

THE DISPARATE IMPACT OF CLEAN-SHAVE POLICIES ON BLACK MEN

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ABSTRACT

Employers' clean-shave policies are overburdensome, inflexible, and harmful to black men suffering from pseudofolliculitis barbae (PFB), so these men need accessible shaving exemptions and employer-provided treatment, protection from harassment and retaliation in workplace because of their shaving exemption, and—if the preceding measures fail—adequate means of legal redress under the Civil Rights Act of 1991. This Article will examine PFB and its negative impact on black men in the workplace. The convergence of historical racial discrimination and methods of exclusionary professionalism has enabled the rise of employer practices that fail to properly account for the unique grooming problems of black men. PFB is a disease afflicting up to 85% of black men, caused by the growth of curved hair follicles following a close skin-shave. A close shave for someone with PFB results in "shaving bumps," or papules and pustules in the neck, chin, and sometimes cheeks. Continual shaving by someone with PFB can lead to irreversible and cosmetically bothersome damage to the skin, including scarring, keloid formation, hyperpigmentation, and secondary infection. The current United States legal regime enables employers to enforce clean shave policies and impose unduly burdensome, harmful, and unnecessary requirements on PFB victims. To remedy this injustice, employers, policymakers, and lawyers must reconsider the employment practices, laws, and legal standards that inflict this harm upon black men.

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This Article also examines the impact of military grooming policies on black service members suffering from PFB. Receiving a shaving exemption in the military can lead to adverse career ramifications, heightened scrutiny by superior officers, and harassment. Drawing on historical data, medical research, and contemporary military studies, this Article traces the long-standing awareness of PFB within the armed forces and documents its persistent association with racialized discipline and professional disadvantage. Although the last decade has marked some improvements in the military for recognizing PFB and accommodating its sufferers, a wave of policy changes in 2025 has ushered in a significant regression. Under the new Secretary of War, Pete Hegseth, new grooming directives by the Army, Marine Corps, and Air Force restrict long-term shaving waivers, require repeated medical evaluations, and effectively force affected soldiers to choose between laser hair removal and administrative discharge. The Navy's policy, by contrast, offers a more accommodating model. This Article argues that current military grooming standards perpetuate racial discrimination, lack medical justification, and impose coercive choices on black military men. It concludes by proposing an ideal PFB policy for the military.

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INTRODUCTION

Black men are harmed by policies that require a close skin shave as a condition of employment or military service. Pseudo-folliculitis barbae (PFB) is a disease afflicting up to 85% of Black men, caused by the growth of curved hair follicles following a close skin shave.¹ A close shave for someone with PFB results in “shaving bumps,” or papules and pustules in the neck, chin, and sometimes cheeks.² Continual shaving by someone with PFB can lead to irreversible and cosmetically bothersome damage to the skin, including scarring, keloid formation, hyperpigmentation, and secondary infection.³ “[C]essation of shaving” is “[t]he most definitive treatment for PFB.”⁴

This harm is caused by clean-shave policies, where employers require their employees to maintain a close skin shave as a condition of employment.⁵ Employers enforce clean-shave policies that are overburdensome, inflexible, and harmful to black men suffering from PFB.⁶ Exemptions to these policies may include temporary or permanent waivers from the shaving requirements of the employer.⁷ Black men need accessible

1. Roopal V. Kundu & Stavonnie Patterson, *Dermatologic Conditions*, in *SKIN OF COLOR: PART II. DISORDERS OCCURRING PROMINENTLY IN SKIN OF COLOR*, 87 AM. FAM. PHYSICIAN 859, 860 (2013).

2. *Id.*

3. *See id.*

4. *See* Divya Sharma, Yoseph Dalia & Tejesh S. Patel, *Ethnic Equity Implications in the Management of Pseudofolliculitis Barbae*, 35 JABFM 173, 173 (2022).

5. *See, e.g.*, WESTLAKE CHEM. CORP., FACIAL HAIR POLICY 2 (2021) [hereinafter WESTLAKE FACIAL HAIR POLICY], <https://www.westlake.com/sites/default/files/4301-06-573.pdf> [https://perma.cc/JUW3-633Z]; MARATHON PETROL. CO., FACIAL HAIR POLICY 3 (2018) [hereinafter MARATHON FACIAL HAIR POLICY], https://www.marathonrefinerycontractor.com/content/documents/Refinery_Contractor/Canton/CantonFacialHairPolicy.pdf [https://perma.cc/6F5F-B8QZ]; OFF. DIR. POLICE UNIV. TEX. SYS. POL'Y PROC. MANUAL, FACIAL HAIR AND GROOMING 2–3 (2022), <https://www.utsystem.edu/sites/default/files/offices/police/policies/213AFacialHairandGrooming-011323.pdf> [https://perma.cc/6HHZ-R746].

6. *See, e.g.*, *Bradley v. Pizzaco of Neb., Inc.*, 939 F.2d 610, 612 (8th Cir. 1991) (requiring a black pizza delivery driver with PFB to maintain a clean shave); *Forkin v. UPS*, 18-CV-3397 (MKB), 2020 WL 9816001, at *1–3 (E.D.N.Y. Nov. 10, 2020) (requiring a black UPS employee with PFB to maintain a close skin shave as a condition of employment).

7. *See, e.g.*, MARATHON FACIAL HAIR POLICY, *supra* note 5, at 1, 4 (explaining that a Facial Hair Policy Waiver Form must be signed by a manager to exempt a worker from Marathon's facial hair policy).

shaving exemptions and employer-provided treatment; protection from harassment and retaliation in the workplace because of their shaving exemption; and—if the preceding measures fail—adequate means of legal redress under the Civil Rights Act of 1991.

The history of the United States is littered with examples of racial hierarchy.⁸ A hierarchy based, in large part, on the physical characteristics of the people who comprise its ranks.⁹ A hierarchy which has traditionally punished those with certain skin color, hair textures, or facial features.¹⁰ Black people have historically found themselves subordinated to the bottom of this racial hierarchy.¹¹ Hair and grooming are prime examples of the physical characteristics used to achieve this subordination.¹² A historical thread of hair discrimination in the United States can be traced from the period of enslavement to the modern employment context, where advantages are conferred upon those with straight, European-style hair, and disadvantages are levied against black people with curly or kinky hair texture who sport hair styles such as braids, twists, afros, or locs.¹³ In addition to historic hair discrimination, employers have enforced clean shave policies since at least the 1970s,¹⁴ despite evidence

8. See, e.g., Messi H. J. Lee, Jacob M. Montgomery & Calvin K. Lai, *America's Racial Framework of Superiority and Americanness Embedded in Natural Language*, 3 PNAS NEXUS, Jan. 2, 2024, at 1 (“Black people have unequal access to health care and are subject to disproportionate rates of police violence and incarceration.”).

9. See Nancy DiTomaso, *The Invention of Race and the Persistence of Racial Hierarchy: White Privilege, White Supremacy, and White Colorblindness*, SOC. & PERSONALITY COMPASS, Mar. 21, 2024, at 1, 4–7.

10. See D. Wendy Greene, *Title VII: What's Hair (and Other Race-Based Characteristics) Got to Do with It?*, 79 COLO. L. REV. 1355, 1365–66 (2008).

11. See *supra* notes 7–10 and accompanying text.

12. See *A Short History of Hair Discrimination*, HALO COLLECTIVE, <https://halocollective.co.uk/halo-background/> [<https://perma.cc/7AMC-PSJE>] (last visited Apr. 6, 2026).

13. See Greene, *supra* note 10, at 1366, 1387.

14. See, e.g., *Brown v. D.C. Transit Sys., Inc.*, No. 2426-71, 1973 WL 137, at *1–2 (D.D.C. May 3, 1973), *rev'd on other grounds*, 523 F.2d 725, (D.C. Cir. 1975) (discharging several black bus drivers for noncompliance with the employers' facial hair regulations); *Thomas v. Firestone Tire & Rubber Co.*, 392 F. Supp. 373, 374 (N.D. Tex. 1975) (maintaining strict prohibition on facial hair and terminating employees for failure to comply); *Wofford v. Safeway Stores, Inc.*, 78 F.R.D. 460, 469 (N.D. Cal. 1978) (alleging that the employer maintained an informal no-beard policy which negatively impacted employee candidates with beards); *EEOC v. Greyhound Lines, Inc.*, 635 F.2d 188, 189 (3d Cir. 1980) (maintaining a no-beard policy for all employees, with no

of these policies' disproportionate harm upon black men.¹⁵ Historical racial discrimination against black hair, along with the failure to account for the unique grooming problems of black men, result in anti-black employment practices and negative individual biases against black men in the workplace.

Standards of workplace professionalism illustrate how these trends manifest. Professionalism is a tool with multiple purposes. A tool employed to include those who fit the mold. Or a tool wielded to exclude those who do not conform to the prevailing standards of professionalism. Standards which contain built-in biases against non-white persons—especially in the United States.¹⁶ These standards shape workplace policies. Workplace policies which often target hairstyle and grooming and exhibit a preference for straightened hair and shaven faces.¹⁷ Exclusionary notions of professionalism, in conjunction with the historically rooted biases against the physical characteristics of black people, result in employment policies that do not adequately account for black men suffering from PFB and legal approaches that are overly deferential to the employers who implement these discriminatory practices.

The Civil Rights Act of 1964 was intended to prevent racial discrimination by providing routes of legal redress for certain

exemptions permitted); *Antrum v. Wash. Metro. Area Transit Auth.*, 710 F. Supp. 2d 112, 116 (D.D.C. 2010) (enforcing a clean shave policy that imposed unreasonable and overly-bureaucratic requirements for black men with PFB to obtain an exemption); *Lewis v. Univ. of Pa.*, No. 16-6874, 2018 WL 583127, at *2 (E.D. Pa. Jan. 29, 2018), *rev'd on other grounds*, 779 F. App'x 920 (3d Cir. 2019) (maintaining an inflexible no-beard policy despite evidence that obtaining an exemption from the policy had unnecessarily harmed multiple black employees who suffered from PFB); *Bey v. City of New York*, 999 F.3d 157, 161–62 (2d Cir. 2021) (maintaining a strict no-facial hair policy with only limited exceptions for mustaches and sideburns).

15. See *CM-619 Grooming Standards*, U.S. EEOC, <https://www.eeoc.gov/laws/guidance/cm-619-grooming-standards> [<https://perma.cc/64LG-XCYR>] (last visited Apr. 6, 2026); Alvin M. Alexander & Walter I. Delph, *Pseudofolliculitis Barbae in the Military, A Medical, Administrative and Social Problem*, 66 J. NAT'L MED. ASSOC. 459, 460 (1974).

16. See Tiziana Faitini, Michele Nicoletti & Massimo Palma, *Redefining Professionalism: A Historical and Sociopolitical Exploration*, POL. & RTS. REV. (July 27, 2024), <https://politicalrights.com/professionalism-historical-sociopolitical/> [<https://perma.cc/5E6T-CVHY>].

17. See Aysa Gray, *The Bias of 'Professionalism' Standards*, STAN. SOC. INNOVATION R. (June 4, 2019), https://ssir.org/articles/entry/the_bias_of_professionalism_standards# [<https://perma.cc/GX5Z-PP95>].

protected classes.¹⁸ Protection from racial discrimination under the Act also insulates protected classes from the facially neutral policies of employers that generate a disparate racial impact.¹⁹ As with most revolutionary pieces of legislation, the justice system was left to decipher the letter and spirit of the law through litigation. Unsurprisingly, courts developed different interpretations of the 1964 Act, thus creating a confusing legal landscape for those seeking equal protection of the law.²⁰ The Civil Rights Act of 1991 codified some of these competing legal methods used by courts to decide disparate impact claims.²¹ Although the 1991 Act was adopted with benign intentions, courts have failed to apply the 1991 Act appropriately.²²

Courts now use a three-part burden shifting framework—adopted by the 1991 Act—to evaluate disparate impact claims.²³ Although courts use the same burden-shifting framework, the underlying evidentiary requirements for each part of the test are assessed very differently by the justice system.²⁴ The net result is an injustice to black men in the workplace. Black men are subjected to clean-shave policies that are overburdensome, administratively and financially costly, unnecessary, and outright harmful. Employers should be more accommodating to black men with PFB by providing easier access to shaving waivers and punishing employees who harass men with shaving

18. *A Brief History of Civil Rights in the United States: Civil Rights Acts (1964, 1968)*, HOW. UNIV. SCH. OF L. (Jan. 15, 2026, at 11:55 ET), <https://library.law.howard.edu/civilrightshistory/blackrights/civilrightsacts> [<https://perma.cc/WY7P-YTET>].

19. *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971).

20. *Compare id.*, with *W. Va. Univ. Hosps. v. Casey*, 499 U.S. 83 (1991) (Marshall, J., dissenting) (highlighting the patchwork that promulgated from judicial interpretation of the Civil Rights Act of 1964 following *Griggs*).

21. William Gordon, *The Evolution of the Disparate Impact Theory of Title VII: A Hypothetical Case Study*, 44 HARV. J. ON LEGIS. 529, 540–41 (2007).

22. *See, e.g.*, *Bradley v. Pizzaco of Neb., Inc.*, 939 F.2d 610, 612–14 (8th Cir. 1991); *Forkin v. UPS*, 18-CV-3397 (MKB), 2020 WL 9816001, at *8–9, *11 (E.D.N.Y. Nov. 10, 2020); *Bey v. City of New York*, 999 F.3d 157, 162–63, 170–71 (2d Cir. 2021); *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1117–18, 1126–27 (11th Cir. 1993).

23. Gordon, *supra* note 21, at 539–42.

24. *Compare Fitzpatrick*, 2 F.3d at 1117–18, 1123–24, with *Bey*, 999 F.3d at 162–63, 165, 170 (illustrating the difference in outcomes under the burden-shifting framework propagated by courts).

waivers. Employers who maintain strict clean-shaven policies for legitimate safety concerns should provide resources and access to treatment for black men with PFB.

This Article argues for employers to enact grooming policies that account for black men, for policymakers to prohibit unnecessary and harmful clean-shave policies, and for legal advocacy that encourages courts to reconsider the current methods of evaluating disparate impact claims by black men with PFB.

The United States military is the most uncompromising enforcer of clean-shave policies. Despite decades of evidence detailing the harmful impact of shaving, the military has continued to enforce policies that generate an unacceptable bias against black men. Under the new Secretary of War, Pete Hegseth, three of the six military branches have adopted more restrictive grooming policies that will produce adverse consequences for black male soldiers.²⁵

In 2025, the Army, Marine Corps, and Air Force each adopted more restrictive grooming policies.²⁶ These changes have limited the availability and duration of shaving exemptions for soldiers.²⁷ Treatment recommendations even include

25. See Memorandum from Dan Driscoll, U.S. Sec'y of the Army, to All Army Pers. (July 7, 2025) [hereinafter U.S. Sec'y of the Army Memo], https://lyster.tricare.mil/Portals/61/ARN44307-ARMY_DIR_2025-13-000.pdf [<https://perma.cc/B69C-D3LN>]; *Uniform and Grooming Standards for Medical Conditions*, MARINES (Mar. 13, 2025), <https://www.marines.mil/News/Messages/Messages-Display/Article/4119098/uniform-and-grooming-standards-for-medical-conditions/> [<https://perma.cc/5CGB-E3VJ>]; Riley Ceder, *Marine Corps Tightens Rules on Shaving Waivers for Medical Conditions*, MARINE CORPS TIMES (Mar. 14, 2025) [hereinafter *Marine Corps Tightens Rules on Shaving Waivers*], <https://www.marinecorpstimes.com/news/2025/03/14/marine-corps-tightens-rules-on-shaving-waivers-for-medical-conditions/> [<https://perma.cc/5DNS-Q87H>]; John Vandiver, *Marines Take Tougher Line on Shaving Waivers in New Order Issued Amid DOD Standards Review*, STARS & STRIPES (Mar. 14, 2025), https://www.stripes.com/branches/marine_corps/2025-03-14/marine-corps-beard-policy-17137960.html [<https://perma.cc/S2TK-BMDH>]; Memorandum from John DeGoes, Lieutenant Gen., to ALMRC/CC, ALMAJCOM/SG, ALMDG/MDS/CC (Dec. 15, 2025, at 07:56 ET) [hereinafter Lieutenant Gen. Memo], <https://www.airforcemedicine.af.mil/Portals/1/Documents/AF%20SG%20Medical%20Guidance%20for%20Shaving%20Profiles%2015%20Dec%202025.pdf> [<https://perma.cc/K5ED-25YX>].

26. See U.S. Sec'y of the Army Memo, *supra* note 25; *Uniform and Grooming Standards for Medical Conditions*, *supra* note 25; Ceder, *supra* note 25; Vandiver, *supra* note 25; Lieutenant Gen. Memo, *supra* note 25.

27. See U.S. Sec'y of the Army Memo, *supra* note 25; *Uniform and Grooming Standards for Medical Conditions*, *supra* note 25; Ceder, *supra* note 25.

laser hair removal.²⁸ And now, a soldier's inability to recover from PFB can provide grounds for an administrative discharge from service.²⁹

These changes are unlikely to be repealed under the current Secretary of War. A future administration, however, may be inspired to alter these policies to prevent harm to black soldiers. The current policies force black men to make a choice between laser surgery or being discharged from service. Under the current regime, shaving waivers are more difficult to obtain and re-evaluations to renew shaving waivers are required too frequently. This Article will establish why the Navy's current grooming policy is the least harmful and enumerate how an ideal military grooming policy should account for black men with PFB.

I. PFB PROBLEMS IN THE CIVILIAN CONTEXT: THE
CONVERGENCE OF HISTORICAL RACIAL
DISCRIMINATION AND EXCLUSIONARY
PROFESSIONALISM CULMINATE TO THE DISADVANTAGE
OF BLACK MEN WITH PFB

The convergence of two themes of racial discrimination in the workplace amplify the problems faced by black men with PFB. A historical thread of hair and grooming discrimination can be traced from the time of American slavery to the modern employment context. Methods of exclusionary professionalism converge with these historic forms of racial discrimination in the workplace, manifesting in modern employment practices. Therefore, black men with PFB must contend not only with historic racial discrimination and exclusionary employment practices, but also with employer policies that fail to properly

28. See U.S. Sec'y of the Army Memo, *supra* note 25; *Uniform and Grooming Standards for Medical Conditions*, *supra* note 25; Ceder, *supra* note 25; Vandiver, *supra* note 25; Lieutenant Gen. Memo, *supra* note 25.

29. See U.S. Sec'y of the Army Memo, *supra* note 25; *Uniform and Grooming Standards for Medical Conditions*, *supra* note 25; Ceder, *supra* note 25; Vandiver, *supra* note 25.

account for a harmful medical condition suffered by men of color at a disproportionate rate.³⁰

A. *History of Hair and Grooming Discrimination*

It is not years or decades, but centuries that measure the period that Africans and their descendants were enslaved on the North American continent. For many, the year 1619 carries an infamous weight as the year in which the first African slaves were brought to the Americas.³¹ Despite the popularity of this view, the first slave-bearing ship probably reached the Americas sometime in the early 1500s.³² Over three tainted centuries elapsed in the Americas before the despicable practice was abolished by the Thirteenth Amendment to the United States Constitution in 1865.³³

Even after slavery was abolished, race-based distinctions, including those based on hair texture or style, remained prevalent in America through the late Nineteenth Century with the implementation of Black Codes and Jim Crow laws.³⁴ Jim Crow

30. See *infra* Section II.C. The author acknowledges that failures in the medical field to account for and recognize the unique plight of black men and women constitutes an entire field of study on its own. While this Article does not address the medical profession's shortcomings in this vein, there is certainly room for more scholarship examining the intersection of this phenomenon with PFB-related issues.

31. *Arrival of the First Africans in 1619*, NAT'L PARK SERV., <https://www.nps.gov/articles/000/arrival-of-the-first-africans-in-1619.htm> [<https://perma.cc/LH9R-J335>] (last visited Apr. 6, 2026); Khushbu Shah & Juweek Adolphe, *400 Years Since Slavery: A Timeline of American History*, THE GUARDIAN (Aug. 16, 2019, at 14:00 ET), <https://www.theguardian.com/news/2019/aug/15/400-years-since-slavery-timeline> [<https://perma.cc/ET4J-L5LJ>].

32. Ira Berlin, *Historical Context: Facts About the Slave Trade and Slavery*, GILDER LEHRMAN INST. AM. HIST., <https://www.gilderlehrman.org/history-resources/teacher-resources/historical-context-facts-about-slave-trade-and-slavery> [<https://perma.cc/V7WD-PFUR>] (last visited Apr. 6, 2026); Stephanie Hall, *Beyond 1619: Slavery and the Cultures of America*, LIBR. CONG. BLOGS (Aug. 28, 2019), <https://blogs.loc.gov/folklife/2019/08/beyond-1619/> [<https://perma.cc/7XF3-2GGR>]; *The Slave Trade*, NAT'L HUMANS. CTR. TOOLBOX LIBR.: PRIMARY RES. IN U.S. HIST. & LITERATURE, <https://nationalhumanitiescenter.org/pds/amerbegin/exploration/text7/text7read.htm> [<https://perma.cc/9JWJ-82TD>] (last visited Apr. 6, 2026).

33. U.S. CONST. amend. XIII; *13th Amendment to the U.S. Constitution: Abolition of Slavery (1865)*, NAT'L ARCHIVES, [https://www.archives.gov/milestone-documents/13th-amendment#:~:text=13th%20Amendment%20to%20the%20U.S.%20Constitution%3A%20Abolition%20of%20Slavery%20\(1865\),-EnlargeDownload%20Link](https://www.archives.gov/milestone-documents/13th-amendment#:~:text=13th%20Amendment%20to%20the%20U.S.%20Constitution%3A%20Abolition%20of%20Slavery%20(1865),-EnlargeDownload%20Link) [<https://perma.cc/2F4T-BTYR>] (last visited Apr. 6, 2026).

34. JEFF OLIVET, AMANDA ANDERE, MARC DONES, BRITTANI MANZO & JESSICA VENEGAS, COMMUNITY SOLUTIONS, *A BRIEF TIMELINE OF RACE & HOMELESSNESS IN AMERICA* (2019),

laws created restrictive voter registration and electoral laws, which disenfranchised black people, in addition to institutionalizing a system of racial segregation.³⁵ These laws received a stamp of approval from the United States Supreme Court in the 1896 case of *Plessy v. Ferguson*, which held that laws creating separate, but equal, classes of people on the basis of race were constitutionally permissible.³⁶ Under this endorsement, these racially discriminatory laws lasted until *Plessy* was overruled in 1954 by *Brown v. Board of Education*.³⁷ It was not until 1964, however, that racial discrimination was comprehensively outlawed by the Civil Rights Act.³⁸

White supremacists have fought for centuries to maintain a dominant position in the American racial hierarchy. Enslavement, Black Codes, and Jim Crow laws have placed black Americans in an unfavorable position within this racial hierarchy — to say the least. The vestiges of these practices remain with us today; however, they are more discreet than the *de jure* subordination techniques exemplified by slavery, Black Codes, and Jim Crow laws.³⁹ These remnants are embedded and often disguised in our laws, culture, and psychological biases. They affect us and those around us every day, acting as an invisible, yet irresistible force upon the direction of our lives.

To maintain this system of advantage and disadvantage based on race, the dominant race must be able to distinguish between themselves and those of “lesser” racial categories. One historical method of this racial classification is based on differences in physical characteristics.⁴⁰ During American slavery,

<https://community.solutions/wp-content/uploads/2020/06/A-Brief-Timeline-of-Race-and-Homelessness-in-America-March-2019.pdf> [https://perma.cc/SBC2-88QC].

35. *A Brief History of Civil Rights in the United States*, *supra* note 18.

36. *Plessy v. Ferguson*, 163 U.S. 537, 540 (1896), *overruled by*, *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

37. *Brown*, 347 U.S. at 495.

38. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964); *A Brief History of Civil Rights in the United States*, *supra* note 18.

39. *De jure* refers to state-sanctioned segregation. *De jure*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/de%20jure> [https://perma.cc/66UB-KXR5] (last visited Apr. 6, 2026).

40. Greene, *supra* note 10, at 1365–66.

this meant that slaves with physical characteristics more akin to white people were given preferential treatment,⁴¹ including features like skin color and “the shape of one’s lips, nose, eyes, and head.”⁴² Hair texture was another of the primary features used to make these hierarchical determinations.⁴³ Enslaved black men and women who worked in the fields were often forced to shave their “bad” hair and required to wear headscarves to hide their hair from the slave owner.⁴⁴ Slaves who worked inside often wore their hair in styles to mimic the slave masters’ straight hair.⁴⁵ This use of hair texture to stratify different races can be traced from the period of enslavement to the modern employment context.

This preferential treatment of black people with hair texture and style closer to that of white people led to a desire among black people to conform to the characteristics of the dominant race through the mid-twentieth century. At the end of the nineteenth century, Madam C.J. Walker became the first black female millionaire by popularizing the hair-straightening comb.⁴⁶ “For better or worse, she offered black women an avenue for increased societal acceptance.”⁴⁷ Malcolm X famously described his days spent sporting a conk, a hair style popular among black men from the 1920s to the 1960s that symbolizes both a racial hierarchy and the internalization of that racial hierarchy by

41. *A Short History of Hair Discrimination*, *supra* note 12.

42. Greene, *supra* note 10, at 1366.

43. *A Short History of Hair Discrimination*, *supra* note 12.

44. Aliya Rodriguez & Brooke Jackson, *What Every Dermatologist Must Know About the History of Black Hair*, *PRAC. DERMATOLOGY*, Nov. 2023, at 35, 36; see Khanya Mtshali, *The Radical History of the Headwrap*, *MEDIUM* (May 10, 2018), <https://medium.com/timeline/headwraps-were-born-out-of-slavery-before-being-reclaimed-207e2c65703b> [https://perma.cc/8XU2-L9GR].

45. Manka Nkimbeng, Bernice B. Malaika Rumala, Crystal M. Richardson, Shemekka Ebony Stewart-Isaacs & Janiece L. Taylor, *The Person Beneath the Hair: Hair Discrimination, Health, and Well-Being*, 7 *HEALTH EQUITY* 406, 407 (2023); Chanté Griffin, *How Natural Black Hair at Work Became a Civil Rights Issue*, *JSTOR DAILY* (July 3, 2019), <https://daily.jstor.org/how-natural-black-hair-at-work-became-a-civil-rights-issue/> [https://perma.cc/QK3D-Z76B].

46. Griffin, *supra* note 45.

47. *Id.*

black people in that era.⁴⁸ In his autobiography, Malcolm elaborated: “I had joined that multitude of Negro men and women in America who are brainwashed into believing that the black people are ‘inferior’—and white people ‘superior’—that they will even violate and mutilate their God-created bodies to try to look ‘pretty’ by white standards.”⁴⁹

The Natural Hair Movement of the 1960s rejected Eurocentric standards of beauty and weaponized the afro in the fight for racial equality.⁵⁰ Black men and women in this movement inspired others to stop conforming with the preferred characteristics of the dominant race.⁵¹ As the Black Power Movement ended in the late 1970s,⁵² the desire to conform to Eurocentric standards of beauty began to reemerge.⁵³ By the 1980s, subordination efforts resurfaced in the form of TV advertisements and magazines “encourage[ing] black women to alter the texture of their hair.”⁵⁴ By the beginning of the Twenty-First Century, a resurgence of the Natural Hair Movement had taken hold.⁵⁵ Through the ebbs and flows of the Natural Hair Movement within the black community itself, one external phenomenon

48. MALCOLM X & ALEX HALEY, *THE AUTOBIOGRAPHY OF MALCOLM X* 52–54 (1964); *Black Hairstyles: This Is How We ‘Do It*, *THE ROOT* (Feb. 27, 2014), <https://theroot.com/black-hairstyles-this-is-how-we-do-it> [<https://perma.cc/G6DU-PCR2>].

49. X & Haley, *supra* note 48, at 54.

50. Griffin, *supra* note 45.

51. *See, e.g., id.* (describing how Marcus Garvey and Angela Davis “encouraged black [people] to embrace their natural kinks”).

52. *See The Foundations of Black Power*, SMITHSONIAN: NAT’L MUSEUM OF AFR. AM. HIST. & CULTURE, <https://nmaahc.si.edu/explore/stories/foundations-black-power#:~:text=Between%201956%20and%201971%2C%20the,with%20the%20black%20power%20movement> [<https://perma.cc/5GBG-XBS3>] (last visited Apr. 6, 2026) (describing how government attacks on “dissidents . . . weaken[ed] or destroy[ed] many of the groups associated with the black power movement” in the 1970s).

53. *See id.*

54. Griffin, *supra* note 45. For a comprehensive discussion of advertisements related to black hair and black hair relaxers, see India Espy-Jones, *Black Hair Ads, From Afro Sheen to SheaMoisture*, *ESSENCE* (Aug. 10, 2023), <https://www.essence.com/beauty/black-hair-ads-through-the-years-from-afro-sheen-to-sheamoisture/> [<https://perma.cc/AT8M-8F6N>]. *See also Black Hair Care Has Gone Through a Lot of Changes*, *PROSE* (Feb. 4, 2020), <https://prose.com/blog/black-hair-history?srsId=AfmBOopW7svuC9KumFedrlmQyQNY-3uWZZcyssdDG6C24jBqrHDNiG4> [<https://perma.cc/9X6L-CTHB>] (listing products that played an important role in the evolution of black hair and black hair relaxers).

55. Griffin, *supra* note 45.

has remained consistent: negative biases against black hair texture and style.

Negative perceptions of black hair texture and style in the workplace continue to have a harmful impact on black people. A perception remains that black hair is “unprofessional and unkempt.”⁵⁶ White people, in particular, have more negative attitudes toward black hair.⁵⁷ When asked to associate different hairstyles with certain stereotypes, participants in one study identified straightened hair as “clean, professional, feminine, and pretty”; afros were associated with “wild, radical, and solidarity”; and dreadlocks were associated with “drug use, ghetto, nasty, and gross.”⁵⁸ These biased attitudes also lead to employment discrimination. “Hair Discrimination and Grooming Policy Discrimination cases involving hair length, hair texture, or hair styles in the workplace have been prevalent since the enactment of the Civil Rights Act of 1964 (Title VII).”⁵⁹ Taken together, this supports the notion that historical classification of different racial groups on the basis of physical characteristics—particularly hair and grooming—still impacts the perceptions and actions of those occupying advantageous positions in the racial hierarchy today.

Efforts to eradicate historically rooted biases against black hair texture and style have been unsuccessful. Race-based hair discrimination is prohibited by the Creating a Respectful and Open World for Natural Hair (CROWN) Act.⁶⁰ This includes “the denial of employment and educational opportunities because of hair texture or protective hairstyles including braids,

56. Doriane S. Nguenang Tchenga, *Black Women’s Hair and Natural Hairstyles in the Workplace: Expanding the Definition of Race Under Title VII*, 107 VA. L. REV. ONLINE 272, 279 (2021).

57. Nkimheng et al., *supra* note 45, at 407.

58. KALEN KENNEDY, MY NATURAL HAIR IS UNPROFESSIONAL: THE IMPACT OF BLACK HAIRSTYLES ON PERCEIVED EMPLOYMENT-RELATED CHARACTERISTICS 17 (May 2020) (Master’s Thesis, Marquette University).

59. Yucheng (Renee) Jiang, *Reasonable Accommodation and Disparate Impact: Clean Shave Policy Discrimination in Today’s Workplace*, 50 FORDHAM URB. L.J. 151, 152–53 (2022).

60. *About*, CROWN COALITION, <https://www.thecrownact.com/about> [perma.cc/M93P-XFVE] (last visited Mar. 31, 2026).

locs, twists or bantu knots.”⁶¹ Today, only thirty American states have adopted the CROWN Act.⁶² The passage of laws, however, does not eliminate individual biases against black hair.

There is also an unfortunate history of grooming discrimination among employers in the United States. As early as 1973, the Equal Employment Opportunity Commission (EEOC) recognized the risk of grooming discrimination against black men due to their race or national origin.⁶³ Additionally, military studies from the 1970s documented the prevalence of PFB issues among black American soldiers.⁶⁴ Despite the reliable evidence of PFB problems among black men, employers continued to require their employees to be clean-shaven.⁶⁵ When black men are unable or unwilling to comply with these clean-shaven requirements, they suffer adverse consequences, such as termination from employment, suspension, harassment, social stigma, racial epithets, and decreased access to promotional opportunities.⁶⁶ This lack of acknowledgement by employers can

61. *Id.* When this Article refers to “black hair,” the meaning is hair which is tightly coiled or styled with braids, locs, twists, or bantu knots. *See id.*

62. *Id.*

63. *See* EEOC Decision No. 72-0979, CCH EEOC Decisions 4622–24 (1973).

64. *See* Alexander & Delph, *supra* note 15, at 460.

65. *See, e.g.,* Brown v. D.C. Transit Sys. Inc., No. 2426-71, 1973 WL 137, at *1–2 (D.D.C. May 3, 1973), *rev'd on other grounds*, 523 F.2d 725 (D.C. Cir. 1975) (discharging of several black bus drivers for noncompliance with the employers’ facial hair regulations); Thomas v. Firestone Tire & Rubber Co., 392 F. Supp. 373, 374 (N.D. Tex. 1975) (prohibiting facial hair and terminating employees for failing to comply); Wofford v. Safeway Stores, Inc., 78 F.R.D. 460, 470 (N.D. Cal. 1978) (alleging an informal no-beard policy which negatively impacted employee candidates with beards); EEOC v. Greyhound Lines, Inc., 635 F.2d 188, 190 (3d Cir. 1980) (maintaining a no-beard policy for all employees, with no exemptions permitted); Antrum v. Wash. Metro. Area Transit Auth., 710 F. Supp. 2d 112, 116 (D.D.C. 2010) (enforcing a clean shave policy that imposed unreasonable and overly-bureaucratic requirements for black men with PFB to obtain an exemption); Lewis v. Univ. of Pa., No. 16-5874, 2018 WL 583127, at *2 (E.D. Pa. Jan. 29, 2018), *rev'd on other grounds*, 779 F. App'x 920 (3d Cir. 2019) (maintaining a no-beard policy, with limited exemptions, despite evidence that obtaining an exemption from the policy had unnecessarily harmed multiple black employees who suffered from PFB); Bey v. City of New York, 999 F.3d 157, 161–62 (2d Cir. 2021) (maintaining a strict no-facial hair policy, as required by OSHA, with only limited exceptions for mustaches and sideburns).

66. *See, e.g.,* D.C. Transit Sys. Inc., 1973 WL 137, at *1–2 (discharging of several black bus drivers for noncompliance with the employers’ facial hair regulations); Thomas, 392 F. Supp. at 374 (prohibiting facial hair and terminating employees for failing to comply); Wofford, 78 F.R.D. at 469 (alleging an informal no-beard policy which negatively impacted employee candidates

be connected to the long history of race-based hair discrimination, a symptom of the same phenomenon: an ascription of negative value to the physical idiosyncrasies of black people.

Racial subjugation did not end with the abolition of slavery. Nor did racial discrimination cease after the Civil Rights Act of 1964. Racial biases stemming from ideologies bent on the subordination of black people persist today. These biases influence the actions of those who behold them in many different ways. Distinctions between different races based on physical characteristics, particularly hair and grooming, still have a negative impact on black men today. An unfortunate history of hair and grooming discrimination converges with notions of professionalism in the modern workplace, where preferences for certain hair and grooming standards actively operate to the disadvantage of black men.

B. *Exclusionary Professionalism*

Standards of professionalism in the United States are used explicitly and implicitly to reinforce white, Western norms in the workplace to the detriment of black men. Merriam-Webster dictionary defines professionalism as “the skill, good judgment, and polite behavior that is expected from a person who is trained to do a job well.”⁶⁷ According to the U.S. Department of Labor, “[p]rofessionalism does not mean wearing a suit or

with beards); *Greyhound Lines, Inc.*, 635 F.2d at 190 (maintaining a no-beard policy for all employees and refusing to hire job applicants who are unable to comply with the no-beard policy); *Antrum*, 710 F. Supp. 2d at 116–17 (suspending employee for failing to comply with the no-beard policy, despite the employee’s previous exemption from the policy due to the adverse medical consequences of compliance); *Lewis*, 2018 WL 583127, at *2 (maintaining an inflexible no-beard policy despite evidence that obtaining an exemption from the policy had unnecessarily harmed multiple black employees who suffered from PFB; the plaintiff suffered from multiple retaliatory measures by his superiors, including harassment from fellow employees and a racial epithet prompted by his beard growth: “What are you, Taliban now? You don’t have that condition, why don’t you shave?”); *Bey*, 999 F.3d at 161–62 (switching policy regarding medical accommodations to the clean-shaven requirement after discovering that exceptions were not permitted under the OSHA regulations, thereby preventing firefighters with PFB from returning to full duty, despite them being able to sport short beard growth for the past three years of employment).

67. *Professionalism*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/professionalism> [perma.cc/5Z6D-HL8S] (last visited Apr. 1, 2026).

carrying a briefcase; rather, it means conducting oneself with responsibility, integrity, accountability, and excellence. It means communicating effectively and appropriately and always finding a way to be productive."⁶⁸

Others view professionalism as based on one of three models: virtue, behavior, or professional identity.⁶⁹ None of these formal descriptions of professionalism include appearance or physical characteristics as metrics.

In *Shaping the Profession: Towards a Genealogy of Professional Ethics*, Tiziana Faitini explores the "evolution of professionalism and its ethical dimensions" from Ancient Rome to modern Western civilization.⁷⁰ One concept that emerges is a link between the "profession" and its relationship to "status" and "office."⁷¹ Faitini's historical perspective illuminates "the [] link between occupation and socio-political inclusion."⁷² A scholarly commentary on Faitini's work describes professionalism as "multifaceted," connected to themes such as "political identity, societal inclusion, and the pursuit of personal dreams and ambitions."⁷³

If it is true that professionalism evolved as a method of societal inclusion, it follows that professionalism may also be used for societal exclusion. Standards of professionalism may also be viewed as pillars of white supremacy culture, defined as: "[T]he systemic, institutionalized centering of whiteness. In the workplace, white supremacy culture explicitly and implicitly privileges whiteness and discriminates against non-Western and non-white professionalism standards related to dress code, speech, work style, and timeliness."⁷⁴

68. U.S. DEP'T. OF LABOR, SKILLS TO PAY THE BILLS: MASTERING SOFT SKILLS FOR WORKPLACE SUCCESS 106 (2008), <https://pueblo.gpo.gov/CAARNG/ODEP/PDF/ODEP013.pdf> [<https://perma.cc/UG9G-RCB7>].

69. George B. Bartley, *The Unfinished History of Professionalism*, 128 AM. ACAD. OPHTHALMOLOGY 1261, 1261 (2021).

70. Faitini et al., *supra* note 16.

71. *Id.*

72. *Id.*

73. *Id.*

74. Gray, *supra* note 17.

This narrative may be viewed as an undercurrent of professionalism today, which plays out in many different ways.⁷⁵ One of the ways this undercurrent operates is through standards of grooming and hairstyle, with preference given to straightened hair and shaven faces.⁷⁶

The United States, of course, harbors its own unique problems when it comes to exclusionary professionalism. In addition to explicit preferences regarding hairstyle and grooming, an implicit bias exists against non-white persons in the U.S.⁷⁷ More people in the U.S. make automatic and unconscious associations that have an overwhelmingly pro-white preference.⁷⁸ This pro-white bias is also disseminated through popular media, exhibiting white men "as competent leaders and the standard for normalcy."⁷⁹ When voters decide which political candidate to support, they often support the candidate they would feel most comfortable having a beer with. Similarly, employers describe ideal employees as "someone they would 'go to lunch with.'"⁸⁰ This employer evaluation, known as "cultural fit," is a proxy for exclusionary professionalism, which enables employers to exclude job applicants whose "values, behaviors, customs, interests, and [] outward appearance" do not conform to the traditional, pro-white professional preferences.⁸¹ A "cultural fit" assessment severely hinders minority candidates in white-dominated societies by allowing pro-white biases to infiltrate employment decisions.⁸²

Professionalism should be designed to ensure the competency of employees in the workplace. A closer look reveals a brand of professionalism driven by explicit and implicit biases that are geared against non-white employees. Explicit professionalism policies include those governing hairstyle and

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *See id.*

grooming, with a preference for straightened hair and shaven faces.⁸³ In the United States, there are implicit biases disfavoring non-white persons perpetuated by media messaging and enshrined in employee-selection practices such as “cultural fit.”⁸⁴ Uses of exclusionary professionalism manifest the historical threads of race-based hair and grooming discrimination by enabling employers to maintain policies—rooted in white supremacy—that are facially neutral, but function as an obstacle to black men in the workplace.

*C. The Convergence of Historical Discrimination and
Exclusionary Professionalism in the Case of Black Men with
PFB*

The disproportionate prevalence of PFB among black men detrimentally compounds with historical racial discrimination and exclusionary professionalism when employers require employees to be clean-shaven. PFB is a skin condition that primarily affects the face and neck of people with curled hair.⁸⁵ PFB disproportionately affects men of African descent, prevalent in forty-five percent to eighty-five percent of black men.⁸⁶ An inflammatory reaction occurs after shaving “due to strongly curved hairs emerging parallel to and subsequently re-entering the skin.”⁸⁷ Medical professionals recommend that black men with PFB avoid close skin shaves.⁸⁸ The condition manifests itself as razor bumps, also known as “follicularly-based erythematous and hyperpigmented papules and pustules.”⁸⁹ Pustules may lead to secondary infections, as well as scars and keloid formation.⁹⁰

83. *Bradley v. Pizzaco of Neb., Inc.*, 939 F.2d 610, 612 (8th Cir. 1991) (explaining that a pizza company required its delivery drivers to be clean-shaven because an internal survey showed that customers preferred clean-shaven delivery drivers).

84. Gray, *supra* note 17.

85. Kundu & Patterson, *supra* note 1, at 860.

86. *Id.*

87. Sharma et al., *supra* note 4, at 173.

88. See Kundu & Patterson, *supra* note 1, at 860.

89. *Id.*

90. *Id.*

Recommended treatment of PFB can vary. Medical management of PFB may include the use of topical steroids or a topical antibiotic applied after shaving.⁹¹ Laser hair removal may also be prescribed as a remedy.⁹² “The most definitive treatment for PFB is the cessation of shaving” altogether.⁹³

Employers who require their employees to be clean-shaven do not adequately account for the unique problems created by PFB. Some policies do allow limited medical exemptions, which prevents PFB victims from harming themselves by continually shaving to keep their job.⁹⁴ Not all employers, however, permit medical exemptions, and even those employers who allow shaving waivers impose unreasonable and overly burdensome requirements on those seeking exemptions.⁹⁵

Historical biases against the hair of black people and their physical characteristics, in conjunction with modern notions of professionalism, have enabled the rise of harmful employer grooming policies, including clean-shaven mandates.⁹⁶

D. Title VII Disparate Impact and Access to Justice for PFB Victims

The enforcement of unnecessary or overly burdensome clean shave policies has a disparate impact on black men. Title VII of the Civil Rights Act of 1964 and 1991 is designed to protect black men from discrimination based on race, which includes facially neutral policies that have a disparate impact on people of color.⁹⁷ The evolution of how courts assess disparate impact claims has created a muddled and confusing legal landscape. Inconsistent and unpredictable application of the

91. *Id.*

92. Evans Okonkwo, Brandon Neal & Harvey L. Harper, *Pseudofolliculitis Barbae in the Military and the Need for Social Awareness*, 186 MIL. MED. 143, 143 (2021).

93. Sharma et al., *supra* note 4, at 173.

94. *Lewis v. Univ. of Pa.*, No. 16-5874, 2018 WL 583127, at *2 (E.D. Pa. Jan. 29, 2018), *rev'd on other grounds*, 779 F. App'x 920 (3d Cir. 2019) (permitting a police officer to obtain an exemption from the clean shave policy).

95. *See id.*

96. Jiang, *supra* note 59, at 155–56.

97. 42 U.S.C. § 2000e-2(a)(1)–(2).

underlying evidentiary assessment methods has resulted in injustice to black men.

“Joseph Lewis, an African American male, began working as an officer for the Penn Police in 2009.”⁹⁸ A facially neutral policy “require[d] [all] officers to be clean shaven,” but “allow[ed] medical waivers under certain circumstances.”⁹⁹ After being diagnosed with PFB, Lewis requested a waiver from the shaving requirement.¹⁰⁰ Five months later, Lewis’s superior began to pressure him to shave.¹⁰¹ Lewis’s “supervisors began checking his facial hair daily,” subjecting him to uniform inspections—which had never been done before—and frequently making comments “about his need to shave.”¹⁰² Around the same time, Lewis’s patrol car was taken away; none of the overtime assignments Lewis had requested were granted; and previously granted training assignments were revoked.¹⁰³

When Lewis attempted to renew his shaving waiver, the request was denied, forcing him to comply with the shaving requirement or risk losing his job.¹⁰⁴ Lewis appealed to higher authority in the police department, who accused him of lying about his mistreatment.¹⁰⁵ Lewis ceased working at the police department and sued under various theories of racial and disability discrimination.¹⁰⁶ At the trial and appellate levels, Lewis ultimately failed on his disparate impact claims.¹⁰⁷

The case of Joseph Lewis clearly demonstrates the inadequacy of current legal standards in accounting for black men who suffer from PFB. Unfortunately, Lewis’s case is not the

98. *Lewis*, 2018 WL 583127, at *1.

99. *Id.* at *2.

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.* at *2–3.

106. *Id.* at *1, *3.

107. *See id.* at *5–6; *see also* *Lewis v. Univ. of Pa.*, No. 16-5874, 2018 WL 1243721, at *1–3 (E.D. Pa. Mar. 9, 2018) (denying plaintiff’s motion for reconsideration); *Lewis v. Univ. of Pa.*, 779 F. App’x 920, 926 (3d Cir. 2019) (affirming the district courts’ ruling as to plaintiff’s disparate impact claim).

only example of black men facing discrimination at the hands of an employer due to PFB.¹⁰⁸ These cases are all too common among police officers and firefighters, including even non-public servants.¹⁰⁹ As the next part of this Article will show, plaintiffs in these cases typically employ similar legal claims, which fail almost every time. Proper interpretation of the legal standards underlying disparate impact claims can provide an avenue for black men, like Joseph Lewis, to find justice.

1. *Evolution of the legal standards governing Title VII disparate impact claims*

Courts assess claims of disparate impact, like those made by Joseph Lewis, under Title VII by employing a three-part burden-shifting approach, known as the *McDonnell Douglas* burden-shifting framework.¹¹⁰ Initially, the plaintiff (employee) seeking protection under Title VII must make a prima facie showing of discriminatory impact.¹¹¹ If this showing is adequate, the defendant (employer) may rebut this showing by proving the employment policy or action is necessary for the operation of the business.¹¹² A successful business necessity defense by the employer shifts the burden back to the employee, and allows the employee to present non-discriminatory alternative policies that would be equally effective in achieving the employer's business goals.¹¹³

Different evidentiary assessment methods underlying the *McDonnell Douglas* framework have emerged at each step of the burden-shifting approach. The *Griggs-Albemarle-Dothard*

108. See *supra* notes 65–66 and accompanying text.

109. See, e.g., *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1120 (11th Cir. 1993) (upholding a clean shave policy imposed on Atlanta firefighters due to a justified “business necessity”); see also *Antrum v. Wash. Metro. Area Transit Auth.*, 710 F. Supp. 2d 112, 122–23 (D.D.C. 2010) (denying racial discrimination claims of a black police officer suffering from PFB despite an EEOC finding that clean shave policies cause black males with PFB to suffer a significant negative adverse impact); *Bey v. City of New York*, 999 F.3d 157, 170–71 (2d Cir. 2021) (upholding the clean shave policy of a fire department on the grounds of “business necessity”).

110. See *Jiang, supra* note 59, at 158.

111. *Gordon, supra* note 21, at 530.

112. *Id.* at 530–31.

113. *Id.* at 531.

(hereafter, “*Griggs*”) and *Wards Cove* methods represent divergent interpretations of the *McDonnell Douglas* burden-shifting framework.¹¹⁴ To remedy these inconsistencies, Congress passed the Civil Rights Act of 1991, which adopted parts of both approaches.¹¹⁵

Congress adopted the *Wards Cove* method at the initial stage of the burden-shifting framework, where the employee is required to make a prima facie showing of discriminatory impact.¹¹⁶ Under the *Wards Cove* method, the plaintiff must provide statistical evidence of a discriminatory impact caused by a specific policy or practice of the employer.¹¹⁷

When the burden shifts to the employer, who must justify the policy or practice based on business necessity, Congress endorses the *Griggs* method.¹¹⁸ *Griggs* mandates that an employer produce evidence establishing that the disputed policy is “job related . . . and consistent with business necessity.”¹¹⁹ Congress, however, did not provide guidance for the meaning of “consistent with business necessity,” so subsequent courts were left with room to interpret the statute in a way favorable to employers.¹²⁰ Before enactment of the 1991 Act, the *Griggs* method provided three ways an employer could justify its practice: “criterion validation, content validation, and construction validation.”¹²¹ Since the 1991 Act went into effect, courts have not used these metrics to evaluate an employer’s justification for a disputed policy.

If the employer succeeds under a business necessity defense, the employee is provided with a final opportunity to assemble non-discriminatory alternative policies that would effectively

114. See *id.* at 531–32, 539–40; *infra* notes 117, 119, 121 and accompanying text.

115. Gordon, *supra* note 21, at 540–41; Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071.

116. Gordon, *supra* note 21, at 540.

117. *Id.* at 539–40.

118. *Id.* at 541.

119. *Id.*

120. *Id.*

121. *Id.* at 534.

achieve the employer's business objectives.¹²² Congress adopted the *Albemarle* standard, an extension of the *Griggs* branch of methodology, which provides a plaintiff-friendly avenue for pleading non-discriminatory alternative policies.¹²³ *Albemarle* approves alternative policies that would serve the employer's interest in "efficient and trustworthy workmanship."¹²⁴ Although Congress adopted the *Albemarle* standard, Congress once again failed to sufficiently clarify how courts should assess these alternative policies.¹²⁵ This ambiguity is further complicated by disputes among scholars. Some claim, for example, that the *Wards Cove* approach adopted the *Albemarle* standard but allowed courts to defer to an employer's assessment regarding the effectiveness of an alternative non-discriminatory policy.¹²⁶ Again, ambiguity in the statute has enabled courts to apply the law in a way favorable to employers, and detrimental to black men seeking protection under the Civil Rights Act.¹²⁷

2. *Evaluation of disparate impact claims involving PFB victims after the Civil Rights Act of 1991*

Following the enactment of the 1991 Act, courts began to assess disparate impact claims under the newly codified legal standard. At first, courts assessed claims by PFB plaintiffs in a manner consistent with the spirit of the Civil Rights Act. As time progressed, courts became less open to these claims in factually analogous cases.¹²⁸ In fact, courts began to apply the law in a way that makes it more difficult for PFB claimants to succeed in disparate impact cases.¹²⁹ This method of application is adverse to the spirit of the Civil Rights Act. Additionally, these legal methods are detrimental to the physical well-being of black

122. *Id.* at 531.

123. *See id.* at 541–42.

124. *Id.* at 531 (quoting *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 425 (1975)).

125. *See id.* at 541–42.

126. *Id.*

127. *See Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1117–18 (11th Cir. 1993).

128. *See Bey v. City of New York*, 999 F.3d 157, 170–71 (2d Cir. 2021).

129. *See id.*

men and create a negative impact on black men in the workforce.¹³⁰

When plaintiffs with PFB bring claims against clean shave policies, the cases often follow one of three paths. The first is an attempt by the court to apply the law in a manner consistent with the spirit of the Civil Rights Act, yet the plaintiff still falls short due to a lack of evidence regarding the effectiveness of respirators with short beard growth.¹³¹ In the second line of cases, the court applies a different legal analysis to an analogous fact pattern, thereby strengthening the business necessity defense for employers while weakening plaintiffs' route to justice.¹³² The third path creates an avenue for black men with PFB to prevail in disparate impact claims.¹³³

i. *Fitzpatrick v. City of Atlanta*

Soon after the 1991 Act was passed, black men with PFB began to challenge employers' clean-shaven requirements.¹³⁴ Despite their efforts under the seemingly favorable civil rights law, courts did not always provide justice for black men.¹³⁵ *Fitzpatrick v. City of Atlanta*¹³⁶ demonstrates this trend. In *Fitzpatrick*, several black firefighters with PFB challenged the fire department's clean shave policy.¹³⁷ In addition to three other claims, the firefighters alleged that the clean shave policy inflicted a disparate discriminatory impact on African Americans in violation of Title VII of the Civil Rights Act.¹³⁸ Accordingly, the Eleventh Circuit evaluated this case under the aforementioned

130. Jiang, *supra* note 59, at 160.

131. See *Fitzpatrick*, 2 F.3d at 1120.

132. See *Bey*, 999 F.3d at 161, 170–71.

133. See *Bradley v. Pizzaco of Neb., Inc.*, 7 F.3d 795, 796 (8th Cir. 1993).

134. See Tamar Lewin, *Beard Ban Ruled Unfair to Blacks*, N.Y. TIMES, Nov. 3, 1993, at A20.

135. See *Bradley*, 7 F.3d at 795–96.

136. 2 F.3d 1112, 1122–23 (11th Cir. 1993).

137. *Id.* at 1113.

138. *Id.*

three-part approach, as codified by the Civil Rights Act of 1991.¹³⁹

The *Fitzpatrick* court found it unnecessary to address the prima facie showing on appeal, and instead “assume[d] *arguendo* that the firefighters ha[d] adequately alleged a prima facie case of disparate impact.”¹⁴⁰ Pursuant to this assumption, the court advanced its analysis to step two of the burden-shifting framework, where the employer is required to show the challenged action is justified according to business necessity.¹⁴¹ To support its clean shave policy, the employer provided two pieces of evidence: an affidavit from an expert and a federal “regulation concerning [the] use of respirators by persons with facial hair.”¹⁴² Based on this evidence, the employer claimed that the presence of any facial hair on an employee would prevent respirators from forming a proper seal on the wearer’s face.¹⁴³

In response, the plaintiffs contended that short beard growth would not hinder the effectiveness of respirators.¹⁴⁴ For six years prior to the employer’s strict no-beard policy, firefighters with PFB were permitted to grow shadow beards (short beard growth) as part of a shadow beard test program.¹⁴⁵ Over this period, there were no reported problems in obtaining adequate seals for those with shadow beards.¹⁴⁶ After weighing this evidence against the employer’s justification, the court concluded that the shadow beard program did not effectively counter the fire department’s business necessity defense.¹⁴⁷

After the employer successfully raised the business necessity defense, the burden shifted back to the plaintiffs to provide

139. *Id.* at 1118; Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071; *see supra* notes 131–33 and accompanying text.

140. *Fitzpatrick*, 2 F.3d at 1118.

141. *Id.* at 1118–19.

142. *Id.* at 1119.

143. *Id.* at 1119–20.

144. *See id.* at 1120.

145. *Id.*

146. *Id.*

147. *Id.* at 1120–21.

a less discriminatory alternative to the challenged policy.¹⁴⁸ At this stage, the firefighters suggested two alternatives to the current policy.¹⁴⁹ First, the firefighters recommended reinstatement of the shadow beard program, which would serve the employer's acknowledged business need—safety.¹⁵⁰ Rejecting this claim, the court held that the firefighters failed to show that shadow beards could be safely worn with respirators.¹⁵¹ For the second alternative, the firefighters suggested shaving only the portion of the face where the respirator seal would contact the skin.¹⁵² Once again, the court rejected the proposed alternative, claiming that partial shaving would create the same PFB problems as full-face shaving.¹⁵³ After denying both of the proposed alternatives, the court entered final judgment for the employer.¹⁵⁴

Although the final judgment was not favorable for black men, the court fully evaluated the firefighters' main claims,¹⁵⁵ which is more than can be said of later decisions. The *Fitzpatrick* plaintiffs were unable to overcome the lack of evidence regarding the effect of short beard growth on the seal of a respirator.¹⁵⁶ Today, there is sufficient evidence to support a finding that short beard growth will not hinder the effectiveness of a respirator.¹⁵⁷ Currently, however, plaintiffs are unable to overcome

148. *Id.* at 1121–22.

149. *Id.* at 1122.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.* at 1122–23.

155. *Id.* at 1120–22.

156. *Id.* at 1122–23.

157. See Jonathan Banta, Casey Bowen, Emily Wong, Sean McCarthy, Thomas Beachkofsky, Jessica May Franklin, Jisuk Park & Simon Ritchie, *Perceptions of Shaving Profiles and Their Potential Impacts on Career Progression in the United States Air Force*, 186 MIL. MED. 187, 188 (2021) (asserting that respirators can seal the vast majority of individuals with 1/8 inch of beard growth or less); Injae Jung, Ford M. Lannan, Aeja Weiss & Sunghun Cho, *Treatment and Current Policies on Pseudofolliculitis Barbae in the US Military*, 112 CURTIS 299, 301–02 (2023) (noting that while the impact of facial hair on military gas masks is unknown, studies have confirmed that short facial hair does not reduce the effectiveness of N95 respiratory masks); see also Jiang, *supra* note 59, at 161 (discussing a case where a plaintiff firefighter was able to pass the District of Columbia Fire Department respirator fit test with a beard). Additionally, a 2021–2023 study has been

the evidentiary burden with this new evidence because courts have effectively foreclosed disparate impact claims for plaintiffs required to wear respirators in the course of their employment.

ii. *Bey v. City of New York*

Since the Civil Rights Act of 1991,¹⁵⁸ courts have become increasingly skeptical of plaintiffs with PFB, especially in employment contexts requiring respirator use. In *Bey v. City of New York*, a group of black firefighters suffering from PFB challenged the clean shave policy of the New York City Fire Department (FDNY).¹⁵⁹ Finding the firefighters had satisfied the initial burden of a Title VII disparate impact claim, the court said this:

[T]he Firefighters have undoubtedly put forward a *prima facie* case. They have (i) identified an employment practice (the FDNY's grooming policy), (ii) demonstrated that a disparity exists (PFB is significantly more prevalent among Black men than among any other demographic group), and (iii) established a causal connection between the two (PFB prevents a disproportionate number of Black men from safely satisfying the grooming policy, which can result in their reassignment or termination from the FDNY).¹⁶⁰

This excerpt illustrates the compelling logic of disparate impact claims by PFB plaintiffs. When an employer requires that employees be clean-shaven, the clean-shaven policy will negatively impact black employees who are significantly more likely to suffer from a skin condition caused by close shaving. This is

conducted to evaluate the effectiveness of gas masks on those with beards, but the results of this study have not been released. Irene Loewenson, *Sailors, Marines Could See Changes to How Beards Are Accommodated*, MARINE CORPS TIMES (Mar. 5, 2024), <https://www.marinecorpstimes.com/news/your-marine-corps/2024/03/05/sailors-marines-could-see-changes-to-how-beards-are-accommodated/> [https://perma.cc/TQR6-5CLA].

158. Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071.

159. 999 F.3d 157, 161–62 (2d Cir. 2021).

160. *Id.* at 170.

exactly the sort of intolerable racial discrimination prohibited by the Civil Rights Act.¹⁶¹

After successfully pleading a prima facie case, the burden shifted to the FDNY to justify its practice under the business necessity defense.¹⁶² In *Bey*, the court's assessment of business necessity worked against the plaintiffs.¹⁶³ Federal safety regulations required the FDNY to impose a clean-shaven policy on its employees.¹⁶⁴ Finding for the employer on this issue, the court reasoned that "complying with [a] legally binding federal regulation is, by definition, a business necessity and presents a complete defense to the Firefighters' disparate impact claim."¹⁶⁵ There is ample evidence, however, to doubt the validity of the federal regulation and the court's interpretation that *only* strict compliance by the fire department is sufficient to satisfy business necessity.¹⁶⁶

Following a successful defense by the FDNY, the burden shifted back to the plaintiffs to plead an alternative, non-discriminatory policy that would achieve the same business objectives.¹⁶⁷ Instead of evaluating the proposed alternatives on the merits, the court refused to consider these claims because the plaintiffs failed to raise them at the trial court level.¹⁶⁸ Since the plaintiffs failed to show a valid, non-discriminatory alternative, the court ruled in favor of the employer.¹⁶⁹

161. See Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071.

162. *Bey*, 999 F.3d at 170.

163. See *id.* at 170–71.

164. *Id.* at 165–66.

165. *Id.* at 171.

166. See *id.* at 167 (citing an interpretive OSHA letter relied on by the district court: "Facial hair is allowed so long as it does not protrude under the respirator seal, or extend far enough to interfere with the device's valve function. Short mustaches, sideburns, and small goatees that are neatly trimmed so that no hair compromises the seal of the respirator usually do not present a hazard and, therefore, do not violate [the regulation]"). For the agency's clarification on respiratory protection standards, see Letter of Interpretation from Thomas Galassi, Dir., OSHA Directorate of Enforcement, to Matthew Sands (May 9, 2016) [hereinafter OSHA Letter of Interpretation], <https://www.osha.gov/laws-regs/standardinterpretations/2016-05-09> [<https://perma.cc/MA4M-WELK>].

167. *Bey*, 999 F.3d at 170.

168. *Id.* at 169–70.

169. *Id.* at 171.

The holding in *Bey* has tragic implications for black men: “With millions of workers required to wear a respirator in the workplace, the *Bey* decision will have a profound impact on Black men with PFB and other men who need to maintain facial hair for medical [] reasons when they seek employment opportunities.”¹⁷⁰ There is a stark contrast between the *Bey* and *Fitzpatrick* decisions, which itself has a negative impact on black men.¹⁷¹ Both cases involved the same federal regulation that required employees using respirators be clean-shaven.¹⁷²

In *Fitzpatrick*, the employer’s justification was predicated on expert testimony and the guidelines of the federal regulation.¹⁷³ Instead of definitionally determining that a federal regulation satisfies business necessity, the *Fitzpatrick* court weighed evidence from both parties before making a final determination.¹⁷⁴ In contrast, the *Bey* court determined that the existence of a federal regulation automatically establishes a business necessity defense, even when the employer’s practice goes beyond what is recommended by the federal regulation.¹⁷⁵ The *Bey* decision effectively prevents a plaintiff from proposing less discriminatory alternatives, which is especially problematic considering the new evidence that has surfaced since the *Fitzpatrick* decision.

Passage of the 1991 Act was a promising step forward for racial equality. Application of the 1991 Act has proven the opposite—at least in part. Courts should evaluate modern data and evidence instead of blindly deferring to federal regulations. PFB cases instead reveal a reality that does not comport with this ideal. On the surface, courts are seemingly justified to defer to OSHA regulations governing the use of respirators. A keener eye, however, would reveal that the OSHA regulation at issue in *Bey* did not require strict adherence. An interpretive letter

170. Jiang, *supra* note 59, at 160.

171. See *infra* notes 163–66 and accompanying text.

172. See *Bey*, 999 F.3d at 165–66; *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1112–14 (11th Cir. 1993).

173. 2 F.3d at 1119–20.

174. *Id.* at 1126–27.

175. *Bey*, 999 F.3d at 170–71.

published by OSHA explicitly permits short beard growth so long as it does not interfere with respirator use.¹⁷⁶ Notwithstanding this letter, the *Bey* court denied black men their right to racial equality.¹⁷⁷ Now, black men are faced with a choice: keep mutilating their bodies to pursue their careers in service of the public or abandon their career paths to avoid further degradation and self-harm. While the entire 1991 Act may not have been a failure, its shortcoming with respect to PFB plaintiffs is blaringly deficient.

This deficiency will lead to less black men occupying jobs involving respirator use, and it will cause negative effects to the physical wellbeing of black men who continue to serve the public despite the detrimental impact of shaving on their dermatologic health.

iii. *Bradley v. Pizzaco of Nebraska, Inc.*

When jobs do not require the use of respirators and courts apply a plaintiff-friendly approach, black men are much better situated. *Bradley v. Pizzaco of Nebraska, Inc.* involved a strict no-beard policy for all employees, including pizza delivery drivers.¹⁷⁸ Bradley, a black man afflicted with PFB, was fired for failing to comply with the no-beard policy.¹⁷⁹ Bradley succeeded at the *prima facie* stage by showing military studies and presenting medical testimony to establish the disparate impact of clean-shave policies on black men.¹⁸⁰

In employment contexts without respirators, employers find it difficult to justify a clean-shave policy under the business necessity standard. In *Bradley*, when the burden shifted to the employer to prove business necessity, the employer faced this

176. OSHA Letter of Interpretation, *supra* note 166.

177. *See Bey*, 999 F.3d at 170–71.

178. 7 F.3d 795, 796 (8th Cir. 1993).

179. *Id.* at 796.

180. *Bradley v. Pizzaco of Neb., Inc.*, 939 F.2d 610, 612–13 (8th Cir. 1991) . Further, the court held that Bradley was not required to produce statistical evidence comparing the racial composition of the labor market and the racial composition of his employer's workforce because Title VII "do[es] not require a showing of racial disparity at the bottom line of the employer's workforce." *Id.* at 613.

problem exactly.¹⁸¹ The burden is on the employer “to show a substantial business justification for its strict no-beard policy,” which includes a “manifest relationship to the employment in question.”¹⁸² The employer in *Bradley* claimed that “the better our people look, the better our sales will be.”¹⁸³ To support this assertion, the employer cited a survey indicating that up to twenty percent of customers negatively reacted to a delivery person with a beard.¹⁸⁴ Additionally, the employer claimed it would be difficult to monitor exceptions to the grooming code across such a large number of employees.¹⁸⁵ Describing these justifications as “speculative and conclusory,” the court rejected the employer’s business necessity defense.¹⁸⁶

The result of the *Bradley* case is positive for black men. In the end, the appellate court ordered the issuance of an injunction requiring the employer to recognize “a limited exception to its no-beard policy for African American males who suffer from PFB and as a result of this medical condition are unable to shave.”¹⁸⁷ Limited exceptions to facially neutral policies, such as the one in *Bradley*, do not place black men on a pedestal of privilege in the workplace, but instead allow black men to rise to a level of equality with their fellow employees by removing an unnecessary impediment to their chosen career.

One might have hoped that *Bradley* would spur a flurry of successful challenges to private employers’ clean-shave policies. But one would be disappointed to find that this is yet another ideal that does not comport with reality. Even as recent as 2020, PFB plaintiffs have failed in these actions against private employers.¹⁸⁸ Advocates have failed to formulate successful arguments and courts have failed to provide black men with

181. *Pizzaco*, 7 F.3d at 797–98.

182. *Id.* at 798.

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.* at 799.

188. See *Forkin v. United Parcel Serv.*, No. 18-CV-3397 (MKB), 2020 WL 9816001, at *8–9 (E.D.N.Y. Nov. 10, 2020).

equal protection under the law. However unfortunate these circumstances may be, there are sufficient means of challenging these policies.

3. *How disparate impact claims involving PFB victims should be assessed moving forward*

This Part began by chronicling the story of Joseph Lewis, a black man suffering from PFB, who was forced to leave his job after having to repeatedly renew his shaving exemption and being harassed by fellow employees and his superiors about his medical condition.¹⁸⁹ This case is just one example of how black men are denied justice due to the incorrect application of legal standards. Lewis's disparate impact claim was rejected at the first step of the burden-shifting framework.¹⁹⁰ Under the Civil Rights Act of 1991, the prevalence of evidence regarding respirators and the well-known effects of PFB, Joseph Lewis should have been successful in challenging the clean-shave policy of the Penn Police Department.

The prima facie burden borne by the plaintiff at the outset of a disparate impact claim should be automatic for claimants suffering from PFB, assuming the plaintiff pleads the proper statistics.¹⁹¹ This prima facie burden requires the identification of an employment practice (a clean shave policy); a statistical disparity among black men (up to 85% of black men suffer from PFB); and a causal connection between employment practice and the disparity (if black men cannot comply with the shaving policy due to PFB, this may result in termination of their employment or other disciplinary actions negatively affecting their employment status).¹⁹² In the case of Joseph Lewis, the Penn Police enforced a strict clean shave policy; Lewis was a black man who suffered from PFB; and when Lewis did not comply with

189. See *Lewis v. Univ. of Pa.*, No. 16-5874, 2018 WL 583127, at *2, *16 (E.D. Pa. Jan. 29, 2018).

190. *Id.* at *4-5.

191. For more literature on pleading statistical disparity under a prima facie burden, see Kevin Tobia, Note, *Disparate Statistics*, 126 YALE L.J. 2382, 2385 (2017).

192. *Id.*; see 42 U.S.C. § 2000e-2(k)(1)(A).

the clean shave policy, he was suspended, threatened, taken off assignments, and deprived of his police car.¹⁹³

When the burden shifts to the employer to prove business necessity, any job that does not require respirator use must provide an accessible exemption to the clean shave policy or abolish the policy altogether. For jobs that require respirator use, short beard growth should be permitted—less than one-quarter of an inch—and, at minimum, black men with PFB should not be required to shave in areas where the respirator seal does not connect with the face. In Lewis's case, the employer did not claim business necessity based on respirator use, so the employer should have provided Lewis with an accessible exemption to the policy.¹⁹⁴ Instead, the employer required Lewis to renew his shaving exemption every sixty days.¹⁹⁵ Additionally, Lewis's supervisors constantly monitored and harassed him about having a beard, suspended him, and revoked previously granted assignments, despite Lewis's valid exemption from the shaving policy.¹⁹⁶ By forcing Lewis to repeatedly renew his exemption and subjecting him to harassment and retaliation, the employer did not provide Lewis with a sufficient exemption.¹⁹⁷ The procedural requirements and social pressure exerted on Lewis because of his shaving exemption were not consistent with the employer's business necessity.¹⁹⁸

If the employer successfully raises a business necessity defense, there are several viable and less discriminatory alternatives that plaintiffs can supply.¹⁹⁹ First, the employer can allow a shadow beard program, where employees with PFB are permitted to maintain short facial hair growth, but keep the facial hair below a level that would hinder effective respirator

193. *Lewis*, 2018 WL 583127, at *2.

194. *See id.*

195. *Id.*

196. *Id.*

197. *See id.*

198. *See id.* at *4.

199. Joseph P. Loudon & Timothy D. Loudon, *Applying Disparate Impact to Title VII Comparable Worth Claims: An Incomparable Task*, 61 IND. L.J. 165, 168–69 (1986).

operation.²⁰⁰ Second, the employer can allow employees with PFB to shave only in those areas where a respirator would seal against the wearer's face.²⁰¹ This method would prevent PFB symptoms in some areas, which is preferable to forcing a man to shave his entire beard.²⁰² Third, employers can make shaving exemptions more accessible and less burdensome to those who suffer from PFB.²⁰³ Less burdensome exemptions should prohibit employers from requiring repetitive proof of a medical condition, reduce the organizational levels of approval a shaving exemption must pass through, and decrease the monetary burden on black men seeking these exemptions. In Lewis's case, any of these alternatives would have been less discriminatory while allowing the employer to achieve its business objectives.²⁰⁴

Given the current state of the law, in conjunction with evidence of PFB and the effectiveness of respirators with short facial hair, courts should be more willing to decide disparate impact claims in favor of black men with PFB. Failure to apply the proper legal standards or weigh the evidence equitably will result in illegal racial discrimination against black men.

E. How to End Workplace Discrimination Against Black Men with PFB

Black men are harmed by employers who require employees to maintain a close skin shave as a condition of

200. See *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1114 (11th Cir. 1993).

201. OSHA Letter of Interpretation, *supra* note 166.

202. See *id.*

203. See *Bradley v. Pizzaco of Neb., Inc.*, 7 F.3d 795, 799 (8th Cir. 1993) (requiring a narrow medical exception to a no-beard policy for employees with PFB and noting the "burden of a narrow medical exception . . . appears minimal," with injunctive relief "carefully tailored" to impose only a "minimal burden" on the employer).

204. One would assume that the "business" goals of a police department are something like maintaining order, peace, and safety, so it would be difficult to imagine why requiring officers to be clean-shaven supports these objectives in the slightest. *But see* Gregory S. Anderson & Darryl Plecas, *Studying Public Perceptions of Police Officer Grooming Standards*, 70 POLICE CHIEF 42, 42 (2003) (suggesting that officer grooming standards influence public perceptions of professionalism and authority, thereby supporting broader law enforcement objectives).

employment.²⁰⁵ Even those employers who allow exemptions to clean-shave requirements impose overly burdensome requirements on black men seeking exemptions from those shaving policies.²⁰⁶ Employers' failure to account for the unique position of black men, when it comes to grooming, is caused by the collision of historical racial discrimination and exclusionary professionalism.²⁰⁷ When black men bring this issue into the legal system, our courts fail to provide them with consistent and predictable access to justice.²⁰⁸ There are three ways that employers, policymakers, and lawyers can prevent this harm to black men.

First, employers should account for black men who suffer from PFB in their employment practices. This can be accomplished in several ways. Employers can avoid these issues altogether by not requiring their employees to maintain a close skin shave. Employers with shaving requirements for substantial business reasons should have accessible and uncostly exemptions available to black men with PFB. For employers who must adhere to federal grooming guidelines for safety reasons, a narrowly tailored employment policy regarding shaving can be implemented. Such a policy may allow the short beard growth or permit employees to partially shave only in those places where it is essential to ensure safety. Additionally, harassment or unfair treatment of employees with shaving waivers should be met with disciplinary action. Sensible employment policies regarding grooming will remove an unnecessary impediment to black men in the workplace.

Second, policymakers should prohibit clean shave policies in employment contexts where a clean shave is not essential to ensure safety. When a clean shave is essential for ensuring safety, employers should be mandated to provide resources

205. *See supra* Section I.C.

206. *See supra* Section I.D.

207. *See supra* Sections I.A–B.

208. *See* Yucheng (Renee) Jiang, *Reasonable Accommodation and Disparate Impact: Clean Shave Policy Discrimination in Today's Workplace*, 51 J.L., MED. & ETHICS 185, 188 (2023); *supra* Section I.D.

and access to treatment for black men with PFB. If a clean shave is required, employers should relax dress requirements for black men with PFB, so there is no garment pressed against the face and neck that causes the proliferation of PFB symptoms. Employers who fail to implement sensible clean-shave policies should be required, by law, to take the unique grooming issues of black men into account.

Third, lawyers should advocate for reform of the legal standards governing disparate impact claims by black men with PFB. Under the Civil Rights Act of 1991, courts can provide protection to black men suffering from PFB, but they must also do so in a consistent and predictable manner.²⁰⁹ The tools available to litigators in these cases are more than sufficient to construct a winning legal argument for clients suffering from PFB. Even if employers and policymakers fail to enact practices or laws that adequately account for black men with PFB, accessible means of legal redress through the judicial system can prevent unnecessary harm to black men.

II. PFB PROBLEMS IN THE MILITARY

When Master Sergeant Darhem Victor Parker was informed of his promotion to the rank of first sergeant, “he had his command photo taken immediately so he could hit the ground running.”²¹⁰ Later that month, Parker uploaded a video to his TikTok account exhibiting the photo.²¹¹ Parker’s image depicts a black man outfitted in his camo U.S. Army uniform, a crisp high and tight haircut, and a neatly trimmed, well-shaped beard.²¹² In his video, Parker referred to the image and happily

209. See Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071.

210. Riley Ceder, *Soldier Says He Lost a Leadership Position Due to His Beard*, ARMY TIMES (May 16, 2024) [hereinafter *Soldier Lost Leadership Due to His Beard*], <https://www.armytimes.com/news/your-army/2024/05/16/soldier-says-he-lost-a-leadership-position-due-to-his-beard/> [https://perma.cc/3AS6-MY9K].

211. *Id.*; Video posted by Darhem Victor Parker (@blackunicorn2026), TIKTOK, (Apr. 30, 2024), https://www.tiktok.com/@blackunicorn2026/video/7363797730701069614?is_from_webapp=1&sender_device=pc [https://perma.cc/2LT5-JQ85].

212. See *Soldier Lost Leadership Due to His Beard*, *supra* note 210; Parker, *supra* note 211.

recognized how people would not believe the U.S. Army permitted a first sergeant to fashion a beard.²¹³ A shaving profile enabled Parker to wear a beard—an exemption from the Army’s clean-shave policy—that he obtained due to a skin condition.²¹⁴ Perhaps unwisely, Parker noted, “Somebody in real life is gonna see that picture on their wall and gonna be pissed the fuck off.”²¹⁵ He was right.

The Army formally reprimanded Parker for “taunting” in his online video.²¹⁶ After the post, Parker was also admonished by the battalion sergeant major, who claimed that certain unnamed persons were upset about Parker’s video.²¹⁷ The Army prohibited Parker from posting on social media and forced him to teach a class on online misconduct.²¹⁸ Unexpectedly, the battalion sergeant major directed Parker “to cut his hair, fix his beard, and retake his command photo.”²¹⁹ Specifically, Parker was told that his beard was not compliant with Army regulations, but Parker found it difficult to “abide by ambiguous, [and] sometimes confusing guidelines.”²²⁰

A few days later, Parker uploaded another TikTok video claiming how grateful he was to have been reported because it gave him the chance to discuss issues regarding promotions for individuals with shaving profiles.²²¹ The battalion sergeant major, and now the battalion commander, summoned Parker after he uploaded the second video.²²² This time, Parker’s promotion was revoked completely.²²³

Men like Master Sergeant Parker should not be subjected to adverse career ramifications based on shaving exemptions. He

213. See *Soldier Lost Leadership Due to His Beard*, *supra* note 210; Parker, *supra* note 211.

214. See *Soldier Lost Leadership Due to His Beard*, *supra* note 210.

215. See *id.*; Parker, *supra* note 211.

216. See *Soldier Lost Leadership Due to His Beard*, *supra* note 210.

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

is not alone. Studies discussed below reveal statistical evidence of black men in the military suffering from adverse career consequences due to their shaving exemptions.²²⁴ Additionally, new military policies are increasing the negative impact of shaving requirements on black military men by forcing them to choose between laser hair removal and administrative separation (ceasing military service).²²⁵ These policies perpetuate discrimination against black men with shaving exemptions and will likely cause many of them to exit military service altogether.²²⁶

A. Overview of PFB in the Military

As early as 1974, the prevalence of PFB in the military was well-documented among black men.²²⁷ At that time, the number of black men affected by PFB was uncertain.²²⁸ Although the extent of PFB was unknown, the disease was clearly caused by the military's clean-shave policies.²²⁹ Of the black servicemen who were suffering from PFB, only 42% reported they were aware of their condition before entering the military.²³⁰ Black soldiers needed approval from their supervisor or commander, usually a white person, to obtain shaving profiles to mitigate their PFB symptoms.²³¹ At the time, many Black men "felt they were being unfairly harassed because they wore beards."²³² 72% of black servicemen felt "th[is] harassment was racially motivated."²³³

224. See *infra* notes 259–264 and accompanying text.

225. See, e.g., U.S. Sec'y of the Army Memo, *supra* note 25 (Army grooming standards); *Uniform and Grooming Standards for Medical Conditions*, *supra* note 25 (Marine Corps grooming standards); Lieutenant Gen. Memo, *supra* note 25 (Air Force grooming standards). For an explanation of these regulations, see Vandiver, *supra* note 25; *Marine Corps Tightens Rules on Shaving Waivers*, *supra* note 25.

226. See Vandiver, *supra* note 25.

227. Alvin M. Alexander & Walter I. Delph, *Pseudofolliculitis Barbae in the Military: A Medical, Administrative and Social Problem*, 66 J. NAT'L MED. ASS'N 459, 459 (1974).

228. *Id.* at 459–60.

229. See *id.* at 463.

230. *Id.*

231. *Id.*

232. *Id.*

233. *Id.*

Whether this harassment was actually on account of race is irrelevant because perceptions determine behavior.²³⁴ Therefore, perceptions by black men of racially motivated harassment caused them to ignore their skin condition and shave, or abstain from shaving and face discipline for violation of military appearance standards.²³⁵

Awareness of PFB issues in the military has gained traction since the 1970s.²³⁶ This awareness, however, has only been realized in the last few years.²³⁷ Between 2021 and 2023, shaving waivers for medical conditions dramatically increased.²³⁸ Waivers for PFB alone rose from 10,965 to 18,991 during this period.²³⁹ Additionally, some branches of the military altered policies to address concerns associated with shaving profiles and PFB treatment.²⁴⁰

Recent studies have established more concrete data regarding the proportion of black men afflicted with PFB.²⁴¹ Since many black men may not be aware of their condition—because they are not always forced to shave—these studies estimate that 45–85% of black men may suffer from PFB.²⁴² Military cases of PFB “have skyrocketed since 2000.”²⁴³ Even now, this condition

234. *Id.*

235. *See id.*

236. *See* Michael T. Tshudy & Sunghun Cho, *Pseudofolliculitis Barbae in the U.S. Military*, 186 MIL. MED. e52, e53 (2021).

237. *See* Thomas Novelty, *Medical Beard Waivers Nearly Double in Air Force and Space Force in Just 3 Years*, MILITARY.COM (Apr. 8, 2024, at 16:25 ET), <https://www.military.com/daily-news/2024/04/08/medical-beard-waivers-nearly-double-air-force-and-space-force-just-3-years.html> [<https://perma.cc/QW7A-WZH8>].

238. *Id.*

239. *Id.*

240. *Compare* Okonkwo et al., *supra* note 92, at 143 (claiming that military policies in 2021 prohibited the shaping of one’s beard while on a shaving profile), *with* Jung et al., *supra* note 157, at 300 (asserting that previous Naval policy prohibited shaping one’s beard, but current Naval policy does not require a sailor to grow his beard without shaping or outlining).

241. *See* Sharma et al., *supra* note 4, at 173; Jiang, *supra* note 59, at 152 (citing Roopal V. Kundu & Stavonnie Patterson, *Dermatologic Conditions of Skin Color: Part II. Disorders Occurring Predominantly in Skin of Color*, 87 AM. FAM. PHYSICIAN 859, 860 (2013)).

242. *See* Sharma et al., *supra* note 4, at 173; Jiang, *supra* note 59, at 152 (citing Roopal V. Kundu & Stavonnie Patterson, *Dermatologic Conditions in Skin of Color: Part II. Disorders Occurring Predominantly in Skin of Color*, 87 AM. FAM. PHYSICIAN 859, 860 (2013)).

243. Hope Hodge Seck, *Military Cases of Condition Made Worse by Shaving Have Skyrocketed*, MIL. TIMES (Sep. 13, 2023), <https://www.militarytimes.com/news/your-marine->

receives little attention despite its widespread impact. This lack of acknowledgement is evidenced by the wide-ranging estimates emanating from sources focused on PFB in the military.²⁴⁴

Regardless of any shortcomings of the PFB data, the evidence still shows an unacceptable bias against black men in the military. Despite this evidence, newly appointed Secretary of War, Pete Hegseth, aroused a wave of shaving policy changes across the military branches upon taking office. Hegseth directed the U.S. military to conduct a force-wide review of military standards, including standards pertaining to grooming, “which includes but is not limited to beards.”²⁴⁵ The directive ordered a comprehensive review of these standards and how they have changed since 2015.²⁴⁶ In response, the Army, Marine Corps, Air Force, and Space Force each enacted more restrictive clean shave policies.²⁴⁷ These policies escalate the negative implications of shaving requirements on black military men.

B. Current Military Shaving Policies

Each branch of the U.S. military has adopted a very detailed grooming policy that governs everything from haircuts and facial hair to fingernails and makeup.²⁴⁸ Generally, beards are

corps/2023/09/14/military-cases-of-condition-made-worse-by-shaving-have-skyrocketed/
[<https://perma.cc/87ZJ-J2GB>].

244. *Compare id.* (stating that military cases of PFB have grown from 50 cases in 2,000 to 2,404 cases in 2022), *with* Novelly, *supra* note 237 (reporting that shaving waivers for PFB grew from 10,965 in 2021 to 18,991 in 2023), *with* Sharma et al., *supra* note 4, at 173 (claiming the prevalence of PFB in Black men ranges between 45% and 83%), *with* Jiang, *supra* note 59, at 152 (asserting that PFB affects up to 85% of black men).

245. Memorandum from Pete Hegseth on Rapid Force-Wide Review of Military Standards to Senior Pentagon Leadership, Commanders of the Combatant Commands, Def. Agency, & DOD Field Activity Dirs., (Mar. 12, 2025) [hereinafter Memorandum for Senior Pentagon Leadership].

246. *Id.*

247. *See* U.S. Secretary of the Army Memo, *supra* note 25; *Uniform and Grooming Standards for Medical Conditions*, *supra* note 25; Lieutenant General Memo, *supra* note 25.

248. *See e.g.*, *Army Updates Standards for Appearance, Grooming, Uniform Wear in New Directive*, U.S. ARMY (Sep. 15, 2025), https://www.army.mil/article/288397/army_updates_standards_for_appearance_grooming_uniform_wear_in_new_directive [<https://perma.cc/M8TT-3YKH>] (describing policy changes, including standards for “cosmetics, fingernails, and jewelry”); U.S. Secretary of the Army Memo, *supra* note 254; *Uniform and Grooming Standards for Medical Conditions*, *supra* note 25; Lieutenant General Memo, *supra* note 25.

strictly prohibited unless a soldier can obtain a medical or religious exemption.²⁴⁹ The reasons for such a prohibition are varied. Secretary Hegseth's review of military grooming policy cited a need to maintain discipline and "the standards that enable the men and women of our military to protect the American people and our homeland as the world's most lethal and effective fighting force."²⁵⁰ Another justification cites the need to wear a gas mask with an airtight seal.²⁵¹

Men who suffer from PFB can obtain exemptions from the clean shave requirements.²⁵² These exemptions are often referred to as "shaving profiles."²⁵³ Although the military allows these soldiers to avoid harmful shaving requirements, complying with these policies is not always so simple. Being on a shaving profile can lead to discrimination and abuse.²⁵⁴ When faced with a choice between a harmful shaving regimen and discrimination, black service members often choose the former.²⁵⁵ One study of PFB in the military vividly described the impact of such a choice: "[O]ur [] personal experiences with PFB regulations in the U.S. military have found us sacrificing our skin by shaving over fibrotic tissue, ingrown hair, and bumps, only to leave our faces looking like a battlefield."²⁵⁶

Shaving profiles are common in the military. A shaving profile allows soldiers "to grow [their] facial hair beyond what is allowed by regulation."²⁵⁷ Studies have shown that a negative bias exists against those who obtain waivers from the shaving

249. See U.S. Secretary of the Army Memo, *supra* note 25 *Uniform and Grooming Standards for Medical Conditions*, *supra* note 25; Lieutenant General Memo, *supra* note 25.

250. Memorandum for Senior Pentagon Leadership, *supra* note 245.

251. Steve Beynon, *New Army Shaving Policy Will Allow Soldiers with Skin Condition That Affects Mostly Black Men to Be Kicked Out*, MILITARY.COM (June 27, 2025, at 11:16 ET), <https://www.military.com/daily-news/2025/06/27/new-army-shaving-policy-will-allow-soldiers-skin-condition-affects-mostly-black-men-be-kicked-out.html#> [https://perma.cc/6F3Q-CWW9] ("But a 2021 study from Military Medicine, [however,] found there's no conclusive evidence that a well-groomed, modest beard interferes with mask function.").

252. See Banta et al., *supra* note 157, at 187.

253. See *id.*

254. *Id.* at 188.

255. See Okonkwo et al., *supra* note 92, at 143.

256. *Id.*

257. See Banta et al., *supra* note 157, at 187.

requirements.²⁵⁸ A 2020 analysis was conducted to determine the effects of shaving profiles on Air Force service members.²⁵⁹ The study concluded that, at minimum, a perception exists among active-duty members that being on a shaving profile “has negatively affected their career and that this disproportionately affects members of skin of color.”²⁶⁰

This study was not the first to investigate the negative impacts of shaving regulations and shaving profiles in the military.²⁶¹ Decades earlier, two studies from military physicians found widespread discrimination and sometimes abuse of members suffering from PFB.²⁶² In particular, black service members who suffer from PFB “face significant career ramifications.”²⁶³ These studies clearly show that the former military grooming policies did not adequately account for Black men. Unfortunately, the new and regressive military policies take an even further step back.²⁶⁴

In July 2025, the Army released “Army Directive 2025-13 (Facial Hair Grooming Standards).” Here is the directive’s self-proclaimed purpose:

This directive establishes new policy for facial hair grooming standards. This directive also prohibits permanent shaving profiles and provides the means for command teams to document and verify a Soldier’s basis for a beard. The intent of this directive is to provide refined grooming standards for medical providers and commanders to implement, in support of Army readiness.²⁶⁵

Presumably, this directive is a response to Secretary Hegseth’s memorandum earlier in the year, calling for a review

258. *Id.* at 187–88.

259. *Id.* at 187.

260. *Id.* at 188.

261. *Id.* at 188–89 (citing Alexander & Delph, *supra* note 15, at 459–64, 479).

262. Banta et al., *supra* note 157, at 188–89.

263. Okonkwo et al., *supra* note 92, at 143.

264. See Memorandum from the Sec’y of the Army on Army Directive 2025-13 (Facial Hair Grooming Standards) (July 7, 2025) [hereinafter Army Directive 2025-13].

265. *Id.*

of all military grooming standards, including beards. The Army's new grooming policy exacerbates the burden on Black men who suffer from PFB. The new policy specifically addresses military men with PFB.²⁶⁶ Soldiers with a shaving profile already in existence at the time of the directive were required to report for re-evaluation by a medical provider within 90 days of the directive.²⁶⁷ "If the medical provider determines that re-issuance of the shaving profile is necessary, the Soldier's profile will detail the medical treatment and *expected time of recovery*."²⁶⁸ This policy fails to reflect the nature of PFB, which cannot be permanently eradicated except by laser hair removal, since the condition results from hair texture and growth patterns.²⁶⁹ Under this policy, a soldier can "recover" from the razor bumps only for the problem to arise again once the soldier resumes shaving.²⁷⁰ It defies logic—and violates basic decency—to force someone with a medical condition to repeatedly provoke symptoms to prove that the condition exists. The implementation of this policy reflects a troubling indifference to the unique health conditions disproportionately affecting black men.²⁷¹

The medical provider is also required to develop a treatment plan. Treatment plans fall into one of four phases, based on the severity of the PFB.²⁷² Phases I–III provide for time-limited exemptions from shaving requirements.²⁷³ Phase I allows an exemption for up to 30 days; Phase II provides an exemption for up to 60 days; and Phase III provides an exemption for up to 90 days.²⁷⁴

In Phase IV, the Army's policy continues to be problematic. Listed as "optional," Phase IV addresses PFB cases where

266. *See id.*

267. *See id.* at 2.

268. *Id.* (emphasis added).

269. *See* Banta et al., *supra* note 157, at 187.

270. *See* Okonkwo et al., *supra* note 92, at 143.

271. *See id.* at 144.

272. *See* Army Directive 2025-13, *supra* note 264, at 2–3.

273. *See id.*

274. *Id.*

soldiers' conditions are not ameliorated by Phases I–III or where the condition is recurring frequently.²⁷⁵ In these cases, Phase IV allows medical providers to refer soldiers to “specialty care and more targeted treatment such as laser treatment.”²⁷⁶ Another provision reads: “[a]n accumulation of ETPs [(exceptions to the policy)] to the facial hair grooming standards totaling over 12 months in a 24-month period may result in an administrative separation.”²⁷⁷

The above language, in conjunction with Phase IV's requirements, effectively drives soldiers with PFB out of the military. This provision is a drastic shift from the previous Army policy that permitted permanent shaving waivers.²⁷⁸ Now, a soldier's only alternative to “administrative separation” is to undergo laser hair removal.²⁷⁹ Thus, the Army's new grooming policy forces black men—who disproportionately suffer from PFB—into a “heads I win, tails you lose” situation.²⁸⁰

The Marine Corps adopted a policy identical to that of the Army, thereby increasing the negative impact of these policies on black men in the military.²⁸¹

The Air Force also adopted stricter grooming standards in 2025. Changes in Air Force policy, however, were enacted before Secretary Hegseth's prodding.²⁸² Now, only airmen with severe cases of PFB will be able to receive long-term shaving

275. *Id.* at 2–3.

276. *Id.*

277. *Id.* at 3.

278. See Steve Beynon, *Army Policy Severely Limiting Shaving Waivers Goes into Effect*, MILITARY.COM (July 9, 2025, at 15:10 ET), <https://www.military.com/daily-news/2025/07/09/army-policy-severely-limiting-shaving-waivers-goes-effect.html> [<https://perma.cc/5DS2-6FGT>].

279. See *id.*; U.S. Sec'y of the Army Memo, *supra* note 25, at 3.

280. See Beynon, *supra* note 251.

281. See *Uniform and Grooming Standards for Medical Conditions*, *supra* note 25; *Marine Corps Tightens Rules on Shaving Waivers*, *supra* note 24; Vandiver, *supra* note 25.

282. Memorandum from John De Goes, Surgeon Gen., Dept. of the Air Force to ALMAJCOM/SG & ALMAJCOM/SG (Jan. 24, 2025) (on file with author) [hereinafter 2025 Shaving Med. Guidance Letter].

waivers.²⁸³ Previously, those suffering from PFB could receive five-year shaving waivers,²⁸⁴ but this policy was repealed because it “did not give medical providers enough clarity on diagnosing PFB.”²⁸⁵ A notice announcing this change explained that the former Air Force policy failed to distinguish painful cases of PFB from “common shaving irritation.”²⁸⁶

Although the Air Force has made a valiant effort to accommodate those suffering from PFB, the new policy still falls short.²⁸⁷ A news source tracking Air Force policy changes revealed a chart developed by the Air Force for medical providers to distinguish between common shaving irritation and PFB.²⁸⁸ Although this chart may be helpful for medical providers, it fails to adequately illustrate the steps or requirements for airmen seeking a shaving waiver.²⁸⁹ Instead of simplifying the shaving profile process, this policy modification heightens the obstacles facing soldiers with PFB. Not only must they deal with harassment and adverse career ramifications for having a shaving profile, but they must also navigate an unclear waiver process. Instead of making the process more difficult, all branches of the military should make clear the steps needed for shaving waivers so that our soldiers can avoid this unnecessary harm. By over-complicating the process, our military is facilitating the harm.

283. Stephen Losey, *Air Force Tightens Rules on Shaving Waivers, Uniform Patches*, A.F. TIMES (Jan. 30, 2025), <https://www.airforcetimes.com/news/your-air-force/2025/01/30/air-force-tightens-rules-on-shaving-waivers-uniform-patches/> [https://perma.cc/V8C8-BE7H].

284. Air Force Surgeon General Public Affairs, *Air Force Surgeon General Authorizes 5-Year Shaving Waivers*, A.F. (June 23, 2020), <https://www.af.mil/News/Article-Display/Article/2228965/air-force-surgeon-general-authorizes-5-year-shaving-waivers/> [https://perma.cc/E4DG-9DJ8]. The Air Force policy allowing for five-year shaving profiles was enacted in June 2020 and replaced the Air Force’s previous maximum shaving profile period of one year. *Id.*

285. *See* Losey, *supra* note 283.

286. *Id.*

287. *See id.*

288. Jeff Schogol, *Good Luck Figuring Out the Air Force’s Algorithm for Shaving Waivers*, TASK & PURPOSE (Apr. 23, 2025, at 14:10 ET), <https://taskandpurpose.com/news/air-force-shaving-chart/> [https://perma.cc/9TEZ-KWZH].

289. *See id.*

Additionally, and perhaps most harmfully, the new policy eliminated long-term shaving waivers.²⁹⁰ Even if the former Air Force policy did not effectively differentiate between common shaving irritation and PFB, this shortcoming does not supply a justification for eliminating long-term shaving waivers.²⁹¹ The absence of long-term waivers will create an administrative burden on Air Force medical providers to constantly re-evaluate and re-issue shaving waivers.²⁹² Medical providers will only be able to re-issue these shaving waivers if PFB is evident on the face of the soldier.²⁹³ Therefore, the new policy will also force airmen with PFB to trigger their condition by shaving, since the disease only manifests when a close skin-shave is performed.²⁹⁴ This Air Force policy, like that of the Army and Marine Corps, defies logic and violates basic decency.²⁹⁵

The Navy is the only military branch yet to adopt a new shaving exemption policy in 2025.²⁹⁶ In 2019, the Navy issued a comprehensive policy update for sailors diagnosed with PFB.²⁹⁷ This policy was similar to the policies described above. It did not allow permanent shaving waivers, provided laser hair removal as a recommended treatment, and allowed PFB to serve as grounds for an administrative separation.²⁹⁸ The Navy significantly improved its policy in 2022 by eliminating these harmful requirements.²⁹⁹

290. See Losey, *supra* note 283.

291. Lieutenant Gen. Memo, *supra* note 25.

292. See *id.*

293. See *id.*

294. See Kundu & Patterson, *supra* note 1, at 860.

295. U.S. Army Pub. Affs., *Army Updates Facial Hair Policy to Reinforce Grooming Standards*, U.S. ARMY (July 8, 2025), https://www.army.mil/article/286911/army_updates_facial_hair_policy_to_reinforce_grooming_standards [https://perma.cc/M8TT-3YKH]; Memorandum from Commandant of the Marine Corps to Distrib. List on Pseudofolliculitis Barbae (Oct. 9, 2012).

296. Memorandum from Chief of Naval Pers. on Mgmt of Navy Uniformed Pers. Diagnosed with Pseudofolliculitis Barbae (Oct. 8, 2019) [hereinafter Navy PFB Memo].

297. *Id.*

298. *Id.*

299. Jeanette Mullinax, *Navy Updates Policy for Sailors with Pseudofolliculitis Barbae (PFB)*, AMERICA'S NAVY (Mar. 9, 2022), <https://www.navy.mil/Press-Office/News-Stories/Article/2961376/navy-updates-policy-for-sailors-with-pseudofolliculitis-barbae-pfb/> [https://perma.cc/J4YY-JMZD].

After discussing the 2019 policy with sailors afflicted by PFB, the Navy updated its PFB management policy to reflect their concerns.³⁰⁰ First, the Navy prohibited PFB from serving as grounds for administrative separation.³⁰¹ Next, sailors are no longer required to consider laser hair removal as a required treatment for PFB.³⁰² And finally, sailors' may be re-evaluated for PFB every two years, rather than annually.³⁰³ Although the Navy's 2019 policy was misguided, the new approach more adequately accounts for sailors suffering from PFB.

Currently, the Navy's policy best addresses PFB. The Army and Marine Corps, whose policies are identical, each force black men with PFB into a decision between harming themselves and administrative separation.³⁰⁴ Air Force policy is difficult for airmen to navigate and fails to allow long-term shaving waivers, which are necessary for those who suffer from chronic PFB.³⁰⁵ Navy policy has been adapted to the concerns of sailors by removing PFB as a ground for administrative separation, allowing for longer re-evaluation periods, and axing the requirement to consider laser hair removal as a form of treatment.³⁰⁶

Military regulators deserve credit for the progress that has been made since black men began joining the U.S. military in larger numbers.³⁰⁷ The PFB problem was prevalent from the very beginning, but major headway has only occurred in the last two and a half decades.³⁰⁸ The number of shaving waivers granted has increased and treatment methods have evolved to

300. *Id.*

301. *See id.*

302. *Id.*

303. *Id.*; Navy PFB Memo, *supra* note 296.

304. *See* U.S. Sec'y of the Army Memo, *supra* note 25; *Marine Corps Tightens Rules on Shaving Waivers*, *supra* note 25.

305. *See* Matthew Cox, *Air Force: Medical Shaving Profiles Issued Before March Will Soon Be Invalid*, AIR & SPACE FORCES MAG. (Dec. 17, 2025), <https://www.airandspaceforces.com/air-force-medical-shaving-profiles-deadline-new-rules/#> [<https://perma.cc/7M43-L74N>].

306. Navy PFB Memo, *supra* note 296.

307. *See* Michael T. Tshudy & Sunghun Cho, *Pseudofolliculitis Barbae in the U.S. Military, a Review*, 186 MIL. MED. e52, e53 (2021).

308. *See* Adebola Ogunbiyi, *Pseudofolliculitis Barbae; Current Treatment Options*, 12 CLINICAL, COSM., & INVESTIGATIONAL DERMATOLOGY 241, 241 (2019).

manage PFB.³⁰⁹ Now, the military has begun a stage of regression concerning PFB treatment.³¹⁰ Three of the four military branches examined in this Article have made it more difficult for soldiers to obtain shaving waivers, reduced the time permitted for shaving exemptions, and forced soldiers to choose between laser surgery and administrative discharge.³¹¹ These ill-conceived policies will wreak an incalculable harm upon black men in the military.³¹²

C. *The Ideal Military PFB Policy*

In the current political climate, a progressive change in military policy looks bleak.³¹³ But the dim outlook of the current situation will not last forever. A future administration may be motivated to enact the changes that reduce the harm inflicted upon military men of color. An ideal military PFB policy would bear the following characteristics.

Permanent or long-term shaving waivers should be permitted.³¹⁴ PFB is triggered by shaving.³¹⁵ The most definitive treatment of PFB is cessation of shaving.³¹⁶ Annual re-evaluation does not prevent PFB from recurring.³¹⁷ If a soldier's PFB symptoms are reduced or eliminated by a year-long shaving abstinence, their symptoms are just as likely to re-emerge when further treatment is deemed unnecessary and the soldier is once again forced to shave.³¹⁸ Therefore, the best way to prevent the resurgence of PFB is by permanent or long-term shaving waivers.

309. See Tshudy & Cho, *supra* note 290, at e53–e54.

310. See Army Directive 2025-13, *supra* note 307.

311. See *supra* notes 245–51 and accompanying text.

312. See Banta et al., *supra* note 157, at 188–89.

313. See Memorandum for Senior Pentagon Leadership, *supra* note 245.

314. See *supra* Section III.B.

315. See Kundu & Patterson, *supra* note 1, at 860.

316. Sharma et al., *supra* note 4, at 173.

317. *Supra* Section II.C.

318. See Hana Numan, Jannet Gomez & Amanda Oakley, *Pseudofolliculitis Barbae*, DERMNET (Feb. 2022), <https://dermnetnz.org/topics/pseudofolliculitis-barbae> [<https://perma.cc/UB7L-WMVS>].

Soldiers should never be forced to decide between laser surgery and administrative discharge. Laser hair removal is not permanent, but its effects can outlast a soldier's time of service.³¹⁹ Also, there is something ethically troubling about forcing someone to consider surgery for a common condition. This is especially true in the context of historical racial discrimination based on physical characteristics.³²⁰ Current military policy recommends an extreme remedy to an issue that frequently arises with men of color.³²¹ This alone is dubious and objectionable.

If the recommended treatment is ineffective or a soldier refuses to comply, then PFB may become grounds for an administrative discharge.³²² Coupled with the recommended laser treatment, the possibility of administrative separation adopts a coercive character.³²³ Soldiers face a choice between discharge and laser surgery.³²⁴ This choice may be acceptable if shaving were an absolute necessity in the military. The latest justification for strict enforcement of clean shave policy, however, is based on discipline.³²⁵ Discipline is necessary to develop and maintain an effective fighting force.³²⁶ But there is no evidence to suggest that soldiers who grow beards out of medical necessity undermine the discipline of the entire military. Rather, soldiers with properly acquired shaving waivers have shown more discipline and compliance with military codes by enduring the shaving profile process.

319. See A. Krasniqi, D. P. McClurg, K. J. Gillespie & S. Rajpara, *Efficacy of Lasers and Light Sources in Long-Term Hair Reduction: A Systematic Review*, 24 J. COSM. & LASER THERAPY 1, 6 (2022).

320. See *supra* Section II.

321. See Army Directive 2025-13, *supra* note 264.

322. See *id.*

323. See *id.*

324. See *id.*

325. See Memorandum from the U.S. Dep't of Def. on Rapid Force-Wide Rev. of Mil. Standards to Senior Pentagon Leadership, Commanders of the Combatant Commands, Def. Agency & DOD Field Activity Dirs. (Mar. 12, 2025).

326. See *id.*

Another oft-cited justification is safety.³²⁷ Soldiers may, at times, need to wear respirators or gas masks for personal safety.³²⁸ While longer beards have been shown to prevent an airtight seal, further research is being conducted to determine whether short beards or “beard bands” can remedy this defect.³²⁹ “Beard bands” are rubber bands worn atop the beard growth, wrapping around the wearer’s head and allowing the gas mask or respirator to seal to a skin-like surface, instead of sealing against the wearer’s beard.³³⁰ While the effectiveness of beard bands has not been fully determined, they may yet present a viable alternative.

Regardless of whether short beards and beard bands can be worn with a gas mask, other prominent militaries have lifted the ban on soldiers’ beards.³³¹ Several foreign military forces allow troops to grow beards, including Britain, Germany, Denmark, and Belgium.³³² Although many other foreign militaries mirror the U.S. clean shave policy, being clean shaven is certainly not a necessity for every respectable military.³³³ Since

327. See Aris Copeland & Jonisha Pollard, *Beards and Respirators: Navigating No Shave November Safely*, CTR. FOR DISEASE CONTROL (Nov. 7, 2004), <https://www.cdc.gov/niosh/blogs/2024/beards-and-respirators.html> [https://perma.cc/E3S]-8KR8].

328. See *id.*

329. See Banta et al., *supra* note 157, at 188 (asserting that respirators can seal the vast majority of individuals with 1/8 inch of beard growth or less); see also Jung et al., *supra* note 157, at 301 (claiming that studies which tested the interference of facial hair with the effectiveness of gas masks did not explore how different lengths of facial hair would affect the seal of gas masks); see also Jiang, *supra* note 59, at 161 (discussing a case where a plaintiff firefighter was able to pass the District of Columbia Fire Department respirator fit test with a beard). Additionally, a 2021–2023 study has been conducted to evaluate the effectiveness of gas masks on those with beards, but the results of this study have not been released. Loewenson, *supra* note 157.

330. See Daryl Lindsay, Williams, Benjamin Kave, Charles Bodas, Fiona Begg, Megan Roberts & Irene Ng, *Prospective Comprehensive Evaluation of an Elastic-Band Beard Cover for Filtering Facepiece Respirators in Healthcare Workers*, 45 *INFECTION CONTROL & HOSP. EPIDEMIOLOGY* 89, 89 (2024).

331. See Ali Abbas Ahmadi, *Army Lifts Ban on Serving Soldiers Having Beards*, BBC (Mar. 29, 2024), <https://www.bbc.com/news/uk-68691987> [https://perma.cc/P8RU-6KU5].

332. See *id.*

333. See, e.g., Forces News, *Is It Time for a Trim? Check out the Facial Hair Facts Across the World’s Armed Forces* (Oct. 25, 2023, at 13:00 ET), <https://www.forcesnews.com/technology/uniform/time-trim-facial-hair-rules-across-worlds-militaries> [https://perma.cc/RC6K-4MCB] (listing foreign militaries that generally prohibit beards and maintain clean-shaven requirements

being clean-shaven is not required for an effective military, U.S. soldiers who cannot shave for medical reasons should not be administratively discharged.

Each military branch is responsible for adopting its own grooming policy. These policies may require soldiers to be clean-shaven, but they must also provide accessible exemptions tailored for soldiers with PFB. Failing to adapt grooming policy to account for soldiers with PFB directly harms black men. Such negligence will force black men out of the military and inflict unnecessary harm upon them. As black men occupy our battlefields, their faces need not look like one.

CONCLUSION

Black men are disproportionately affected by a shaving-related skin condition, yet grooming policies across civilian employment, first responder organizations, and the military continue to ignore this reality. When close-shave requirements are imposed without a legitimate safety justification, they perpetuate a legacy of racial discrimination that should have ended decades ago. Despite credible legal arguments and favorable precedent, the justice system has largely failed to provide meaningful relief for black men affected by these policies. Recent military grooming rules further entrench this harm by forcing black soldiers with PFB to choose between laser surgery and administrative discharge.

In the civilian context, employees may find relief using the legal arguments formulated in this Article, and employers should revise grooming standards to accommodate individuals with PFB. Policymakers should also enact protections against discriminatory clean-shave policies. The outlook for black service members, however, is more uncertain. While the Navy has adopted a comparatively accommodating approach, broader reform across the armed forces appears unlikely under current leadership. Meaningful protection for black soldiers suffering

similar to U.S. policy, including the Philippines, Nepal, South Korea, Syria, Australia, and Mexico).

from PFB may ultimately depend on political change driven by the electorate.