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Mr. Richard L. Skinner  
Inspector General  
U.S. Department of Homeland Security  
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Dear Mr. Skinner:

We write to request that you investigate a troubling practice that has come to the attention of the American Civil Liberties Union (“ACLU”) and Muslim Advocates: without individualized suspicion of wrongdoing based on credible evidence, U.S. Department of Homeland Security ("DHS") Customs and Border Protection ("CBP") officers are questioning U.S. citizens and legal residents who are Muslim, or appear to be Muslim, about their religious and political beliefs, associations, and religious practices and charitable activities protected by the First Amendment and federal law.

The ACLU and Muslim Advocates represent five individuals who have experienced this treatment when returning to the United States from abroad, as described in Appendix A. We believe the CBP exceeded its authority in these cases and violated the civil rights of these individuals. We request that you conduct an investigation to determine:

1. Whether DHS and/or CBP have a policy regarding the permissibility of questioning U.S. persons seeking to enter the United States about their religious or political beliefs, associations, religious practices or religious, charitable giving, and/or other First Amendment-protected activity and if so, whether such a policy comports with the Constitution, other federal laws, including the Religious Freedom Restoration Act ("RFRA"), and other agency policies, including the Department of Justice’s June 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies, and DHS’s June 2004 Commitment to Race Neutrality in Law Enforcement Activities.

2. Whether the conduct of the CBP officers in questioning individual travelers as described in Appendix A violated these individuals' constitutional rights, federal law, and/or agency policies.

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1 A “U.S. person” is an individual who is a citizen or legal resident of the United States.
3. Whether CBP officers are subjecting other travelers who are Muslim or appear to be Muslim to illegal and/or inappropriate questioning about their religious and political beliefs, associations, religious practices and charitable activities in violation of law or policy.

4. What standards govern how information provided by an individual in response to questioning about protected beliefs, associations, or activities is recorded and/or reported to, entered into, or disseminated through databases, or by other means, to other components of DHS, other government agencies, or persons or entities outside the government, and the standards governing the retention and destruction of such information.

Over the past several years, at ports, land border crossings, and international airports across the country, U.S. persons who are Muslim, or who are perceived to be Muslim, have been targeted by CBP officers for questioning about topics including their religious identity, what mosque they attend, how often they pray, their religious charitable giving, and their views on U.S. military engagement in Iraq and Afghanistan. Some have had the contents of their electronic devices, such as laptops and cell phones, searched and copied.

The U.S. government has a legitimate interest in verifying the identity and citizenship or legal status of individuals seeking to reenter the country. It also rightfully has an interest in ensuring that individuals who pose a threat to national security are detected and brought to justice. No legitimate government interest is served, however, when CBP officers question a U.S. person about his or her religious or political beliefs, associations, and religious practices and charitable activities in the absence of a reasonable suspicion, based on credible evidence, that the individual has engaged in criminal activity, and a nexus between such questions and the suspected activity. This practice harms our country's national security interests by wasting scarce government resources, generating false leads, and eroding the trust of these religious and racial/ethnic communities in law enforcement and government.

Questioning individuals about their protected religious and political beliefs, associations, and activities may infringe upon rights guaranteed by the Constitution and federal law—rights that are not surrendered at the border. These questions are not routine and, like any non-routine border search, are prohibited by the Fourth Amendment absent reasonable suspicion that the person has committed a crime. United States v. Montoya de Hernandez, 473 U.S. 531, 541 (1985). Similarly, government officials who question or search individuals at the border must respect those individuals' First Amendment rights to freedom of expressive association and free exercise of religion and rights under the Religious Freedom of Restoration Act (RFRA). See Tabbaa v. Chertoff, 509 F.3d 89, 102 (2d Cir. 2007) (finding that actions by CBP officers towards U.S. citizens seeking reentry to the United States burdened their right to association, thereby triggering First Amendment protection); id. at 105-06 (noting that both the Free Exercise Clause of the First Amendment and RFRA circumscribe government questioning and searches of individuals at the border when such action is not the result of a rule of general applicability and imposes a substantial burden on plaintiffs' exercise of faith).
Today, however, CBP officials are acting contrary to these fundamental rights and protections as illustrated by the experiences of each of the five individuals described in Appendix A. Each of these individuals is a U.S. citizen with a constitutional right to re-enter the United States from abroad. Yet, after determining their citizenship, CBP officers asked each person questions about their protected beliefs, associations, and activities. For example, CBP officers asked why he had converted to Islam, about his opinion of the U.S. occupation in Iraq, and about how often he prays in the course of a day. See App. A. The government officials involved in each of these cases went far beyond asking routine and permissible questions to verify a prospective entrant’s citizenship and identity, and the purpose and duration of the entrant’s trip abroad. See United States v. Silva, 715 F.2d 43, 47 (2d Cir. 1983) (routine questions include those about “citizenship, the length and purpose of [a prospective entrant’s] trip to Canada, [and] what items she had acquired or bought in Canada”). Several of these individuals were also subjected to lengthy detention.

We are not aware of any evidence supporting a reasonable suspicion that any of these individuals were or are involved in criminal activity. Even if CBP had reasonable suspicion, based on credible evidence, that these individuals were involved in criminal activity, questioning travelers about their First Amendment-protected beliefs, associations, and activities is only permissible in the narrowest of circumstances to establish whether further law enforcement action is necessary (e.g., when an individual suspect’s description is premised upon such characteristics). It appears that the government officials who questioned these five individuals failed to respect their rights guaranteed by the First and Fourth Amendments and the Religious Freedom of Restoration Act.

The five individual accounts detailed in Appendix A are not isolated instances. In 2009, Muslim Advocates chronicled the stories of twenty-one other travelers—twenty U.S. citizens and one lawful resident who are Muslim or were perceived to be Muslim—who were subject to this type of questioning at the border in its report, Unreasonable Intrusions: Investigating the Politics, Faith & Finances Returning Home. Additional accounts were also documented in a report by the Asian Law Caucus, Returning Home: How U.S. Government Practices Undermine Civil Rights At Our Nation’s Doorstep. CBP’s practice of questioning travelers who are Muslim, or who are perceived to be Muslim, about beliefs, associations, and activities protected by the First Amendment and federal law is widespread and has a detrimental impact, and despite at least two years of advocacy by civil rights organizations and impacted individuals, the practice has not stopped.

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It appears that CBP policy not only fails to prohibit, but actually permits officers to target U.S. persons who are Muslim, or who are perceived to be Muslim, for questioning about protected beliefs, associations and activities. When our client, (b)(6) wrote to CBP to complain that border agents had questioned him about his religious identity and practices, the chief officer of a CBP Field Office responded via email, “CBP Officers target extremists. In 2001, the U.S. was attacked by Islamist extremists. If a CBP Officer inquires as to a person’s religious beliefs in order to uncover signs of extremist tendencies, that Officer is well within his authority.” This response supports our concern that the questioning described is representative of a systemic problem: the targeting of Muslim travelers, or those who are perceived to be Muslim, for questions about their religious beliefs, associations, and practices, without any suspicion that they have engaged in criminal activity or any nexus between the questions and suspected activity that would permit this type of questioning.

We are also concerned with how DHS and CBP are storing and disseminating information collected during questioning of U.S. persons at the border, particularly the ways in which they share information with the Federal Bureau of Investigations (“FBI”). Timothy Healy, the Director of the Terrorist Screening Center of the FBI, has publicly described the Terrorist Enforcement Communication System (“TECS”) as a system used by CBP “to screen individuals at air, land, and sea ports of entry.” We have reason to believe that at least some of this information, unlawfully collected, is being saved and shared with other federal agencies. See, e.g., App. A at 1 (discussing questioning of (b)(6) Individuals questioned about their First Amendment-protected beliefs, activities, practices and associations at the border fear, therefore, that their responses to these questions are entered into TECS and disseminated to other government databases, including other parts of the consolidated Terrorist Screening Database, and will be used to unjustly target them for future law enforcement attention. Members of American Muslim, Arab, South Asian, and Sikh communities also worry that they may be subject to future invasive and illegal questioning or investigative activities about their protected beliefs, associations, and activities, and consequently feel chilled from exercising core rights to freedom of speech and association, and to the free exercise of religion.

U.S. citizens and legal residents have a right to know what questions they may be asked and what questions they are required to answer when they seek to reenter the United States from abroad. They also have a right to be free from intrusive government questioning about beliefs, associations, and activities protected by the First Amendment and federal law absent credible evidence supporting a reasonable suspicion that they are involved in specific criminal activity that would warrant such questioning. We therefore respectfully request that you undertake the investigation we have requested.

We appreciate your attention to this matter and look forward to your response.

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Sincerely,

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