



November 21, 2016

Hon. Jeh Charles Johnson
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

R. Gil Kerlikowske
Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500
WWW.ACLU.ORG

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT B. REMAR
TREASURER

Re: **Border detention and search of photojournalist Edward Ou;
denial of his application to enter the United States**
SIGMA Event 8145805
Event No. VCV1710000004

Dear Secretary Johnson and Commissioner Kerlikowske:

We represent Canadian photojournalist Edward Ou in connection with the Department of Homeland Security's decision to deny Mr. Ou entry into the United States on October 1, 2016, following an extended interrogation and search by U.S. Customs and Border Protection (CBP) at the Vancouver, Canada airport. The interrogation and search of Mr. Ou were harassing and exceptionally intrusive and went far beyond what would have been required to confirm Mr. Ou's identity, establish his credentials as a journalist, and determine his eligibility to enter the country. Furthermore, Mr. Ou's experience at the border raises troubling questions about whether the decision to deny him entry to the United States was either in retaliation for his work as a journalist or intended to prevent him from reporting on protests over planned pipeline construction in North Dakota. Neither of these is a legitimate reason for denial of admission. As set forth in more detail below, Mr. Ou is seeking assurance that he will not be subjected to intrusive and inappropriate searches in the future on the basis of his work as a journalist, and that CBP will purge any confidential information that it obtained inappropriately during the search.

Mr. Ou is a prominent and internationally renowned journalist who has traveled to the United States many times in connection with his work for major U.S. and international media organizations, including *The New York Times* and

TIME Magazine. He has also extensively covered the Middle East, Africa, and Central Asia for these and other organizations and is the recipient of awards from, among others, Pictures of the Year International and World Press Photo. He was an intern photojournalist at *The New York Times* in 2010 and 2011, during which time he worked in the United States on an O-1 visa. As you know, such visas are awarded only to “aliens of extraordinary ability.” Mr. Ou is currently represented as a photojournalist by Getty Images Reportage and is a TED Senior Fellow.

As part of an assignment for the Canadian Broadcasting Corporation, Mr. Ou attempted to travel from Canada to the United States on October 1, 2016 to report on the unfolding protests against the Dakota Access pipeline in Standing Rock, North Dakota. After Mr. Ou applied for admission to the United States at the Vancouver airport, he was redirected to secondary inspection, where he clearly identified himself as a journalist. CBP officers nonetheless detained him for more than six hours and subjected him to four separate rounds of intrusive interrogation. The officers questioned him at length about his work as a journalist and his prior professional travel in the Middle East. They also questioned him extensively about dissidents and “extremists” whom he had encountered or interviewed as a journalist. Mr. Ou answered the agents’ questions fully and forthrightly and explained many times that he was a journalist whose credentials and background could be verified easily. The officers declined to inspect his press credentials.

CBP officers also conducted an unduly intrusive search of Mr. Ou’s belongings. In the course of this search, they made photocopies of his personal papers, including of pages from his handwritten personal diary. They also confiscated, examined, and searched—or at least attempted to search—his mobile phones. The CBP officers asked Mr. Ou to unlock the three mobile phones he carries to enable him to communicate in different locations worldwide. When Mr. Ou declined with an apology, citing his ethical obligation as a journalist to protect his newsgathering materials, including his confidential sources, the officers removed the phones from Mr. Ou’s presence. When the officers returned the phones to him several hours later, it was evident that their SIM cards had been temporarily removed because tamper tape covering the cards had been destroyed or altered. CBP officers told Mr. Ou that his refusal to assist them in searching his phones would negatively impact his application for admission.

Ultimately, after nearly six hours of detention, CBP officers informed Mr. Ou that they had determined him to be inadmissible to the United States, but that they would allow him to withdraw his application for admission to avoid a formal finding of inadmissibility. When Mr. Ou asked why he was being denied admission when he had been permitted to enter the United States as a journalist many times in the past, a CBP officer said that he could not provide Mr. Ou with any details about the determination. Another CBP officer stated that Mr. Ou’s

name matched that of a “person of interest” to an unspecified law enforcement agency, but he refused to provide any further information and said that the purported name similarity was not an “official” reason for denying Mr. Ou entry to the United States. The same officer later stated that Mr. Ou’s refusal to grant access to his mobile phones “did not help” his application for admission. The officers did not provide Mr. Ou with any further explanation of the reasons for his purported inadmissibility, nor was he told what information, if any, CBP took from his phones, or whether CBP was retaining copies of that information, material from his personal diary, or his other personal papers.

The officers did provide Mr. Ou with a Form I-275 Withdrawal of Application for Admission stating that he had been found inadmissible pursuant to Section 212(a)(7)(A)(I)(I) of the Immigration and Nationality Act (“INA”). However, that is not a valid citation to the INA; indeed, the cited subsection does not exist. Section 212(a)(7)(A), moreover, pertains to those who seek admission as “immigrants”—persons intending to reside permanently in the United States. Mr. Ou plainly was not seeking admission as an “immigrant,” and neither the Form I-275 nor the questions the CBP officers asked Mr. Ou suggested any basis for concluding otherwise.

CBP’s treatment of Mr. Ou was harassing and exceptionally intrusive. It went far beyond what would have been necessary to confirm Mr. Ou’s identity and determine his entitlement to enter the country. Mr. Ou recognizes CBP’s authority and obligation to ensure that those seeking to enter the country have the right to do so, and he recognizes that CBP agents will sometimes have a legitimate interest in questioning and searching individuals—including journalists—whom CBP has reason to believe are engaged in criminal activity or seeking to enter the country unlawfully. Here, however, it should have been evident to CBP agents that Mr. Ou was a bona fide journalist who had entered the United States many times in the past, who had longstanding connections to U.S. media organizations, whose past international travel related principally to his work as a journalist, and who was seeking to enter the country again to continue that legitimate work.

The treatment of Mr. Ou was neither “appropriate” nor “necessary.” *See* 19 C.F.R. § 162.6. CBP had no legitimate cause to interrogate Mr. Ou at such extraordinary length about his professional activities, to search his electronic devices, or to copy his personal diary. None of the CBP agents ever suggested to Mr. Ou that they believed he was engaged in criminal activity, nor did they articulate any level of suspicion—reasonable or otherwise—about Mr. Ou’s conduct before or during the border inspection. To the extent that Mr. Ou’s name is similar to a “person of interest,” he should be readily distinguishable from any such person by simple reference to his biographic details and/or a review of his long-term work as a journalist. Moreover, if CBP viewed Mr. Ou as inadmissible because he lacked required documentation, that determination, whether justified or not, could plainly have been made after a short, limited

interview. Finally, the apparent conditioning of Mr. Ou's admission on his willingness to assist CBP officers in searching his mobile phones, which contained confidential and sensitive information regarding his journalistic sources, made the government's conduct here all the more troubling.

Based on the facts as we understand them, we believe that CBP took advantage of Mr. Ou's application for admission to engage in an opportunistic fishing expedition for sensitive and confidential information that Mr. Ou had gathered through his newsgathering activities in Turkey, Iraq, Somalia, and elsewhere. CBP's actions were unjustified and unlawful. CBP officers should not subject foreign journalists to intrusive interrogation as a means of gathering intelligence, nor should they condition journalists' admission to the United States on their agreement to turn over electronic devices and personal papers for searching and copying. To do so forces journalists to breach confidences they are ethically required to honor, and turns them into unwilling agents of national security agencies. Conditioning foreign journalists' admission to the United States on their willingness to risk arbitrary and intrusive searches also risks discouraging foreign journalists from traveling to the United States, and it invites other countries to subject American journalists to treatment that is similarly arbitrary and abusive.

Given the baselessness of the interrogation and search he experienced and the plainly incorrect explanation CBP provided for his inadmissibility, Mr. Ou is concerned that he may experience similar treatment if he attempts to enter the United States in the future. He is also concerned that DHS or CBP may have retained a copy of his phones' SIM cards and of the confidential newsgathering information they contain, as well as copies of his personal papers, including pages of his handwritten diary. We respectfully ask that you provide (1) a detailed explanation, citing to valid and applicable authority, of the reasons Mr. Ou was subjected to a prolonged interrogation and search and was ultimately found inadmissible; (2) written assurance that he will not be targeted for additional inspection in the future on the basis of his work as a journalist, and that any future inspections will be conducted with due regard for journalists' need to protect the integrity of their sources; (3) written assurance that neither Mr. Ou's work as a journalist nor his reasonable efforts to protect his sources will prejudice any future application for admission to the United States; and (4) written assurance that the government has destroyed and purged from its databases any copies of the contents of Mr. Ou's mobile phones and his personal papers, including his personal diary. If DHS and CBP do not consider themselves legally obligated to provide this relief, we ask that you provide it as a matter of discretion.

This letter is sent without prejudice to the rights of Mr. Ou, all of which are specifically reserved.

Sincerely,



Hugh Handeyside
American Civil Liberties Union
Foundation

125 Broad Street, 18th Floor

New York, NY 10004

Tel: (212) 549-2500; Fax: (212) 549-2654

Email: hhandeyside@aclu.org

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