

SANKORE'



Institute of Islamic - African Studies

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَالصَّلَاةُ وَالسَّلَامُ عَلَى سَيِّدِنَا مُحَمَّدٍ وَأَلِهِ وَصَحْبِهِ وَسَلَّمَ

Memorandum

DATE: November, 4, 1997
TO: California Department of Corrections
FROM: Sankore' Institute of Islamic-African Studies
RE: The Issue of Beards and Grooming Standards in Islam

The Directorate of the Sankore' Institute of Islamic-African Studies was requested by the Muslim public as well as many Muslim inmates in the California Department of Correction to research into the *shari`a* of Islam in order to provide textual evidence concerning the wearing of beards by Muslims. The purpose of this research is to determine whether the wearing of the beard is an obligation in Islam, an established *sunna*, or simply a custom of the Muslim people which can be dispensed with under certain circumstances.

On October 16, 1997 the California Department of Corrections issued Resolution # 97/12: Notice of Change to Director's Rules - Sections: 3000, 3062, 3075, 3287, 3314 and 3315. The new resolution was issued "to incorporate into the Director's Rules provisions governing inmate grooming standards".

After carefully examining the purpose and aims of the resolution and after grasping the legitimate needs for security and maintenance of the hygienic standards within the California Department of Corrections - the Sankore` Institute of Islamic African Studies determined that the established Islamic grooming standards can be allowed for Muslims without challenging the stated objectives of the new changes. The stated objectives of the new changes are coterminous with the legal obligations of grooming standards in Islam. Therefore, each Muslim inmate can maintain the obligations of Islamic grooming standards while at the same time comply with the objectives of the new changes as stated in Resolution 97/12.

The objectives of the new changes are, as stated: [1] to promote good personal hygiene; [2] to aid in the security of the prisons; and [3] to protect the safety of the public. We do not feel that the objectives of these new changes are to "target" the Muslim inmate population of the CDC nor to violate established religious normative practices which in no way threaten the security of the prison system.

It for this reason that the California Department of Corrections should be well informed of the grooming standards of Muslims, whether incarcerated or free - from the legal perspective of the *shari`a* of Islam. This will enable the officials of the CDC to know that Muslim grooming standards fulfill the very objectives of the new changes which would allow Muslims to be exempt from conforming to any grooming standards which violate their religion.

[1] [a] The beard (الْحَيْة) is a distinct part of the natural constitutions (الْفِطْرَة) of human beings by which Allah ta`ala distinguishes males from females. According to Islam it is not permissible to alter, change or disfigure the character of these distinct natural constitutions, except when the shari`a permits. Allah ta`ala says in the Quran that Satan says:

"وَلَأْمُرَنَّهُمْ فَلْيُغَيِّرَنَّ خَلْقَ اللَّهِ."

"I will command them and they will alter the creation of Allah." [an-Nisa':119] The Muslim is obligated by the very definition of being Muslim not to obey Satan when he commands them to alter any characteristic of the natural constitution.

[b] Further, in Islam men are prohibited from resembling women and vice versa. Shaykh Uthman Dan Fodio said in his Kitaab Tahdheer Ahli 'l-Imaan, "The resemblance of men to women and vice versa is forbidden. Rather, it is among the major sins. Shihabudeen Ahmad ibn Hajr 'l-Haytami said, 'It is forbidden for men to resemble women in the inexorable traits which distinguish them from men neither in movement, speech or clothing.' It has been related by Imam al-Bukhari on the authority of Ibn `Abass, may Allah be pleased with him, said:

"لَعَنَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمُتَشَبِّهِينَ مِنَ الرِّجَالِ بِالنِّسَاءِ وَالْمُتَشَبِّهَاتِ مِنَ النِّسَاءِ بِالرِّجَالِ."

"The Messenger of Allah, may Allah bless him and grant him peace, cursed the men who resemble women and the women who resemble men." Again in the Saheeh of al-Bukhari:

"لَعَنَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمُتَخَنِّثِينَ مِنَ الرِّجَالِ وَالْمُتَرَجِّلَاتِ مِنَ النِّسَاءِ."

"The Messenger of Allah, may Allah bless him and grant him peace, cursed effeminate men and masculine women."¹ In the proceeding prophetic traditions are clear warnings to Muslims against resembling the opposite sex in any of the natural or cosmetic traits which distinguish one gender from the other.

Here we see congruence between Islamic standards and the spirit of the proposed changes within the CDC concept of grooming standards. In the Initial Statement of Reasons it states:.

"The Department realizes that there are differences between male and female inmates and has tried to set the standards for each gender according to needs, physical and psychological differences, behavioral differences and social standards."²

It is about time that some standard be made in which the clear divinely ordained lines of gender distinction be enforced. Too long has the distinction between male/female been ignored within the correctional institutional walls. The existence of the beard is the single most apparent symbol for masculinity which distinguishes the male from females. Thus, there is no way for a person to alter or change the creation of Allah by removing the facial hair which demarcates masculinity.

[2] [a] The existence of facial hair is apart of the clear distinctions in Islam for determining the maturity of a young men. It is at the point of maturity (الْبُلُوغ) that human beings are made responsible for their actions (الْمَعْلُوف). According to Abd'l-Wahab ibn Ashir in his Murshid 'l-Mu`een:

وَكُلُّ تَكْلِيفٍ بِشَرَطِ الْعَقْلِ مَعَ الْبُلُوغِ بِدَمٍ أَوْ حَمَلٍ
أَوْ بَمَنِيٍّ أَوْ بِأَنْبَاتِ الشَّعْرِ أَوْ بِثَمَانِ عَشْرَةَ حَوْلًا ظَهَرَ

"Every responsibility is conditioned by reason. Along with maturity indicated by (menstrual) blood or pregnancy.

¹ Uthman Dan Fodio, Tahdheer Ahl 'l-Imaan Min at-Tashabbuhi Bi Ahl 'l-Kufr Wa 'l-'Isyaan, mansc. with author, pp. 17-19.

² Director of Corrections, California Department of Corrections, "Initial Statements of Reasons", Sept, 12, 1997, p. 1.

Or by sperm or the growing of (facial or pubic) hair, Or by reaching eighteen years of age.”³

[b] The existence of the beard is the clearest and most apparent sign of physical maturity in the male. The intentional removal of the beard is considered in Islam a sign of infantile vanity and religious immaturity. The shaving of the beard is a sign of humiliation and degradation.

[3] [a] Human outward appearance (الأشكال) is divided into two divisions: [i] the natural physiognomy (خَلْقِي); and [ii] artificially produced appearance (مُصْنُوع). The beard is included among the first type - the natural physiognomy of man. The divine law was established to preserve every aspect of the natural physiognomy and it is opposed to anything that would lead to its removal. This includes shaving or mutilation, except in a case which is justified by the *shari`a*. This principle lies at the very foundation of the divine law. The majority of laws in Islam were implemented by Allah ta`ala in order to protect the natural human constitution from futility and in order to preserve that which is the fundamental nature of humanity - whether spiritual or physical.

[b] Thus, the Messenger, may Allah bless him and grant him peace, established what is lawfully removed from the physical body and he included this removal as being apart of the natural human constitution (الفطرة). It has been related by *Imam Muslim* in his *Saheeh* on the authority of A`isha: The Messenger of Allah may Allah bless him and grant him peace said:

"عَشْرٌ مِنَ الْفِطْرَةِ قَصُّ الشَّارِبِ وَأَعْقَاءُ اللَّحْيَةِ وَالسَّوَّاءِ وَاسْتِنْشَاقُ الْمَاءِ وَقَصُّ الْأَظْفَارِ وَغَسْلُ الْبَرَاجِمِ وَتَنْفُ الْأَبْطِ وَحَلْقُ الْعَانَةِ وَانْتِقَاصُ الْمَاءِ." قَالَ مِصْعَبٌ "وَنَسِيتُ الْعَاشِرَةَ إِلَّا أَنْ يَكُونَ الْمَضْمَضَةُ."

“Ten things are the acts according to *fitra* (the natural state): clipping the mustache, letting the beard grow, using the tooth-brush, cutting the nails, washing the finger joints, plucking the hair under the arm-pits, shaving the pubic hair, and cleansing one's private parts (after defecation or urination) with water.” The narrator said: “I have forgotten the tenth, but it may have been rinsing the mouth.”⁴

[c] From the above prophetic tradition it is known that the *shari`a* begins by preserving the natural human constitution. This is because the completion or perfection of the human physiognomy is apart of the natural constitution upon which humanity was created. Thus, the clipping of the mustache and the growing of the beard also constitutes the perfection of the human physiognomy as Allah ta`ala has ordained. Within these two acts there are well known hygienic, medical as well as religious benefits. Thus, the issue of the beard comprises the essence of the human formation and physical constitution in Islam and it should be preserved in the fashion that the Prophet, may Allah bless him and grant him peace ordered.

[4] [a] The Muslim is obligated to follow the commands of the Messenger of Allah, may Allah bless him and grant him peace and to avoid disobeying him in all circumstances. Allah ta`ala says:

"وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا."

“What ever the Messenger gives you then take and what he forbids you then avoid it.”[al-Hashr: 7]

[b] It has been narrated in the *al-Muwatta* of *Imam Malik* ibn Anas, in the section called ‘The *Sunna* Concerning Hair’:

"وَحَدَّثَنِي عَنْ مَالِكٍ عَنْ أَبِي بَكْرٍ بْنِ نَافِعٍ عَنْ أَبِيهِ نَافِعٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَمَرَ بِإِحْقَاءِ الشَّوَارِبِ وَإِعْقَاءِ اللَّحْيِ."

³ Shaykh Abd ‘l-Waahid ibn `Aashir, *al-Murshid ‘l-Mu`een `Ala ad-Daruuri Min `Uluum ‘d-Deen*, (Tunis: Maktaba ‘l-Manaar, 1969), p. 3.

⁴ *Imam Muslim, Saheeh Muslim*, (Cairo: Isa ‘l-Baabi ‘l-Halabi), p. 125.

“Yahya related to me from Malik from Abu Bakr ibn Nafi from his father Nafi from Abdullah ibn Umar that the Messenger of Allah, may Allah bless him and grant him peace, *ordered the mustache to be trimmed and the beard to be left.*”⁵

[c] *Shaykh* Muhammad ibn `Abd `l-Baaqi ibn Yusef `z-Zurqaani said in his commentary upon the *al-Muwatta* called *Sharhu `z-Zurqaani*: “*The Messenger of Allah, may Allah bless him and grant him peace, ordered; here ordered means ‘as an endorsement and it is said it means ‘as an obligation’; for the mustache to be trimmed, that is removing what extends over the lips, until the lip becomes clear and apparent- as the Imam explained it. This is the opinion of those who prohibit the shaving of the mustache. Those scholars who say that it is recommended to shave, say it means complete elimination (استئصال), this is because this is more fitting linguistically due to the fact that the fundamental meaning of ‘trim’ is close and thorough (استقصاء).* However, this opinion is challenged by the prophetic tradition:

مَنْ لَمْ يَأْخُذْ مِنْ شَارِبِهِ فَلَيْسَ مِنَّا

“Whoever does not take something from his mustache, then he is not from among us.”

The expression ‘from’ here gives evidence of the meaning of ‘a portion’ and that the mustache is not to be completely eliminated...It has been narrated by al-Baraaz on the authority of A`isha, “The Prophet, may Allah bless him and grant him peace once saw a man whose mustache was very long. He said, ‘Bring me scissors and a tooth brush.’ He took the tooth brush and placed it on the edge of his lips and then cut the hair which extended beyond that.”...It has been related by at-Tabraani and al-Bayhaqi on the authority of Abdallah ibn Abi Raafi` who said, “I saw Abu Sa`id `l-Khudri, Jaabir ibn Abdallah, Ibn Umar, Raafi` ibn Khudayj, Abu Sa`id `l-Ansaari, Salama ibn al-Akwa` and Abu Raafi`, all of them used to remove their mustaches in the same way of shaving.” For this reason Ibn Jarir followed the opinion that one had a choice in trimming and shaving the mustache...For clipping (فَصْر) is evidence that a portion of the mustache should be removed, while cut (إِحْقَاء) is evidence that the entire mustache should be removed. Therefore each opinion is established, so appeal to whichever opinion you desire.”⁶

In the above prophetic tradition, the Messenger of Allah, may Allah bless him and grant him peace, continued, “... *and the beard to be left.*”;...this refers to the hair which grows on the two cheeks (خَدَّيْنِ) and the chin (ذَقْنِ). It means here that you should allow the beard to increase until it becomes abundant. This is what Abu Ubayda said. However, al-Baaji said: ‘I consider that what is intended here is that the beard should be exempt from being cut, because not cutting the beard does not necessarily mean it should be abundant.’ It has been narrated that Ibn Umar and Abu Hurayra used to grasp their beards in their hands and then cut what exceeded beyond their hand grasp. *Imam* Malik was asked about the beard which is very long and he said, ‘My opinion is that he should grasp hold of it and cut (that which extended beyond the hand).’...*Imam* at-Taybi said, ‘It is prohibited

(مَنْهِيٌّ) **to cut the beard like the non-Arabs or to extend the beard like the tail of a donkey.**’ *Imam* al-Haafidh said, ‘The prohibition for the beard is complete elimination (استئصال) or cutting it very close contrary to what grows beyond the hand grasp mentioned in the above traditions.”⁷

⁵ *Imam* Malik ibn Anas, *al-Muwatta*, (Beirut: Dar `l-Kutub `l-`Ilmiyya, 1984), p. 522.

⁶ *Imam* Muhammad ibn **Abd`l-Baaqi ibn Yusef az-Zurqaani**, *Sharh `z-Zurqaani `Ala Muwatta `l-Imam Malik*, (Beirut: Dar `l-Kutub `l-`Ilmiyya, 1990), pp.425-6.

⁷ *Ibid*, 426.

[5] [a] The Muslim is prohibited from repudiating known Islamic customs and resembling the customs of the non-Muslims. Allah ta`ala says:

"وَمَنْ يُشَاقِقِ الرَّسُولَ مِنْ بَعْدِ مَا تَبَيَّنَ لَهُ الْهُدَىٰ وَيَتَّبِعْ غَيْرَ سَبِيلِ الْمُؤْمِنِينَ نُوَلِّهِ مَا تَوَلَّىٰ وَنُصَلِّهِ جَهَنَّمَ وَسَاءَتْ مَصِيرًا."

"Whoever repudiates the Messenger after the Guidance had been made clear to him and follows other than the Way of the believers, Allah will attach him to what he has become attached and lead him to Hell an evil destiny." [an-Nisa': 115]

Thus, if the Muslim denies the obligation of maintaining the beard and follows in the ways of the disbelievers by shaving their beards after the Messenger has given the command to let the beard grow -then he will no doubt be connected to those whom he resembles. This is because sameness in outward appearance is a proof of sameness in the hearts.

[b] The Messenger of Allah, may Allah bless him and grant him peace said,

"لَا يُشْبِهُ الرَّيُّ بِالرَّيِّ حَتَّىٰ يُشْبِهُ الْقَلْبُ بِالْقَلْبِ."

"There is no resemblance of outer appearance until there is first resemblance in the hearts." Again the Messenger of Allah, may Allah bless him and grant him peace said,

"مَنْ تَشَبَّهَ بِقَوْمٍ فَهُوَ مِنْهُمْ."

"Whoever resembles a people then he is from them." Lastly the Messenger of Allah, may Allah bless him and grant him peace said,

"لَيْسَ مِنَّا مَنْ تَشَبَّهَ بِغَيْرِنَا."

"He is not from among us who resembles other than us." Shehu Uthman Dan Fodio said in his Tahdheer, "This means he is not among the righteous from us nor among those who are fearful of Allah - who resembles the people of corruption and sinful deviation. For by resembling them in their ways it is feared that he will be included among them on the Day of Judgment."⁸

[c] *Shaykh* Uthman ibn Abd'l-Qaadir narrated in his excellent work called Hukmu 's-Shar'i Fii 'l-Lahya wa 'l-Azyaa (The Legal Judgment Concerning Beards and Attire), "One day messengers from the courts of the King of Persia, Kosra, came to the Prophet of Allah, may Allah bless him and grant him peace and their beards were shaved off. He upon him be peace asked, 'Who has ordered you to do that?' They said, 'Our master.' Meaning by that Kosra. He then turned his eyes away from them and said, 'As for me my Lord ordered me to *clip the mustache and the let the beard grow.*'"⁹

[7] [a] In addition to the above there are many prophetic traditions which speak to the necessity of grooming the beard and taking care of it. Among them is what was related in the al-Muwatta:

"كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي الْمَسْجِدِ، فَدَخَلَ رَجُلٌ تَائِرَ الرَّأْسِ وَاللَّحْيَةِ، فَأَنشَرَ إِلَيْهِ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِيَدِهِ أَنْ أُخْرَجَ، كَأَنَّهُ يَعْنِي إِصْلَاحَ شَعْرِ رَأْسِهِ وَلَحْيَتِهِ، فَفَعَلَ الرَّجُلُ ثُمَّ رَجَعَ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: " أَلَيْسَ هَذَا خَيْرًا مِنْ أَنْ يَأْتِيَ أَحَدَكُمْ تَائِرَ الرَّأْسِ كَأَنَّهُ شَيْطَانٌ."

"Yahya related to me from Malik from Zayd ibn Aslam that Ata ibn Yasar told him that the Messenger of Allah, may Allah bless him and grant him peace, was in the mosque when a man came

⁸ Uthman Dan Fodio, Tahdheer, pp. 21-22.

⁹ *Shaykh* Uthman ibn Abd'l-Qaadir 's-Saafi, Hukmu 's-Shar'i Fii 'l-Lahyati wa 'l-Azyaa, (Bierut: al-Maktab al-Islami, 1983), p.

in *with disheveled hair and beard*. The Messenger of Allah, may Allah bless him and grant him peace, motioned with his hand that he should be sent out to groom his hair and beard. The man did so and then returned. The Messenger of Allah, may Allah bless him and grant him peace, said, "Isn't this better than that one of you should come with his head disheveled, as if he were a shaytan?"¹⁰

[b] *Shaykh* Muhammad ibn `Abd `l-Baaqi ibn Yusef `z-Zurqaani said in his commentary upon the *al-Muwatta* called *Sharhu `z-Zurqaani*: "The meaning of *disheveled hair and beard* is that the hair and beard were matted (شَعَّتْ), . . . by neglecting to maintain them with what would normally take care of the hair and beard."¹¹

[c] It has been narrated by *Imam* al-Bukhari in his *Saheeh* on the authority of Ibn Umar who said: "The Prophet, may Allah bless him and grant him peace said, "Do the opposite of what the disbelievers do. Keep the beards and cut the mustaches short."¹²

[d] It has been related by Abu Dawud, al-Bayhaqi and al-Hakim on the authority of Anas who said, "When the Messenger of Allah performed ablution, he would take a handful of water and put it under his jaws and **pass it through his beard**. He said, "This is what my Lord, Allah, ordered me to do."¹³

[e] It has been related by Ibn Maja and at-Tirmidhi on the authority of A`isha who said: "The Messenger of Allah would **run his fingers through his beard**."¹⁴

[f] It has been related by Muslim on the authority of Anas ibn Malik: "Anas did not like that a person **should pick out his white hair from his head or beard**, and Allah's Messenger (peace be upon him) did not dye, and there was some whiteness in his hair at his chin, on his temples and very little on his head."¹⁵

[g] Also by *Imam* Muslim on the authority of Jabir ibn Abdallah: "When Abu Quhafah (father of Abu Bakr) came in the Year of Victory or on the Day of Victory (to the Prophet to pledge his allegiance to him) **his head and his beard were white like hyssop**. He (the Prophet) commanded or the women were commanded by him that they should change this with something (that the color of his hair should be changed)."¹⁶

[h] It is related by Abu Dawud in his *Sunan* on the authority of Laqit ibn Sabira who said: "Oh Messenger of Allah, tell me about ablution." He said: "*Perform ablution in full and make the fingers go through the beard and sniff with water well except when you are fasting*."¹⁷

[i] In the same collection on the authority of Anas ibn Malik: "Whenever the Messenger of Allah (peace be upon him) performed ablution, he took a handful of water, and, putting it under his chin, **made it go through his beard**, saying: *Thus did my Lord command me*."¹⁸

[j] Finally, it says in the *al-Ibdaa` Fi Mudaar `l-Ibtidaa`*:

"اتَّفَقَتْ الْمَذَاهِبُ الْأَرْبَعَةُ عَلَىٰ وَجُوبِ تَوْفِيرِ اللَّحْيَةِ وَحُرْمَةِ حَلْقِهَا وَالْأَخْذِ الْقَرِيبِ مِنْهُ."

¹⁰ Imam Malik, *al-Muwatta*, p. 523.

¹¹ Imam az-Zurqaani, *Sharh `z-Zurqaani*, pp. 430-31.

¹² Ahmad Khan, *Alim*, vers. 4, computer software, ISL Software Corporation., 1996.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ bid.

¹⁷ Ibid.

¹⁸ bid.

“The four schools of thought are unanimously agreed upon the obligation of growing of the beard and upon the prohibition of shaving it and trimming it to where it is nearly (shaved).”¹⁹

[8] [a] Pursuant to the above legal rulings as established within the Quranic verses, prophetic traditions and the independent judgment of the *sunni* scholars - the Sankore` Institute will now examine the actual text of the new amendments to demonstrate that the Muslim inmates can wear the beards as has been religiously ordained while at the same time complying with the objectives of the new amendments.

[b] The ‘determination’ of the new amendments concerning inmate grooming standards states:

“The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.”²⁰

The Muslim community believes that regarding Section 3062 *Inmate Grooming Standards*, Subsection (h),1-2 - that **there is an alternative which can be considered which would be more effective and less burdensome to the religious grooming standards of the Muslim inmates.**

[c] Subsection 3062 (h) says: “*An inmate’s face shall be clean shaven at all times.*”²¹ The stated objective of this subsection as mentioned in *Initial Statement of Reasons* says:

“These restrictions are to prevent inmates from being able to substantially alter their appearance and aiding in escapes, and also prevents hostilities by allowing one to promote or advertise his political viewpoint.”²²

The wearing of the beards by Muslim inmates is a constant feature of his physiognomy, thus by the obligations imposed by the religion, the Muslim should not be in a situation where his beard can be altered or changed in such as fashion which would substantially alter his appearance or aid in escapes. This is because the beard is a immutable characteristic of his faith, this would correspond to the stated objectives of the new amendments. Further, the wearing of the beard by the Muslim is an obligation imposed by Allah and His Messenger and has nothing to do with political or social viewpoints which would induce hostilities between them and other inmates. In addition, the religious wearing of the beard is not a “*promotion*” nor an “*advertisement*” of any kind. It is not worn to please or displease any created being. The beard is simply worn in order to conform to the commands and prohibitions of Islam, as demonstrated in the above Subsections 4(a), (b) and 7(j) of this memorandum²³.

Thus, allowing the Muslim inmates to wear beards would comply with the stated objectives and reasons for amending Subsection (h) because the religious injunction does not allow for the beard to be altered and changed which would preclude identification or abet an escape.

[d] Subsection 3062 (h) (1) continues, “*except as follows: Mustaches are permitted for male inmates and shall not extend below the top of the upper lip, and shall extend to the corner of the mouth but not more than one-half inch beyond the corner of the mouth.*”²⁴ The stated reasons for the above subsection is also to prevent the substantial altering of the appearance aiding in escapes and

¹⁹ Shaykh Uthman ibn Abd’l-Qaadir ‘s-Saafi, *Hukmu ‘s-Shar’i Fii ‘l-Lahyati wa ‘l-Azyaa’*, p. 51.

²⁰ Director of Corrections, “Notice of Adoption of Emergency Regulations” Oct. 3, 1997, p. 2.

²¹ Director of Corrections, California Department of Corrections, “Program Grooming”, Sept, 12, 1997, p. 3.

²² Director of Corrections, “Initial Statements of Reasons”, p.2.

²³ See pg. 4. and pg. 7 above.

²⁴ Director of Corrections, “Program Grooming”, p. 3.

preventing the promotion or advertising particular viewpoints which could lead to hostilities between inmates. This is also congruent with Islamic grooming codes as delineated in Subsection 4 (b), (c); 5(c) and 7(j) of this memorandum.²⁵

[e] Subsection 3062 (h)/(2) states, “An exemption from shaving shall only be authorized by the appropriate Institutions Division’s, Regional Administrator and only when an exemption is deemed medically necessary by a physician. Such exemption must not exceed ninety days. If the condition persists, another exemption request shall be submitted. Facial hair permitted by such exemption, shall not exceed 1/4 inch in length.”²⁶

The Muslim community alleges that this amendment should: [a] be excluded because of the above mentioned religious reasons; or [b] be amended to include within its exemption the Muslim inmates who have a ‘chronos’ from the institutional Muslim Chaplain stating that the said inmate is indeed a Muslim and be given authorization from Institutional Division’s Regional Administrator. The above amendment for those who are professed Muslims should not be delimited by a time exemption.

[f] As for beard’s length, the *Initial Statement of Reasons* states,

“Prison restrictions on hair length assist correctional officers in searches of inmates for concealment of contraband including dangerous materials, reduce the difficulty and time needed to conduct searches, and aid in the promotion of hygienic and healthy conditions inside the prisons.”²⁷

This objective demonstrates the compelling institutional interests that can never be compromised because it underpins the very purpose and design of the CDC system. However, the Muslim community maintains that this objective can also be accomplished by allowing the Muslim inmates to grow their beards as enjoined by Islam. The Islamic injunction regarding the growing of the beard is that it should be a certain length. In the above mentioned tradition narrated on the authority of Ibn Umar and Abu Hurayra that they used to grasp their beards in their hands and then cut what exceeded beyond their hand grasp. *Imam* Malik was asked about the beard which is very long and he said, ‘My opinion is that he should grasp hold of it and cut (that which extended beyond the hand).’²⁸ This means the beard should be no longer than three inches in length. This length is also supported by the Institutional requirements as established in the *Initial Statement of Reasons*,

“The Department contends that *three inches is a reasonable length* as it is difficult to hide contraband in hair of this length and will inhibit matting of the hair, which makes it difficult to search. At this time, a shorter maximum length, such as two inches is not thought to be necessary to address security concerns.”²⁹

Although this objective was engendered regarding the length of the hair of the head, it can be argued that what is “*necessary to address security concerns*”³⁰ for the hair of the head should be the same circumstances for the hair of the face. As for the concerns of uniformity, discipline and neatness, the Islamic requirements of neatness and uniformity for the beard are completely in accord with the stated objectives of the Department’s new amendments.

All of the above gives evidence that there are clear achievable alternatives to Section 3062(h), (1), (2) which will prove to be more effective in carrying out the purpose, reason and

²⁵ See pp. 4, 5 and 7 above.

²⁶ Director of Corrections, “Program Grooming”, p. 3.

²⁷ Director of Corrections, “Initial Statements of Reasons”, p. 1.

²⁸ See above pg. 5 Section 4 (c) of this memorandum.

²⁹ Director of Corrections, “Initial Statements of Reasons”, p. 2.

³⁰ Ibid.

objective of inmate grooming standards. Allowing the Muslims to grow their beards to a uniform length of three inches (and no more) would be as effective and less burdensome to Muslims who will be adversely affected by the above amendments as stated.

[9] [a] Section 3062 (m) states, “An inmate who fails to comply with these grooming standards may be deemed a program failure, as defined in Section 3000³¹, subject to progressive discipline and classification committee review for appropriate housing and program placement.”³² Subsection 3075 (d)³³; Subsection 3114 (3)(L)³⁴; Subsection 3315 (f)³⁵ and Subsection 3315 (g)³⁶ were added or amended to effectively implement 3062 (m). The stated objective of the Subsections as pronounced in the *Initial Statement of Reasons* is:

“This is necessary to make complying with the grooming standards more of an appealing choice to the inmate, and to aid in maintaining inmate discipline.”³⁷

If the CDC amends Section 3062 (h) to allow Muslims to wear their beards as suggested in the above mentioned Section 8 (f)³⁸ of this memorandum, then Muslims wearing the religiously enjoined beard would not be contravening Department grooming standards and thus they would not be deemed as a ‘*program failures*’. As a result Subsection 3075 (d); Subsection 3114 (3)(L); Subsection 3315 (f) and Subsection 3315 (g) would not apply to them because they would be within acceptable limits of grooming as redefined by the administration. Since we have demonstrated that there is an alternative to Subsection 3062 (h) that would anticipate the overall stated objectives of the inmate grooming standards being compromised - there would be positive reason for Muslims to comply with the entire action of the grooming standards.

However, if the CDC fails to recognize the legitimate religious customs of the Muslims and fails to realize an achievable alternative which would allow the Muslims to be in compliance with the stated objectives of the grooming standard amendments while conforming to Islamic law, then it would appear that CDC is targeting the very religion of Islam and the very identity of a Muslim. This action, with all of the negative results it would induce³⁹ would no doubt lead to the very opposite of

³¹ Section 3000: “Program failure means any general population inmate who fails to accept or perform an assignment, or any general population inmate who generates a significant disciplinary history within the last 120 days from the current date. A guilty finding for two Serious Rules Violations Reports or any three Rules Violations Reports (serious or administrative) within the last 120 days from the current date is reasonable evidence of a significant disciplinary history and shall be considered a program failure.”

³² Director of Corrections, “Program Grooming”, p. 4.

³³ Ibid., This ruling states: “Each inmate shall be informed of the departmental grooming standards and afforded an opportunity to comply prior to being photographed. Each inmate will be advised that failure to comply may result in a program failure pursuant to Section 3062 (m). The processing officer will document on a CDC 128-B, General Chrono, the inmate’s refusal to comply with departmental grooming standards. The CDC 128-B will be forwarded to records for the inmate’s initial classification committee review.”

³⁴ The statement for reasons for the above section is discussed in the Director of Corrections, “Initial Statements of Reasons”, p. 4.

³⁵ Ibid. The stated reason for amending this section is, “to allow the classification committee the option of placing into Work Group C those inmates who aren’t complying with the grooming standards. This work group does not receive time credits and doesn’t get as many privileges as a higher work group. This is necessary to make complying with the grooming standards more of an appealing choice to the inmate, and to aid in maintaining inmate discipline.” For a thorough understanding of “time credits” refer to Department of Corrections, Title 15, Article 3.5 Credits, Sections 3042, 3043, 3043.1, 3043.2, 3043.3, and 3043.4., pp.14 -17.

³⁶ Director of Corrections, “Program Grooming”, p. 8.

³⁷ Director of Corrections, “Initial Statements of Reasons”, p. 4.

³⁸ See above pg. 9 of this memorandum.

³⁹ Failing to comply with grooming standards would constitute a violation of the rules and the inmate will be written up for an administrative rule violation. The inmate may be placed in Work Group C, which would preclude them from earning time credits and restrict their privileges.

“promoting a positive self image”⁴⁰ on the part of Muslim inmates. It will induce fear, depression and an overwhelming sense of persecution. These pessimistic traits would undermine the ability of the inmates to become rehabilitated and reformed.

The Muslim inmate would then be left with two alternatives: [1] to comply with Subsection 3062 (h) by shaving their beards and disobeying the laws of Islam; or [2] by refusing to comply with the administrative action and obeying the laws of Islam. All Muslims, whether incarcerated or free have the same choices. Shaykh Uthman Dan Fodio said in his Bayan Wujub 'l-Hijra, “Whenever there is a conflict between a religious interest and a worldly interest, then it is obligatory for the Muslim to give preference to the religious interest over the worldly interest.”⁴¹ Allah ta`ala says:

"وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ، وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ فَقَدْ ضَلَّ ضَلَالًا مُبِينًا.

“It is not for the believing man and believing woman that when Allah and His Messenger decide a matter that they should have a choice in their affair. Whoever disobeys Allah and His Messenger has gone clearly astray.”[al-Ahzaab: 36] The Messenger of Allah, may Allah bless him and grant him peace is reported to have said,

"لَا طَاعَةَ لِلْمَخْلُوقِ فِي مَعْاصِيَةِ لِلْخَالِقِ."

“There is no obedience to a created being in disobedience to the Creator.” Thus, the Muslim who fears Allah and His displeasure will endure every worldly constriction for the sake of Allah and His religion.

As for the weak hearted Muslim, who is a slave of his lower passions and has been induced by Satan to fear created beings, Allah ta`ala says about him:

"الَّذِينَ يَزْعُمُونَ أَنَّهُمْ آمَنُوا بِمَا نُزِّلَ إِلَيْكَ وَمَا نُزِّلَ مِنْ قَبْلِكَ يُرِيدُونَ أَنْ يَحْكُمُوا إِلَى الطَّاغُوتِ وَقَدْ أُمِرُوا أَنْ يَكْفُرُوا بِهِ، وَيُرِيدُ الشَّيْطَانُ أَنْ يُضِلَّهُمْ ضَلَالًا بَعِيدًا. وَإِذَا قِيلَ لَهُمْ تَعَالَوْا إِلَى مَا أَنْزَلَ اللَّهُ وَإِلَى الرَّسُولِ رَأَيْتَ الْمُنَافِقِينَ يَصُدُونَ عَنْكَ صُدُودًا.

“Have you not seen those who claim that they believe in what was revealed to you and in what was revealed before you, how they would go for judgment to false deities when they were ordered to renounce them? Satan desires to lead them far astray. And when it is said to them, ‘Come to that which Allah has revealed and to the Messenger’; you see the hypocrites turning their back to you with aversion.”[an-Nisaa: 59-60]

In the condition that the CDC refuses to allow the Muslim inmates to wear the religiously ordained beards in accordance with the above stipulations, then each Muslim should file a 602 against the correctional officer who disavows his right as well as his supervising officer, the institution head or program administrator. The Muslim Chaplain should assist the Muslim inmates in convincing the CDC of the need for Muslims to wear their beards in accordance with the *sunna* of the Prophet, may Allah bless him and grant him peace. If the Muslim Chaplain refuses to inform the CDC of the religious obligations of Muslims wearing beards, then he too should be included in the 602.

⁴⁰ Department of Corrections, “Initial Statement of Reasons”, p. 1. “The Department contends that these grooming standards may help to promote a positive self image on the part of the inmates.”

⁴¹ Uthman Dan Fodio, Bayan Wujub 'l-Hijra `Ala 'l-'Ibaad, trans. F.H. el-Misri, p.13.

The 602 is the only legal conduit by which inmates can gain a hearing and redress for legitimate grievances. It was established so that inmates would not resort to any illegal means to obtain their rights. The Muslim community considers it essential for every Muslim to utilize every legal means necessary to induce the CDC to recognize and accommodate legitimate Muslim grooming standards.

In addition to this, the Sankore' Institute has sent copies of the CDC new inmate grooming standards resolution along with a copy of this memorandum to the Urgency Section of the Commission on Human Rights as well as the Islamic Human Rights Commission. These non-governmental United Nations organizations have been informed verbally about the new changes and feel the need to look deeply into the motivation of these new rulings to determine if they conform to internationally accepted norms of imprisonment.

We also encourage every Muslim inmate to send copies of his 602 grievance with the names of every correctional officer as well as every other institutional staff deemed responsible for denying his religious rights to wear his beard to the office of IHRAAM (the International Human Rights Association of American Minorities) at:

Dr. Yusuf Naim Kly

Ste. 253, 919C Albert Street, Regina, SK. S4R 2P6, Canada/ or

126 Bauermeister Bay, Regina, SK. S4R 6J3

Dr. Kly will see to it that all grievances be forwarded to the United Nations Commission on Human Rights as well as the Islamic Human Rights Commission in New York and the Hague in Geneva. These United Nations non-governmental organizations will then contact each inmate as well as the headquarters of the CDC and all institutional heads.

The Sankore` Institute of Islamic-African Studies feels that the CDC will see that there is an alternative solution to Section 3062 (h) of the new inmate grooming standards and allow Muslim inmates to wear their beards in conformity with their religion. It has been demonstrated in this memorandum that Islamic rules of grooming are congruent with the stated objectives of the Department of Correction's new rules on inmate grooming. The wearing of the beard will in no way impede these objectives. For this reason, there would be no need for Muslim inmates filing 602s or forwarding their just religious grievances to the United Nations.

Institute of Islamic-African Studies International

Conclusion

The Islamic ordinance for wearing the beard demonstrates definitively that the claim of the beard not being a substantial part of the *shari`a* of Islam is false. The beard is the prominent facial distinction between males and females. The beard is a symbol of maturity and puberty in the male, signaling that he has attained the age of religious and social responsibility of the Islamic commands and prohibitions. The beard is apart of the natural human physiognomy, which completes and perfects the facial constitution. It is forbidden to shave it or to trim it until it is almost shaved.

Letting the beard grow is apart of the features of the natural human constitution, which Allah included in creating mankind. It is apart of the *sunna* of the Prophet, may Allah bless him and grant him peace, which a Muslim is rewarded for adhering to and is punished for leaving. The Messenger of Allah, may Allah bless him and grant him peace guided the Muslim to do the opposite of what non-Muslims do in shaving their beards.

All of the foregoing judgments does not challenge the objectives of the new changes to be implemented in the CDC concerning inmate grooming standards. In fact, Islamic grooming standards correspond with the spirit and objectives of the new changes. The wearing of beards by the Muslim inmate population does not in anyway preclude discipline and respect for authority. The wearing of beards as stipulated by the Islamic law does not hamper the health and safety requirements of the correctional institution. The beard does not impede the effective use of safety devices e.g. eye shields, headgear and face masks. The Islamic custom of wearing the beard is a religious custom, which in no way induces animosity towards anyone. The wearing of beards in the manner, which Islamic law delineates impedes the possibility of concealing weapons or contraband and permits the necessity and efficiency of inspection and search by Correctional Officers.

The wearing of beards by Muslim inmates will help to promote a positive self-image and is an alternative which would be more effective in carrying out the purpose of the new changes in grooming standards. The Muslim inmate population should be given administrative exemption from the shaving of their beards after determination of their Islamic faith by institutional Muslim chaplains. This would be more effective and less burdensome than Subsection 3062(h)(1) and (2) to the Muslim population.

Directorate: Sankore` Institute of Islamic-African Studies

أَبُو الْفَعِّ عَمْرٍ مُحَمَّدٌ شَرِيفٌ بِنُ فَرِيدٍ

Abu Alfa Umar Muhammad Shareef bin Farid

Institute of Islamic-African Studies International