



December 16, 2010

Mr. Richard L. Skinner
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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. persons¹ 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.

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 Lawrence Ho why he had converted to Islam, Aun Hasan Ali about his opinion of the U.S. occupation in Iraq, and Ali Uddin Malik 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*.² 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*.³ 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.

² *See* Muslim Advocates, *Unreasonable Intrusions: Investigating the Politics, Faith & Finances of Americans Returning Home* 19-22, 25-26, 27-28, 32-36, 38-42 (2009), available at http://www.muslimadvocates.org/documents/Unreasonable_Intrusions_2009.pdf.

³ *See* Asian Law Caucus, *Returning Home: How U.S. Government Practices Undermine Civil Rights At Our Nation's Doorstep* 10-21 (2009), available at <http://www.asianlawcaucus.org/wp-content/uploads/2009/04/Returning%20Home.pdf>.

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, Mr. Ho, 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."⁴ 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 Shareef Alshinnawi).

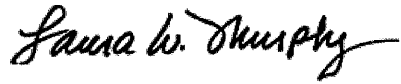
Individuals questioned about their First Amendment-protected beliefs, activities, practices and associations at the border fear, therefore, that their responses to these questions are entered into TECS and disseminated to other government databases, including other parts of the consolidated Terrorist 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.

⁴ *See The Lessons and Implications of the Christmas Day Attack: Watchlisting and Pre-screening: Hearing Before the Senate Comm. on Homeland Security and Governmental Affairs*, 111th Cong. 4 (2010) (statement of Timothy J. Healy, Director, Terrorist Screening Center, Federal Bureau of Investigation).

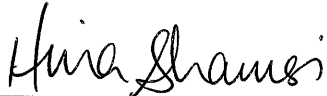
Sincerely,



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APPENDIX A

1. **Aun Hasan Ali** is a U.S. citizen, a resident of Montreal, Canada, and a Muslim. He is a graduate student at McGill University in Montreal, works as an Arabic teaching fellow, and frequently travels to New Jersey to visit his family. On August 6, 2009, Mr. Ali sought to enter the United States from Canada with his wife and three-month-old daughter on a trip to visit his parents in New Jersey. After providing a CBP agent at the Champlain border crossing with the family's U.S. passports, Mr. Ali and his family were held for over an hour of questioning and searches by CBP. Three CBP officers questioned Mr. Ali and asked, "Do you go to the mosque?"; "Why?"; "How often?"; "What mosque?"; "Are you an Imam at the mosque?"; and "Are you Shi'a or Sunni?"

The August 2009 incident was not the first time that CBP officers subjected Mr. Ali to questioning about protected beliefs and practices. In April 2004, Mr. Ali returned to the United States from Yemen, where he was studying Arabic, in order to attend his sister's wedding. After arriving at Newark International Airport, he was pulled out of the passport control line by a CBP officer and taken to a room where he was questioned by three other CBP officers and asked, "Do you prefer Fox News or Al-Jazeera?" "How do you feel about the U.S. occupation in Iraq?" and "What are your attitudes regarding American policy in Israel?" He was held for questioning and searches by CBP for nearly three hours before being permitted to leave.

As a result of these experiences, Mr. Ali feels that he must watch what he says while he is in the United States. He is reluctant to have open and honest conversations about political or potentially controversial topics in the United States, in contrast to Canada, where he feels comfortable expressing his opinions about the government and foreign policy.

2. **Shareef Alshinnawi** is a U.S. citizen, a North Carolina resident, and a Muslim. Mr. Alshinnawi works for IBM. On July 8, 2010, he sought to return to the United States from Canada by car with his wife, one-year-old daughter, and two other relatives, all of whom are U.S. citizens, following a one-day tourism trip. After the group provided their U.S. passports to a CBP officer at the Pacific Highway crossing in Washington state, the officer told Mr. Alshinnawi to step out of the car and to put his hands behind his back. He was then handcuffed, patted down, and taken to a waiting room in the CBP facility. There, his cellphone was confiscated.

After waiting for about two hours, Mr. Alshinnawi was taken to a room where he was questioned by CBP for about 45 minutes. The questions he was asked included: "Do you belong to any organizations?" During this questioning, Mr. Alshinnawi mentioned that he had previously visited the Pentagon and CENTCOM for work purposes. Mr. Alshinnawi was left in the room after questioning by CBP.

Later, an FBI agent and an officer of Immigration Customs Enforcement (“ICE”) came into the room to question Mr. Alshinnawi. The FBI officer began by asking Mr. Alshinnawi about his “top level clearance.” When Mr. Alshinnawi explained that he did not have security clearance, the FBI agent asked how he had been able to go to the Pentagon and CENTCOM. Apart from the fact that he had mentioned this visit during questioning by CBP, Mr. Alshinnawi does not know how the FBI came to know of it. The FBI agent also asked: “What mosque do you attend?”; “How often do you attend the mosque?”; “So you don’t consider yourself a religious person?”; “Does anybody [at the mosque] talk about going back to the motherland?”; “Do you give donations?”; “Don’t you have to pay a certain amount of your money religiously?”; “Who do you give [charity] to?”; and “Do you belong to any organization?” When, in response, Mr. Alshinnawi explained that he believes in interfaith dialogue, the FBI agent inquired, “So you dialogue with the militants?” The ICE officer was present for the entire period of questioning by the FBI. Mr. Alshinnawi was held for approximately five hours by CBP, FBI, and ICE officers for questioning and searches before being permitted to leave.

Mr. Alshinnawi was embarrassed and humiliated about being questioned by CBP and FBI officers about his associations and religious beliefs, practices, and charitable activities. He has since declined several requests from his employers to travel for work because he fears being interrogated again by government officials about his protected beliefs, associations, practices and charitable activities, and he does not want to experience again the embarrassment and humiliation that he suffered.

- 3. Lawrence Ho** is a U.S. citizen, a New Jersey resident, and a Muslim. He works as an operations manager at a freight boarding company. On February 21, 2010, Mr. Ho sought to return to the United States by car at the border crossing at Rainbow Bridge in New York following a trip to attend a conference in Canada. Mr. Ho’s passport had expired, so he sought to enter the United States using his driver’s license and original U.S. birth certificate. After providing these identification papers to a CBP agent, the agent told Mr. Ho that they needed time to verify his documents. Mr. Ho was escorted to the CBP facility. There, he was taken aback when a CBP officer asked him, “When did you convert?” Mr. Ho does not know how the agents knew he had converted to Islam.

Mr. Ho was then taken to a room where another CBP officer questioned him in the presence of three or four armed CBP officers. Among the questions they asked were: “When did you become a Muslim?”, “Which mosques do you attend?” and “How often do you attend the mosque?” Mr. Ho was held for nearly four hours for questioning and searches by CBP officers before he was permitted to leave.

In response to an emailed complaint from Mr. Ho, a senior CBP officer assigned to the Port of Buffalo wrote, “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."

Mr. Ho felt violated and treated like a criminal suspect. As a result of this experience, Mr. Ho feels inhibited about discussing his faith and religious practices publicly.

4. **Ali Uddin Malik** is a U.S. citizen, a California resident, and a Muslim. He works for Zaytuna College, a California-based institution of higher learning for Muslim scholars in training. Mr. Malik has been questioned by CBP about protected beliefs, practices, and associations on a number of occasions.

On August 14, 2006, Mr. Malik sought to return to the United States following a trip to attend a spiritual retreat in Yemen. After he presented his U.S. passport to two CBP officers, they escorted him to get his luggage and then to a room for questioning. A CBP officer questioned Mr. Malik about the spiritual retreat, and then asked, "You seem to be from the States, but are you practicing?" A CBP officer also pointed to the business card of a Muslim religious leader in Mr. Malik's wallet and asked him, "Is this the mosque you go to?" Mr. Malik was held for nearly two hours of questioning and searches before he was permitted to leave.

On December 31, 2007, Mr. Malik, his brother, and a friend sought to return to the United States at a border crossing near Detroit following a trip to attend a religious conference in Canada. After providing their U.S. passports to CBP officers, Mr. Malik and his companions were ordered out of the car. CBP officers took them to a building where they were each separately questioned. A CBP officer asked Mr. Malik, "How many times do you pray a day? Five or three?" The officer stated that he had served with the U.S. military in Iraq and then asked Mr. Malik for his opinion about the Iraq war. Mr. Malik was held for more than three hours for questioning before he was permitted to leave.

In early August of 2009, Mr. Malik sought to return to the United States after a trip to the United Kingdom during which he married his wife, a British citizen. After Mr. Malik and his wife landed at Atlanta International Airport, two CBP officers stopped them at the gate, escorted them through passport control, and then took them to an office for questioning. The CBP officers asked Mr. Malik about his involvement with a Muslim student organization at the University of California, Irvine, including the capacity in which he was involved. CBP officers also took the contents of Mr. Malik's wallet and bag, and his and his wife's electronic devices, including his digital camera, their laptops, and their cell phones. Mr. Malik and his wife were held for more than three hours for questioning, missed their connecting flight to Los Angeles, and were required to spend the night in Atlanta.

These experiences have made Mr. Malik afraid to practice his Muslim faith in public, and he is particularly afraid to pray in airports and on airplanes. Mr. Malik feels that his own government is treating him like a criminal suspect even though he has done nothing wrong.

- 5. Hassan Shibly** is a U.S. citizen, a resident of Buffalo, New York, and a Muslim. He is a law student at the University at Buffalo Law School. On August 18, 2010, he sought to return to the United States with his wife, a lawful permanent resident, and seven-month-old son, a U.S. citizen, following a trip to the Middle East to visit family and perform a religious pilgrimage. After landing at John F. Kennedy Airport in New York, Mr. Shibly provided his family's passports to a CBP agent at passport control. The CBP agent took Mr. Shibly and his family to a waiting area where, after approximately 20 minutes, a CBP officer asked Mr. Shibly about the holy sites he had visited on his trip. The CBP officer then asked him: "Do you visit any Islamist extremist websites?"; "Are you part of any Islamic tribes?"; "Have you ever been to a madrassah or studied Islam full-time?"; and "Do you attend a particular mosque?"

The same CBP agent later asked Mr. Shibly to open several of the family's bags, take out their contents, and explain them to him. When Mr. Shibly removed a Qur'an from one of the bags and explained that it was a holy book, the CBP officer asked, "How many gods or prophets do you believe in?" When Mr. Shibly took out several digital prayer counters, the CBP officer asked for whom Mr. Shibly had purchased them. Mr. Shibly and his family were held for over an hour of questioning and searches before they were permitted to leave.

Mr. Shibly was also questioned about his religious practices on August 1, 2008, when he sought to return to the United States through John F. Kennedy airport from a trip to Jordan. On this occasion, he showed his passport to the officer in the passport control line, and was then taken by a CBP officer to another area for questioning and a search of Mr. Shibly's luggage. Finding a Qur'an in the luggage, the CBP officer asked Mr. Shibly, "Do you recruit people to your faith?"

Mr. Shibly has become anxious about traveling and is fearful of the treatment he might receive from CBP officials. He is afraid that he will again be subjected to questioning about his protected religious beliefs, associations, and practices upon his return to the United States from abroad.