The Sikh Coalition submits this comment regarding the draft “Occupational Exposure to COVID-19; Emergency Temporary Standard” (“ETS”, Docket No. OSHA-2020-0004) issued by Occupational and Safety Health Administration, U.S. Department of Labor (OSHA). We greatly appreciate OSHA’s promulgation of the ETS given the critically important guidance it provides healthcare employers and employees in promoting workplace safety while also promoting the civil rights of employees.

By way of introduction, the Sikh Coalition is the nation’s largest Sikh American legal and civil rights organization. The Sikh Coalition owes its existence in large part to the effort to combat bias against Sikh-Americans after September 11, 2001, including hate crimes, police profiling, employment discrimination, school harassment, and other forms of discrimination. Since its inception, the Sikh Coalition has worked with government agencies and the private sector to achieve mutually acceptable solutions to the accommodation of Sikh articles of faith in the workplace.

I. Employers Have Used N95 Shaving Requirements to Discriminate Against Observant Sikhs

In January of this year, the Biden Administration directed all federal agencies and their subsidiaries to “address systemic barriers to underrepresented communities...includ[ing] members of religious minorities.”¹ The Sikh Coalition is compelled to submit this comment because, since the start of the COVID-19 pandemic in March of 2020, our legal team has fielded approximately two dozen requests for legal assistance from healthcare workers – primarily observant Sikhs but also some of other faiths – who were told to shave their religiously-mandated beards² in compliance with N95 respirator fit test requirements and/or were denied


² Sikhism is the fifth largest world religion, with over 25 million followers. Sikhism was founded in Punjab, India in 1469 by Guru Nanak, who rejected the caste system and declared all human beings equal. The Sikh religion is monotheistic, believing in one God that is all eternal, all-pervading, and all equal. It is estimated that approximately half a million Sikhs reside within the United States. Observant Sikhs are required to wear a religious uniform consisting of certain articles of faith, including kesh (uncut hair, including an unshorn beard). Sikh men (and some women) cover their hair with a turban. Sikhs wear their articles of faith as part of an external uniform to unify and
religious accommodations. These healthcare workers include physicians, medical and dental students, paramedics, occupational therapists, and hospital support staff. Most of these healthcare workers were on the front lines of the COVID-19 pandemic and had not previously been subject to policies requiring them to shave their facial hair to wear N95 respirators. These employees were subject to systemic inequality given that their employers failed to consider their statutory and constitutionally-protected right to freedom of religious exercise when interpreting and enforcing OSHA regulations; this resulted in significant barriers to their ability to continue working in a safe manner while exercising their religious beliefs.

Throughout the pandemic, employers enforced OSHA regulations (see, e.g., 29 CFR 1910.134(g)(1)) stating that those with facial hair could not be fitted for an N95 respirator. Administrators blindly followed employer respirator policies, often failing to consider the equal employment opportunity repercussions of mandating that employees shave to wear N95s or whether employees could be accommodated with alternatives that allowed them to safely work while maintaining their religiously-mandated facial hair. Many of these employees only granted their employees accommodations after the Sikh Coalition’s intervention, which included educating employers of religious protections under the free exercise clause of the First Amendment to the U.S. Constitution, Title VII of the Civil Rights Act of 1963 (“Title VII”) (and analogous state statutes), and/or the Religious Freedom Restoration Act (“RFRA”).

Employer enforcement of CDC and OSHA N95-related requirements to shave have had a detrimental and disparate impact on religiously observant bearded healthcare workers. Some have even been forced to make the unconscionable choice between sacrificing their faith by shaving their beards or risking demotion or termination. We have included a spreadsheet as Appendix A which provides an overview of the challenges faced by the observant bearded Sikh

bind them to the beliefs of the religion and to remind them of their commitment to Sikh teachings at all times. The articles of faith distinguish a Sikh and have deep spiritual significance. Maintaining unshorn kesh is one of the primary means through which most Sikhs practice their faith. This religious mandate includes not only hair on the head, but all body hair (including facial hair) for men and women. Maintaining kesh unshorn is rooted in the Sikh belief that hair is a divine gift; thus, maintaining it unshorn is considered living in harmony with the will of God. The Sikh religious code of conduct (the Rehat Maryada) explicitly forbids the removal or cutting of any hair, and doing so weakens a Sikh's connection to God and to the Sikh religious community.

Uncut hair and turbans historically have been central features of the Sikh identity. In the 18th century, Sikhs in South Asia were persecuted and subject to forcible conversion. The method of conversion was to remove a Sikh’s turban and cut off his hair. Since then, denying a Sikh the right to wear a turban and maintain unshorn hair - and by extension, a beard - has symbolized denying that person the right to belong to the Sikh faith; it is perceived by adherents as the most humiliating and hurtful physical injury that can be inflicted upon a Sikh.

(and Muslim) healthcare workers who contacted the Sikh Coalition in the past sixteen months for legal help. This snapshot is exactly that: a sampling of what observant Sikhs and others have endured throughout the pandemic. It is important to note that the list is not exhaustive, as many observant healthcare workers may not have had the resources, time, knowledge, or ability to advocate for their rights. Additionally, because we have worked closely with the North American Sikh Medical & Dental Association (“NASMDA”) to promote awareness regarding NIOSH-approved alternatives to N95s, we understand that a number of Sikh healthcare workers were able to resolve similar matters within their workplaces using our resources without our direct intervention.

For your reference, we are highlighting some of the more egregious cases we received below.

- An observant Sikh emergency medical technician (“EMT”) in Connecticut requested a religious accommodation to maintain his religiously-mandated beard and wear a Powered Air-Purifying Respirator (“PAPR”) in place of an N95 respirator. The employer, a national medical transportation company, denied his request and terminated him in late fall of 2020. When the Sikh Coalition intervened, the company doubled down on its refusal to provide a religious accommodation arguing that it did not consider use of a PAPR to be a reasonable accommodation. One of the employer’s purported objections was remaining safety concerns in relation to air exhaled from a PAPR. After exhaustive discussions, the employer's position did not change. The Sikh Coalition filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission (“EEOC”) in May of 2021; the agency is currently investigating the charge. See App. A, no. 14; App. C, Redacted EEOC Charge (May 10, 2021).

- Counsel for three observant bearded Muslim men recently contacted the Sikh Coalition to consult and for information. Upon information and belief, three men who worked as part of a cleaning crew in a New York hospital were told to shave their beards to wear N95s, and were denied religious accommodations to wear PAPRs in place of N95s. The hospital questioned the sincerity of the men’s religious beliefs and did not entertain a request to wear PAPRs, which the hospital now claims do not provide the same level of protection as N95s (i.e., that the wearer's exhaled air could potentially cause contamination). The hospital-employer offered all three men alternative positions, which paid less and/or were

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less desirable. Only one of the men accepted. The other two men were terminated. See App. A, no. 18; App. D.

- A hospital-employer in California segregated an observant Sikh occupational therapist from patients testing positive or showing symptoms of COVID-19 because he objected to shaving his religiously-mandated beard to use an N95. When he requested a religious accommodation, his hospital refused to provide the employee with a PAPR (purportedly due to the cost), causing him to worry that his hours may be reduced. Ultimately, the Sikh Coalition was able to provide him with support and a PAPR (which had been donated to our organization), which resolved the matter. See App. A, no. 11.

- A Sikh medical student in New York City was temporarily suspended from Staten Island University Hospital (“SIUH”) even after he had passed the hospital’s mandatory N95 respirator fit test with his religiously-mandated beard. At the start of the COVID-19 pandemic, SIUH informed the medical student that he would need to shave his beard. Prior to the pandemic, the medical student passed the fit test by placing a beard gown underneath a N95 respirator. However, after the pandemic began the hospital advised the medical student that he needed to shave and take another fit test before being allowed to return. The medical student feared that his refusal to shave would impede his ability to complete his studies and become a doctor. The Sikh Coalition intervened, informed the hospital of the student’s constitutionally and statutorily protected rights, and filed a complaint with the Office for Civil Rights (“OCR”) at the U.S Department of Health and Human Services (“HHS”). The agency provided SIUH with technical assistance⁶, enabling them to provide the medical student with a PAPR which resolved the matter. See App. A, no. 7.

- A Sikh dental student in Pennsylvania was advised by his dental school that all students must be clean shaven in order to wear N95 respirators. When inquiring about accommodations for his religiously-mandated beard, the dental student was told to “reevaluate your priorities” by the school’s staff. After consultation with the Sikh Coalition, the dental students – along with several other bearded students – contacted the school’s director and provided the school information about alternatives to the N95 respirator. The dental school eventually agreed to provide him with an accommodation to wear a PAPR, which resolved the matter. See App. A, no. 10.

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Additionally, it must be noted that employees who could not shave for medical reasons faced similar challenges in the workplace. According to news reports, one law enforcement agency placed 25 officer-employees on paid leave as a medical accommodation during the early days of the pandemic because they could not shave to wear N95s due to a condition called Pseudofolliculitis Barbae (PFB). We understand that individuals with PFB are subject to a painful skin condition when they shave, and that PFB disproportionately impacts African-Americans and Latinos.

II. OSHA Must Comply with RFRA to Protect Religious Minorities from Discrimination

As evidenced by the cases discussed in the previous section and Appendix A, employers often fail to provide religious accommodations to N95/tight-fitting respirator workplace requirements consistent with Title VII of the Civil Rights Act of 1964 and analogous state antidiscrimination statutes. While employers are generally knowledgeable of their duty not to discriminate on the basis of race or sex, in our experience employers are often ignorant of their legal duty to not discriminate on the basis of religion by providing reasonable religious accommodations.

It must be noted that the religious accommodation standard under Title VII (and most analogous state law) is fairly weak; thus, even when employers are aware of their legal obligations, they often ignore them. Employers must provide religious accommodations absent “undue hardship,” which the Supreme Court has defined as a “de minimus cost or burden” – in other words, a minimal cost or burden. Courts generally find that documented health and safety objections qualify as a de minimus cost or burden on an employer in the face of a request for religious accommodation – particularly where the employer provides evidence that the proposed accommodation would either cause or increase safety risks or the risk of legal liability for the employer. Accordingly, it has been too easy for employers to argue that the safety risks borne by the COVID-19 pandemic trump any duty to accommodate. Employers have argued that safety is paramount such that N95 respirators must be worn consistent with their understanding of CDC and OSHA regulations – and, as demonstrated above, have terminated or threatened to terminate observant Sikhs and other employees who cannot shave their religiously-mandated beards in order to wear N95 respirators. Throughout the pandemic, bearded healthcare workers of faith required legal advice and counsel to protect themselves from their employers. Even then, as discussed above, multiple Sikh and Muslim bearded employees have been terminated or transferred for refusing to shave. See App. A, case nos. 14, 18; App. C; App. D.

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8 See id.
We in no way seek to minimize the grave threat posed by the COVID-19 pandemic nor propose that OSHA weaken its workplace safety standards in any manner. Notwithstanding, it is imperative that OSHA proactively inform employers that safe and effective alternatives exist for bearded employees who cannot create a tight-fitting seal with N95s -- and should be made available whether for religious, medical or other reasons.12 While we are aware of a number of workable solutions, due to a lack of research and development put towards a wide variety of PPE, the go-to alternatives are most often the National Institute of Occupational Safety and Health (“NIOSH”)-approved PAPRs. We understand that PAPRs are functionally equivalent to N95s in terms of protecting healthcare workers, co-workers and patients in almost all circumstances. Indeed, OSHA repeatedly emphasizes in the preamble to the proposed ETS that PAPRs are safe and effective alternatives to N95s and should be used more frequently given that they are reusable and that their use would help stretch N95 capacity.13 According to OSHA, use limitations may exist for surgical settings given concerns about unfiltered exhaled air;14 however, we understand that these concerns are obviated if the worker wears either a surgical mask or shrouded hood with the PAPR (and/or otherwise covers exhalation sources).15 We are aware of numerous bearded Sikh physicians who safely wear PAPRs in this manner. Indeed, OSHA itself concludes in the preamble of the ETS that there is “no basis for OSHA to prohibit any NIOSH-approved filtering facepiece respirator from serving as both personal protective equipment and as source control” (i.e., as a control for exhaled air). 86 Fed. Reg. at 32756.

Other respirators and/or solutions may exist given that technology is rapidly advancing in this area, including potential techniques for the safe wear of N95s by bearded people. For example, a beard guard or rubber sheath worn under an N95 may create a seal and protect a bearded wearer as effectively as being clean shaven. See R. Singh, et al., Under-mask beard cover (Singh Thattha technique) for donning respirator masks in COVID-19 patient care, 106 J. HOSP. INFECTION 782 (2020) (attached in App. F).16 We hope that the government will give further study and review to this solution, and others like it.

Moreover, §1910.504(d)(2) of the proposed ETS contains a note advising that:

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12 Note that individuals may need accommodations to N95 / tight-fitting standards for a variety of reasons. Whether tight-fitting respirators fit effectively may depend upon face shape/size, ethnic/racial background, gender and age. See, e.g., Yi-Chun Lin & Chen-Peng Chen, Characterization of Small-to-Medium Head-and-Face Dimensions for Developing Respirator Fit Test Panels and Evaluating Fit of Filtering Facepiece Respirators with Different Facesal Design, PLOS ONE, 1 (2017), available at https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0188638.


14 See id. at 32576.

15 See, e.g., id. at 32436.

16 Similar solutions have been contemplated previously. For example, about 25 years ago, Canada’s current defense minister Harjit S. Sajjan (an observant bearded Sikh) filed a Canadian patent on a tight-fitting “synthetic skin” protective hood to be worn underneath a gas mask that would ostensibly allow bearded soldiers to create an airtight seal. We understand that the patent exists but that the synthetic skin protective hood has never been further researched, developed or manufactured. See Canada Patent No. CA2189378C (filed Nov. 1, 1996), available at https://patents.google.com/patent/CA2189378C/en and https://patentimages.storage.googleapis.com/af/4f/32/4ad19d51231dcb/CA2189378C.pdf.
When employees are required to wear a respirator and a problem with the seal check arises due to interference with the seal by an employee’s facial hair, employers may provide a different type of respirator to accommodate employees who cannot trim or cut facial hair due to religious belief.

Given this language, OSHA appears to acknowledge its legal obligation consistent with the strict standard of the Religious Freedom Restoration Act (“RFRA”) to ensure that employers do not use its safety standards to discriminate against employees who maintain religiously-mandated beards. RFRA generally compels faith-based exemptions to facially neutral government regulations - including those promulgated by OSHA - that substantially burden an individual’s religious practice. Specifically, RFRA provides that the “[g]overnment shall not substantially burden a person’s exercise of religion” unless it “demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1(a), (b).

This "least-restrictive-means standard is exceptionally demanding" because it requires the government to show "it lacks other means of achieving its desired goal." Hobby Lobby, 573 U.S. at 728. This requires an evidence-based analysis that considers all available options. See, e.g., Singh v. McHugh, 185 F. Supp. 3d 201, 231 n.23 (D.D.C. 2016) (finding that the military failed to pursue workable alternatives when it denied an observant Sikh the religious accommodation of a beard); Singh v. Carter, 168 F. Supp.3d 216, 232 (D.D.C. 2016) (finding similarly).

While OSHA certainly has a compelling governmental interest to implement respirator-related safety standards for healthcare works during a pandemic, those standards would neither 1) be in furtherance of, nor 2) the least restrictive means of furthering that interest, if they did not include more specific and detailed language advising employers of the need to provide reasonable religious accommodations for bearded people. It is critically important that OSHA fulfill its obligations under RFRA to ensure that employers do not use agency regulations to either place coercive pressure on healthcare workers to violate their faith or discriminate against them for refusing to shave their religiously-mandated beard – particularly given that reasonable accommodations do indeed exist, i.e., options for bearded employees to safely wear respirators that protect them and others against COVID-19 and other airborne infectious diseases.

III. Sikh Coalition Requests of OSHA

Given the information and analysis discussed above, the Sikh Coalition makes the following concrete requests of OSHA:

(1) Amend & Strengthen ETS Language Regarding Respirator Accommodations

OSHA directly addresses religious accommodations in the draft ETS in a note in §1910.504(d)(2). OSHA’s proposed language is a good start and we absolutely endorse and commend the Agency’s efforts to encourage healthcare employers to provide religious accommodations to tight-fitting respirator requirements. However, we believe that the high
standards of RFRA – coupled with the fact that that numerous employers have used OSHA standards to discriminate against bearded employees of faith by failing to provide them religious accommodations to N95 standards and/or have placed coercive pressure on them to shave their beards – compel OSHA to strengthen its language around religious accommodations. Accordingly, the Sikh Coalition asks that OSHA amend the note in §1910.504(d)(2) of the proposed ETS in the following manner:

When employees are required to wear a respirator and a problem with the seal check arises due to interference with the seal by an employee’s facial hair, employers must provide a different type of respirator, such as a powered air-purifying respirator (PAPR), to accommodate employees who cannot trim or cut facial hair due to religious belief or medical condition.

(a) We ask that the verb “may” be changed to “must” in order to ensure that the ETS complies with RFRA’s high standards. It is clear that OSHA regulations have substantially burdened employees who maintain religiously-mandated beards given the large number of intakes we have received from these employees who have been denied religious accommodations ostensibly pursuant to those same OSHA regulations. Given the existence of reasonable accommodations consistent with the standards of Title VII and RFRA, OSHA must clarify that employers must provide alternatives to employees who maintain religiously-mandated beards.

(b) We additionally ask that PAPRs specifically be included as an example of an accommodation in the draft ETS because several employers have refused to acknowledge that PAPRs are functionally equivalent to N95s. Indeed, we have taken formal legal action against one employer who terminated an employee rather than allowing him to wear a PAPR for this very reason, despite our attorneys providing evidence to the contrary and engaging in exhaustive discussions on this issue. See App. A, no. 14, App. C. We are aware of a similar case currently being litigated in court. See App. A, no. 18; App. D. In addition, the federal government itself (i.e., U.S. Department of Health & Human Services Office of Civil Rights) intervened to ensure that a hospital provide a PAPR to a medical student in response to a complaint we filed with their office. See App. A, no. 7; App. E.

(c) We ask that medical conditions be acknowledged in the ETS as a reason why some employees cannot shave their beards and require accommodations to N95 respirator requirements. As discussed previously, we understand that individuals who suffer from the medical condition Pseudofolliculitis Barbae (PFB) are subject to a painful skin condition if they shave and often require medical accommodations to N95 respirator requirements. As PFB disproportionately impacts African-Americans and Latinos, the

17 See fn. 7.
need for accommodations is not only a disability/medical rights issue but also a racial equity issue.

Overall, it is imperative that OSHA strive to normalize accommodations to tight-fitting respirators for bearded people no matter the reason. It is in everyone's interest that a variety of PPE be available to protect healthcare workers and patients from COVID-19 at minimum to prevent the N95 supply issues that were so prevalent in the early days of the pandemic.

(2) Address Employer PAPR Exhalation Concerns in the ETS and Additional Permanent Guidance

As previously discussed, the Sikh Coalition is aware of multiple bearded employees who were discriminated against by employers who denied them religious accommodations to N95 shaving requirements – and, indeed, terminated them – due to purported concerns about PAPRs, i.e., exhalation and contamination. None of these employees’ job duties implicated PAPR use limitations (i.e., surgical settings) – one was an EMT and several were part of a cleaning crew. More broadly, we believe that a number of our other clients would not have received PAPR accommodations without our advice, counsel, and/or intervention (particularly medical and dental students, many of whom had fewer rights than employees).

For this reason, we ask OSHA to specifically address employer’s PAPR use limitations and exhalation concerns – both in the ETS itself and in supplemental, permanent guidance to employers. Given the workplace challenges we have seen, there is a need for OSHA to broadly affirm the use of PAPRs as accommodations in almost all circumstances by healthcare workers and clarify their specific, extremely narrow use limitations, as well as provide information on how to resolve any exhalation concerns, e.g., through the use of shrouds/hoods or surgical masks.

(3) Support Research & Development into N95 Alternatives for Bearded People

Given the large number of people who require alternatives to tight-fitting respirators (whether for religious, medical or other reasons), we ask that OSHA push government agencies – such as the Centers for Disease Control and Prevention (“CDC”) and its subsidiary NIOSH – and private businesses to engage in research, development and review of alternatives to N95s. This may include additional hooded respirators such as PAPRs. It may also include workable solutions to the wear of N95s such as the Singh Thattha Technique, a method used by observant British Sikh medical professionals through which they achieved a tight-fitting seal with N95s by tying a rubber sheath over their beards. See Singh, supra (attached in App. E); see also fn. 16. Indeed, one of our own bearded clients was able to create a tight-fitting seal and pass an N95 fit test by wearing the N95 over a beard gown. See App. A, case no. 7.

OSHA should demand more PPE alternatives to advance equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by disparities and, if appropriate, provide funding and/or advocate for funding of research and development into these alternatives, thereby promoting safety and reinforcing statutory civil
rights and constitutional protections for bearded workers. Taking such action would also be consistent with Executive Order 13985 On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. Moreover, it is incumbent upon OSHA to continue taking steps towards pandemic preparedness in relation to PPE so that our country is not caught under-resourced and underprepared as we were during the first months of the pandemic.

(4) Expand ETS Guidance’s Applicability to Industries Outside of Healthcare

Beyond this proposed regulation, we ask that OSHA continue to encourage employers outside of the healthcare industry to provide PPE alternatives (such as PAPRs) to their employees who require religious and medical accommodations – and greater flexibility as envisioned by the ETS’s creation of the Mini Respiratory Program. We are aware, for example, that law enforcement agencies and correctional facilities have required their employees to use N95s or maintain a state of so-called “N95 readiness” (i.e., be clean-shaven) during the pandemic – and bearded employees in those sectors have required religious and medical accommodations to maintain their facial hair. In some cases, these employees required intervention by legal counsel to secure their rights. (See, e.g., App. A, case no. 20.) As the proposed ETS does not apply to law enforcement and corrections, these employers are left without guidance affirming that their OSHA obligations are subject to statutory civil rights and constitutional protections and may be slow to provide alternative PPE to the N95 – in the event that they choose to provide accommodations at all. We believe that it is important to make all industries which OSHA regulates aware of this ETS, the information they must consider in providing alternative PPE, and the need and promotion of research and development of greater PPE options for bearded people, given the significant number of medical and religious accommodations required by employees. This recommendation would also be consistent with the President directive in Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government) and Executive Order 14031 of May 29, 2021 (Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islander), which state that the entire Federal Government must advance equity and racial justice for underserved communities, which include AA and NHPI communities.

IV. Additional Comments and Inclusions

Finally, we would like to specifically endorse and commend OSHA for inclusion of the following provisions of the proposed ETS:

- All guidance normalizing and encouraging the use of PAPRs by healthcare workers.\(^\text{18}\) As stated above, we also strongly encourage OSHA to normalize and encourage the use of PAPRs by employees both within and outside of the healthcare industry.

\(^\text{18}\) See, e.g., fn. 13.
• Affirmation of anti-retaliation principles for employees who seek to obtain religious and medical accommodations in the workplace.\textsuperscript{19} Workplace retaliation for requesting accommodations, filing discrimination-related complaints, and/or more simply voicing equal employment opportunity-related concerns is a very real and serious issue for employees, including observant Sikhs.

• Implementation of the Mini Respirator Protection Program ("Mini RPP"). We strongly endorse inclusion of this program given that it allows employees greater flexibility to wear PPE in the workplace, even if/when not mandated by OSHA or an employer. We strongly agree with OSHA that healthcare employees should be allowed to use PPE that is more protective than that mandated by an employer. Indeed, we strongly encourage OSHA to implement Mini RPPs in industries outside of healthcare. All employees should be empowered to protect themselves with PPE, even if not required or supported by an employer. Some employers’ refusal to provide PPE accommodations stems from their disinterest in creating a Mini RPP for only a handful of employees who require PAPRs or other accommodations; thus, we believe it is important for OSHA to review whether a more flexible Mini RPP may be appropriate. One example of greater flexibility would be by allowing employees to review training videos created by the PAPR manufacturer to familiarize themselves with the use and maintenance of the equipment, instead of employers bringing a representative in to conduct trainings.

We broadly ask that these aspects of the ETS be made permanent and be expanded to fully address the workplace discrimination that occurs when employees seek accommodations to more readily available PPE. The COVID-19 pandemic might be temporary, but its impact will be long-lasting as the world we live in is changed forever. Thus, it is imperative that OSHA provide guidance, support and information to employers and ensure that both the safety and civil rights (both religious and medical) of employees are preserved.

\textsuperscript{19} See Fed. Reg. 32560 at 32603-32605, 32626.
V. Conclusion

Thank you for giving us the opportunity to submit comments to the proposed ETS, and for your careful consideration of our input. Consistent with Executive Order 13985, as OSHA endeavors to review its policies to reduce and eliminate systemic barriers to underrepresented communities such as religious minorities, please do not hesitate to contact the Sikh Coalition for information about our community’s experiences. We look forward to collaborating with your agency to address current and emerging workplace challenges related to PPE and compliance with OSHA regulations to ensure safer, more open and inclusive workplaces.

Sincerely,

Harsimran Kaur, Senior Counsel
Harsimran@sikhcoalition.org

Amrith Kaur, Legal Director
Amrith@sikhcoalition.org

Sim J. Singh, Senior Policy & Advocacy Manager
Sim@sikhcoalition.org

Kiranjot Kaur, Legal Fellow
Kiran@sikhcoalition.org

Appendix Items:

A. Challenges Faced by Religiously Observant Workers Spreadsheets
B. Sikh Coalition Legal Director Amrith Kaur’s Written EEOC Testimony
C. Redacted EEOC Charge (May 10, 2021)
D. Judicial Complaint, Ronald Moye, et al. v. Mount Sinai Hospital
E. U.S. Department of Health and Human Services Press Release (Jul. 21, 2020)
F. Singh Thattha Technique Report
<table>
<thead>
<tr>
<th>No.</th>
<th>Religion</th>
<th>State</th>
<th>Date</th>
<th>Type of Healthcare Worker</th>
<th>Brief Background</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Observant bearded Sikh</td>
<td>Ohio</td>
<td>03/2020</td>
<td>Physician</td>
<td>Hospital policy prevented people with facial hair from using N95s. Hospital had a handful of PAPRs but were requiring staff to wear N95s. Sikh Coalition ghostwrote an email for the physician to send to the hospital requesting an accommodation. Hospital then provided Physician with a PAPR.</td>
</tr>
<tr>
<td>2</td>
<td>Observant bearded Sikh</td>
<td>New York</td>
<td>03/2020</td>
<td>Physician</td>
<td>Hospital-employer informed physician that it would not provide religious accommodation and that the employee would need to forsake their religious observance of maintaining an unshorn beard in order to wear the N95 respirator. Employee was informed by the hospital that a refusal to shave would result in suspension. Sikh Coalition ghostwrote an email for the physician to send to the hospital-employer. Physician was able to get access to a PAPR after a decline in cases. Physician remained concerned about future needs if cases were to spike.</td>
</tr>
<tr>
<td>3</td>
<td>Observant bearded Sikh</td>
<td>North Carolina</td>
<td>03/2020</td>
<td>Physician</td>
<td>Physician was asked to shave their religiously required beard in order to wear the required N95 respirator. Sikh Coalition sent guidance memo that the physician used to request a religious accommodation from his residency program.</td>
</tr>
<tr>
<td>4</td>
<td>Observant bearded Sikh</td>
<td>Illinois</td>
<td>03/2020</td>
<td>Physician</td>
<td>Physician contacted Sikh Coalition to inquire about PAPR alternatives after hospital refused to provide them. Sikh Coalition provided information and advice, and assisted in connecting individual with a PAPR supplier.</td>
</tr>
<tr>
<td>5</td>
<td>Observant bearded Sikh</td>
<td>Massachusetts</td>
<td>05/2020</td>
<td>Physician</td>
<td>Healthcare worker inquired about where to get a PAPR after hospital ran out of supplies. Sikh Coalition assisted in connecting individual with a PAPR supplier.</td>
</tr>
<tr>
<td>6</td>
<td>Observant bearded Sikh</td>
<td>Unknown</td>
<td>06/2020</td>
<td>Unknown</td>
<td>Hospital asked third year medical student doing clinical rotations to shave his beard to wear an N95. After student asked for religious accommodation, hospital informed him that even if he passed the fit test with his beard, he would not be permitted to work with facial hair. (Prior to pandemic, he had passed a fit test using a beard gown.) Hospital noted that they were adhering to strict OSHA guidelines. Sikh Coalition represented the individual and advocated with the U.S. Dept. of Health and Human Services and pushed hospital to provide an accommodation so that he could use a PAPR. Agency provided hospital with technical assistance, enabling them to provide med student with a PAPR which resolved the matter. See App. E.</td>
</tr>
<tr>
<td>7</td>
<td>Observant bearded Sikh</td>
<td>New York</td>
<td>06/2020</td>
<td>Medical Student</td>
<td>Employer notified dental resident that all residents must shave in order to wear N95 respirators and that the hospital would not provide PAPR accommodations. Sikh Coalition represented the resident to request a religious accommodation on his behalf. Hospital did not allow resident to wear PAPR but provided him with an accommodation to wear an N95 respirator by covering his beard with a cloth to create a tight-fitting seal.</td>
</tr>
<tr>
<td>8</td>
<td>Observant bearded Sikh</td>
<td>New York</td>
<td>07/2020</td>
<td>Dental Resident</td>
<td>Medical school told medical student to shave/trim religiously observant beard to wear an N95 respirator. Sikh Coalition provided information and advice.</td>
</tr>
<tr>
<td>9</td>
<td>Observant bearded Sikh</td>
<td>New Jersey</td>
<td>07/2020</td>
<td>Medical Student</td>
<td>Dental school advised dental student that all students must shave in order to wear N95 respirators in order to work. When inquiring about religious accommodations for a beard, the individual was told to reevaluate their priorities. Individual, along with several other bearded students, contacted the school's Director. Sikh Coalition provided advice and information about PAPRs. Individual provided information about alternatives to the N95 to the school, which eventually accommodated him.</td>
</tr>
<tr>
<td>10</td>
<td>Observant bearded Sikh</td>
<td>Pennsylvania</td>
<td>08/2020</td>
<td>Dental Student</td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Religion</td>
<td>State</td>
<td>Date</td>
<td>Type of Healthcare Worker</td>
<td>Brief Background</td>
</tr>
<tr>
<td>-----</td>
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<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>11</td>
<td>Observant bearded Sikh</td>
<td>California</td>
<td>09/2020</td>
<td>Occupational Therapist</td>
<td>Hospital segregated occupational therapist from patients testing positive or showing symptoms of COVID-19 because he objected to shaving his religiously-mandated beard. The hospital refused to provide him with a PAPR when requested citing budget concerns. OT-employee was concerned that hospital may reduce his hours. The Sikh Coalition ghostwrote an accommodation request for individual to submit to the administrator and sent him a donated PAPR.</td>
</tr>
<tr>
<td>12</td>
<td>Observant bearded Sikh</td>
<td>Unknown</td>
<td>10/2020</td>
<td>Critical Care Resident</td>
<td>Critical care resident needed a PAPR due to his religiously-mandated beard. Sikh Coalition provided advice and information.</td>
</tr>
<tr>
<td>13</td>
<td>Observant bearded Muslim</td>
<td>Tennessee</td>
<td>10/2020</td>
<td>Nursing Student</td>
<td>Muslim nursing student told to shave religiously observant beard for N95 seal even though hospital had PAPRs onsite. Sikh Coalition shared information.</td>
</tr>
<tr>
<td>14</td>
<td>Observant bearded Sikh</td>
<td>Connecticut</td>
<td>11/2020</td>
<td>EMT</td>
<td>EMT requested religious accommodation to wear PAPR in place of N95 seal. Employer denied his request and terminated him. Sikh Coalition engaged in exhaustive discussions with the employer and attempted to resolve matter, but employer's position did not change. One of the employer’s purported objections was remaining safety concerns in relation to air exhaled from PAPR. EMT (represented by Sikh Coalition) filed a charge of discrimination with the EEOC in May 2021. Charge is currently under investigation by the EEOC. See App. C.</td>
</tr>
<tr>
<td>15</td>
<td>Observant bearded Sikh</td>
<td>California</td>
<td>12/2020</td>
<td>Physician</td>
<td>Third year medical student inquired about PAPR models that work best for bearded Sikh healthcare workers to share with his school. The Sikh Coalition shared information.</td>
</tr>
<tr>
<td>16</td>
<td>Observant bearded Sikh</td>
<td>Michigan</td>
<td>03/2021</td>
<td>Medical Student</td>
<td>Third year medical student was told he would need to pass a N95 respirator fit test ahead of his fourth year. He was unable to find a hospital or health center that would conduct the fit test for a bearded man. Sikh Coalition provided advice and shared information.</td>
</tr>
<tr>
<td>17</td>
<td>Observant bearded Muslims</td>
<td>New York</td>
<td>05/2021</td>
<td>Medical Student</td>
<td>Counsel for three observant bearded Muslim men recently contacted the Sikh Coalition to consult and for information. Upon information and belief, three men who worked as part of a cleaning crew in a New York hospital were told to shave to wear N95s, and were denied religious accommodations to wear PAPRs in place of N95s. Hospital-employer questioned the sincerity of the men's religious beliefs and did not entertain request to wear PAPRs, which the hospital now claims do not provide the same level of protection as N95s (i.e., that wearer's exhaled air could potentially cause contamination). Hospital offered all three men alternative positions, which paid less and/or were less desirable. Only one of the men accepted; the other two were terminated. See App. D.</td>
</tr>
<tr>
<td>18</td>
<td>Observant bearded Muslim</td>
<td>New York</td>
<td>07/2021</td>
<td>Hospital Cleaning Crew</td>
<td></td>
</tr>
</tbody>
</table>
### Non-Healthcare Workers

<table>
<thead>
<tr>
<th>No.</th>
<th>Religion</th>
<th>State</th>
<th>Date</th>
<th>Type of Worker</th>
<th>Brief Background</th>
</tr>
</thead>
<tbody>
<tr>
<td>19</td>
<td>Observant bearded Sikh</td>
<td>California</td>
<td>11/2020</td>
<td>Facility Cleaning Crew</td>
<td>Individual applied for a position and was told he would need to wear an N95 respirator to clean an airport. Employer did not allow him to be fit tested because of his beard and then offered him a different job that paid less.</td>
</tr>
<tr>
<td>20</td>
<td>Observant bearded Sikh</td>
<td>Illinois</td>
<td>05/2021</td>
<td>Correctional Officer</td>
<td>Federal correctional officer who adopted Sikh faith requested an accommodation to maintain his religiously observant beard. Employer initially denied the accommodation stating that officers need to be clean shaven at all times in order to maintain a constant state of so-called &quot;N95 readiness&quot;, even though they wore cloth facemasks on a daily basis. Sikh Coalition intervened and requested accommodation for officer to use a PAPR. While employer denied an accommodation for use of a PAPR in prison, it granted him a temporary accommodation from clean shaven requirement. Facility thereafter soon lifted its clean shaven policy for all officers.</td>
</tr>
</tbody>
</table>
APPENDIX B
Good afternoon Chair Burrows, Vice-Chair Samuels, Commission Members and staff of the Equal Employment Opportunity Commission (EEOC), and my fellow panelists. I thank you all for the opportunity to testify and participate in today’s discussions regarding the impact of the COVID-19 pandemic on the Sikh community. My name is Amrith Kaur Aakre, and I am the national Legal Director for the Sikh Coalition, the nation’s largest Sikh civil rights organization. The Sikh Coalition is a community-based organization that defends civil rights and civil liberties in the United States, educates the broader community about Sikhs and diversity, promotes local community empowerment, and fosters civic engagement among Sikh Americans. The Sikh Coalition owes its existence in large part to the effort to combat uninformed discrimination against Sikh Americans after September 11, 2001. Since our inception, we have worked with governmental and private entities to achieve mutually acceptable accommodations for the Sikh articles of faith and have advocated for better protections for religious and racial minorities across the board. Indeed, we have partnered with the EEOC for nearly 20 years as a stakeholder organization in crafting guidance documents and co-litigating employment discrimination cases.

I. Background on Employment Discrimination Against Sikhs

By way of background, there are approximately 26 million practicing Sikhs in the world, with over 500,000 within the United States, making Sikhism the fifth largest religion in the world.1 Observant Sikhs are often targeted for employment discrimination because of their actual or perceived race, ethnicity, national origin, and religion.2 Sikh religious practices include wearing five articles of faith comprised of maintaining kesh (uncut hair - including facial hair) out of respect for God’s will and covered by a dastaar (turban) as a reminder to lead an ethical life, carrying a kanga (small wooden comb) as a reminder to maintain physical and spiritual cleanliness, wearing kachera (long cotton undershorts) as a reminder of the importance of marital fidelity, wearing a kara (steel bracelet), and

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1 Sikhism was founded in the South Asian subcontinent over 550 years ago.
2 In 2006, the Sikh Coalition surveyed over 1,000 Sikhs in New York City; 9% of surveyed Sikh adults reported that they had been refused employment or denied a job promotion because of their Sikh identity. In 2009, the Sikh Coalition surveyed over 1,300 Sikhs in the California Bay Area; 12% of surveyed Sikhs believed that they had been refused employment because of their religious identity. See Sikh Coalition Making Our Voices Heard: A Civil Rights Agenda for New York City’s Sikhs (April 2008), pgs. 5, 12, available at https://www.sikhcoalition.org/wp-content/uploads/2016/11/Making-Our-Voices-Heard.pdf and Sikh Coalition Bay Area Civil Rights Report 2010 (2010) pgs. 5, 8, 21, available at http://www.sikhcoalition.org/documents/pdf/Bay_Area_Civil_Rights_Agenda.pdf.
carrying a kirpan (article of faith resembling a knife) as a reminder to defend the rights of the oppressed. These articles of faith have deep religious significance for observant Sikhs but are poorly understood by most Americans, including many employers.³ Sikhs remain one of the most vulnerable minority groups in America. According to the most recent FBI statistics, Sikhs are among the top five groups experiencing anti-religious hate crimes as of 2019 and have seen an upward trend of victimization by an average annual increase of 102% between 2015 to 2019. Studies also show that Sikhs are disproportionately subject to workplace discrimination.⁴ As a result, we continue to receive a high volume of intakes from Sikh Americans alleging violations of Title VII and other federal, state, and local civil rights laws.

Historically, the Sikh community is all too familiar with this type of workplace discrimination and has routinely had to fight for equitable access to employment. The Sikh Coalition has litigated numerous cases where observant Sikh employees were retaliated against, subjected to hostility, or segregated due to their articles of faith by employers in both the public and private sectors; where Sikh military service members were denied their religious identity and ability to maintain their articles of faith even while sacrificing their bodies for our country; and where physicians, paramedics, police officers, restaurant workers, teachers and others were pretextually not hired because of their visible articles of faith or the employers’ denial of religious accommodations.

For example, in 2010, we worked with the EEOC to combat harassment, a hostile work environment, and the failure to provide religious accommodations against AutoZone, on behalf of an employee who had adopted Sikhism and then was repeatedly referred to as a “terrorist”, asked by his coworkers whether he intended to blow up the store, and refused the right to wear his religiously mandated turban. Additionally, in 2016, the EEOC negotiated a conciliation agreement between J.B. Hunt Transport, Inc. and four Sikh truck drivers represented by our organization regarding discriminatory hair drug testing policies which required drivers to cut their hair in order to be tested rather than offer an alternative test, such as a urine analysis, to accomplish the same goals. The scope of this employment discrimination and the burden it places on Sikh employees is unmeasurable; however, we do know that in many cases it is completely avoidable given the protections these employees should be afforded. It is for this reason that I am here today, respectfully requesting the EEOC to acknowledge this harm which continues to grow as a result of the COVID-19 pandemic, and to stand up for the workplace rights of Sikhs and other similarly impacted groups.


II. The COVID-19 Pandemic has Exacerbated Employment Challenges for Sikh Workers Due to Biased Policies and Regulations

As you know, under Title VII of the Civil Rights Act of 1964, employers are prohibited from discriminating against employees on the basis of religion. This includes refusing to accommodate an employee's sincerely held religious beliefs or practices unless the accommodation would impose an undue hardship upon the employer. The EEOC updated its Compliance Manual Section on Religious Discrimination in January of this year, for which we submitted public comments for your review. While we agreed that it was time to update that manual, one of the main issues it failed to adequately address – and an issue we emphasized in our comments on the proposed updates to the manual – is the systemic discrimination experienced by observant Sikhs who are not given accommodations to facially neutral employment policies and regulations. This includes policies and regulations that are promulgated by federal and state workplace regulators.

An emerging challenge caused by the COVID-19 pandemic has been the interpretation of regulations issued by the Centers for Disease Control and Prevention (CDC) and Occupational Safety and Health Administration (OSHA) on the wear of certain types of Personal Protective Equipment (PPE), such as the N95 respirator, by bearded people. Specifically, both the CDC and OSHA regulations require certain employees to be fitted for N95 respirators prior to being able to wear them in the workplace. However, neither agency’s regulations allow individuals to be fit tested if they have any amount of facial hair. It is important to note that there are many reasons why individuals may be unable to pass such a “fit test,” including having a narrow face shape which is most common for women; however, it is only individuals with facial hair who are not allowed to sit for the fit test at all. This is true regardless of whether those individuals may be able to form a seal with the N95 mask and maintain the same level of protection as clean-shaven wearers.

The requirement to shave has had a detrimentally disparate impact on many Sikh, Jewish, Muslim and other minority faith healthcare workers, medical and dental students, paramedics and other first responders who maintain beards consistent with their religious beliefs. They have been forced to make the unconscionable choice between sacrificing their faith by shaving their beards or risking termination. Additionally, the shaving requirement has had an adverse impact on Black and Hispanic workers who most commonly have the medical condition Pseudofolliculitis Barbae (PFB), which causes an uncomfortable rash after shaving thereby requiring facial hair to be grown out. Despite the availability of CDC and OSHA approved alternatives to the N95 respirator - namely, Powered Air-Purifying Respirators (PAPRs) - many frontline workers are being denied accommodation requests by their employers.

The discriminatory impact of these policies regarding respirators is even more concerning...
given the CDC’s recent declaration that racism is a serious public health crisis.\(^5\) Importantly, the CDC acknowledged that both interpersonal and structural racism negatively affect “the mental and physical health of millions of people, preventing them from attaining their highest level of health, and consequently, affect[s] the health of our nation.”\(^6\) Thus, the impact of racism is felt in every aspect of one’s life, including in the workplace. The CDC further acknowledged that, “racism also deprives our nation and the scientific and medical community of the full breadth of talent, expertise, and perspectives needed to best address racial and ethnic health disparities. To build a healthier America for all, we must confront the systems and policies that have resulted in the generational injustice that has given rise to racial and ethnic health inequities.”\(^7\) Indeed, part of confronting this public health crisis must include addressing the increasing inequities experienced by minority employees as a result of the COVID-19 pandemic. The issue of respirator fit tests and employers’ general unwillingness to provide appropriate PPE for religious and racial minorities is just another way in which vulnerable communities, like Sikhs, are targeted by systemic issues within our policies, workplaces, and healthcare industry. Not only do these policies harm minority employees, but they also harm the general public, as they limit the access of talented minorities from entering or remaining within the profession.

A. Workplace Policy Mandates Must be Interpreted as Subject to All Relevant Statutory and Constitutional Protections afforded to Employees

Since the onset of the COVID-19 pandemic and over the course of this last year, we have worked with over twenty Sikh employees, and provided guidance to countless other workers, regarding their workplace rights and the wear of PPE. The majority of those employees were on the front lines of the COVID-19 pandemic and had not previously encountered policies that required them to shave their facial hair to wear N95 respirators. Employers routinely took at face value the CDC and OSHA regulations proclaiming that those with facial hair could not be fitted for an N95 – and failed to consider whether these regulations were fair, what the equal employment repercussions were under Title VII, or whether the employees could be alternatively accommodated and remain safely working while maintaining their religiously-mandated facial hair. In each case, we challenged the employers to interpret the CDC and OSHA regulations like any other policy, in conjunction with constitutional and statutory protections for employees which require employers to provide reasonable accommodations absent undue hardship. In some cases, the employers quickly acted to grant the accommodations; however, that is not always the case. In fact, a number of observant Sikhs are categorically denied access to employment by certain employers, such as ambulance services or paramedic providers, because employers refuse to acknowledge their legal obligations and provide alternative PPE.


\(^6\) Id.

\(^7\) See Id.
In an effort to bring clarity to this issue, we have engaged with the U.S. Department of Health and Human Services (HHS) of which the CDC is a part, as well as the U.S. Department of Labor (DOL) of which OSHA is a part, to reiterate the fact that a large number of bearded Sikhs work in the American healthcare industry, that there is no Sikh religious prohibition against wearing PPE, and that Sikhs are able to wear PPE safely without shaving or trimming their beards. Indeed, HHS’s Office of Civil Rights helped to resolve a Sikh healthcare worker’s PPE case we brought to their attention; it clarified to the hospital-employer that, while a safe workplace is critical, if shaving is required for healthcare professionals to comply with CDC or OSHA regulations or their individual policies, then pursuant to the legal standard under Title VII, reasonable alternatives should be provided for bearded employees, absent undue hardship. These workable solutions may include, but are not limited to:

- Additional layers of cloth or masks worn underneath the N95 to act as a smooth skin to which the N95 can be sealed, and which the CDC deemed sufficiently safe throughout the worst of the COVID pandemic last year.\(^8\)
- PAPRs, which are hooded respirators worn over the head and face, providing full coverage protection that is even safer than an N95.\(^9\)

The case we brought to HHS was not unique. Similar cases arise frequently because many employers fundamentally misunderstand that they are subject to Title VII when following CDC and OSHA regulations. Even though common sense and legal precedent dictate that employers must abide by EEO law and provide reasonable accommodations absent the imposition of an undue hardship, the CDC and OSHA regulations themselves do not make it explicitly clear. This lack of acknowledgement that the civil rights of employees must be balanced with the regulations themselves is the direct result of a biased interpretation of the policies -- one which results in employers either intentionally or unintentionally failing to comprehensively evaluate their own obligations in maintaining a discrimination-free workplace for their employees.

**B. Employers Must be Held Accountable for Failing to Provide Religious Accommodations Consistent with Their Obligations Under Title VII**

Unfortunately, our experience indicates that some employers have used the pandemic as an opportunity to create more stringent workplace policies that fail to provide religious or other accommodations whatsoever, as a way to reduce their expenditures on those accommodations. In normal times, it may be difficult for many employers to claim that providing alternative PPE to the N95 as religious accommodations creates an undue

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hardship (i.e., would impose more than a de minimis cost or burden), given the provision of these same accommodations and tens of thousands of additional dollars they may spend on disability or other accommodations (such as the construction of accessible buildings and properties or alternative work schedules). However, due to the ongoing nature of this pandemic and its lasting effect on PPE protocol for the healthcare industry and other first responders, many employers feel they have government sanctioned authority to create employment policies which fail to take religion-based Title VII employee protections into account, thereby subjecting their employees to the risk of termination or a myriad of other forms of discrimination, just for practicing their faith.

Over the last year, we have engaged with community members, stakeholder professional associations such as the North American Sikh Medical and Dental Association (NASMDA), manufacturers of PAPRs and other alternative forms of PPE, and built a coalition of civil rights organizations that represent employees in religious and other discrimination cases with the goal of advocating for our clients’ rights. However, unless the employers are held accountable by our government and the courts, all of our efforts will have been in vain.

It is imperative that the EEOC take a stand to protect the rights of employees requesting accommodations for alternative forms of PPE. Employers need clear, explicit guidance to better understand their legal obligations under Title VII to accommodate the needs of those unable to wear standard N95 respirators – particularly because employers interpret CDC and OSHA workplace regulations to supersede EEO law. Clarity would benefit many faith, disability, racial, and ethnic communities now and in the future as our health and safety policies evolve, so those policies do not disparately impact religious and racial minorities in the same manner as they have during this COVID-19 pandemic.

III. Conclusion

As I mentioned at the beginning of my testimony, the Sikh community is not new to workplace discrimination, and the COVID-19 pandemic has contributed to greater religion-based employment discrimination. The role of the EEOC is to advance the public interest, protect the civil rights of employees who are subjected to discrimination, and ensure that all American workers have access to equal employment opportunity. While this is no easy task, it is particularly important now given our societal recognition of the dangers of pervasive bias in the interpretation of policies and regulations, and their disparate impact on vulnerable minority communities. Employers must comply with their legal obligations under Title VII when it comes to the provision of religious accommodations, and our workplace regulations must clearly protect employees’ rights.

Consequently, we strongly urge the EEOC to acknowledge this harm which continues to grow as a result of the COVID-19 pandemic and to hold employers accountable whenever their actions or the failure to act are the cause of it.

Thank you for your time and consideration.
CHARGE OF DISCRIMINATION

Complainant Information
Name: [redacted]
Address: [redacted]
Phone Number: [redacted]
Date of Birth: [redacted]

Complaint Against
Name of Employer: [redacted]
Address: [redacted]
Phone Number: [redacted]
No. Employees: Upon information and belief, over 200

Discrimination Alleged
Discrimination based on: Religion, Race, Color, National Origin
Date(s) of Discrimination: Earliest: November 2020
Latest: March 2021
Continuing Action: Yes

Representatives
Name(s): Giselle Klapper and Amrith Kaur
Organization: The Sikh Coalition
Address: 50 Broad St., Suite 504, New York, NY 10004
Phone Number: (201) 800-4458
Email Address: giselle@sikhcoalition.org and amrith@sikhcoalition.org
**Facts of Discrimination**

I am of Punjabi, South Asian (Indian) descent and am an observant member of the Sikh faith. My Sikh religious beliefs and practice require me to wear a turban and maintain unshorn hair, including unshorn facial hair.

In October of 2020, I applied for a job with [Company Name]. On or about November 2, 2020, [Employer] offered me a job as an EMT Basic. I accepted the offer.

On or about November 9, 2020, [employer] told me that all new employees have to be fit tested for an N95 respirator and that we have to be clean shaven for the fit test. I requested a religious accommodation to use a powered air purifying respirator ("PAPR") in place of an N95 respirator. I had previously used a PAPR at this same [location] location when I completed my Field Internship there in September of 2020. During this Field Internship, I was performing the job duties of an EMT. I told [employer] that I had previously used a PAPR at this same [location] location during my Field Internship in September of 2020. [Employer] asked that I provide additional documentation on the Sikh faith, which I subsequently provided through my counsel at the Sikh Coalition.

On or about November 17, 2020, [employer] told me that they had denied my religious accommodation request and that I would be separated.

I understand that in early December of 2020, my counsel communicated with [employer] to reiterate my religious accommodation request but received a similar response.

On or about December 9, 2020, I received a letter from [Employer] denying my religious accommodation request, but the letter mischaracterized my request as a request to wear an N95 respirator while maintaining facial hair. I understand that my counsel subsequently communicated with [Employer] to clarify my request and provide additional information about personal protective equipment ("PPE") for people with facial hair.

I understand that in January of 2021, [Employer] told my counsel that [Employer] was not going to provide me with a religious accommodation to use alternative PPE. I understand that despite additional communication between [Employer] and my counsel about PPE used by people with facial hair, [Employer] position did not change. I understand that in March of 2021, [Employer] told my counsel that [Employer] would continue internal discussions regarding my religious accommodation request and would follow up with my counsel. I understand that my counsel has not heard from [Employer] since.
Upon information and belief, \[\text{[Redacted]}\] offers alternative forms of PPE for use by employees, including PPE that may be used safely by people with facial hair.

I believe that \[\text{[Redacted]}\] has discriminated against me based upon my religion (Sikh), race (Punjabi/South Asian), color (Punjabi/South Asian) and/or national origin (Punjabi/South Asian/Indian) in violation of state and federal law.

I believe that \[\text{[Redacted]}\] may have engaged in a pattern or practice of discrimination upon the basis of religion, race, color, national origin, and/or disability against a class of bearded employees and applicants in violation of state and federal law.

I want this charge filed with both the EEOC and the Connecticut Commission on Human Rights and Opportunities. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

May 10, 2021
Date
SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK

RONALD MOYE, CHRISTOPHER SHAW and BRIAN JONES,

Plaintiffs,

v.

THE MOUNT SINAI HOSPITAL, MOUNT SINAI HEALTH SYSTEM, INC., JEFFERY COHEN, and DAVID GIRDUSKY

Defendants.

Index No.:

SUMMONS

Plaintiff designates NEW YORK COUNTY as the place of trial

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff’s attorney within twenty (20) days after service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: July 13, 2021

MORGAN & MORGAN, P.A.

By:

Bryan L. Arbeit

8151 Peters Rd, 4th Fl.
Plantation, FL 33324
T: (954) 694-9610
F: (954) 694-9695
barbeit@forthepeople.com

Counsel for Plaintiffs
Plaintiffs RONALD MOYE, CHRISTOPHER SHAW AND BRIAN JONES hereby allege as follows:

**NATURE OF THE CLAIMS**

1. According to Mount Sinai Health System’s Vice President for Labor Relations and Human Resources, “religion is one of those things that if you look you can find an opinion that meets your expectations.”

2. This biased perception of religion is the catalyst for the actions taken against Plaintiffs, who are all devout Muslims that, as part of their religion, require them to maintain a beard of at least fist-length.

3. Notably, while non-Muslim employees with beards (including Orthodox Jews) continue to walk freely around The Mount Sinai Hospital and Mount Sinai Health System (collectively, “Mount Sinai”), Plaintiffs were selectively targeted to be required to pass a fit test for N95 masks even though Plaintiffs positions did not routinely expose them to situations where one was needed and alternative personal protective equipment (“PPE”) existed.
4. Moreover, Plaintiffs were suspended without pay and required to get letters from religious leaders to prove their sincerely held religious beliefs.

5. Even after providing a letter supporting their religious beliefs, Defendants refused to provide a reasonable accommodation in their current positions on the basis that “the department has a right to run the department the way they want” and not wanting a “situation within the department where there are particular people who don’t have to abide by fit testing.”

6. Defendants’ position on religious accommodations is unlawful and contrary to the New York State and New York City Human Right’s Law requirement to make accommodations or exceptions to policies and practices for religious beliefs so long as they do not pose an undue hardship.

7. As a result of Defendants’ bias toward religious beliefs and refusal to accommodate Plaintiffs in any way, Plaintiffs were either terminated or forced to accept a less desirable position in another department.

8. Plaintiffs bring this action to redress Defendants’ unlawful practices under the New York State and New York City Human Rights Laws and seek, in addition to damages and reinstatement, declaratory and injunctive relief to stop and prevent future religious discrimination at Mount Sinai.

**JURISDICTION AND VENUE**

9. Pursuant to CPLR §§ 301 and/or 302, this Court has jurisdiction over Defendants because it is authorized to do business in New York.

10. Venue is proper in this county pursuant to CPLR § 503.
PARTIES

11. Plaintiff Ronald Moye is a resident of New York County and was employed by Defendants from April 2016 to February 2020. At all relevant times, Plaintiff Moye met the definition of an “employee” under all applicable statutes.

12. Plaintiff Christopher Shaw is a resident of New York County and was employed by Defendants from June 20, 2016 to February 20, 2020. At all relevant times, Plaintiff Shaw met the definition of an “employee” under all applicable statutes.

13. Plaintiff Brian Jones is a resident of New York County and was employed by Defendants from May 2, 2016 to the present. At all relevant times, Plaintiff Jones met the definition of an “employee” under all applicable statutes.

14. Defendant The Mount Sinai Hospital is a domestic non-for-profit corporation with its principal place of business located in New York County. At all relevant times, Defendant The Mount Sinai Hospital met the definition of employer under all applicable statutes.

15. Defendant Mount Sinai Health System, Inc. is a domestic non-for-profit corporation with its principal place of business located in New York County. At all relevant times, Defendant Mount Sinai Health System met the definition of employer under all applicable statutes.

16. Defendant Jeffrey Cohen is the Vice President for Labor Relations and Human Resources for the Mount Sinai Health System. Defendant Cohen was one of the decision makers who denied Plaintiffs a reasonable accommodation. At all relevant times, Defendant Cohen met the definition of employer and/or aider and abettor under all applicable statutes.

17. Defendant David Girdusky, Vice President of Building Services. Defendant Girdusky supervised Plaintiffs and was one of the decision makers who denied Plaintiffs a
reasonable accommodation. At all relevant times, Defendant Cohen met the definition of employer and/or aider and abettor under all applicable statutes.

**FACTUAL ALLEGATIONS**

18. Plaintiffs are current and/or former employees of Mount Sinai who worked in the Building Services Department as Support Specialists responsible for general housekeeping and building maintenance.

19. In or around February 13, 2021, Plaintiffs were targeted to pass an N95 fit test because they are devout Muslims whose religious beliefs require them to maintain a beard at least fist-length.

20. Plaintiffs were told that if they did not shave or substantially trim their beards, they would not be allowed to work.

21. Plaintiffs were subsequently sent home and suspended without pay for failing to trim their beards.

22. Previously, Plaintiffs worked for years at Mount Sinai without being required to pass an N95 fit test, including for nearly a year during the pandemic.

23. Numerous other non-Muslim employees, including orthodox Jews, continue to be able to maintain a beard and were not similarly required to pass an N-95 fit test.

24. After complaining that the trimming of their beards violated their religious beliefs, Plaintiffs were required to obtain a letter from a religious leader to prove that maintaining a beard was part of their religious beliefs.

25. Defendant Cohen, who instructed Plaintiffs to obtain a letter, commented during a zoom meeting about the religious accommodation, “*religion is one of those things that if you look you can find an opinion that meets your expectations.*”
26. Defendant Cohen further expressed that he would not grant a reasonable accommodation in Plaintiff’s current positions even though he could not articulate a burden to provide an accommodation.

27. Specifically, Defendant Cohen stated that “the department has a right to run the department the way they want” and that he did not want a “situation within the department where there are particular people who don’t have to abide by fit testing.”

28. Defendant Girdusky, who oversees the Building Services Department where Plaintiffs worked, similarly refused to make an accommodation for Plaintiffs.

29. No explanation was given as to why the fit testing requirement was suddenly being enforced after almost a year into the COVID-19 pandemic, and over six months after Mount Sinai Hospital System created a policy against allowing the use of the religious exemption for facial hair on the basis that it “obtained special dispensations from religious organizations.”

30. While there is no such thing as a special dispensation for religious beliefs under the New York State and New York City Human Rights Law, the purported opinion from an Islamic cleric only claimed that the shaving of beards to fit testing for an N95 was not sinful only if “all avenues were exhausted.”

31. Notably, two of the Plaintiffs’ responsibilities rarely included being exposed to COVID-19 areas and the fit testing requirement was being imposed in the rare event that Plaintiffs would be instructed to clean a COVID-19 exposed area.

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1 This Islamic cleric is not the religious leader for Plaintiff and cannot claim to dispense of a reasonable accommodation under the law. Moreover, in formulating his opinion, it appears that this Islamic cleric was not informed of the existence and availability of a Power Air Purifying Respirator (“PAPR”) that that would not require a person to shave because it uses a loose fitting hood.
32. In lieu of offering a reasonable accommodation in their current positions, Defendants required Plaintiff to take a position outside the Building Services Department that required a decrease in compensation and/or change to their normal working hours.

33. Plaintiffs Moye and Shaw refused to accept a different position because of their religious beliefs and they were terminated.

34. Plaintiff Jones reluctantly accepted a kitchen position that paid less and isolated him in the back of the kitchen.

**FIRST CAUSE OF ACTION**

(Religious Discrimination under the New York State Human Rights Law)

*Against All Defendants*

35. Plaintiffs repeat and re-allege each and every allegation in the preceding factual allegations section, as though fully set forth herein.

36. Plaintiffs are devout Muslims whose sincerely-held beliefs include maintaining a beard of at least fist-length.

37. Defendants selectively targeted Plaintiffs to pass N95 fit test requirements and suspended them for failing to shave or substantially trim their beards.

38. Plaintiffs requested a reasonable accommodation in the form of either working in areas of the hospital where N95 use was unlikely or being provided with an alternative PPE (such as PAPR mask) that would accommodate their beard.

39. Defendants refused to provide any accommodation in their current position and did not demonstrate that the accommodation would pose an undue hardship.

40. Instead, Defendants forced Plaintiff to obtain letters from religious leaders to support their sincerely held religious beliefs and seek positions outside of Building Services that had materially different responsibilities and/or altered schedules.
41. Defendants violated the New York State Human Rights Law by selectively enforcing the hospital’s fit test policy on Plaintiffs who are devout Muslims, requiring them to provide a letter from a religious leader to support their sincerely held religious beliefs and refusing to provide a reasonable accommodation in Plaintiffs’ current position.

42. Plaintiffs were suffered monetary damages and emotional distress because of the religious discrimination and failure to accommodate.

43. Defendants’ unlawful and discriminatory actions constitute malicious, willful and wanton violations of the New York City Human Rights Law, for which Plaintiffs are entitled to an award of punitive damages.

**SECOND CAUSE OF ACTION**

(Religious Discrimination under the New York City Human Rights Law)  
Against All Defendants

44. Plaintiffs repeat and re-allege each and every allegation in the preceding factual allegations section, as though fully set forth herein.

45. Plaintiffs are devout Muslims whose sincerely-held beliefs include maintaining a beard of at least fist-length.

46. Defendants selectively targeted Plaintiffs to pass N95 fit test requirements and suspended them for failing to shave or substantially trim their beards.

47. Plaintiffs requested a reasonable accommodation in the form of either working in areas of the hospital where N95 use was unlikely or being provided with an alternative PPE (such as PAPR mask) that would accommodate their beard.

48. Defendants refused to provide any accommodation in their current position and did not demonstrate that the accommodation would pose an undue hardship.

49. Instead, Defendants forced Plaintiff to obtain letters from religious leaders to
support their sincerely held religious beliefs and seek positions outside of Building Services that had materially different responsibilities and/or altered schedules.

50. Defendants violated the New York City Human Rights Law by selectively enforcing the hospital’s fit test policy on Plaintiffs who are devout Muslims, requiring them to provide a letter from a religious letter to support their sincerely held religious beliefs and refusing to provide a reasonable accommodation in Plaintiffs’ current position.

51. Plaintiffs were suffered monetary damages and emotional distress because of the religious discrimination and failure to accommodate.

52. Defendants’ unlawful and discriminatory actions constitute malicious, willful and wanton violations of the New York City Human Rights Law, for which Plaintiffs are entitled to an award of punitive damages.

**THIRD CAUSE OF ACTION**

(Replacement to Engage in Cooperative Dialogue under the New York City Human Rights Law)

*Against All Defendants*

53. Plaintiffs repeat and re-allege each and every allegation in the preceding factual allegations section, as though fully set forth herein.

54. The New York City Human Rights Law makes it unlawful for an employer to fail to engage in a cooperative dialogue with an individual who has requested a religious accommodation. N.Y.C. Admin. Code § 8-107(28)(a).

55. A cooperative dialogue is defined as the “process by which a covered entity and a person entitled to an accommodation, or who may be entitled to an accommodation under the law, engage in good faith in a written or oral dialogue concerning the person’s accommodation needs; potential accommodations that may address the person’s accommodation needs, including alternatives to a requested accommodation; and the difficulties that such potential

56. The New York City Human Rights Law requires an employer to engage in a cooperative dialogue before determining that no reasonable accommodation would permit an employee to satisfy the essential requisites of a job. N.Y.C. Admin. Code § 8-107(28)(a).

57. Defendants failed to engage in a good-faith cooperative dialogue by failing to consider any accommodations to Plaintiff’s current positions or identifying any undue burden associated with providing proposed accommodations (e.g. PAPR masks or assignment to non-COVID areas).

58. Rather than engaging in a cooperative dialogue, Defendants took the position that “the department has a right to run the department the way they want” and refused to make any exceptions for Plaintiffs.

59. Defendants’ failure to engage in a cooperative dialogue is an independent violation of the New York Human Rights law which entitles Plaintiffs to damages, including punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter judgment in their favor and against Defendants, containing the following relief:

A. A declaratory judgment that the actions, conduct and practices of Defendants complained of herein violate the laws of the State and City of New York;

B. An injunction and ordering Defendants to restore Plaintiffs to their prior positions and provide an accommodation of their religious beliefs by providing alternative PPE and/or assigning other members of the Building Services to clean areas that may require PPE because of COVID-19 exposure;
C. An injunction and order permanently restraining Defendants and their partners, officers, owners, agents, successors, employees and/or representatives, and any and all persons acting in concert with it, from engaging in any such further unlawful conduct, including the policies and practices complained of herein;

D. An award of damages against Defendants, or any jointly or severally liable entity or person, in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all monetary and/or economic damages, including, but not limited to, loss of past and future income, wages, including overtime wages, compensation, seniority, and other benefits of employment;

E. An award of damages against Defendants, or any jointly or severally liable entity or person, in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all non-monetary and/or compensatory damages, including, but not limited to, compensation for their emotional distress;

F. An award of punitive damages in an amount to be determined at trial;

G. Prejudgment interest on all amounts due;

H. An award of Plaintiff’s reasonable attorneys’ fees and costs; and,

I. Such other and further relief as the Court may deem just and proper.
JURY DEMAND

Plaintiffs hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: July 13, 2021

Respectfully submitted,

MORGAN & MORGAN, P.A.

By: __________________________

Bryan L. Arbeit

8151 Peters Rd, 4th Fl.
Plantation, FL 33324
T: (954) 694-9610
F: (954) 694-9695
barbeit@forthepeople.com

Counsel for Plaintiffs
OCR Resolves Complaint After Hospital Accommodates Medical Student’s Religious Needs During COVID-19

Today, the Office for Civil Rights (OCR) at the U.S Department of Health and Human Services (HHS) is announcing the resolution of a complaint against Staten Island University Hospital (SIUH) in New York City after SIUH accommodated the needs for a medical student to keep a beard according to his faith while using Personal Protective Equipment (PPE) during the COVID-19 pandemic.

OCR enforces federal laws prohibiting discrimination on the basis of race, color, national origin, sex, age, disability, religion and the exercise of conscience, including religious nondiscrimination provisions in various block grant authorizing statutes.

In June 2020, OCR’s Conscience and Religious Freedom Division (CRFD) received a complaint from representatives of a civil rights organization regarding a medical student who was participating in rotations at the Staten Island University Hospital (SIUH) in New York City.

In response to COVID-19, SIUH temporarily suspended medical student rotations at the hospital. As a condition of their return, SIUH required students to fit-test and then wear N95 respirator masks while serving patients and informed the student that he would need to shave his beard. The student does not shave his beard in accordance with the tenets of his religion. In an N95 respirator fit-test prior to the COVID-19 outbreak, the complainant passed the test using a beard gown underneath the N95 respirator. Nevertheless, SIUH advised the complainant that he must take another fit test and shave before being allowed to return.

The student advised SIUH personnel of his inability to shave his beard because of his religious beliefs, claimed he was not initially accommodated by SIUH, and feared the matter would impede his ability to complete his studies and become a doctor.

After OCR communicated with the student and provided technical assistance to SIUH, SIUH granted the student’s accommodation request and provided an alternative form of PPE called a Powered Air Purifying Respirator (PAPR) which provides greater protection than an N95 mask and would allow for a facial beard. As a result, OCR is closing the complaint as satisfactorily resolved.

This is the second religious freedom resolution facilitated by OCR during the COVID-19 pandemic.
Roger Severino, Director of OCR said, “Accommodations like these avoid forcing people to choose between following their profession or following their faith. Religious freedom and patient safety should both be preserved, even and especially during times of crisis.”

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For more information about how OCR is protecting civil rights during COVID-19, please visit https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/index.html.

For more information related to HIPAA and COVID-19, please visit: https://www.hhs.gov/hipaa/for-professionals/special-topics/hipaa-covid19/index.html.

To learn more about non-discrimination on the basis of sex, race, color, national origin, age, and disability; conscience and religious freedom; and health information privacy laws, and to file a complaint with OCR, please visit www.hhs.gov/ocr.

Follow OCR on Twitter at @HHSOCR.

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Note: All HHS press releases, fact sheets and other news materials are available at https://www.hhs.gov/news.

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Short Report

Under-mask beard cover (Singh Thattha technique) for donning respirator masks in COVID-19 patient care


Sikh Doctors & Dentists Association, UK
Sikh Doctors Association, UK
British Sikh Dental Association, UK
British Sikh Doctors Organisation, UK
University of Bedfordshire, Bedford, UK

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SUMMARY

Tight-fitting filtering facepiece (FFP3) face masks are essential respiratory protective equipment during aerosol-generating procedures in the coronavirus disease 2019 (COVID-19) environment, and require a fit test to assess mask-face seal competency. Facial hair is considered to be an impediment for achieving a competent seal. We describe an under-mask beard cover called the Singh Thattha technique, which obtained a pass rate of 25/27 (92.6%) by qualitative and 5/5 (100%) by quantitative fit test in full-bearded individuals. Sturdier versions of FFP3 were more effective. For individuals for whom shaving is not possible, the Singh Thattha technique could offer an effective solution to safely don respirator masks.

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Introduction

Tight-fitting respirator face masks such as N95 or filtering facepiece (FFP3) masks are considered to be the reference standard respiratory protective equipment (RPE) for healthcare workers (HCWs) working in aerosol-generating procedure (AGP) environments involving coronavirus disease 2019 (COVID-19) [1].

Optimal use of face masks depends on their tight seal with the wearer’s skin, assessed via RPE fit testing. Prior to working in AGP environments, HCWs must undergo and pass the mandatory RPE fit test, which is conducted either as a qualitative fit test (QFT) or as a quantitative fit test (QNFT). QFT is based on subjective assessment of face mask seal competency by detection of a test agent, usually sensed as a bitter or sweet taste, or smell by the wearer. QNFT gives an objective measure of face fit, by providing a numerical measure of the seal competency.

* Corresponding author. Address: Transplantation Offices, St Mary’s Hospital Wing, Manchester Royal Infirmary, Manchester M13 9WL, UK. Tel.: +44 (0)161 2765954.
E-mail address: Rajinder.Singh@mft.nhs.uk (R. Singh).

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Fit test is conducted by a certified fit tester, and passing it depends on type of respirator mask tested. In the event of shortage of successfully fit-tested face masks, HCWs must undergo repeat fit testing with other types of available face masks.

Evidence suggests that facial hair reduces tight-fitting respirator face mask efficacy with worsening protection with longer facial hair [2]. Conventional fit testing in the presence of facial hair has been shown to have a high test-failure rate [3,4]. Hence, in line with the available evidence, face mask manufacturers’ guidance for fit testing recommends that wearers are clean-shaven to enable a good seal of FFP3 mask over their face covering the nose and the mouth.

Individuals unable to shave due to personal or religious reasons are recommended to use alternatives such as powered air-purifying respirators (PAPRs) [2]. However, these alternatives are expensive, limited in supply, and cumbersome to use [5]. They do not allow for fitting of surgical loupes. Dentists are unable to perform all the procedures in their repertoire. Redeployment to non-AGP areas incurs a loss of their skill-sets and need for retraining. Junior doctors have their training impacted with concerns for inadequate and prolonged training. Therefore, this option of an alternative PPE may not be ideal for some individuals affected by the above-mentioned factors.

There is no evidence in the literature to suggest why, instead of shaving, the facial hair factor cannot be overcome with an under-mask beard cover. The purpose of this study is to investigate an innovative potential solution called Singh Thattha technique, where an under-mask beard cover is used to overcome the facial hair factor for wearing a respirator mask by bearded individuals.

Methods

The technique of applying the under-mask beard cover to cover the beard over the chin and cheeks and tie the knot at the top of the head is called ‘Singh Thattha’ technique, and pioneered by a transplant surgeon in Manchester. Thatta is the colloquial term used for the beard cover, and the material used for the first case was fabric made of polyester-cotton blend. Using this method the candidate ‘passed’ the Bitrex QFT Qualitative Fit Test (Macfarlan Smith, Edinburgh, UK) in one attempt wearing a 3M 8833 FFP3 mask. It was mentioned that the ‘pass’ was with a beard using a beard cover. The material was subsequently switched to a flat elastic rubber sheet (Pilates & Yoga Elastic band™) for a better seal by the author (Figure 1a). The knot on top of the head could be either over the turban (Figure 1b) or over the inner head cloth (Figure 1c), depending on which gave the best fit with the FFP3 mask.

We are reporting the outcomes of the Singh Thattha technique tested by QFT and QNFT.

Qualitative fit test

Singh Thattha technique was adopted by 27 male, bearded, Sikh dentists in the UK who subjected themselves to Bitrex QFT conducted by certified fit testers to existing industry standards set by the British Safety Industry Federation. Data was collected by the British Sikh Dentists Association and submitted to us for analysis.

Quantitative fit test

The technique was further subjected to robust review with a reputed fit tester through a QNFT session in Shrewsbury, UK. The QNFT method used was ‘Ambient Particle Counting’ using AccuFIT9000 S/N; Protocol: INDG 479; Pass Level: 100. Informed consent was obtained, and no participant was allergic to materials used. Participants included five male candidates from the bearded Sikh community.

Results

The results are summarized in Table I.

Outcomes of qualitative fit test

The Singh Thattha technique was used by 27 male bearded dentists, and the QFT pass rate was 25/27 (92.6%). Statistical analysis comparing the masks showed that the test pass was significantly greater using the stealth half-mask (14/14), JSP Force 8 P3 (8/8), GSV half mask P3 (2/2) as compared to the 3M Half Mask P3 (1/3) (P < 0.01, Fisher’s exact test).
Outcomes of the quantitative fit test

All five male candidates passed QNFT using the *Singh Thattha* technique. The first three candidates passed using 3M 8833 masks, with the knot of the under-mask *Thattha* tied on the top of the head covered by a cloth (Figures 1c, 2c). One of these candidates also passed using a 3M 1863 mask with an adhesive dual mural tape (DMT) in its upper inner lining, with the knot of the under-mask *Thattha* tied directly over the turban. The other two male candidates used FFP3 Stealth Half Masks and passed the QNFT with the under-mask *Thattha* tied directly over their turban (Figure 2b). Small numbers precluded a statistical analysis.

Discussion

The COVID-19 pandemic caused by the novel coronavirus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) has resulted in a significant loss of lives and impacted resource utilization [1]. In their frontline duties, HCWs have suffered significant mortality. Healthcare providers have come under intense scrutiny to ensure that adequate and appropriate personal protective equipment (PPE) is provided for frontline workers.

Tight-fitting respirator masks, which depend on a seal of the mask with the wearer’s face, are considered the best protective RPE for HCWs working in AGP environments involving COVID-19. However, these are not suitable for bearded individuals as evidence has shown that beards will not allow for an optimal mask–face seal. Therefore, bearded individuals who are unable to shave due to personal reasons have to rely on alternative RPE such as expensive and cumbersome PAPRs, which may not be ideally suited for the work or training of some of these individuals — notably dentists and surgeons.

We are offering an innovative solution using an under-mask beard cover called *Singh Thattha* technique for overcoming the beard factor to enable bearded individuals to wear a respirator mask.
The Singh Thattha technique to wear an FFP3 mask was pioneered in Manchester and was adopted and tested by a large number of bearded British Sikh dentists (25/27) who passed the QFT using certified fit testers. The technique was further tested using robust QNFT in a pilot study and all (5/5) fully bearded men passed the fit test.

The relatively sturdier masks such as 3M 8833, Stealth Half Mask P3, JSP Force 8 P3, and GSV Ellipse Half Mask P3 were best-suited to achieve a competent seal using the Singh Thattha technique.

The beard-cover used (Pilates & Yoga Elastic band) is rubber material. During the fit test the different exercises used test that the silicone mask does not slip over the skin. In fact, the resistance of the rubber and silicone actually improved the fit in these exercises with the beard cover.

Facial skin may sweat, but the Thattha material does not and is of an added advantage. Whereas other determinants of face-fit, such as face architecture and mask shapes, may be irreversible factors governing the outcome of the fit test, the beard factor could be overcome by an under-mask beard cover.

This pilot study opens up possibilities for bearded HCWs looking to safely wear a tight-fitting respirator mask for whom shaving may not be a viable option. In additional to cost-saving implications for healthcare providers, this solution minimizes potential risk of redeployment of some affected individuals who either have no access to alternative PPE, or if the available PPE are not conducive to performing for their specific job-roles.

Whilst a limitation of this study remains small numbers of individuals tested using the under-beard cover technique, it provides encouraging results to pave the way for larger scale studies. The authors plan to conduct a follow-up study with the Singh Thattha technique involving larger numbers of bearded individuals given that the preliminary reports are quite encouraging.

To summarize, the final arbiter of face-mask fit is a fit test — not the difference in the nuances of the chemistry between the ‘mask with face’ versus the ‘mask with beard cover’. Facial hair, albeit an accepted risk factor for face-mask leakage, can be overcome by using an under-mask beard cover.

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Conflict of interest statement

Three of the authors were participants in the study. One of the authors is President of the Sikh Doctors and Dentists Association which funded the study, but he has no financial interest to declare.

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