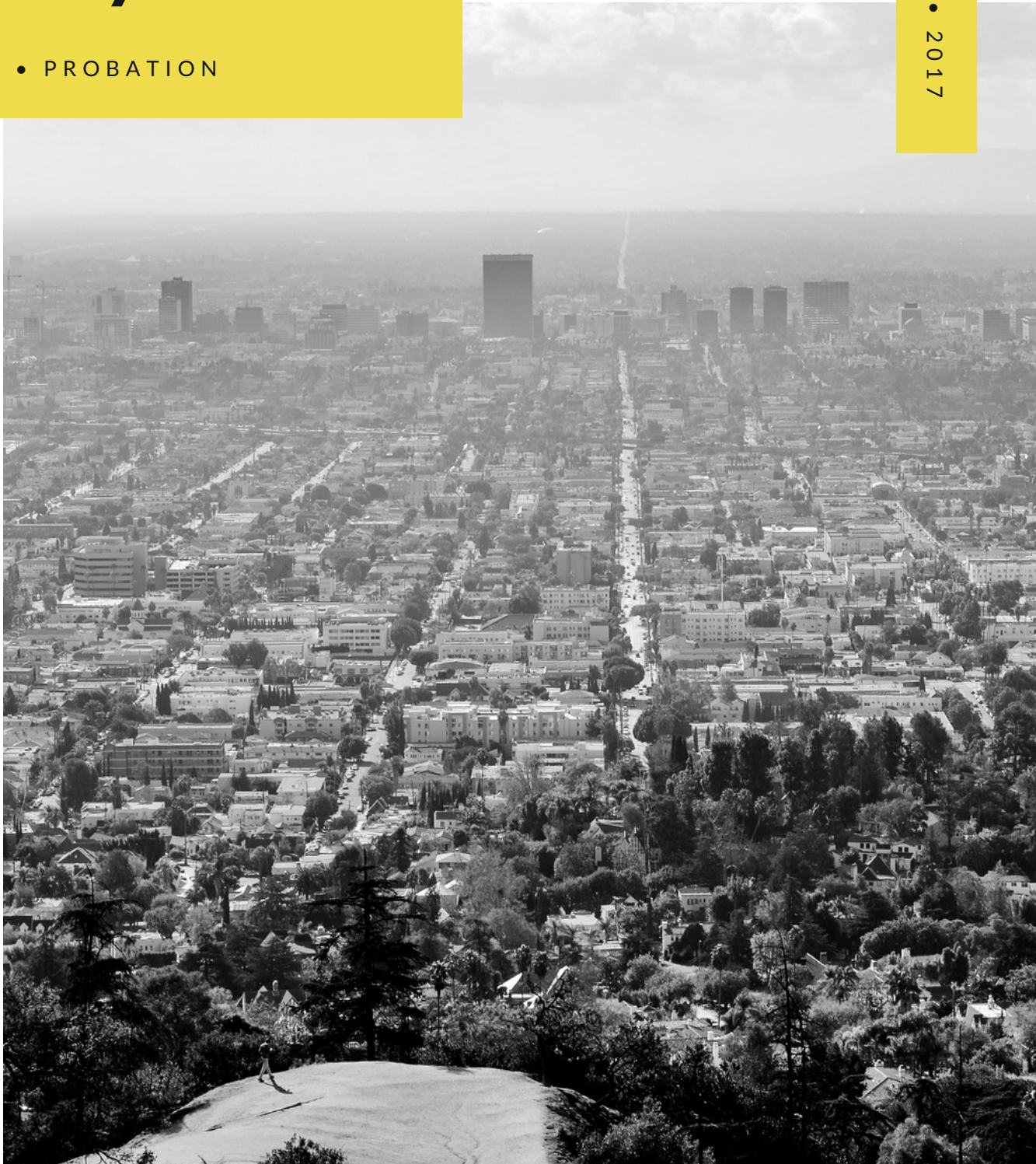


First for Women LA County

SHERIFF • PROBATION

JAN. 1 • 2017



FIRST AMENDMENT PROTECTION

The Free Exercise Clause and
RLUIPA

CURRENT LEGAL CHALLENGES

What is reasonable?

A RISING REALITY FOR WOMEN

Islamophobia and political
discourse

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RELIGIOUS HEADWEAR

PROTECTING FIRST AMENDMENT RIGHTS IN LOS ANGELES COUNTY



In May 2015, Long Beach police pulled over and detained a young African American Muslim woman named Kirsty. This young woman wore a religious head covering in accordance with her religious beliefs. While in custody, she was forcefully stripped of her headscarf by an arresting officer in the presence of several other male officers and inmates. Despite her pleas and cries, her headscarf was not returned to her. She spent the night in jail, alone and exposed.

Kirsty later sued the police department in a fight to preserve the right to don religious headwear, and restore women’s right to bodily integrity and dignity. As for women of all faiths, the right to wear religious headwear is a right deeply rooted in our nation’s history.

“I would never want anyone to go through what I felt from this experience, it was horrible, I want my Muslim sisters to always feel comfortable and safe wearing a hijab and to stand up for what's right. We are all human, we all deserve justice.”
-Kirsty Powell

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EXECUTIVE SUMMARY

Kirsty is among the numerous women across the country who have suffered religious based humiliation and harassment in the criminal justice system. Suits against Sheriff’s departments in San Bernardino, San Diego, and Orange County have settled in favor of detainees denied a religious headwear accommodation and these lawsuits have resulted in policy changes solidifying women’s religious rights in detention facilities. We ask that the Los Angeles County Sheriff’s and Probation Departments proactively implement a policy that demonstrates religious tolerance and a commitment to preserving women’s right to bodily integrity before it’s too late.

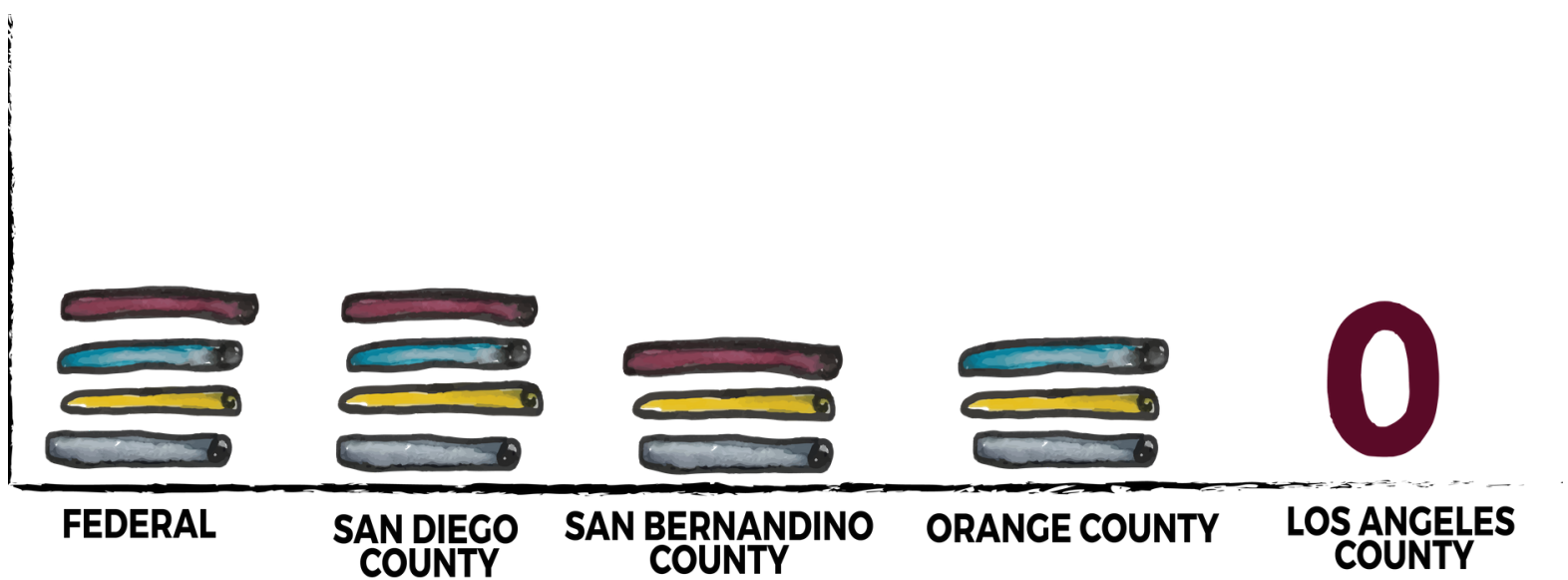
LA County Falling Behind

Prior lawsuits brought by inmates have also resulted in accommodations for halal or Kosher meals, evening meals during Ramadan, attendance of weekly congregational prayers, and possession of religious items including prayer rugs and prayer beads.

In *Tarrer v. Pierce County* (2010), the court ruled in favor of male inmates by allowing them to wear kufis (brimless short religious hats), which were previously prohibited, and modify their clothing in certain situations to comply with dictates of modest loose-fitting clothing [1].

In the last decade, policies accommodating women's religious headwear have been adopted at the federal level and by neighboring counties, such as Orange County, San Diego, and San Bernardino County [2]. Oftentimes these policies were the product of protracted and costly litigation.

The following is a review of existing federal and local law enforcement policies, highlighting common sense practices that are aimed at protecting the religious rights, dignity, and bodily autonomy of women in custody.



-  **Photo with headwear**
-  **Same Gender Searches**
-  **Temporarily issued headwear**
-  **Private screening area**

1. Settlement protects religious freedom for inmates in Pierce. (October 24, 2012). ACLU. Retrieved from <https://www.aclu.org/news/settlement-protects-religious-freedom-inmates-pierce-county-jail>
 2. San Roman, G. (2013, February 14). Muslim woman wins hijab settlement with OC Sheriff's Department. OC Weekly. Retrieved from <http://www.ocweekly.com/news/local-muslim-woman-wins-hijab-settlement-with-oc-sheriffs-department-6455336>



FIRST AMENDMENT *PROTECTIONS*

Article VI of the Constitution's Bill of Rights opens with 16 words known as the First Amendment. Within the First Amendment, the Free-Exercise Clause states that the government shall make no law prohibiting the free exercise of religion. In 2000, Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA) which protects the religious rights of incarcerated individuals. Lawsuits in neighboring Los Angeles counties have required the response of Sheriff's Departments to attend to the issue of religious rights, specifically affecting Muslim women.

THE FREE EXERCISE CLAUSE & THE RLUIPA

PREVENTING A LAWSUIT IN LA COUNTY

Although under the first Amendment, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof," Muslim women have been routinely denied the right to wear a headscarf while in jail and courthouse detention, while visiting family members in correctional institutions, and even while working in correctional institutions. LASD has no current policy protecting the right to wear religious headwear.

"Immediately before I was forced to remove my hijab, I felt fearful, stressed, unsafe, and I really could not believe it was about to happen. When I was forced to remove my hijab, I felt embarrassment, injustice, shame, powerlessness, anger, and even rage. Most of all, I felt utterly humiliated and violated. The next day, I felt a sense of mobility like I had to file the complaint and take some action."

-Jameelah Medina, a Muslim American woman, recounts on being forced to take off her hijab by law enforcement

OC RESPONSE TO LAWSUIT

"The Orange County Sheriff's Department respects the constitutionally guaranteed religious rights of all persons. As agreed to in the settlement, we have implemented new policies and conducted training with our personnel specific to the wearing of religious head garments. These changes will ensure the security needs of our custodial facilities are met and at the same time respect the religious freedoms of those held in our custody."

HEADSCARF: A RELIGIOUS PRACTICE

Islam seeks to dignify, respect and honor men and women and includes a dress code for both genders that emphasizes modesty. Many Muslim women wear the hijab/khimar (headscarf) and loose clothing to cover their bodies, and a few cover their faces with a niqab (veil) as part of religious observance. The Qur'an says, "Say to the believing men that they should lower their gaze and guard their modesty...and say to the believing women that they should lower their gaze and guard their modesty; that they should not display their beauty or ornaments except what ordinarily appear thereof; that they should draw their veils over their bosoms..." (Qur'an 24:30-31).

Muslim women wear headscarves to cover her hair, ears, neck, and part of her chest in public and in the presence of men who are not their immediate family members, in accordance with her religious beliefs. This practice is tied to humility and dignity from the public gaze as part of women's bodily autonomy and devotion to God. Some Christian women (1 Corinthians 11:5-6) and Jewish women (Numbers 5:18) cover their hair, as well. The donning of head coverings by females in the presence of males is a practice of many religious traditions as a way to show devotion to their Creator. When an individual is stripped of their right to religiously express themselves, it can be both psychologically and spiritually traumatizing.

NAMES OF RELIGIOUS HEADCOVERING

Muslim: hijab, khimar, niqab (face veil) Sikh: agri (turban) and patka (under turban); chunni (cloth to cover hair) Jewish: tichel or mitpacha, snood Buddhist: Zukin Catholic: Habit, wimple African women: head wrap, gele Jain: saree, mouth-cloth Eastern Orthodox: Apostolnik Amish/Mennonite/Amish Mennonite, and Old German Baptist Brethren): Cap, Kapp, Bonnet Quaker: Bonnet Santeria, Candomble, and Vodou: for new initiates handkerchief or a hat



CAIR reported 154 cases of discrimination or harassment in which a Muslim woman's head covering was identified as the factor that triggered the incident. The most common complaint in these cases was being prohibited from wearing a head covering, which accounted for 44 incidents.

ISLAMOPHOBIA: A RISING REALITY FOR MUSLIM WOMEN

In today's current divisive political discourse and rampant Islamophobia, women wearing the headscarf are visible targets for those with uninformed views of Muslims. Religious rights are particularly important for law enforcement to protect, given the rise in hate crimes against the American Muslim community. As an effort to protect vulnerable communities from hate, harm and crime, there is an opportunity for law enforcement to enact progressive policy-making and institutional culture change. Los Angeles County and its Sheriff's and Probation Departments can renew its commitment to pluralism and diversity by implementing a policy that accommodates headscarves for those in custody.

CURRENT LEGAL CHALLENGES

The First Amendment and RLUIPA have been enacted to prevent the government from imposing a substantial burden on how people practice their respective religions, while in and out of custody. Although law enforcement officials are to conduct their duties within the purviews of the Constitution, oftentimes law enforcement officials adopt policies that provide unfettered discretion to officers carrying out their official duties. This creates a conflict in terms of weighing the government's interest and a person's right to bodily integrity.

Case law provides that a reasonable religious accommodation be provided to an individual in law enforcement custody, and any substantial burden on the exercise of religion must be overcome by a compelling government interest or the burden must be the least restrictive means of furthering that compelling government interest.

California and Federal courts have yet to make a ruling on the issue of whether, upon an arrest being made, the government's interest in removing a woman's religious headwear outweighs a woman's right to exercise her religion. Several cases have made news headlines including Muslim women protestors whose mugshots were released to the public in Portland Maine [1]. In 2008, an Orthodox Jewish woman was forced to remove her wig [2]. Lawsuits in Dearborn Heights and Long Beach filed by Muslim women are still pending[3]. While these cases have been covered in the media, many of these cases never see their day in court because cities and counties ultimately pay out large settlements from taxpayer money to settle these lawsuits.

1. Flap over Muslim women's mugshots released to public. (2016, August 3). CBS News. Retrieved from <http://www.cbsnews.com/news/flap-over-muslim-womens-mugshots-released-to-public/>
2. Friedman, H. (2008, July 8). Orthodox Jewish woman required to remove her wig. Religion Clause <http://religionclause.blogspot.com/2008/07/police-require-orthodox-jewish-woman-to.html>
3. Lawsuit filed against Dearborn Heights police for forcing woman to remove hijab. (2015, January 22). Fox2. Retrieved from <http://www.fox2detroit.com/news/178797-story>; Cocker, M. (2016, May 3). Long Beach Sued Over Cop's Removal of Muslim Woman's Hijab. OC Weekly. Retrieved from <http://www.ocweekly.com/news/long-beach-sued-over-cops-removal-of-muslim-womans-hijab-7163265>

RECOMMENDATIONS

In order to prevent the occurrence of law enforcement infringements on a women's religious freedom rights, and to avoid costly litigation, the Los Angeles County Sheriff's Department and Probation Department can adopt a policy with the following preventative measures that are within the confines of our constitution and are in line with the government's interests, such as, ensuring officer safety:

- 01 PRIVACY**
Women in the custody of LASD and LAC Probation will not be required to remove their religious headwear unless in a private area under the supervision of a female officer and out of view of any men, including male officers.
- 02 SAME GENDER SEARCHES**
Searches and pat-downs shall be done by a same-gender deputy, officer, or designated employee.
- 03 TEMPORARY RELIGIOUS HEADWEAR**
Women in the custody of LASD and LAC Probation will be provided temporary religious headwear.
- 04 RELIGIOUSLY COMPLIANT PHOTOGRAPHY**
Women in the custody of LASD and LAC Probation who are required to take a photograph shall be permitted to wear their religious headwear if a reasonable likeness can be obtained from an individual the full face is visible and the religious headwear does not cast a shadow on the face.
- 05 PERSONNEL EDUCATION**
All personnel of LASD and LAC Probation are required to complete educational training on the significance of religious headwear, and how to implement the above four policy recommendations with safety and cultural awareness.

CONCLUSION

Los Angeles County should not deny a woman of any faith, the right to exercise her religion through modest head coverings when the burden and challenges of doing so would pose little to no law enforcement concerns. To constitutionally align with the First Amendment Free-Exercise Clause and the congressional Religious Land Use and Institutionalized Persons Act, the Los Angeles Sheriff's and Probation Departments have legal, financial and social responsibilities to adopt the policy recommendations provided. This action of protecting the rights of marginalized Muslim women donning religious head wear have large societal implications of improving community safety on behalf of law enforcement in this County.