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10 **UNITED STATES DISTRICT COURT**  
 11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12  
 13 **ABDIRAHMAN ADEN KARIYE,**  
 14 **MOHAMAD MOUSLLI, and**  
**HAMEEM SHAH,**

15 *Plaintiffs,*

16  
 17 v.

18 **ALEJANDRO MAYORKAS,**  
 19 Secretary of the U.S. Department of  
 20 Homeland Security, in his official  
 21 capacity; **TROY MILLER,** Acting  
 22 Commissioner of U.S. Customs and  
 23 Border Protection, in his official  
 24 capacity; **TAE D. JOHNSON,** Acting  
 25 Director of U.S. Immigration and  
 26 Customs Enforcement, in his official  
 27 capacity; and **STEVE K. FRANCIS,**  
 Acting Executive Associate Director,  
 Homeland Security Investigations, in  
 his official capacity,

28 *Defendants.*

**AMENDED COMPLAINT FOR  
 INJUNCTIVE AND  
 DECLARATORY RELIEF**

No. 2:22-cv-01916-FWS-GJS  
 Hon. Fred W. Slaughter

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**INTRODUCTION**

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1. “How often do you pray?” “Do you attend mosque?” “Which mosque do you attend?” “Are you Sunni or Shi’a?” These are just some of the deeply personal and religiously intrusive questions that federal border officers ask Plaintiffs—three Muslim U.S. citizens—when they return home to the United States from international travel. Border officers ask these questions pursuant to a broader policy and/or practice by U.S. Customs and Border Protection (“CBP”) and Homeland Security Investigations (“HSI”) of targeting Muslim American travelers for questioning about their religious beliefs, practices, and associations, and retaining the answers in a law enforcement database for up to 75 years.

2. Religious questioning such as this violates the U.S. Constitution. It furthers no valid—let alone compelling—government interest, and it is an affront to the First Amendment freedoms of religion and association. Moreover, because Defendants specifically target Muslim Americans for such questioning, they also violate the First and Fifth Amendments’ protections against unequal treatment on the basis of religion. Just as border officers may not single out Christian Americans to ask what denomination they are, which church they attend, and how regularly they pray, singling out Muslim Americans for similar questions is unconstitutional. Plaintiffs are entitled to full and equal membership in American society. By targeting Plaintiffs for religious questioning merely because they are Muslim, Defendants’ border officers stigmatize them for adhering to a particular faith and condemn their religion as subject to suspicion and distrust.

3. This practice also violates the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. § 2000bb *et seq.* It substantially burdens Plaintiffs’ religious practices in several ways, including by coercing Plaintiffs into modifying or abandoning certain religious practices and expression while traveling, contrary to their religious beliefs.

4. Through this lawsuit, Plaintiffs seek a declaratory judgment that the

1 religious questioning of them, and the policy and/or practice of religious questioning  
2 by the U.S. Department of Homeland Security (“DHS”) and CBP, violates the First  
3 and Fifth Amendments and RFRA. Plaintiffs also seek an injunction prohibiting  
4 DHS and CBP from questioning them at ports of entry about their religious beliefs,  
5 practices, and associations. Finally, Plaintiffs seek an injunction requiring  
6 Defendants to expunge records containing information unlawfully obtained through  
7 their religious questioning of Plaintiffs.

### 8 **JURISDICTION AND VENUE**

9 5. This Court has subject matter jurisdiction over Plaintiffs’ claims under  
10 28 U.S.C. § 1331.

11 6. This Court has authority to issue declaratory and injunctive relief  
12 pursuant to 28 U.S.C. §§ 2201–02, Rule 57 of the Federal Rules of Civil Procedure,  
13 and its inherent equitable powers.

14 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e). A  
15 substantial part of the events giving rise to Plaintiffs’ claims occurred in this Court’s  
16 judicial district, and Defendants are officers of the United States sued in their official  
17 capacities.

### 18 **PARTIES**

#### 19 *Plaintiffs*

20 8. Plaintiff Imam Abdirahman Aden Kariye is a U.S. citizen who lives in  
21 Bloomington, Minnesota. He is Muslim and serves as an imam at a local mosque.

22 9. Plaintiff Mohamad Mouslli is a U.S. citizen who lives in Gilbert,  
23 Arizona, with his wife and three children. He is Muslim and works in commercial  
24 real estate.

25 10. Plaintiff Hameem Shah is a U.S. citizen who lives in Plano, Texas. He  
26 is Muslim and works in financial services.

#### 27 *Defendants*

28 11. Defendants, who are responsible for the challenged religious

1 questioning and retention of information, are the heads of the DHS and its agencies:  
2 CBP and U.S. Immigration and Customs Enforcement (“ICE”), of which HSI is a  
3 subcomponent.

4 12. Defendant Alejandro Mayorkas is the Secretary of DHS. He has  
5 authority over all DHS policies and practices, including those challenged in this  
6 lawsuit. Plaintiffs sue him in his official capacity.

7 13. Defendant Troy Miller is the Acting Commissioner of CBP. He has  
8 authority over all CBP policies and practices, including those challenged in this  
9 lawsuit. Plaintiffs sue him in his official capacity.

10 14. Defendant Tae Johnson is Acting Director of ICE. He has authority  
11 over all ICE policies and practices, including those challenged in this lawsuit.  
12 Plaintiffs sue him in his official capacity.

13 15. Defendant Steve K. Francis is the Acting Executive Associate Director  
14 of HSI. He has authority over all HSI policies and practices, including those  
15 challenged in this lawsuit. Plaintiffs sue him in his official capacity.

16 **FACTUAL BACKGROUND**

17 ***Religious Questioning of Muslim Americans at the U.S. Border***

18 16. At border crossings and international airports in the United States,  
19 Defendants’ border officers frequently subject travelers who are Muslim, or whom  
20 they perceive to be Muslim, to questioning about their religion.

21 17. In May 2011, after the American Civil Liberties Union (“ACLU”) and  
22 other organizations submitted complaints to DHS describing border questioning of  
23 Muslim Americans about their religious beliefs and practices, the DHS Office for  
24 Civil Rights and Civil Liberties (“CRCL”) disclosed that it had opened an  
25 investigation into CBP questioning “of U.S. citizens and legal residents who are  
26 Muslim, or appear to be Muslim, about their religious and political beliefs,  
27 associations, and religious practices and charitable activities protected by the First  
28 Amendment and Federal law.” In a letter to the ACLU dated May 3, 2011, CRCL

1 stated that it had received “a number of complaints like yours, alleging that U.S.  
2 Customs and Border Protection (CBP) officers have engaged in inappropriate  
3 questioning about religious affiliation and practices during border screening.”

4 18. In a memorandum dated May 3, 2011 (“May 3 Memorandum”), CRCL  
5 informed the CBP Commissioner that it had received “numerous accounts from  
6 American citizens, legal permanent residents, and visitors who are Arab and/or  
7 Muslim, alleging that officials from U.S. Customs and Border Protection (CBP)  
8 repeatedly question them and other members of their communities about their  
9 religious practices or other First Amendment protected activities, in violation of their  
10 civil rights or civil liberties.”

11 19. The May 3 Memorandum included detailed descriptions of border  
12 officers’ questioning of Muslims about their religious beliefs and practices—  
13 including whether the travelers were Muslim, whether they attended a mosque, how  
14 frequently they prayed, and whether they were Sunni or Shi’a—at various ports of  
15 entry across the United States, including in Boston, Buffalo, Miami, Seattle, Detroit,  
16 Atlanta, and New York City.

17 20. In July 2012, CRCL informed the ACLU and other organizations that  
18 it had suspended its investigation into border questioning about religious beliefs and  
19 practices because individuals had filed a lawsuit challenging the practice. That  
20 litigation is pending.

21 21. In 2019, CRCL acknowledged that DHS had received over two dozen  
22 complaints about CBP questioning travelers regarding their religious beliefs and  
23 practices, including questioning about sect (*e.g.*, Sunni or Shi’a Islam), affiliation  
24 with a particular house of worship, and frequency of prayer.

25 22. As of 2020, CRCL was reviewing numerous allegations that “CBP  
26 officers at ports of entry have inappropriately questioned travelers about their  
27 religious beliefs and practices.”

28 23. Religious questioning of Muslim Americans at ports of entry continues

1 today, as Plaintiffs’ experiences demonstrate.

2 24. Far from prohibiting this unconstitutional and unlawful conduct,  
3 Defendants’ written policies permit border officers to question Americans about  
4 their religious beliefs, practices, and associations. For example, ICE requires its  
5 officers who work at ports of entry to carry with them a sample questionnaire to  
6 guide their interrogations of travelers, which includes intrusive questions about a  
7 traveler’s religious beliefs, practices, and associations. DHS has a policy that allows  
8 it to collect and maintain information about an individual’s religious beliefs,  
9 practices, and associations in numerous circumstances. On information and belief,  
10 DHS and CBP view the collection and retention of Plaintiffs’ responses to the  
11 religious questioning described herein as authorized by that policy.

12 25. In particular, Defendants have a policy and/or practice of intentionally  
13 targeting selected Muslims (or individuals perceived to be Muslim) for religious  
14 questioning. While Defendants’ border officers routinely and intentionally single out  
15 Muslim Americans to demand answers to questions about their religious beliefs,  
16 practices, and associations, travelers perceived as practicing faiths other than Islam  
17 are not routinely subjected to similarly intrusive questioning about their religious  
18 beliefs, practices, and associations.

19 26. This religious questioning of Muslims typically takes place in the  
20 context of “secondary inspection,” a procedure by which CBP detains, questions,  
21 and searches certain travelers before they are permitted to enter the country.

22 27. The secondary inspection environment is inherently coercive:  
23 a. Border officers carry weapons, typically identify themselves as  
24 border officers or wear government uniforms, and command  
25 travelers to enter and remain in the secondary inspection areas.  
26 b. Travelers are not free to leave those areas until officers give them  
27 permission.  
28 c. Secondary inspection areas are separated from the public areas of

1 airports or other ports of entry.

2 d. During the secondary inspection process, border officers typically  
3 take possession of travelers' passports and routinely conduct  
4 physical searches and/or searches of travelers' belongings, including  
5 their electronic devices. Border officers use the coercive nature of  
6 the secondary inspection environment to compel Muslim American  
7 travelers to answer intrusive questions about their religious beliefs,  
8 practices, and associations.

9 28. Because of the coercive nature of secondary inspections, Muslim  
10 American travelers singled out for religious questioning during this process have no  
11 meaningful choice but to disclose their First Amendment-protected beliefs and  
12 activity in response to border officers' inquiries.

13 29. In addition, as part of this religious questioning, Defendants have a  
14 policy and/or practice of retaining—for decades—travelers' coerced responses to  
15 questions about their religious beliefs, practices, and associations. CBP officers are  
16 required to create a record of every secondary inspection at an airport or land  
17 crossing. Through this record, they routinely document travelers' responses to  
18 questions asked during secondary inspections, including Muslim Americans'  
19 coerced responses to questions about their religious beliefs, practices, and  
20 associations. When HSI agents are involved in or otherwise present during  
21 secondary inspection, they also routinely create and maintain records of the  
22 secondary inspection, including Muslim Americans' coerced responses to questions  
23 about their religious beliefs, practices, and associations.

24 30. Border officers input the records of secondary inspections into DHS  
25 databases, including a DHS database called TECS, which is the updated and  
26 modified version of the former Treasury Enforcement Communications System.  
27 TECS functions as a repository for the sharing of information among thousands of  
28 federal, state, local, tribal, and foreign law enforcement, counterterrorism, and



1 border security agencies, which can use the information for investigative and other  
2 activities that can result in civil or criminal sanctions.

3 a. TECS users include personnel from CBP, ICE, the Federal Bureau  
4 of Investigation, Department of Defense, Transportation Security  
5 Administration, U.S. Citizenship and Immigration Services, U.S.  
6 Drug Enforcement Administration, and Department of State.

7 b. TECS data is also accessible to officers from thousands of state and  
8 local police departments.

9 c. Data is retained in TECS for up to 75 years.

10 31. Alternatively, even if Defendants do not engage in a policy and/or  
11 practice of singling out Muslims *in particular* for religious questioning, Defendants  
12 have a policy and/or practice of subjecting travelers of faith, including Plaintiffs, to  
13 questioning about their religious beliefs, practices, and associations during  
14 secondary inspections. Defendants also have a policy and/or practice of retaining,  
15 for decades, travelers' coerced responses to those religious questions, and making  
16 those responses accessible to thousands of law enforcement departments through  
17 TECS.

18 ***Islamic religious belief and practice are constitutionally protected***  
19 ***and not any indication of criminal or other wrongdoing.***

20 32. Being Muslim and practicing Islam are constitutionally protected  
21 religious belief and activity.

22 33. There are nearly two billion Muslim people worldwide, and  
23 approximately 3.45 million Muslims living in the United States. Like any religion,  
24 Islam has certain core tenets, and at the same time, religious practice can vary among  
25 individuals. According to a 2017 Pew Research survey, approximately 59 percent of  
26 Muslim Americans pray daily, and 43 percent attend religious services weekly.  
27 Prayer and mosque attendance—just like prayer and attendance at houses of worship  
28 in any religion—are peaceful religious activities. They have no relationship to

1 violence or other unlawful activity.

2 34. Fifty-five percent of Muslim Americans identify as Sunnis and 16  
3 percent as Shi'a. Affiliation with either sect reflects a set of religious beliefs. It does  
4 not indicate any relationship to violence or other unlawful activity.

5 35. In recent years especially, U.S. national security policies and practices  
6 have disproportionately and wrongly targeted Muslim Americans, and prominent  
7 U.S. politicians have at times made public statements casting doubt on the patriotism  
8 of Muslim Americans, resulting in widespread and false stigma. These factors  
9 contribute to a widespread and harmful misperception that Islamic belief and  
10 practice are associated with wrongdoing or terrorism.

11 36. Despite decades of research, there is no scientifically valid model or  
12 profile that can predict whether an individual will commit an act of terrorism, which  
13 is a form of political violence. Religiosity of any kind, including Muslim religiosity,  
14 is not predictive of violence or terrorism. It is exceedingly rare for Muslim  
15 Americans to commit terrorist acts.

16 37. Islamic religious belief and practice also are not in any way indicative  
17 of immigration or customs-related crime within CBP's enforcement mandate, nor  
18 any other unlawful activity.

19 38. Accordingly, Muslim travelers' personal religious information is not  
20 germane to any legitimate purpose that Defendants may assert.

21 ***American history and tradition protect religious belief***  
22 ***and ensure freedom from religious discrimination.***

23 39. Through the First Amendment's religion clauses, the Framers intended,  
24 among other things, to protect religious belief and exercise from unjustified  
25 government interference, to prohibit official religious coercion, and to ensure that  
26 different faiths and denominations are treated equally by the government.

27 40. Thomas Jefferson and James Madison were highly influenced by the  
28 experiences of religious minorities in colonial America. Many of the original

1 European settlers of the colonies that would become the United States came to  
2 America fleeing religious persecution. Unfortunately, however, religious strife and  
3 persecution were commonplace in colonial America. “Catholics found themselves  
4 hounded and proscribed because of their faith; Quakers who followed their  
5 conscience went to jail; Baptists were peculiarly obnoxious to certain dominant  
6 Protestant sects; men and women of varied faiths who happened to be in a minority  
7 in a particular locality were persecuted because they steadfastly persisted in  
8 worshipping God only as their own consciences dictated.” *Everson v. Bd. of Ed. of*  
9 *Ewing Twp.*, 330 U.S. 1, 10 (1947).

10 41. The Founders’ response was to protect the free exercise of all religions  
11 and the right of religious people of different faiths to be treated equally by the  
12 government. Madison’s *Memorial and Remonstrance Against Religious*  
13 *Assessments*—written just a few years before he helped introduce the Bill of  
14 Rights—articulated his belief in the “unalienable right” of religious freedom and in  
15 religious neutrality.

16 42. Madison wrote, “Government will be best supported by protecting  
17 every Citizen in the enjoyment of his Religion with the same equal hand which  
18 protects his person and his property; by neither invading the equal rights of any Sect,  
19 nor suffering any Sect to invade those of another.”

20 43. As summarized by the Supreme Court, Madison’s vision of “equality”  
21 and “freedom for all religion” required legislators to “accord to their own religions  
22 the very same treatment given to small, new, or unpopular denominations.” *Larson*  
23 *v. Valente*, 456 U.S. 228, 245 (1982).

24 44. After Madison’s *Memorial and Remonstrance* gained wide support, the  
25 Virginia Assembly passed the Virginia Bill for Religious Liberty, written by Thomas  
26 Jefferson. The bill stated that no person should “suffer on account of his religious  
27 opinions or belief.” *See Everson*, 330 U.S. at 13.

28 45. Jefferson’s own writings about the Virginia Bill for Religious Freedom

1 stated that one of the statute’s goals was the protection of every denomination—  
2 explicitly including Muslims, Jews, and Hindus. In his autobiography, he wrote that  
3 the legislative intention had been “to comprehend, within the mantle of its  
4 protection, the Jew and the Gentile, the Christian and Mahometan, the Hindoo, and  
5 Infidel of every denomination.” Jefferson’s personal library included a Quran, a  
6 purchase that appears to have stemmed from his curiosity about the world’s religions  
7 and that informed his views on religious freedom and pluralism. While Jefferson  
8 critiqued aspects of Christianity, Judaism, and Islam, he insisted on civil rights for  
9 practitioners of all faiths.

10 46. Influenced by the Virginia Bill, and in light of their own experiences  
11 with religious discrimination in Europe and the colonies, the Framers intended the  
12 First Amendment to protect “the principle of neutrality” in order to “guard against  
13 the civic divisiveness that follows when the government weighs in on one side of  
14 religious debate.” *McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844, 876 (2005).

15 47. As Justice Gorsuch recently explained, “Our forebears resolved that  
16 this Nation would be different. Here, they resolved, each individual would enjoy the  
17 right to make sense of his relationship with the divine, speak freely about man’s  
18 place in creation, *and have his religious practices treated with respect.*” *Shurtleff v.*  
19 *City of Boston*, 142 S. Ct. 1583, 1608 (2022) (Gorsuch, J., concurring) (emphasis  
20 added).

21 48. Indeed, given this historical record, the Supreme Court has emphasized  
22 that government neutrality toward religion is “the clearest command of the  
23 Establishment Clause.” *Larson*, 456 U.S. at 244–46.

24 49. The principle of religious neutrality has carried forward throughout  
25 American history, forbidding government from discriminating against religious  
26 minorities.

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1 officers wearing uniforms and carrying weapons commanded Imam Kariye to enter  
2 and remain in an area separated from other travelers, usually a windowless room.  
3 They took Imam Kariye's belongings from him, searched his electronic devices, and  
4 questioned him at length. Because the environment was coercive, Imam Kariye's  
5 responses to CBP's questions were coerced. He was not free to leave without the  
6 permission of a CBP officer, and he reasonably believed that if he did not answer all  
7 questions, he would not be permitted to leave and would be subject to additional and  
8 lengthy scrutiny.

9 ***First Religious Questioning Incident: September 12, 2017***

10 56. On September 12, 2017, Imam Kariye arrived home to the United States  
11 from Saudi Arabia, where he had participated in the Hajj. The Hajj is a sacred  
12 religious pilgrimage to Mecca, the holiest city for Muslims.

13 57. Upon his arrival at the Seattle-Tacoma International Airport, Imam  
14 Kariye was detained for secondary inspection by CBP in a small, windowless room.  
15 Two CBP officers were present during the detention, which lasted for approximately  
16 two hours.

17 58. During the detention, a CBP officer questioned Imam Kariye about his  
18 religious beliefs, practices, and associations, including questions about which  
19 mosque he attends and whether he had been on the Hajj before.

20 59. Imam Kariye answered these questions because he was not free to leave  
21 without the permission of a CBP officer and reasonably felt that he had no choice  
22 but to answer, based on the coercive circumstances of his detention.

23 60. A CBP officer took notes during Imam Kariye's detention, including  
24 while Imam Kariye responded to CBP's questions about his religious beliefs,  
25 practices, and associations.

26 ***Second Religious Questioning Incident: February 3, 2019***

27 61. On or about February 3, 2019, CBP again subjected Imam Kariye to  
28 religious questioning during secondary inspection at the Peace Arch Border Crossing

1 near Blaine, Washington. Imam Kariye was returning to the United States by car  
2 from a trip to Vancouver, where he had been on a vacation with friends. Two CBP  
3 officers detained Imam Kariye for approximately three hours. The officers told  
4 Imam Kariye that he would not be free to leave unless he answered their questions.

5 62. During the detention, a CBP officer questioned Imam Kariye about his  
6 religious beliefs, practices, and associations, including questions about Imam  
7 Kariye's involvement with a charitable organization affiliated with Muslim  
8 communities, how he fundraised for this charity, and whether his fundraising  
9 involved visiting mosques. The obligation to provide charity and assistance to the  
10 needy, or *zakat*, is a central tenet of Islam.

11 63. Imam Kariye answered the CBP officer's questions about his religious  
12 charitable beliefs and activities because he was not free to leave without the  
13 permission of a CBP officer and reasonably felt that he had no choice but to answer,  
14 based on the coercive circumstances of his detention.

15 64. A CBP officer took notes during Imam Kariye's detention, including  
16 while Imam Kariye responded to CBP's questions about his religious beliefs,  
17 practices, and associations.

18 ***Third Religious Questioning Incident: November 24, 2019***

19 65. On November 24, 2019, CBP again subjected Imam Kariye to religious  
20 questioning during secondary inspection in a CBP preclearance area at Ottawa  
21 International Airport in Canada. CBP officers are posted at Ottawa International  
22 Airport and conduct inspections there for travelers headed to the United States.  
23 Imam Kariye was returning to the United States after attending a wedding in Canada.  
24 He was flying to Detroit, Michigan, and then to Seattle, Washington. A CBP officer  
25 detained Imam Kariye for approximately one hour in a small, windowless room.

26 66. During the detention, the CBP officer questioned Imam Kariye about  
27 his religious associations. In particular, the officer questioned Imam Kariye about a  
28 youth sports league that he helped to run. Although Imam Kariye had not informed

1 the officer that he was Muslim, the officer asked whether the sports league was “for  
2 black and white kids, or is it just for Muslim kids?” Imam Kariye understood the  
3 question as an acknowledgment of his Islamic faith and an attempt to ascertain what  
4 kinds of religious activities he participated in.

5 67. Imam Kariye answered the questions because he was not free to leave  
6 without the permission of a CBP officer and reasonably felt that he had no choice  
7 but to answer, based on the coercive circumstances of his detention.

8 68. The CBP officer took notes during Imam Kariye’s detention, including  
9 while Imam Kariye responded to CBP’s questioning about his religious beliefs and  
10 associations.

11 ***Fourth Religious Questioning Incident: August 16, 2020***

12 69. On August 16, 2020, CBP officers again subjected Imam Kariye to  
13 religious questioning during secondary inspection at the Seattle-Tacoma  
14 International Airport. Imam Kariye was returning to the United States from a  
15 vacation with a friend. He had traveled from Turkey to Seattle, Washington, via the  
16 Netherlands. CBP officers had photographs of Imam Kariye that they used to  
17 identify him when he came off the jet bridge. Multiple CBP officers detained him  
18 for several hours in a small, windowless room. To the best of Imam Kariye’s  
19 recollection, one of the officers, a supervisor, was named “Abdullah Shafaz” or  
20 something close to it.

21 70. During the detention, CBP officers questioned Imam Kariye about his  
22 religious beliefs, practices, and associations. These questions included:

- 23 a. What type of Muslim are you?  
24 b. Are you Sunni or Shi’a?  
25 c. Are you Salafi or Sufi?  
26 d. What type of Islamic lectures do you give?  
27 e. Where did you study Islam?  
28 f. How is knowledge transmitted in Islam?



- 1 g. Do you listen to music?
- 2 h. What kind of music do you listen do?
- 3 i. What are your views on Ibn Taymiyyah?

4 71. Imam Kariye understood the questions regarding music (religious  
5 opinions about which can vary among Muslims) and his views on Ibn Taymiyyah, a  
6 medieval Muslim scholar, as designed to elicit information about the nature and  
7 strength of his religious beliefs and practices.

8 72. During the detention, a CBP officer threatened Imam Kariye multiple  
9 times with retaliation. The officer said that, if Imam Kariye did not cooperate, CBP  
10 would make things harder for him. The officer also said that Imam Kariye was  
11 welcome to challenge the legality of the detention, but if he did so publicly or went  
12 to the media, CBP would make things harder for him during his future travels.

13 73. Imam Kariye answered the CBP officers' questions because he was not  
14 free to leave without the permission of a CBP officer and reasonably felt that he had  
15 no choice but to answer, based on the coercive circumstances of his detention.

16 74. A CBP officer took notes during Imam Kariye's detention, including  
17 while Imam Kariye responded to CBP's questions about his religious beliefs,  
18 practices, and associations.

19 75. After several hours of detention, two of the CBP officers who had  
20 detained Imam Kariye escorted him to a separate room, where they performed a  
21 thorough, full-body pat-down search, which included touching his buttocks and  
22 groin. The CBP officers had no basis to suspect Imam Kariye of carrying contraband  
23 or weapons, and they had already been in close proximity to him during his lengthy  
24 detention. After the pat-down, the officers finally permitted Imam Kariye to leave.

25 ***Fifth Religious Questioning Incident: December 31, 2021***

26 76. On or about December 31, 2021, a plainclothes CBP officer subjected  
27 Imam Kariye to religious questioning during secondary inspection at the  
28 Minneapolis-Saint Paul Airport. Imam Kariye was returning to the United States

1 from a trip to Somalia, Kenya, and the United Arab Emirates, where he had traveled  
2 for vacation and to visit family. The officer detained Imam Kariye for approximately  
3 an hour and a half.

4 77. During the detention, the CBP officer questioned Imam Kariye about  
5 his religious beliefs, practices, and associations, including whether he had met a  
6 particular friend at a mosque. The officer then said, “I assume you’re a Muslim,  
7 aren’t you?”

8 78. Imam Kariye answered these questions because he was not free to leave  
9 without the permission of a CBP officer and reasonably felt that he had no choice  
10 but to answer, based on the coercive circumstances of his detention.

11 79. A CBP officer took notes during Imam Kariye’s detention, including  
12 while Imam Kariye responded to CBP’s questions about his religious beliefs,  
13 practices, and associations.

14 80. During each of these five religious questioning incidents, Imam  
15 Kariye’s travel and identification documents were valid, and he was not transporting  
16 contraband.

17 ***Imam Kariye is a law-abiding religious leader***  
18 ***and does not pose a national security risk.***

19 81. Imam Kariye is a law-abiding citizen with no criminal record and no  
20 ties to terrorist activity.

21 82. Imam Kariye’s religious beliefs and preaching do not in any way  
22 condone violence or terrorism. He has never participated in nor advocated for any  
23 acts of violence or terrorism, and has never been accused by any government agency  
24 of doing so.

25 83. Like many individuals, and upon information and belief, Imam Kariye  
26 was unjustly and improperly placed on the U.S. government’s master watchlist,  
27 called the Terrorist Screening Database (also known as the “watchlist”), due to an  
28 error or misplaced suspicion.

1           84. Government errors and reliance on unjustified suspicion in placing  
2 people on the watchlist are common because the standard for placement is  
3 remarkably low. Placement may be based on “reasonable suspicion” that the  
4 individual is a known or “suspected” terrorist. A suspected terrorist is defined  
5 broadly as “an individual who is reasonably suspected to be, or have been, engaged  
6 in conduct constituting, in preparation for, in aid of, or related to terrorism and/or  
7 terrorist activities based on an articulable and reasonable suspicion.” In other words,  
8 the standard for placement is extraordinarily low—suspicion that the individual  
9 might be suspicious.

10           85. Under the government’s Watchlisting Guidance, “concrete facts are not  
11 necessary” to satisfy the “reasonable suspicion” standard, and uncorroborated  
12 information of questionable or even doubtful reliability can serve as the basis for  
13 watchlisting an individual. Under the Guidance, an anonymous letter or single social  
14 media post could satisfy the “reasonable suspicion” standard.

15           86. The government has failed to ensure that individuals who do not meet  
16 even these loose criteria are not placed on the watchlist or are promptly removed  
17 from it. Publicly available information shows that as of June 2017, the Terrorist  
18 Screening Database contained approximately 1,160,000 people. That number that  
19 has grown significantly and steadily since June 2013, when there were  
20 approximately 680,000 people on the watchlist. From 2008 through 2017, a total of  
21 1,137,254 people were added to the watchlist. Government documents show that as  
22 of 2014, nearly half the people on the watchlist had no recognized terrorist-group  
23 affiliation.

24           87. The Inspector General of the Department of Justice has criticized the  
25 Terrorist Screening Center—the entity responsible for maintaining the watchlist—  
26 for employing weak quality-assurance mechanisms and for failing to remove people  
27 from the watchlist when information did not support their placement on it. Public  
28 reports also confirm that the government has placed or retained people on

1 government watchlists in error.

2 88. The “minimum identifying criteria” for inclusion on the watchlist can  
3 be as skeletal as a last name, an occupation, and a date-of-birth range spanning years.  
4 Requiring such an incomplete level of identifying information for inclusion on the  
5 watchlist makes misidentifications likely.

6 89. An individual who seeks to challenge placement on the watchlist may  
7 submit a standard form to the DHS Traveler Redress Inquiry Program (“DHS  
8 TRIP”). DHS TRIP then responds to the individual with a letter that does not confirm  
9 or deny whether the person is in fact watchlisted. The letter does not provide any  
10 notice of the basis for placement on the watchlist. It does not state how the  
11 government has resolved the redress petition. Individuals who seek to challenge their  
12 placement on the watchlist are therefore placed in the impossible situation of trying  
13 to prove themselves innocent without actually having been accused of wrongdoing  
14 or knowing the basis for any actual or spurious suspicion.

15 ***CBP’s religious questioning of Imam Kariye is substantially likely to recur.***

16 90. On information and belief, Imam Kariye was previously placed on the  
17 U.S. government watchlist, and Defendants had him removed from it on or around  
18 May 2022, in response to this litigation. Imam Kariye has no basis for knowing why  
19 the government placed him on the watchlist. Defendants may choose to add Imam  
20 Kariye to the watchlist again at any time, even though such a decision would be  
21 unjustified. If so, he will continue to be subject to detention, searches, and  
22 questioning, including religious questioning, each time he returns to the United  
23 States from international travel.

24 91. For years, Imam Kariye has experienced travel issues consistent with  
25 placement on the U.S. government watchlist. Frequently between 2013 and 2019,  
26 and persistently from 2020 until May 2022, Imam Kariye was unable to print his  
27 boarding passes for domestic or international flights from the internet or self-service  
28 kiosks at the airport, and airline agents had to receive clearance from a supervisor or

1 government agency before providing Imam Kariye with his boarding pass. That  
2 process typically takes approximately an hour and has taken up to two hours.  
3 Whenever Imam Kariye took a domestic or international flight, his boarding pass  
4 was marked with “SSSS,” which indicates “Secondary Security Screening  
5 Selection,” and he was subject to additional screening. Placement on the watchlist  
6 consistently results in a traveler’s boarding pass being stamped with “SSSS.”

7 92. Whenever Imam Kariye returned to the United States following  
8 international travel from 2020 until May 2022, whether by plane or by car, he was  
9 subject to secondary inspection. Whenever Imam Kariye returned to a U.S. airport  
10 following international travel, CBP officers were either waiting for him at the arrival  
11 gate or met him at primary inspection. The officers then escorted Imam Kariye to a  
12 secondary inspection area, where CBP officers detained and questioned him.

13 93. Imam Kariye travels internationally frequently for leisure and to visit  
14 family abroad, including his father and other family who live in East Africa. He has  
15 also traveled internationally for religious pilgrimages. He intends to continue to  
16 travel internationally in the near future. When he does so, upon his return home to  
17 the United States, he is at substantial risk of again being questioned by CBP officers  
18 about his religious beliefs, practices, and associations.

19 ***CBP’s religious questioning causes Imam Kariye significant distress.***

20 94. CBP officers ask Imam Kariye intrusive and personal questions about  
21 his religious beliefs, practices, and associations because he is a Muslim.

22 95. Religious questioning by CBP harms Imam Kariye and impedes his  
23 religious practice.

24 96. On information and belief, DHS and CBP maintain records pertaining  
25 to Imam Kariye’s religious beliefs, practices, and associations, as a result of border  
26 officers’ questioning of Imam Kariye about these topics. Defendants’ unlawful  
27 retention of such information in government systems causes Imam Kariye ongoing,  
28 irreparable distress and harm for which he has no adequate remedy at law.

1           97.    CBP’s invasive questions regarding Imam Kariye’s religious beliefs,  
2 practices, and associations are insulting and humiliating to him. Border officers  
3 convey a message of official disapproval of Islam by (1) targeting Imam Kariye for  
4 religious questioning because he is a Muslim, (2) asking him specific questions  
5 about his Islamic religious beliefs, practices, and associations, and (3) retaining  
6 information about his religious beliefs, practices, and associations. In particular,  
7 CBP conveys the stigmatizing message that the U.S. government views adherence  
8 to Islamic religious beliefs and practices as inherently suspicious, and that Muslim  
9 Americans are not entitled to the full constitutional protections afforded to other  
10 Americans. Due to this official condemnation of his faith, Imam Kariye feels  
11 marginalized and like an outsider when coming home to his own country.

12           98.    CBP’s religious questioning also coerces Imam Kariye into modifying  
13 or curbing his religious expression and practices, contrary to his sincere religious  
14 beliefs. In particular, when traveling back to the United States from abroad, Imam  
15 Kariye modifies or eliminates certain religious practices central to his faith to avoid  
16 calling attention to his faith and incurring additional scrutiny and religious  
17 questioning by CBP. Because of CBP’s scrutiny and religious questioning, Imam  
18 Kariye cannot fully practice and express his faith in the way that he otherwise would  
19 while traveling.

20           99.    For example, CBP’s religious questioning coerces Imam Kariye into  
21 modifying his religious dress while traveling back to the United States. Imam Kariye  
22 typically wears a Muslim cap, known as a kufi, when he is in public. Wearing a kufi  
23 is a common religious practice for many Muslim men. For Imam Kariye, the kufi  
24 represents his Muslim identity. It emulates the dress of the Prophet Mohammad, and  
25 it signifies love and reverence for him.

26           100.    Despite his sincerely held religious belief that he should wear his kufi  
27 in public, Imam Kariye no longer wears his kufi at the airport or the border when  
28 returning home to the United States from abroad, in order to avoid additional CBP

1 scrutiny and religious questioning.

2 101. CBP's religious questioning also coerces Imam Kariye into modifying  
3 his prayer practice while traveling back into the United States. As a Muslim, Imam  
4 Kariye believes that he must pray at five specific times each day. This prayer practice  
5 involves kneeling on the ground in a particular direction (toward Mecca), bowing,  
6 and placing his forehead to the ground in prayer. However, to avoid additional CBP  
7 scrutiny and religious questioning, Imam Kariye typically refrains from these  
8 physical acts of prayer at the airport and the border, even though he would ordinarily  
9 pray in this manner during the religiously designated prayer times.

10 102. CBP's religious questioning also coerces Imam Kariye into avoiding  
11 carrying religious texts while traveling back into the United States. As a Muslim and  
12 an imam, Imam Kariye's religious duties require him to study a variety of religious  
13 texts, such as the Quran, commentaries on the Quran, and Islamic jurisprudence in  
14 matters relating to family law and the rules pertaining to charity. However, to avoid  
15 additional CBP scrutiny and religious questioning, Imam Kariye no longer carries  
16 physical copies of these texts with him when he travels home to the United States  
17 from abroad, hindering his ability to study these texts while traveling.

18 103. Imam Kariye is proud to be a Muslim. His sincere religious beliefs  
19 counsel him to wear a kufi in public, pray in a particular manner, and study various  
20 religious texts. These practices are central to his religious beliefs. It causes him  
21 distress to forgo wearing his kufi, modify his prayer practice, and avoid carrying  
22 religious texts as he travels. Nevertheless, because of CBP's practice of subjecting  
23 him to intrusive questions about his faith, he is coerced into refraining from these  
24 religious practices when traveling back into the United States. If Imam Kariye does  
25 engage in these religious practices, he risks being penalized through additional  
26 unwarranted scrutiny and religious questioning by CBP.

27 104. Because Imam Kariye is Muslim, he is subjected to unnecessary  
28 religious questioning by CBP. In other words, he is forced to choose between, on the

1 one hand, being Muslim—and, on the other, being treated just like any other law-  
2 abiding citizen and receiving CBP’s permission to reenter the country without undue  
3 scrutiny. Imam Kariye is also forced to choose between outward displays of  
4 religiosity and avoiding *additional* religious questioning. These forced choices are a  
5 substantial burden on his religious practice.

6 105. CBP’s religious questioning has made and continues to make Imam  
7 Kariye feel anxious, humiliated, and stigmatized as a Muslim American. Imam  
8 Kariye experiences anxiety before traveling home due to CBP’s religious  
9 questioning. In the weeks following each incident of religious questioning described  
10 above, the humiliation of CBP’s intrusive demands for information about his faith  
11 has replayed in Imam Kariye’s mind. CBP’s scrutiny and religious questioning cause  
12 him to suffer acute distress, which has interfered with his daily life, including by  
13 distracting him from work and from his relationships with family members.

14 **Mohamad Mouslli**

15 106. Plaintiff Mohamad Mouslli is a U.S. citizen who is Muslim. He lives in  
16 Gilbert, Arizona, with his wife and three children, all U.S. citizens. Mr. Mouslli  
17 works in commercial real estate.

18 107. On four recent occasions that Mr. Mouslli has traveled internationally,  
19 CBP officers have subjected him to religious questioning upon his return home to  
20 the United States. On each occasion, the environment was coercive: CBP officers  
21 wearing uniforms and carrying weapons commanded Mr. Mouslli to enter and  
22 remain in an area separated from other travelers. They took Mr. Mouslli’s belongings  
23 from him, searched his electronic devices, and questioned him at length. Because  
24 the environment was coercive, Mr. Mouslli’s responses to CBP’s questions were  
25 coerced. He was not free to leave without the permission of a CBP officer, and he  
26 reasonably believed that if he did not answer all questions, he would not be permitted  
27 to leave and would be subject to additional and lengthy scrutiny.

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***First Religious Questioning Incident: August 9, 2018***

108. On or about August 9, 2018, CBP officers subjected Mr. Mouslli to religious questioning during secondary inspection at the border crossing near Lukeville, Arizona. He was returning to the United States by car from a trip to Mexico, where he had been on vacation with a friend.

109. After CBP officers checked Mr. Mouslli’s passport, several officers surrounded the car. They forced Mr. Mouslli to remain in the car for approximately 30 minutes, after which the officers brought him into the station. In total, CBP officers detained Mr. Mouslli for approximately six to seven hours.

110. During the detention, CBP officers questioned Mr. Mouslli about his religious beliefs, practices, and associations, including whether he is a Muslim and whether he is Sunni or Shi’a.

111. Mr. Mouslli answered these questions because he was not free to leave without the permission of a CBP officer and reasonably felt that he had no choice but to answer, based on the coercive circumstances of his detention.

112. A CBP officer took notes during Mr. Mouslli’s detention, including while Mr. Mouslli responded to CBP’s questions about his religious beliefs, practices, and associations.

***Second Religious Questioning Incident: August 6, 2019***

113. On or about August 6, 2019, CBP officers again subjected Mr. Mouslli to religious questioning during secondary inspection at Los Angeles International Airport (“LAX”). He was returning to the United States from a trip to Dubai to visit family and the Netherlands to visit his sister. The officers detained Mr. Mouslli for approximately one-and-a-half to two hours, along with his minor son, who had joined him for the trip.

114. During the detention, the CBP officers questioned Mr. Mouslli about his religious beliefs, practices, and associations, including whether he attends a mosque and how many times a day he prays.

1           115. Mr. Mouslli answered these questions because he and his son were not  
2 free to leave without the permission of a CBP officer, and he reasonably felt that he  
3 had no choice but to answer, based on the coercive circumstances of his detention.  
4 He was also worried about extending the detention, given the presence of his son.

5           116. A CBP officer took notes during Mr. Mouslli's detention, including  
6 while Mr. Mouslli responded to CBP's questions about his religious beliefs,  
7 practices, and associations.

8                           ***Third Religious Questioning Incident: March 11, 2020***

9           117. On March 11, 2020, CBP officers subjected Mr. Mouslli to religious  
10 questioning during another secondary inspection at LAX. Mr. Mouslli was returning  
11 to the United States from a trip to Dubai to visit his parents. The officers detained  
12 Mr. Mouslli for approximately one-and-a-half to two hours.

13           118. During the detention, the CBP officers questioned Mr. Mouslli about  
14 his religious beliefs, practices, and associations, once again demanding to know  
15 whether he attends a mosque and whether he is Sunni or Shi'a.

16           119. Mr. Mouslli answered these questions because he was not free to leave  
17 without the permission of a CBP officer and reasonably felt that he had no choice  
18 but to answer, based on the coercive circumstances of his detention.

19           120. A CBP officer took notes during Mr. Mouslli's detention, including  
20 while Mr. Mouslli responded to CBP's questions about his religious beliefs,  
21 practices, and associations.

22           121. Because of the delay from the secondary inspection, including CBP's  
23 religious questioning, Mr. Mouslli missed his connecting flight from LAX to  
24 Phoenix, and he had to rent a car at additional expense to drive home to Arizona.

25                           ***Fourth Religious Questioning Incident: June 5, 2021***

26           122. On or about June 5, 2021, CBP officers again subjected Mr. Mouslli to  
27 religious questioning during secondary inspection at LAX. Mr. Mouslli was  
28 returning to the United States from a trip to Dubai to visit his parents. The officers

1 detained him for approximately one-and-a-half to two hours, along with his minor  
2 daughter, who had joined him for the trip.

3 123. During the detention, CBP officers questioned Mr. Mouslli about his  
4 religious beliefs, practices, and associations, including whether he goes to a mosque  
5 and whether he prays every day.

6 124. Mr. Mouslli answered these questions because he and his daughter were  
7 not free to leave without the permission of a CBP officer, and he reasonably felt that  
8 he had no choice but to answer, based on the coercive circumstances of his detention.  
9 He was also worried about extending the detention, given the presence of his  
10 daughter.

11 125. A CBP officer took notes during Mr. Mouslli's detention, including  
12 while Mr. Mouslli responded to CBP's questions about his religious beliefs,  
13 practices, and associations.

14 126. During each of these four religious questioning incidents, Mr. Mouslli's  
15 travel and identification documents were valid, and he was not transporting  
16 contraband.

17 ***Mr. Mouslli is a law-abiding citizen***  
18 ***and does not pose a national security risk.***

19 127. Mr. Mouslli is a law-abiding citizen with no criminal record and no ties  
20 to terrorist activity.

21 128. Mr. Mouslli has never participated in nor advocated for any acts of  
22 violence, and has never been accused by any government agency of doing so.

23 129. Like Imam Kariye and many others, upon information and belief, Mr.  
24 Mouslli is unjustly and improperly on the U.S. government watchlist due to an error  
25 or misplaced suspicion.

26 130. Such errors are common because of the flaws in the watchlisting  
27 process described in paragraphs 83–89 above.

28

1           ***CBP’s religious questioning of Mr. Mouslli is substantially likely to recur***  
2   ***and causes him significant distress.***

3           131. On information and belief, Mr. Mouslli has been placed on the U.S.  
4 government watchlist, and he will continue to be subject to detention, searches, and  
5 questioning, including religious questioning, each time he returns to the United  
6 States from international travel. Mr. Mouslli has no basis for knowing why the  
7 government placed him on the watchlist.

8           132. In late 2017, Mr. Mouslli began experiencing travel issues consistent  
9 with placement on the watchlist. Since 2017, Mr. Mouslli has been unable to print  
10 his boarding passes for domestic or international flights from the internet or self-  
11 service kiosks at the airport, and airline agents must receive clearance from a  
12 supervisor or government agency before providing Mr. Mouslli with his boarding  
13 pass. Whenever Mr. Mouslli takes a domestic or international flight, his boarding  
14 pass is marked with “SSSS,” and he is subject to additional screening. Whenever  
15 Mr. Mouslli returns to the United States following international travel, whether by  
16 plane or by car, he is subject to secondary inspection. Whenever Mr. Mouslli returns  
17 to a U.S. airport following international travel, CBP officers are waiting for him at  
18 the arrival gate. The officers then escort Mr. Mouslli to a secondary inspection area,  
19 where CBP officers detain and question Mr. Mouslli. Mr. Mouslli does not know  
20 why the U.S. government has placed him on the watchlist.

21           133. Mr. Mouslli considered taking a trip with his son to Dubai in February  
22 2022 to visit his family. However, he decided that this particular trip would not be  
23 worth the difficulty, discomfort, and stigma of CBP scrutiny in secondary inspection,  
24 including CBP’s religious questioning.

25           134. While Mr. Mouslli intends to travel internationally in the near future to  
26 visit his mother, brother, and sister, who live in Dubai, and his sister, who lives in  
27 the Netherlands, he now weighs the necessity of every trip against the substantial  
28 likelihood of future detention and religious questioning by border officers.

1           135. When Mr. Mouslli travels again internationally, he is at substantial risk  
2 of again being questioned by CBP officers upon his return home to the United States  
3 about his religious beliefs, practices, and associations.

4           136. CBP officers ask Mr. Mouslli intrusive questions about his religious  
5 beliefs, practices, and associations because he is a Muslim.

6           137. Religious questioning by CBP harms Mr. Mouslli and impedes his  
7 religious practice.

8           138. On information and belief, DHS and CBP maintain records pertaining  
9 to Mr. Mouslli's religious beliefs, practices, and associations, as a result of border  
10 officers' questioning of Mr. Mouslli about these topics. Defendants' unlawful  
11 retention of such information in government systems causes Mr. Mouslli ongoing,  
12 irreparable distress and harm for which he has no adequate remedy at law.

13           139. CBP's invasive questions regarding Mr. Mouslli's religious beliefs,  
14 practices, and associations are insulting and humiliating to him. Border officers  
15 convey a message of official disapproval of Islam by (1) targeting Mr. Mouslli for  
16 religious questioning because he is a Muslim, (2) asking him specific questions  
17 about his Islamic religious beliefs, practices, and associations, and (3) retaining  
18 information about his religious beliefs, practices, and associations. In particular,  
19 CBP conveys the stigmatizing message that the U.S. government views adherence  
20 to Islamic religious beliefs and practices as inherently suspicious, and that Muslim  
21 Americans are not entitled to the full constitutional protections afforded to other  
22 Americans. Due to this official condemnation of his faith, Mr. Mouslli feels  
23 marginalized and like an outsider when coming home to his own country.

24           140. CBP's religious questioning also coerces Mr. Mouslli into modifying  
25 his religious expression and practices, contrary to his sincere religious beliefs. In  
26 particular, when traveling back to the United States from abroad, Mr. Mouslli  
27 eliminates certain religious practices and expression central to his faith to avoid  
28 calling attention to his faith and incurring additional scrutiny and religious

1 questioning by CBP. Because of CBP’s scrutiny and religious questioning, Mr.  
2 Mouslli cannot fully practice and express his faith in the way that he otherwise would  
3 while traveling.

4 141. For example, CBP’s religious questioning coerces Mr. Mouslli into  
5 modifying his prayer practice while traveling back into the United States. As a  
6 Muslim, Mr. Mouslli believes he must pray at five specific times each day. This  
7 prayer practice involves kneeling on the ground in a particular direction (toward  
8 Mecca), bowing, and placing his forehead to the ground in prayer. However, to avoid  
9 additional CBP scrutiny and religious questioning, Mr. Mouslli refrains from these  
10 physical acts of prayer at the airport and the border, even though he would ordinarily  
11 pray in this manner during the religiously designated prayer times.

12 142. Mr. Mouslli is proud to be a Muslim. His sincere religious beliefs  
13 counsel him to pray in a particular way. It causes him distress to forgo physical acts  
14 of prayer at the airport and in secondary inspection. Physical acts of prayer are  
15 central to his religious belief. Nevertheless, because of CBP’s practice of subjecting  
16 him to intrusive questions about his faith, he is coerced into refraining from physical  
17 acts of prayer when traveling back into the United States. If Mr. Mouslli does engage  
18 in prayer while traveling, he risks being penalized through additional unwarranted  
19 scrutiny and religious questioning by CBP.

20 143. Because Mr. Mouslli is Muslim, he is subjected to unnecessary  
21 religious questioning by CBP. In other words, he is forced to choose between, on the  
22 one hand, being Muslim—and, on the other, being treated just like any other law-  
23 abiding citizen and receiving CBP’s permission to reenter the country without undue  
24 scrutiny. Mr. Mouslli is also forced to choose between outward displays of  
25 religiosity and avoiding *additional* religious questioning. These forced choices are a  
26 substantial burden on his religious practice.

27 144. Religious questioning by CBP has made and continues to make Mr.  
28 Mouslli feel anxious and distressed, particularly because of the invasive and personal

1 nature of religious questioning and the stigma of being targeted because he is  
2 Muslim.

3 **Hameem Shah**

4 145. Plaintiff Hameem Shah is a U.S. citizen and Muslim who works in  
5 financial services. Mr. Shah lives in Plano, Texas.

6 146. On May 7, 2019, CBP officers subjected Mr. Shah to religious  
7 questioning during secondary inspection at LAX. Mr. Shah was returning to the  
8 United States from a trip to Serbia and Bosnia for vacation.

9 147. After Mr. Shah passed through primary inspection without incident, a  
10 CBP officer (“Officer 1”) stopped him in the baggage retrieval area and asked him  
11 to accompany him for a search. To the best of Mr. Shah’s recollection, Officer 1’s  
12 last name was “Esguerra” or something close to it.

13 148. Mr. Shah responded that he did not wish to be searched. Officer 1  
14 replied that, because Mr. Shah was at the border, he did not have the option to refuse.

15 149. Officer 1 escorted Mr. Shah to a secondary inspection area. There,  
16 Officer 1 and a second officer (“Officer 2”) began to search Mr. Shah’s belongings.  
17 To the best of Mr. Shah’s recollection, Officer 2’s last name was “Gonzalez” or  
18 something close to it.

19 150. The environment was coercive: both officers were wearing uniforms  
20 and carrying weapons, and they commanded Mr. Shah to enter and remain in an area  
21 separated from travelers who were not subject to secondary inspection. Because the  
22 environment was coercive, Mr. Shah’s responses to the officers’ questions were  
23 coerced. He was not free to leave without the permission of a CBP officer, and he  
24 reasonably believed that if he did not answer all questions, he would not be permitted  
25 to leave and would be subject to additional and lengthy scrutiny.

26 151. Officer 2 reviewed a notebook that Mr. Shah had been carrying in his  
27 backpack—a personal journal that Mr. Shah had kept for years. The journal  
28 contained notes about his religious beliefs and practices, which are rooted in peace

1 and nonviolence. It also contained to-do lists for household and work tasks, notes  
2 about business lectures he listens to in his free time, and notes about a popular  
3 podcast on travel and entrepreneurship.

4 152. Mr. Shah told Officer 2 that the notebook was a personal journal and  
5 asked him not to read it, but Officer 2 persisted.

6 153. Officer 2 pointed out that many of the notes in Mr. Shah's journal were  
7 related to religion. He asked Mr. Shah why and where he had taken the notes and  
8 whether he had traveled in the Middle East. Officer 1 told Mr. Shah that they were  
9 trying to make sure Mr. Shah was a "safe person."

10 154. Mr. Shah answered Officer 1's questions because he was not free to  
11 leave without the permission of a CBP officer and reasonably felt that he had no  
12 choice but to answer, based on the coercive circumstances of his detention.

13 155. The officers then told Mr. Shah that they were going to search his phone  
14 and laptop. In response, Mr. Shah said that he did not consent to the search of his  
15 electronic devices and asked to see a supervisor. Officer 1 left to get the supervisor;  
16 Officer 2 stayed behind.

17 156. While he and Mr. Shah were alone, Officer 2 asked Mr. Shah a series  
18 of questions about his religious beliefs, practices, and associations. The officer's  
19 questions included the following:

- 20 a. What religion are you?  
21 b. How religious do you consider yourself? Your family?  
22 c. What mosque do you attend?  
23 d. Do you attend any other mosques?  
24 e. Do you watch Islamic lectures online or on social media?

25 157. When Mr. Shah asked Officer 2 why he was asking these questions, the  
26 officer responded, "I'm asking because of what we found in your journal."

27 158. Mr. Shah answered Officer 2's questions because he was not free to  
28 leave without the permission of a CBP officer and reasonably felt that he had no



1 choice but to answer, based on the coercive circumstances of his detention.

2 159. Later, Officer 1 returned with the supervisor. To the best of Mr. Shah's  
3 recollection, the supervisor's last name was "Lambrano," or something close to it.  
4 Mr. Shah told the supervisor that he did not consent to a search of his electronic  
5 devices. Mr. Shah stated that he wanted to stand up for his constitutional rights.

6 160. The supervisor informed Mr. Shah that his reluctance to allow  
7 inspection of his devices had made the officers more suspicious of him.

8 161. Mr. Shah asked to speak with an attorney immediately. Officer 1  
9 responded by asking, "Why? You're not under arrest."

10 162. Mr. Shah then told the supervisor that he no longer wished to enter the  
11 United States and wanted instead to return to the transit area so that he could leave  
12 the country and go back to Europe. The supervisor responded that Mr. Shah could  
13 not take his devices with him because they had been seized. The supervisor gave Mr.  
14 Shah two options: (1) unlock his phone, in which case the officers would inspect the  
15 device in Mr. Shah's presence; or (2) refuse to unlock his phone, in which case the  
16 officers would hold Mr. Shah's phone and laptop for further examination and return  
17 them to him at a later date.

18 163. Mr. Shah reasonably felt that he had no meaningful choice, so he  
19 unlocked his phone. Officer 2 took the phone, wrote down the International Mobile  
20 Equipment Identity and serial numbers, and manually searched through the phone  
21 without letting Mr. Shah see the screen.

22 164. Officer 1 told Mr. Shah he needed to continue looking through Mr.  
23 Shah's journal using a computer, and he left the secondary inspection area with the  
24 journal.

25 165. Mr. Shah again objected to the search of his phone and his journal.

26 166. About twenty to thirty minutes after Officer 1 had left, he returned with  
27 Mr. Shah's journal; he was accompanied by an officer or agent in plain clothes  
28 ("Officer 3"). To the best of Mr. Shah's recollection, Officer 3's name was "Ali," or

1 something close to it. On information and belief, Officer 3 was an HSI agent.

2 167. Officer 3 asked Mr. Shah about aspects of his religious associations that  
3 Mr. Shah had recorded in his personal journal. Specifically, Officer 3 asked Mr.  
4 Shah about the identity of a local imam in the Phoenix area.

5 168. Mr. Shah answered Officer 3's questions about the imam because he  
6 was not free to leave without the permission of a CBP officer and reasonably felt  
7 that he had no choice but to answer, based on the coercive circumstances of his  
8 detention.

9 169. Approximately two hours after he was taken to secondary inspection,  
10 the officers returned Mr. Shah's passport and allowed him to leave.

11 170. After leaving secondary inspection, Mr. Shah opened his phone and  
12 could see that Officer 2 had viewed private text messages, WhatsApp messages,  
13 internal files, emails, call history, Google maps history, Google Chrome, Airbnb,  
14 and photos of family members spanning ten years, some of which were stored in the  
15 cloud but must have been cached on the device. Mr. Shah reasonably believes that  
16 Officer 2 viewed these apps and files because Mr. Shah has a habit of closing apps  
17 or files after he uses them, meaning Officer 2 must have viewed everything that was  
18 open at the time he returned the phone to Mr. Shah.

19 171. The fact that Officer 2 viewed this content, particularly photos of Mr.  
20 Shah's family members, made Mr. Shah feel extremely distressed and  
21 uncomfortable.

22 172. The border officers subjected Mr. Shah to longer-than-necessary  
23 detention, more extensive and intrusive questioning, and more invasive searches as  
24 retaliation for the religious beliefs reflected in his journal, as well as his statements  
25 to the officers invoking his rights.

26 173. If the officers had not been acting with retaliatory motives, they would  
27 have detained Mr. Shah for a shorter period of time, and would not have conducted  
28 such extensive and intrusive questioning and searches.

1 174. Mr. Shah’s travel and identification documents were valid, and he was  
2 not transporting contraband.

3 175. In response to requests under the Freedom of Information Act and the  
4 Privacy Act, CBP has provided Mr. Shah with a redacted document stating that his  
5 detention and questioning was “Terrorist Related,” even though Mr. Shah has no  
6 connection to terrorism or any kind of political violence. This document is labeled  
7 “IOIL,” which is a type of incident report entered into TECS. The document includes  
8 the following description:

9 During examination of his belongings, subject was very  
10 cautious and focused on his journal that was found in  
11 his hand carry. Subject demanded for us not to read his  
12 journal because he felt that it was an invasion of his  
13 privacy. [Redacted] Upon reading the journal, some  
14 notes regarding his work and religion were found.  
15 Subject stated he’s self-employed working as a financial  
16 trader. Subject didn’t want to elaborate on the type of  
17 work he does but just mentioned that he is able to work  
18 remotely. Subject’s notes regarding his religion (Islam)  
19 seemed to be passages from an individual he calls  
20 [redacted]. Subject stated that he is the Imam at the  
Islamic Center of the North East Valley located in  
Scottsdale, AZ. Subject mentioned that he also goes to  
another mosque but refused to provide the name.  
Subject claimed he’s a devote [sic] Sunni Muslim.

20 ***Mr. Shah is a law-abiding citizen***  
21 ***and does not pose a national security risk.***

22 176. Mr. Shah is a law-abiding citizen with no criminal record and no ties to  
23 terrorist activity.

24 177. Mr. Shah has never participated in nor advocated for any acts of  
25 violence or terrorism, and has never been accused by any government agency of  
26 doing so.

27 178. None of the contents of Mr. Shah’s journal related to violence or  
28 terrorism.

1           ***CBP’s religious questioning of Mr. Shah is substantially likely to recur***  
2   ***and causes him significant distress.***

3           179. Before the pandemic, Mr. Shah traveled internationally frequently for  
4 leisure and visits with family abroad. He intends to resume traveling internationally  
5 in the near future.

6           180. At primary inspection, CBP officers query TECS to identify a traveler’s  
7 recent border crossings. Because CBP has a TECS entry stating that Mr. Shah’s  
8 previous detention and questioning was “Terrorist Related,” on information and  
9 belief, when Mr. Shah travels internationally again, he is at substantial risk of being  
10 referred to secondary inspection upon his return home to the United States and being  
11 questioned by CBP officers about his religious beliefs, practices, and associations.

12           181. Mr. Shah does not know why, and pursuant to what standards, his  
13 detention was labeled as “Terrorist Related.” Mr. Shah’s statements and actions, as  
14 alleged by Mr. Shah and as described by the TECS entry, have no relation to  
15 terrorism.

16           182. CBP and HSI officers asked Mr. Shah intrusive questions about his  
17 religious beliefs, practices, and associations because he is a Muslim. In addition,  
18 CBP and HSI officers subjected Mr. Shah to retaliatory questioning and searches  
19 because he is Muslim, because of the Islamic religious content of his journal, and  
20 because he repeatedly invoked his constitutional rights.

21           183. Religious questioning by CBP and HSI harms Mr. Shah and impedes  
22 his religious practice.

23           184. Defendants maintain records pertaining to Mr. Shah’s religious beliefs,  
24 practices, and associations, as a result of border officers’ questioning of Mr. Shah  
25 about these topics. In addition, on information and belief, Defendants maintain  
26 copies of the contents of his journal and phone, collected in retaliation for the  
27 religious contents of the journal and his invocation of his rights. Defendants’  
28 unlawful retention of such information in government systems causes Mr. Shah

1 ongoing, irreparable distress and harm for which he has no adequate remedy at law.

2 185. CBP's and HSI's invasive questions regarding Mr. Shah's religious  
3 beliefs, practices, and associations are insulting and humiliating to him. Border  
4 officers convey a message of official disapproval of Islam by (1) targeting Mr. Shah  
5 for religious questioning because he is a Muslim, (2) asking specific questions about  
6 his Islamic religious beliefs, practices, and associations, and (3) retaining  
7 information about his religious beliefs, practices, and associations. In particular,  
8 CBP and HSI convey the stigmatizing message that the U.S. government views  
9 adherence to Islamic religious beliefs and practices as inherently suspicious, and that  
10 Muslim Americans are not entitled to the full constitutional protection afforded to  
11 other Americans. Due to this official condemnation of his faith, Mr. Shah feels  
12 marginalized and like an outsider when coming home to his own country.

13 186. CBP's and HSI's religious questioning of Mr. Shah also coerces him  
14 into modifying his religious practices, contrary to his sincere religious beliefs. As  
15 part of his religious practice, Mr. Shah regularly writes in a personal journal. These  
16 writings include expressions of his beliefs and devotion and other notes pertaining  
17 to his faith and religious practice. Mr. Shah's journal is a vital outlet for his religious  
18 expression and is central to his religious practice. In meditating on religious  
19 questions or issues, he often revisits his previous entries and draws on them for  
20 spiritual inspiration. However, the next time Mr. Shah travels internationally, he  
21 intends to leave his journal at home to avoid having it become a basis for Defendants'  
22 practice of targeting Muslims for religious questioning. As a result, due to  
23 government coercion, he will be unable to document his religious expression and  
24 thoughts or consult previous entries while he is out of the country.

25 187. Mr. Shah is proud to be a Muslim, and the prospect of leaving his  
26 journal at home when traveling internationally is distressing to him. Nevertheless,  
27 because of CBP's and HSI's practice of subjecting him to intrusive and retaliatory  
28 questions about his faith, he is coerced into leaving his journal at home. If Mr. Shah

1 travels internationally with his journal, he risks being penalized through additional  
2 unwarranted scrutiny and religious questioning by CBP and HSI.

3 188. Because Mr. Shah is Muslim, he is subjected to unnecessary religious  
4 questioning by border officers. In other words, he is forced to choose between, on  
5 the one hand, being Muslim—and, on the other, being treated just like any other law-  
6 abiding citizen and receiving CBP’s permission to reenter the country without undue  
7 scrutiny. Mr. Shah is also forced to choose between outward displays of religiosity  
8 and avoiding *additional* religious questioning. These forced choices are a substantial  
9 burden on his religious practice.

10 189. Mr. Shah feels violated and humiliated by the border officers’ religious  
11 questioning and retaliatory searches. He remains extremely concerned about the  
12 private information Defendants retain from his journal and phone, as well as the  
13 information they retain about his personal religious beliefs, practices, and  
14 associations.

15 **CAUSES OF ACTION**

16 **CLAIM I**

17 **Violation of the First Amendment**

18 **Establishment Clause**

19 **(by all Plaintiffs against all Defendants)**

20 190. Plaintiffs herein incorporate by reference the allegations above.

21 191. The “clearest command” of the Establishment Clause requires the  
22 government to adhere to a rigid “principle of denominational neutrality”—neither  
23 favoring nor disfavoring any particular religious sect. *Larson v. Valente*, 456 U.S.  
24 228, 244–46 (1982). Where government action “discriminates *among* religions” in  
25 violation of this fundamental principle, strict scrutiny applies. *Id.*

26 192. The denominational neutrality requirement applies to all forms of  
27 government action. *See Sklar v. Comm’r*, 282 F.3d 610, 619 (9th Cir. 2002)  
28 (applying the *Larson* test to a policy contained in an Internal Revenue Service

1 closing agreement).

2 193. Defendants’ border officers have subjected Plaintiffs to religious  
3 questioning on at least ten separate occasions, and Defendants retain Plaintiffs’  
4 responses to such questioning.

5 194. Defendants engage in a policy and/or practice of singling out and  
6 targeting Muslims, including Plaintiffs, for religious questioning during secondary  
7 inspections because of their adherence to Islam. As part of this policy and/or practice  
8 of religious questioning, Defendants retain records that reflect answers to religious  
9 questions and thus contain information about the religious beliefs, practices, and  
10 associations of Muslims, including Plaintiffs.

11 195. Defendants’ conduct, as set forth above, violates the fundamental  
12 principle of denominational neutrality by targeting Muslims for religious  
13 questioning during secondary inspections. Americans who practice other faiths are  
14 not routinely subject to similar questioning about their beliefs and practices during  
15 secondary inspections.

16 196. Defendants’ conduct, as set forth above, does not further any  
17 compelling government interest and is not narrowly tailored to achieve any such  
18 interest.

19 197. Requiring Plaintiffs to respond to invasive questions about their  
20 religious beliefs, practices, and associations, and retaining that information for  
21 decades, does not help to protect the border or prevent terrorism. Moreover,  
22 Defendants have less restrictive alternatives at their disposal—such as questioning  
23 focused on whether a traveler has violated immigration, customs, or border-related  
24 laws—that would help achieve those objectives.

25 198. Defendants’ conduct, as set forth above, is also religiously coercive  
26 because it places substantial pressure on Muslims, including Plaintiffs, to hide,  
27 suppress, or otherwise alter their faith and religious practice.

28 199. Defendants’ discriminatory conduct is at odds with American

1 “historical practices and understandings,” as described in paragraphs 39–53. *See*  
2 *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2428 (2022) (quoting *Town of*  
3 *Greece v. Galloway*, 572 U.S. 565, 566 (2014)).

4 200. Alternatively, even if Defendants do not engage in a policy and/or  
5 practice of singling out Muslims in particular for religious questioning, Defendants  
6 have a policy and/or practice of subjecting certain travelers of faith, including  
7 Plaintiffs, to religious questioning during secondary inspections, and Defendants  
8 retain records reflecting answers to such questioning for decades. Unjustified  
9 intrusive religious questioning is at odds with American historical practices and  
10 understandings as described in paragraphs 39–53.

11 201. Moreover, subjecting travelers of any faith to religious questioning  
12 during secondary inspection is religiously coercive because it places substantial  
13 pressure on people of faith, including Plaintiffs, to hide, suppress, or otherwise alter  
14 their faith and religious practice. The environment in which the questioning takes  
15 place, as well as the fact that Plaintiffs cannot leave without CBP’s permission,  
16 renders the questioning itself coercive. In addition, by coercing Plaintiffs to reveal  
17 information about their religion, Defendants impermissibly coerce Plaintiffs to  
18 profess their belief in their religion.

19 202. As a result, Defendants have violated the Establishment Clause of the  
20 First Amendment to the U.S. Constitution and will continue to do so if Plaintiffs are  
21 not afforded the relief below.

## 22 CLAIM II

### 23 Violation of the First Amendment

#### 24 Free Exercise Clause

25 (by all Plaintiffs against all Defendants)

26 203. Plaintiffs herein incorporate by reference the allegations above.

27 204. The Free Exercise Clause “protect[s] religious observers against  
28 unequal treatment” and “guard[s] against the government’s imposition of “special



1 disabilities on the basis of religious views or religious status.” *Trinity Lutheran*  
2 *Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019, 2021 (2017) (internal  
3 quotation marks and citations omitted). Government actions that treat individuals  
4 unequally based on their religious status are subject to the “strictest scrutiny.” *Id.* at  
5 2019.

6 205. Defendants’ border officers have subjected Plaintiffs to religious  
7 questioning on at least ten separate occasions, and Defendants retain Plaintiffs’  
8 responses to such questioning.

9 206. Defendants engage in a policy and/or practice of singling out and  
10 targeting Muslims, including Plaintiffs, for religious questioning during secondary  
11 inspections because of their adherence to Islam. As part of this policy and/or practice  
12 of religious questioning, Defendants retain records that reflect answers to religious  
13 questions and thus contain information about the religious beliefs, practices, and  
14 associations of Muslims, including Plaintiffs.

15 207. Defendants’ conduct, as set forth above, is not religiously neutral or  
16 generally applicable. It treats Muslims unequally vis-à-vis travelers of other faiths  
17 and, based on their religious status, imposes on Muslims special disabilities while  
18 traveling.

19 208. Defendants’ conduct, as set forth above, does not advance any  
20 compelling government interest and is not narrowly tailored to achieve any such  
21 interest.

22 209. Alternatively, even if Defendants do not engage in a policy and/or  
23 practice of singling out Muslims in particular for religious questioning, Defendants  
24 have a policy and/or practice of subjecting certain travelers of faith, including  
25 Plaintiffs, to religious questioning during secondary inspections, and Defendants  
26 retain records reflecting answers to such questioning for decades. This policy and/or  
27 practice targets people of faith based on their religious status and is thus subject to  
28 strict scrutiny. It does not advance any compelling government interest and is not

1 narrowly tailored to achieve any such interest.

2 210. Requiring Plaintiffs to respond to invasive questions about their  
3 religious beliefs, practices, and associations, and retaining that information for  
4 decades, does not help to protect the border or prevent terrorism. Moreover,  
5 Defendants have less restrictive alternatives at their disposal—such as questioning  
6 focused on whether a traveler has violated immigration, customs, or border-related  
7 laws—that would help achieve those objectives.

8 211. Defendants’ conduct imposes a substantial burden on Plaintiffs’  
9 exercise of their sincerely held religious beliefs because it places on Plaintiffs  
10 substantial pressure to modify or eliminate certain religious practices and expression  
11 while traveling, in order to avoid calling attention to their religion and being  
12 subjected to additional coercive questioning about it. Defendants’ conduct also  
13 forces Plaintiffs to choose between following the tenets of their religion and  
14 receiving a government benefit, and it coerces Plaintiffs to act contrary to their  
15 religious beliefs by threat of sanction. Plaintiffs are coerced into taking measures  
16 contrary to their sincerely held religious beliefs, in order to avoid calling attention  
17 to their religion and being subjected to additional questioning about it.

18 212. As a result, Defendants have violated the Free Exercise Clause of the  
19 First Amendment to the U.S. Constitution and will continue to do so if Plaintiffs are  
20 not afforded the relief below.

21 **CLAIM III**

22 **Violation of the First Amendment**

23 **Right to Free Association**

24 **(by all Plaintiffs against all Defendants)**

25 213. Plaintiffs herein incorporate by reference the allegations above.

26 214. The Supreme Court has “long understood as implicit in the right to  
27 engage in activities protected by the First Amendment a right to associate with  
28 others,” and has recognized “the vital relationship between freedom to associate and

1 privacy in one’s associations.” *Americans for Prosperity Found. v. Bonta*, 141 S. Ct.  
2 2373, 2382 (2021) (internal quotation marks and citations omitted). Government  
3 actions compelling disclosure of one’s associations are subject to exacting scrutiny.  
4 *Id.* at 2383–84.

5 215. Defendants’ border officers have repeatedly subjected Plaintiffs to  
6 questioning about their religious associations, and Defendants retain Plaintiffs’  
7 responses to such questioning.

8 216. Defendants engage in a policy and/or practice of singling out and  
9 targeting Muslims, including Plaintiffs, for questioning about their religious  
10 associations during secondary inspections because of their adherence to Islam. This  
11 policy and/or practice involves expressions of hostility toward Islam. As part of this  
12 policy and/or practice, Defendants retain records that reflect answers to religious  
13 questions and thus contain information about the religious associations of Muslims,  
14 including Plaintiffs.

15 217. Defendants’ border officers question Plaintiffs about their religious  
16 associations in inherently coercive environments, thereby compelling Plaintiffs to  
17 disclose information revealing constitutionally protected associational activities.  
18 This environment, and the fact that Plaintiffs cannot leave without CBP’s  
19 permission, renders the questioning itself coercive.

20 218. There is no substantial relationship between Defendants’ acquisition of  
21 this information and a sufficiently important government interest, and the acquisition  
22 is not narrowly tailored to achieve any such interest.

23 219. There is no substantial relationship between Defendants’ retention of  
24 this information and a sufficiently important government interest, and the retention  
25 is not narrowly tailored to achieve any such interest.

26 220. Alternatively, even if Defendants do not engage in a policy and/or  
27 practice of singling out Muslims in particular for religious questioning, Defendants  
28 have a policy and/or practice of subjecting certain travelers of faith, including

1 Plaintiffs, to religious questioning during secondary inspections, and Defendants  
2 retain records reflecting answers to such questioning for decades. There is no  
3 substantial relationship between the acquisition or retention of this information and  
4 a sufficiently important government interest, and neither the acquisition nor  
5 retention is narrowly tailored to achieve any such interest.

6 221. Requiring Plaintiffs to respond to invasive questions about their  
7 religious beliefs, practices, and associations, and retaining that information for  
8 decades, does not help to protect the border or prevent terrorism. Moreover,  
9 Defendants have less restrictive alternatives at their disposal—such as questioning  
10 focused on whether a traveler has violated immigration, customs, or border-related  
11 laws—that would help achieve those objectives.

12 222. As a result, Defendants have violated Plaintiffs’ right to free association  
13 under the First Amendment to the U.S. Constitution and will continue to do so if  
14 Plaintiffs are not afforded the relief below.

15 **CLAIM IV**

16 **Violation of the First Amendment**

17 **(Retaliation)**

18 **(by Mr. Shah against all Defendants)**

19 223. Plaintiffs herein incorporate by reference the allegations above.

20 224. Two CBP officers and one HSI officer violated Mr. Shah’s First  
21 Amendment rights by retaliating against him for exercising his constitutionally  
22 protected rights to freedom of religion and freedom of speech. Mr. Shah engaged in  
23 constitutionally protected activities, including writing notes about his religious  
24 beliefs and practices in a journal that he carried during his travels, and stating to  
25 border officers that he did not wish to be searched, that he did not consent to a search  
26 of his electronic devices, and that he wanted to stand up for his constitutional rights.

27 225. The officers’ retaliatory adverse actions included prolonged detention;  
28 extensive questioning, including but not limited to additional religious questioning;

1 a search of Mr. Shah’s phone, including private messages, emails and photos; and a  
2 search of Mr. Shah’s private journal. Mr. Shah would have been subject to a shorter  
3 detention, less extensive questioning, and less invasive searches had the officers not  
4 acted in retaliation for his First Amendment protected speech.

5 226. The officers’ statements and behavior clearly indicated a substantial  
6 causal relationship between Mr. Shah’s constitutionally protected activity and the  
7 retaliatory adverse actions. In particular, the officers’ statements and behavior  
8 clearly indicated that they took these adverse actions as retaliation for Mr. Shah’s  
9 religious beliefs reflected in his journal, as well as his statements to the officers  
10 invoking his rights.

11 227. These adverse actions chill Mr. Shah from documenting his religious  
12 expression and thoughts while out of the country and from asserting his  
13 constitutional rights while in secondary inspection. These adverse actions would also  
14 chill a person of ordinary firmness from continuing to engage in constitutionally  
15 protected activity.

16 228. The officers’ adverse actions would lead a traveler to reasonably  
17 believe that if they engage in protected speech, officers would retaliate by subjecting  
18 them to longer-than-necessary detention, more extensive questioning, and more  
19 invasive searches.

20 229. Defendants maintain records illegally obtained through the retaliatory  
21 searches and questioning.

22 **CLAIM V**

23 **Violation of the Fifth Amendment**

24 **Due Process Right to Equal Protection**

25 **(by all Plaintiffs against all Defendants)**

26 230. Plaintiffs herein incorporate by reference the allegations above.

27 231. The Due Process Clause of the Fifth Amendment to the U.S.  
28 Constitution provides that “[n]o person shall . . . be deprived of life, liberty, or

1 property, without due process of law.” The Due Process Clause contains an equal  
2 protection component. Under the right to equal protection, government action  
3 discriminating “along suspect lines like . . . religion” is subject to strict scrutiny.  
4 *Burlington Northern Railroad Co. v. Ford*, 504 U.S. 648, 651 (1992).

5 232. Defendants’ border officers have subjected Plaintiffs to religious  
6 questioning on at least ten separate occasions, and Defendants retain Plaintiffs’  
7 responses to such questioning.

8 233. Defendants engage in a policy and/or practice of singling out and  
9 targeting Muslims, including Plaintiffs, for religious questioning during secondary  
10 inspections because of their adherence to Islam. As part of this policy and/or practice  
11 of religious questioning, Defendants retain records that reflect answers to religious  
12 questions and thus contain information about the religious beliefs, practices, and  
13 associations of Muslims, including Plaintiffs.

14 234. Defendants’ conduct, as set forth above, discriminates on the basis of  
15 religion, a suspect classification, and is thus subject to strict scrutiny.

16 235. Defendants’ conduct, as set forth above, is substantially motivated by  
17 an intent to discriminate against Muslims, on whom it has a disparate effect relative  
18 to adherents of other faiths, because Defendants’ border officers do not routinely  
19 subject travelers of other faiths to similar questioning about their religious beliefs  
20 and practices.

21 236. Defendants’ conduct, as set forth above, stigmatizes Plaintiffs as  
22 Muslims and condemns their religion as one that is the subject of intense suspicion  
23 and distrust, different from any other religion.

24 237. Defendants’ conduct, as set forth above, does not advance any  
25 compelling government interest and is not narrowly tailored to achieve any such  
26 interest.

27 238. Requiring Plaintiffs to respond to invasive questions about their  
28 religious beliefs, practices, and associations, and retaining that information for

1 decades, does not help to protect the border or prevent terrorism. Moreover,  
2 Defendants have less restrictive alternatives at their disposal—such as questioning  
3 focused on whether a traveler has violated immigration, customs, or border-related  
4 laws—that would help achieve those objectives.

5 239. By discriminating against Plaintiffs in this manner, Defendants have  
6 violated the equal protection component of the Due Process Clause of the Fifth  
7 Amendment to the U.S. Constitution and will continue to do so if Plaintiffs are not  
8 afforded the relief below.

9 **CLAIM VI**

10 **Violation of the Religious Freedom Restoration Act,**

11 **42 U.S.C. § 2000bb *et seq.***

12 **(by all Plaintiffs against all Defendants)**

13 240. Plaintiffs herein incorporate by reference the allegations above.

14 241. Defendants' border officers have repeatedly subjected Plaintiffs to  
15 religious questioning during secondary inspections and have recorded Plaintiffs'  
16 responses in DHS databases, where Plaintiffs' personal religious information will be  
17 retained for up to three-quarters of a century and accessible to thousands of law  
18 enforcement agencies.

19 242. Defendants' conduct imposes a substantial burden on Plaintiffs'  
20 exercise of their sincerely held religious beliefs because it forces Plaintiffs to choose  
21 between following the tenets of their religion and receiving a government benefit.

22 243. Defendants' conduct also imposes a substantial burden on Plaintiffs'  
23 exercise of their sincerely held religious beliefs because it coerces Plaintiffs to act  
24 contrary to their religious beliefs by threat of sanction. Plaintiffs are coerced into  
25 taking measures contrary to their sincerely held religious beliefs, in order to avoid  
26 calling attention to their religion and being subjected to additional coercive  
27 questioning about it.

28 244. This substantial burden is not imposed in furtherance of a compelling

1 government interest, and is not the least restrictive means of furthering a compelling  
2 government interest.

3 245. Requiring Plaintiffs to respond to invasive questions about their  
4 religious beliefs, practices, and associations, and retaining that information for  
5 decades, does not help to protect the border or prevent terrorism. Moreover,  
6 Defendants have less restrictive alternatives at their disposal—such as questioning  
7 focused on whether a traveler has violated immigration, customs, or border-related  
8 laws—that would help achieve those objectives.

9 **REQUEST FOR RELIEF**

10 Wherefore, Plaintiffs respectfully request that this Court:

- 11 A. *Declare* that the religious questioning of Plaintiffs, as well as the  
12 policies and practices of DHS and CBP described in the complaint,  
13 violate the First and Fifth Amendments to the U.S. Constitution and  
14 RFRA;
- 15 B. *Enjoin* DHS and CBP and their agents, employees, successors, and all  
16 others acting in active concert with them from questioning Plaintiffs  
17 about their religious beliefs, practices, and First Amendment-protected  
18 religious associations during future border inspections;
- 19 C. *Order* Defendants and their agents, employees, successors, and all  
20 others acting in active concert with them to expunge all records they  
21 have retained regarding the unlawful religious questioning of Plaintiffs,  
22 including records reflecting the substance of information that Plaintiffs  
23 were unlawfully compelled to disclose;
- 24 D. *Order* Defendants and their agents, employees, successors, and all  
25 others acting in active concert with them to expunge all records that  
26 were collected as a result of retaliatory action against Mr. Shah;
- 27 E. *Award* Plaintiffs’ counsel reasonable attorneys’ fees and litigation  
28 costs, including but not limited to fees, costs, and expenses pursuant to



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28 U.S.C. § 2412; and

F. *Grant* such other and further relief as the Court deems proper.

Dated: November 14, 2022

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

AMERICAN CIVIL LIBERTIES UNION OF  
MINNESOTA

ACLU FOUNDATION OF SOUTHERN  
CALIFORNIA

By: /s/ Ashley Gorski

Ashley Gorski

Attorney for Plaintiffs