IS THAT THE 'KUFI' IS NOT PERMITTED TO BE WORN IN THE DINING HALL, EDUCATION, VISITING, AND ACCORDING TO CERTAIN C/O'S, SUCH AS A. SERVA III, THE 'KUFI' IS NOT TO BE WORN INDOORS AT ALL. MOREOVER, THERE ARE OTHER PROVISIONS PER VARIOUS ISLAMIC SCHOOLS OF THOUGHT / LAW (FIQH): THAT BEARING A BARE HEAD IS THE CUSTOM OF THE WRONGDOERS. PLEASE SEE ATTACHED DOCUMENTATION WHICH SUPPORTS MY CLAIM.

Please reconsider and reverse this unfair policy.

METHOD OF DELIVERY (CHECK APPROPRIATE BOX) **NO RECEIPT WILL BE PROVIDED IF REQUEST IS MAILED **

SENT THROUGH MAIL: ADDRESSED TO: **A. SCOTT BARRON (A/W) CENTRAL OPERATIONS.** DATE MAILED: **8 / 24 / 12**
 DELIVERED TO STAFF (STAFF TO COMPLETE BOX BELOW AND GIVE GOLDENROD COPY TO INMATE/PAROLEE):

RECEIVED BY: PRINT STAFF NAME: <i>A. SCOTT BARRON</i>	DATE: <i>8/30/12</i>	SIGNATURE: <i>A. Scott Barron</i>	FORWARDED TO ANOTHER STAFF? (CIRCLE ONE) YES <input type="radio"/> NO <input checked="" type="radio"/>
IF FORWARDED - TO WHOM:	DATE DELIVERED/MAILED:	METHOD OF DELIVERY: (CIRCLE ONE) IN PERSON <input type="radio"/> BY US MAIL <input type="radio"/>	

SECTION B: STAFF RESPONSE

RESPONDING STAFF NAME: <i>A. SCOTT BARRON</i>	DATE: <i>8/30/12</i>	SIGNATURE: <i>A. Scott Barron</i>	DATE RETURNED: <i>8/30/12</i>
--	-------------------------	--------------------------------------	----------------------------------

MR. ZOMALT - EFFECTIVE IMMEDIATELY, THE "KUFI" WILL BE AUTHORIZED IN VISITING PURSUANT TO DOM 54020.21. THE ISSUE OF WEARING THE "KUFI" IN THE DINING HALL, AND OTHER AREAS SUCH AS EDUCATION HAS BEEN PREVIOUSLY ADDRESSED & DENIED, MOST RECENTLY BY THE RELIGIOUS REVIEW COMMITTEE ON 3/2/11. WARDEN LONG WILL NOT RE-CONSIDER

SECTION C: REQUEST FOR SUPERVISOR REVIEW OUR LOCAL POLICY & IT WILL NOT BE
 PROVIDE REASON WHY YOU DISAGREE WITH STAFF RESPONSE AND FORWARD TO RESPONDENT'S SUPERVISOR IN PERSON OR BY US MAIL. REFERENCE AGENCY COPY. **ADDED TO THE NEXT RRC AGEND.**

Chief Deputy Warden J. McKennie. Approval of wearing the kufi has been denied under false contentions (pg.6). Wearing a head covering in public is required (wajib) under Islamic Law (Fiqh) (pg.7) though the laws protecting religious rights doesn't require a religious exercise to be mandated (pg.9). I'm requesting the RRC to renege this issue considering the facts and REVERSE this unnecessary and un-fair policy.

SIGNATURE:	DATE SUBMITTED:
------------	-----------------

SECTION D: SUPERVISOR'S REVIEW

RECEIVED BY SUPERVISOR (NAME): <i>J. MCKINNIE</i>	DATE: <i>9/6/12</i>	SIGNATURE: <i>J. McKennie</i>	DATE RETURNED: <i>9/6/12</i>
--	------------------------	----------------------------------	---------------------------------

I have reviewed your issue and Mrs. Scott-Barron's response to your issue. I concur with the response provided to you. The Warden has established local policy regarding the authorized wearing of the "Kufi" at *Shirwood State Prison*.

SEP 17 2012

SEP 12 2012

To: A. Scott-Baron, (AW) Central Operations
C. Ochs, Community Resource Manager
Muhammad Toure', Imam/Muslim Chaplain
Ironwood State Prison (RRC)

I am making an appeal to the Ironwood State Prison Religious Review Committee to reconsider and rectify a policy that is discriminatory and places undue substantial burden on the practice of wearing the Islamic Religious Headgear (Kufi).

Policy

The current policy is that the kufi is not permitted to be worn in the Dining hall (pg. 1); Education (pg. 2); Visiting (pg. 3) or according to Correctional Officer A. Serna III, "Religious head-wear (Kufi) is not to be worn indoors." This includes Medical, Work-Change, Vocational training, etc.

This policy has been upheld by:

- * A. Scott-Barron, (AW) Central Operations (pg.4)
- * R. Johnson, Captain (pg. 5)
- * T.D. Wooldridge, Lieutenant (pg. 2)
- * A. Serna III, Correctional Officer (pg. 2)
- ISP Religious Review Committee (pg. 6)

Religious Mandate

The reason given for the denial of the right to wear the kufi is because it is not mandated by the religion. This opinion was confirmed by Imam Toure' who also included that "it is recommended by the religion and a preference of many Muslim men." (pg. 4) But according to the Hanafi and Hanbali Schools of Islamic Law (fiqh), bearing a bare head is the custom of the wrongdoers (fasiqun), is legally detestable (makruh), and it is obligatory (wajib) to abstain from it. (pg. 7) (Encyclopedia of Islamic Doctrine, v. 6, pg. 118-Hisham Kabbani; Kazi Publications).

Still, to require that the kufi be mandated by the religion places a "substantial burden" on that religious exercise. According to RLUIPA, a "Religious exercise need not be 'compelled' by a system of religious belief to be protected (under

RLUIPA).... An examination of the decisions discussing substantial burden (on religious exercise) reveals that the Supreme Court has never held that religious conduct must be compelled by the believers faith to be protected. To the contrary, the Court has recognized that religious exercise may be substantially burdened even where there is no showing that the particular exercise at issue was mandated by the plaintiffs faith."

(RLUIPA, section 522, pg 12 of 89) (see pg 9)

Discrimination

The members of the Islamic Community believe that the policy against wearing the kufi is discriminatory. The Jewish Yarmulke is permitted to be worn in areas where the kufi is not. Allowing one group to practice a religious exercise "produces 'substantial harm or alleged harm of the same sort' that the prison claims it is preventing by burdening the prisoner's religious exercise." This action by the prison shows that there is not a "genuinely compelling governmental interest... for burdening (the) religious exercise" of wearing a kufi.

(RLUIPA, section 548 # 4; pg 21 of 89) (see pg 8)

Therefore, we are making a formal request and appeal to the Ironwood State Prison Religious Review Committee to reverse this unfair and unnecessary policy.

See Clark v. Scribner, No. 5-05-00702 (E.D. Cal.
Sept. 12, 2007)

ISP

SEP 17 2012

ISP

SEP 12 2012

22 APPEALS OFFICE

APPEALS OFFICE

Exhibit 2

inmates participating in the function. During the release of the inmates from a housing unit that has only one officer in it a yard officer would report to the housing unit to assist in the release if necessary.

C. Meal Release

1. Inmates shall be released for the breakfast and dinner meals in a timely manner, one section of one tier at a time, utilizing both dining rooms. Any delay in meal release will be documented on the Facility DAR and a NOU addressed to the Facility Captain shall be completed. (Staff will randomly conduct clothed body searches of inmates entering and exiting the dining hall.) Only authorized state clothing (State Blues) will be allowed in the dining hall (personal tennis shoes are permitted). The shirt must be fully buttoned (with the exception of the top button) and tucked in. If jackets are worn, they must also be buttoned with the exception of the top button. While in the dining room area, no head covering is permitted with exception of hairnets worn by the culinary workers and the Jewish Yarmulke. No personal shorts or shirts will be allowed in the dining hall.
2. The manner to be utilized while seating the inmates in the dining hall will be controlled seating. Controlled seating requires all seats per table shall be filled and all tables shall be used prior to filling the next table or row. Inmates will be allowed a minimum of 15 minutes to eat from the time they sit down before being ordered to exit the dining hall.
3. Breakfast will commence at 0605 hours. Inmates who are to be processed to their work assignment by 0630 hours and inmates participating in the Special Religious Diet program will be released first. Early workers will proceed to one dining hall, while the inmates participating in the Special Religious Diet program will be released to the other dining hall. No food will be allowed out of the dining hall.
 - a. For the breakfast meal, inmates on orientation status will be fed last.
4. Noon meals (boxed lunches) will be distributed during the morning meal to those inmates not assigned to vocational classes and will be taken back to their cell to be eaten at lunchtime. Vocational and Braille Program

ISP

SEP 17 2012

23 APPEALS OFFICE
Exhibit 2

ISP

SEP 12 2012

APPEALS OFFICE

REQUEST FOR INTERVIEW, ITEM OR SERVICE

SECTION A: INMATE/PAROLEE REQUEST

NAME (FIRST): Tolbert	(LAST NAME) Robert	FIRST NAME	CDC NUMBER: J-54792	SIGNATURE: <i>[Signature]</i>
HOUSING/BED NUMBER: D-1 112	ASSIGNMENT: ABE /GED	LOW	HOURS FROM 1045 TO 1345	TOPIC (I.E. MAIL, CONDITION OF CONFINEMENT/PAROLE, ETC.): Religious (Condition)

CLEARLY STATE THE SERVICE OR ITEM REQUESTED OR REASON FOR INTERVIEW:
 ON 3-23-2012 upon entering D-facility education ⁹⁰ A. Serna told me to remove MY Religious headwear "approved" he told me I can't wear it in the chow hall I can't wear it in Education. The Jews can wear their religious headwear without discrimination the christen get to wear their crosses with out discrimination 3004.c.
 ON 3-10-12 The muslim inmates had the similar incident with the same officer A. Serna telling us to Leave D-facility chapel for "no" reason when the Muslim chaplain was present in the chapel. This officer is always discriminating against Muslims.

METHOD OF DELIVERY (CHECK APPROPRIATE BOX): **NO RECEIPT WILL BE PROVIDED IF REQUEST IS MAILED **

SENT THROUGH MAIL: ADDRESSED TO: _____ DATE MAILED: _____

DELIVERED TO STAFF (STAFF TO COMPLETE BOX BELOW AND GIVE GOLDENROD COPY TO INMATE/PAROLEE):

RECEIVED BY: PRINT STAFF NAME: <i>[Signature]</i>	DATE: 02/24/12	SIGNATURE: <i>[Signature]</i>	FORWARDED TO ANOTHER STAFF? (CIRCLE ONE) YES NO
IF FORWARDED - TO WHOM: c/o A. SERNA	DATE DELIVERED/MAILED: 2-24-2012	METHOD OF DELIVERY: (CIRCLE ONE) <u>IN PERSON</u> BY US MAIL	

SECTION B: STAFF RESPONSE

RESPONDING STAFF NAME: A. Serna	DATE: 2-24-12	SIGNATURE: <i>[Signature]</i>	DATE RETURNED: 2-24-12
---	-------------------------	----------------------------------	----------------------------------

I is the policy of CDCR that your religious head wear (a.c.f.i) is not to be worn indoors

ISP

SEP 12 2012

SECTION C: REQUEST FOR SUPERVISOR REVIEW

PROVIDE REASON WHY YOU DISAGREE WITH STAFF RESPONSE AND FORWARD TO RESPONDENT'S SUPERVISOR IN PERSON OR BY MAIL TO APPEALS OFFICE GOLDENROD COPY.

AS a Muslim MY Religious Headwear is a Part of MY Religion just as the cross is in the christen, they can wear there cross in doors and in the chow hall. Just as th Jew can wear his Yamake in doors and in visiting. But the Muslim can't wear his Approved Religious headwear. This is discrimination 3004.c. I have proof that it is a Part of MY Religion and its a Part of Policy to wear approved head wear in visiting

SIGNATURE: <i>[Signature]</i>	DATE SUBMITTED: 2-26-2012
----------------------------------	-------------------------------------

SECTION D: SUPERVISOR'S REVIEW

RECEIVED BY SUPERVISOR (NAME): T. Woodley	DATE: 4/6/12	SIGNATURE: <i>[Signature]</i>	DATE RETURNED: 4/10/12
---	------------------------	----------------------------------	----------------------------------

I concur with c/o A. Serna's response to
 ISP
 SEP 17 2012

APPEALS OFFICE

54020.21 Processing of Inmates

Revised January 4, 2006

Before allowing inmates into the visiting area, staff shall:

- Search the inmate in a manner consistent with institution/facility security prior to, and upon conclusion of, each visit.
- Verify the inmate's identity.

Inmates shall be permitted to take any of the following items into the visiting area:

- One handkerchief.
- One comb.
- One wedding band.
- One religious medal on a necklace.
- Prescription eyeglasses.
- Approved medical assistive device.
- Written or printed legal material or case-related documentation pertaining to the inmate's case for an attorney visit only.
- One article of approved Religious headgear may be worn in the visiting area.

ISP
SEP 12 2012
APPEALS OFFICE

NOTE:
Muslims excluded.

54020.21.1 Inmate Visiting Dress Standards

Inmates shall wear only those items of state-issued clothing issued to them at the time of the visit.

Inmates are permitted to wear one each of the following state- issued clothing items:

- Shirt.
- Pair of pants.
- Belt.
- Jacket.
- Pair of socks.
- Pair of shoes.
- Under garments.

ISP
SEP 17 2012
APPEALS OFFICE

Inmates may wear the following state-issued or personal items, if allowed at the institution/facility at the time of the visit:

- Thermal clothing
- Sandals or shower shoes may be permitted for inmates housed in institution/facility medical units.

Exceptions to the approved inmate attire shall be based on medical necessity, and authorized by the health care manager or treating physician.

DIVISION OF ADULT INSTITUTIONS
 IRONWOOD STATE PRISON
 19005 Wiley's Well Road
 P.O. Box 2229
 Blythe, CA 92226-2229



May 31, 2012

Robert Tolbert
 CDCR #J54792, D1-112L
 Ironwood State Prison
 PO Box 2229
 Blythe, CA 92226

ISP

SEP 12 2012

APPEALS OFFICE

Dear Mr. Tolbert,

I am in receipt of the letter you wrote on May 2, 2012, to the Associate Warden of Complex II, requesting a religious accommodation, specifically, to allow Muslim inmates to wear their approved religious head wear to visiting, education, and the dining hall.

As the Associate Warden of Central Operations and the Religious Review Coordinator, your letter was forwarded to me for response.

You state in your letter that denying Muslim inmates the right to wear their religious head wear amounts to discrimination and violates your religious rights as inmates of the Jewish faith are allowed to wear their approved religious head wear in places the Muslim inmates are not.

You have requested the Religious Review Committee (RRC) reconsider the Institution's policy regarding religious head wear for Muslim inmates.

As eluded to in your letter, the RRC has previously reviewed the request by Muslim inmates to wear religious head wear in the aforementioned areas of the Institution on a number of occasions, most recently on March 2, 2011 (RRC minutes enclosed). On each occasion, the request has been denied because the Muslim religion does not mandate that religious head wear be worn at all times, whereas the Jewish religion does.

I recently met with the Muslim Chaplain, Mr. Toure, regarding this matter. Mr. Toure reaffirmed that it is not a mandate to wear religious head wear; however, it is recommended by the religion and a preference of many Muslim men.

Although the request has previously been addressed and denied by the RRC, it will be placed on the agenda for the next RRC, currently scheduled for June 26, 2012. At that time, various issues including security concerns will be discussed and documented in the minutes. A copy of the RRC minutes will be posted in the Facility Chapels following their completion.

Sincerely,

A. SCOTT-BARRON
 Associate Warden
 Central Operations
 Ironwood State Prison

ISP

SEP 17 2012

APPEALS OFFICE

cc: David B. Long, Warden (A)
 Joe McKinnie, Chief Deputy Warden (A) 26
 Sam Burton, Community Resource Manager (A)

Exhibit 2

SECTION A: INMATE/PAROLEE REQUEST

NAME (FIRST, LAST NAME) Talbert Robert	FIRST NAME Robert	CDC NUMBER: J-54792	SIGNATURE: <i>[Signature]</i>
HOUSING/BED NUMBER: D-1 112	ASSIGNMENT: ABE 13ED	HOURS FROM 10 ⁰⁰ TO 14 ⁵⁵	TOPIC (I.E. MAIL, CONDITION OF CONFINEMENT/PAROLE, ETC.): Discrimination

CLEARLY STATE THE SERVICE OR ITEM REQUESTED OR REASON FOR INTERVIEW:
 Sergeant Hernandez I sent two CDCR 22 supervisor Review to your office date 2-26-2012 As of 3-16-2012 I have not received an answer from your office. Both appeals were dealing with staff discrimination on Ch. A. serv. II one refusing Me the Right to wear MY Religious head to school. PEP CDCR Title 15, 3009C and Title VII of Civil Right Act of 1964 California code section 12940 and The Religious Landmark. The Jews and christians are allowed to wear their approved religious item indoors but the Muslims are not

SENT THROUGH MAIL. ADDRESSED TO: Captain Johnson D-facility DATE MAILED: 3 18 12
 DELIVERED TO STAFF (STAFF TO COMPLETE BOX BELOW AND GIVE GOLDENROD COPY TO INMATE/PAROLEE):

RECEIVED BY: PRINT STAFF NAME: R. Johnson	DATE: 3/22/12	SIGNATURE: <i>[Signature]</i>	FORWARDED TO ANOTHER STAFF? (CIRCLE ONE) YES NO
IF FORWARDED - TO WHOM: N/A	DATE DELIVERED/MAILED:	METHOD OF DELIVERY: (CIRCLE ONE) IN PERSON BY US MAIL	

SECTION B: STAFF RESPONSE

RESPONDING STAFF NAME: R. Johnson	DATE: 3/22/12	SIGNATURE: <i>[Signature]</i>	DATE RETURNED: 3/22/12
--------------------------------------	------------------	----------------------------------	---------------------------

A review of your previous CDCR 22's indicates this office received the forms on 3/13/12 and they were returned to you on 3/15/12. This is not unreasonable and within allowable time frames. Additionally your issue of religious head covering was not mentioned in either form. **ISP**

SEP 12 2012

SECTION C: REQUEST FOR SUPERVISOR REVIEW

PROVIDE REASON WHY YOU DISAGREE WITH STAFF RESPONSE AND FORWARD TO RESPONDENT'S SUPERVISOR IN PERSON OR BY US MAIL. KEEP FINAL CANARY COPY. **APPEALS OFFICE**

Dear sir with all due respect I never received the two CDCR 22 I am talking about. Now the CDCR 22 sent to Robert Talbert V-41765 Not Me J-54792. You staff has not answered MY CDCR 22 from Talbert J-54792 ON Religious head wear. Because I am Being discriminated against by staff violation of 3009(C).

SIGNATURE: <i>[Signature]</i>	DATE SUBMITTED: 3-22-2012	ISP SEP 17 2012
----------------------------------	------------------------------	---------------------------

SECTION D: SUPERVISOR'S REVIEW

RECEIVED BY SUPERVISOR (NAME): R. Johnson	DATE: 3/26/12	SIGNATURE: <i>[Signature]</i>	DATE RETURNED: 3/26/12
--	------------------	----------------------------------	---------------------------

Your original request has been answered on the previously noted dates. Additionally staff followed established policies by asking you to remove you head covering while indoors.

IRONWOOD STATE PRISON
Religious Review Committee Meeting
 Date: March 2, 2011
 Time: 1300 Hours

Present: Associate Wardens M. Martel, W. Montgomery, Captains S.M. Smith, T. Long and M. Payton, CRM R. Davis, CBM S. Venero, AA/PIO V. Allen, Chaplains J. James, M. Toure and S. Burton, Office Tech J. Shipton

NEW BUSINESS	DISCUSSION	RESPONSE	STATUS
Burton Satanists – What is allowed?	Requested vendor Lucifer Gardens	Interested individuals in this religion need to submit a list of items that are being requested to be maintained within the cell and what items will be maintained within the chapel area.	Burton to gather info and submit to RRC
Toure Institutional policy regarding Kufi caps being worn by Muslim inmates	Toure wants to have it approved for Muslim inmates to wear Kufi caps in the dining hall and in visiting.	Muslim religions does NOT mandate that Kufi caps be worn at all times, unlike the Jewish religion DOES require that yarmulke's are worn.	CLOSED
Bathroom access for inmates in chapel	Toure believes education inmates are being shown "preferential treatment" being able to utilize the restrooms in the education area.	Matt will speak with the AW's regarding chapel inmates utilizing the education restroom area	Matt to follow up
Religious artifacts	When ordering religious artifacts, Toure believes only Muslim inmates should be able to order Muslim artifacts, and so on. Should only be artifacts from the religion followed.	Issue with constitutional right of freedom of religion. Questions ... if an alternative denomination wishes to have a rug to kneel and pray on, they cannot order a "prayer rug"?	Referring to Fed Bureau Guidelines
Wants a Muslim vendor that provides Halal meats, food items	<p align="center">ISP SEP 12 2012 APPEALS OFFICE</p> <p align="center">ISP SEP 17 2012</p>	Toure to bring in catalog from vendor he is requesting approval. Also checking with other vendors to see if they offer the Halal meats and food items. ISP is providing the required food items. This request is for a variety of foods for breakfast and/or lunch meals.	Toure to gather info and submit to RRC

In all instances where information cannot be obtained from an operational procedure or DOM supplement, guidelines set forth in the Federal Bureau of Prisons, Religious Beliefs, will be utilized.

HANAFI/HANBALI

To go about bare-headed without a legal excuse or a legal reason is obviously a disapproved habit. It is . . . the custom of the transgressors (*fussaq*). It is legally abominable (*makruh*); it is necessary (*wajib*) to abstain from it.

Shaykh Abd al-Qadir Jilani, says: To uncover the head or such parts of the body as are not included in the *sair* (parts of the body that should be kept covered), though it is the method or habit of orthodox or civilized virtuous men to keep them covered, before people is abominable.²¹

Ibn al-Jawzi writes, "It is not hidden from a wise man that it is abominable to keep the head bare before the people; an act which is looked down upon and is against gentleness, humaneness, etiquette, and gentlemanly decorum."²²

(ENCYCLOPEDIA OF ISLAMIC DOCTRINE, V. 6, PG. 118—HISHAM KABANI; KAZI PUBLICATION)

ISP

SEP 12 2012

APPEALS OFFICE

ISP

SEP 17 2012

APPEALS OFFICE

28 Harv. J.L. & Pub. Pol'y 501

Page 20

28 Harv. J.L. & Pub. Pol'y 501

(Cite as: 28 Harv. J.L. & Pub. Pol'y 501)

monetary consideration as a sufficient justification for the infringement of fundamental rights under the strict scrutiny standard. [FN209] Similarly, courts have held that a government may not deliberately budget in a way that will prevent it from meeting its civil rights obligations. [FN210] The overriding concern in these cases is that if cost is allowed to *548 suffice as a compelling governmental interest, virtually any government-sponsored rights infringement could be justified. Indeed, as the court in Robinson v. City of Seattle observed, "governments' interest in cost and efficiency are all-encompassing. Virtually any intrusion could be justified if cost and efficiency were considered compelling interests in the constitutional sense." [FN211]

To be sure, a few courts that have suggested in dicta that cost considerations might amount to a compelling government interest. [FN212] But these courts have simply ignored, let alone attempted to distinguish, the Supreme Court's holding in Memorial Hospital and the vast weight of lower court precedent to the contrary. Additionally, in regards to cost, very little differentiates prisons from other governmental institutions operating on budgets, so there is no convincing reason to treat cost differently there than, for instance, in the police force or the school system. In short, allowing cost to be a compelling interest in the prison context lacks a strong legal justification and risks undermining the strict scrutiny standard as applied elsewhere.

4. Prisoners can defeat assertions of a compelling government interest where the prison allow similar conduct that damages the asserted interest

Even where prison administrators do cite a genuinely compelling government interest (such as prison security and safety) as grounds for burdening religious exercise, RLUIPA's strict scrutiny test provides prisoners with a valuable means to rebut that showing. Specifically, a prisoner can show that a prison's asserted compelling government interest is in fact "not compelling" by pointing to conduct that the prison permits that produces "substantial harm or alleged harm of the same sort" that the prison claims it is preventing by burdening the prisoner's religious exercise. [FN213] This flows from the well-established principle of "strict scrutiny jurisprudence that a law *549 cannot be regarded as protecting an interest "of the highest order" ... when it leaves appreciable damage to that supposedly vital interest unprohibited." [FN214]

The facts of a recent case, Ickstadt v. Dretke, [FN215] illustrate how this principle should work. In Ickstadt, a group of five Orthodox Jewish prisoners sued pro se to challenge Texas' prison policy forbidding them from having one-quarter beards. Because there was no real dispute that forbidding their beards substantially burdened their religious exercise, the case turned on whether Texas could satisfy RLUIPA's strict scrutiny standard. In conclusory fashion, the court accepted Texas' position that the no-beard policy served a compelling interest in maintaining prison safety by preventing contraband from being hidden in beards and that completely forbidding beards was the least restrictive means to serve that policy, even though prisoners with medical conditions were allowed to grow beards. [FN216] However, the court failed to properly apply the rigors of the strict scrutiny test. Allowing prisoners to grow beards for medical reasons, which also poses the potential of doing appreciable damage to the interest of preventing contraband from being hidden in facial hair, fatally undermines Texas' assertion that denying the plaintiffs the ability to grow a quarter-inch beard serves a compelling interest. [FN217]

Another means that prisoners may use to undermine an asserted compelling interest in a particular policy is to introduce evidence demonstrating that another well-run prison accommodates the religious practice without appreciable damage to the supposed compelling interest. As the Supreme Court has pointed out, "[w]hile not necessarily controlling, the policies followed at other well-run institutions would be relevant to a determination of the need for a particular type of restriction." [FN218] Thus, for example, a prisoner could *550 respond to the claims made by the prison in Wilson v. Moore [FN219] that insuperable threats to security would be raised by allowing a Native American sweat lodge by pointing to the fact that other prison systems, e.g., Wisconsin's Department of Corrections, [FN220] allow sweat lodges. At the very least, such a demonstration that other prisons are able to accommodate the requested religious practice creates a genuine issue of material fact as to whether a

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

ISP

ISP

ISP

AUG 15 2012

SEP 17 2012

SEP 12 2012

APPEALS OFFICE

APPEALS OFFICE

APPEALS OFFICE

28 HVLPF 501

28 Harv. J.L. & Pub. Poly 501

(Cite as: 28 Harv. J.L. & Pub. Poly 501)

ISP

SEP 12 2012

Page 19

statutory and regulatory scheme in question is the least restrictive means. ~~It is a case of~~ government's compelling interests." [FN196] Furthermore RLUIPA requires that the government must "demonstrate[] that imposition of the [substantial] burden on that person," (i.e., the plaintiff) advances a compelling interest by the least restrictive means, not merely that application of the law in general achieves its compelling interest. [FN197] In other words, "a court does not consider the prison regulation in its general application, but rather considers whether there is a compelling government reason, advanced in the least restrictive means, to apply the prison regulation to the individual claimant." [FN198] As one court put it, while it "is undeniable that, in the abstract, [commonly asserted interests such as] safety, security, internal order and discipline, and the management and conservation of resources are compelling interests[,] [i]t does not follow... that anything that furthers one or more of these interests, however marginally, is equally compelling." [FN199]

At a minimum, the requirement that prison administrators build a record to prove that burdening religious exercise is the least restrictive *545 means of advancing a compelling government interest will make it less likely than under Turner/O'One for prison administrators to prevail on a motion to dismiss or summary judgment [FN200] Though in some instances this may result in cases going to trial, the additional leverage given to prisoners will increase the chances for cases to be resolved by settlement or even by the administrative process without the need for a trial. [FN201]

3. Prison Administrators Will Not Be Able to Rely on Merely Legitimate or Important Interests

RLUIPA's strict scrutiny test narrows considerably the range of interests on which prisons may rely to burden religious exercise. Although prisons will still be able to invoke such compelling government interests as maintaining prison security and safety (by far the most frequently cited reason for denying religious accommodations), lesser interests that merely rise to the level of "important" or "legitimate" will not pass muster. One reason sometimes cited for refusing to accommodate a religious practice is that accommodation will lead to a flood of requests for similar accommodations. [FN202] that does not suffice as an interest of the highest order. Moreover, differential treatment for prisoners is commonly recognized based on such factors as age or medical condition. The fact that prisons make accommodations based on these factors casts doubt on the importance of an interest in avoiding envy over differential treatment to accommodate religious practice. [FN203] Furthermore, because all prisons accommodate at least some religious *546 practices, making religious accommodations subject to the feelings of fellow-prisoners would essentially give to other prisoners a heckler's veto over what religions could be accommodated. The inevitable result would be to disparately impact less favored religions—the more unusual or disfavored the religion, the more opposition there would likely be to its accommodation.

Another reason frequently cited by prisons is the risk that other prisoners might be envious or jealous if a particular prisoner's religious exercise is accommodated. [FN204] Though this has been recognized as a legitimate penological interest, [FN205] that does not suffice as an interest of the highest order. Moreover, differential treatment for prisoners is commonly recognized based on such factors as age or medical condition. The fact that prisons make accommodations based on these factors casts doubt on the importance of an interest in avoiding envy over differential treatment to accommodate religious practice. [FN206] Furthermore, because all prisons accommodate at least some religious practices, making religious accommodations subject to the feelings of fellow-prisoners would essentially give to other prisoners a heckler's veto over what religions could be accommodated. The inevitable result would be to disparately impact less favored religions—the more unusual or disfavored the religion, *547 the more opposition there would likely be to its accommodation.

Finally, though the cost of implementing new regulations may in some limited circumstances be a legitimate grounds for continuing to burden religious exercise, [FN207] the Supreme Court has expressly rejected cost as a compelling government interest. [FN208] Lower courts have consistently followed suit in rejecting cost and other

ISP

ISP

SEP 17 2012

AUG 15 2012

31 APPEALS OFFICE
Exhibit 2

APPEALS OFFICE

28 HARV. J.L. & PUB. POL'Y 501

(Cite as: 28 Harv. J.L. & Pub. Pol'y 501)

First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching. Third, a religion often can be recognized by the presence of certain formal and external signs. [FN78]

Though the Supreme Court has stated that "the very concept of ordered liberty precludes allowing" a person a blanket privilege "to make his own standards on matters of conduct in which society as a whole has important interests," [FN79] the Court has also hastened to make clear that "[t]he determination of what is a 'religious' belief or practice is more often than not a difficult and delicate task." [FN80] The very nature of this inquiry requires courts to proceed with some humility as they must take heed not to let their own biases (whether based on reason or their own faith) about what a religious belief should look like determine the issue. [FN81] For that reason the Supreme Court has cautioned that "the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." [FN82] Moreover, a court may "not undertake to dissect religious beliefs because the believer admits that he is 'struggling' with his position or because his beliefs are not articulated with the *521 clarity and precision that a more sophisticated person might employ." [FN83] In short, though "[o]ne can, of course, imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection," [FN84] the risks involved in the inquiry of the state declaring what constitutes a religious belief for a particular religion requires that any doubts should be resolved in favor of finding that a particular belief or practice is religious. [FN85] RLUIPA reflects such an approach by providing that it "shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution." [FN86]

Second, a plaintiff must demonstrate that the religious belief is sincerely held. [FN87] The plaintiff must sincerely hold the burdened belief because the "government need only accommodate the exercise of actual religious convictions." [FN88] Protection does not extend--whether under the First Amendment or RLUIPA--to "so-called religions which ... are obviously shams and absurdities and, whose members are patently devoid of religious sincerity." [FN89] However, the fact that other members of plaintiff's faith may have a different view of the religious obligations of the faith is irrelevant where a plaintiff's belief is "different and sincerely held." [FN90] "[T]he relevant question is not what others regard as an important religious practice, but what the plaintiff believes." [FN91]

*522 iii. Religious Exercise Need Not Be "Compelled" by a System of Religious Belief to Be Protected

Not only does RLUIPA's definition of "religious exercise" provide that "any" religious exercise is protected, it also makes explicit that this protection is not limited to practices that are compelled by the individual's religion. [FN92] Thus, religious exercise that some might claim is discretionary on the part of the believer--e.g., a Catholic's desire to pray the rosary, a Muslim's desire to utilize prayer oils during daily prayers, or a Jewish believer's decision to wear a yarmulke--is also protected and may not be substantially burdened. This is an important feature of the Act, and, as explained below, is one designed both to comply with Supreme Court precedent and to reject the approach taken by some courts in interpreting RFRA that religious exercise must be mandated in order to be protected.

An examination of decisions discussing substantial burden reveals that the Supreme Court has never held that religious conduct must be compelled by the believer's faith to be protected. To the contrary, the Court has recognized that religious exercise may be substantially burdened even where there was no showing that the particular religious exercise at issue was mandated by the plaintiff's faith. For example, in Goldman v. Weinberger, the Court found that a Jewish serviceman's practice of wearing a particular yarmulke, "a practice described by [the serviceman] as silent devotion akin to prayer," was religiously motivated conduct eligible for protection under the

AUG 15 2012

ISP

ISP

SEP 17 2012

SEP 12 2012

APPEALS OFFICE

APPEALS OFFICE

32 Exhibit 2 APPEALS OFFICE

APPEALS OFFICE

substantial burden standard, despite the absence of evidence showing that this practice was compelled by his Jewish faith. [FN93] And in *Frazee v. Illinois Department of Employment Security*, the Court expressly repudiated a test extending protection only to religious exercise that was compelled: "[W]e reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization." [FN94]

*523 The Supreme Court's aversion to adopting a requirement that religious exercise be mandated by a faith in order to be protected flows directly from the Court's consistent position that "[c]ourts are not arbiters of scriptural interpretation." [FN95] To require a court to inquire into whether a particular religious practice is compelled by the believer's faith is to force a court into a role "not within the judicial function and judicial competence," [FN96] because it necessitates a judgment as to what a religion requires of its believers. Such an outcome would be particularly troubling because the coercive power of the state would enforce the court's judgment. Fortunately, such an unappealing situation is not a part of the Supreme Court's doctrine. [FN97]

If compulsion was a prerequisite, these problems would be even more pronounced because very often the issue of whether a practice is mandated by faith arises when the state seeks to defeat a believer's claim of substantial burden by introducing testimony of another member of the believer's faith who opines that the particular practice is not mandated. For example, in one lower court case, [FN98] the plaintiff, prisoner, a sincere adherent of Islam, argued that the prison's failure to provide him leave to obtain a Friday Juma'ah service substantially burdened his religious exercise. The prison responded by producing an affidavit of its Muslim chaplain who testified that in his understanding of Islam, attending Juma'ah was not required. The court could have avoided a decision on what Islam required and found that the prison's policy substantially burdened religious exercise by completely preventing the plaintiff's sincerely motivated religious *524 conduct. Instead, the court waded into the thicket of what Islam requires of its adherents and brought the coercive power of the state down on the side of the prison's preferred view that Juma'ah was not required. This is one of the ways of other religious believers whose interpretation the state prefers is precisely the kind that the Supreme Court has held that the state is not competent to make: "Intrafaith differences... are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences." [FN99]

Judge Posner has eloquently described why the religious judgment of whether a practice is mandated is not the business of courts or other government officials:

[R]equir[ing] the courts to determine what practices the plaintiff's religion obligates him to follow... [means] requiring the court to determine the authoritative sources of law for the religion in question and to interpret the commands emanating from those sources. In the case of hierarchical religions such as Roman Catholicism this process of identification and interpretation, which resembles the procedures of legal positivism, is feasible. In the case of nonhierarchical religions, however, such as Islam, Judaism, and a multitude of Protestant sects, the process is infeasible, or at least very difficult and attended with a high degree of indeterminacy. The danger that courts will find themselves taking sides in religious schisms, if they must opine on matters of *525 religious obligation, is not a trivial one. [FN100]

Courts have also recognized that a compulsion requirement presents an additional danger of providing less protection for minority religious faiths. "[W]hile some religions instruct their followers to obey the commands and prohibitions of the faith, others, especially those outside the Judeo-Christian tradition, lack the concept of religious compulsion." [FN101] For example, "Theravada Buddhism ... is a nonduty-based religion, which emphasizes inward spiritual maturity rather than obedience to religious mandates." [FN102] Imposition of a test that requires a showing of religious mandate behind a practice would have an inevitable disparate impact on the ability of adherents to such nontraditional religions to exercise their religion free of government burdens. [FN103]

ISP

ISP

APPEALS OFFICE

SEP 17 2012

APPEALS OFFICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 3

Level 2 Decision

DIVISION OF ADULT INSTITUTIONS

IRONWOOD STATE PRISON
19005 Wiley's Well Road
P O Box 2229
Blythe, CA 92226-2229



OCT 03 2012

Appellant: Zomalt, Zamaad
CDCR#: F35569
Housing Unit: D3-204L
Ironwood State Prison
P.O. Box 2199
Blythe, CA 92226

Dear Mr. Zomalt:

SECOND LEVEL RESPONSE APPEAL LOG # ISP-D-12-01045**SUMMARY OF APPEAL**

You are appealing the issue that the Jewish Yarmulke allowed to be worn in areas where the Kufi is not permitted, which is discriminatory.

You are requesting to have the Religious Review Committee (RCC) (Scott-Barron) and all other RCC members revise the policy or reverse this policy and acknowledge that the Kufi is mandated by the Religion.

EFFECTIVE COMMUNICATION

Additional assistance was not required to achieve effective communication. A review of the Disability and Effective Communication System (DECS) reflects a grade point level of 12.9. You are not a participant in the Mental Health Service Delivery System and have no physical or developmental disabilities which would preclude you from being able to communicate your concerns in an interview without assistance. Both your Central File and DECS reflect your need to wear prescription glasses, which you were wearing at the time of our interview. During the interview, you were able to clearly articulate responses in your own words in a manner that demonstrated that no accommodation for effective communication was necessary. Therefore, effective communication had been achieved.

SUMMARY OF INQUIRY

Your appeal was **BYPASSED** at the First Level; this letter is in response to the Second Level.

A thorough inquiry has been conducted for the purpose of this response.

An interview was conducted with you for the purpose of this response on September 20, 2012 by Correctional Counselor II (CCII) (A) C. Blair. During the interview, you reiterated the information which was contained within your appeal and indicated you had no further information to add.

Appellant: Zomalt, Zamaad
CDCR#: F35569
Second Level Appeal Response
Appeal Log#: ISP-D-12-01045
Page 2 of 2

On August 24, 2012 you submitted a Form 22 to Associate Warden, A. Scott-Barron, requesting the current policy regarding the 'Kufi' be reconsidered. You were informed by A. Scott-Barron on August 30, 2012 the 'Kufi' would be authorized effective immediately in Visiting pursuant to DOM 54020.21. She also stated the issue of wearing the 'Kufi' in the Dining Hall and other areas such as Education has been previously addressed and denied, most recently by the RCC on March 2, 2011. She also informed you Warden Long would not re-consider our Local Policy and it would not be added to the next RCC agenda.


Chief Deputy Warden, J. Mckinnie, reviewed the Form 22 you submitted to his office and responded on September 6, 2012. He stated he concurred with A. Scott-Barron's response dated August 30, 2012.

APPEAL RESPONSE

For the reasons stated above your appeal is **DENIED at the Second Level of Review.**

If you are dissatisfied with the Second Level of Response, complete Section F of the CDCR 602, attach supporting documents and submit by mail for Third Level Review. It must be received within 30 calendar days of receipt of prior response. Mail to: Chief, Inmate Appeals Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001.

Sincerely,


A. SCOTT-BARRON
Associate Warden


JOE MCKINNIE
Chief Deputy Warden (A)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 4

Level 3 Decision

ZOMALT V. BEARD
COMPLAINT

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
OFFICE OF APPEALS
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

THIRD LEVEL APPEAL DECISION

JAN 08 2012

Date:

In re: Zamaad Zomalt, F35569
Ironwood State Prison
P.O. Box 2229
Blythe, CA 92226

TLR Case No.: 1204305 Local Log No.: ISP-12-01045

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner B. Forsterer, Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that Ironwood State Prison (ISP) has inappropriately denied him the right to wear his Kufi. The appellant contends that Jewish inmates are allowed the Yarmulke to be worn in areas the Kufi is not permitted. The appellant asserts the Religious Land Use and Institutionalized Persons Act (RLUIPA) does not require a practice to be mandated to be protected by the law. The appellant contends the Religious Review Committee denial of wearing the Kufi indoors is false. The appellant requests to have the policy revised or reversed. The appellant requests for the acknowledgement that the Kufi is mandated by his religion.

II SECOND LEVEL'S DECISION: The reviewer found that the appellant had received a response regarding the current policy regarding the wearing of the Kufi. The Second Level of Review (SLR) noted that the appellant was informed by Associate Warden A. Scott-Barron that the Kufi would be an authorized in visiting pursuant to ISP CDCR Operations Manual, Section Supplement, 54020.21. The SLR noted the issue of the Kufi in the dining hall and other areas such as education was previously addressed by the Religious Review Committee (RRC) on March 2, 2011, and denied. The SLR noted the Warden would not reconsider the local policy and the issue would not be added to the next RCC agenda. Based upon the aforementioned, the appellant's appeal was denied at the SLR.

III THIRD LEVEL DECISION: Appeal is denied.

A. FINDINGS: The documentation and arguments presented are persuasive that the appellant has failed to support his appeal issue with sufficient evidence or facts to warrant modification of the previous levels of review. The Third Level of Review (TLR) notes that pursuant to the RLUIPA, CDCR must determine the least restrictive alternative to meet the appellant's religious practices. The RRC was established to determine the least restrictive alternative pursuant to the RLUIPA. The RRC is composed of custody staff and religious advisors. The RRC's mission to ensure that the security of the institution is not compromised and the appellant's religious beliefs are not excessively hindered. The appellant is informed that pursuant to California Code of Regulations, Title 15, Section (CCR) 3213(a) "Prior written approval of the institution head or their designee shall be required for the following: (3) For an inmate to wear or carry an approved religious artifact at any time other than during their regular religious or sweat events, or facility-approved special events." The TLR notes the RRC had previously reviewed the issue of wearing the Kufi in the dining hall and other areas. The issue was denied by the RRC on March 2, 2011. The TLR concurs with the findings by ISP. Therefore, relief at the TLR is not warranted.

B. BASIS FOR THE DECISION:
California Penal Code Section: 5058
CCR: 3000, 3001, 3053, 3210, 3213, 3270, 3380

C. ORDER: No changes or modifications are required by the Institution.

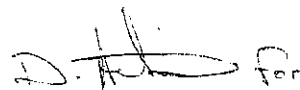
ZAMAAD ZOMALT, F35569
CASE NO. 1204305
PAGE 2

This decision exhausts the administrative remedy available to the appellant within CDCR.



B. FORSTERER, Appeals Examiner
Office of Appeals

cc: Warden, ISP
Appeals Coordinator, ISP



J. D. LOZANO, Chief
Office of Appeals