

6-2020

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Recommended Citation

Dhaliwal, Karamvir (2020) "The Balance of Safety and Religious Freedom: Allowing Sikhs the Right to Practice their Religion and Access Courthouses," *Seattle Journal for Social Justice*: Vol. 18 : Iss. 2 , Article 14.

Available at: <https://digitalcommons.law.seattleu.edu/sjsj/vol18/iss2/14>

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The Balance of Safety and Religious Freedom: Allowing Sikhs the Right to Practice their Religion and Access Courthouses

Karamvir Dhaliwal

AUTHOR'S NOTES

America prides itself on being a nation that allows religious freedom. Today, the current political climate in the United States is one of religious intolerance. The clearest indicator of religious intolerance is the current administration's agenda of the Muslim ban and strong hate rhetoric towards immigrants and refugees. In a climate like this, we must examine the ways our leaders and communities apply religious freedoms in a selective and intolerant way. While there are numerous groups of people who have suffered due to the failings of our government to provide constitutionally guaranteed religious protections, this article highlights the ways our government is failing to provide this essential protection to Sikhs. By effectively not allowing Sikhs to follow the tenements of their religion within the US, Sikhs are being excluded from practicing the rights they have as Americans. This article will attempt to raise awareness of the various realms from which Sikhs are being excluded as well as propose solutions that will allow Sikhs to exercise the rights they hold as Americans without compromising their religious beliefs.

I. INTRODUCTION

"I either break the law for not showing up for jury duty—they can fine and imprison you if you don't show up for jury duty—or I break my Sikh code

of conduct, one of the two.”¹ Gurshant Singh, who was barred from jury duty because he refused to remove his religious “dagger,” explains the dilemma he is faced with when a Sikh’s freedom to practice religion is not applicable within the confines of the courthouse. The freedom to practice religion is a right that every American enjoys.² The First Amendment to the United States Constitution and the federal Religious Freedom Restoration Act protect the rights of Americans to practice their religion without the government substantially burdening their exercise.³ Sikhs in America have been denied this right time and again because they are effectively excluded from various public forums, such as courthouses, due to their religious tenements as will be discussed herein. The first part of this article will provide an overview of Sikhism and highlight the different issues that Sikhs face in America. Next, the article will focus specifically on the issues that Sikhs face in accessing courtrooms. Lastly, the article will propose solutions for Washington State to allow Sikhs accessibility to courthouses.

II. BACKGROUND

A. What is Sikhism?

Sikhism is the fourth largest religion in the world. In North America, Sikhism is commonly mistaken for Islam or Hinduism; ninety-nine percent of all people who wear turbans in America, however, are Sikhs.⁴ Sikhism was founded 500 years ago on three basic principles: (1) remembering the name

¹ *Sikh barred from jury duty after refusing to remove religious dagger*, CBS NEWS (Apr. 30, 2014), <https://www.cbsnews.com/news/sikh-barred-from-jury-duty-after-refusing-to-remove-religious-dagger/> [<https://perma.cc/DC28-Q4QN>].

² U.S. CONST. amend. I.

³ Joe Carter, *5 Facts About the Religious Freedom Restoration Act*, ETHICS AND RELIGIOUS LIBR. COMM’N (Jan. 18, 2018), <https://erlc.com/resource-library/articles/5-facts-about-the-religious-freedom-restoration-act> [<https://perma.cc/H3Q6-HYFD>].

⁴ *Who are Sikhs? What is Sikhism?*, SIKH NET (last visited Mar. 18, 2019), <https://www.sikhnet.com/pages/who-are-sikhs-what-is-sikhism> [<https://perma.cc/4SH5-UTB5>].

of God through prayer and meditation; (2) living a truthful, honest life; and (3) sharing the fruits of living with others.⁵ All Sikh men adopt the name Singh, and women adopt Kaur, to reinforce that all humans are sovereign and equal under God by getting rid of discrimination based on family names, which often denoted caste.⁶

In 1699, the Tenth Sikh Guru introduced the formal initiation ceremony.⁷ Sikhs who go through the formal initiation ceremony, also known as the baptism process, are required to wear five articles of faith, which are *Kes* (uncut hair), *Kara* (iron bracelet), *Kangha* (small wooden comb), *Kachara* (a special type of shorts) and *Kirpan* (small dagger-like object).⁸ Taken together, these five articles are commonly referred to as the “five Ks” and signify a person’s commitment to Sikhism and the ideals of love and service to humanity.⁹ In addition, the baptized Sikhs commit themselves to following the Sikh Rehit Maryada (Code of Conduct for Sikhs) as well as the guidance of Guru Granth Sahib Ji (holy scripture for Sikhs).¹⁰

⁵ Bill Broadway, *The Growing Presence of Sikhs: As more Families Immigrate to Region, Faith and its Adherents gain Prominence*, WASH. POST (Oct. 31, 1998), https://www.washingtonpost.com/archive/local/1998/10/31/the-growing-presence-of-sikhs-as-more-families-immigrate-to-region-faith-and-its-adherents-gain-prominence/ec47cba9-698f-4936-b56d-7aa20aff1133/?utm_term=.e31317718f81 [<https://perma.cc/SAW3-V6LC>].

⁶ *Id.*

⁷ Tarunjit Singh Butalia, *The Sikh Kirpan: Balancing Religious Freedom with Security*, HUFFINGTON POST (Jan. 27, 2009, 8:21PM), https://www.huffingtonpost.com/dr-tarunjit-singh-butalia/the-sikh-kirpan-balancing_b_814001.html [<https://perma.cc/E9CB-GSJV>].

⁸ *Id.*

⁹ *Sikhism and the Sikh Kirpan Fact Sheet*, SIKH COAL. (last visited Mar. 18, 2019), <https://www.sikhcoalition.org/wp-content/uploads/2016/12/kirpan-factsheet-aug2018.pdf> [<https://perma.cc/DMA2-Y8RJ>].

¹⁰ Butalia, *supra* note 7.

B. Significance of Kirpans

Kirpans are an important and mandatory part of the Sikh Faith.¹¹ Baptized Sikhs carry Kirpans at all times.¹² The word Kirpan comes from two Punjabi words: *kirpa* and *aan*. *Kirpa* signifies an act of kindness, and *aan* means honor and self-respect.¹³ Kirpans are usually sheathed with either a cloth or a steel cover.¹⁴ When worn, a Kirpan attaches to a strap called a *gatra*. This strap is then worn across the body, with the Kirpan on the left hip.¹⁵ In the United States, most Sikhs wear their Kirpan underneath their clothes.¹⁶ The Kirpan holds strong values for the wearer, as it obligates Sikhs to practice generosity, compassion, and service to humanity.¹⁷ The Kirpan is symbolic reminder of the wearer's duties to protect the weak and promote justice for all.¹⁸

C. Issues Sikhs Face with Kirpans

Many Americans lack knowledge of the Kirpan and have preconceived notions—and fears—about people wearing a “dagger.” This fact has made compliance with Sikh faith traditions difficult. Many Sikhs wear their Kirpans underneath their clothing, which helps to avoid detection and ensuing confrontation.¹⁹ However, many Sikhs face an ordeal when they must prove that their right to practice their faith is not a threat to society.

Sikhs have faced multiple ordeals in schools when it comes to the wearing of their Kirpans. In 1995, a school district in Merced County, California, refused to allow three baptized Sikh children (the Cheema children) to wear

¹¹ *Sikhism and the Sikh Kirpan Fact Sheet*, *supra* note 9.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

their Kirpans to school.²⁰ The school relied on its weapons ban and claimed the Kirpans were “clearly” knives and violated California’s state statutes regarding the prohibition of knives on school grounds.²¹ This policy forced the Cheema children to choose between violating a fundamental tenet of their religion by leaving their Kirpan at home or bringing their Kirpans to school and fear expulsion and criminal proceedings.²² The Cheema children decided to stay at home and their parents brought a federal case under the Religious Freedoms Restoration Act.²³ The Cheema children asked for a preliminary injunction enjoining enforcement of the ban.²⁴ The United States District Court for the Eastern District of California denied the motion, and the Cheema children appealed.²⁵ The Court of Appeals for the Ninth Circuit concluded that the children unquestionably proved their burden that wearing Kirpans was animated by a sincere religious belief and that the school district’s refusal to accommodate that belief put a substantial burden on their exercise of religion.²⁶ The burden shifted to the school district to prove that the Kirpan ban was necessary to serve a compelling governmental interest.²⁷ The Ninth Circuit agreed that the Kirpan ban served the governmental interest of safety at schools. However, the court of appeals also found that the school failed to demonstrate that a less restrictive method could satisfy that government interest.²⁸ Therefore, on remand, the district court imposed its own plan for the school district in its order to lift the Kirpan ban.²⁹ The restrictions included as follows:

²⁰ *Cheema v. Thompson*, 67 F.3d 883, 884 (9th Cir. 1995).

²¹ *Id.*

²² *Id.*

²³ *Id.* at 884–85.

²⁴ *Id.* at 885.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

- 1) the kirpan will be of the type demonstrated to the Board and to the District Court, that is: a dull blade, approximately 3 - 3 1/2 inches in length with a total length of approximately 6 1/2 - 7 inches including its sheath;
- 2) the kirpan will be sewn tightly to its sheath;
- 3) the kirpan will be worn on a cloth strap under the children's clothing so that it is not readily visible;
- 4) a designated official of the District may make reasonable inspections to confirm that the conditions specified above are being adhered to;
- 5) if any of the conditions specified above are violated, the student's privilege of wearing his or her kirpan may be suspended; and
- 6) the District will take all reasonable steps to prevent any harassment, intimidation or provocation of the Cheema children by any employee or student in the District and will take appropriate disciplinary action to prevent and redress such action, should it occur.³⁰

Sikhs have had to face many other obstacles when engaging in everyday activities. Another such example is when a 17-year-old Sikh, Varender Singh, was walking to a Sikh Temple in Queens, New York, and was arrested for carrying a Kirpan.³¹ Varender was charged with two counts of criminal possession of a weapon in the fourth degree.³² While at trial, Varender filed a motion to dismiss, which the court granted upon the prosecutor's concession.³³ Varender's attorney expressed his frustration with the system:

³⁰ *Id.* at 885–89.

³¹ Yudhvir Rana, *The US Court Drops Criminal Charges Against Kirpan Carrying Sikh Youth*, TIMES OF INDIA (Oct. 10, 2015), http://timesofindia.indiatimes.com/articleshow/49302882.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst <https://timesofindia.indiatimes.com/world/us/US-court-drops-criminal-charges-against-Kirpan-carrying-Sikh-youth/articleshow/49302882.cms> [<https://perma.cc/7WGQ-46K4>].

³² *Id.*

³³ *Id.*

“[b]y now, there is enough legal precedent, at least in New York City, which acknowledges the Kirpan as an article of faith mandated to be worn by initiated Sikhs at all times. We sincerely hope the New York City Police Department now accepts this precedent and stops making innocent initiated Sikhs undergo these ordeals.”³⁴

The judge in *Varender*’s matter dismissed the case under New York Criminal Procedure Law § 170.40, which allows a judge to dismiss charges “in the interest of justice,” “as a matter of judicial discretion,” if the judge concludes that there is “some compelling factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendant ... would constitute or result in injustice.”³⁵ In determining whether such compelling factor, consideration, or circumstance exist to dismiss a complaint, the judge must examine and consider the following factors:

- (a) the seriousness and circumstances of the offense;
- (b) the extent of harm caused by the offense;
- (c) the evidence of guilt, whether admissible or inadmissible at trial;
- (d) the history, character and condition of the defendant;
- (e) any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant;
- (f) the purpose and effect of imposing upon the defendant a sentence authorized for the offense;
- (g) the impact of a dismissal on the safety or welfare of the community;
- (h) the impact of a dismissal upon the confidence of the public in the criminal justice system;
- (i) where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion;

³⁴ *Id.*

³⁵ N.Y. Crim. Proc. Law § 170.40; Eugene Volokh, *Sikhs, knives, and religious exemptions*, WASH. POST (Oct. 16, 2015), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/10/16/sikhs-knives-and-religious-exemptions/?utm_term=.b963ff4f59d4 [<https://perma.cc/EFB6-XS9N>].

(j) any other relevant fact indicating that a judgment of conviction would serve no useful purpose.³⁶

New York judges have used this factored test as an informal system of religious exemptions to prevent prosecution for wearing Kirpans.³⁷ This system unfortunately does not provide legal protection for Sikhs, as it is not binding, and it is looked at on a case-by-case basis.³⁸

Sikhs face discrimination even from the highest levels of governments around the world. In 2011, four representatives of World Sikhs Organization of Canada were denied entry into the Quebec National Assembly because they were wearing Kirpans.³⁹ These Sikhs had intended to attend the Quebec National Assembly in order to speak in favor of religious accommodation of veiled Muslim women.⁴⁰ In a similar incident in the United States, in 2004 the Chairperson of the World Sikh Association was invited to the White House for a celebration of the Sikh faith, but ironically was forced to turn down the invitation because White House staffers asked him to remove his Kirpan before entering.⁴¹

D. Access to Courts

Despite the multiple contexts in America where Sikhs ironically have to compromise their faith in order to enjoy the freedom to practice their religion, this article specifically focuses on Kirpan-carrying Sikhs being denied access to courts. Despite the issues faced by Sikhs in almost every aspect of western life, there are some policies in place which protect Sikhs' right to carry the Kirpan. However, when it come to the courts, there is almost zero leniency.

³⁶ N.Y. Crim. Proc. Law § 170.40.

³⁷ Volokh, *supra* note 35; *see also* People v. Singh, 516 N.Y.S.2d 412, 412 (Crim Ct. 1987).

³⁸ *Id.*

³⁹ Butalia, *supra* note 7.

⁴⁰ *Id.*

⁴¹ *Id.*

Being forced to choose between following one's religious code of conduct and accessing a court—and justice—is unacceptable.

It is a tenet of the Sikh faith to carry a Kirpan at all times. This tenet comes in direct conflict with the right to access a courthouse, and thus the right to access to justice. Therefore, the State of Washington should pass legislation to accommodate Sikhs' right to practice their religion and carry Kirpans. In particular, changing the language of RCW 9.41.300 to include an exemption for Kirpans, which can be done by adapting Canada's corresponding policy. Further, federal government should increase the scope of the Federal Protective Services to apply to Federal Courts, which would allow Sikhs to utilize their rights of access to the court system while still practicing their religion and maintaining the safety of the courthouses. To this effect, this article first discusses the importance of allowing Kirpan-carrying Sikhs into courts. Next, the article proposes possible solutions that Washington State legislation can enact that will allow Sikhs to wear their Kirpans in court while the courts maintain appropriate safety regulations. Lastly, the article explores a possible solution that federal courts can adopt that would accommodate Sikhs who wear Kirpans.

III. Access to Courts and the American Legal System

Allowing Sikhs to bring Kirpans into courts is crucial. Unfortunately, the current *de facto* ban on this practice conflicts with Sikhs' ability to practice their religious rights as protected by the U.S. Constitution. Sikhs, like all other Americans, have rights and obligations such as serving jury duty, receiving and renewing passports, serving as witnesses, and getting married.

Ramandeep Kaur shared her experience of being forced to choose, as a baptized Sikh, between her civic duty and her religion.⁴² In 2018, Ms. Kaur was summoned for jury duty, but was not allowed past security because she

⁴² Interview with Ramandeep Kaur by author, in Kent, Wash. (Oct. 13, 2018).

was carrying her Kirpan.⁴³ Ms. Kaur refused to take off her Kirpan and explained to the security officer that it was an article of her Sikh faith and that she must always keep it on her.⁴⁴ Ms. Kaur explained that she would have to go into court with it on, or she will be unable to appear for jury duty.⁴⁵ Court personnel told her she was required to show up to jury duty.⁴⁶ Rather than allowing her into the court, they had her go in through a different entrance and had her sign a form which contained a clause along the lines of “I cannot participate in Jury Duty because I am carrying a weapon.”⁴⁷ Ms. Kaur said she refused to sign the form because a Kirpan is not a weapon.⁴⁸ Ultimately, security personnel required Ms. Kaur to write in a provision explaining that she was carrying a Kirpan, a religious symbol, and would therefore not be able to serve as a juror.⁴⁹ Ms. Kaur was then escorted out of the courthouse by security.⁵⁰

Additionally, Darshan Singh explained his experience at courts, which differed vastly from Ms. Kaur’s experience. Mr. Singh said that he always removes his Kirpan before entering courts to avoid any issues with the court.⁵¹ Mr. Singh explained that, as a Sikh man who has a long beard and turban, people are already on high alert around him.⁵² Due to language barriers, Mr. Singh fears that he would not be able to adequately explain that his Kirpan is an article of his faith and that matters would escalate.⁵³ Mr. Singh faced a moral dilemma because taking off his Kirpan would be wrong, but going to the courthouse is sometimes necessary and even unavoidable.⁵⁴

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Telephone Interview with Darshan Singh (Oct. 14, 2018).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

Mr. Singh talked about the various times he had to visit the courtroom, whether to get his or his children's passports renewed or, most recently, to serve as a witness for a friend's marriage.⁵⁵ Each time, he faced, and continues to face, the same internal dilemma of violating an essential tenet of his religion or going into the courthouse.

Mr. Singh's and Ms. Kaur's stories exemplify just how burdensome the banning of Kirpans can be for Sikhs. People visit courts for various reasons, whether it is to seek legal protection for themselves, to get married, to be a jury member, or to be a witness, among others.⁵⁶ Laws and regulations that effectively prohibit Sikhs from bringing Kirpans into courthouses force Sikhs to choose between their right to practice their religion and their right to access courthouses.

In 2014, Gurshant Singh was excluded from serving jury duty in Stutter County Courthouse in Yuba City, California, due to his insistence on carrying his Kirpan.⁵⁷ Mr. Singh expressed his emotions as he said, "I feel very strongly that as a citizen of the United States that I should be able to serve as a juror."⁵⁸ He added, "[t]hey've put me in a position. Either I violate my code of conduct with my religion, or I break the law."⁵⁹ The Stutter County Jury Commissioner, Mary Beth Todd, attempted to come up with a solution, including the idea of storing the Kirpan with security at courts.⁶⁰ Considering

⁵⁵ *Id.*

⁵⁶ *Going to Court*, NSW GOV'T, https://www.justice.nsw.gov.au/diversityservices/Pages/divserv/ds_cultural_diverse/ds_cald_goingtocourt.aspx [<https://perma.cc/J7YJ-BYF8>].

⁵⁷ *Sikh Barred From Jury Duty After Refusing to Remove Religious Dagger*, *supra* note 1.

⁵⁸ *Id.*

⁵⁹ Yasmine Hafiz, *California Sikh Man, Gursant Singh, Barred From Jury Duty For Carrying Religious Dagger, Kirpan*, HUFFINGTON POST (May 01, 2014), https://www.huffingtonpost.com/2014/05/01/gursant-singh-jury-duty-dagger-kirpan_n_5246955.html [<https://perma.cc/LV7Z-URZ9>].

⁶⁰ Derek Shore, *Sutter County Sikh Told He Can't Serve On Jury With Ceremonial Knife*, CBS SACRAMENTO (Apr. 23, 2014), <https://sacramento.cbslocal.com/2014/04/23/sutter-county-sikh-told-he-cant-serve-on-jury-with-ceremonial-knife/> [<https://perma.cc/KR6B-2XZ7>].

that doing so would still require Sikhs to remove their Kirpans, Mr. Singh was not satisfied with this solution.⁶¹

It was long ago established that defendants have a right to a jury of their peers.⁶² In *Strauder v. West Virginia*, for instance, the Supreme Court held that the jury should be drawn from a group “composed of the peers or equals [of the defendant]; that is, of his neighbors, fellows, associates, persons having the same legal status in society as he holds.”⁶³ The United States has the fourth largest Sikh population in the world; in King County alone there are roughly 50,000 Sikhs.⁶⁴ As US citizens, Sikhs deserve to have a voice when vital decisions that affect all citizens are made in courtrooms every day.

IV. CANADA’S COURT POLICIES ON KIRPANS

Canada has the largest Sikh population in the world after India.⁶⁵ Canada has made great progress in assuring that Sikhs are not denied access to various fora such as schools, airports, and courthouses. The Kirpan is accommodated across Canada, including in the House of Commons, the Supreme Court of Canada (SCC), and all provincial legislatures.⁶⁶ In 2006,

⁶¹ *Id.*

⁶² U.S. CONST. amend. VI.

⁶³ *Strauder v. West Virginia*, 100 U.S. 303, 307 (1879); see also Patrick DePoy, *A Jury of Your Peers – The Right to a Jury Trial Free from Discrimination*, ACLU (Jun. 19, 2012), <https://www.aclu.org/blog/lgbt-rights/transgender-rights/jury-your-peers-right-jury-trial-free-discrimination> [<https://perma.cc/F99T-67WA>].

⁶⁴ Chris Fuchs, *In this Seattle Suburb, Sikh Americans Make Historic Gains Amid Tough Challenges*, NBC NEWS (Nov. 27, 2017), <https://www.nbcnews.com/news/asian-america/seattle-suburb-sikh-americans-make-historic-gains-amid-tough-challenges-n822006> [<https://perma.cc/H5XC-YUND>].

⁶⁵ Amber Pariona, *Countries With The Largest Sikh Populations*, WORLD ATLAS (Mar. 23, 2018), <https://www.worldatlas.com/articles/countries-with-the-largest-sikh-populations.html> [<https://perma.cc/7S9U-C2VR>].

⁶⁶ Rhéal Séguin, *Invited to Quebec Legislature, Sikhs then Barred for Carrying Kirpans*, GLOBE & MAIL (Jan. 18, 2011), <https://www.theglobeandmail.com/news/politics/invited-to-quebec-legislature-sikhs-then-barred-for-carrying-kirpans/article562406/> [<https://perma.cc/5V45-UCCC>].

the SCC ruled that the Kirpan is not a weapon, but an article of faith.⁶⁷ Furthermore, the high-security measures in the 2010 Winter Olympics, held in Vancouver, B.C., permitted the Kirpan.⁶⁸

Notably, Alberta became the first province in Canada to implement a province-wide policy regarding Kirpans in courthouses.⁶⁹ This policy was the result of a successful human rights' challenge that started when a man was denied entry to a Calgary court.⁷⁰ Tejinder Singh was a 25-year-old Canadian who had been subpoenaed to court to testify at a trial regarding a fatal car accident; he was ordered to appear or risk an arrest warrant being issued for him.⁷¹ Mr. Singh informed the sheriff at the courthouse that he was wearing a Kirpan, and the sheriff informed him he would not be allowed in while wearing it.⁷² Mr. Singh explained how humiliating the ordeal was for him, stating, "I considered myself a Canadian Sikh, but on Monday I was made to decide to be a Canadian or a Sikh. That's a decision I never wanted to make."⁷³ Mr. Singh explained that he, like most baptized Sikhs, never takes off his Kirpan and that it is on him even when he is sleeping or showering.⁷⁴

⁶⁷ Jaskaran Sandhu, *World Sikh Organization Disappointed by Passing of Quebec Motion*, WORLD SIKH ORG. (Feb. 09, 2011), http://www.worldsikh.org/world_sikh_organization_disappointed_by_passing_of_quebec_motion [https://perma.cc/T947-X2US].

⁶⁸ Rita Kaur Dhamoon, *Exclusion and Regulated Inclusion, The case of the Sikh kirpan in Canada*, 9 SIKH FORMATIONS 7, 14 (2013).

⁶⁹ John Cotter, *Alberta Brings in Policy to Allow Sikhs to Wear Kirpan Religious Knives in Court*, TIMES COLONIST (Jan. 28, 2013), <https://www.timescolonist.com/news/alberta-brings-in-policy-to-allow-sikhs-to-wear-kirpan-religious-knives-in-court-1.58268> [https://perma.cc/9FN3-4PYX].

⁷⁰ *Id.*

⁷¹ *Sikh Man Considers Filing Complaint over his Kirpan*, VANCOUVER SUN (Jan. 18, 2008), <http://www.pressreader.com/canada/vancouver-sun/20080118/281775624836311> [https://perma.cc/MLJ5-MU7A].

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

Fortunately, Alberta later adopted Toronto's policy allowing Sikhs to wear Kirpans into court.⁷⁵ Now, Alberta's policy consists of the following multi-step process:

The guidelines provide that: (1) a person who wishes to enter an Alberta courthouse wearing a Kirpan must self-identify as a Khalsa Sikh (baptized Sikh) and inform the court officer that they are carrying a Kirpan upon arrival; (2) all articles of the Sikh faith must be worn and available for proof, if required; the total length of the Kirpan, including the sheath, may not exceed 7.5 inches with a blade of not more than 4 inches; (3) the Kirpan must be worn under clothing and not be easily accessible and remain so throughout the courthouse attendance.⁷⁶

In addition to these guidelines, the court security guards are required to do a further risk assessment to determine whether the Kirpan should be allowed inside the courthouse.⁷⁷ The assessment is conducted from a general risk-based perspective; the assessment may include, but is not limited to, consideration of the following factors:

1. The reason for the person being at the courthouse (visitor, witness, victim, accused, jury duty, student, etc.).
2. The type of court proceeding the person is attending (criminal trial, small claims, family court, etc.).
3. The adversarial nature of the court proceeding that the person intends to attend.
4. Any other identified risk factors that may contribute to a potential for violence. Types of factors include, but are not limited

⁷⁵ Cotter, *supra* note 69.

⁷⁶ *WSO Gets Sikh "Kirpan" Accommodated At Alberta Courts*, LINK, (Jan. 26, 2013), <http://thelinkpaper.ca/?p=26146> [<https://perma.cc/5LH5-8SUA>].

⁷⁷ ALBERTA HUM. RTS. COMM'N, SUMMARY OF ALBERTA JUSTICE AND SOLICITOR GENERAL PERIMETER SECURITY SCREENING PROCEDURES FOR KIRPANS AT ALBERTA COURTHOUSES (2016), *available at* <https://www.albertahumanrights.ab.ca/Documents/Summary.Kirpans.Policy.Alberta.courthouses.pdf> [<https://perma.cc/5QJ3-EAT8>].

to, occurrences of prior threats of violence, prior circumstances of violence and potential volatility of the participants.⁷⁸

In addition, if a contentious case is being heard in the courthouse that may have a serious potential for violence, the person wearing a Kirpan will not be allowed entry into the courthouse in order to ensure that the Kirpan cannot be taken from them and used as a weapon by someone else.⁷⁹

The Alberta Courthouse policy also includes procedures for the sheriffs to follow in any case where an individual is not in compliance with the above standards or where the sheriffs identify risk factors that would determine that a Kirpan should not be admitted.⁸⁰ In 2017, Canada as a whole became even more open when it enacted a policy allowing Kirpans under six-centimeters onto airplanes for local and international flights, with an exception for flights going to the United States.⁸¹ In Canada, the Quebec National Assembly and prisons are now the only two places with absolute prohibitions on the Kirpan.⁸² Canada has thus experienced a slow process to achieve wider acceptance of Kirpans, spanning the allowance of Kirpans in schools, in courthouses, and now in airplanes.

V. ADDING AN EXEMPTION FOR KIRPANS IN RCW 9.41.300 AND DECLARING KIRPANS AS AN ARTICLE OF FAITH

The State of Washington should adopt policies and guidelines similar to those in Canada and apply them to Washington's current Kirpan-related legislative framework, Revised Code of Washington (RCW) 9.41.300. Next,

⁷⁸ *Id.*

⁷⁹ *WSO Gets Sikh "Kirpan" Accommodated At Alberta Courts*, *supra* note 76.

⁸⁰ ALBERTA HUM. RTS COMM'N, *supra* note 78.

⁸¹ Preeti K. McCarthy, *Sikhs Get Permission to Wear Kirpans on Flights in Canada*, SBS (Nov. 8, 2017), <https://www.sbs.com.au/yourlanguage/punjabi/en/article/2017/11/08/sikhs-get-permission-wear-kirpans-flights-canada> [<https://perma.cc/EG9T-EL7K>].

⁸² *Quebec Kirpan Ruling Very Disappointing: WSO*, INDOCANADIANS (Feb. 24, 2018), <http://www.indocanadians.ca/indo-canadian-news/canadian-news/quebec-kirpan-ruling-disappointing-wso/> [<https://perma.cc/CM55-5WRZ>].

Washington State Legislation should consider the solution of declaring the Kirpan an article of faith.

A. Washington's Current Law on Kirpans

In order to allow Sikhs the freedom to practice their religion and the freedom to access courthouses, the Washington State legislature must enact policies to allow Kirpan-carrying Sikhs access to courts and the legal system. The current law prohibiting Kirpan-carrying Sikhs from entering courthouses is The Revised Code of Washington (RCW) 9.41.300, which is as follows:

(1) It is unlawful for any person to enter the following places when he or she knowingly possesses or knowingly has under his or her control a weapon: ...

(b) Those areas in any building which are used in connection with court proceedings, including courtrooms, jury rooms, judge's chambers, offices and areas used to conduct court business, waiting areas, and corridors adjacent to areas used in connection with court proceedings. ...

For purposes of this subsection (1)(b), "weapon" means any firearm, explosive as defined in RCW 70.74.010, or any weapon of the kind usually known as slung shot, sand club, or metal knuckles, or any knife, dagger, dirk, or other similar weapon that is capable of causing death or bodily injury and is commonly used with the intent to cause death or bodily injury.⁸³

B. Proposed Changes to RCW 9.41.300

RCW 9.41.300 has been used as a basis to deny Sikhs entry to courthouses when they carry Kirpans.⁸⁴ Despite the fact that Sikhs have proven time and time again in courts that Kirpans are not weapons, they are often treated like daggers due to their shape and length. Because Kirpans continue to be treated

⁸³ WASH. REV. CODE § 9.41.300 (2018).

⁸⁴ *Id.*

as weapons, it is important that drafters of a revised RCW adopt an exception for Kirpan-carrying Sikhs so that they may enter a courthouse without being required to dishonor their code of conduct. This article proposes adding an exemption to RCW 9.41.300(6), which lists the individuals to whom the prohibitions do not apply, for baptized (*i.e.*, Kirpan-carrying) Sikhs so that they may carry Kirpans in accordance with the tenets of their faith. The exemption should draw from, and in some cases adopt, the language in corresponding provisions promulgated by courthouses in Alberta, Canada.

In addition, while Washington needs to adopt a Kirpan policy based on Alberta's, Washington should take the additional step of ensuring the policy is uniform, clear, and minimizes discretion at the individual-officer level. This is important, as it would not only minimize opportunities for discrimination, but also preserve efficiency as there is no need for subject tests based on the presence of all the "five Ks".⁸⁵ Language to this effect should ensure that Sikhs will not be unreasonably searched for the purposes of ascertaining whether the person is truly a baptized Sikh, unless the security personnel in question has reasonable suspicion that they are not. In the case where an officer has reasonable doubts about the legitimacy of the Kirpan, it is recommended that an upper-level manager or security personnel be required to assess the situation before the Sikh has to show their "five Ks." This would ideally decrease discriminatory harassment and ensure court security do not abuse their power by asking a Sikh to prove their identity. In addition, such a requirement would place accountability on security personnel to ensure that they do not target individuals merely based on their appearance. Specifically, the proposed RCW exception could look like the following:

RCW 9.41.300

(6) Subsection (1) of this section shall not apply to:

⁸⁵ See discussion *supra* Part II.A.

(d) Individuals wearing a Kirpan who self-identify as baptized Sikhs and have disclosed that they are carrying a Kirpan to security officers of the court or other public facility or office, in addition:

(i) The total length of the Kirpan may not exceed 7.5 inches.

(ii) The Kirpan shall be worn under clothing and shall not be easily accessible, and shall remain so throughout the carrier's presence in the courthouse.

(iii) All articles of Sikh faith must be worn and be available for proof if required. If a court security guard reasonably suspects the legitimacy of the Kirpan, an upper-level employee must assess the situation before the individual is asked to show all five articles of faith.

In addition to the above-mentioned guidelines, Washington should adopt the risk assessment process that Alberta has used for several years, in order to add further protections and accountability procedures to this legal framework. By amending RCW 9.41.300 and enacting additional guidelines for security assessment, Washington State would hold court security personnel accountable to conducting a general risk assessment, thereby increasing Sikhs' access to courts. Taking Alberta as a model, a risk assessment for Washington may include, but would not be limited to, the following:

1. The reason for the person being at the courthouse (visitor, witness, victim, accused, jury duty, student, etc.).
2. The type of court proceeding the person is attending (criminal trial, small claims, family court, etc.).
3. The adversarial nature of the court proceeding that the person intends to attend.
4. Any other identified risk factors that may contribute to a potential for violence. Types of factors include, but are not limited to, occurrences of prior threats of violence, prior circumstances of violence and potential volatility of the participants.

5. If there is a contentious case being heard in the courthouse with a serious potential for violence, the person wearing a Kirpan will not be allowed entry into the courthouse in order to ensure that the Kirpan cannot be taken from them and used as a weapon by someone else.

6. If in any case a court security officer deems it necessary to deny entry to a baptized Sikh, the risk assessment will have to be reviewed and granted by an upper-level manager or security personnel to protect against discrimination.

C. Declaring Kirpans to be an article of faith rather than a weapon

RCW 9.41.300 plainly states that weapons that are “commonly used with the intent to cause death or bodily harm.”⁸⁶ Based on this language, Kirpans are not weapons because they are not commonly used to cause harm.⁸⁷ Many baptized Sikhs sleep with their Kirpans on; this alone may be evidence that Kirpans are not sharp enough to easily break skin or likely to slip out of their sheaths easily. A similar argument about Kirpans not being classified as deadly weapons was successful in the Ohio Court of Appeals in *State v. Singh*.⁸⁸ The court held that the definition of “deadly weapon” in the corresponding Ohio statute consisted of an “instrument capable of inflicting death and either designed or specially adapted for use as a weapon or possessed, carried, or used as a weapon”.⁸⁹ Although the court noted that the pointed Kirpan is capable of inflicting death, it concluded that the Kirpan is nevertheless not a deadly weapon.⁹⁰ There was no evidence presented that proved the Kirpan was carried or used as a weapon by Singh, as the Kirpan was sheathed and sewn to the front of his undergarment.⁹¹ In addition, the

⁸⁶ *Id.*

⁸⁷ Satvinder Singh Juss, *Kirpans Law and Religious Symbols in Schools*, 55 J. OF CHURCH & ST., 1, 13 (2013).

⁸⁸ *State v. Singh*, 117 Ohio App. 3d 381, 387 (Ohio Ct. App. 1996); Volokh, *supra* note 35.

⁸⁹ *State v. Singh*, 117 Ohio App. 3d 381, 387 (Ohio Ct. App. 1996).

⁹⁰ *Id.*

⁹¹ *Id.*

expert testimony was only able to establish that a Kirpan could be used as a weapon in certain “last resort” situations, and even this was based on a letter from a 17th century cleric.⁹² Testimony also importantly established that Kirpans are designed to remind Sikhs of their obligation to do justice.⁹³ The court continued to establish the importance of Kirpans for Sikhs by recognizing that

[t]o be a Sikh is to wear a Kirpan – it is that simple. It is a religious symbol, and in no way a weapon. As long as the Kirpan remains a symbol and is neither designed nor adapted for use as a weapon, laws such as R.C. 2923.12 are wholly inapplicable.⁹⁴

The judge also expressed how establishing a Kirpan as a deadly weapon would have the negative impacts of banishing the members of one religious sect from the state of Ohio due to its mandatory wear.⁹⁵ Washington should look toward this legal precedent and refuse to classify Kirpans as dangerous weapons.

D. Public safety

Public safety concerns remain the primary argument against allowing Kirpans in courtrooms. Allowing pointed metal items into court, a place where high tension situations occur, to some may be worrisome. However, despite this concern, courts have been known to allow items such as scissors, forks, butter knives, pliers, and other “pointed metal objects” into courthouses with little to no regulation.⁹⁶ Sikhs have repeatedly shown that their Kirpans are not the dangerous objects that they are made out to be—at least no more dangerous than these other objects already found in

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 388.

⁹⁵ *Id.*

⁹⁶ KING CTY. COURTHOUSE, STANDARD OPERATING PROCEDURE (last visited Mar. 18, 2019) <https://www.kingcounty.gov/~media/about/images/locations/courthouse-prohibited-permitted-items.ashx?la=en> [<https://perma.cc/AHS4-QV8S>].

courthouses. In the case of *Tagore v. Department of Homeland Security*, for instance, Ms. Tagore’s attorney vigorously rubbed the blade of the Kirpan against his hand to demonstrate that it was not sharp enough to break skin.⁹⁷

It is also notable how other places that are generally high security – such as schools, airports, and the White House have dealt with the safety concerns of Kirpans without imposing a total ban on Kirpans. In Washinton State, the Auburn School District administrators relied on state and federal guidelines that allow certain exceptions to Washington’s “zero tolerance” weapons policy in determining that as long as the Kirpan is kept underneath clothes, and not shown around, then students and staff will be allowed to carry it.⁹⁸ The Auburn School District understood that this was a compromise that allowed Sikhs to practice their faith without jeopardizing the safety of the children.⁹⁹ Indeed, many Sikh students and staff in that school district have carried Kirpans for years without incident.¹⁰⁰ Further, the district made it clear that one child’s mistake, were such to occur, would not strip all Sikhs from their constitutionally guaranteed freedom of religion.¹⁰¹

Outside of the school context, there are even a few examples of public places with otherwise unparalleled security beginning to soften their stances on whether the Kirpan is a “dangerous weapon.” As of 2017, Transport Canada, for instance, announced that Canada would allow small Kirpans on all domestic and international flights, excluding flights going to the U.S.¹⁰²

⁹⁷ *Tagore v. U.S.*, 735 F.3d 324 (5th Cir. 2013); see Michael Cohn, *Voices More on the Case of the IRS Dagger Carrier*, ACCT. TODAY (Sep. 2, 2009), <https://www.accountingtoday.com/opinion/more-on-the-case-of-the-irs-dagger-carrier> [<https://perma.cc/3LJC-NTSC>].

⁹⁸ Eric Wilkinson, *Student Allowed to Bring Religious Knife to Class*, USA TODAY (Oct. 23, 2014), <https://www.usatoday.com/story/news/nation/2014/10/23/student-allowed-bring-religious-knife-school/17763379/> [<https://perma.cc/9NLL-ACM6>].

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *World Sikh Organization Welcomes Canadian Decision to Allow Small Kirpans on Flights*, CBC (Nov. 7, 2017), <https://www.cbc.ca/radio/asithappens/as-it-happens->

In 2010, the White House allowed Tarunjit Singh Butalia to enter the premise with his Kirpan on to attend “A Multi-Stakeholder Roundtable to Advance Multi-religious Cooperation for Peace, Development, and Shared Security,” after Secret Service was able to complete a risk assessment.¹⁰³

Schools, airports, and the White House, similar to courthouses, are places where the public generally should not be able to carry weapons. Exceptions have been made for Kirpans in a manner where the security interest are not overlooked, but Sikhs’ right to practice their religion is not compromised either.

VI. EXPAND THE KIRPAN POLICY OF THE FEDERAL PROTECTIVE SERVICE

A. The Federal Protective Service

In many sectors of society, there are no explicit exceptions allowing Sikhs to carry Kirpans. Even in schools, there are no outright policies that allow faculty, staff, or students to carry Kirpans; rather, it is often understood by faculty that they are permitted. Surprisingly, the one place where the allowance of Kirpans has been codified is in federally protected facilities.

Policy changes in the Federal Protective Services (FPS), a division of the US Department of Homeland Security (DHS), came as a response to *Tagore v. United States*.¹⁰⁴ In that case, Ms. Tagore worked for the IRS and when she became a baptized Sikh, she began carrying a three-inch Kirpan.¹⁰⁵ Upon discovering that she was able to pass through her building’s metal detector without setting it off, Ms. Tagore informed her supervisor that she was

tuesday-edition-1.4391247/world-sikh-organization-welcomes-canadian-decision-to-allow-small-kirpans-on-flights-1.4391256 [https://perma.cc/7MQH-7AXL].

¹⁰³ Butalia, *supra* note 7.

¹⁰⁴ *Tagore v. U.S.*, 735 F.3d 324 (5th Cir. 2013); see *New Federal Kirpan Policy: What You Need to Know*, SIKH COAL. (Sep. 28, 2013), <https://www.sikhcoalition.org/blog/2013/new-federal-kirpan-policy-what-you-need-to-know/> [https://perma.cc/8VM2-WUW9].

¹⁰⁵ *Tagore*, 735 F.3d at 324.

carrying a Kirpan, and was then instructed to request a security waiver.¹⁰⁶ To do this, Ms. Tagore brought a letter from the Legal Director of the Sikh Coalition, who explained that Ms. Tagore had recently been baptized and was required by her religion to carry all five articles of Sikhism at all times.¹⁰⁷ Further, the letter highlighted the fact that Kirpans are less dangerous than scissors and box cutters, which are regularly allowed into FPS buildings.¹⁰⁸ Despite the smaller Kirpan and the letter explaining the religious requirement to wear a Kirpan, Ms. Tagore was placed on an interim arrangement requiring her to work from home until the matters were resolved.¹⁰⁹ Ms. Tagore worked from home for nine months before she was eventually terminated.¹¹⁰ In their reasoning, FPS stated that 18 U.S.C § 930(a) bans the knowing possession of “a firearm or other dangerous weapon in a Federal facility.”¹¹¹ “Dangerous weapon” is further defined under §930(g)(2) as “a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.”¹¹² FPS determined that Ms. Tagore’s Kirpan qualified as a “dangerous weapon” due to its three-inch blade, and thus that Ms. Tagore did not fall within an exemption of the statute.¹¹³

That decision led Ms. Tagore to bring a Title VII case against FPS and a Religious Freedoms Restoration Act action against FPS, DHS, and other defendants.¹¹⁴ As a result of this case, FPS settled with Ms. Tagore and brought a change to its nationwide policies to accommodate Sikh federal

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 326.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 327.

¹¹¹ *Id.* at 326.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* at 327.

employees.¹¹⁵ The DHS stated that some items otherwise prohibited from a federal facility may have some legitimate and lawful purpose or use in a federal facility.¹¹⁶ Such a purpose may include “accommodations for compliance with specific civil rights and civil liberties under Federal laws including, but not limited to, Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Rehabilitation Act, and the Religious Freedom Restoration Act.”¹¹⁷

DHS’s National Protection and Programs Directorate amended its Prohibited Items Program to include a training document on the Kara and Kirpan.¹¹⁸ The document was titled “Federal Protective Service—Accommodating Sikh Articles of Faith,” and informs personnel about the considerations presented with articles of the Sikh faith and the importance they hold for Sikhs.¹¹⁹ Specifically with regard to the Kirpan, the Prohibited Items Program states that “[a] Kirpan may qualify as a ‘dangerous weapon’ under 18 U.S.C. § 930, which generally prohibits knives with blades 2.5 inches or longer, unless otherwise authorized.”¹²⁰ Conversely, the training document points out that a Kirpan less than 2.5 inches may be permitted in a federal facility without an exception or exemption unless it is used as a dangerous weapon.¹²¹ Before a Kirpan longer than 2.5 inches can be carried into a federal facility, it must meet an exception or exemption to the

¹¹⁵ *Case Detail: Tagore v. Dept. of Homeland Security*, BECKET FUND FOR RELIGIOUS LIBR. (last visited Mar. 18, 2019), <https://www.becketlaw.org/case/tagore-v-department-homeland-security> [<https://perma.cc/9D8B-R75Q>].

¹¹⁶ DEPT. OF HOMELAND SEC., PROHIBITED ITEMS PROGRAM 22 (Dec. 10, 2012), *available at* <https://www.dhs.gov/sites/default/files/publications/foia/prohibited-items-program-nppd-fps-directive-15.9.3.1.pdf> [<https://perma.cc/R2XX-ARQ4>].

¹¹⁷ DEPT. OF HOMELAND SEC., ITEMS PROHIBITED FROM FED. FACILITIES: AN INTERAGENCY SEC. COMM. STANDARD (Feb. 2013), <https://www.dhs.gov/sites/default/files/publications/ISC-%20Items%20Prohibited%20from%20Federal%20Facilities-%20An%20ISC%20Standard.pdf> [<https://perma.cc/7LTK-NBH9>].

¹¹⁸ *Supra* note 116.

¹¹⁹ *Supra* note 117.

¹²⁰ *Id.*

¹²¹ *Id.*

prohibited items policy, like those described in FPR Directive 15.9.3.1.¹²² While granting an exception is discretionary, denials of exceptions and exemptions may be appealed to the FPS headquarters.¹²³ Importantly, however, the training document includes a disclaimer that the policy does not apply to federal courts, even if within FPS-secured facilities.¹²⁴

B. Expanding the FPS policy to federal courts

The FPS policy change was a huge victory for Sikhs, but the policy is still narrowly applied to only certain federal buildings, with federal courts remaining a glaring hole. No FPS exception provides access for Kirpan-carrying Sikhs to a federal court, even if the court is within an FPS-secured facility.¹²⁵ The FPS should thus expand its rule to allow for Kirpans to be worn in federal courts in addition to the other federal buildings.

First, the FPS policy could be easily incorporated by federal courts more generally because the training has been well established with a handbook that is detailed enough for their use. The Prohibited Items Program includes various attachments in the document that would allow federal courts to adapt comprehensive policies. These attachments including “FPS recommended prohibited items reference”, “procedures for exceptions and exemptions to otherwise prohibited items”, “alternative documents to a State-issued credential” and “prohibited items report”.¹²⁶ The program along with the attachments will allow court security personnel to have guidelines and procedures to follow when faced with Sikhs entering the courts.

Further, there is no legitimate security reason why allowing Kirpans into federal courts would be any more of a threat to safety than allowing Kirpans

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *New Federal Kirpan Policy: What You Need to Know*, SIKH COAL. (Sep. 28, 2013), <https://www.sikhcoalition.org/blog/2013/new-federal-kirpan-policy-what-you-need-to-know/> [<https://perma.cc/8VM2-WUW9>].

¹²⁶ *Supra* note 116.

into IRS or DHS buildings, where other sharp tools are permitted. IRS and DHS buildings, similar to federal courts, give access and services to thousands of people daily. The primary argument for not allowing Kirpans into federal courts, but allowing them into other FPS buildings would be the contentious nature of courts. The federal courthouses allow access to the public, but also has the power to limit the access where they find necessary.¹²⁷ For example, federal courts can limit access to the public for security reasons.¹²⁸ Rather than putting a *de facto* ban on Kirpans, the courthouses can use this power that they already use, to limit Sikhs wearing Kirpans in areas where there are high – tension cases or defendants present.

VII. CONCLUSION

By allowing Sikhs to wear Kirpans into courthouses, the state and federal court systems will be recognizing the basic rights of Sikhs, which all other Americans have. A Sikh would not have to choose between violating their religious code of conduct and doing their civic duty. Effectively barring Sikhs from being witnesses for a crucial case, seeking justice for themselves, or having a voice in the community through jury duty, detracts not only from the Sikh community, but from American society at large. Though the proposed solutions will not make wearing a Kirpan as simple as passing through security without a Kirpan, allowing Sikhs to enter courts while honoring the tenets of their faith as advocated herein is a step in the right direction. Kirpan-carrying Sikhs will still have to wait longer than the average court attendees and will still be questioned about their religion at relevant security checkpoints, but they will not be forced to face moral dilemmas every time they have a need to go to a court.

Establishing rules and regulations in order to allow Kirpan-wearing Sikhs into courthouses is itself a start, however, there will still need to be broader

¹²⁷ Visit a Federal Court (last visited Apr. 25, 2020), <https://www.uscourts.gov/about-federal-courts/federal-courts-public/visit-federal-court> [<https://perma.cc/VR9U-4Q2N>].

¹²⁸ *Id.*

changes implemented and codified as pertain to schools, airports, and within other sectors of the criminal justice system. In addition to legislation, basic outreach and education are important in establishing rights recognition for a group like the Sikhs. Seeing people in public areas with something that looks like a knife can easily be alarming for anyone. If there was more awareness around what a Kirpan is, and why Sikhs carry it, such would decrease the chances of Sikhs, such as Virender Singh,¹²⁹ from being dragged to court due to misunderstandings.

The First Amendment to the US Constitution guarantees the right to freedom of religion. Washington State's law on weapons that are prohibited in courts amounts to a *de facto* exclusion of an entire subsection of the population from entering courts, thus impermissibly conditioning their access to courts on their religion. Sikhs are compelled to take off their Kirpans before entering courts, resulting in a conflict with the Code of Conduct that they have vowed to follow. But if a Sikh refuses to take off their Kirpan and cannot enter a court, they are effectively stripped of the many rights and opportunities that the court system provides to its citizens. Changing Washington and federal law to create an exception for Kirpans is a solution that would maintain the safety of the courts and allow Sikhs to enter without committing any religious wrongdoings.

In addition, the Federal Protective Services policy, which allows Sikhs carrying Kirpans under 2.5 inches to enter without any issues and allows exceptions to be requested for Kirpans over 2.5 inches, should be expanded. In particular, expanding the policy's reach to all federal courthouses will have a larger impact than changing the Washington statute alone, as it would allow Sikhs all over America to access federal courts as they need to. This

¹²⁹ See discussion *supra* Part II. B; see also Yudhvir Rana, *The US Court Drops Criminal Charges Against Kirpan Carrying Sikh Youth*, TIMES OF INDIA (Oct. 10, 2015), http://timesofindia.indiatimes.com/articleshow/49302882.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst
<https://timesofindia.indiatimes.com/world/us/US-court-drops-criminal-charges-against-Kirpan-carrying-Sikh-youth/articleshow/49302882.cms> [<https://perma.cc/7WGQ-46K4>].

expansion would be a smooth transition as the initiatives the FPS uses are well established and detailed, thus making them easy to adapt in the federal court context.

Kirpans are not dangerous, they are not used with the intent to harm; they are sheathed, and they have a dull blade. Establishing in legislation and federal policies that Kirpans are not weapons would help Sikhs access courts, and perhaps various other domains, throughout America. Sikhs would not be continuously confronted when going to court, or have to repeatedly prove that they are not carrying weapons when they are stopped in the streets, or at school, or work; they would not have to choose between their religious convictions and accessing public forums.