

Discrimination Against Muslim Women

Muslim women are a fast-growing segment of the United States population that reflects the breadth of this country's racial, ethnic, and multicultural heritage and includes U.S.-born Muslims of diverse ethnicities, immigrants from many countries and regions, and converts from various backgrounds. Many Muslim women, although by no means all, practice *hijab*¹ in accordance with their religious beliefs: these women may wear a headscarf, also known as *hijab* or *khimar*, and loose-fitting clothing when they are in public and when they are in the presence of men who are not part of their immediate family. Some women additionally cover much of their face with a covering known as *niqab*.

Muslim women, like all people in the United States, have the right to practice their religion. They also have the right to be treated equally and the right not to be discriminated against or harassed because of their religion, their gender, or perceptions about their nationality or ethnicity. Numerous sources of law protect these rights (see box).

Notwithstanding Legal Protections, Muslim Women Who Wear Hijab Sometimes Face Infringements On Their Rights

Muslim women have been prohibited from wearing their headcoverings in a number of contexts. They have been harassed, fired from jobs, denied access to public places, and otherwise discriminated against because they wear hijab. Because of their visibility, Muslim women who wear hijab face particular exposure to discrimination and have increasingly been targets for harassment in the aftermath of September 11. While it is difficult to obtain accurate statistics about discriminatory incidents, reported instances of discrimination appear to be on the rise.

■ Civil rights complaints filed with one Muslim advocacy group rose from 366 in 2000 to 2,467 in 2006, an increase of 674%.²

■ The same group reported that, in 2006, there were 154 cases of discrimination or harassment in which a Muslim woman's head-covering was identified as the factor that triggered the incident.⁷ The most common complaint in these cases was being prohibited from wearing a headcovering, which accounted for 44 incidents.⁸

■ One expert has found that Muslim women who wear headscarves are more likely than those who do not to face discrimination: 69% of women who wore hijab reported at least one incident of discrimination compared to 29% of women who did not wear hijab.⁹

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Laws Protecting Women Who Wear Hijab

■ The First and Fourteenth Amendments of the U.S. Constitution bar federal and state governments from making laws or rules that specifically prohibit women from practicing hijab. In some circumstances, however, the Constitution allows neutral rules that apply to everyone, such as a rule barring all headcoverings, whether religious or not.

■ The Fourteenth Amendment and numerous federal civil rights laws bar federal and state officials and some private actors from discriminating against women who practice hijab.

■ The Religious Freedom Restoration Act (RFRA) provides additional protection at the federal level by barring the federal government and its officials from restricting women's ability to practice hijab (either specifically or through generally applicable rules), unless the government can demonstrate that its action was the "least restrictive means" for achieving a "compelling governmental interest."³ Although RFRA does not apply to state governments, many states have adopted their own "mini-RFRAs" or interpreted their state constitutions to provide the same heightened protections.

■ The Religious Land Use and Institutionalized Persons Act (RLUIPA) bars government officials from restricting women's ability to practice hijab when they are confined to any institution that receives federal funding (such as state prisons), unless the government can demonstrate that its action was the "least restrictive means" for achieving a "compelling governmental interest."⁴

■ One federal civil rights law, Title VII of the Civil Rights Act of 1964, prohibits an employer from firing, refusing to hire, or disciplining a woman because of religious practices like hijab, unless the employer can show that it offered a "reasonabl[e] accommodat[ion]" or that it could not offer such an accommodation without incurring an "undue hardship."⁵ The Equal Employment Opportunity Commission (EEOC) specifically states that refusing to hire someone because of a concern that customers or co-workers may be "uncomfortable" with hijab is illegal.⁶ Many states and municipalities have additional laws protecting employees from discrimination, threats, and harassment.

These Infringements Occur In A Variety Of Contexts

At work: Muslim women have been denied the right to wear a headscarf while working as police officers¹⁰ and in other occupations.¹¹ Women also have been fired for refusing to remove their headscarves.¹² Teachers in public school have been prevented from wearing religious garb, a bar that has been authorized by some state statutes and upheld by some courts.

At school: Muslim girls who wear headscarves, or whose mothers wear headscarves, have been harassed and assaulted.¹³ Students also have been denied the right to wear hijab to school¹⁴ and have been prevented from participating in extracurricular activities, including musical concerts¹⁵ and athletic events.¹⁶

In law enforcement contexts: Muslim women have been denied the right to wear a headscarf while in jail and courthouse detention,¹⁷ while visiting family members in correctional institutions, and even while working in correctional institutions. Women also have been harassed by police officers for wearing headscarves, both when being arrested¹⁸ and when they have called the police for help.

In public places: Muslim women and girls have been denied the right to enter public buildings, shopping malls,¹⁹ and swimming pools²⁰ unless they submit to being searched by male guards or agree to remove their headcoverings and other garments that they wear for religious reasons.

■ **Muslim women should be free to express their religious beliefs—including choosing whether or not to wear headcoverings—free from discrimination and prejudice.**

In obtaining drivers' licenses: Muslim women have been denied drivers' licenses unless they remove their headcoverings for the photograph.²¹

A Number Of Employers And Correctional Settings Have Demonstrated That It Is Possible To Recognize And Accommodate The Right To Wear Religious Garb, Including Headscarves:

■ Police forces in the nation's three largest metropolitan areas – New York, Los Angeles, and Chicago – and in Cook County, Illinois, the second-largest county in the country, have accommodated officers wishing to wear religious garb.²²

■ The Montgomery County fire department in Maryland accommodated a Muslim firefighter who chose to wear a headscarf while on duty.²³

■ Correctional systems including the Federal Bureau of Prisons²⁴ and the Kentucky²⁵ and New York²⁶ state correctional departments have policies in place accommodating inmates who wear headcoverings for religious reasons.

■ A majority of states permits exceptions for those who, for religious reasons, do not wish to be photographed without headcoverings for drivers' licenses.

Enforcing Your Rights

If you have been discriminated against or harassed because you wear hijab, or if you have been barred from wearing hijab, you are not alone. Do not remain silent – take action:

■ If you believe that your rights have been violated, contact your local American Civil Liberties Union office:

Find Your Local ACLU
www.aclu.org/affiliates

■ If you believe you have been subjected to discrimination on the job, you may file a charge with the nearest field office of the EEOC:

EEOC Field Offices
www.eeoc.gov/offices.html

■ For more information about discrimination against Muslim women, contact the ACLU:

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■ National and local Muslim community and advocacy groups and anti-discrimination organizations may also be resources.

Endnotes

¹The word *hijab* comes from the Arabic word *hajaba*, which means to hide or screen from view or to cover. Sometimes the word *hijab* refers specifically to a woman's headscarf; sometimes it is used more generally to refer to the practice of wearing modest clothing in accordance with religious beliefs.

²Council on American Islamic Relations ("CAIR"), *Presumption of Guilt: The Status of Muslim Civil Rights in the United States, 2007* [hereinafter *2007 CAIR Report*] at 8, available at <http://www.cair.com/Portals/0/pdf/2007-Civil-Rights-Report.pdf>.

³42 U.S.C. § 2000bb-1.

⁴42 U.S.C. § 2000cc-1(a).

⁵42 U.S.C. §§ 2000e(j), 2000e-2(a).

⁶*Questions and Answers about the Workplace Rights of Muslims, Arabs, South Asians, and Sikhs under the Equal Employment Opportunity Laws*, U.S. Equal Employment Opportunity Commission (May 14, 2002), available at <http://www.eeoc.gov/facts/backlash-employee.html>.

⁷*2007 CAIR Report*, *supra* note 2, at 20.

⁸CAIR, unpublished data, 2006, copy on file with the Women's Rights Project.

⁹Alyssa E. Rippy & Elana Newman, unpublished raw data, 2008, copy on file with the Women's Rights Project.

¹⁰See, e.g., *Webb v. City of Philadelphia*, No. 07-3081 [3d Cir. filed July 13, 2007]. On January 9, 2008 the ACLU filed a friend-of-the-court brief in an appeal concerning the right of a Muslim woman to cover her hair while working as a police officer. The district court ruled against the officer and, as of the time of printing, the case is on appeal to the Third Circuit. ACLU brief available at <http://www.aclu.org/womensrights/employ/35023lg120080109.html>.

¹¹See, e.g., *2007 CAIR Report*, *supra* note 2, at 24 (reporting a 2006 incident in which a female Muslim employee at a Jiffy Lube store in Virginia was told that she could not wear her headscarf due to a "no hats" policy. Following CAIR's intervention, the company apologized and agreed to allow the headscarf.).

¹²See, e.g., Press Release, American-Arab Anti-Discrimination Committee, ADC Welcomes Jury Award for Muslim Woman (June 4, 2007), available at [http://www.adc.org/index.php?id=3117&no_cache=1&sword_list\[\]=hijab](http://www.adc.org/index.php?id=3117&no_cache=1&sword_list[]=hijab) (describing a 2001 incident in which a woman was fired from her job at a car rental company in Phoenix, AZ, for refusing to remove her headscarf during the Muslim holy month of Ramadan. The EEOC brought a discrimination case on her behalf, and a jury awarded her \$287,640.).

¹³See, e.g., *Suffer the Little Muslims: A Look at the Appalling Discrimination against Middle Eastern Students Countenanced by Bay Area Public Schools*, San Francisco Weekly (Aug. 17, 2005), available at <http://www.ing.org/about/islampage.asp?num=42>. The article mentions the case of Muslim high school student Jana Elhifny in Nevada, who wore her hijab to school and was harassed by peers at school with school officials' knowledge and participation. She was called a terrorist, and her pleas for help to school officials met with inappropriate comments and no action. In 2004, the ACLU of Nevada filed Title VI, Title IX, and First Amendment Freedom of Religion claims on behalf of Ms. Elhifny against the Washoe County School District and various school employees who permitted this abusive treatment to continue. As of the time of printing, the case is in discovery. *Barns v. Gifford, et al.*, No. 3:04-cv-00583 [D. Nev. filed Oct. 19, 2004], complaint available at <http://www.aclu.org/womensrights/edu/35029lg120041014.html>.

See also *2007 CAIR Report*, *supra* note 2, at 9 (describing an incident in which a female Muslim college senior at Baylor University in Texas was attacked from behind while walking through the university's campus. The assailant pushed, slapped, and kicked her while using racial and anti-Muslim slurs and pulled off her headscarf. The woman was treated at the hospital for contusions and a dislocated shoulder.). See also *Shouting Across the Divide*, This American Life (Dec. 15, 2006), available at http://www.thisamericanlife.org/Radio_Episode.aspx?episode=322 (interviewing a Muslim family whose female children were harassed in schools in Delaware).

¹⁴See, e.g., *Hearn v. Muskogee School District*, No. 6:03-cv-00598 (E.D. Okla. filed Oct. 28, 2003). In 2003 a sixth-grade girl in Muskogee, Oklahoma was suspended from the Benjamin Franklin Science Academy for refusing to take off her headscarf, after being told it violated the school's dress code, which prohibits students from wearing hats, caps, bandanas, or jacket hoods inside school buildings. The Department of Justice Civil Rights Division filed a complaint against the school district for violating the student's Fourteenth Amendment rights. The case settled pursuant to a consent decree. See Press Release, American-Arab Anti-Discrimination Committee, ADC Commends DOJ for Protecting Student's Right to Wear Headscarf in School (Mar. 31, 2004), available at [http://www.adc.org/index.php?id=2183&no_cache=1&sword_list\[\]=headscarf](http://www.adc.org/index.php?id=2183&no_cache=1&sword_list[]=headscarf).

¹⁵See, e.g., *2007 CAIR Report*, *supra* note 2, at 23 (reporting a 2006 incident in which a 10-year-old female Muslim student in Jacksonville, Florida, elementary school was discriminated against by her teacher for wearing a headscarf. The cello instructor reportedly asked mocking questions and refused to let her play in a school concert.).

¹⁶See, e.g., *When the Rules Run Up Against Faith: Prep Athlete Wearing Muslim Clothing Disqualified From Track Meet*, Washington Post (Jan. 16, 2008), available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/01/15/AR2008011503356.html> (describing the case of a high school senior who was disqualified from a track and field meet after officials said her Muslim clothing violated national competition rules). See

also *An Angry Backlash*, ESPN.com (Sept. 24, 2004), available at <http://sports.espn.go.com/espn/news/story?id=1887618> (describing the case of a University of South Florida student who said she was told by her basketball coach that she could not wear her Muslim headscarf, long sleeves and long pants on the court, prompting her to leave the team).

¹⁷ See, e.g., *Medina v. County of San Bernardino, et al.*, No. 5:07-cv-01600 (C.D. Cal. filed Dec. 5, 2007). The ACLU filed a lawsuit on behalf of Jameelah Medina, a practicing Muslim woman who was forced by local deputies to remove her headcovering while she was in custody in San Bernardino County's West Valley Detention Center. In October, 2008, the County agreed to adopt a policy accommodating the right of Muslim women to wear headscarves in County jails. ACLU press release and settlement agreement available at www.aclu.org/muslimwomen. See also *Khatib v. County of Orange, et al.*, No. 8:07-cv-01012 (C.D. Cal. filed Sept. 4, 2007). The ACLU of Southern California filed claims under RLUIPA, the First Amendment, and several state law provisions on behalf of Souhair Khatib, a practicing Muslim woman who was forced to remove her hijab while in custody at an Orange County courthouse holding facility.

¹⁸ See, e.g., *Court Allows Muslim Woman's Headscarf Case to Proceed*, ACLU Blog, Feb. 27, 2008, <http://blog.aclu.org/index.php?/archives/527-Court-Allows-Muslim-Womans-Headscarf-Case-to-Proceed.html>. In *Medina v. County of San Bernardino*, Jameelah Medina alleged that the arresting officer accused her of being a terrorist and of supporting Saddam Hussein. While Ms. Medina tried to answer his questions about why she chooses to cover her hair, he yelled at her that Muslims are evil and that the United States was in Iraq at God's direction to squash evil. See *Medina*, *supra* note 17.

¹⁹ See, e.g., Press Release, CAIR, Muslim Ejected from Louisiana Mall Over Hijab (Mar. 3, 2008), available at <http://www.cair.com/ArticleDetails.aspx?mid1=777&&ArticleID=24324&&name=n&&currPage=1> (describing an incident in which a security guard approached a 54-year-old woman in the Oakwood Mall in Gretna, Louisiana and told her that she must remove her headscarf or leave the mall. The guard escorted the woman out of the mall.).

²⁰ See, e.g., *Hussein v. City of Omaha*, No. 8:04-cv-00268 (D. Neb. filed June 9, 2004). In February 2005 the ACLU of Nebraska reached a settlement in a suit on behalf of a Muslim woman who was not allowed to enter a public swimming pool wearing religious clothing. The city policies in place at the time of the lawsuit did not permit anyone to enter a swimming pool unless s/he was wearing a bathing suit. The lawsuit alleged civil rights violations on the basis of race, national origin, gender, and religion. As part of the settlement, the City of Omaha amended its policies to allow a variance in the dress code based on religious and/or medical needs. ACLU press release available at www.aclu.org/religion/discrim/16248prs20050218.html.

In a separate incident in 2005, a Muslim seventh-grade student was denied swimming privileges at the Rolling Hills Water Park in Ypsilanti, MI, while on a class trip, because she was wearing clothing covering her body in accordance with her religious beliefs. The ACLU of Michigan worked with the Parks and Recreation Commission, which adopted a new policy for swimwear at its water parks to provide for religious accommodation. See Washtenaw County Parks and Recreation Policy on Swimwear at Aquatic Facilities (Jan. 10, 2006), available at <http://www.aclu.org/womensrights/gen/35367res20060110.html>.

²¹ See, e.g., *Freeman v. State of Florida*, No. 2002-CA-2828 (Fla. Cir. Ct. filed Mar. 22, 2002). The ACLU of Florida filed a complaint on behalf of Sulthaana LaKiana Myke Freeman, a Muslim woman who wears niqab and does not reveal her face to strangers or men outside her family. The complaint alleged that state officials violated Freeman's rights under Florida's Religious Freedom Restoration Act when they revoked her driver's license because she declined to replace her old driver's license photograph with one showing her entire face. ACLU press release available at: <http://www.aclu.org/religion/gen/16218prs20030527.html>.

²² See generally Brief in Support of Reversal of *Amici Curiae, Webb*, *supra* note 10.

²³ *Muslim Firefighter May Wear Scarf*, Washington Post (July 13, 2001), available at: <http://pqasb.pqarchiver.com/washingtonpost/access/75379231.html?dids=75379231:75379231&FMT=ABS&FMTS=ABS:FT&date=Jul+13%2C+2001&author=Jo+Becker&pub=The+Washington+Post&edition=&startpage=B.05&desc=Muslim+Firefighter+May+Wear+Scarf>. In July 2001, the Montgomery County Fire and Rescue Service reached an agreement with Stacy Tobing, a Muslim firefighter, allowing her to wear the traditional hijab at work. She replaces it with a fire-resistant hood and helmet when fighting fires.

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²⁴ U.S. Department of Justice, Federal Bureau of Prisons Program Statement re: Religious Beliefs and Practices, No. 5360.09 (Dec. 31, 2004).

²⁵ Kentucky Corrections, Policies and Procedures re: Religious Programs, No. 23.1 (Jan. 9, 2007).

²⁶ State of New York Department of Correctional Services, Directive re: Religious Programs and Practices, No. 4202 (Apr. 24, 2007).