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HARPAL SINGH CHEEMA
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20 UNITED STATES DISTRICT COURT
21 EASTERN DISTRICT OF CALIFORNIA
22 SACRAMENTO DIVISION
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HARPAL SINGH CHEEMA,
Plaintiff,
v.
MARK CHANDLESS, Warden, Yuba County Jail; VIRGINIA BLACK, Yuba County Sheriff; NANCY ALCANTAR, Field Office Director, Detention and Removal, U.S. Immigration and Customs Enforcement; MICHAEL J. GARCIA, Assistant Secretary, U.S. Immigration and Customs Enforcement; VICTOR CERDA, Acting Director, Office of Detention and Removal, U.S. Immigration and Customs Enforcement,
Defendants.

Case No. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND DAMAGES FOR VIOLATION OF RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000, 42 U.S.C. § 2000cc, ET SEQ., RELIGIOUS FREEDOM RESTORATION ACT OF 1993, 42 U.S.C. § 2000bb, ET SEQ., FIRST AMENDMENT OF THE U.S. CONSTITUTION, AND ART. I, § 4 OF THE CALIFORNIA CONSTITUTION
DEMAND FOR JURY TRIAL

INTRODUCTION

1. By this complaint, Plaintiff Harpal Singh Cheema seeks relief from the substantial burdens that Defendants have imposed on his religious exercise. Under the authority of U.S. Customs and Immigration Enforcement, Mr. Cheema is confined to the Yuba County Jail, pending the outcome of immigration proceedings in which he seeks relief based on the brutal torture and persecution he suffered before fleeing India and arriving in the United States. As a devout Sikh, Mr. Cheema is obligated to keep his head covered at all times. Nonetheless, Defendants have been unjustifiably and unlawfully subjecting Mr. Cheema to extraordinary restrictions on his use of a religious headcovering, prohibiting him from leaving his bed with his head covered.

JURISDICTION AND VENUE

2. This action arises under 42 U.S.C. § 1983, the laws and the Constitution of the United States, and the Constitution of the State of California. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(3), 1343(a)(4) and 42 U.S.C §§ 2000bb-1(c), 2000cc-2(a) and directly under the Constitution. The Court has supplemental jurisdiction under

1 28 U.S.C. § 1367(a). Jurisdiction to grant declaratory relief is conferred by 28 U.S.C. §§ 2201,
2 2202. Injunctive relief is authorized under Rule 65 of the Federal Rules of Civil Procedure.

3 3. Venue is proper pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events
4 or omissions giving rise to the claim occurred in the Eastern District of California.

5 6 **PARTIES**

7 **Plaintiff**

8 4. Plaintiff Harpal Singh Cheema, an *Amritdhari* Sikh, was born in India in 1958.
9 He is presently confined to the Yuba County Jail while his immigration proceedings are pending.
10 Federal authorities – first the Immigration and Naturalization Service (INS), and now its
11 successor agency (as of March 1, 2003), U.S. Immigration and Customs Enforcement (ICE), a
12 bureau of the Department of Homeland Security – have subjected Mr. Cheema to detention since
13 1997. Since 1993, when he arrived in the United States after fleeing persecution in India, Mr.
14 Cheema has been pursuing immigration relief in the form of asylum, withholding of removal,
15 and deferral of removal. Mr. Cheema has been granted deferral of removal. His application for
16 asylum and withholding of removal is pending before the Board of Immigration Appeals.

17 **Defendants**

18 5. Defendant Mark Chandless is the Warden of Yuba County Jail. He is sued in his
19 official capacity and individually for damages. Mr. Chandless is directly responsible for the
20 restrictions that Yuba County Jail has imposed on Mr. Cheema's use of a religious headcovering.

21 6. Defendant Virginia Black is the Sheriff of Yuba County. She is sued in her
22 official capacity. Ms. Black is responsible for oversight of the County's jails. Plaintiff is
23 informed and believes, and on that information and belief alleges, that Ms. Black was, at all
24 relevant times herein alleged, responsible for the policy pursuant to which Plaintiff is restricted
25 in his use of a religious headcovering.

26 7. Defendant Nancy Alcantar is the San Francisco Field Office Director for
27 Detention and Removal, U.S. Immigration and Customs Enforcement. She is sued in her
28 individual and official capacity. Plaintiff is informed and believes, and on that information and

1 belief alleges, that Ms. Alcantar is responsible for determining whether and where Plaintiff is
2 detained, ensuring that immigration detainees under her legal authority are housed in detention
3 facilities that comply with national Detention Standards, and ensuring that such immigration
4 detainees are not subject to unconstitutional or otherwise unlawful conditions of confinement.

5 8. Defendant Michael J. Garcia is the Assistant Secretary for U.S. Immigration and
6 Customs Enforcement within the Department of Homeland Security. Plaintiff is informed and
7 believes, and on that information and belief alleges, that Mr. Garcia oversees ICE's functions
8 including, but not limited to, fulfilling ICE's responsibility for the detention of, and conditions of
9 confinement for, non-citizens who are held in custody pending the outcome of their immigration
10 proceedings. Mr. Garcia is sued in his official capacity.

11 9. Defendant Victor Cerda is the acting Director of ICE's Office of Detention and
12 Removal (DRO). DRO secures bed space in detention facilities such as Yuba County Jail.
13 Plaintiff is informed and believes, and on that information and belief alleges, that Mr. Cerda
14 oversees DRO's functions including, but not limited to, monitoring facilities housing
15 immigration detainees to ensure compliance with national Detention Standards, which specify
16 the minimum living conditions appropriate for detainees, and laws governing conditions of
17 confinement for immigration detainees. Mr. Cerda is sued in his official capacity.

18
19 **FACTUAL ALLEGATIONS**

20 10. Plaintiff Harpal Singh Cheema is an *Amritdhari* (initiated) Sikh, born in India in
21 1958. He is presently detained at the Yuba County Jail, under the authority of U.S. Customs and
22 Immigration Enforcement, while his application for relief under the Immigration and Nationality
23 Act and the Convention Against Torture is pending before the Board of Immigration Appeals.

24 **The Sikh Religion and Its Requirements for Plaintiff**

25 11. The monotheistic Sikh religion was founded in India in or around the year 1500
26 by Guru Nanak. Today, there are over 20 million Sikhs worldwide.

1 12. Guru Nanak passed on the leadership of the Sikh religion to nine successive
2 Gurus. The teachings of Sikhism's 10 Gurus are enshrined in the Sikh Holy Book, the *Sri Guru*
3 *Granth Sahib*.

4 13. The final living Guru, Guru Gobind Singh, died in 1708. Before his death, Guru
5 Gobind Singh crystallized the practices and beliefs of the faith and determined that no future
6 living Guru was needed.

7 14. In keeping with Guru Gobind Singh's direction, the Sikh religion has, since Guru
8 Gobind Singh's death, been jointly guided by the Sikh Holy Book and the collectivity of
9 *Amritdhari* Sikhs. *Amritdhari* Sikhs are men and women who have undergone the Sikh initiation
10 ceremony, akin to a baptism, binding them to a life of discipline and piety. An *Amritdhari* Sikh
11 is regarded as having reached the highest level of religious commitment.

12 15. *Amritdhari* Sikhs are charged with upholding the highest Sikh values of devotion,
13 remembrance of God at all times, truthful living, equality between all human beings, and social
14 justice. They are required, *inter alia*, to engage in lengthy meditation and prayer each morning
15 and every night before retiring. They are also obliged to perform good works and to aid the
16 weak and oppressed.

17 16. *Amritdhari* Sikhs must strictly follow the Sikh Code of Conduct and
18 Conventions, known as the *Rehat Maryada*, and wear the prescribed physical articles of the faith,
19 which are known as the "five Ks" – *kes*, *kanga*, *kara*, *kirpan*, and *kachhera*.

20 17. One of the five Ks – *kes* – means uncut hair. In keeping with the *Rehat*
21 *Maryada*'s requirements, *Amritdhari* Sikhs do not cut their hair. Relatedly, the *Rehat Maryada*
22 further requires that male Sikhs wear a turban, known as a *dastaar*, to cover their heads.
23 Wearing a turban is viewed by observant Sikhs as being one of the religion's central
24 requirements.

25 18. As an *Amritdhari* Sikh, Mr. Cheema must follow the *Rehat Maryada*. Thus, for
26 Mr. Cheema, as an *Amritdhari* Sikh, it is a religious imperative that he cover his head. Having
27 his head uncovered is a deeply humiliating and defiling experience.
28

Plaintiff's Immigration Proceedings

1
2 19. Harpal Singh Cheema and his wife fled India and applied for immigration relief in
3 the form of asylum, withholding of removal, and deferral of removal when they arrived in the
4 United States in 1993.

5 20. Mr. Cheema, a human rights lawyer in India, has long advocated for an
6 independent Sikh state known as Khalistan. In response to his political and legal activities,
7 Indian officials subjected Mr. Cheema to brutal torture and incarceration without charges or trial.
8 *See Cheema v. Ashcroft*, 383 F.3d 848, 850-51 (9th Cir. 2004). During several periods of
9 extended illegal detention and torture between 1987 and 1990, Indian security forces beat Mr.
10 Cheema with a wooden stick; stretched his legs apart until the muscles began to break; stretched
11 him repeatedly on a pulley; rolled a solid steel roller over his thighs; and broke his leg twice in
12 the same place. 383 F.3d at 850-51.

13 21. Mr. Cheema fled to Canada in August 1990 and entered the United States two
14 months later.

15 22. Upon learning in February 1992 that his wife, still in India, was ill, Mr. Cheema
16 returned to India. At the Bombay airport, Mr. Cheema was seized by the police and flown to
17 Delhi. The Indian police brutally tortured Mr. Cheema by repeatedly applying electric currents
18 to his tongue, lips, nostrils, and temples; racking him by pulley; and subjecting him to a mock
19 execution. 383 F.3d at 851.

20 23. When Mr. Cheema was released three months later, he went into hiding. In May
21 1993, he and his wife fled to the United States where they sought asylum or other relief that
22 would save them from being returned to India.

23 24. After twenty-six hearings, an Immigration Judge declined to grant Mr. Cheema
24 asylum but determined that he was entitled to withholding of deportation and relief under the
25 Convention Against Torture.

26 25. Both the INS and Mr. Cheema appealed to the Board of Immigration Appeals.
27 “The Board found that Mr. Cheema had been brutally tortured by Indian authorities and that he
28 ‘is one of the few prominent pro-Khalistan leaders in the world who would be in danger if

1 returned to India.” 383 F.3d at 853. The Board held that Mr. Cheema could be granted deferral
2 of removal but not withholding of deportation.

3 26. On petition for review, the Ninth Circuit affirmed the Board’s holding that Mr.
4 Cheema cannot be deported to a country where he is likely to be tortured. The Court affirmed
5 the deferral of removal and the denial of full relief under the Convention Against Torture but
6 remanded Mr. Cheema’s petition for withholding of deportation and asylum because the Board
7 had applied an incorrect legal standard in concluding that Mr. Cheema was not eligible for such
8 relief. 383 F.3d 850.

9 27. By virtue of the Ninth Circuit’s decision, Mr. Cheema’s immigration case is again
10 before the Board of Immigration Appeals. When the Board last considered Mr. Cheema’s case,
11 it took approximately two years to render a decision.

12 28. ICE has denied Mr. Cheema’s requests for release, most recently in a letter dated
13 October 14, 2004, from Defendant Alcantar, pending the outcome of his immigration case.

14 Detention and Restrictions on Plaintiff’s Use of a Religious Headcovering

15 29. U.S. Immigration and Customs Enforcement (previously the INS) has confined
16 Mr. Cheema to various detention facilities since November 3, 1997, while his immigration
17 proceedings have been pending. Since September 2002, Mr. Cheema has been held at the Yuba
18 County Jail in Marysville, California.

19 30. Yuba County Jail receives federal financial assistance to house immigration
20 detainees such as Mr. Cheema pursuant to an Intergovernmental Service Agreement with the
21 federal government.

22 31. Facilities, such as Yuba County Jail, that agree to house immigration detainees
23 such as the plaintiff oblige themselves to comply with the federal government’s Detention
24 Standards, which set forth national standards and implementing procedures for facilities housing
25 immigration detainees. The standards specify minimum living conditions appropriate for
26 immigration detainees.

27 32. ICE is responsible for monitoring whether facilities housing immigration
28 detainees are complying with the Detention Standards. Plaintiff is informed and believes, and on

1 that information and belief alleges, that Defendants Garcia and Cerda are responsible for
2 ensuring that ICE fulfills its duty to enforce compliance with the Detention Standards. Plaintiff
3 is informed and believes, and on that information and belief alleges, that Defendant Alcantar is
4 responsible for ensuring that facilities housing immigration detainees within her jurisdiction are
5 in compliance with the Detention Standards.

6 33. The Detention Standard addressing Religious Practices directs: “Detainees shall
7 have access to personal religious property, consistent with facility security.” The corresponding
8 implementing procedure provides: “Religious headwear, notably kufis, yarmulkes, turbans,
9 crowns, and headbands, as well as scarves and head wraps for orthodox Muslim and Jewish
10 women, is permitted in all areas of the facility, subject to the normal considerations of security
11 and good order, including inspection by staff.”

12 34. Prior to Mr. Cheema’s detention at Yuba County Jail, immigration officers in the
13 San Francisco office responsible for Mr. Cheema’s detention were informed of Mr. Cheema’s
14 religious observance needs.

15 35. Upon learning that he would be transferred to a new facility, Mr. Cheema
16 informed an immigration officer in the San Francisco office of his concern that he be able to
17 continue using a religious headcovering upon being transferred to Yuba County Jail. The officer
18 assured Mr. Cheema that he would not face any problems in relation to his use of a religious
19 headcovering at the new facility.

20 36. Upon arriving at Yuba County Jail, Mr. Cheema informed Defendant Mark
21 Chandless and other Jail officers that his religion requires that he keep his head covered at all
22 times. When he arrived at Yuba County Jail, Mr. Cheema was using the headcovering that he
23 wore while detained in Bakersfield. One Yuba County Jail officer threatened to use force if Mr.
24 Cheema did not remove his headcovering.

25 37. Shortly after his arrival at Yuba County Jail, Mr. Cheema was informed that he
26 would not be allowed to keep his head covered except under the most limited circumstances.
27 Specifically, on or about September 27, 2002, Mr. Cheema was instructed to sign a document
28 (hereinafter “the September 2002 Memorandum”) that provided as follows:

1 This memo is to confirm our conversation this afternoon concerning your
2 being approved by Capt. Chandless to wear a religious head garment. We have
3 approved for you to wear a cloth garment covering [your] head ONLY while at
4 your bunk/bed 1. Praying, 2. Reading your religious book or 3. Eating. It
5 SHALL NOT be worn otherwise or away from your bunk. I have provided the
6 white cloth from your personal property which you shall maintain and use for this
7 purpose. If you violate this agreement, it may be taken away.

8 By signing this, Inmate Cheema acknowledges that he understands our
9 agreement and agrees to follow the aforementioned stipulations to possessing the
10 cloth garment.

11 38. Believing he had no other choice, Mr. Cheema signed the document as directed.

12 39. The policy set forth in the September 2002 Memorandum, though understood by
13 Mr. Cheema to be temporary when it was instituted, was never modified.

14 40. After the institution of the policy restricting Mr. Cheema's use of a religious
15 headcovering, the same immigration officer who had assured Mr. Cheema that he would not face
16 any problems in relation to his use of a headcovering once transferred to Yuba County Jail
17 visited the Jail. When Mr. Cheema saw the officer, he informed him of the severe restrictions
18 that the Jail had imposed on his use of a religious headcovering, but no change was made
19 thereafter.

20 41. While detained at Yuba County Jail, Mr. Cheema has been using a towel to cover
21 his head.

22 42. While some Yuba County Jail officers demonstrate respect for Mr. Cheema's
23 religious practices and articles of faith, others do not.

24 43. In October 2003, Defendant Chandless, accompanied by two other Jail officers,
25 came upon Mr. Cheema with his head covered away from his bed. Mr. Cheema was directed to
26 uncover his head. When Mr. Cheema complied, Defendant Chandless and the other officers
27 laughed at him.

28 44. In response to this incident, Mr. Cheema filed a grievance with the Yuba County
Jail.

45. In response to Mr. Cheema's grievance, Defendant Chandless initiated a short
conversation with Mr. Cheema, during which Defendant Chandless told Mr. Cheema that he had
been given all the accommodations he was going to receive with respect to his use of a
headcovering.

1 46. Mr. Cheema was not satisfied with the response and asserted that he should be
2 allowed to cover his head at all times in accordance with the INS Detention Standards.

3 47. As retaliation, Mr. Cheema was placed in segregation. The segregation began at
4 night on the same day that Mr. Cheema and Captain Chandless discussed Mr. Cheema's
5 grievance.

6 48. Other prisoners at the Yuba County Jail respect and support Mr. Cheema. When
7 Mr. Cheema was held in segregation, numerous fellow prisoners requested that he be returned to
8 his dormitory where he has served as a trustee for the other prisoners.

9 49. In a letter dated November 20, 2003, Mr. Cheema's immigration attorney wrote to
10 the Director of the Office of Detention and Removal, U.S. Immigration and Customs
11 Enforcement (ICE), indicating: "Mr. Cheema would like to present his grievance regarding his
12 solitary confinement and the denial of his religious freedom." In the letter, Mr. Cheema's
13 immigration attorney explained the religious importance of a headcovering for Mr. Cheema,
14 recounted the history of interference with this aspect of Mr. Cheema's religious exercise, and
15 requested that ICE take action to ensure respect for Mr. Cheema's rights. A copy of this letter
16 was sent to Defendant Chandless.

17 50. Mr. Cheema was held in segregation at the Yuba County Jail for approximately
18 one month.

19 51. Since his return to his regular Yuba County Jail dormitory, Mr. Cheema has been
20 subject to the Jail's policy restricting his use of a religious headcovering to the circumstances
21 specified in the September 2002 Memorandum.

22 52. The restrictions on Mr. Cheema's use of a religious headcovering are the source
23 of significant injury to him. In prohibiting Mr. Cheema from covering his head away from his
24 bed, the Jail authorities effectively exact, as the price for Mr. Cheema's compliance with his
25 faith, confinement to his bed. By way of example, Mr. Cheema is forced to eat on his bed
26 because his religion requires that he have his head covered while eating. And when Mr. Cheema
27 must be away from his bed without a religious headcovering, he feels debased and defiled.
28

1 53. Plaintiff is informed and believes, and on such information and belief alleges, that
2 while restricting Mr. Cheema's use of a religious headcovering to instances in which he is on his
3 bed, Yuba County Jail permits other prisoners to cover their heads without imposing such a
4 limitation.

5 54. Plaintiff is informed and believes, and on such information and belief alleges, that
6 Defendant Chandless was directly responsible for establishing the restrictions imposed by the
7 policy embodied in the September 2002 Memorandum. Plaintiff is informed and believes, and
8 on such information and belief alleges, that Defendant Black was aware of and responsible for
9 the policy embodied in the September 2002 Memorandum.

10 55. Defendant Alcantar has been informed of the restrictions on Plaintiff's use of a
11 religious headcovering.

12 56. Defendants Alcantar, Cerda, and Garcia have failed to ensure compliance with the
13 Detention Standards and have failed to ensure that Yuba County Jail refrains from violating Mr.
14 Cheema's right to religious exercise.

15 57. Defendants have acted, or failed to act, intentionally or with reckless or callous
16 indifference to Plaintiff's rights.

17 58. Plaintiff has suffered and will continue to suffer irreparable harm as long as he is
18 subjected to the restrictions that Defendants have imposed on his use of a religious headcovering.

19 59. Plaintiff is willing to use as a religious headcovering a turban that is smaller than
20 that which is typically worn by an adult male *Amritdhari* Sikh, and he is willing to submit to
21 reasonable searches of his religious headcovering.

22
23 **DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS**

24 60. An actual and substantial controversy exists between Plaintiff and Defendants as to
25 their respective legal rights and duties. Plaintiff contends that Defendants' restriction on his use of
26 a religious headcovering is illegal. On information and belief, Plaintiff alleges that Defendants
27 contend that the restriction is valid.

