



The Public Advocate
for the City of New York

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VIA ELECTRONIC MAIL

The Honorable William Bratton
Commissioner
New York City Police Department
1 Police Plaza
New York, NY 10038

Dear Commissioner Bratton:

The New York City Police Department (NYPD), like other agencies across the City, has greatly benefited from diversity within its ranks. Government functions better when it is representative of the people it serves. I write to you in support of this important value and bring to your attention a case that raises troubling questions about NYPD policies. The case involves Police Officer Masood Syed who was disciplined for keeping a beard in accordance with his religious beliefs.

Officer Syed joined the NYPD in 2006 in the Transit Bureau. He has served our City for the past ten years and even attended New York Law School while working, all the while fulfilling his religious obligation of wearing a beard. Officer Syed most recently served in the Office of the Deputy Commissioner of Trials, until his suspension without pay took effect.

It appears that the NYPD applies its beard policy inconsistently. There is sufficient evidence of other officers receiving accommodations for growing beards. In this case, Captain James Kobel (the NYPD EEO Office's second-in-command) approached Officer Syed and informed him that his beard was not in compliance with NYPD policy. According to press reports and conversations Officer Syed had with my office, Officer Syed appealed the decision with Deputy Commissioner Neldra Zeigler.¹ But six months later, he is still awaiting a determination from Commissioner Zeigler.² Nonetheless, before a determination could be made, Captain Kobel suspended Officer Syed without pay.³ This may have violated the NYPD's Administrative

¹ Ashley Southall, *Muslim Officer Sues New York Police Dept. Over No-Beard Policy*, N.Y. TIMES (June 22, 2016), <http://nyti.ms/28YLQKJ>.

² Class Action Complaint at ¶ 66, *Masood Syed v. City of New York*, 1:16-cv-04789-PGG (S.D.N.Y. June 22, 2016).

³ *Id.* at ¶ 67.

Guide Procedure 320-47, which provides for due process and a right to appeal.⁴ Procedure 320-47 further prohibits retaliatory action while a matter is pending.⁵

Unfortunately, the NYPD has a history of not religiously accommodating individuals, only to be overturned by a tribunal or court.⁶

As applied, the NYPD's policies may violate the U.S. and New York's Constitution, Title VII of the Civil Right Act of 1964, the Religious Freedom Restoration Act, as well as State and City Human Rights law. In addition, there may be a new Equal Protection claim, given an assertion made by the NYPD's attorney Michael Fleming. According to one report, when federal judge Kevin Castel inquired into the distinction between Officer Syed's case and another case where the beard was ruled to be permissible, Mr. Fleming replied: "It is my understanding that he has different religious beliefs from the plaintiff." It seems that Mr. Fleming acknowledged in open court that the NYPD treats officers differently based upon their faith.

The NYPD's contention that federal guidelines require that officers be able to wear gas masks in case of a chemical and biological attack is not substantiated.⁷ According to Officer Syed's complaint, he was certified on the MSA Millennium model respirator on multiple occasions while wearing at least a ½ inch-long beard.⁸ Recently, the Department of Defense (DOD) acknowledged this when it permitted multiple members of the armed forces to retain their beards.⁹

As the New York City Public Advocate, I demand that Officer Syed be immediately reinstated and granted a religious accommodation. I also call upon the NYPD to have all of the EEO Officers retrained in the applicable federal, state, local laws, and NYPD procedures. We are a large and diverse people of many faiths and traditions. If the DOD can permit our armed forces to grow beards and even wear turbans, surely the NYPD may make such an accommodation. I am confident that the NYPD will implement common-sense policies to ensure the safety of officers and the public without inhibiting religious freedom.

⁴ New York Police Department, *Reasonable Accommodations for Employees and Applicants*, Administrative Guide Procedure No. 320-47 (Oct. 8, 2014).

⁵ *Id.*

⁶ See, e.g., *Litzman v. New York Police Dep't*, 12 Civ. 4681 (HB), 2013 U.S. Dist. LEXIS 162968 (S.D.N.Y. Nov. 15, 2013); see also James Barron, *Two Sikhs Win Back Jobs Lost by Wearing Turbans*, N.Y. TIMES (July 29, 2004), http://www.nytimes.com/2004/07/29/nyregion/two-sikhs-win-back-jobs-lost-by-wearing-turbans.html?_r=0; Karen K. Narasaki, *A Citizen Fights for His Civil Rights after 9/11: Amric Singh Rathour*, *Advancing Justice* (2009), http://advancingjustice-la.org/sites/default/files/UCRS%2013_Amric_Singh_Rathour_story%20r2.pdf; James Barron, *Two Sikhs Win Back Jobs Lost by Wearing Turbans*, N.Y. Times (July 29, 2004), <http://www.nytimes.com/2004/07/29/nyregion/two-sikhs-win-back-jobs-lost-by-wearing-turbans.html>.

⁷ Southall, *supra* note 1.

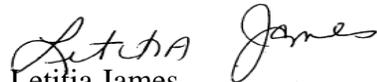
⁸ Class Action Complaint, *supra* note 1, ¶ 35.

⁹ *Singh v. Carter*. Civil Action No. 16-399 (BAH), 2016 U.S. Dist. LEXIS 26990 (D.D.C. Mar. 3, 2016); see also Corey Dickstein, *In rare accommodation, Army to allow Sikh officer to wear beard, turban*, STARS AND STRIPES (Dec. 14, 2015),

<http://www.stripes.com/news/in-rare-accommodation-army-to-allow-sikh-officer-to-wear-beard-turban-1.384033>.

Beyond the case of Officer Syed, there is a broader issue of how the NYPD interprets and applies its standards for reasonable accommodation. In an ever-growing diverse force, we must ensure that everyone's civil rights are protected uniformly. The NYPD has an opportunity to demonstrate by its own internal procedures its commitment to the City's values and the communities it serves.

Sincerely,



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