



Homeland
Security

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MEMORANDUM FOR: DHS Component Heads

FROM: Margo Schlanger *Margo Schlanger*
Officer for Civil Rights and Civil Liberties

SUBJECT: Guidance for Accommodating Religious Beliefs in DHS Policies
Requiring Fingerprinting or Photographic Identification

There are many circumstances in which the Department, in the execution of its missions, requires individuals to pose for or provide a photograph or provide fingerprints. For example, the Department requires photographs and fingerprints of many aliens seeking admission to the United States and of applicants for immigration benefits or for participation in trusted traveler programs, and the Department may need to document identity in a criminal arrest or immigration enforcement action. Although operational requirements vary among DHS Components, this memorandum provides guidance for DHS offices and Components when they require individuals to pose for or provide photographs or to submit to fingerprinting.

The guidance contained in this memorandum should be reflected in Component policies and procedures that require photographs or fingerprints of individuals for identification purposes. When developing or reviewing such policies and procedures, Components should seek legal advice from Office of the General Counsel (OGC) headquarters or Component counsel and policy advice from the Office for Civil Rights and Civil Liberties (CRCL). Federal agencies, including DHS, are subject to the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. §§ 2000bb et seq., which prohibits any Federal Government practice that substantially burdens a person's exercise of religion, unless the Government demonstrates that the practice represents the least restrictive means of furthering a compelling governmental interest. This memorandum does not address any Component's compliance with RFRA; it is only a statement of DHS policy.

Importantly, the guidance in this memorandum regarding Component policies for individuals wearing religious headwear only relates to situations involving photographs; it is not intended to address other situations in which removal of headwear may be necessary for other reasons, such as to protect officer safety or in the course of a personal search. Similarly, this memorandum does not address situations in which an individual is requesting a complete waiver of a photographic requirement.

Standards Regarding Religious Headwear in Photographs

The Department's interest in documenting or verifying the appearance of an individual with a photograph generally can be achieved while accommodating individuals who wear headwear as part of their daily religious observance as long as the face is not obscured and a reasonable

likeness can be obtained. Accordingly, Department policies should permit individuals who wear headwear as part of a daily religious observance (e.g., turbans, yarmulkes, headscarves, prayer caps) to wear that headwear in photographs taken in routine circumstances to establish and verify identity, such as photographs provided or taken during a routine border crossing at a port of entry or identification documents issued by components (e.g., transportation worker identification cards, merchant mariner documents, facility visitor badges). In some circumstances, it may be necessary to ask an individual to remove a portion or all of his or her religious headwear in order to meet a compelling interest that underlies the Department's requirement for a photograph.

The Department's standards are informed by those of the Department of State (DOS), under which a reasonable likeness is generally obtained when the full face is visible and the religious headwear does not cast a shadow on the face. Some types of religious headwear cover all or part of an individual's face, and the portion that covers the individual's face must be adjusted or removed to make the full face visible and avoid casting a shadow. Other types of headwear, although they do not cover the face, may need to be adjusted in order to reveal an individual's crown, chin, or sides of the face, or to prevent a shadow being cast across the face in the photograph. Headwear that covers the ears is only permissible if it allows identification of the individual; it is preferable that the ears be exposed. These requirements should be applied to all individuals presenting themselves for photographing; where individuals not wearing headwear are not asked to move their hair in order to expose their ears or crown, individuals wearing religious headwear should not be required to move religious headwear to expose their ears or crown, absent a compelling need in an individual circumstance. Component or office policies should provide guidance to personnel as to when certain individuals wearing religious headwear may be treated differently from individuals not wearing religious headwear whose hairline or ears are nevertheless obscured.

In rare instances, such as when an individual presents with an uncommon form of religious headwear, a component may use its discretion to implement a policy to require a signed statement explaining the nature and daily use of the headwear. This type of requirement should not be used as a mechanism to deter individuals from seeking accommodation for their sincerely held religious beliefs, but rather when circumstances necessitate confirmation that the headwear is, in fact, religious in nature. Regardless of the requirement of any such statements, however, the provisions that the face not be obscured and a reasonable likeness can be obtained still apply.

Privacy for Removal of Religious Headwear

Typically, individuals who wear a head covering as part of a daily religious observance do not remove the head covering in public, especially in front of members of the opposite gender. Where a policy requires an individual to adjust or remove part or all of his or her religious headwear for a photograph, the office or Component should consider how to accommodate the individual's religious belief. When private screening is feasible, Component/office policy should require staff to proactively offer individuals who present themselves in religious headwear the option of adjusting or removing their religious headwear in a private setting, with a same-gender photographer. Components or offices should take reasonable steps to make mirrors available to individuals in order to facilitate their ability to re-don the religious headwear in private, provided it is safe to do so.

Factors to consider in developing or reviewing policies that require the adjustment or removal of religious headwear include whether the office or Component's location has a pre-existing space that can be adapted for this use when needed (e.g., if a Component has, as a standard element, a private room to conduct physical searches or special screening), or whether some space within the main operating area could be adjusted to afford privacy (e.g., through the use of screens or modular partitions). Offices or Components whose locations do not always have staff of both genders available to take photographs during all shifts should consider other methods of providing same-gender photographers, such as offering to re-schedule an appointment during a time when a individual of the same gender will be on duty, or—when possible and consistent with safety requirements given existing staffing—diverting individuals of the same gender from other duties to provide the accommodation.

The Office for Civil Rights and Civil Liberties can provide posters and other training materials on recognizing common religious headwear, tailored to the needs and policies of specific offices/Components.

Same-Gender Personnel for Physically Assisted Fingerprints

Several religions limit or prohibit adherents' physical contact with members of the opposite gender. It is sometimes necessary for Department personnel to physically assist an individual by holding his or her hand or arm in order to obtain usable prints (e.g., when "rolled" fingerprints are required, and in all DHS custodial settings). Where personnel must routinely or occasionally physically assist individuals to obtain fingerprints, offices and Components should accommodate an individual's religious beliefs relating to such contact, unless a compelling safety or security need prohibits all methods of accommodation with respect to that individual.

Where offices or Components routinely have personnel of both genders available to take fingerprints during all shifts, policies should require accommodation when requested, if qualified staff are available. Offices or Components whose locations do not always have personnel of both genders available to take fingerprints should consider other methods of accommodation when possible, such as offering to re-schedule an appointment during a time when a individual of the same gender will be on duty, or when possible and consistent with safety requirements, diverting individuals of the same gender from other duties to provide the accommodation.