

Muslimah Asked to Remove Hijab For Mugshot “Devastated,” Lawsuit Follows

by Hugh Fitzgerald



Another case of Amerika’s Police State mistreating an inoffensive Muslim woman, leaving her devastated, distraught, agitated, humiliated – and so a lawsuit follows.

From [Yeni Safak](#):

“A Muslim woman who was left devastated after she was forced to remove her hijab sued New York’s Yonkers City on Wednesday due to its “demeaning and humiliating” policies.

Ihsan Malkawi stated in a federal civil rights lawsuit that she was arrested, along with her husband, in Yonkers due to “false allegations of abuse” made by their daughter, which were deemed “unfounded” after the case was investigated by child services, NBC News reported.

Until the case was investigated, the police had both the right and the duty to book her. Their daughter's charge of child abuse was too serious to let them go free before Child Services had made its investigation.

Malkawi's daughter, desiring to return to Michigan where the family formerly lived, tried to run away from home on Aug. 25, 2019 whereupon the couple found her and brought her back.

The next day, when Ihsan and her husband were out enrolling their daughter in school, the girl unexpectedly called 911 and claimed that her mother and father had attacked her with a belt and curtain rod, the lawsuit explained.

Ihsan was arrested, handcuffed, taken to a booking cell and ordered by a female officer to remove her hijab for a mugshot. "You can't take a photo or go into a cell with this," the officer told her, according to the lawsuit.

The hijab is worn as a sign of modesty, to foil the libidinous male gaze. If, as it appears, the person taking the mugshot was the female police officer, that would suggest less reason for Ihsan to worry. She would have been locked up in a cell – until her husband arrived to bail her out – in the women's wing of the jail, with female guards. So it appears that without her hijab, she was not being looked at by men. Or was she? It is unclear why she was not allowed to put her hijab back on in the cell where she was held. Was this police policy, or simply an oversight? Did she ask for it back, alerting the police to her need to have it, or did she say nothing more about it? Did the police offer her a scarf to wear instead? Questions, questions.

Ihsan, who has never been asked to remove her hijab in public before, explained to the officer that her veil was not a fashion accessory but deemed as an obligation by her religious faith. However, officers refused her by saying, "It's the law."

She was never asked to remove her hijab before because she never had her mugshot taken before.

Anxious, distraught and afraid of further criminal charges, Malkawi “reluctantly removed her hijab to be photographed,” and then left in tears. She was also forced to wear a short-sleeved shirt instead of the long-sleeved one she was originally wearing.

Was Ihsan Malkawi really “anxious” and “distraught” for having been asked to remove her hijab for her mugshot? Displeased, perhaps, at not getting her way, but is there not some exaggeration in her claim? This description was no doubt written by a member of CAIR, the group that is representing Malkawi, possibly with some editorial input by the lawyers at the law firm Emery Celli Brinkeroff and Abady.

After spending 36 hours without her hijab, she was bailed out of jail by her husband on Aug. 28, but her head-cover still was not returned to her till she was in the parking lot outside.

In order to have spent 36 hours “without her hijab,” she would have had to have been picked up by her husband very late the next day – in fact, she would have been picked up, at the earliest, at 11 or 12 pm. Is that what happened?

A Yonkers’ spokeswoman told NBC News that the city can’t comment about the lawsuit in question.

This is the part of the case that is troublesome. Why was her headgear not returned to her once the mugshot was taken? Was that the usual procedure, in other cases where headgear had been removed – to return it only once someone being held on bail is freed? In the lawsuit we will find out what the Yonkers police department offers by way of justification.

The Yonkers Police Department violated Malkawi's religious rights, said lawsuit director of CAIR NY, Ahmed Mohamed.

"This is not a one-time incident. This is a policy. This is something that has happened to a lot of people," Mohamed told NBC News in a phone interview.

The fact that the removal of headgear was not a one-time incident but "is a policy" strengthens rather than weakens the case for the police department. No one was out to get or embarrass Ihsan Malkawi. She was merely being asked to conform to a policy that applied across the board, to people of all religions. and none. who are asked to remove head coverings so that they might be more clearly seen in the round. One hopes that the judge will find this a sufficient state need to withstand the "strict scrutiny" test that is constitutionally applicable.

In addition to Yonkers, various cities across the country have similar policies such as Dearborn Heights, Michigan; Portland, Maine; and a number of jurisdictions in California.

"The police department's policy goes beyond being demeaning and humiliating. It's a First Amendment right that we have here as Americans to be able to wear religious head coverings. We don't lose those rights because we have interactions with law enforcement," Mohamed said.

The police department's policy is neither "demeaning" nor "humiliating." It bears an understandable and reasonable relation to the declared goal of taking mugshots that show the face and head as fully as possible. If the policy were applied only to Muslim women, that would be unacceptable. When It applies, as here, to all head coverings – the shtreimel, spodik, or kolpik of Hasidic Jews, the turbans of Sikhs, the headscarves of Orthodox Jewish women – then it should be allowed.

Mohamed, underlining that “Yonkers has a significant Muslim population,” stated that the lawsuit is not only limited [sic for “limited only”] to Muslims but also covers people who believe in wearing their religious attire.

The fact that Yonkers has “a significant Muslim population” is irrelevant to the policy of removing head coverings for mugshots, unless it can be shown that the policy had not been in place before but was instituted in response to that growing Muslim population.

“We are in the year 2020. Police forces have to abandon policies that cling to the past of not being religiously inclusive and not respecting religious freedom. We hope there will be a policy change,” he concluded.

If the policy of requiring the removal of headgear applies to people of all religions, how can Mr. Mohamed claim that the policy is one of “not being religiously inclusive”?

Did the required removal of her head covering – the hijab – a requirement made of everyone, including Hasidic and Orthodox Jews, as well as Sikhs – really impinge on her “religious freedom”? Do you think a Hasidic Jew asked to remove his shtreimel would bring a lawsuit if he had been made to comply? Or a Sikh asked to remove his turban? Or an Orthodox Jewish woman asked to remove her headscarf? Would any of them feel that their “religious freedom” had been diminished as a consequence? Would anyone but a Muslimah have sued?

Ihsan Malkawi and the CAIR representative who has appeared to help her are well aware of the similar lawsuits by Muslim women who were asked to remove their hijabs and won what are grotesquely large settlements. In New York City, in separate cases, three women won a total of \$60,000 apiece, merely for having had to remove their hijabs for mugshots. Yonkers is practically part of New York City. Were the police in Yonkers

unaware of those settlements? If they had been, they might have made sure that at no time was Ms. Malkawi seen by any men without her hijab, and would have promptly returned it to her, not kept it, as they did in this case, for many hours longer. The claim that she was without her hijab “for 36 hours,” however, is surely exaggerated. Assuming her daughter did not call at the crack of dawn, but sometime during the first day, and then the police had to find the parents, bring them to the police station, and only then – how many hours had gone by? – asked her to remove her hijab, and then, sometime the next day, having been kept in a cell overnight, she was released and given back her hijab. But the exact number of hours she went without her hijab is not the point. Was she given the option of wearing a scarf supplied by the police? If so, and she refused to wear it, that weakens her case, her claimed sense of being “devastated.” The reports about the case do not provide any information about this.

So here are the questions a court should consider

1. Was the removal of headgear by the Yonkers police required of everyone getting a mugshot?
2. Was the mugshot taken by a female guard? Were any males – guards or detainees – present to see Malkawi without her hijab?
3. Did she ever request, during her overnight stay, that her hijab be returned to her?
4. Was she ever offered a scarf to wear as a replacement for her hijab?
5. While she was without her hijab, when she spent the night in the women’s wing of the jail, was she seen by male guards?
6. When did she become aware of the large sums that Muslim females have been awarded for having had to remove their hijabs for mugshots?

Police departments nationwide should be alerted to this and similar cases. They should be advised not to have males present while the hijab is removed, and to return the hijab promptly to its owner after her mugshot is taken. Even that may not be enough. Given the unfortunate results in too many instances, in order to stop spending so much time and, especially, money on settling these cases, perhaps a new rule should be universally adopted: headcoverings will no longer need to be removed unless they obscure any part of the face. This might be seen as a retreat; I'd characterize it as a strategic withdrawal. The game is not worth the candle.

The goal should be to minimize, or ideally, end entirely, payouts to "devastated" and "distraught" Muslim women. For the real interest here of the Muslimah and her CAIR advisor and her lawyer is to squeeze as much as they can from the state, though they claim to be suing for a principle, as stout defenders of religious freedom, in order to ensure it is upheld. Where, in what Muslim country – there are so many – is there now, or has there ever been, complete "religious freedom" for any non-Muslims? **As Finley Peter Dunne once said, "When someone says 'it's not the money, it's the principle'" – it's the money."**

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