

No. 23-55790

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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ABDIRAHMAN ADEN KARIYE, MOHAMAD MOUSLLI,  
and HAMEEM SHAH,

*Plaintiffs–Appellants,*

v.

ALEJANDRO MAYORKAS, Secretary of the U.S. Department of Homeland Security, in his official capacity; TROY MILLER, Acting Commissioner of U.S. Customs and Border Protection, in his official capacity; PATRICK J. LECHLEITNER, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; and KATRINA W. BERGER, Executive Associate Director, Homeland Security Investigations, in her official capacity,

*Defendants–Appellees.*

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On Appeal from the United States District Court  
for the Central District of California  
No. 2:22-cv-01916  
Hon. Fred W. Slaughter

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**APPELLANTS’ EXCERPTS OF RECORD**  
Volume I of I

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# JS-6

## UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

Case No. 2:22-cv-01916-FWS-GJS

ABDIRAHMAN ADEN KARIYE, *et al.*,

Plaintiffs,

v.

ALEJANDRO MAYORKAS, *et al.*,

Defendants.

### JUDGMENT

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1 On March 24, 2022, Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli,  
2 and Hameem Shah (collectively, “Plaintiffs”) filed a Complaint alleging violations of  
3 the First Amendment, Fifth Amendment, and the Religious Freedom Restoration Act  
4 (“RFRA”), 42 U.S.C. §§ 2000bb *et seq.* by Defendants Steve K. Francis, Tae D.  
5 Johnson, Alejandro Mayorkas, and Mark Morgan (collectively, “Defendants”). (Dkt.  
6 1.) On May 31, 2022, Defendants filed a Motion to Dismiss the Complaint  
7 (“Motion”). (Dkt. 40.) On July 28, 2022, the court held oral argument on the Motion  
8 and thereafter took the Motion under submission. (Dkt. 49.) On October 12, 2022,  
9 the court issued an order **GRANTING** Defendants’ Motion and dismissed without  
10 prejudice and with leave to amend each of Plaintiffs’ claims. (Dkt. 58.)

11 On November 14, 2022, Plaintiffs filed a First Amended Complaint. (Dkt. 61.)  
12 On December 27, 2022, Defendants filed a Motion to Dismiss the Amended  
13 Complaint (“Second Motion”). (Dkt. 68.)<sup>1</sup> On March 23, 2023, the court held oral  
14 argument on the Second Motion and thereafter took the Second Motion under  
15 submission. (Dkt. 72.) On July 19, 2023, the court issued an order **GRANTING**  
16 Defendants’ Second Motion and dismissed without prejudice and with leave to amend  
17 each of Plaintiffs’ claims. (Dkt. 73.)

18 On August 1, 2023, Plaintiffs filed a Notice of Intent Not to File a Second  
19 Amended Complaint (“Notice”) and requested that the court enter judgment in this  
20 matter. (Dkt. 75.) Defendants did not file a response to the Notice. (*See generally*  
21 Dkt.) On August 15, 2023, the court ordered the parties to each submit a proposed  
22 final judgment within seven days of the order, or by August 22, 2023. (Dkt. 76.) The  
23 parties each lodged a proposed judgment. (Dkts. 77-80.) The court has considered  
24 the parties’ lodged proposed judgments. (Dkts. 77, 78.)

25 \_\_\_\_\_  
26 <sup>1</sup> Defendant Mark Morgan, the former Commissioner of U.S. Customs and Border  
27 Protection was terminated from this case on November 14, 2022, and replaced with  
28 Defendant Troy Miller, the Acting Commissioner of U.S. Customs and Border  
Protection. (*See generally* Dkt.)

1           Accordingly, the court finds that Defendants are entitled to judgment as a  
2 matter of law on all causes of action and claims asserted against them in this action.  
3 In accordance with the court’s order granting Defendants’ Motion to Dismiss the  
4 Amended Complaint (Dkt. 73):

- 5
- 6           1. Final Judgment is entered in favor of Defendants and against Plaintiffs on all  
7           claims asserted by Plaintiffs against Defendants.
  - 8
  - 9           2. Any motion or application for costs made by Defendants must be filed in  
10           compliance with L. R. 54-2, *et seq.*

11

12           **IT IS SO ORDERED.**

13

14

15           Dated: September 5, 2023



16           \_\_\_\_\_  
17           Hon. Fred W. Slaughter  
18           UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No.: 2:22-cv-01916-FWS (GJSx)

Date: July 19, 2023

Title: Abdirahman Aden Kariye *et al.* v. Alejandro Mayorkas *et al.*

Present: **HONORABLE FRED W. SLAUGHTER, UNITED STATES DISTRICT JUDGE**

Deborah Lewman  
Deputy Clerk

N/A  
Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**PROCEEDINGS: ORDER GRANTING DEFENDANTS’ MOTION TO DISMISS [68]**

Before the court is Defendants Alejandro Mayorkas, Secretary of the Department of Homeland Security, in his official capacity; Tae D. Johnson, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; Steve K. Francis, Acting Executive Associate Director of Homeland Security Investigations, in his official capacity; and Troy Miller’s, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity (collectively, “Defendants”) Motion to Dismiss (“Motion” or “Mot.”) Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, and Hameem Shah’s (collectively, “Plaintiffs”) Amended Complaint. (Dkt. 68.) Plaintiffs’ First Amended Complaint (“FAC”) seeks injunctive relief, declaratory relief, and attorneys’ fees and costs for violations of the First Amendment, Fifth Amendment, and the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. §§ 2000bb *et seq.* (Dkt. 61.)

The court held a hearing on the Motion on March 23, 2023. (Dkt. 72.) At the conclusion of the hearing on the Motion, the court took the matter under submission. (*Id.*) Based on the state of the record, as applied to the applicable law, the court **GRANTS** the Motion.

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

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**I. Background**

**a. Summary of FAC’s Allegations**

Plaintiff Abdirahman Aden Kariye is a U.S. citizen who lives in Bloomington, Minnesota. (FAC ¶ 8.) Plaintiff Kariye is Muslim and serves as an imam at a local mosque. (*Id.*) Plaintiff Mohamad Mouslli is a U.S. citizen who lives in Gilbert, Arizona. (*Id.* ¶ 9.) Plaintiff Mouslli is Muslim and works in commercial real estate. (*Id.*) Plaintiff Hameem Shah is a U.S. citizen who lives in Plano, Texas. (*Id.* ¶ 10.) Plaintiff Shah is Muslim and works in financial services. (*Id.*)

Defendants are the heads of the U.S. Department of Homeland Security (“DHS”) and its agencies: U.S. Customs and Border Protection (“CBP”) and U.S. Immigration and Customs Enforcement (“ICE”), of which Homeland Security Investigations (“HSI”) is a subcomponent. (*Id.* ¶ 11.) Defendant Alejandro Mayorkas is the Secretary of DHS and has authority over all DHS policies and practices, including those challenged in this lawsuit, and is named in his official capacity. (*Id.* ¶ 12.) Defendant Troy Miller is the Acting Commissioner of CBP and has authority over all CBP policies and practices, including those challenged in this lawsuit, and is named in his official capacity. (*Id.* ¶ 13.) Defendant Tae Johnson is Acting Director of ICE and has authority over all ICE policies and practices, including those challenged in this lawsuit, and is named in his official capacity. (*Id.* ¶ 14.) Defendant Steve K. Francis is the Acting Executive Associate Director of HSI and has authority over all HSI policies and practices, including those challenged in this lawsuit, and is named in his official capacity. (*Id.* ¶ 15.)

Plaintiffs allege at border crossings and international airports in the United States, Defendants’ border officers frequently subject travelers who are Muslim, or whom they perceive to be Muslim, to questioning about their religion. (*Id.* ¶ 16.) In May 2011, after the American Civil Liberties Union (“ACLU”) and other organizations submitted complaints to DHS, the DHS Office for Civil Rights and Civil Liberties disclosed that it had opened an

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investigation into CBP questioning “of U.S. citizens and legal residents who are Muslim, or appear to be Muslim, about their religious and political beliefs, associations, and religious practices and charitable activities protected by the First Amendment and Federal law.” (*Id.* ¶ 17.) In a letter to the ACLU dated May 3, 2011, the DHS Office for Civil Rights and Civil Liberties stated that it had received “a number of complaints like yours, alleging that U.S. Customs and Border Protection (CBP) officers have engaged in inappropriate questioning about religious affiliation and practices during border screening.” (*Id.*)

The DHS Office for Civil Rights and Civil Liberties issued a memorandum on May 3, 2011 (the “May 3, 2011, Memorandum”), to the CBP Commissioner stating that it had received “numerous accounts from American citizens, legal permanent residents, and visitors who are Arab and/or Muslim, alleging that officials from U.S. Customs and Border Protection (CBP) repeatedly question them and other members of their communities about their religious practices or other First Amendment protected activities, in violation of their civil rights or civil liberties.” (*Id.* ¶ 18.)

The May 3, 2011, Memorandum included descriptions of border officers’ questioning of Muslims about their religious beliefs and practices at various ports of entry across the United States. (*Id.* ¶ 19.) In July 2012, the DHS Office for Civil Rights and Civil Liberties informed the ACLU and other organizations that it had suspended the investigation because of a lawsuit challenging the practice. (*Id.* ¶ 20.) That litigation is still pending. (*Id.*) In 2019, CRCL acknowledged that DHS received over two dozen complaints about CBP questioning. (*Id.* ¶ 21.) As of 2020, CRCL was reviewing numerous allegations of CBP questioning at ports of entry. (*Id.* ¶ 22.)

Plaintiffs allege religious questioning of Muslim Americans at ports of entry continues today and Defendants’ written policies permit border officers to question Americans about their religious beliefs, practices, and associations. (*Id.* ¶ 24.) ICE requires officers who work at ports of entry to carry a sample questionnaire to guide their interrogations of travelers, which

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includes questions about a traveler’s religious beliefs, practices, and associations. (*Id.*) CBP has a policy that allows it to collect and maintain information about an individual’s religious beliefs, practices, and associations in numerous circumstances. (*Id.*) On information and belief, CBP views the collection and retention of Plaintiffs’ responses to religious questioning as authorized by its policy. (*Id.*) Defendants have a policy and/or practice of intentionally targeting selected Muslims (or individuals perceived to be Muslim) for religious questioning. (*Id.* ¶ 25.) Plaintiffs allege that while Defendants’ border officers routinely and intentionally single out Muslim Americans to demand answers to religious questions, travelers perceived as practicing faiths other than Islam are not routinely subjected to similarly intrusive questioning about their religious beliefs, practices, and associations. (*Id.*)

The religious questioning of Muslims typically takes place in the context of “secondary inspection,” a procedure by which CBP detains, questions, and searches certain travelers before they are permitted to enter the country. (*Id.* ¶ 26.) Plaintiffs allege the secondary inspection environment is coercive because: (1) border officers carry weapons, identify themselves as border officers or wear government uniforms, and command travelers to enter and remain in the secondary inspection areas; (2) travelers are not free to leave those areas until officers give them permission; (3) secondary inspection areas are separated from the public areas of airports and ports of entry; (4) border officers typically take travelers’ passports, routinely conduct physical searches and/or searches of travelers’ belongings, and use the secondary inspection environment to compel Muslim American travelers to answer questions about their religious beliefs, practices, and associations. (*Id.* ¶ 27.) Plaintiffs allege Muslim American travelers have no meaningful choice but to disclose their First Amendment-protected beliefs and activity in response to border officers’ inquiries. (*Id.* ¶ 28.)

Defendants have a policy and/or practice of retaining traveler’s responses to questioning about their religious beliefs, practices, and associations. (*Id.* ¶ 29.) CBP officers are required to create a record of every secondary inspection at an airport or land crossing. (*Id.*) CBP officers routinely document travelers’ responses to questions asked during secondary inspections,

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including Muslim Americans’ responses to questions about their religious beliefs, practices, and associations. (*Id.*) When HSI agents are involved in or otherwise present during secondary inspection, they also routinely create and maintain records of the secondary inspection. (*Id.*) Border officers input the records of secondary inspections into DHS databases, including a DHS database called TECS, which functions as a repository for the sharing of information among tens of thousands of federal, state, local, tribal, and foreign law enforcement, counterterrorism, and border security agencies. (*Id.* ¶ 30.) TECS users include personnel from various federal agencies; TECS data is also accessible to officers from over 45,000 state and local police departments and retained for up to seventy-five years. (*Id.*)

Alternatively, Plaintiffs allege even if Defendants do not engage in a policy and/or practice of singling out Muslims for religious questioning, Defendants have a policy and/or practice of subjecting travelers of faith to questioning. (*Id.* ¶ 31.) Defendants also have a policy and/or practice of retaining travelers’ responses for decades and making the responses available to law enforcement departments through TECS. (*Id.*)

Plaintiffs allege being Muslim and practicing Islam are protected religious beliefs and activity and these religious beliefs and practices do not indicate that an individual has or is engaged in any immigration or customs-related crime or that an individual has or is engaged in any other unlawful activity. (*Id.* ¶¶ 32-37.) Plaintiffs allege Muslim travelers’ personal religious information is not germane to any legitimate purpose that Defendants may assert. (*Id.* ¶ 38.) Plaintiffs allege American history and tradition protect religious belief and ensure freedom from religious discrimination, and there is no American history or tradition of questioning U.S. citizens about these topics and retaining that information for decades. (*Id.* ¶¶ 39-53.)

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**i. Questioning of Plaintiffs by Defendants’ Border Officers**

**1. Plaintiff Kariye**

Plaintiff Kariye is a U.S. citizen and an imam at a mosque in Bloomington, Minnesota. (*Id.* ¶ 54.) CBP officers have questioned Plaintiff Kariye about his Muslim faith on at least five occasions. (*Id.* ¶ 55.) On each occasion the environment was coercive: CBP officers wearing uniforms and carrying weapons commanded Plaintiff Kariye to enter and remain in an area separated from other travelers, usually a windowless room, took Plaintiff Kariye’s belongings from him, searched his electronic devices, and questioned him at length. (*Id.*)

**a. First Questioning Incident: September 12, 2017**

On September 12, 2017, Plaintiff Kariye arrived home to the United States from Saudi Arabia, where he had participated in the Hajj, a sacred religious pilgrimage to Mecca. (*Id.* ¶ 56.) Upon his arrival at the Seattle-Tacoma International Airport, Plaintiff Kariye was detained for secondary inspection by two CBP officers in a small, windowless room for approximately two hours. (*Id.* ¶ 57.) During the first incident, a CBP officer questioned Plaintiff Kariye about his religious beliefs, practices, and associations, including questions about which mosque he attends and whether he had been on the Hajj before. (*Id.* ¶ 58.) Plaintiff Kariye answered these questions because he was not free to leave without the permission of a CBP officer and felt that he had no choice but to answer based on the circumstances of his detention. (*Id.* ¶ 59.) A CBP officer took notes during Plaintiff Kariye’s detention, including while Plaintiff Kariye was responding to CBP’s questions. (*Id.* ¶ 60.)

**b. Second Questioning Incident: February 3, 2019**

On February 3, 2019, CBP asked Plaintiff Kariye questions related to his religion during a secondary inspection at the Peace Arch Border Crossing near Blaine, Washington. (*Id.* ¶ 61.)

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Plaintiff Kariye was returning to the United States by car from a trip to Vancouver, where he had been on a vacation with friends. (*Id.*) Two CBP officers detained Plaintiff Kariye for approximately three hours. (*Id.*) The officers told Plaintiff Kariye that he would not be free to leave unless he answered their questions. (*Id.*) During the detention, a CBP officer questioned Plaintiff Kariye about his religious beliefs, practices, and associations, including questions about Plaintiff Kariye’s involvement with a charitable organization affiliated with Muslim communities, how he fundraised for this charity, and whether his fundraising involved visiting mosques. (*Id.* ¶ 62.)

Plaintiff Kariye answered the CBP officer’s questions about his religious charitable beliefs and activities because he was not free to leave without the permission of a CBP officer and felt that he had no choice but to answer based on the circumstances of his detention. (*Id.* ¶ 63.) A CBP officer took notes during Plaintiff Kariye’s detention, including while Plaintiff Kariye responded to CBP’s questions about his religious beliefs, practices, and associations. (*Id.* ¶ 64.)

**c. Third Questioning Incident: November 24, 2019**

On November 24, 2019, CBP asked Plaintiff Kariye questions related to his religion during a secondary inspection in a CBP preclearance area at Ottawa International Airport in Canada. (*Id.* ¶ 65.) Plaintiff Kariye was returning to the United States after attending a wedding in Canada. (*Id.*) Plaintiff Kariye was flying to Detroit, Michigan, and then to Seattle, Washington. (*Id.*) A CBP officer detained Plaintiff Kariye for approximately one hour in a small, windowless room. (*Id.*)

During the detention, the CBP officer questioned Plaintiff Kariye about his religious associations. (*Id.* ¶ 66.) The CBP officer questioned Plaintiff Kariye about a youth sports league that he helped to run. (*Id.*) Although Plaintiff Kariye had not informed the officer that he was Muslim, the officer asked whether the sports league was “for black and white kids, or is

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it just for Muslim kids?” (*Id.*) Plaintiff Kariye understood the question as an acknowledgment of his Islamic faith and an attempt to ascertain what kinds of religious activities he participated in. (*Id.*) Plaintiff Kariye answered the questions because he was not free to leave without the permission of a CBP officer and felt that he had no choice but to answer based on the circumstances of his detention. (*Id.* ¶ 67.) The CBP officer took notes during Plaintiff Kariye’s detention, including while Plaintiff Kariye responded to CBP’s questioning about his religious beliefs and associations. (*Id.* ¶ 68.)

**d. Fourth Questioning Incident: August 16, 2020**

On August 16, 2020, CBP officers asked Plaintiff Kariye questions related to his religion during a secondary inspection at the Seattle-Tacoma International Airport. (*Id.* ¶ 69.) Plaintiff Kariye was returning to the United States from a vacation with a friend. (*Id.*) Plaintiff Kariye had traveled from Turkey to Seattle, Washington, via the Netherlands. (*Id.*) CBP officers had photographs of Plaintiff Kariye that they used to identify him when he came off the jet bridge. (*Id.*) Multiple CBP officers detained Plaintiff Kariye for several hours in a small, windowless room. (*Id.*) To the best of Plaintiff Kariye’s recollection, one of the officers, a supervisor, was named “Abdullah Shafaz” or something close to it. (*Id.*)

During the detention, CBP officers questioned Plaintiff Kariye about his religious beliefs, practices, and associations. (*Id.* ¶ 70.) These questions included:

- a. What type of Muslim are you?
- b. Are you Sunni or Shi’a?
- c. Are you Salafi or Sufi?
- d. What type of Islamic lectures do you give?
- e. Where did you study Islam?
- f. How is knowledge transmitted in Islam?
- g. Do you listen to music?

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- h. What kind of music do you listen do?
- i. What are your views on Ibn Taymiyyah?

*(Id.)*

Plaintiff Kariye understood the questions about music and Ibn Taymiyyah as designed to elicit information about the nature and strength of his religious beliefs and practices. *(Id.* ¶ 71.) During the detention, a CBP officer threatened Plaintiff Kariye multiple times with retaliation by saying that, if Plaintiff Kariye did not cooperate, CBP would make things harder for him. *(Id.* ¶ 72.) The officer also said that Plaintiff Kariye was welcome to challenge the legality of the detention, but if he did so publicly or went to the media, CBP would make things harder for him during his future travels. *(Id.)*

Plaintiff Kariye answered the CBP officers' questions because he felt he was not free to leave without the permission of a CBP officer and had no choice but to answer. *(Id.* ¶ 73.) A CBP officer took notes during Plaintiff Kariye's detention, including while Plaintiff Kariye responded to CBP's questions about his religious beliefs, practices, and associations. *(Id.* ¶ 74.) After several hours of detention, two of the CBP officers who had detained Plaintiff Kariye escorted him to a separate room, where they performed a thorough, full-body pat-down search, even though the CBP officers had no basis to suspect Plaintiff Kariye of carrying contraband or weapons, and they had already been in close proximity to him during his detention. *(Id.* ¶ 75.) After the pat-down, the officers permitted Plaintiff Kariye to leave. *(Id.)*

**e. Fifth Questioning Incident: December 31, 2021**

On December 31, 2021, a plainclothes CBP officer asked Plaintiff Kariye questions related to his religion during a secondary inspection at the Minneapolis-Saint Paul Airport. *(Id.* ¶ 76.) Plaintiff Kariye was returning to the United States from a trip to Somalia, Kenya, and the United Arab Emirates, where he had traveled for vacation and to visit family. *(Id.)* The officer

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detained Plaintiff Kariye for approximately an hour and a half. (*Id.*) During the detention, the CBP officer questioned Plaintiff Kariye about his religious beliefs, practices, and associations, including whether he had met a particular friend at a mosque. (*Id.* ¶ 77.) The officer then said, “I assume you’re a Muslim, aren’t you?” (*Id.*)

Plaintiff Kariye answered these questions because he was not free to leave without the permission of a CBP officer and felt that he had no choice but to answer. (*Id.* ¶ 78.) A CBP officer took notes during Plaintiff Kariye’s detention, including while Plaintiff Kariye responded to CBP’s questions. (*Id.* ¶ 79.) During each of these five religious questioning incidents, Plaintiff Kariye alleges his travel and identification documents were valid, and he was not transporting contraband. (*Id.* ¶ 80.)

**f. Plaintiff Kariye’s General Allegations**

Plaintiff Kariye alleges he is a law-abiding citizen with no criminal record and no ties to terrorist activity and was improperly placed on the U.S. government’s master watchlist based on error or misplaced suspicion. (*Id.* ¶¶ 81-83.) Plaintiffs allege government errors are common in placing individuals on the government watchlist, the government has failed to properly maintain the watchlist, and individuals who seek to challenge their placement on the watchlist are not informed of the reason for their placement. (*Id.* ¶¶ 84-89.)

Plaintiff Kariye was previously on the government watchlist, and Defendants removed him from the list on or around May 2022 in response to this litigation. (*Id.* ¶ 90.) Plaintiffs allege the religious questioning is substantially likely to recur because Plaintiff Kariye has “experienced travel issues consistent with placement on the U.S. government watchlist” for years, such as his boarding pass being marked with “SSSS” indicating “Secondary Security Screening Selection” and being subject to secondary inspection. (*Id.* ¶¶ 91-92.) Plaintiff Kariye intends to continue to travel internationally in the near future and alleges when he does

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so, upon his return home to the United States, he is at substantial risk of again being questioned by CBP officers about his religious beliefs, practices, and associations. (*Id.* ¶ 93.)

Plaintiff Kariye alleges religious questioning by CBP harms him and impedes his religious practice. (*Id.* ¶¶ 94-95.) On information and belief, DHS and CBP maintain records about Plaintiff Kariye’s religious beliefs, practices, and associations and Defendants’ retention of such information in government systems causes Plaintiff Kariye ongoing distress and harm. (*Id.* ¶ 96.) Plaintiff Kariye alleges CBP’s questioning about his religious beliefs, practices, and associations is insulting and humiliating and conveys the stigmatizing message that the U.S. government views adherence to Islamic religious beliefs and practices as inherently suspicious and that Muslim Americans are not entitled to the full constitutional protections afforded to other Americans. (*Id.* ¶ 97.)

Plaintiff Kariye alleges CBP’s religious questioning places pressure on him to modify or curb his religious expression and practices, contrary to his sincere religious beliefs, such as by modifying his religious dress, modifying his prayer practice, and avoiding carrying religious texts when traveling back into the United States. (*Id.* ¶¶ 98-102.) Plaintiff Kariye is proud to be a Muslim, and his sincere religious beliefs direct him to wear a kufi in public, pray in a particular manner, and study various religious texts. (*Id.* ¶ 103.) Plaintiff Kariye alleges it causes him distress to forgo wearing his kufi, modify his prayer practice, and avoid carrying religious texts when he travels, but, because of CBP’s questioning, Plaintiff Kariye takes these measures when traveling back into the United States to avoid additional scrutiny and religious questioning by CBP. (*Id.*)

Plaintiff Kariye alleges he is subjected to unnecessary religious questioning by CBP and is forced to choose between outward displays of religiosity and avoiding additional religious questioning, which constitutes a substantial burden on his religious practice. (*Id.* ¶ 104.) Plaintiff Kariye alleges CBP’s religious questioning makes him feel anxious, humiliated, and

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stigmatized as a Muslim American, including by causing acute distress that distracts him from work and from his relationships with family members. (*Id.* ¶ 105.)

**2. Plaintiff Mouslli**

Plaintiff Mouslli is a U.S. citizen who is Muslim. (*Id.* ¶ 106.) He lives in Gilbert, Arizona, with his wife and three children, all U.S. citizens. (*Id.*) Plaintiff Mouslli works in commercial real estate. (*Id.*) On the last four occasions that Plaintiff Mouslli traveled internationally, CBP officers have asked him questions related to his religion upon his return to the United States. (*Id.* ¶ 107.) Plaintiff Mouslli alleges on each occasion the environment was coercive: CBP officers wearing uniforms and carrying weapons commanded Plaintiff Mouslli to enter and remain in an area separated from other travelers, took Plaintiff Mouslli’s belongings from him, searched his electronic devices, and questioned him at length. (*Id.*)

**a. First Questioning Incident: August 9, 2018**

Plaintiff Mouslli alleges on or about August 9, 2018, CBP officers asked Plaintiff Mouslli questions related to his religion during a secondary inspection at the border crossing near Lukeville, Arizona. (*Id.* ¶ 108.) Plaintiff Mouslli was returning to the United States by car from a trip to Mexico, where he had been on vacation with a friend. (*Id.*) After CBP officers checked Plaintiff Mouslli’s passport, several officers surrounded the car. (*Id.* ¶ 109.) The officers forced Plaintiff Mouslli to remain in the car for approximately 30 minutes, after which the officers brought him into the station. (*Id.*) In total, CBP officers detained Plaintiff Mouslli for approximately six to seven hours. (*Id.*) CBP officers questioned Plaintiff Mouslli about his religious beliefs, practices, and associations, including whether he is a Muslim and whether he is Sunni or Shi’a. (*Id.* ¶ 110.) Plaintiff Mouslli answered these questions because he was not free to leave without the permission of a CBP officer and felt that he had no choice but to answer. (*Id.* ¶ 111.) A CBP officer took notes during Plaintiff Mouslli’s detention, including

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while Plaintiff Mouslli responded to CBP’s questions about his religious beliefs, practices, and associations. (*Id.* ¶ 112.)

**b. Second Questioning Incident: August 6, 2019**

On or about August 6, 2019, CBP officers again asked Plaintiff Mouslli questions related to his religion during a secondary inspection at Los Angeles International Airport (“LAX”). (*Id.* ¶ 113.) Plaintiff Mouslli was returning to the United States from a trip to Dubai and the Netherlands to visit family. (*Id.*) The officers detained Plaintiff Mouslli for approximately one and a half to two hours, along with his minor son who had joined him for the trip. (*Id.*) The CBP officers questioned Plaintiff Mouslli about his religious beliefs, practices, and associations, including whether he attends a mosque and how many times a day he prays. (*Id.* ¶ 114.) Plaintiff Mouslli answered these questions because he and his son were not free to leave without the permission of a CBP officer and he felt that he had no choice but to answer. (*Id.* ¶ 115.) A CBP officer took notes during Plaintiff Mouslli’s detention, including while Plaintiff Mouslli responded to CBP’s questions about his religious beliefs, practices, and associations. (*Id.* ¶ 116.)

**c. Third Questioning Incident: March 11, 2020**

On March 11, 2020, CBP officers asked Plaintiff Mouslli questions related to his religion during another secondary inspection at LAX. (*Id.* ¶ 117.) Plaintiff Mouslli was returning to the United States from a trip to Dubai to visit family. (*Id.*) The officers detained Plaintiff Mouslli for approximately one and a half to two hours. (*Id.*) The CBP officers questioned Plaintiff Mouslli about his religious beliefs, practices, and associations, once again demanding to know whether he attends a mosque and whether he is Sunni or Shi’a. (*Id.* ¶ 118.) Plaintiff Mouslli answered these questions because he was not free to leave without the permission of a CBP officer and felt that he had no choice but to answer based on the circumstances of his detention. (*Id.* ¶ 119.) A CBP officer took notes during Plaintiff Mouslli’s detention, including while

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Plaintiff Mouslli responded to CBP’s questions about his religious beliefs, practices, and associations. (*Id.* ¶ 120.) Because of the delay from the secondary inspection, including CBP’s religious questioning, Plaintiff Mouslli missed his connecting flight from LAX to Phoenix, and he had to rent a car at additional expense to drive home to Arizona. (*Id.* ¶ 121.)

**d. Fourth Questioning Incident: June 5, 2021**

On or about June 5, 2021, CBP officers again asked Plaintiff Mouslli questions related to his religion during a secondary inspection at LAX. (*Id.* ¶ 122.) Plaintiff Mouslli was returning to the United States from a trip to Dubai to visit family. (*Id.*) The officers detained him for approximately one and a half to two hours, along with his minor daughter who had joined him for the trip. (*Id.*) CBP officers questioned Plaintiff Mouslli about his religious beliefs, practices, and associations, including whether he goes to a mosque and whether he prays every day. (*Id.* ¶ 123.)

Plaintiff Mouslli answered these questions because he and his daughter were not free to leave without the permission of a CBP officer and he felt that he had no choice but to answer. (*Id.* ¶ 124.) He was also worried about extending the detention, given the presence of his daughter. (*Id.*) A CBP officer took notes during Plaintiff Mouslli’s detention, including while Plaintiff Mouslli responded to CBP’s questions about his religious beliefs, practices, and associations. (*Id.* ¶ 125.) Plaintiff Mouslli alleges during each of these four religious questioning incidents, his travel and identification documents were valid and he was not transporting contraband. (*Id.* ¶ 126.)

**e. Plaintiff Mouslli’s General Allegations**

Plaintiff Mouslli alleges he is a law-abiding citizen with no criminal record and no ties to terrorist activity and was improperly placed on the U.S. government’s master watchlist based on error or misplaced suspicion. (*Id.* ¶¶ 127-30.) Plaintiff Mouslli alleges CBP’s religious

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questioning is substantially likely to recur because Plaintiff Mouslli has “experienced travel issues consistent with placement on the watchlist” for years, such as his boarding pass being marked with “SSSS” indicating “Secondary Security Screening Selection” and being subject to secondary inspection. (*Id.* ¶ 132.) Plaintiff Mouslli intends to continue to travel internationally in the near future and alleges when he travels, he is at substantial risk of again being questioned by CBP officers about his religious beliefs, practices, and associations upon his return to the United States. (*Id.* ¶¶ 133-36.)

Plaintiff Mouslli alleges religious questioning by CBP harms him and impedes his religious practice. (*Id.* ¶ 137.) On information and belief, DHS and CBP maintain records about Plaintiff Mouslli’s religious beliefs, practices, and associations and Defendants’ retention of such information in government systems causes Plaintiff Mouslli ongoing distress and harm. (*Id.* ¶ 138.) Plaintiff Mouslli alleges CBP’s questioning about his religious beliefs, practices, and associations is insulting and humiliating and conveys the stigmatizing message that the U.S. government views adherence to Islamic religious beliefs and practices as inherently suspicious and that Muslim Americans are not entitled to the full constitutional protections afforded to other Americans. (*Id.* ¶ 139.)

Plaintiff Mouslli alleges CBP’s religious questioning places pressure on him to modify or curb his religious expression and practices in a way that is contrary to his sincere religious beliefs, such as by modifying his prayer practice. (*Id.* ¶¶ 140-41.) Plaintiff Mouslli is proud to be a Muslim and his sincere religious beliefs direct him to pray in a particular manner. (*Id.* ¶ 142.) Plaintiff Mouslli alleges it causes him distress to modify his prayer practice but because of CBP’s questioning, Plaintiff Mouslli takes these measures when traveling back into the United States to avoid calling attention to his religion and incurring additional scrutiny and religious questioning by CBP. (*Id.*)

Plaintiff Mouslli alleges he is subjected to unnecessary religious questioning by CBP and is forced to choose between outward displays of religiosity and avoiding additional religious

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questioning, which constitutes a substantial burden on his religious practice. (*Id.* ¶ 143.) Plaintiff Mouslli alleges CBP’s religious questioning has made and continues to make him feel anxious and distressed because of the invasive and personal nature of religious questioning and the stigma of being targeted because he is Muslim. (*Id.* ¶ 144.)

**3. Plaintiff Shah**

**a. First Questioning Incident: May 7, 2019**

Plaintiff Shah is a U.S. citizen and Muslim who works in financial services. (*Id.* ¶ 145.) Plaintiff Shah lives in Plano, Texas. (*Id.*) On May 7, 2019, CBP officers asked Plaintiff Shah questions related to his religion during a secondary inspection at LAX. (*Id.* ¶ 146.) Plaintiff Shah was returning to the United States from a trip to Serbia and Bosnia for vacation. (*Id.*) After Plaintiff Shah passed through primary inspection without incident, a CBP officer (“Officer 1”) stopped him in the baggage retrieval area and asked him to accompany him for a search. (*Id.* ¶ 147.) To the best of Mr. Shah’s recollection, Officer 1’s last name was “Esguerra” or something close to it. (*Id.*) Plaintiff Shah responded that he did not wish to be searched. (*Id.* ¶ 148.) Plaintiff Shah alleges Officer 1 replied that, because Plaintiff Shah was at the border, he did not have the option to refuse. (*Id.*) Officer 1 escorted Mr. Shah to a secondary inspection area. (*Id.* ¶ 149.) There, Officer 1 and a second officer (“Officer 2”) began to search Plaintiff Shah’s belongings. (*Id.*) To the best of Plaintiff Shah’s recollection, Officer 2’s last name was “Gonzalez” or something close to it. (*Id.*) Plaintiff Shah alleges the environment was coercive because both officers were wearing uniforms and carrying weapons and they commanded Plaintiff Shah to enter and remain in an area separate from travelers not subject to secondary inspection. (*Id.* ¶ 150.)

Officer 2 reviewed a notebook that Plaintiff Shah had been carrying in his backpack—a personal journal that Plaintiff Shah had kept for years and included notes about his religious beliefs and practices, as well as notes on non-religious topics. (*Id.* ¶ 151.) Plaintiff Shah told

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Officer 2 that the notebook was a personal journal and asked him not to read it, but Officer 2 persisted. (*Id.* ¶ 152.) Officer 2 pointed out that many of the notes in Plaintiff Shah’s journal were related to religion and asked why and where Plaintiff Shah had taken the notes and whether he had traveled in the Middle East. (*Id.* ¶ 153.) Officer 1 told Plaintiff Shah that they were trying to make sure Plaintiff Shah was a “safe person.” (*Id.*) Plaintiff Shah answered Officer 1’s 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. (*Id.* ¶ 154.)

The officers told Plaintiff Shah that they were going to search his phone and laptop. (*Id.* ¶ 155.) In response, Plaintiff Shah said that he did not consent to the search of his electronic devices and asked to see a supervisor. (*Id.*) Officer 1 left to get the supervisor; Officer 2 stayed behind. (*Id.*) While he and Plaintiff Shah were alone, Officer 2 asked Plaintiff Shah a series of questions about his religious beliefs, practices, and associations. (*Id.* ¶ 156.) The officer’s questions included the following:

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

(*Id.*)

When Plaintiff Shah asked Officer 2 why he was asking these questions, the officer responded, “I’m asking because of what we found in your journal.” (*Id.* ¶ 157.) Plaintiff Shah answered Officer 2’s questions because he was not free to leave without the permission of a CBP officer and felt that he had no choice but to answer. (*Id.* ¶ 158.) Later, Officer 1 returned with the supervisor. (*Id.* ¶ 159.) To the best of Plaintiff Shah’s recollection, the supervisor’s last name was “Lambrano,” or something close to it. (*Id.*) Plaintiff Shah told the supervisor

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that he did not consent to a search of his electronic devices. (*Id.*) Plaintiff Shah stated that he wanted to stand up for his constitutional rights. (*Id.*) The supervisor informed Plaintiff Shah that his reluctance to allow inspection of his devices had made the officers more suspicious of him. (*Id.* ¶ 160.) Plaintiff Shah asked to speak with an attorney immediately. (*Id.* ¶ 161.) Officer 1 responded by asking, “Why? You’re not under arrest.” (*Id.*)

Plaintiff Shah then told the supervisor that he no longer wished to enter the United States and wanted to return to the transit area so that he could leave the country and go back to Europe. (*Id.* ¶ 162.) The supervisor responded that Plaintiff Shah could not take his devices with him because they had been seized. (*Id.*) The supervisor gave Plaintiff Shah two options: (1) unlock his phone, in which case the officers would inspect the device in Plaintiff Shah’s presence; or (2) refuse to unlock his phone, in which case the officers would hold Plaintiff Shah’s phone and laptop for further examination and return them to him at a later date. (*Id.*) Mr. Shah felt that he had no meaningful choice, so he unlocked his phone. (*Id.* ¶ 163.) Officer 2 took the phone, wrote down the International Mobile Equipment Identity and serial numbers, and manually searched through the phone without letting Plaintiff Shah see the screen. (*Id.*) Officer 1 told Plaintiff Shah he needed to continue looking through Plaintiff Shah’s journal using a computer, and he left the secondary inspection area with the journal. (*Id.* ¶ 164.) Plaintiff Shah again objected to the search of his phone and his journal. (*Id.* ¶ 165.) About twenty to thirty minutes after Officer 1 had left, he returned with Plaintiff Shah’s journal; he was accompanied by an officer or agent in plain clothes (“Officer 3”). (*Id.* ¶ 166.) To the best of Plaintiff Shah’s recollection, Officer 3’s name was “Ali,” or something close to it. (*Id.*) On information and belief, Officer 3 was an HSI agent. (*Id.*)

Officer 3 asked Plaintiff Shah about aspects of his religious associations that Plaintiff Shah had recorded in his personal journal. (*Id.* ¶ 167.) Specifically, Officer 3 asked Plaintiff Shah about the identity of a local imam in the Phoenix area. (*Id.*) Plaintiff Shah answered Officer 3’s questions about the imam because he was not free to leave without the permission of a CBP officer and felt that he had no choice but to answer. (*Id.* ¶ 168.) Approximately two

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hours after he was taken to secondary inspection, the officers returned Plaintiff Shah’s passport and allowed him to leave. (*Id.* ¶ 169.)

After leaving secondary inspection, Plaintiff Shah opened his phone and could see that Officer 2 had viewed private text messages, WhatsApp messages, internal files, emails, call history, Google maps history, Google Chrome, Airbnb, and photos of family members spanning ten years, some of which were stored in the cloud but must have been cached on the device. (*Id.* ¶ 170.) Plaintiff Shah believes that Officer 2 viewed these apps and files because Plaintiff Shah has a habit of closing apps or files after he uses them, meaning Officer 2 must have viewed everything that was open at the time he returned the phone to Mr. Shah. (*Id.*) The fact that Officer 2 viewed this content made Mr. Shah feel extremely distressed and uncomfortable. (*Id.* ¶ 171.)

Plaintiff Shah alleges border offices subjected him to longer-than-necessary detention, more extensive and intrusive questioning, and more invasive searches as retaliation for the religious beliefs in his journal and his statements to officers invoking his rights. (*Id.* ¶ 172.) Plaintiff Shah alleges if the officers had not been acting with retaliatory motive, they would have detained Mr. Shah for a shorter period of time and would not have conducted such extensive and intrusive questioning and searches. (*Id.* ¶ 173.) Plaintiff Shah’s travel and identification documents were valid, and he was not transporting contraband. (*Id.* ¶ 174.)

In response to requests under the Freedom of Information Act and the Privacy Act, CBP has provided Plaintiff Shah with a redacted document stating that his detention and questioning was “Terrorist Related.” (*Id.* ¶ 175.) This document is labeled “IOIL,” which is a type of incident report entered into TECS. (*Id.*) The document includes the following description:

During examination of his belongings, subject was very cautious and focused on his journal that was found in his hand carry. Subject demanded for us not to read his journal because he felt that it was an invasion of his privacy. [Redacted] Upon

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reading the journal, some notes regarding his work and religion were found. Subject stated he’s self-employed working as a financial trader. Subject didn’t want to elaborate on the type of work he does but just mentioned that he is able to work remotely. Subject’s notes regarding his religion (Islam) seemed to be passages from an individual he calls [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.

(*Id.*)

**b. Plaintiff Shah’s General Allegations**

Plaintiff Shah alleges he is a law-abiding citizen with no criminal record and no ties to terrorist activity and none of the contents of his journal related to violence or terrorism. (*Id.* ¶¶ 176-78.) Plaintiff Shah alleges CBP’s religious questioning is substantially likely to recur because Mr. Shah’s previous detention and questioning was memorialized in a TECS entry labeled “Terrorist Related.” (*Id.* ¶ 180.) Plaintiff Shah alleges none of his statements or actions have any relation to terrorism and he does not know why the detention was labeled as “Terrorist Related.” (*Id.* ¶ 181.)

Plaintiff Shah alleges religious questioning by CBP harms him and impedes his religious practice. (*Id.* ¶¶ 182-83.) On information and belief, DHS and CBP maintain records pertaining to Plaintiff Shah’s religious beliefs, practices, and associations from border officers’ questioning of Plaintiff Shah. (*Id.* ¶ 184.) Defendants’ retention of copies of his journal and phone causes Plaintiff Shah ongoing distress and harm. (*Id.*) Plaintiff Shah alleges CBP’s questioning about his religious beliefs, practices, and associations is insulting and humiliating. (*Id.* ¶ 185.) Plaintiff Shah also alleges CBP’s questioning conveys the stigmatizing message that the U.S. government views adherence to Islamic religious beliefs and practices as

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inherently suspicious and that Muslim Americans are not entitled to the full constitutional protections afforded to other Americans. (*Id.*)

Plaintiff Shah alleges CBP’s religious questioning places pressure on him to modify or curb his religious expression and practices in ways that are contrary to his sincere religious beliefs, such as by leaving his journal at home when traveling internationally. (*Id.* ¶¶ 186-87.) Plaintiff Shah alleges he is subjected to unnecessary religious questioning by CBP and is forced to choose between outward displays of religiosity and avoiding additional religious questioning, which constitutes a substantial burden on his religious practice. (*Id.* ¶ 188.) Plaintiff Shah alleges he feels violated and humiliated by the border officers’ religious questioning and searches and remains concerned about the information Defendants retained about his journal, phone, and personal religious beliefs, practices, and associations. (*Id.* ¶ 189.)

**b. Procedural Background**

On October 12, 2022, the court granted Defendant’s Motion to Dismiss the Complaint. (Dkt. 58.) On November 14, 2022, Plaintiffs filed the FAC. (Dkt. 61.) On December 27, 2022, Defendants filed the Motion to Dismiss the FAC. (Dkt. 68.) On February 10, 2023, Plaintiffs opposed the Motion. (Dkt. 70.) On February 27, 2023, Defendants filed a Reply. (Dkt. 71.) On March 23, 2023, the court heard the Motion to Dismiss the FAC and took the matter under submission. (Dkt. 72.)

**II. Request for Judicial Notice**

Under Federal Rule of Evidence 201, the court can judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b). The court cannot take judicial notice of facts subject to reasonable dispute. *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir.

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2001), *overruled on other grounds by Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002)

Defendants request that the court take judicial notice of two documents: (1) a memorandum from Kevin K. McAleenan to All DHS Employees regarding First Amendment Protected Activities dated May 17, 2019 (“McAleenan Memo”); and (2) CBP Standards of Conduct, CBP Directive 51735-013B dated Dec. 9, 2020 (“CBP Standards of Conduct”). (Dkt. 69.) The court finds that judicial notice of the documents is proper because they are government agency documents. *See Itzhaki v. U.S. Liab. Ins. Co.*, 536 F. Supp. 3d 651, 655 (C.D. Cal. 2021) (citation omitted) (“Courts may take judicial notice of government documents available from reliable sources.”); *U.S. ex rel. Modglin v. DJO Glob. Inc.*, 48 F.Supp.3d 1362, 1381 (C.D. Cal. 2014) (“Under Rule 201, [a] court can take judicial notice of public records and government documents available from reliable sources on the Internet, such as websites run by governmental agencies.”). Accordingly, the court **GRANTS** Defendants’ Requests for Judicial Notice of the McAleenan Memo and CBP Standards of Conduct.

### III. Legal Standard

Rule 12(b)(6) permits a defendant to move to dismiss a complaint for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). To withstand a motion to dismiss brought under Rule 12(b)(6), a complaint must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). While “a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations,” a plaintiff must provide “more than labels and conclusions” and “a formulaic recitation of the elements of a cause of action” such that the factual allegations “raise a right to relief above the speculative level.” *Id.* at 555 (citations and internal quotation marks omitted); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (reiterating that “recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice”).

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“Establishing the plausibility of a complaint’s allegations is a two-step process that is ‘context-specific’ and ‘requires the reviewing court to draw on its judicial experience and common sense.’” *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 995-96 (9th Cir. 2014) (quoting *Iqbal*, 556 U.S. at 679). “First, to be entitled to the presumption of truth, allegations in a complaint . . . must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively.” *Id.* at 996 (quoting *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011)). “Second, the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation.” *Id.* (quoting *Baca*, 652 F.3d at 1216); *see also Iqbal*, 556 U.S. at 681. But “[w]here a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to relief.” *Id.* (quoting *Iqbal*, 556 at U.S. 678).

In *Sprewell v. Golden State Warriors*, the Ninth Circuit described legal standards for motions to dismiss made pursuant to Rule 12(b)(6):

Review is limited to the contents of the complaint. *See Enesco Corp. v. Price/Costco, Inc.*, 146 F.3d 1083, 1085 (9th Cir. 1998). All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party. *See id.* The court need not, however, accept as true allegations that contradict matters properly subject to judicial notice or by exhibit. *See Mullis v. United States Bankr. Ct.*, 828 F.2d 1385, 1388 (9th Cir.1987). Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994).

266 F.3d 979, 988 (9th Cir. 2001).

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**IV. Discussion**

**A. Plaintiffs Have Sufficiently Alleged the Existence of an Official Practice, Policy or Custom of Targeting Muslim Americans for Religious Questioning**

The court first considers whether Plaintiffs have sufficiently alleged the existence of an official practice, policy or custom to have standing to assert the claims in the FAC. *See Armstrong v. Davis*, 275 F.3d 849, 861 (9th Cir. 2001) (a plaintiff must demonstrate “the harm alleged is directly traceable to a written policy” or that “the harm is part of a pattern of officially sanctioned . . . behavior” to have standing) (citation and internal quotation marks omitted) (*overruled on other grounds by Johnson v. California*, 543 U.S. 499 (2005)).

The FAC presents two alternative theories as to what constitutes Defendants’ allegedly illegal official practice, policy or custom: (1) Defendants have a policy and/or practice of intentionally targeting Muslims for religious questioning” and as part of this religious questioning, retain the coerced responses to Defendants’ questioning, (FAC ¶¶ 25, 29); or (2) Defendants have a policy and/or practice of subjecting *all* travelers of faith to questioning about their religious beliefs, practices, and associations during secondary inspections and retain such information, (*id.* ¶ 31). The FAC further alleges such conduct is permitted by Defendants’ written policies, which “permit border officers to question Americans about their religious beliefs, practices, and associations” and “collect and maintain information about an individual’s religious beliefs, practices, and associations in numerous circumstances.” (*Id.* ¶ 24).

The parties’ briefing does not sufficiently demonstrate the relevant standard for determining the existence of an official practice, policy, or custom. The court previously found that under *Mayfield v. United States*, 599 F.3d 964 (9th Cir. 2010), there are two ways for a plaintiff to establish an official practice, policy or custom:

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First, a plaintiff may show that the defendant had, at the time of the injury, a written policy, and that the injury ‘stems from’ that policy. . . . Second, the plaintiff may demonstrate that the harm is part of a ‘pattern of officially sanctioned . . . behavior, violative of the plaintiffs’ [federal] rights.

*Id.* at 971 (citations and internal quotation marks omitted).

The court previously found that Plaintiffs sufficiently alleged the existence of an official practice, policy or custom of targeting Muslim Americans for religious questioning based on allegations of ten separate incidents of questioning, but Plaintiffs did not sufficiently allege the existence of a written policy permitting such targeting. (Dkt. 58 at 30-32.) *See Askins v. U.S. Dep’t of Homeland Sec.*, 2013 WL 5462296, at \*7 (S.D. Cal. Sept. 30, 2013) (finding a “pattern of official sanctioned behavior” in violation of the Fourth Amendment where plaintiffs alleged two instances of CBP officers searching and seizing the persons and property of individuals at two separate ports of entry for taking photographs), *amended on other grounds*, 2015 WL 12434362 (S.D. Cal. Jan. 29, 2015); *Cherri v. Mueller*, 951 F. Supp. 2d 918, 933-34 (E.D. Mich. 2013) (plaintiffs sufficiently alleged an official policy, custom and practice where plaintiffs alleged they were asked the same questions about their religious practices and beliefs on multiple occasions, the Complaint attached a DHS memorandum regarding law enforcement questioning of religion at the border, DHS informed plaintiffs’ counsel that the agency had received a number of similar complaints, and DHS wrote a memorandum on the topic).

In this case, the FAC alleges Plaintiffs were subjected to religious questioning on ten different occasions and DHS and CBP retain records about each Plaintiff. (*See generally* FAC; *id.* ¶¶ 96, 138, 184.) The FAC further alleges multiple instances of DHS disclosing that it was investigating instances of reported religious questioning of Muslim individuals, acknowledging receipt of such complaints, creating memoranda on the issue, and continuing to review allegations of religious questioning at ports of entry as recently as 2020. (*Id.* ¶¶ 17-22.)

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Taking these allegations as true, the FAC alleges that Plaintiffs not only experienced religious questioning on ten different occasions and had their responses recorded, but that DHS has acknowledged receiving numerous complaints about religious questioning at the border, issued memoranda on the subject, and acknowledged the existence of an internal investigation into border officers’ questioning of Muslims regarding their religious practices. Therefore, the court finds that Plaintiffs have sufficiently alleged the existence of an official practice, policy or custom of targeting Muslim Americans for religious questioning and retaining their responses based on Defendants’ pattern of behavior. *See Cherri*, 951 F. Supp. 2d at 933-34 (holding plaintiffs sufficiently alleged an official policy, custom and practice based on similar facts).

However, the court finds Plaintiffs have not sufficiently alleged the existence of an official practice, policy or custom of Defendants subjecting *all* travelers of faith to religious questioning and retaining their responses to such questions. Apart from the allegation that such a policy exists, the FAC does not include sufficient factual allegations regarding other travelers of faith being subject to religious questioning. (*See generally* FAC.)

Accordingly, the court finds that Plaintiffs have sufficiently alleged the existence of an official practice, policy or custom of targeting Muslim Americans for religious questioning based on a pattern of officially sanctioned behavior for Plaintiffs to have standing to assert the causes of action in the Complaint. The court’s discussion below is limited to Plaintiffs’ first basis for an official practice, policy or custom—that Defendants are targeting Muslims for religious questioning. (*Id.* ¶ 25.)

**B. First Claim (Violation of the First Amendment Establishment Clause)**

The First Amendment’s Establishment Clause provides that “Congress shall make no law respecting an establishment of religion.” U.S. Const. amend. I. “This clause applies not only to official condonement of a particular religion or religious belief, but also to official disapproval or hostility towards religion.” *Am. Fam. Ass’n, Inc. v. City & Cnty. of San Francisco*, 277 F.3d

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1114, 1120-21 (9th Cir. 2002); *see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993) (“In our Establishment Clause cases we have often stated the principle that the First Amendment forbids an official purpose to disapprove of a particular religion or of religion in general.”); *Vernon v. City of Los Angeles*, 27 F.3d 1385, 1396 (9th Cir. 1994) (“The government neutrality required under the Establishment Clause is thus violated as much by government disapproval of religion as it is by government approval of religion.”).

As the court noted in its previous order, the Supreme Court established a new standard for evaluating Establishment Clause claims in *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022). Under *Kennedy*, “[i]n place of *Lemon* and the endorsement test, this Court has instructed that the Establishment Clause must be interpreted by reference to historical practices and understandings.” *Id.* at 2428 (citation and internal quotation marks omitted). The Ninth Circuit has recognized that *Kennedy*, by abrogating the *Lemon* test, set forth a new standard for analyzing Establishment Clause claims. *See Sabra v. Maricopa Cnty. Cmty. Coll. Dist.*, 44 F.4th 867, 888 (9th Cir. 2022) (citations and internal quotation marks omitted) (“Instead of relying on the *Lemon* test, lower courts must now interpret the Establishment Clause by reference to historical practices and understandings . . . Going forward, the line that courts and governments must draw between the permissible and the impermissible has to accord with history and faithfully reflect the understanding of the Founding Fathers.”).

As was the case previously, Plaintiffs urge the court to apply two alternative standards: (1) the test for denominational neutrality set forth in *Larson v. Valente*, 456 U.S. 228 (1982); or (2) the coercion test set forth in *Everson v. Board of Education*, 330 U.S. 1, 15-16 (1947) and *Lee v. Weisman*, 505 U.S. 577, 587-88 (1992). (Opp. at 7-10.) The court finds neither alternative standard applies here. (*See id.* (citing cases that pre-date *Kennedy*)). As the court discussed in its prior Order, *Lemon*—not the alternative standards proposed by Plaintiffs—was “the *dominant* mode of Establishment Clause analysis” in the Ninth Circuit prior to its

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abrogation. *Freedom From Religion Found., Inc. v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132, 1149 (9th Cir. 2018) (emphasis added).<sup>1</sup>

Therefore, the court finds that *Kennedy* sets forth the relevant standard for analyzing Establishment Clause violations. 142 S. Ct. at 2428; *see also Freedom From Religion Found.*, 896 F.3d at 1149. Given the recency of the decision, the court observes that there is limited case law interpreting and applying the *Kennedy* standard. Based on the limited case law regarding the *Kennedy* standard, the court considers historical practices regarding the government’s authority to question individuals at the border, per the Supreme Court’s instruction to interpret the Establishment Clause “by reference to historical practices and understandings.” 142 S. Ct. at 2428; *see also Sabra*, 44 F.4th at 888 (“Instead of relying on the *Lemon* test, lower courts must now interpret the Establishment Clause by ‘reference to historical practices and understandings.’ . . . Going forward, ‘the line that courts and governments must draw between the permissible and the impermissible has to accord with history and faithfully reflect the understanding of the Founding Fathers.’”) (citation and internal quotation marks

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<sup>1</sup> The court finds neither of Plaintiffs’ proposed alternative standards applicable in analyzing their Establishment Clause claim. As stated above, Establishment Clause claims must now be evaluated under *Kennedy*. First, as to the *Larson* test, the court finds no statute or law at issue here that would make this test applicable, and Plaintiffs have not otherwise identified one. *See Hernandez v. Comm’r*, 490 U.S. 680, 695 (1989) (“*Larson* teaches that, when it is claimed that a denominational preference exists, the initial inquiry is whether the law facially differentiates among religions.”). Second, as to the coercion test, Plaintiffs allege they were subjected to coercive conditions during secondary inspection, forced to answer border officers’ questions, penalized for being Muslim, and coerced into “not fully practicing their faith.” (Opp. at 20.) Under *Lee* and *Everson*, the government is prohibited from “coerc[ing] anyone to support or participate in religion or its exercise,” *Lee*, 505 U.S. at 587 or “forc[ing] him to profess a belief or disbelief in any religion,” *Everson*, 330 U.S. at 15. Plaintiffs do not sufficiently show how these alternative tests, even if applicable, are satisfied based on the allegations of the FAC.

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omitted); *Kane v. de Blasio*, 2022 WL 3701183, at \*10 (S.D.N.Y. Aug. 26, 2022) (applying *Kennedy* test to an Establishment Clause challenge to New York’s vaccine mandate and reviewing the “long history of vaccination requirements in this country and in this Circuit”); *Freedom from Religion Foundation, Inc. v. Mack*, 49 F.4th 941, 951 (5th Cir. 2022) (internal quotation marks omitted) (applying *Kennedy* test to an Establishment Clause challenge to a Texas judge’s use of prayer in court’s opening ceremony with “particular attention paid to historical practices”).

The court finds substantial legal authority supports the government’s historically broad authority to implement security measures at the border. In *United States v. Montoya de Hernandez*, 473 U.S. 531 (1985), the Supreme Court explained the plenary authority of the Executive Branch at the border:

Since the founding of our Republic, Congress has granted the Executive plenary authority to conduct routine searches and seizures at the border, without probable cause or a warrant, in order to regulate the collection of duties and to prevent the introduction of contraband into this country. . . . [The] Court has long recognized Congress’ power to police entrants at the border . . . . Consistent[], therefore, with Congress’ power to protect the Nation by stopping and examining persons entering this country, the Fourth Amendment’s balance of reasonableness is qualitatively different at the international border than in the interior. Routine searches of the persons and effects of entrants are not subject to any requirement of reasonable suspicion, probable cause, or warrant . . . . These cases reflect longstanding concern for the protection of the integrity of the border.

473 U.S. at 537-38.

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The Supreme Court has repeatedly emphasized that such plenary authority is rooted in historical practices and understanding of the government’s authority at the border. In *United States v. Ramsey*, 431 U.S. 606 (1977), the Supreme Court explained:

That searches made at the border, pursuant to the long-standing right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border, should, by now, require no extended demonstration . . . . Border searches, then, from before the adoption of the Fourth Amendment, have been considered to be “reasonable” by the single fact that the person or item in question had entered into our country from outside. There has never been any additional requirement that the reasonableness of a border search depended on the existence of probable cause. This longstanding recognition that searches at our borders without probable cause and without a warrant are nonetheless “reasonable” has a history as old as the Fourth Amendment itself. We reaffirm it now.

431 U.S. at 616-19.

Additionally, the court finds substantial authority holding that maintaining border security is a compelling government interest. *See Haig v. Agee*, 453 U.S. 280, 307 (1981) (“It is obvious and unarguable that no governmental interest is more compelling than the security of the Nation.”) (citation and internal quotation marks omitted); *Holder v. Humanitarian L. Project*, 561 U.S. 1, 28 (2010) (“Everyone agrees that the Government’s interest in combating terrorism is an urgent objective of the highest order.”); *United States v. Flores-Montano*, 541 U.S. 149, 152 (2004) (“The Government’s interest in preventing the entry of unwanted persons and effects is at its zenith at the international border.”); *Al Haramain Islamic Found., Inc. v. U.S. Dep’t of Treasury*, 686 F.3d 965, 980 (9th Cir. 2012) (“On the other side of the scale, the government’s interest in national security cannot be understated.”); *Tabbaa v. Chertoff*, 509 F.3d 89, 103 (2d Cir. 2007) (“It is undisputed that the government’s interest in protecting the

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nation from terrorism constitutes a compelling state interest.”); *Carroll v. United States*, 267 U.S. 132, 154 (1925) (“Travelers may be so stopped in crossing an international boundary because of national self-protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in.”).

In light of the case law holding that the government has plenary authority at the border and that maintaining border security is a compelling government interest, the court finds that “reference to historical practices and understandings” weighs against finding an Establishment Clause violation based on religious questioning at the border. *Kennedy*, 142 S. Ct. at 2428. Plaintiffs’ allegations to the contrary—that American history and tradition protect religious belief—do not sufficiently address historical practices and understandings at the border. (FAC ¶¶ 39-53.)

Accordingly, Plaintiffs have not sufficiently alleged an Establishment Clause violation, and thus the court **GRANTS** the Motion as to Plaintiffs’ Establishment Clause claim (Count 1).

**C. Second Claim (Violation of the First Amendment Free Exercise Clause)**

The Free Exercise Clause of the First Amendment of the U.S. Constitution provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const., amend. I. “The right to freely exercise one’s religion, however, does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (internal quotation marks omitted) (quoting *Emp. Div. v. Smith*, 494 U.S. 872, 879 (1990)).

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“[A] law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice. Neutrality and general applicability are interrelated, and . . . failure to satisfy one requirement is a likely indication that the other has not been satisfied.” *Church of the Lukumi Babalu Aye*, 508 U.S. at 531. “A law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest.” *Id.* at 531-32. But “[f]acial neutrality is not determinative. The Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination.” *Id.* at 534. “Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality” because “[t]he Free Exercise Clause protects against governmental hostility which is masked, as well as overt.” *Id.*

Plaintiffs alleging a Free Exercise claim must “allege a substantial burden on their religious practice or exercise.” *Cal. Parents for the Equalization of Educ. Materials v. Torlakson*, 973 F.3d 1010, 1016 (9th Cir. 2020). “The free exercise inquiry asks whether government has placed a substantial burden on the observation of a *central* religious belief or practice and, if so, whether a compelling governmental interest justifies the burden.” *Hernandez v. Comm’r*, 490 U.S. 680, 699 (1989) (emphasis added). Thus, “[t]he Free Exercise Clause of the First Amendment protects only ‘the observation of a central religious belief or practice.’” *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1076 (9th Cir. 2008) (quoting *Hernandez*, 490 U.S. at 699).<sup>2</sup>

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<sup>2</sup> Plaintiffs argue the language describing a substantial burden in *Navajo Nation* must be understood in light of *Jones v. Slade*, 23 F.4th 1124 (9th Cir. 2022) and *Ohno v. Yasuma*, 723 F.3d 984 (9th Cir. 2013). (Opp. at 22.) Neither case alters the court’s analysis. *Jones* analyzes the meaning of “substantial burden” under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. §§ 2000cc, *et seq.* and explicitly notes that this statutory standard is “more generous to the religiously observant than the Free Exercise Clause.” 23 F.4th at 1139. *Ohno* reiterates the same standard discussed by the court above—that a “substantial

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**a. Plaintiffs Have Not Sufficiently Alleged a Substantial Burden<sup>3</sup>**

**i. Plaintiffs’ Alleged Burden Is a Subjective Chilling Effect**

The parties again dispute whether the protective measures taken by Plaintiffs constitute a substantial burden or are merely a “subjective chilling effect.” (Mot. at 19-22; Opp. at 21-25.) Defendants cite to *Vernon v. City of Los Angeles*, 27 F.3d 1385 (9th Cir. 1994) and *Dousa v. U.S. Dep’t of Homeland Sec.*, 2020 WL 434314, at \*5 (S.D. Cal. Jan. 28, 2020) for the proposition that a plaintiff is not substantially burdened in their religious practice when they voluntarily refrain from religious activity. (Mot. at 19-22.) The court reviews both cases below.

In *Vernon*, the Ninth Circuit considered whether the plaintiff, the Assistant Chief of Police of the Los Angeles Police Department (“LAPD”), experienced a substantial burden when the LAPD investigated “whether [plaintiff’s] religious views were having an impermissible

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burden must place more than an inconvenience on religious exercise” and must have a “tendency to coerce individuals into acting contrary to their religious beliefs” or “exert substantial pressure on an adherent to modify his behavior and to violate his beliefs.” 723 F.3d at 1011.

<sup>3</sup> Plaintiffs argue in the alternative that they are not required to plead a substantial burden for two reasons: (1) the Supreme Court has not recently applied such a requirement to Free Exercise claims; and (2) Plaintiffs have alleged a practice, policy, or custom of targeting Muslim Americans that is not a neutral or generally applicable policy and is thus only subject to strict scrutiny analysis. (Opp. at 25-28.) As to Plaintiff’s first argument, in the absence of binding authority holding that a substantial burden is not required to assert a Free Exercise claim, the court continues to follow existing precedent. As to Plaintiffs’ second argument, the court discusses why Plaintiffs’ Free Exercise claim would fail even if Plaintiffs had sufficiently alleged a substantial burden in Section IV(C)(b), *infra*.

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effect on his on-duty police department performance.” *Id.* at 1388. The plaintiff in *Vernon* alleged that the investigation “chilled [him] in the exercise of his religious beliefs,” because he “fear[ed] that he can no longer worship as he chooses, consult with his ministers and the elders of his church, participate in Christian fellowship and give public testimony to his faith without severe consequences.” *Id.* at 1394. The plaintiff in *Vernon* thus argued that the investigation “interfered with [his] freedom to worship in the way [he] want[s] without repercussions.” *Id.* The Ninth Circuit held that, based on the record, the investigation “resulted in no disciplinary action being taken” and that the plaintiff had admitted “in his deposition testimony that no one has specifically told him that he cannot [consult with his church elders].” *Id.* at 1395. As a result, the Ninth Circuit held that plaintiff “failed to show any concrete and demonstrable injury” because a substantial burden could not be based on “mere subjective chilling effects with neither a claim of specific present objective harm [n]or a threat of specific future harm.” *Id.* (citation and internal quotation marks omitted).

In *Dousa*, the district court considered whether the plaintiff, a pastor who was allegedly subjected to government “surveillance, detention, and harassment” for her activities ministering to asylum seekers at the U.S.-Mexico border, had a cognizable Free Exercise claim. 2020 WL 434314, at \*1. Plaintiff alleged she suffered three distinct harms from the government’s activities: (1) the government revoked, or at least attempted to revoke, her border crossing card (“SENTRI” card), hindering her ability to enter the United States; (2) the government detained and interrogated her on January 2, 2019; and (3) the government monitored her domestic activities. *Id.* at \*3. Plaintiff argued the cumulative effect of these harms was that she was “dissuaded from traveling to Mexico and ministering to refugees, something her religious beliefs compel her to do” and that she felt “compelled to warn penitents about the possibility of government surveillance, chilling her ability to provide pastoral counseling and absolution.” *Id.*

The *Dousa* court held that because the challenged government action was “neither regulatory, proscriptive [n]or compulsory,” “the [threshold] question is not necessarily whether the Government action is neutral and generally applicable, but rather ‘whether it substantially

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burdens a religious practice and either is not justified by a substantial state interest or is not narrowly tailored to achieve that interest.” *Id.* at \*7 (quoting *Am. Family Ass’n*, 277 F.3d at 1123-24). Analyzing this threshold question, the court held that plaintiff’s alleged harms did not rise to the level of a substantial burden because plaintiff’s decision to refrain from providing religious counseling were “subjective chills.” *Id.* at \*8. Based on evidence of plaintiff’s continued ability to travel and use her Global Entry privileges, the court held that plaintiff did not face a “present objective harm or a threat of specific future harm” and that “any harms felt are not the direct result of government action, but rather a result of her decision to limit her religious practices for her own subjective reasons.” *Id.* However, the court clarified that “if the Government had revoked [the plaintiff’s] SENTRI card (and [the plaintiff] could show that the revocation was the result of her engaging in protected activity), the Court would have no problem finding a substantial burden” because the revocation “would effectively amount to a government sanction, and it would undoubtedly make it more difficult for her to travel and to practice her sincerely held beliefs.” *Id.*

In this case, Plaintiffs allege that they were intentionally targeted for religious questioning on ten occasions, and information about their religious beliefs, practices, and associations was collected and is now maintained in government databases. (*See* FAC ¶¶ 54-105 (Plaintiff Kariye alleges he was subjected to religious questioning on five occasions from September 12, 2017, to December 31, 2021); *id.* ¶¶ 106-44 (Plaintiff Mouslli alleges he was subjected to religious questioning on four occasions from August 9, 2018, to June 5, 2021); *id.* ¶¶ 145-89 (Plaintiff Shah alleges he was subjected to religious questioning on one occasion on May 7, 2019).) Plaintiffs further allege the questioning is substantially likely to recur and Plaintiffs have suffered emotional distress from these experiences. (*Id.*)

Plaintiffs also allege they have modified their religious practices during international travel because of their experiences. Plaintiff Kariye alleges he now “modifies or eliminates certain religious practices central to his faith to avoid calling attention to his faith,” including “no longer wear[ing] his kufi at the airport or the border,” “refrain[ing] from . . . physical acts

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of prayer at the airport and the border,” and “avoid[ing] carrying religious texts while traveling back into the United States.” (*Id.* ¶¶ 98-102.) Plaintiff Mouslli alleges he “refrains from these physical acts of prayer at the airport and the border.” (*Id.* ¶ 141). Plaintiff Shah alleges “the next time he travels internationally, he intends to leave his journal at home.” (*Id.* ¶ 186.)

The court finds that the ongoing harms alleged by Plaintiffs here—their modifications to religious practices during international travel—hew closely to the harms alleged in *Vernon* and *Dousa* and can similarly be categorized as subjective chilling effects insufficient to constitute a substantial burden under the Free Exercise Clause. *See Vernon*, 27 F.3d at 1395 (substantial burden could not be based on “mere subjective chilling effects with neither a claim of specific present objective harm [n]or a threat of specific future harm”); *Dousa*, 2020 WL 434314, at \*8 (no substantial burden where “any harms felt are not the direct result of government action, but rather a result of her decision to limit her religious practices for her own subjective reasons”).

Plaintiffs describe their actions as *preventative* measures they adopted to avoid questioning in the future, not coerced actions compelled by government officials. (*See* FAC ¶¶ 98-102 (Plaintiff Kariye alleges he “modifies or eliminates” certain practices to avoid additional scrutiny); *id.* ¶ 141 (Plaintiff Mouslli alleges he “refrains from these physical acts of prayer at the airport and the border”); *id.* ¶ 186 (Plaintiff Shah alleges “the next time he travels internationally, he intends to leave his journal at home”).)

As in *Dousa*, the court finds that “any harms felt are not the direct result of government action, but rather a result of [plaintiff’s] decision to limit [their] religious practices for [their] own subjective reasons.” 2020 WL 434314, at \*8; *see also Am. Fam. Ass’n*, 277 F.3d at 1124 (“[W]hen the challenged government action is neither regulatory, proscriptive [n]or compulsory, alleging a subjective chilling effect on free exercise rights is not sufficient to constitute a substantial burden.”). Therefore, the court finds that the protective measures alleged by Plaintiffs constitute a subjective chilling effect rather than a substantial burden.

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**ii. Plaintiffs Do Not Plausibly Allege They Were Deprived of a Government Benefit or Coerced to Act Contrary to their Religious Beliefs**

Although Plaintiffs again urges the court to find a substantial burden pursuant to the reasoning of *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058 (9th Cir. 2008), the court finds *Navajo Nation*'s reasoning dictates the opposite outcome. (Opp. at 22.) In *Navajo Nation*, the Ninth Circuit considered whether the “use of artificial snow for skiing on a portion of a public mountain sacred in [the plaintiffs’] religion” violates RFRA and other unrelated statutes. *Id.* at 1062-63. The harm alleged was to the plaintiffs’ “subjective spiritual experience,” “[t]hat is, the presence of the artificial snow on the Peaks is offensive to the Plaintiffs’ feelings about their religion and will decrease the spiritual fulfillment Plaintiffs get from practicing their religion on the mountain.” *Id.* at 1063. Under these facts, the Ninth Circuit explained that “a government action that decreases the spirituality, the fervor, or the satisfaction with which a believer practices his religion is not what Congress has labeled a ‘substantial burden’—a term of art chosen by Congress to be defined by reference to Supreme Court precedent—on the free exercise of religion.” *Id.* The Ninth Circuit further explained that a substantial burden is “imposed only when individuals are forced to choose between following the tenets of their religion and receiving a governmental benefit . . . or coerced to act contrary to their religious beliefs by the threat of civil or criminal sanctions.” *Id.* at 1070. “Any burden imposed on the exercise of religion short of that described by *Sherbert* and *Yoder* is not a ‘substantial burden’ within the meaning of RFRA.” *Id.* The court finds that because the Ninth Circuit’s analysis in *Navajo Nation* is explicitly grounded in binding Supreme Court precedent in *Sherbert* and *Yoder*, it does not warrant a departure from the analysis above.

The court finds Plaintiffs have not adequately alleged that they were “forced to choose between following the tenets of their religion and receiving a government benefit” under *Sherbert* or “coerced to act contrary to their religious beliefs” under *Yoder*. *Id.* at 1070. In *Sherbert*, the Supreme Court held that South Carolina could not deny unemployment benefits to

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a claimant, a member of the Seventh-Day Adventist Church, who refused jobs that required the claimant to work on the Sabbath Day of her faith. 374 U.S. at 398. In *Yoder*, the Supreme Court held that respondents’ criminal convictions for violating Wisconsin’s compulsory school-attendance law were invalid under the Free Exercise Clause based on respondents’ belief that their children’s compulsory attendance at high school violated the Amish religion and way of life. 406 U.S. at 206-09.

In this case, Plaintiffs have not plausibly alleged they were deprived of a government benefit or coerced to act contrary to their religious beliefs. First, under *Sherbert*, Plaintiffs argue they were deprived of the benefit of being allowed to reenter the United States without protracted questioning. (Opp. at 22.) Plaintiffs do not sufficiently explain how such a benefit falls within the type of “government benefit” discussed in *Sherbert*. (*See generally* Opp.) To the contrary, case law regarding the government’s authority at the border suggests no such benefit exists. *See Flores-Montano*, 541 U.S. at 155 n.3 (2004) (“Respondent points to no cases indicating the Fourth Amendment shields entrants from inconvenience or delay at the international border . . . We think it clear that delays of one to two hours at international borders are to be expected.”); *Haig*, 453 U.S. at 306 (“[T]he freedom to travel abroad . . . is subordinate to national security and foreign policy considerations; as such, it is subject to reasonable governmental regulation. The Court has made it plain that the *freedom* to travel outside the United States must be distinguished from the *right* to travel within the United States.”) (emphasis in original).

Second, under *Yoder*, Plaintiffs argue they are coerced to “choose between outward displays of religiosity and avoiding additional religious questioning” and thus refrain from physical acts of prayer, religious attire, carrying religious texts, and carrying a personal journal when traveling internationally. (Opp. at 22-23.) However, the Ninth Circuit has described the coercion contemplated by *Yoder* as an individual being “coerced to act contrary to their religious beliefs by the threat of civil or criminal sanctions.” *Navajo Nation*, 535 F.3d at 1075. In this case, the FAC does not sufficiently describe what, if any, civil or criminal sanctions

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Defendants threatened. *See, e.g., Warsoldier v. Woodford*, 418 F.3d 989, 995-96 (9th Cir. 2005) (finding a substantial burden under RLUIPA where an inmate who refused to cut his hair in violation of his religious beliefs was “subjected to a series of punishments designed by CDC to coerce him into compliance” including confinement to his cell, being forced to work additional duty hours, and being expelled from prison classes).

Accordingly, the court finds that the FAC does not plausibly allege Plaintiffs were deprived of the government benefit of reentering the United States without protracted questioning or that they were coerced to act contrary to their religious beliefs. In summary, the court finds that Plaintiffs have not sufficiently alleged a substantial burden to sustain their Free Exercise Claim.

**b. Even if Plaintiffs Sufficiently Alleged a Substantial Burden, the Court would find the Questioning is Narrowly Tailored to Advance a Compelling Government Interest**

Alternatively, Defendants argue that even if Plaintiffs had sufficiently alleged a substantial burden, “the questioning alleged here is the least restrictive means of advancing a compelling government interest.” (Mot. at 23-25 (discussing Plaintiffs’ Free Exercise Clause and RFRA claims).) The court agrees that even if Plaintiffs had sufficiently alleged a substantial burden, based on the FAC’s allegations and the record before the court, the record supports Defendants’ questioning is a narrowly tailored means of advancing a compelling government interest.

“[A] law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice.” *Church of the Lukumi Babalu Aye*, 508 U.S. at 531. “A law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest.” *Id.* at 531-32. “The free exercise inquiry asks whether

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government has placed a substantial burden on the observation of a central religious belief or practice and, if so, whether a compelling governmental interest justifies the burden.” *Hernandez*, 490 U.S. at 699.

Defendants identify the compelling interest here as the government’s interest in “protecting its borders and investigating and preventing potential acts of terrorism.” (Mot. at 23.) Defendants cite several cases supporting the proposition that the government has a compelling interest in this area. (*Id.* (citing *Haig*, 453 U.S. at 307 (“It is obvious and unarguable that no governmental interest is more compelling than the security of the Nation.”) (citation and internal quotation marks omitted); *Humanitarian L. Project*, 561 U.S. at 28 (“Everyone agrees that the Government’s interest in combating terrorism is an urgent objective of the highest order.”); *Flores-Montano*, 541 U.S. at 152 (“The Government’s interest in preventing the entry of unwanted persons and effects is at its zenith at the international border.”); *Al Haramain Islamic Found.*, 686 F.3d at 980 (“On the other side of the scale, the government’s interest in national security cannot be understated.”); *Tabbaa*, 509 F.3d at 103 (“It is undisputed that the government’s interest in protecting the nation from terrorism constitutes a compelling state interest.”). Plaintiffs do not sufficiently address whether the government’s purported interest in this area constitutes a compelling interest. (*See generally* Opp.) Accordingly, the court’s analysis below concerns whether Plaintiffs’ questioning was narrowly tailored to achieve such an interest.

The court notes that case law holding that the government’s action was *not* narrowly tailored typically addresses governmental conduct broader in scope than the questioning alleged here. *Cf. Shelton v. Tucker*, 364 U.S. 479, 488 (1960) (law not narrowly tailored where statute required teachers to list “the church to which he belongs, or to which he has given financial support,” “his political party, and every political organization to which he may have contributed over a five-year period” and “every conceivable kind of associational tie—social, professional, political, avocational, or religious”); *id.* (“[E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle

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fundamental personal liberties when the end can be more narrowly achieved.”); *Fulton v. City of Philadelphia, Pa.*, 141 S. Ct. 1868, 1882 (2021) (holding that City of Philadelphia violated Free Exercise Clause where it conditioned a religious agency’s ability to participate in the foster care system on the agency agreeing to certify same-sex couples as foster parents).

Additionally, Plaintiffs’ allegations support the conclusion that the questioning alleged in this case would be a narrowly tailored means of achieving the compelling government interest of maintaining border security. For example, Plaintiffs Kariye and Mouslli allege they were on the government watchlist for several years preceding the incidents of questioning, but they do not know why they were placed on the watchlist. (*See* FAC ¶¶ 90-93 (Plaintiff Kariye has been experiencing travel issues consistent with placement on a government watchlist since 2013 but was taken off the watchlist in May 2022, in response to this litigation); *id.* ¶¶ 131-32 (Plaintiff Mouslli has been experiencing travel issues consistent with placement on a government watchlist since 2017).) Given that the FAC alleges Plaintiffs Kariye and Mouslli were on the government watchlist during the incidents of questioning, the court finds implausible Plaintiffs’ allegations that questioning Plaintiffs “does not help to protect the border or prevent terrorism.” (*Id.* ¶ 210.)<sup>4</sup> Indeed, the FAC alleges the government watchlist is a terrorist screening tool and

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<sup>4</sup> To the extent Plaintiffs seek to challenge the legality of the government watchlist, the court observes no such claims are asserted here. (*See generally* FAC.) The court notes that the legality of the U.S. government’s Terrorist Screening Database—the government’s watchlist of known or suspected terrorists—has been upheld by several Circuits. *See Elhady v. Kable*, 993 F.3d 208, 213 (4th Cir. 2021) (describing the database as “the federal government’s consolidated watchlist of known or suspected terrorists” and holding that “any wholesale reworking or significant modification of the program rests within the purview of the democratic branches”); *Abdi v. Wray*, 942 F.3d 1019, 1024 (10th Cir. 2019) (holding no due process claim from placement on the list); *Beydoun v. Sessions*, 871 F.3d 459, 467 (6th Cir. 2017) (holding plaintiffs did not adequately allege their fundamental rights were violated from placement on the list).



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substantial burden, the court finds that Plaintiffs have not sufficiently addressed how Defendants’ questioning was not narrowly tailored to further a compelling government interest. The court therefore concludes Plaintiffs have not plausibly alleged their Free Exercise Claim. Accordingly, the court **GRANTS** the Motion as to Plaintiffs’ Free Exercise Clause claim (Count 2).

**D. Third Claim (Violation of the First Amendment Right to Free Association)**

“The First Amendment prohibits government from ‘abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.’” *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2382 (2021). The Supreme Court “has ‘long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others.’” *Id.* (quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984)). “[T]he freedom of association may be violated where a group is required to take in members it does not want . . . where individuals are punished for their political affiliation . . . or where members of an organization are denied benefits based on the organization’s message.” *Id.* at 2382. In addition, “[i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action.” *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958).

In *Ams. for Prosperity Found.*, the Supreme Court explained the standard of review that applies to First Amendment challenges to compelled disclosure:

We have since settled on a standard referred to as “exacting scrutiny.” *Buckley v. Valeo*, 424 U.S. 1, 64, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (per curiam). Under that standard, there must be “a substantial relation between the disclosure requirement and a sufficiently important governmental interest.” *Doe v. Reed*, 561 U.S. 186, 196, 130 S.Ct. 2811, 177 L.Ed.2d 493 (2010) (internal quotation marks omitted). “To

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withstand this scrutiny, the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights.” *Ibid.* (internal quotation marks omitted). Such scrutiny, we have held, is appropriate given the “deterrent effect on the exercise of First Amendment rights” that arises as an “inevitable result of the government’s conduct in requiring disclosure.” *Buckley*, 424 U.S., at 65, 96 S.Ct. 612.

141 S. Ct. at 2373.

Here, Plaintiffs argue that “by compelling Plaintiffs to disclose sensitive associational information and retaining that information for decades, border officers do not further any valid government interest, and their questions are not narrowly tailored to the detection of terrorists.” (Opp. at 28.) According to Plaintiffs, Defendants’ religious questioning and the retention of Plaintiffs’ information cannot survive the “exacting scrutiny” standard the Supreme Court set forth in *Ams. for Prosperity Found*, and the FAC sufficiently alleges that Defendants’ questions are not narrowly tailored and there is no “substantial relation” between the questions and a compelling interest. (Opp. at 28-31.)

The parties do not dispute that the relevant governmental interest here is securing the border and preserving national security. (*See generally* Mot. and Opp.) Plaintiffs identify the harm to their associational rights as Defendants’ questioning and the retention of Plaintiffs’ information. (Opp. at 28.) Defendants argue the questioning at issue is intertwined with the government’s interest in security at the border. (Mot. at 27.)

Accordingly, the relevant question before the court is whether Plaintiffs’ allegations that there is no “substantial relation between the disclosure requirement and a sufficiently important governmental interest” are plausible. *Reed*, 561 U.S. at 196. Based on the allegations of the FAC, the court finds implausible Plaintiffs’ allegations that there is no substantial relation between Defendants’ religious questioning of Plaintiffs and collection of information and the

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governmental interests of securing the border and preserving national security. *See Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). To the contrary, as discussed above, certain of Plaintiffs’ allegations appear to provide an explanation for Defendants’ questioning of Plaintiffs.

For example, the FAC alleges Plaintiffs Kariye and Mouslli have been on U.S. government watchlists since 2013 and 2017, respectively. (*See* FAC ¶¶ 91, 132.) *Cf. Tabbaa*, 509 F.3d at 94 (affirming district court’s grant of summary judgment on plaintiffs’ freedom of association claim based on Muslim travelers’ experiences of being searched and questioned at the border even where “Plaintiffs had no criminal records, and at no time did CBP have reasonable suspicion that any particular plaintiff had committed a crime or was associated with terrorists”). Additionally, as Defendants argue, questions about Plaintiff Kariye’s associations could plausibly be considered questions related to his occupation because he works as an “imam at a mosque,” (FAC ¶ 54). (Mot. at 26-27.)

As for Plaintiff Shah—the only Plaintiff not alleged to be on a government watchlist—the court finds the FAC’s allegations that no substantial relation between the disclosure requirement and a sufficiently important governmental interest are not plausible. *Reed*, 561 U.S. at 196. As discussed above, Plaintiff Shah’s questioning followed a search of his belongings during which Plaintiff “was very cautious and focused on his journal” and “demanded for [officers] not to read his journal.” (FAC ¶ 175.) Only after this interaction did the officers ask religious questions based on the contents of his journal. (*See id.* ¶ 157 (“When Mr. Shah asked Officer 2 why he was asking these questions, the officer responded, ‘I’m asking because of what we found in your journal.’”).) The FAC further alleges that Plaintiff was selected for secondary inspection after a trip to Serbia and Bosnia and that the report of the interview was later labeled as “Terrorist Related.” (*Id.* ¶¶ 146, 175.)

Even if Plaintiffs had sufficiently alleged a substantial disclosure under the First Amendment, based on the allegations regarding Plaintiffs’ questioning, the court would find

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that Defendants have met their burden to show that the disclosure is narrowly tailored to advance a compelling government interest. Because the court would find that the government has met this more stringent standard, it necessarily follows that the government satisfies the lower standard of “exacting scrutiny”, which requires only that there be a plausible “substantial relation between the disclosure requirement and a sufficiently important governmental interest.” *Reed*, 561 U.S. at 196.

Accordingly, the court **GRANTS** the Motion as to Plaintiffs’ Freedom of Association claim (Count 3). *See Tabbaa*, 509 F.3d at 103 (“[T]he [government’s] reach was carefully circumscribed: it applied only to those conferences about which the government had specific intelligence regarding the possible congregation of suspected terrorists, it was limited to routine screening measures, and it was confined to those individuals, regardless of their religion, whom CBP could establish had attended the conferences in question.”); *Humanitarian L. Project v. Reno*, 205 F.3d 1130, 1133 (9th Cir. 2000) (affirming district court’s denial of preliminary injunction to plaintiffs alleging that statute prohibiting contributions of support to foreign terrorist organizations “infringes their associational rights under the First Amendment”).

**E. Fourth Claim (Violation of the First Amendment (Retaliation))**

A plaintiff asserting a First Amendment retaliation claim must allege the following three elements: “(1) [they were] engaged in a constitutionally protected activity, (2) the defendant’s actions would chill a person of ordinary firmness from continuing to engage in the protected activity and (3) the protected activity was a substantial or motivating factor in the defendant’s conduct.” *O’Brien v. Welty*, 818 F.3d 920, 932 (9th Cir. 2016) (citation omitted); *see also Blair v. Bethel Sch. Dist.*, 608 F.3d 540, 543 (9th Cir. 2010) (listing the same three elements). Plaintiffs’ First Amendment Retaliation claim is only asserted as to Plaintiff Shah and concerns Defendants’ alleged retaliation against him for engaging in protected activity. (Opp. at 31-33.)

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As for the first element, constitutionally protected activity encompasses expression of views, other than categories of speech courts have held to be unprotected by the First Amendment. *See Chaplinsky v. State of New Hampshire*, 315 U.S. 568, 571-72 (1942) (“There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or ‘fighting’ words.”); *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964) (“Like insurrection, contempt, advocacy of unlawful acts, breach of the peace, obscenity, solicitation of legal business, and the various other formulae for the repression of expression that have been challenged in this Court, libel can claim no talismanic immunity from constitutional limitations.”); *Obsidian Fin. Grp., LLC v. Cox*, 740 F.3d 1284, 1291 (9th Cir. 2014) (holding in the context of a First Amendment defamation claim that “[t]he protections of the First Amendment do not turn on whether the defendant was a trained journalist, formally affiliated with traditional news entities, engaged in conflict-of-interest disclosure, went beyond just assembling others’ writings, or tried to get both sides of a story”).

In this case, the court finds that Plaintiff Shah’s writing in a personal journal and verbal speech constitute expression of views. *See Kaplan v. California*, 413 U.S. 115, 119-20 (1973) (“As with pictures, films, paintings, drawings, and engravings, both oral utterance and the printed word have First Amendment protection until they collide with the long-settled position of this Court that obscenity is not protected by the Constitution.”); *ETW Corp. v. Jireh Pub., Inc.*, 332 F.3d 915, 924 (6th Cir. 2003) (“The protection of the First Amendment is not limited to written or spoken words, but includes other mediums of expression, including music, pictures, films, photographs, paintings, drawings, engravings, prints, and sculptures.”). Accordingly, the court finds that Plaintiffs have sufficiently alleged the first element of constitutionally protected activity regarding Plaintiff Shah’s writing in his journal and his verbal communications with border officers.

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As for the second element, the test is whether the actions would “chill a person of ordinary firmness from continuing to engage in the protected activity.” *O’Brien*, 818 F.3d at 932. The standard is objective. *Id.* at 933. “Whether [a plaintiff] himself was, or would have been, chilled is not the test.” *Id.*

In this case, the court finds that Plaintiffs have not sufficiently alleged that a person of ordinary firmness would be chilled from continuing to write in his journal and asserting his constitutional right. The FAC alleges Plaintiff was escorted to a secondary inspection area by two CBP officers who searched his belongings. (FAC ¶¶ 146-50.) The search included review of Plaintiff Shah’s personal journal, phone, and laptop. (*Id.* ¶¶ 151, 155). Plaintiff Shah was then asked a series of questions about his religious beliefs, practices, and associations. (*Id.* ¶¶ 156-68). The process of being escorted to secondary inspection, searched, and questioned by CBP officers took approximately two hours. (*Id.* ¶ 169.) Based on the allegations of the FAC as applied to the law regarding border searches, the court finds that Plaintiffs have not sufficiently alleged the second element—that a person of ordinary firmness would be chilled from continuing the protected activity.

In considering whether a person of ordinary firmness would be chilled from considering the protected activity, the court looks to Ninth Circuit and Supreme Court precedent regarding the scope of border searches. In *United States v. Cotterman*, the Ninth Circuit explained the contours of the scope of border searches:

The broad contours of the scope of searches at our international borders are rooted in “the long-standing right of the sovereign to protect itself by stopping and examining persons and property crossing into this country.” *Ramsey*, 431 U.S. at 616, 97 S. Ct. 1972. Thus, border searches form “a narrow exception to the Fourth Amendment prohibition against warrantless searches without probable cause.” *Seljan*, 547 F.3d at 999 (internal quotation marks and citation omitted). Because “[t]he Government’s interest in preventing the entry of unwanted persons and effects

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is at its zenith at the international border,” *United States v. Flores–Montano*, 541 U.S. 149, 152, 124 S. Ct. 1582, 158 L. Ed. 2d 311 (2004), border searches are generally deemed “reasonable simply by virtue of the fact that they occur at the border.” *Ramsey*, 431 U.S. at 616, 97 S. Ct. 1972.

This does not mean, however, that at the border “anything goes.” *Seljan*, 547 F.3d at 1000. Even at the border, individual privacy rights are not abandoned but “[b]alanced against the sovereign’s interests.” *United States v. Montoya de Hernandez*, 473 U.S. 531, 539, 105 S. Ct. 3304, 87 L. Ed. 2d 381 (1985). That balance “is qualitatively different . . . than in the interior” and is “struck much more favorably to the Government.” *Id.* at 538, 540, 105 S. Ct. 3304. Nonetheless, the touchstone of the Fourth Amendment analysis remains reasonableness. *Id.* at 538, 105 S. Ct. 3304. The reasonableness of a search or seizure depends on the totality of the circumstances, including the scope and duration of the deprivation.

709 F.3d 952, 960 (9th Cir. 2013).

The Ninth Circuit has repeatedly held in the context of Fourth Amendment challenges that initial border searches of electronic devices and personal documents such as letters are reasonable even without particularized suspicion. *See United States v. Seljan*, 547 F.3d 993, 1003 (9th Cir. 2008) (“An envelope containing personal correspondence is not uniquely protected from search at the border.”); *United States v. Abbouchi*, 502 F.3d 850, 856 (9th Cir. 2007) (“Customs officers at the Louisville UPS hub did not need reasonable suspicion to search the contents of [a] UPS package [containing immigration documents, handwritten notes, and an identification booklet] because the search took place at the functional equivalent of the border.”); *United States v. Tsai*, 282 F.3d 690, 696 (9th Cir. 2002) (“[T]he INS looked briefly through [the traveler’s] briefcase and luggage. The scope of the search clearly placed it within our cases’ definition of a routine border search, requiring neither warrant nor individualized suspicion.”); *Cotterman*, 709 F.3d at 960 (“[T]he legitimacy of the initial search of [the

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traveler’s] electronic devices at the border is not in doubt. Officer Alvarado turned on the devices and opened and viewed image files while the [travelers] waited to enter the country.”); *United States v. Arnold*, 533 F.3d 1003, 1009 (9th Cir. 2008) (holding that plaintiff “failed to distinguish how the search of his laptop and its electronic contents is logically any different from the suspicionless border searches of travelers’ luggage that the Supreme Court and we have allowed” where CBP officers “simply “had [plaintiff] boot [the laptop] up, and looked at what [plaintiff] had inside”).

In this case, the question is not whether Plaintiff Shah’s search and questioning violated the Fourth Amendment; instead, the question is whether a person of ordinary firmness would have been chilled from engaging in protected activity in violation of the First Amendment. But given Ninth Circuit and Supreme Court case law regarding what constitutes a routine border search, the court cannot say that Plaintiff Shah’s border search—involving a search of his personal journal, phone, and laptop, being asked a series of questions about his religious beliefs, practices, and associations, and being in secondary inspection for approximately two hours (FAC ¶¶ 146-69)—would chill a person of ordinary firmness. As discussed above, searches of personal documents and electronic devices are routine. *Cf. Cotterman*, 709 F.3d at 966 (federal agents performed a “computer strip search” where “[a]fter their initial search at the border, customs agents made copies of the hard drives and performed forensic evaluations of the computers that took days to turn up contraband”). The same is true for multi-hour delays at the border. *See Flores-Montano*, 541 U.S. at 155 n.3 (“We think it clear that delays of one to two hours at international borders are to be expected.”). Further examination or questioning based on information uncovered in a search is also routine. *Cotterman*, 709 F.3d at 967 (“In practical terms . . . border officials will conduct further, forensic examinations where their suspicions are aroused by what they find or by other factors. Reasonable suspicion leaves ample room for agents to draw on their expertise and experience to pick up on subtle cues that criminal activity may be afoot.”); *United States v. Bravo*, 295 F.3d 1002, 1008 (9th Cir. 2002) (“Detention and questioning during routine searches at the border are considered reasonable within the meaning of the Fourth Amendment.”). *See also Tabbaa*, 509 F.3d at 98-99 (“Plaintiffs complain that

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they were required to answer intrusive questions about their activities at [a religious] conference, the content of the lectures they attended, and their reasons for attending. But these questions are not materially different than the types of questions border officers typically ask prospective entrants in an effort to determine the places they have visited and the purpose and duration of their trip.”). Accordingly, the court finds that Plaintiffs have not sufficiently alleged that Defendants’ actions would chill a person of ordinary firmness from continuing to engage in the protected activity.

As for the third element of causation, the court also finds that Plaintiffs have not sufficiently alleged that the protected activity was a “substantial or motivating factor in the defendant’s conduct.” *O’Brien*, 818 F.3d at 932. “To prevail on such a claim, a plaintiff must establish a ‘causal connection’ between the government defendant’s ‘retaliatory animus’ and the plaintiff’s ‘subsequent injury.’” *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722 (2019) (citation omitted). “It is not enough to show that an official acted with a retaliatory motive and that the plaintiff was injured—the motive must cause the injury.” *Id.* The connection “must be a ‘but-for’ cause, meaning that the adverse action against the plaintiff would not have been taken absent the retaliatory motive.” *Id.*

In this case, Plaintiff Shah alleges that when he asked the CBP officer why the officer was asking these questions, the officer responded, “I’m asking because of what we found in your journal.” (*Id.* ¶ 157.) Although Plaintiffs argue that officers retaliated against him for engaging in protected speech, (*see* Opp. at 32-33), the court finds the FAC does not plausibly allege that officers detained and questioned Plaintiff Shah to retaliate against him. Instead, the FAC plausibly alleges that the questions resulted from the information learned in the routine search rather than as retaliation for Plaintiff Shah maintaining a personal journal or speaking with border officers. *See Cotterman*, 709 F.3d at 967 (“In practical terms . . . border officials will conduct further, forensic examinations where their suspicions are aroused by what they find or by other factors.”). Accordingly, the court finds that Plaintiffs have not sufficiently alleged that the protected activity was a substantial or motivating factor in Defendants’ conduct.







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questioning incident of Plaintiff Mouslli occurred in August 2019).) The FAC also links Plaintiff Kariye and Mouslli’s placement on government watchlists to their experiences during international travel. (*See id.* ¶¶ 90-93 (“For years, Imam Kariye has experienced travel issues consistent with placement on the U.S. government watchlist . . . He intends to continue to travel internationally in the near future. When he does so, upon his return home to the United States, he is at substantial risk of again being questioned by CBP officers about his religious beliefs practices, and associations.”); *id.* ¶¶ 132-38 (“In late 2017, Mr. Mouslli began experiencing travel issues consistent with placement on the watchlist . . . When Mr. Mouslli travels again internationally, he is at substantial risk of again being questioned by CBP officers upon his return home to the United States about his religious beliefs, practices, and associations.”).) The FAC further alleges the government watchlist contains errors but is ultimately used a terrorist screening database and individuals may be placed on the list based on “reasonable suspicion” that the individual is a known or suspected terrorist. (*Id.* ¶ 84.)

Accordingly, based on the allegations of the FAC, the court finds that Plaintiffs Kariye and Mouslli have not plausibly alleged that they experienced secondary inspection and religious questioning because of Defendants’ discriminatory intent regarding their religion. To the contrary, the court finds that the facts as alleged raise the inference that Plaintiffs Kariye and Mouslli experienced secondary inspection and religious questioning because of their placement on government watchlists.

**b. Plaintiff Shah Has Not Sufficiently Alleged an Equal Protection Claim**

As for Plaintiff Shah, the FAC alleges Plaintiff Shah is not on a government watchlist but still experienced a single instance of religious questioning in May 2019. (*Id.* ¶¶ 147-75.) The FAC alleges Plaintiff Shah was returning from a trip to Serbia and Bosnia and that after passing through primary inspection “without incident,” an officer “stopped him in the baggage retrieval area and asked him to accompany him for a search.” (*Id.* ¶ 147.) After being escorted to secondary inspection, officers began to search Plaintiff Shah’s belongings. (*Id.* ¶ 149.) One of

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the officers reviewed a notebook that Plaintiff Shah had been carrying in his backpack. (*Id.* ¶ 151.) The officer then “pointed out that many of the notes in Mr. Shah’s journal were related to religion,” “asked Mr. Shah why and where he had taken the notes and whether he had traveled in the Middle East,” and told Plaintiff Shah that “they were trying to make sure Mr. Shah was a ‘safe person.’” (*Id.* ¶ 153.) One of the officers then began asking Plaintiff “a series of questions about his religious beliefs, practices, and associations.” (*Id.* ¶ 156.) When Plaintiff Shah asked the officer why he was asking these questions, the officer responded, “I’m asking because of what we found in your journal.” (*Id.* ¶ 157.) The incident report regarding Plaintiff Shah’s detention and questioning was later labeled as “terrorist related.” (*Id.* ¶ 175.)

The Ninth Circuit has made clear that there must be sufficient factual allegations to support an inference of discrimination or discriminatory intent. “Mere indifference to the effects of a decision on a particular class does not give rise to an equal protection claim. . . and conclusory statements of bias do not carry the nonmoving party’s burden in opposition to a motion for summary judgment.” *Thornton v. City of St. Helens*, 425 F.3d 1158, 1167 (9th Cir. 2005); *see also Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1026 (9th Cir. 1998) (“We have held that § 1983 claims based on Equal Protection violations must plead intentional unlawful discrimination or allege facts that are at least susceptible of an inference of discriminatory intent.”); *Cal. Parents*, 973 F.3d at 1018 (affirming dismissal of Equal Protection claims where the complaint alleged that “the Standards and Framework discriminate against Hinduism by treating it less favorably than other religions” but “[t]he allegations contain no reference to State Board policy, nor do the allegations describe any materials used in the classroom from which such a policy could be inferred.”); *Jimenez v. Ruelas*, 2007 WL 9723456, at \*5 (C.D. Cal. Mar. 31, 2007) (“Here, plaintiff’s conclusory statement that he was discriminated against because of his race, without providing any additional facts to support this statement, is insufficient to support an equal protection claim.”); *Davis v. John*, 485 F. Supp. 3d 1207, 1222 (C.D. Cal. 2020) (finding plaintiff adequately alleged discriminatory intent where the defendant, a prison official, allegedly “aggressively and angrily ordered the removal of the Nation of Islam symbol from a multi-denominational chapel and podium although members of

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other faiths were permitted to display their religion’s symbols in that location” and stated that “Black Muslims could not display their religious symbol because both the chapel and podium supposedly were reserved for Christians”).

In this case, the court finds that Plaintiff Shah has not plausibly alleged that he experienced secondary inspection and religious questioning because of Defendants’ discriminatory intent regarding his religion. First, the court notes that the FAC does not include sufficient allegations regarding why Plaintiff Shah was singled out for secondary inspection. As currently pled, the FAC merely states that Plaintiff Shah passed through primary inspection but was asked in the baggage retrieval area to go to secondary inspection. (FAC ¶¶ 146-47.) Second, the court notes that the FAC alleges the officers involved only began asking questions about Plaintiff Shah’s religious practices after reviewing the contents of his personal journal. (*See id.* ¶¶ 152-57.) The journal included notes about his religious beliefs and practices, as well as notes unrelated to religion. (*Id.* ¶ 151).

As discussed above, border officers are permitted to conduct further inspection based on information uncovered during a routine search. *See Cotterman*, 709 F.3d at 967; *Bravo*, 295 F.3d at 1008. The court finds that the allegations regarding Plaintiff Shah do not sufficiently raise the inference that he was selected for secondary inspection or asked religious questions based on discriminatory intent regarding his religion. *See Iqbal*, 556 U.S. at 680 (a Complaint must “nudg[e] . . . claims of invidious discrimination across the line from conceivable to plausible”) (citation and internal quotation marks omitted).

The court finds that Plaintiffs have not sufficiently alleged the first step of an equal protection claim—that there is discriminatory intent causing “members of a certain group [to be] treated differently from other persons based on membership in that group.” *McLean*, 173 F.3d at 1185. Accordingly, the court does not reach the second step of the analysis—whether “under the appropriate level of scrutiny . . . the distinction made between the groups is justified.” *Id.*







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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No.: 2:22-cv-01916-FWS (GJSx)

Date: July 19, 2023

Title: Abdirahman Aden Kariye *et al.* v. Alejandro Mayorkas *et al.*

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threatened by Defendants. (*See* FAC ¶ 72 (Plaintiff Kariye alleges a CBP officer told him that if he did not cooperate, “CBP would make things harder for him.”).) *See, e.g., Warsoldier v. Woodford*, 418 F.3d 989, 995-96 (9th Cir. 2005) (finding a substantial burden under RLUIPA where an inmate who refused to cut his hair in violation of his religious beliefs was “subjected to a series of punishments designed by CDC to coerce him into compliance” including confinement to his cell, being forced to work additional duty hours, and being expelled from prison classes).

Accordingly, the court finds that the Complaint does not plausibly allege Plaintiffs were deprived of the government benefit of reentering the United States without protracted questioning or that they were coerced to act contrary to their religious beliefs, such that Plaintiffs have not sufficiently alleged a substantial burden to sustain their RFRA claim.

**b. Plaintiffs Do Not Sufficiently Demonstrate Whether the Questioning is a Narrowly Tailored Means of Achieving a Compelling Government Interest**

Even if Plaintiffs had adequately alleged a substantial burden, Plaintiffs do not sufficiently demonstrate how Defendants’ questioning is not a narrowly tailored means of achieving a compelling government interest. (*See generally* Opp.) As discussed above, there is no dispute that the government has a compelling interest in protecting its borders and preventing acts of terrorism. *See Haig*, 453 U.S. at 307; *Humanitarian L. Project*, 561 U.S. at 28; *Flores-Montano*, 541 U.S. at 152 (2004); *Al Haramain Islamic Found.*, 686 F.3d at 980; *Tabbaa*, 509 F.3d at 103. Plaintiffs’ RFRA claim thus fails for the same reason as their Free Exercise claim—Plaintiffs do not sufficiently show why, even if the religious questioning were to constitute a substantial burden, that burden is not a narrowly tailored means of achieving the government’s interest in protecting its borders and preventing acts of terrorism. (*See generally* Opp.) Accordingly, the court finds that even if Plaintiffs had sufficiently alleged a substantial burden, they have not plausibly alleged the questioning is not a narrowly tailored means of advancing a compelling government interest.

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

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Accordingly, the court **GRANTS** the Motion as to Plaintiffs’ RFRA claim (Count 6).

**V. DISPOSITION**

For the reasons set forth above, Defendants’ Motion is **GRANTED**. Plaintiffs’ claims are **DISMISSED WITHOUT PREJUDICE AND WITH LEAVE TO AMEND**. Should Plaintiffs desire to file a Second Amended Complaint that addresses the issues in this ruling, Plaintiffs must file and serve it within **thirty (30) days** of service of notice of ruling.

**IT IS SO ORDERED.**

Initials of Deputy Clerk: djl

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13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 ABDIRAHMAN ADEN KARIYE,  
16 *et al.*,

17 *Plaintiffs,*

18  
19 v.

20 ALEJANDRO MAYORKAS,  
21 Secretary of the U.S. Department of  
22 Homeland Security, in his official  
capacity, *et al.*,

23 *Defendants.*  
24  
25  
26  
27  
28

Case No. 2:22-cv-01916-FWS-GJS

**PLAINTIFFS' NOTICE OF  
INTENT NOT TO FILE A  
SECOND AMENDED  
COMPLAINT**

Honorable Fred W. Slaughter  
**United States District Judge**

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28

1           On July 19, 2023, this Court granted Defendants’ Motion to Dismiss  
2 Plaintiffs’ First Amended Complaint and granted Plaintiffs leave to file a Second  
3 Amended Complaint within 30 days. *See* ECF No. 73. Plaintiffs respectfully inform  
4 the Court that they elect not to submit a Second Amended Complaint. Instead,  
5 Plaintiffs seek to obtain an appealable final judgment by filing this written notice of  
6 intent not to file an amended complaint. *See Edwards v. Marin Park, Inc.*, 356 F.3d  
7 1058, 1064 (9th Cir. 2004) (plaintiff may obtain appealable final judgment by filing  
8 written notice of intent not to file an amended complaint); *WMX Techs., Inc. v.*  
9 *Miller*, 104 F.3d 1133, 1135-37 (9th Cir. 1997) (en banc) (party may not appeal  
10 claims dismissed with leave to amend until district court enters final judgment); *see*  
11 *also McCalden v. Cal. Library Ass’n*, 919 F.2d 538, 547 (9th Cir. 1990)  
12 (“[A]ppellant is not required to amend in order to preserve his right to appeal. When  
13 one is granted leave to amend a pleading, she may elect to stand on her pleading and  
14 appeal if the other requirements for a final, appealable judgment are satisfied.”).

15           Accordingly, Plaintiffs respectfully request that the Court enter judgment.

16  
17 Dated: August 1, 2023

Respectfully submitted,

18 AMERICAN CIVIL LIBERTIES UNION  
19 FOUNDATION

20 AMERICAN CIVIL LIBERTIES UNION OF  
21 MINNESOTA

22 ACLU FOUNDATION OF SOUTHERN  
23 CALIFORNIA

COOLEY LLP

24 By:           /s/ Ashley Gorski          

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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  
capacity; and STEVE K. FRANCIS,  
27 Acting Executive Associate Director,  
28 Homeland Security Investigations, in  
his official capacity,

*Defendants.*

**AMENDED COMPLAINT FOR  
INJUNCTIVE AND  
DECLARATORY RELIEF**

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

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*\*Admitted pro hac vice*

1 INTRODUCTION

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

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

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

28 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.

27  
28





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 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 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 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.



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

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

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

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

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

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

184. Defendants maintain records pertaining to Mr. Shah’s religious beliefs, practices, and associations, as a result of border officers’ questioning of Mr. Shah about these topics. In addition, on information and belief, Defendants maintain copies of the contents of his journal and phone, collected in retaliation for the religious contents of the journal and his invocation of his rights. Defendants’ 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 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 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 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

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ABDIRAHMAN ADEN KARIYE, et  
al.,

Plaintiffs,

v.

ALEJANDRO MAYORKAS, et al.,

Defendants.

Case No.: CV 22-01916-FWS-GJS

**ORDER GRANTING DEFENDANTS’  
MOTION TO DISMISS PLAINTIFFS’  
COMPLAINT [40]**

1 Before the court is Defendants Alejandro Mayorkas, Secretary of  
2 the Department of Homeland Security, in his official capacity; Chris Magnus,  
3 Commissioner of U.S. Customs and Border Protection, in his official capacity;  
4 Tae D. Johnson, Acting Director of U.S. Immigration and Customs Enforcement, in  
5 his official capacity; and Steve K. Francis’, Acting Executive Associate Director,  
6 Homeland Security Investigations, in his official capacity (collectively, “Defendants”)  
7 Motion to Dismiss (“Motion” or “Mot.”) Plaintiffs Abdirahman Aden Kariye,  
8 Mohamad Mouslli, and Hameem Shah’s (collectively, “Plaintiffs”) Complaint. (Dkt.  
9 40.) Plaintiffs’ Complaint (“Compl.”) seeks injunctive relief, declaratory relief, and  
10 attorneys’ fees and costs for violations of the First Amendment, Fifth Amendment,  
11 and the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. §§ 2000bb *et seq.*  
12 (Dkt. 1.)

13 The court held a hearing on the Motion on July 28, 2022. (Dkt. 49.) Present at  
14 the hearing were Plaintiffs’ counsel and Defendants’ counsel. (*Id.*) At the conclusion  
15 of the hearing on the Motion, the court took the matter under submission. (*Id.*) Based  
16 on the state of the record, as applied to the applicable law, the court **GRANTS** the  
17 Motion.

18 **I. Background**

19 **A. Summary of Complaint Allegations**

20 Plaintiff Abdirahman Aden Kariye is a U.S. citizen who lives in Bloomington,  
21 Minnesota. (Compl. ¶ 8.) Plaintiff Kariye is Muslim and serves as an imam at a local  
22 mosque. (*Id.*) Plaintiff Mohamad Mouslli is a U.S. citizen who lives in Gilbert,  
23 Arizona. (*Id.* ¶ 9.) Plaintiff Mouslli is Muslim and works in commercial real estate.  
24 (*Id.*) Plaintiff Hameem Shah is a U.S. citizen who lives in Plano, Texas. (*Id.* ¶ 10.)  
25 Plaintiff Shah is Muslim and works in financial services. (*Id.*)

26 Defendants are the heads of the U.S. Department of Homeland Security  
27 (“DHS”) and its agencies: U.S. Customs and Border Protection (“CBP”) and U.S.  
28 Immigration and Customs Enforcement (“ICE”), of which Homeland Security

1 Investigations (“HSI”) is a subcomponent. (*Id.* ¶ 11.) Defendant Alejandro Mayorkas  
2 is the Secretary of DHS and has authority over all DHS policies and practices,  
3 including those challenged in this lawsuit. (*Id.* ¶ 12.) Plaintiffs name Defendant  
4 Mayorkas in his official capacity. (*Id.*) Defendant Chris Magnus is the Commissioner  
5 of CBP and has authority over all CBP policies and practices, including those  
6 challenged in this lawsuit. (*Id.* ¶ 13.) Plaintiffs name Defendant Magnus in his  
7 official capacity. (*Id.*) Defendant Tae Johnson is Acting Director of ICE and has  
8 authority over all ICE policies and practices, including those challenged in this  
9 lawsuit. (*Id.* ¶ 14.) Plaintiffs name Defendant Johnson in his official capacity. (*Id.*)  
10 Defendant Steve K. Francis is the Acting Executive Associate Director of HSI and has  
11 authority over all HSI policies and practices, including those challenged in this  
12 lawsuit. (*Id.* ¶ 15.) Plaintiffs name Defendant Francis in his official capacity. (*Id.*)

13 Plaintiffs allege at border crossings and international airports in the United  
14 States, Defendants’ border officers frequently subject travelers who are Muslim, or  
15 whom they perceive to be Muslim, to questioning about their religion. (*Id.* ¶ 16.) In  
16 May 2011, after the American Civil Liberties Union (“ACLU”) and other  
17 organizations submitted complaints to DHS describing border questioning of Muslim  
18 Americans about their religious beliefs and practices, the DHS Office for Civil Rights  
19 and Civil Liberties disclosed that it had opened an investigation into CBP questioning  
20 “of U.S. citizens and legal residents who are Muslim, or appear to be Muslim, about  
21 their religious and political beliefs, associations, and religious practices and charitable  
22 activities protected by the First Amendment and Federal law.” (*Id.* ¶ 17.) In a letter  
23 to the ACLU dated May 3, 2011, the DHS Office for Civil Rights and Civil Liberties  
24 stated that it had received “a number of complaints like yours, alleging that U.S.  
25 Customs and Border Protection (CBP) officers have engaged in inappropriate  
26 questioning about religious affiliation and practices during border screening.” (*Id.*)  
27  
28

1 The DHS Office for Civil Rights and Civil Liberties issued a memorandum on  
2 May 3, 2011, to the CBP Commissioner stating that it had received the following:

3  
4 [N]umerous accounts from American citizens, legal permanent residents,  
5 and visitors who are Arab and/or Muslim, alleging that officials from  
6 U.S. Customs and Border Protection (CBP) repeatedly question them and  
7 other members of their communities about their religious practices or  
8 other First Amendment protected activities, in violation of their civil  
9 rights or civil liberties.

10 (*Id.* ¶ 18.)

11 The May 3, 2011, Memorandum included descriptions of border officers’  
12 questioning of Muslims about their religious beliefs and practices at various ports of  
13 entry across the United States. (*Id.* ¶ 19.) In July 2012, the DHS Office for Civil  
14 Rights and Civil Liberties informed the ACLU and other organizations that it had  
15 suspended its investigation because individuals had filed a lawsuit challenging the  
16 practice, and that litigation is still pending. (*Id.* ¶ 20.) Plaintiffs allege, on  
17 information and belief, the DHS Office for Civil Rights and Civil Liberties never  
18 resumed its investigation or issued findings about whether border questioning about  
19 religious beliefs and practices complies with federal law. (*Id.* ¶ 21.)

20 Plaintiffs allege Defendants’ written policies permit border officers to question  
21 Americans about their religious beliefs, practices, and associations. (*Id.* ¶ 23.) ICE  
22 requires officers who work at ports of entry to carry a sample questionnaire to guide  
23 their interrogations of travelers, which includes questions about a traveler’s religious  
24 beliefs, practices, and associations. (*Id.*) CBP has a policy that allows it to collect and  
25 maintain information about an individual’s religious beliefs, practices, and  
26 associations in numerous circumstances. (*Id.*) On information and belief, CBP views  
27 the collection and retention of Plaintiffs’ responses to the religious questioning  
28 described herein as authorized by its policy. (*Id.*) Defendants have a policy and/or

1 practice of intentionally targeting selected Muslims (or individuals perceived to be  
2 Muslim) for religious questioning. (*Id.* ¶ 24.)

3 Plaintiffs allege that while Defendants' border officers routinely and  
4 intentionally single out Muslim Americans to demand answers to religious questions,  
5 travelers perceived as practicing faiths other than Islam are not routinely subjected to  
6 similarly intrusive questioning about their religious beliefs, practices, and  
7 associations. (*Id.*) The religious questioning of Muslims typically takes place in the  
8 context of "secondary inspection," a procedure by which CBP detains, questions, and  
9 searches certain travelers before they are permitted to enter the country. (*Id.* ¶ 25.)

10 Plaintiffs allege the secondary inspection environment is coercive because of  
11 the following elements present during the inspection: (1) border officers carry  
12 weapons, typically identify themselves as border officers or wear government  
13 uniforms, and command travelers to enter and remain in the secondary inspection  
14 areas; (2) travelers are not free to leave those areas until officers give them  
15 permission; (3) secondary inspection areas are separated from the public areas of  
16 airports and ports of entry; (4) border officers typically take possession of travelers'  
17 passports, routinely conduct physical searches and/or searches of travelers'  
18 belongings, including their electronic devices, and use the nature of the secondary  
19 inspection environment to compel Muslim American travelers to answer questions  
20 about their religious beliefs, practices, and associations. (*Id.* ¶ 26.) Plaintiffs allege  
21 Muslim American travelers have no meaningful choice but to disclose their First  
22 Amendment-protected beliefs and activity in response to border officers' inquiries.  
23 (*Id.* ¶ 27.)

24 CBP officers are required to create a record of every secondary inspection at an  
25 airport or land crossing. (*Id.* ¶ 28.) CBP officers routinely document travelers'  
26 responses to questions asked during secondary inspections, including Muslim  
27 Americans' responses to questions about their religious beliefs, practices, and  
28 associations. (*Id.*) When HSI agents are involved in or otherwise present during

1 secondary inspection, they also routinely create and maintain records of the secondary  
2 inspection. (*Id.*) Border officers input the records of secondary inspections into DHS  
3 databases, including a DHS database called TECS, which functions as a repository for  
4 the sharing of information among tens of thousands of federal, state, local, tribal, and  
5 foreign law enforcement, counterterrorism, and border security agencies. (*Id.* ¶ 29.)  
6 TECS users include personnel from various federal agencies; TECS data is also  
7 accessible to officers from over 45,000 state and local police departments and retained  
8 for up to 75 years. (*Id.*) Plaintiffs allege being Muslim and practicing Islam are  
9 protected religious beliefs and activity, and these religious beliefs and practices do not  
10 indicate that an individual has or is engaged in any immigration or customs-related  
11 crime or that an individual has or is engaged in any other unlawful activity. (*Id.* ¶ 30.)  
12 Plaintiffs allege Muslim travelers' personal religious information is not germane to  
13 any legitimate purpose that Defendants may assert. (*Id.*)

## 14 **B. Religious Questioning of Plaintiffs by Defendants' Border Officers**

### 15 **a. Plaintiff Kariye**

16 Plaintiff Kariye is a U.S. citizen and an imam at a mosque in Bloomington,  
17 Minnesota who is a member of the local Muslim and interfaith communities, as well  
18 as a participant in civic life and charitable endeavors. (*Id.* ¶ 31.) CBP officers have  
19 questioned Plaintiff Kariye about his Muslim faith on at least five occasions. (*Id.*  
20 ¶ 32.) Plaintiffs allege on each occasion the environment was coercive: CBP officers  
21 wearing uniforms and carrying weapons commanded Plaintiff Kariye to enter and  
22 remain in an area separated from other travelers, usually a windowless room, took  
23 Plaintiff Kariye's belongings from him, searched his electronic devices, and  
24 questioned him at length. (*Id.*)

#### 25 **i. First Religious Questioning Incident: September 12, 2017**

26 On September 12, 2017, Plaintiff Kariye arrived home to the United States from  
27 Saudi Arabia, where he had participated in the Hajj. (*Id.* ¶ 33.) In the Islamic faith,  
28 the Hajj is a sacred religious pilgrimage to Mecca, the holiest city for Muslims. (*Id.*)

1 Upon his arrival at the Seattle-Tacoma International Airport, Plaintiff Kariye was  
2 detained for secondary inspection by two CBP officers in a small, windowless room  
3 for approximately two hours. (*Id.* ¶ 34.) During the first incident, a CBP officer  
4 questioned Plaintiff Kariye about his religious beliefs, practices, and associations,  
5 including questions about which mosque he attends and whether he had been on the  
6 Hajj before. (*Id.* ¶ 35.) Plaintiff Kariye answered these questions because he was not  
7 free to leave without the permission of a CBP officer and felt that he had no choice  
8 but to answer based on the circumstances of his detention. (*Id.* ¶ 36.) A CBP officer  
9 took notes during Plaintiff Kariye's detention, including while Plaintiff Kariye  
10 responded to CBP's questions about his religious beliefs, practices, and associations.  
11 (*Id.* ¶ 37.)

12 **ii. Second Religious Questioning Incident: February 6, 2019**

13 On February 6, 2019, CBP asked Plaintiff Kariye questions related to his  
14 religion during a secondary inspection at the Peace Arch Border Crossing near Blaine,  
15 Washington. (*Id.* ¶ 38.) Plaintiff Kariye was returning to the United States by car  
16 from a trip to Vancouver, where he had been on a vacation with friends. (*Id.*) Two  
17 CBP officers detained Plaintiff Kariye for approximately three hours. (*Id.*) The  
18 officers told Plaintiff Kariye that he would not be free to leave unless he answered  
19 their questions. (*Id.*) During the detention, a CBP officer questioned Plaintiff Kariye  
20 about his religious beliefs, practices, and associations, including questions about  
21 Plaintiff Kariye's involvement with a charitable organization affiliated with Muslim  
22 communities, how he fundraised for this charity, and whether his fundraising involved  
23 visiting mosques. (*Id.* ¶ 39.) Plaintiffs allege the obligation to provide charity and  
24 assistance to the needy, or zakat, is a central tenet of Islam. (*Id.*)

25 Plaintiff Kariye answered the CBP officer's questions about his religious  
26 charitable beliefs and activities because he was not free to leave without the  
27 permission of a CBP officer and felt that he had no choice but to answer based on the  
28 circumstances of his detention. (*Id.* ¶ 40.) A CBP officer took notes during Plaintiff

1 Kariye’s detention, including while Plaintiff Kariye responded to CBP’s questions  
2 about his religious beliefs, practices, and associations. (*Id.* ¶ 41.)

3 **iii. Third Religious Questioning Incident: November 24, 2019**

4 On November 24, 2019, CBP asked Plaintiff Kariye questions related to his  
5 religion during a secondary inspection in a CBP preclearance area at Ottawa  
6 International Airport in Canada. (*Id.* ¶ 42.) CBP officers are posted at Ottawa  
7 International Airport and conduct inspections there for travelers headed to the United  
8 States. (*Id.*) Plaintiff Kariye was returning to the United States after attending a  
9 wedding in Canada. (*Id.*) Plaintiff Kariye was flying to Detroit, Michigan, and then  
10 to Seattle, Washington. (*Id.*) A CBP officer detained Plaintiff Kariye for  
11 approximately one hour in a small, windowless room. (*Id.*)

12 During the detention, the CBP officer questioned Plaintiff Kariye about his  
13 religious associations. (*Id.* ¶ 43.) The CBP officer questioned Plaintiff Kariye about a  
14 youth sports league that he helped to run. (*Id.*) Although Plaintiff Kariye had not  
15 informed the officer that he was Muslim, the officer asked whether the sports league  
16 was “for black and white kids, or is it just for Muslim kids?” (*Id.*) Plaintiff Kariye  
17 understood the question as an acknowledgment of his Islamic faith and an attempt to  
18 ascertain what kinds of religious activities he participated in. (*Id.*) Plaintiff Kariye  
19 answered the questions because he was not free to leave without the permission of a  
20 CBP officer and felt that he had no choice but to answer based on the circumstances of  
21 his detention. (*Id.* ¶ 44.) The CBP officer took notes during Plaintiff Kariye’s  
22 detention, including while Plaintiff Kariye responded to CBP’s questioning about his  
23 religious beliefs and associations. (*Id.* ¶ 45.)

24 **iv. Fourth Religious Questioning Incident: August 16, 2020**

25 On August 16, 2020, CBP officers asked Plaintiff Kariye questions related to  
26 his religion during a secondary inspection at the Seattle-Tacoma International Airport.  
27 (*Id.* ¶ 46.) Plaintiff Kariye was returning to the United States from a vacation with a  
28 friend. (*Id.*) Plaintiff Kariye had traveled from Turkey to Seattle, Washington, via the

1 Netherlands. (*Id.*) CBP officers had photographs of Plaintiff Kariye that they used to  
2 identify him when he came off the jet bridge. (*Id.*) Multiple CBP officers detained  
3 Plaintiff Kariye for several hours in a small, windowless room. (*Id.*) To the best of  
4 Plaintiff Kariye’s recollection, one of the officers, a supervisor, was named “Abdullah  
5 Shafaz” or something close to it. (*Id.*)

6 During the detention, CBP officers questioned Plaintiff Kariye about his  
7 religious beliefs, practices, and associations. (*Id.* ¶ 47.) These questions included:

- 8 a. What type of Muslim are you?
- 9 b. Are you Sunni or Shi’a?
- 10 c. Are you Salafi or Sufi?
- 11 d. What type of Islamic lectures do you give?
- 12 e. Where did you study Islam?
- 13 f. How is knowledge transmitted in Islam?
- 14 g. Do you listen to music?
- 15 h. What kind of music do you listen do?
- 16 i. What are your views on Ibn Taymiyyah?

17 (*Id.*)

18 Plaintiff Kariye understood the questions regarding music and his views on Ibn  
19 Taymiyyah, a medieval Muslim scholar, as designed to elicit information about the  
20 nature and strength of his religious beliefs and practices. (*Id.* ¶ 48.) During the  
21 detention, a CBP officer threatened Plaintiff Kariye multiple times with retaliation by  
22 saying that, if Plaintiff Kariye did not cooperate, CBP would make things harder for  
23 him. (*Id.* ¶ 49.) The officer also said that Plaintiff Kariye was welcome to challenge  
24 the legality of the detention, but if he did so publicly or went to the media, CBP would  
25 make things harder for him during his future travels. (*Id.*)

26 Plaintiff Kariye answered the CBP officers’ questions because he was not free  
27 to leave without the permission of a CBP officer and felt that he had no choice but to  
28 answer based on the circumstances of his detention. (*Id.* ¶ 50.) A CBP officer took

1 notes during Plaintiff Kariye’s detention, including while Plaintiff Kariye responded  
2 to CBP’s questions about his religious beliefs, practices, and associations. (*Id.* ¶ 51.)

3 After several hours of detention, two of the CBP officers who had detained  
4 Plaintiff Kariye escorted him to a separate room, where they performed a thorough,  
5 full-body pat-down search, which included touching his buttocks and groin. (*Id.*  
6 ¶ 52.) Plaintiff alleges the CBP officers had no basis to suspect Plaintiff Kariye of  
7 carrying contraband or weapons, and they had already been in close proximity to him  
8 during his detention. (*Id.*) After the pat-down, the officers finally permitted Plaintiff  
9 Kariye to leave. (*Id.*)

10 **v. Fifth Religious Questioning Incident: January 1, 2022**

11 On January 1, 2022, a plainclothes CBP officer asked Plaintiff Kariye questions  
12 related to his religion during a secondary inspection at the Minneapolis-Saint Paul  
13 Airport. (*Id.* ¶ 53.) Plaintiff Kariye was returning to the United States from a trip to  
14 Somalia, Kenya, and the United Arab Emirates, where he had traveled for vacation  
15 and to visit family. (*Id.*) The officer detained Plaintiff Kariye for approximately an  
16 hour and a half. (*Id.*) During the detention, the CBP officer questioned Plaintiff  
17 Kariye about his religious beliefs, practices, and associations, including whether he  
18 had met a particular friend at a mosque. (*Id.* ¶ 54.) The officer then said, “I assume  
19 you’re a Muslim, aren’t you?” (*Id.*)

20 Plaintiff Kariye answered these questions because he was not free to leave  
21 without the permission of a CBP officer and felt that he had no choice but to answer  
22 based on the circumstances of his detention. (*Id.* ¶ 55.) A CBP officer took notes  
23 during Plaintiff Kariye’s detention, including while Plaintiff Kariye responded to  
24 CBP’s questions about his religious beliefs, practices, and associations. (*Id.* ¶ 56.)  
25 During each of these five religious questioning incidents, Plaintiff Kariye alleges his  
26 travel and identification documents were valid, and he was not transporting  
27 contraband. (*Id.* ¶ 57.)

28 ///

1                                    **vi. Plaintiff Kariye Alleges CBP’s Religious Questioning Is**  
2                                    **Substantially Likely to Recur**

3                    Plaintiff Kariye alleges on information and belief, he has been placed on a 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 States  
6 from international travel. (*Id.* ¶ 58.) For years, Plaintiff Kariye has experienced travel  
7 issues consistent with placement on a U.S. government watchlist. (*Id.* ¶ 59.)  
8 Frequently between 2013 and 2019, and “persistently from 2020 to the present,”  
9 Plaintiff Kariye has been unable to print his boarding passes for domestic or  
10 international flights from the internet or self-service kiosks at the airport, and airline  
11 agents must receive clearance from a supervisor or government agency before  
12 providing Plaintiff Kariye with his boarding pass. (*Id.*) That process typically takes  
13 approximately an hour and has taken up to two hours. (*Id.*) Whenever Plaintiff  
14 Kariye takes a domestic or international flight, his boarding pass is marked with  
15 “SSSS,” which indicates “Secondary Security Screening Selection,” and he is subject  
16 to additional screening. (*Id.*) Placement on a watchlist consistently results in a  
17 traveler’s boarding pass being stamped with “SSSS.” (*Id.*)

18                    Whenever Plaintiff Kariye returns to the United States following international  
19 travel, whether by plane or by car, he is subject to secondary inspection. (*Id.* ¶ 60.)  
20 Whenever Plaintiff Kariye returns to a U.S. airport following international travel, CBP  
21 officers are either waiting for him at the arrival gate or meet him at primary  
22 inspection. (*Id.*) The officers then escort Plaintiff Kariye to a secondary inspection  
23 area, where CBP officers detain and question him. (*Id.*) Plaintiff Kariye does not  
24 know why the U.S. government has placed him on a watchlist. (*Id.*) Plaintiff Kariye  
25 travels internationally frequently for leisure, to visit family abroad, and for religious  
26 pilgrimages. (*Id.* ¶ 61.) Plaintiff Kariye intends to continue to travel internationally in  
27 the near future and alleges when he does so, upon his return home to the United  
28

1 States, he alleges he is at substantial risk of again being questioned by CBP officers  
2 about his religious beliefs, practices, and associations. (*Id.*)

3 **vii. Plaintiff Kariye Alleges CBP’s Religious Questioning Causes**  
4 **Him Significant Distress**

5 Plaintiff Kariye further alleges CBP officers ask him intrusive and personal  
6 questions about his religious beliefs, practices, and associations because he is a  
7 Muslim. (*Id.* ¶ 62.) Plaintiff Kariye alleges religious questioning by CBP harms him  
8 and impedes his religious practice. (*Id.* ¶ 63.) On information and belief, DHS and  
9 CBP maintain records pertaining to Plaintiff Kariye’s religious beliefs, practices, and  
10 associations from border officers’ questioning of Plaintiff Kariye about these topics,  
11 and Defendants’ retention of such information in government systems causes Plaintiff  
12 Kariye ongoing distress and harm. (*Id.* ¶ 64.) Plaintiff Kariye alleges CBP’s  
13 questioning about his religious beliefs, practices, and associations is insulting and  
14 humiliating, and border officers convey a message of official disapproval of Islam by:  
15 (1) targeting Plaintiff Kariye for religious questioning because he is a Muslim,  
16 (2) asking him specific questions about his Islamic religious beliefs, practices, and  
17 associations, and (3) retaining information about his religious beliefs, practices, and  
18 associations. (*Id.* ¶ 65.) Plaintiff Kariye alleges CBP conveys the stigmatizing  
19 message that the U.S. government views adherence to Islamic religious beliefs and  
20 practices as inherently suspicious and that Muslim Americans are not entitled to the  
21 full constitutional protections afforded to other Americans. (*Id.*) Plaintiff Kariye  
22 alleges Defendants are officially condemning his faith, which makes him feel  
23 marginalized and like an outsider when coming home to his own country. (*Id.*)

24 Plaintiff Kariye alleges CBP’s religious questioning places pressure on him to  
25 modify or curb his religious expression and practices, contrary to his sincere religious  
26 beliefs. (*Id.* ¶ 66.) Specifically, Plaintiff Kariye alleges when traveling back to the  
27 United States from abroad, he modifies or eliminates certain religious practices to  
28 avoid calling attention to his faith and incurring additional scrutiny and religious

1 questioning by CBP and cannot fully practice and express his faith in the way he  
2 otherwise would while traveling. (*Id.*)

3 For example, Plaintiff Kariye typically wears a Muslim cap, known as a kufi,  
4 when he is in public, a common religious practice for many Muslim men. (*Id.* ¶ 67.)  
5 For Plaintiff Kariye, the kufi represents his Muslim identity, emulates the dress of the  
6 Prophet Mohammad, and signifies love and reverence for the Prophet. (*Id.*) Despite  
7 his sincerely held religious belief that he should wear his kufi in public, Plaintiff  
8 Kariye no longer wears his kufi at the airport or the border when returning home to the  
9 United States from abroad, in order to avoid additional CBP scrutiny and religious  
10 questioning. (*Id.* ¶ 68.)

11 Plaintiff Kariye also modifies his prayer practice while traveling back into the  
12 United States. (*Id.* ¶ 69.) As a Muslim, Plaintiff Kariye believes that he must pray at  
13 five specific times each day, which involves kneeling on the ground in a particular  
14 direction (toward Mecca), bowing, and placing his forehead to the ground in prayer.  
15 (*Id.*) However, to avoid additional CBP scrutiny and religious questioning, Plaintiff  
16 Kariye typically refrains from these physical acts of prayer at the airport and the  
17 border, even though he would ordinarily pray in this manner during the religiously  
18 designated prayer times. (*Id.*)

19 Plaintiff Kariye also avoids carrying religious texts while traveling back into the  
20 United States. (*Id.* ¶ 70.) As a Muslim and an imam, Plaintiff Kariye's religious  
21 duties require him to study a variety of religious texts, such as the Quran,  
22 commentaries on the Quran, and Islamic jurisprudence in matters relating to family  
23 law and rules pertaining to charity. (*Id.*) However, to avoid additional CBP scrutiny  
24 and religious questioning, Plaintiff Kariye no longer carries physical copies of these  
25 texts with him when he travels home to the United States from abroad, hindering his  
26 ability to study these texts while traveling. (*Id.*)

27 Plaintiff Kariye is proud to be a Muslim and his sincere religious beliefs direct  
28 him to wear a kufi in public, pray in a particular manner, and study various religious

1 texts. (*Id.* ¶ 71.) Plaintiff Kariye alleges it causes him distress to forgo wearing his  
2 kufi, modify his prayer practice, and avoid carrying religious texts as he travels, but,  
3 because of CBP’s questioning, Plaintiff Kariye takes these measures when traveling  
4 back into the United States to avoid calling attention to his religion and incurring  
5 additional scrutiny and religious questioning by CBP. (*Id.*)

6 Plaintiff Kariye alleges CBP’s religious questioning has made and continues to  
7 make him feel anxious, humiliated, and stigmatized as a Muslim American. (*Id.* ¶ 72.)  
8 Plaintiff Kariye experiences anxiety before traveling home due to CBP’s religious  
9 questioning, and, in the weeks following each incident of religious questioning, the  
10 humiliation replays in Plaintiff Kariye’s mind. (*Id.*) CBP’s scrutiny and religious  
11 questioning cause him to suffer acute distress, which has interfered with his daily life,  
12 including distracting him from work and from his relationships with family members.  
13 (*Id.*)

14 **b. Plaintiff Mouslli**

15 Plaintiff Mouslli is a U.S. citizen who is Muslim. (*Id.* ¶ 73.) He lives in  
16 Gilbert, Arizona, with his wife and three children, all U.S. citizens. (*Id.*) Plaintiff  
17 Mouslli works in commercial real estate. (*Id.*) On the last four occasions that  
18 Plaintiff Mouslli has traveled internationally, CBP officers have asked him questions  
19 related to his religion upon his return home to the United States. (*Id.* ¶ 74.) Plaintiff  
20 Mouslli alleges on each occasion the environment was coercive: CBP officers wearing  
21 uniforms and carrying weapons commanded Plaintiff Mouslli to enter and remain in  
22 an area separated from other travelers, took Plaintiff Mouslli’s belongings from him,  
23 searched his electronic devices, and questioned him at length. (*Id.*)

24 **i. First Religious Questioning Incident: August 9, 2018**

25 Plaintiff Mouslli alleges on or about August 9, 2018, CBP officers asked  
26 Plaintiff Mouslli questions related to his religion during a secondary inspection at the  
27 border crossing near Lukeville, Arizona. (*Id.* ¶ 75.) Plaintiff Mouslli was returning to  
28

1 the United States by car from a trip to Mexico, where he had been on vacation with a  
2 friend. (*Id.*)

3 After CBP officers checked Plaintiff Mouslli's passport, several officers  
4 surrounded the car. (*Id.* ¶ 76.) The officers forced Plaintiff Mouslli to remain in the  
5 car for approximately 30 minutes, after which the officers brought him into the  
6 station. (*Id.*) In total, CBP officers detained Plaintiff Mouslli for approximately six to  
7 seven hours. (*Id.*) CBP officers questioned Plaintiff Mouslli about his religious  
8 beliefs, practices, and associations, including whether he is a Muslim and whether he  
9 is Sunni or Shi'a. (*Id.* ¶ 77.) Plaintiff Mouslli answered these questions because he  
10 was not free to leave without the permission of a CBP officer and felt that he had no  
11 choice but to answer based on the circumstances of his detention. (*Id.* ¶ 78.) A CBP  
12 officer took notes during Plaintiff Mouslli's detention, including while Plaintiff  
13 Mouslli responded to CBP's questions about his religious beliefs, practices, and  
14 associations. (*Id.* ¶ 79.)

15 **ii. Second Religious Questioning Incident: August 19, 2019**

16 On or about August 19, 2019, CBP officers again asked Plaintiff Mouslli  
17 questions related to his religion during a secondary inspection at Los Angeles  
18 International Airport ("LAX"). (*Id.* ¶ 80.) Plaintiff Mouslli was returning to the  
19 United States from a trip to Dubai to visit family and the Netherlands to visit his  
20 sister. (*Id.*) The officers detained Plaintiff Mouslli for approximately one and a half  
21 to two hours, along with his minor son who had joined him for the trip. (*Id.*) The  
22 CBP officers questioned Plaintiff Mouslli about his religious beliefs, practices, and  
23 associations, including whether he attends a mosque and how many times a day he  
24 prays. (*Id.* ¶ 81.) Plaintiff Mouslli answered these questions because he and his son  
25 were not free to leave without the permission of a CBP officer, and he felt that he had  
26 no choice but to answer based on the circumstances of his detention. (*Id.* ¶ 82.)

27 Plaintiff Mouslli was also worried about extending the detention, given the  
28 presence of his son. (*Id.*) A CBP officer took notes during Plaintiff Mouslli's

1 detention, including while Plaintiff Mouslli responded to CBP's questions about his  
2 religious beliefs, practices, and associations. (*Id.* ¶ 83.)

3 **iii. Third Religious Questioning Incident: March 11, 2020**

4 On March 11, 2020, CBP officers asked Plaintiff Mouslli questions related to  
5 his religion during another secondary inspection at LAX. (*Id.* ¶ 84.) Plaintiff Mouslli  
6 was returning to the United States from a trip to Dubai to visit his parents. (*Id.*) The  
7 officers detained Plaintiff Mouslli for approximately one and a half to two hours. (*Id.*)  
8 The CBP officers questioned Plaintiff Mouslli about his religious beliefs, practices,  
9 and associations, once again demanding to know whether he attends a mosque and  
10 whether he is Sunni or Shi'a. (*Id.* ¶ 85.) Plaintiff Mouslli answered these questions  
11 because he was not free to leave without the permission of a CBP officer and felt that  
12 he had no choice but to answer based on the circumstances of his detention. (*Id.*  
13 ¶ 86.) A CBP officer took notes during Plaintiff Mouslli's detention, including while  
14 Plaintiff Mouslli responded to CBP's questions about his religious beliefs, practices,  
15 and associations. (*Id.* ¶ 87.) Because of the delay from the secondary inspection,  
16 including CBP's religious questioning, Plaintiff Mouslli missed his connecting flight  
17 from LAX to Phoenix, and he had to rent a car at additional expense to drive home to  
18 Arizona. (*Id.* ¶ 88.)

19 **iv. Fourth Religious Questioning Incident: June 5, 2021**

20 On or about June 5, 2021, CBP officers again asked Plaintiff Mouslli questions  
21 related to his religion during a secondary inspection at LAX. (*Id.* ¶ 89.) Plaintiff  
22 Mouslli was returning to the United States from a trip to Dubai to visit his parents.  
23 (*Id.*) The officers detained him for approximately one and a half to two hours, along  
24 with his minor daughter who had joined him for the trip. (*Id.*) CBP officers  
25 questioned Plaintiff Mouslli about his religious beliefs, practices, and associations,  
26 including whether he goes to a mosque and whether he prays every day. (*Id.* ¶ 90.)

27 Plaintiff Mouslli answered these questions because he and his daughter were  
28 not free to leave without the permission of a CBP officer, and he felt that he had no

1 choice but to answer based on the circumstances of his detention. (*Id.* ¶ 91.) He was  
2 also worried about extending the detention, given the presence of his daughter. (*Id.*)  
3 A CBP officer took notes during Plaintiff Mouslli’s detention, including while  
4 Plaintiff Mouslli responded to CBP’s questions about his religious beliefs, practices,  
5 and associations. (*Id.* ¶ 92.) Plaintiff Mouslli alleges during each of these four  
6 religious questioning incidents, his travel and identification documents were valid, and  
7 he was not transporting contraband. (*Id.* ¶ 93.)

8 **v. Plaintiff Mouslli Alleges CBP’s Religious Questioning Is**  
9 **Substantially Likely to Recur and Causes Him Significant**  
10 **Distress**

11 On information and belief, Plaintiff Mouslli alleges he has been placed on a  
12 U.S. government watchlist, and he will continue to be subject to detention, searches,  
13 and questioning, including religious questioning, each time he returns to the United  
14 States from international travel. (*Id.* ¶ 94.) In late 2017, Plaintiff Mouslli began  
15 experiencing travel issues consistent with placement on a U.S. government watchlist.  
16 (*Id.* ¶ 95.) Since 2017, Plaintiff Mouslli has been unable to print his boarding passes  
17 for domestic or international flights from the internet or self-service kiosks at the  
18 airport, and airline agents must receive clearance from a supervisor or government  
19 agency before providing Plaintiff Mouslli with his boarding pass. (*Id.*) Whenever  
20 Plaintiff Mouslli takes a domestic or international flight, his boarding pass is marked  
21 with “SSSS,” and he is subject to additional screening. (*Id.*) Whenever Plaintiff  
22 Mouslli returns to the United States following international travel, whether by plane or  
23 by car, he is subject to secondary inspection. (*Id.*) Whenever Plaintiff Mouslli returns  
24 to a U.S. airport following international travel, CBP officers are waiting for him at the  
25 arrival gate. (*Id.*) The officers then escort Plaintiff Mouslli to a secondary inspection  
26 area, where CBP officers detain and question Plaintiff Mouslli. (*Id.*) Plaintiff Mouslli  
27 does not know why the U.S. government has placed him on a watchlist. (*Id.*)  
28

1 Plaintiff Mouslli considered taking a trip with his son to Dubai in February  
2 2022 to visit his family. (*Id.* ¶ 96.) However, Plaintiff Mouslli decided that this  
3 particular trip would not be worth the difficulty, discomfort, and stigma of CBP  
4 scrutiny in secondary inspection, including CBP’s religious questioning. (*Id.*)  
5 Although Plaintiff Mouslli intends to travel internationally in the near future to visit  
6 his family in Dubai and the Netherlands, he now weighs the necessity of every trip  
7 against the likelihood of future detention and religious questioning by border officers.  
8 (*Id.* ¶ 97.) When Plaintiff Mouslli travels again internationally, he is at risk of being  
9 questioned by CBP officers again about his religious beliefs, practices, and  
10 associations upon his return home to the United States. (*Id.* ¶ 98.) CBP officers ask  
11 Plaintiff Mouslli questions about his religious beliefs, practices, and associations  
12 because he is a Muslim. (*Id.* ¶ 99.) Religious questioning by CBP harms Plaintiff  
13 Mouslli and impedes his religious practice. (*Id.* ¶ 100.) He further alleges, on  
14 information and belief, DHS and CBP maintain records pertaining to Plaintiff  
15 Mouslli’s religious beliefs, practices, and associations, as a result of border officers’  
16 questioning of Plaintiff Mouslli about these topics. (*Id.* ¶ 101.) Defendants’ retention  
17 of such information in government systems causes Plaintiff Mouslli ongoing distress  
18 and harm. (*Id.* ¶ 102.) CBP’s questions regarding Plaintiff Mouslli’s religious beliefs,  
19 practices, and associations are insulting and humiliating to him. (*Id.*)

20 Plaintiff Mouslli alleges border officers convey a message of official  
21 disapproval of Islam by: (1) targeting Plaintiff Mouslli for religious questioning  
22 because he is a Muslim; (2) asking him specific questions about his Islamic religious  
23 beliefs, practices, and associations; and (3) retaining information about his religious  
24 beliefs, practices, and associations. (*Id.*) Plaintiff Mouslli alleges CBP conveys the  
25 stigmatizing message that the U.S. government views adherence to Islamic religious  
26 beliefs and practices as inherently suspicious and that Muslim Americans are not  
27 entitled to the full constitutional protections afforded to other Americans. (*Id.*)  
28

1 Plaintiff Mouslli alleges Defendants are officially condemning his faith and he feels  
2 marginalized and like an outsider when coming home to his own country. (*Id.*)

3 Plaintiff Mouslli also alleges CBP’s religious questioning imposes pressure on  
4 him to modify his religious expression and practices, contrary to his sincere religious  
5 beliefs. (*Id.* ¶ 103.) In particular, when traveling back to the United States from  
6 abroad, Plaintiff Mouslli eliminates certain religious practices and expression to avoid  
7 calling attention to his faith and incurring additional scrutiny and religious questioning  
8 by CBP, and Plaintiff Mouslli cannot fully practice and express his faith in the way  
9 that he otherwise would while traveling. (*Id.*)

10 For example, CBP’s religious questioning imposes pressure on Plaintiff Mouslli  
11 to modify his prayer practice while traveling back into the United States. (*Id.* ¶ 104.)  
12 As a Muslim, Plaintiff Mouslli believes he must pray at five specific times each day,  
13 which involves kneeling on the ground in a particular direction (toward Mecca),  
14 bowing, and placing his forehead to the ground in prayer. (*Id.*) However, to avoid  
15 additional CBP scrutiny and religious questioning, Mr. Mouslli refrains from these  
16 physical acts of prayer at the airport and the border, even though he would ordinarily  
17 pray in this manner during the religiously designated prayer times. (*Id.*) Plaintiff  
18 Mouslli is proud to be a Muslim. (*Id.* ¶ 105.) His sincere religious beliefs counsel  
19 him to pray in a particular way and it causes him distress to forgo physical acts of  
20 prayer at the airport and in secondary inspection. (*Id.*) Because of CBP’s practice of  
21 asking questions about his faith, Plaintiff Mouslli takes these “protective measures”  
22 when traveling back into the United States to avoid calling attention to his religion  
23 and incurring additional scrutiny and religious questioning by CBP. (*Id.*) Religious  
24 questioning by CBP has made and continues to make Plaintiff Mouslli feel anxious  
25 and distressed, particularly because of the invasive and personal nature of religious  
26 questioning and the stigma of being targeted because he is Muslim. (*Id.* ¶ 106.)

27 ///

28 ///

1                   **c. Plaintiff Shah**

2                           **i. First Religious Questioning Incident: May 7, 2019**

3                   Plaintiff Shah is a U.S. citizen and Muslim who works in financial services.  
4 (*Id.* ¶ 107.) Plaintiff Shah lives in Plano, Texas. (*Id.*) On May 7, 2019, CBP officers  
5 asked Plaintiff Shah questions related to his religion during a secondary inspection at  
6 LAX. (*Id.* ¶ 108.) Plaintiff Shah was returning to the United States from a trip to  
7 Serbia and Bosnia for vacation. (*Id.*) After Plaintiff Shah passed through primary  
8 inspection without incident, a CBP officer (“Officer 1”) stopped him in the baggage  
9 retrieval area and asked him to accompany him for a search. (*Id.* ¶ 109.) To the best  
10 of Mr. Shah’s recollection, Officer 1’s last name was “Esguerra” or something close  
11 to it. (*Id.*) Plaintiff Shah responded that he did not wish to be searched. (*Id.* ¶ 110.)  
12 Plaintiff Shah alleges Officer 1 replied that, because Plaintiff Shah was at the border,  
13 he did not have the option to refuse. (*Id.*) Officer 1 escorted Mr. Shah to a secondary  
14 inspection area. (*Id.* ¶ 111.) There, Officer 1 and a second officer (“Officer 2”) began  
15 to search Plaintiff Shah’s belongings. (*Id.*) To the best of Plaintiff Shah’s  
16 recollection, Officer 2’s last name was “Gonzalez” or something close to it. (*Id.*)  
17 Plaintiff Shah alleges the environment was coercive because both officers were  
18 wearing uniforms and carrying weapons and they commanded Plaintiff Shah to enter  
19 and remain in an area separate from travelers who were not subject to secondary  
20 inspection. (*Id.* ¶ 112.)

21                   Officer 2 reviewed a notebook that Plaintiff Shah had been carrying in his  
22 backpack—a personal journal that Plaintiff Shah had kept for years. (*Id.* ¶ 113.)  
23 Plaintiff Shah told Officer 2 that the notebook was a personal journal and asked him  
24 not to read it, but Officer 2 persisted. (*Id.*) Officer 2 pointed out that many of the  
25 notes in Plaintiff Shah’s journal were related to religion. (*Id.* ¶ 114.) He asked  
26 Plaintiff Shah why and where he had taken the notes and whether he had traveled in  
27 the Middle East. (*Id.*) Officer 1 told Plaintiff Shah that they were trying to make sure  
28 Plaintiff Shah was a “safe person.” (*Id.*) Plaintiff Shah answered Officer 1’s

1 questions because he was not free to leave without the permission of a CBP officer  
2 and reasonably felt that he had no choice but to answer based on the coercive  
3 circumstances of his detention. (*Id.* ¶ 115.) The officers then told Plaintiff Shah that  
4 they were going to search his phone and laptop. (*Id.* ¶ 116.) In response, Plaintiff  
5 Shah said that he did not consent to the search of his electronic devices and asked to  
6 see a supervisor. (*Id.*) Officer 1 left to get the supervisor; Officer 2 stayed behind.  
7 (*Id.*) While he and Plaintiff Shah were alone, Officer 2 asked Plaintiff Shah a series of  
8 questions about his religious beliefs, practices, and associations. (*Id.* ¶ 117.) The  
9 officer’s questions included the following:

- 10 a) What religion are you?
- 11 b) How religious do you consider yourself? Your family?
- 12 c) What mosque do you attend?
- 13 d) Do you attend any other mosques?
- 14 e) Do you watch Islamic lectures online or on social media?

15 (*Id.*)

16 When Plaintiff Shah asked Officer 2 why he was asking these questions, the  
17 officer responded, “I’m asking because of what we found in your journal.” (*Id.*  
18 ¶ 118.) Plaintiff Shah answered Officer 2’s questions because he was not free to leave  
19 without the permission of a CBP officer and reasonably felt that he had no choice but  
20 to answer based on the coercive circumstances of his detention. (*Id.* ¶ 119.) Later,  
21 Officer 1 returned with the supervisor. (*Id.* ¶ 120.) To the best of Plaintiff Shah’s  
22 recollection, the supervisor’s last name was “Lambrano,” or something close to it.  
23 (*Id.*) Plaintiff Shah told the supervisor that he did not consent to a search of his  
24 electronic devices. (*Id.*) Plaintiff Shah stated that he wanted to stand up for his  
25 constitutional rights. (*Id.*) The supervisor informed Plaintiff Shah that his reluctance  
26 to allow inspection of his devices had made the officers more suspicious of him. (*Id.*  
27 ¶ 121.) Plaintiff Shah asked to speak with an attorney immediately. (*Id.* ¶ 122.)  
28 Officer 1 responded by asking, “Why? You’re not under arrest.” (*Id.*) Plaintiff Shah

1 then told the supervisor that he no longer wished to enter the United States and wanted  
2 instead to return to the transit area so that he could leave the country and go back to  
3 Europe. (*Id.* ¶ 123.) The supervisor responded that Plaintiff Shah could not take his  
4 devices with him because they had been seized. (*Id.*) The supervisor gave Plaintiff  
5 Shah two options: (1) unlock his phone, in which case the officers would inspect the  
6 device in Plaintiff Shah’s presence; or (2) refuse to unlock his phone, in which case  
7 the officers would hold Plaintiff Shah’s phone and laptop for further examination and  
8 return them to him at a later date. (*Id.*) Mr. Shah felt that he had no meaningful  
9 choice, so he unlocked his phone. (*Id.* ¶ 124.) Officer 2 took the phone, wrote down  
10 the International Mobile Equipment Identity and serial numbers, and manually  
11 searched through the phone without letting Plaintiff Shah see the screen. (*Id.*) Officer  
12 1 told Plaintiff Shah he needed to continue looking through Plaintiff Shah’s journal  
13 using a computer, and he left the secondary inspection area with the journal. (*Id.*  
14 ¶ 125.) Plaintiff Shah again objected to the search of his phone and his journal. (*Id.*  
15 ¶ 126.) About twenty to thirty minutes after Officer 1 had left, he returned with  
16 Plaintiff Shah’s journal; he was accompanied by an officer or agent in plain clothes  
17 (“Officer 3”). (*Id.* ¶ 127.) To the best of Plaintiff Shah’s recollection, Officer 3’s  
18 name was “Ali,” or something close to it. (*Id.*) On information and belief, Officer 3  
19 was an HSI agent. (*Id.*)

20 Officer 3 asked Plaintiff Shah about aspects of his religious associations that  
21 Plaintiff Shah had recorded in his personal journal. (*Id.* ¶ 128.) Specifically, Officer  
22 3 asked Plaintiff Shah about the identity of a local imam in the Phoenix area. (*Id.*)  
23 Plaintiff Shah answered Officer 3’s questions about the imam because he was not free  
24 to leave without the permission of a CBP officer and felt that he had no choice but to  
25 answer based on the circumstances of his detention. (*Id.* ¶ 129.) Approximately two  
26 hours after he was taken to secondary inspection, the officers returned Plaintiff Shah’s  
27 passport and allowed him to leave. (*Id.* ¶ 130.)  
28

1 After leaving secondary inspection, Plaintiff Shah opened his phone and could  
2 see that Officer 2 had viewed private text messages, WhatsApp messages, internal  
3 files, emails, call history, Google maps history, Google Chrome, Airbnb, and photos  
4 of family members spanning ten years, some of which were stored in the cloud but  
5 must have been cached on the device. (*Id.* ¶ 131.) Plaintiff Shah believes that Officer  
6 2 viewed these apps and files because Plaintiff Shah has a habit of closing apps or  
7 files after he uses them, meaning Officer 2 must have viewed everything that was  
8 open at the time he returned the phone to Mr. Shah. (*Id.*) The fact that Officer 2  
9 viewed this content, particularly photos of Plaintiff Shah’s family members, made Mr.  
10 Shah feel extremely distressed and uncomfortable. (*Id.* ¶ 132.) Plaintiff Shah’s travel  
11 and identification documents were valid, and he was not transporting contraband. (*Id.*  
12 ¶ 133.)

13 In response to requests under the Freedom of Information Act and the Privacy  
14 Act, CBP has provided Plaintiff Shah with a redacted document stating that his  
15 detention and questioning was “Terrorist Related.” (*Id.* ¶ 134.) This document is  
16 labeled “IOIL,” which is a type of incident report entered into TECS. (*Id.*) The  
17 document includes the following description:

18  
19 During examination of his belongings, subject was very cautious and  
20 focused on his journal that was found in his hand carry. Subject demanded  
21 for us not to read his journal because he felt that it was an invasion of his  
22 privacy. [Redacted] Upon reading the journal, some notes regarding his  
23 work and religion were found. Subject stated he’s self-employed working  
24 as a financial trader. Subject didn’t want to elaborate on the type of work  
25 he does but just mentioned that he is able to work remotely. Subject’s  
26 notes regarding his religion (Islam) seemed to be passages from an  
27 individual he calls [redacted]. Subject stated that he is the Imam at the  
28 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.

(*Id.*)

1 Before the pandemic, Plaintiff Shah frequently traveled internationally for  
2 leisure and visits with family abroad. (*Id.* ¶ 135.) He intends to resume traveling  
3 internationally in the near future. (*Id.*) At primary inspection, CBP officers query  
4 TECS to identify a traveler’s recent border crossings. (*Id.* ¶ 136.) Because CBP has a  
5 TECS entry stating that Plaintiff Shah’s previous detention and questioning was  
6 “Terrorist Related,” on information and belief, when Plaintiff Shah travels  
7 internationally again, he is at substantial risk of being referred to secondary inspection  
8 upon his return home to the United States and being questioned by CBP officers about  
9 his religious beliefs, practices, and associations. (*Id.*) Plaintiff Shah alleges CBP and  
10 HSI officers asked him intrusive questions about his religious beliefs, practices, and  
11 associations because he is a Muslim. (*Id.* ¶ 137.) In addition, Plaintiff Shah alleges  
12 CBP and HSI officers subjected him to retaliatory questioning and searches because  
13 he is Muslim, because of the Islamic religious content of his journal, and because he  
14 repeatedly invoked his constitutional rights. (*Id.*) Plaintiff Shah alleges religious  
15 questioning by CBP and HSI harms him and impedes his religious practice. (*Id.*  
16 ¶ 138.)

17 Defendants maintain records pertaining to Plaintiff Shah’s religious beliefs,  
18 practices, and associations, as a result of border officers’ questioning of Plaintiff Shah  
19 about these topics. (*Id.* ¶ 139.) In addition, on information and belief, Defendants  
20 maintain copies of the contents of his journal and phone, collected in retaliation for  
21 the religious contents of the journal and his invocation of his rights. (*Id.*) Defendants’  
22 unlawful retention of such information in government systems causes Plaintiff Shah  
23 ongoing, irreparable distress and harm for which he has no adequate remedy at law.  
24 (*Id.*) CBP’s and HSI’s invasive questions regarding Plaintiff Shah’s religious beliefs,  
25 practices, and associations are insulting and humiliating to him. (*Id.* ¶ 140.) Border  
26 officers convey a message of official disapproval of Islam by (1) targeting Plaintiff  
27 Shah for religious questioning because he is a Muslim; (2) asking specific questions  
28 about his Islamic religious beliefs, practices, and associations; and (3) retaining

1 information about his religious beliefs, practices, and associations. (*Id.*) In particular,  
2 Plaintiff Shah alleges CBP and HSI convey the stigmatizing message that the U.S.  
3 government views adherence to Islamic religious beliefs and practices as inherently  
4 suspicious and that Muslim Americans are not entitled to the full constitutional  
5 protection afforded to other Americans. (*Id.*) Plaintiff Shah feels marginalized and  
6 like an outsider when coming home to his own country “[d]ue to this official  
7 condemnation of his faith.” (*Id.*)

8 Plaintiff Shah further alleges CBP’s and HSI’s religious questioning imposes  
9 pressure on him to modify his religious practices, contrary to his sincere religious  
10 beliefs. (*Id.* ¶ 141.) As part of his religious practice, Plaintiff Shah regularly writes in  
11 a personal journal. (*Id.*) These writings include expressions of his beliefs and  
12 devotion and other notes pertaining to his faith and religious practice and is a “vital  
13 outlet for his religious expression.” (*Id.*) In meditating on religious questions or  
14 issues, Plaintiff Shah often revisits his previous entries and draws on them for spiritual  
15 inspiration. (*Id.*) Plaintiff Shah alleges the next time he travels internationally, he  
16 intends to leave his journal at home to avoid having it become a basis for questioning  
17 and Plaintiff Shah will thus be unable to document his religious expression or consult  
18 previous entries while out of the country. (*Id.*)

19 Plaintiff Shah is proud to be a Muslim, and the prospect of leaving his journal at  
20 home when traveling internationally is distressing to him. (*Id.* ¶ 142.) Nevertheless,  
21 Plaintiff Shah intends to take this protective measure to avoid incurring additional  
22 religious questioning and retaliatory scrutiny by CBP and HSI. (*Id.*) Plaintiff Shah  
23 feels violated and humiliated by the border officers’ religious questioning and  
24 retaliatory searches. (*Id.* ¶ 143.) Plaintiff Shah remains extremely concerned about  
25 the private information Defendants retain from his journal and phone, as well as the  
26 information they retain about his personal religious beliefs, practices, and  
27 associations. (*Id.*)  
28

### 1           **C.           Procedural History**

2           On May 31, 2022, Defendants filed the Motion to Dismiss. (Dkt. 40.) On June  
3 27, 2022, Plaintiffs opposed the Motion. (Dkt. 44.) On July 14, 2022, Defendants  
4 filed a Reply. (Dkt. 47.) On July 28, 2022, the court held a hearing on the Motion.  
5 (Dkt. 49.) At the conclusion of the hearing on the Motion, the court took the matter  
6 under submission. (*Id.*)

## 7           **II.       Legal Standard**

### 8           **A.           Motion to Dismiss Pursuant to Rule 12(b)(6)**

9           Rule 12(b)(6) permits a defendant to move to dismiss a complaint for “failure to  
10 state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). To  
11 withstand a motion to dismiss brought under Rule 12(b)(6), a complaint must allege  
12 “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v.*  
13 *Twombly*, 550 U.S. 544, 570 (2007). While “a complaint attacked by a Rule 12(b)(6)  
14 motion to dismiss does not need detailed factual allegations,” a plaintiff must provide  
15 “more than labels and conclusions” and “a formulaic recitation of the elements of a  
16 cause of action” such that the factual allegations “raise a right to relief above the  
17 speculative level.” *Id.* at 555 (citations and internal quotation marks omitted); *see*  
18 *also Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (reiterating that “recitals of the  
19 elements of a cause of action, supported by mere conclusory statements, do not  
20 suffice”).

21           “Establishing the plausibility of a complaint’s allegations is a two-step process  
22 that is ‘context-specific’ and ‘requires the reviewing court to draw on its judicial  
23 experience and common sense.’” *Eclectic Props. E., LLC v. Marcus & Millichap Co.*,  
24 751 F.3d 990, 995-96 (9th Cir. 2014) (quoting *Iqbal*, 556 U.S. at 679). “First, to be  
25 entitled to the presumption of truth, allegations in a complaint . . . must contain  
26 sufficient allegations of underlying facts to give fair notice and to enable the opposing  
27 party to defend itself effectively.” *Id.* at 996 (quoting *Starr v. Baca*, 652 F.3d 1202,  
28 1216 (9th Cir. 2011)). “Second, the factual allegations that are taken as true must

1 plausibly suggest an entitlement to relief, such that it is not unfair to require the  
2 opposing party to be subjected to the expense of discovery and continued litigation.”  
3 *Id.* (quoting *Baca*, 652 F.3d at 1216); *see also Iqbal*, 556 U.S. at 681. But “[w]here a  
4 complaint pleads facts that are merely consistent with a defendant’s liability, it stops  
5 short of the line between possibility and plausibility of entitlement to relief.” *Id.*  
6 (quoting *Iqbal*, 556 at U.S. 678).

7 In *Sprewell v. Golden State Warriors*, the Ninth Circuit described legal  
8 standards for motions to dismiss made pursuant to Rule 12(b)(6):

9  
10 Review is limited to the contents of the complaint. *See Enesco Corp. v.*  
11 *Price/Costco, Inc.*, 146 F.3d 1083, 1085 (9th Cir. 1998). All allegations  
12 of material fact are taken as true and construed in the light most favorable  
13 to the nonmoving party. *See id.* The court need not, however, accept as  
14 true allegations that contradict matters properly subject to judicial notice  
15 or by exhibit. *See Mullis v. United States Bankr. Ct.*, 828 F.2d 1385, 1388  
16 (9th Cir.1987). Nor is the court required to accept as true allegations that  
are merely conclusory, unwarranted deductions of fact, or unreasonable  
inferences. *See Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55  
(9th Cir. 1994).

17 266 F.3d 979, 988 (9th Cir. 2001).

### 18 III. DISCUSSION

#### 19 A. Plaintiffs Have Sufficiently Alleged the Existence of an Official Practice, 20 Policy or Custom of Targeting Muslim Americans for Religious 21 Questioning<sup>1</sup>

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22  
23  
24  
25 <sup>1</sup> The court notes that the parties’ briefing includes references to a memorandum  
26 authored by Kevin K. McAleenan, the former Acting Secretary of the Department of  
27 Homeland Security (“McAleenan Memorandum”). Neither party has requested  
28 judicial notice of the memorandum, nor is the memorandum attached to the  
Complaint. Accordingly, the court does not take judicial notice of the McAleenan  
Memorandum at this time.

1 The court first considers whether Plaintiffs have sufficiently alleged the  
2 existence of an official practice, policy or custom to have standing to assert the claims  
3 in the Complaint. *See Armstrong v. Davis*, 275 F.3d 849, 861 (9th Cir. 2001) (a  
4 plaintiff must demonstrate “the harm alleged is directly traceable to a written policy”  
5 or that “the harm is part of a pattern of officially sanctioned . . . behavior” to have  
6 standing) (citation and internal quotation marks omitted) (*overruled on other grounds*  
7 *by Johnson v. California*, 543 U.S. 499 (2005)). As a threshold matter, the court finds  
8 that the Complaint and Plaintiffs’ briefing present multiple theories as to what  
9 constitutes Defendants’ allegedly illegal official practice, policy or custom. Plaintiffs  
10 argue that the Complaint plausibly alleges several policies in the alternative: “(1)  
11 targeting Muslim Americans, including Plaintiffs, for religious questioning; or (2)  
12 alternatively, subjecting travelers—regardless of their faith—to religious questioning;  
13 and (3) retaining records reflecting answers to such questioning for up to 75 years.”  
14 (Opp. at 6-7.)

15 However, the court finds that it is not sufficiently clear which policy Plaintiffs  
16 are identifying as the purportedly illegal practice, policy or custom at issue here. In  
17 other words, it is not sufficiently clear whether Plaintiffs identify the allegedly illegal  
18 policy as Defendants subjecting *all* travelers to questioning and retaining their  
19 personal information or specifically targeting Muslims for questioning and retaining  
20 their information. (*See* Opp. at 6-7 (listing three policies of: “(1) targeting Muslim  
21 Americans, including Plaintiffs, for religious questioning; or (2) alternatively,  
22 subjecting travelers—regardless of their faith—to religious questioning; and (3)  
23 retaining records reflecting answers to such questioning for up to 75 years.”).)

24 Given that the Complaint—in contrast to Plaintiffs’ briefing—alleges that  
25 “Defendants’ border officers do not direct these intrusive questions to all travelers”  
26 and instead “have a policy and/or practice of intentionally targeting selected Muslims  
27 (or individuals perceived to be Muslim) for religious questioning” (Compl. ¶ 24), the  
28 court’s discussion below is limited to Plaintiff’s first listed basis for an official

1 practice, policy or custom—that Defendants are “targeting Muslim Americans,  
2 including Plaintiffs, for religious questioning.” (*See Opp.* at 6-7.) To the extent that  
3 Plaintiffs challenge additional policies, these policies must be clarified in an amended  
4 pleading.

5 Assuming that Defendants’ alleged policy of targeting Muslims for religious  
6 questioning is the relevant policy at issue, the parties agree that *Mayfield v. United*  
7 *States*, 599 F.3d 964 (9th Cir. 2010) provides the relevant standard here for  
8 determining whether a policy exists. (*See Mot.* at 16; *Opp.* at 8.) In *Mayfield*, the  
9 Ninth Circuit held that there are two ways for a plaintiff to establish an official  
10 practice, policy or custom:

11  
12 First, a plaintiff may show that the defendant had, at the time of the injury,  
13 a written policy, and that the injury ‘stems from’ that policy. . . . Second,  
14 the plaintiff may demonstrate that the harm is part of a ‘pattern of officially  
sanctioned . . . behavior, violative of the plaintiffs’ [federal] rights.

15 *Id.* at 971 (citations and internal quotation marks omitted).

16 Plaintiffs maintain that both prongs are met here because “[d]iscovery will  
17 determine whether Defendants’ discriminatory policies are written or unwritten” and  
18 the Complaint describes a pattern of “officially sanctioned behavior” based on ten  
19 incidents of questioning. (*Opp.* at 7-11.) The court finds that, per Plaintiffs’  
20 argument that discovery is needed to determine whether Defendants’ policies are  
21 “written or unwritten,” Plaintiffs have not adequately alleged that a written policy  
22 exists at this time. *Cf. Mayfield*, 599 F.3d at 971 (“First, a plaintiff may show that the  
23 defendant had, at the time of the injury, a written policy, and that the injury ‘stems  
24 from’ that policy.”).

25 As for whether Plaintiffs have adequately alleged a pattern of officially  
26 sanctioned behavior, the court observes that there is limited relevant case law in this  
27 area, but that at least one court in the Ninth Circuit has held that multiple instances of  
28

1 allegedly unconstitutional conduct can establish a “pattern of official sanctioned  
2 behavior.” *See Askins v. U.S. Dep’t of Homeland Sec.*, 2013 WL 5462296, at \*7 (S.D.  
3 Cal. Sept. 30, 2013) (finding a “pattern of official sanctioned behavior” in violation of  
4 the Fourth Amendment where plaintiffs alleged two instances of CBP officers  
5 searching and seizing the persons and property of individuals at two separate ports of  
6 entry for taking photographs), *amended on other grounds*, 2015 WL 12434362 (S.D.  
7 Cal. Jan. 29, 2015). The court also considers the analysis of district courts in other  
8 Circuits. *See, e.g., Cherri v. Mueller*, 951 F. Supp. 2d 918, 933-34 (E.D. Mich. 2013)  
9 (plaintiffs sufficiently alleged an official policy, custom and practice where plaintiffs  
10 alleged they were asked the same questions about their religious practices and beliefs  
11 on multiple occasions, the Complaint attached a DHS memorandum regarding law  
12 enforcement questioning of religion at the border, DHS informed plaintiffs’ counsel  
13 that the agency had received a number of similar complaints, and DHS wrote a  
14 memorandum to CBP personnel informing them of complaints from Muslim-  
15 Americans).

16 Here, the Complaint alleges that Plaintiffs were subjected to religious  
17 questioning on ten different occasions. (*See generally* Compl.) The Complaint  
18 further alleges that in May 2011, after the ACLU and other organizations submitted  
19 complaints to DHS, DHS disclosed that it had opened an investigation into CBP  
20 questioning “of U.S. citizens and legal residents who are Muslim, or appear to be  
21 Muslim, about their religious and political beliefs, associations, and religious practices  
22 and charitable activities protected by the First Amendment and Federal law.” (*Id.*  
23 ¶ 17.) In a May 3, 2011, letter to the ACLU, DHS stated that it had received “a  
24 number of complaints like yours, alleging that U.S. Customs and Border Protection  
25 (CBP) officers have engaged in inappropriate questioning about religious affiliation  
26 and practices during border screening.” (*Id.*) In a May 3, 2011, memorandum to the  
27 CBP Commissioner (“May 3 Memorandum”), DHS stated that it had received  
28 “numerous accounts from American citizens, legal permanent residents, and visitors

1 who are Arab and/or Muslim, alleging that officials from U.S. Customs and Border  
2 Protection (CBP) repeatedly question them and other members of their communities  
3 about their religious practices or other First Amendment protected activities, in  
4 violation of their civil rights or civil liberties.” (*Id.* ¶ 18.) The May 3 Memorandum  
5 included descriptions of border officers’ questioning of Muslims about their religious  
6 beliefs and practices at various ports of entry across the United States. (*Id.* ¶ 19.) In  
7 July 2012, DHS informed the ACLU and other organizations that it had “suspended  
8 its investigation into border questioning about religious beliefs and practices because  
9 individuals had filed a lawsuit challenging the practice.” (*Id.* ¶ 20.) The Complaint  
10 alleges, on information and belief, DHS never resumed its investigation or issued  
11 findings about whether border questioning about religious beliefs and practices  
12 complies with federal law. (*Id.* ¶ 21.)

13 Based on these allegations, the court finds that the Complaint alleges “enough  
14 facts to state a claim to relief that is plausible on its face” to establish a pattern of  
15 officially sanctioned behavior for an official practice, policy or custom. *Twombly*,  
16 550 U.S. at 570. Taken as true, the Complaint alleges that Plaintiffs not only  
17 experienced religious questioning on ten different occasions, but that DHS  
18 acknowledged receiving numerous complaints about religious questioning at the  
19 border, issued memoranda on the subject, and acknowledged the existence of an  
20 internal investigation into border officers’ questioning of Muslims regarding their  
21 religious practices. *See also Cherri*, 951 F. Supp. 2d at 933-34 (holding plaintiffs  
22 sufficiently alleged an official policy, custom and practice based on similar facts). In  
23 short, Plaintiffs have not sufficiently alleged that there is a relevant written policy at  
24 this time, but have sufficiently alleged that there may be a pattern of “officially  
25 sanctioned behavior” based on ten incidents of religious questioning, the May 2011  
26 and July 2012 correspondence between the ACLU and DHS, and the DHS May 3,  
27 2011, Memorandum. *Mayfield*, 599 F.3d at 971.

28

1           Accordingly, the court finds that Plaintiffs have sufficiently alleged the  
2 existence of an official practice, policy or custom of targeting Muslim Americans for  
3 religious questioning based on a pattern of officially sanctioned behavior for Plaintiffs  
4 to have standing to assert the causes of action in the Complaint.

5           **B. First Claim (Violation of the First Amendment Establishment Clause)**

6           The First Amendment’s Establishment Clause provides that “Congress shall  
7 make no law respecting an establishment of religion.” U.S. Const. amend. I. “This  
8 clause applies not only to official condonement of a particular religion or religious  
9 belief, but also to official disapproval or hostility towards religion.” *Am. Fam. Ass’n,*  
10 *Inc. v. City & Cnty. of San Francisco*, 277 F.3d 1114, 1120-21 (9th Cir. 2002); *see*  
11 *also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532  
12 (1993) (“In our Establishment Clause cases we have often stated the principle that the  
13 First Amendment forbids an official purpose to disapprove of a particular religion or  
14 of religion in general.”); *Vernon v. City of Los Angeles*, 27 F.3d 1385, 1396 (9th Cir.  
15 1994) (“The government neutrality required under the Establishment Clause is thus  
16 violated as much by government disapproval of religion as it is by government  
17 approval of religion.”).

18           Previously, the Ninth Circuit analyzed Establishment Clause claims under the  
19 standard set forth in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), which employed a  
20 three-part test to determine whether government conduct violated the Establishment  
21 Clause. *See Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 975 (9th Cir. 2004)  
22 (describing the inquiry under the *Lemon* test as whether the government conduct at  
23 issue: “(1) it has a secular purpose, (2) its principal or primary effect is not to advance  
24 or inhibit religion, and (3) it does not foster excessive government entanglement with  
25 religion”). However, recently, in *Kennedy v. Bremerton Sch. Dist.*, the Supreme Court  
26 abrogated *Lemon* and established a new standard for evaluating Establishment Clause  
27 claims. 142 S. Ct. 2407 (2022). Under *Kennedy*, “[i]n place of *Lemon* and the  
28 endorsement test, this Court has instructed that the Establishment Clause must be

1 interpreted by reference to historical practices and understandings.” *Id.* at 2428  
2 (citation and internal quotation marks omitted).

3 Plaintiffs urge the court to apply two alternative standards set forth in *Larson v.*  
4 *Valente*, 456 U.S. 228 (1982) and *Inouye v. Kemna*, 504 F.3d 705 (9th Cir. 2007).  
5 (Opp. at 13-19.) As discussed below, the court finds that neither standard governs  
6 here. Previously, *Lemon*—not the alternative standards proposed by Plaintiffs—was  
7 “the *dominant* mode of Establishment Clause analysis” in the Ninth Circuit prior to its  
8 abrogation. *Freedom From Religion Found., Inc. v. Chino Valley Unified Sch. Dist.*  
9 *Bd. of Educ.*, 896 F.3d 1132, 1149 (9th Cir. 2018) (emphasis added). The court  
10 briefly reviews each of Plaintiffs’ proposed alternative standards below.

11 The Ninth Circuit has described *Larson* as “a framework for determining  
12 whether a *statute* grants an unconstitutional denominational preference.” *Sklar v.*  
13 *Comm’r*, 282 F.3d 610, 618 (9th Cir. 2002) (emphasis added); *see id.* (“Under that  
14 test, articulated in *Larson v. Valente* . . . the first inquiry is whether or not the law  
15 facially discriminates amongst religions. The second inquiry, should it be found that  
16 the law does so discriminate, is whether or not, applying strict scrutiny, that  
17 discrimination is justified by a compelling governmental interest.”). The court finds  
18 no statute at issue here that would make *Larson* applicable, and Plaintiffs have not  
19 identified one.

20 Nor is the coercion test set forth in *Inouye* applicable here. In *Inouye*, the Ninth  
21 Circuit considered whether a parole officer violated a parolee’s First Amendment  
22 rights by requiring attendance in a religious drug treatment program as a condition of  
23 his parole. 504 F.3d at 712. The Ninth Circuit held that “it is essentially uncontested  
24 that requiring a parolee to attend religion-based treatment programs violates the First  
25 Amendment” because “[f]or the government to coerce someone to participate in  
26 religious activities strikes at the core of the Establishment Clause of the First  
27 Amendment, whatever else the Clause may bar.” *Id.*; *see also Lee v. Weisman*, 505  
28 U.S. 577, 587 (1992) (“It is beyond dispute that, at a minimum, the Constitution

1 guarantees that government may not coerce anyone to support or participate in  
2 religion or its exercise.”). Although Plaintiffs argue they were subjected to coercive  
3 conditions during secondary inspection, Plaintiffs cite to no authority holding that  
4 coercive conditions alone satisfy the *Inouye* test. (Opp. at 17-19.) *Cf. Lee*, 505 U.S.  
5 at 593-94 (finding Establishment Clause violation where students were required to  
6 take part in an approximately two-minute prayer as part of a graduation ceremony).  
7 Indeed, Plaintiffs appear to argue that the “coercion” here applies to the secondary  
8 inspection setting that Plaintiffs experienced, rather than coercion to “support or  
9 participate in religion or its exercise.” (See Opp. at 18 (“The secondary inspection  
10 setting in which religious questioning occurs is inherently coercive.”); *Lee*, 505 U.S.  
11 at 587. Here, Plaintiffs allege only that they were coerced into participating in  
12 secondary inspection rather than any religious activity. (See Compl. ¶ 32 (“CBP  
13 officers have questioned Imam Kariye about his Muslim faith on at least five  
14 occasions. On each occasion, the environment was coercive.”); *id.* ¶¶ 36, 40, 44, 50,  
15 55 (describing the “coercive circumstances of [the] detention”; *id.* ¶¶ 74, 78, 82, 86,  
16 91 (alleging the same for Plaintiff Mouslli); *id.* ¶¶ 112, 115, 119, 129 (alleging the  
17 same for Plaintiff Shah).)

18 Accordingly, the court finds that *Kennedy*, not *Larson* or *Inouye*, sets forth the  
19 relevant standard for analyzing Establishment Clause violations. 142 S. Ct. 2428; *see*  
20 *also Freedom From Religion Found.*, 896 F.3d at 1149. Given the recency of the  
21 decision, the court observes that there is limited case law interpreting and applying the  
22 *Kennedy* standard to analogous cases. In the absence of such authority, the court  
23 considers historical practices regarding the government’s authority to question  
24 individuals at the border, per the Supreme Court’s instruction to interpret the  
25 Establishment Clause “by reference to historical practices and understandings.” 142  
26 S. Ct. at 2428. *See also Sabra v. Maricopa Cnty. Cmty. Coll. Dist.*, 44 F.4th 867, 888  
27 (9th Cir. 2022) (“Instead of relying on the *Lemon* test, lower courts must now interpret  
28 the Establishment Clause by ‘reference to historical practices and understandings.’ . . .

1 Going forward, ‘the line that courts and governments must draw between the  
2 permissible and the impermissible has to accord with history and faithfully reflect the  
3 understanding of the Founding Fathers.’”) (citation and internal quotation marks  
4 omitted); *Kane v. de Blasio*, 2022 WL 3701183, at \*10 (S.D.N.Y. Aug. 26, 2022)  
5 (applying *Kennedy* test to an Establishment Clause challenge to New York’s vaccine  
6 mandate and reviewing the “long history of vaccination requirements in this country  
7 and in this Circuit.”).

8 The court finds substantial legal authority supporting the government’s  
9 historically broad authority to implement security measures at the border. In *United*  
10 *States v. Montoya de Hernandez*, 473 U.S. 531 (1985), the Supreme Court explained  
11 the plenary authority of the Executive Branch at the border:

12  
13 Since the founding of our Republic, Congress has granted the Executive  
14 plenary authority to conduct routine searches and seizures at the border,  
15 without probable cause or a warrant, in order to regulate the collection of  
16 duties and to prevent the introduction of contraband into this country. . . .  
17 [The] Court has long recognized Congress’ power to police entrants at  
18 the border . . . . Consistent[, therefore, with Congress’ power to protect  
19 the Nation by stopping and examining persons entering this country, the  
20 Fourth Amendment’s balance of reasonableness is qualitatively different  
21 at the international border than in the interior. Routine searches of the  
22 persons and effects of entrants are not subject to any requirement of  
23 reasonable suspicion, probable cause, or warrant . . . . These cases reflect  
24 longstanding concern for the protection of the integrity of the border.

25 473 U.S. at 537-38.

26 The Supreme Court has repeatedly emphasized that such plenary authority is  
27 rooted in historical practices and understanding of the government’s authority at the  
28 border. In *United States v. Ramsey*, 431 U.S. 606 (1977), the Supreme Court  
explained:

That searches made at the border, pursuant to the long-standing right of the  
sovereign to protect itself by stopping and examining persons and property

1 crossing into this country, are reasonable simply by virtue of the fact that  
2 they occur at the border, should, by now, require no extended  
3 demonstration . . . . Border searches, then, from before the adoption of the  
4 Fourth Amendment, have been considered to be “reasonable” by the single  
5 fact that the person or item in question had entered into our country from  
6 outside. There has never been any additional requirement that the  
7 reasonableness of a border search depended on the existence of probable  
8 cause. This longstanding recognition that searches at our borders without  
9 probable cause and without a warrant are nonetheless “reasonable” has a  
10 history as old as the Fourth Amendment itself. We reaffirm it now.

11 431 U.S. at 616-19.

12 Additionally, the court finds substantial authority holding that maintaining  
13 border security is a compelling government interest. *See Haig v. Agee*, 453 U.S. 280,  
14 307 (1981) (“It is obvious and unarguable that no governmental interest is more  
15 compelling than the security of the Nation.”) (citation and internal quotation marks  
16 omitted); *Holder v. Humanitarian L. Project*, 561 U.S. 1, 28 (2010) (“Everyone  
17 agrees that the Government’s interest in combating terrorism is an urgent objective of  
18 the highest order.”); *United States v. Flores-Montano*, 541 U.S. 149, 152 (2004) (“The  
19 Government’s interest in preventing the entry of unwanted persons and effects is at its  
20 zenith at the international border.”); *Al Haramain Islamic Found., Inc. v. U.S. Dep’t of*  
21 *Treasury*, 686 F.3d 965, 980 (9th Cir. 2012) (“On the other side of the scale, the  
22 government’s interest in national security cannot be understated.”); *Tabbaa v.*  
23 *Chertoff*, 509 F.3d 89, 103 (2d Cir. 2007) (“It is undisputed that the government’s  
24 interest in protecting the nation from terrorism constitutes a compelling state  
25 interest.”); *Carroll v. United States*, 267 U.S. 132, 154 (1925) (“Travelers may be so  
26 stopped in crossing an international boundary because of national self-protection  
27 reasonably requiring one entering the country to identify himself as entitled to come  
28 in, and his belongings as effects which may be lawfully brought in.”)

In light of the case law holding that the government has plenary authority at  
the border and that maintaining border security is a compelling government interest,

1 the court finds that “reference to historical practices and understandings” weighs  
2 against finding an Establishment Clause violation based on religious questioning at  
3 the border. *Kennedy*, 142 S. Ct. at 2428.

4 Accordingly, Plaintiffs have not sufficiently alleged an Establishment Clause  
5 violation and the court **GRANTS** the Motion as to Plaintiffs’ Establishment Clause  
6 claim (Count 1).

### 7 **C. Second Claim (Violation of the First Amendment Free Exercise Clause)**

8 The Free Exercise Clause of the First Amendment of the U.S. Constitution  
9 provides that “Congress shall make no law respecting an establishment of religion, or  
10 prohibiting the free exercise thereof.” U.S. Const., amend. I. “The right to freely  
11 exercise one’s religion, however, ‘does not relieve an individual of the obligation to  
12 comply with a ‘valid and neutral law of general applicability on the ground that the  
13 law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).’”  
14 *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Emp. Div. v.*  
15 *Smith*, 494 U.S. 872, 879 (1990)).

16 “[A] law that is neutral and of general applicability need not be justified by a  
17 compelling governmental interest even if the law has the incidental effect of  
18 burdening a particular religious practice. Neutrality and general applicability are  
19 interrelated, and . . . failure to satisfy one requirement is a likely indication that the  
20 other has not been satisfied.” *Church of the Lukumi Babalu Aye*, 508 U.S. at 531. “A  
21 law failing to satisfy these requirements must be justified by a compelling  
22 governmental interest and must be narrowly tailored to advance that interest.” *Id.* at  
23 531-32. But “[f]acial neutrality is not determinative. The Free Exercise Clause, like  
24 the Establishment Clause, extends beyond facial discrimination.” *Id.* at 534. “Official  
25 action that targets religious conduct for distinctive treatment cannot be shielded by  
26 mere compliance with the requirement of facial neutrality. The Free Exercise Clause  
27 protects against governmental hostility which is masked, as well as overt.” *Id.*  
28

1 Plaintiffs alleging a Free Exercise claim must “allege a substantial burden on  
2 their religious practice or exercise.” *Cal. Parents for the Equalization of Educ.*  
3 *Materials v. Torlakson*, 973 F.3d 1010, 1016 (9th Cir. 2020), *cert. denied sub nom.*  
4 *Cal. Parents for Equalization of Educ. Materials v. Torlakson*, 141 S. Ct. 2583  
5 (2021). “The free exercise inquiry asks whether government has placed a substantial  
6 burden on the observation of a *central* religious belief or practice and, if so, whether a  
7 compelling governmental interest justifies the burden.” *Hernandez v. Comm’r*, 490  
8 U.S. 680, 699 (1989) (emphasis added). Thus, “[t]he Free Exercise Clause of the First  
9 Amendment protects only ‘the observation of a central religious belief or practice.’”  
10 *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1076 (9th Cir. 2008) (quoting  
11 *Hernandez*, 490 U.S. at 699).

12 **a. Plaintiffs Have Not Sufficiently Alleged a Substantial Burden<sup>2</sup>**

13 **i. Plaintiffs’ Alleged Burden Is a Subjective Chilling Effect**

14 The parties first dispute whether the protective measures taken by Plaintiffs  
15 constitute a substantial burden or are merely a “subjective chilling effect.” (Mot. at  
16 24-28; Opp. at 20-24.) Defendants cite to *Vernon v. City of Los Angeles*, 27 F.3d  
17 1385 (9th Cir. 1994) (cert. denied, 115 S. Ct. 510) and *Dousa v. U.S. Dep’t of*  
18 *Homeland Sec.*, 2020 WL 434314, at \*5 (S.D. Cal. Jan. 28, 2020) for the proposition  
19 that a plaintiff is not substantially burdened in their religious practice when they  
20 voluntarily refrain from religious activity. (Mot. at 26-27.) The court reviews both  
21 cases below.

22  
23  
24 \_\_\_\_\_  
25 <sup>2</sup> Plaintiffs argue in the alternative that they are not required to plead a substantial  
26 burden under the Free Exercise Clause because the Supreme Court has not applied  
27 such a requirement to Free Exercise claims. (Opp. at 24-26.) In the absence of  
28 binding authority holding that a substantial burden is not required to assert a Free  
Exercise claim, the court continues to follow existing precedent.

1           In *Vernon*, the Ninth Circuit considered whether the plaintiff, the Assistant  
2 Chief of Police of the Los Angeles Police Department (“LAPD”), experienced a  
3 substantial burden when the LAPD conducted an investigation into “whether  
4 [plaintiff’s] religious views were having an impermissible effect on his on-duty police  
5 department performance.” *Id.* at 1388. The plaintiff in *Vernon* alleged that the  
6 investigation “chilled [him] in the exercise of his religious beliefs,” because he  
7 “fear[ed] that he can no longer worship as he chooses, consult with his ministers and  
8 the elders of his church, participate in Christian fellowship and give public testimony  
9 to his faith without severe consequences.” *Id.* at 1394. The plaintiff in *Vernon* thus  
10 argued that the investigation “interfered with [his] freedom to worship in the way [he]  
11 want[s] without repercussions.” *Id.* The Ninth Circuit found that, based on the  
12 record, the investigation “resulted in no disciplinary action being taken,” and that the  
13 plaintiff had admitted “in his deposition testimony that no one has specifically told  
14 him that he cannot [consult with his church elders].” *Id.* at 1395. Based on that  
15 record, the Ninth Circuit held that plaintiff “failed to show any concrete and  
16 demonstrable injury” and a substantial burden could not be based on “mere subjective  
17 chilling effects with neither a claim of specific present objective harm [n]or a threat of  
18 specific future harm.” *Id.* (citation and internal quotation marks omitted).

19           In *Dousa*, the district court considered whether the plaintiff, a pastor who was  
20 allegedly subjected to government “surveillance, detention, and harassment” for her  
21 activities ministering to asylum seekers at the U.S.-Mexico border, had a cognizable  
22 Free Exercise claim. 2020 WL 434314, at \*1. Plaintiff alleged she suffered three  
23 distinct harms from the government’s activities: (1) the government revoked, or at  
24 least attempted to revoke, her border crossing card (“SENTRI” card), hindering her  
25 ability to enter the United States; (2) the government detained and interrogated her on  
26 January 2, 2019; and (3) the government monitored her domestic activities. *Id.* at \*3.  
27 Plaintiff argued the cumulative effect of these harms was that she was “dissuaded  
28 from traveling to Mexico and ministering to refugees, something her religious beliefs

1 compel her to do” and that she felt “compelled to warn penitents about the possibility  
2 of government surveillance, chilling her ability to provide pastoral counseling and  
3 absolution.” *Id.*

4 The *Dousa* court held that because the challenged government action was  
5 “neither regulatory, proscriptive [n]or compulsory,” “the [threshold] question is not  
6 necessarily whether the Government action is neutral and generally applicable, but  
7 rather ‘whether it substantially burdens a religious practice and either is not justified  
8 by a substantial state interest or is not narrowly tailored to achieve that interest.’” *Id.*  
9 at \*7 (quoting *Am. Family Ass’n*, 277 F.3d at 1123-24). Analyzing this threshold  
10 question, the court held that plaintiff’s alleged harms did not rise to the level of a  
11 substantial burden because plaintiff’s decision to refrain from providing religious  
12 counseling were “subjective chills.” *Id.* at \*8. Based on evidence of plaintiff’s  
13 continued ability to travel and use her Global Entry privileges, the court held that  
14 plaintiff did not face a “present objective harm [n]or a threat of specific future harm”  
15 and that “any harms felt are not the direct result of government action, but rather a  
16 result of her decision to limit her religious practices for her own subjective reasons.”  
17 *Id.* However, the court clarified that “if the Government had revoked Dousa’s  
18 SENTRI card (and Dousa could show that the revocation was the result of her  
19 engaging in protected activity), the Court would have no problem finding a substantial  
20 burden” because the revocation “would effectively amount to a government sanction,  
21 and it would undoubtedly make it more difficult for her to travel and to practice her  
22 sincerely held beliefs.” *Id.*

23 Here, Plaintiffs allege that they were intentionally targeted for religious  
24 questioning on ten occasions, and information about their religious beliefs, practices,  
25 and associations was collected and is now maintained in government databases. (*See*  
26 *Compl.* ¶¶ 33-57 (Plaintiff Kariye alleges he was subjected to religious questioning on  
27 five occasions from September 12, 2017, to January 1, 2022); *id.* ¶¶ 75-93 (Plaintiff  
28 Mouslli alleges he was subjected to religious questioning on four occasions from

1 August 9, 2018, to June 5, 2021); *id.* ¶¶ 107-43 (Plaintiff Shah alleges he was  
2 subjected to religious questioning on one occasion on May 7, 2019).) Plaintiffs  
3 further allege they have suffered emotional distress from these experiences. (*Id.*  
4 ¶¶ 62-72, 94-106, 135-43.)

5 Plaintiffs also allege they have modified their religious practices during  
6 international travel because of their experiences. More specifically, Plaintiff Kariye  
7 alleges he now “modifies or eliminates certain religious practices to avoid calling  
8 attention to his faith,” including “no longer wear[ing] his kufi at the airport or the  
9 border,” “refrain[ing] from . . . physical acts of prayer at the airport and the border,”  
10 and “avoid[ing] carrying religious texts while traveling back into the United States.”  
11 (*Id.* ¶¶ 66-70.) Plaintiff Mouslli also “refrains from these physical acts of prayer at the  
12 airport and the border.” (*Id.* ¶ 104). Plaintiff Shah alleges “the next time he travels  
13 internationally, he intends to leave his journal at home to avoid having it become a  
14 basis for questioning.” (*Id.* ¶ 141.)

15 The court finds that the ongoing harms alleged by Plaintiffs here—their  
16 modifications to religious practices during international travel—hew closely to the  
17 harms alleged in *Vernon* and *Dousa*, and similarly do not constitute a substantial  
18 burden under the Free Exercise Clause because they are subjective chilling effects.  
19 *See Vernon*, 27 F.3d at 1395 (substantial burden could not be based on “mere  
20 subjective chilling effects with neither a claim of specific present objective harm [n]or  
21 a threat of specific future harm”); *Dousa*, 2020 WL 434314, at \*8 (no substantial  
22 burden where “any harms felt are not the direct result of government action, but rather  
23 a result of her decision to limit her religious practices for her own subjective  
24 reasons.”).

25 Indeed, Plaintiffs describe their actions as *preventative* measures they adopted  
26 to avoid questioning in the future, not coerced actions compelled by government  
27 officials. (*See Compl.* ¶¶ 66-70) (Plaintiff Kariye alleges he “modifies or eliminates  
28 certain religious practices to avoid calling attention to his faith,” including “no longer

1 wear[ing] his kufi at the airport or the border,” “refrains from . . . physical acts of  
2 prayer at the airport and the border,” and “avoids carrying religious texts while  
3 traveling back into the United States”); *id.* ¶ 104 (Plaintiff Mouslli “refrains from  
4 these physical acts of prayer at the airport and the border”); *id.* ¶ 141 (Plaintiff Shah  
5 alleges “the next time he travels internationally, he intends to leave his journal at  
6 home to avoid having it become a basis for questioning.”). As in *Dousa*, the court  
7 finds that “any harms felt are not the direct result of government action, but rather a  
8 result of [plaintiff’s] decision to limit her religious practices for her own subjective  
9 reasons.” 2020 WL 434314, at \*8; *see also Am. Fam. Ass’n*, 277 F.3d at 1124  
10 (“[W]hen the challenged government action is neither regulatory, proscriptive [n]or  
11 compulsory, alleging a subjective chilling effect on free exercise rights is not  
12 sufficient to constitute a substantial burden.”). Accordingly, the court finds that the  
13 protective measures alleged by Plaintiffs constitute a subjective chilling effect rather  
14 than a substantial burden.

15 **ii. Plaintiffs Do Not Plausibly Allege They Were Deprived of a**  
16 **Government Benefit or Coerced to Act Contrary to their**  
17 **Religious Beliefs**

18 Although Plaintiffs urge the court to follow the reasoning of *Navajo Nation v.*  
19 *U.S. Forest Serv.*, 535 F.3d 1058 (9th Cir. 2008) to find that they have plausibly  
20 alleged a substantial burden, the court’s analysis is no different under *Navajo Nation*.  
21 (Opp. at 20.) In *Navajo Nation*, the Ninth Circuit considered whether the “use of  
22 artificial snow for skiing on a portion of a public mountain sacred in [the plaintiffs’]  
23 religion” violates RFRA and other unrelated statutes. *Id.* at 1062-63. The harm  
24 alleged was to the plaintiffs’ “subjective spiritual experience,” “[t]hat is, the presence  
25 of the artificial snow on the Peaks is offensive to the Plaintiffs’ feelings about their  
26 religion and will decrease the spiritual fulfillment Plaintiffs get from practicing their  
27 religion on the mountain.” *Id.* at 1063. Under these facts, the Ninth Circuit explained  
28 that “a government action that decreases the spirituality, the fervor, or the satisfaction

1 with which a believer practices his religion is not what Congress has labeled a  
2 ‘substantial burden’—a term of art chosen by Congress to be defined by reference to  
3 Supreme Court precedent—on the free exercise of religion.” *Id.* The Ninth Circuit  
4 further explained that a substantial burden is “imposed only when individuals are  
5 forced to choose between following the tenets of their religion and receiving a  
6 governmental benefit (*Sherbert* [374 U.S. 398 (1963)]) or coerced to act contrary to  
7 their religious beliefs by the threat of civil or criminal sanctions (*Yoder* [406 U.S. 205  
8 (1972)]).” *Id.* at 1070. The court finds that because the Ninth Circuit’s analysis in  
9 *Navajo Nation* is explicitly grounded in binding Supreme Court precedent in *Sherbert*  
10 and *Yoder*, it does not dictate a departure from the analysis above.

11 The court finds Plaintiffs have not adequately alleged that they were “forced to  
12 choose between following the tenets of their religion and receiving a government  
13 benefit” under *Sherbert* or “coerced to act contrary to their religious beliefs” under  
14 *Yoder*.<sup>3</sup> *Id.* at 1070. The court reviews both cases below. In *Sherbert*, the Supreme  
15 Court held that South Carolina could not deny unemployment benefits to a claimant, a  
16 member of the Seventh-Day Adventist Church, who refused jobs that required the  
17 claimant to work on the Sabbath Day of her faith. 374 U.S. at 398. In *Yoder*, the  
18 Supreme Court held that respondents’ criminal convictions for violating Wisconsin’s  
19

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20  
21 <sup>3</sup> The Ninth Circuit has “continued to apply the *Sherbert* substantial burden test to  
22 government conduct that did not involve an actual regulation or criminal law.” *Am.*  
23 *Fam. Ass’n*, 277 F.3d at 1124; *see also Kennedy*, 142 S. Ct. at 2421 (listing *Sherbert*  
24 as one of the “Court’s precedents” relevant to analyzing a plaintiff’s Free Exercise  
25 claim); *id.* at 2421-22 (“[A] plaintiff may carry the burden of proving a free exercise  
26 violation in various ways, including by showing that a government entity has  
27 burdened his sincere religious practice pursuant to a policy that is not ‘neutral’ or  
28 ‘generally applicable.’ . . . Should a plaintiff make a showing like that, this Court will  
find a First Amendment violation unless the government can satisfy ‘strict scrutiny’  
by demonstrating its course was justified by a compelling state interest and was  
narrowly tailored in pursuit of that interest.”).

1 compulsory school-attendance law were invalid under the Free Exercise Clause based  
2 on respondents' belief that their children's compulsory attendance at high school  
3 violated the Amish religion and way of life. 406 U.S. at 206-09.

4 Here, Plaintiffs have not plausibly alleged they were deprived of a government  
5 benefit or coerced to act contrary to their religious beliefs. First, under *Sherbert*,  
6 Plaintiffs argue they were deprived of the benefit of being allowed to reenter the  
7 United States. (*See Opp.* at 20 (“The governmental benefit—or in this case, right—  
8 that hangs in the balance each time Plaintiffs travel internationally is permission to  
9 reenter their own country”).) Assuming that permission to reenter the United States is  
10 a government benefit, the court finds the Complaint does not plausibly allege that  
11 Plaintiffs were deprived of such a benefit. To the contrary, although Plaintiffs  
12 experienced secondary inspection on ten occasions, the Complaint alleges Plaintiffs  
13 were allowed to reenter the United States on each such occasion. (*See generally*,  
14 *Compl.*) *See also Flores-Montano*, 541 U.S. at 155 n.3 (2004) (“We think it clear that  
15 delays of one to two hours at international borders are to be expected.”).

16 Second, under *Yoder*, Plaintiffs argue they are coerced because if they “do not  
17 reveal information about their religious beliefs and practices, they risk being subjected  
18 to further harassment and detention for an unknown period of time” and “border  
19 officers implicitly (and even explicitly) threaten Plaintiffs with sanctions for not  
20 complying.” (*Opp.* at 20.) The court observes that the coercion argued by Plaintiffs  
21 here appears to be pressure to “reveal information about their religious beliefs and  
22 practices.” (*Id.*) However, the Ninth Circuit has described the coercion contemplated  
23 by *Yoder* as an individual being “coerced to act contrary to their *religious beliefs* by  
24 the threat of civil or criminal sanctions.” *Navajo Nation*, 535 F.3d at 1075. Here, the  
25 Complaint does not sufficiently allege why revealing information about Plaintiffs'  
26 religious beliefs and practices is contrary to their religious beliefs. Nor does the  
27 Complaint sufficiently allege what civil or criminal sanctions were threatened by  
28 Defendants. Accordingly, the court finds that the Complaint does not plausibly allege

1 Plaintiffs were deprived of the government benefit of reentering the United States or  
2 that by revealing information about their religious beliefs and practices, they were  
3 coerced to act contrary to their religious beliefs.

4 Nor is the court persuaded by Plaintiffs' remaining citations. (*See Opp.* at 20-  
5 24) (citing *Jones v. Slade*, 23 F.4th 1124 (9th Cir. 2022), *Ohno v. Yasuma*, 723 F.3d  
6 984 (9th Cir. 2013), *Fazaga v. Fed. Bureau of Investigation*, 965 F.3d 1015 (9th Cir.  
7 2020); *El Ali v. Barr*, 473 F. Supp. 3d 479 (D. Md. 2020).) The court briefly reviews  
8 and distinguishes these cases here. *Jones* analyzes the meaning of "substantial  
9 burden" under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"),  
10 42 U.S.C. §§ 2000cc, *et seq.* but notes that this statutory standard is "more generous to  
11 the religiously observant than the Free Exercise Clause." 23 F.4th at 1139. *Ohno*  
12 reiterates the same standard discussed by the court above—that a "substantial burden  
13 must place more than an inconvenience on religious exercise" and "must have a  
14 "tendency to coerce individuals into acting contrary to their religious beliefs" or "exert  
15 substantial pressure on an adherent to modify his behavior and to violate his beliefs."  
16 723 F.3d at 1011. In *Fazaga*, the Ninth Circuit held that a substantial burden existed  
17 where plaintiffs alleged that they altered their religious practices because of FBI  
18 surveillance, including trimming their beards, no longer wearing skull caps,  
19 decreasing attendance at the mosque, and no longer counseling congregants. 965 F.3d  
20 at 1061. The court observes that plaintiffs in *Fazaga* alleged modified behavior  
21 during a fourteen-month surveillance program as compared to the alleged  
22 modifications made during international travel alleged here. *Id.* at 1026-29. The court  
23 further observes that the Ninth Circuit's decision in *Fazaga* has since been reversed  
24 and remanded by the Supreme Court. *See Fed. Bureau of Investigation v. Fazaga*,  
25 142 S. Ct. 1051 (2022).

26 Finally, although a Maryland district court held in *El Ali* that the "very process  
27 of inquiry *may* itself impose a substantial burden on the individuals' religious beliefs,"  
28 the court is aware of no authority in the Ninth Circuit reiterating this proposition. 473

1 F. Supp. 3d at 526 (emphasis added). In *El Ali*, the “inquiry” at issue included the pat-  
2 down and interrogation of a plaintiff’s disabled mother because she was a travel  
3 companion, the screening of a two-month-old baby, and law enforcement agents  
4 offering to remove plaintiffs from watchlists in exchange for becoming informants on  
5 religious leaders. 473 F. Supp. 3d at 495-97. By contrast, in this case, Plaintiffs  
6 allege ten incidents of questioning (see Compl. ¶¶ 33-57, 75-93, 108-130) and  
7 employing “protective measures” to avoid additional CBP scrutiny (*id.* ¶¶ 71, 105,  
8 142). Because the facts in this case are distinguishable from *El Ali*, the court finds the  
9 facts do not plausibly demonstrate that Defendants’ actions constitute a substantial  
10 burden under *Sherbert* and *Yoder*. (See *supra*, Section C.)

11 Accordingly, the court finds that Plaintiffs have not sufficiently alleged a  
12 substantial burden to sustain their Free Exercise Claim.

13 **b. Even if Plaintiffs Sufficiently Alleged a Substantial Burden, the**  
14 **Court would find the Questioning is Narrowly Tailored to Advance**  
15 **a Compelling Government Interest**

16 Alternatively, Defendants argue that even if Plaintiffs had sufficiently alleged a  
17 substantial burden, “the questioning alleged here is the least restrictive means of  
18 advancing a compelling government interest.” (Mot. at 27 (discussing Plaintiffs’ Free  
19 Exercise Clause and RFRA claims).) The court observes that even if Plaintiffs had  
20 sufficiently alleged a substantial burden, based on the Complaint’s allegations and the  
21 record before the court, the record supports Defendants’ questioning is a narrowly  
22 tailored means of advancing a compelling government interest.

23 “[A] law that is neutral and of general applicability need not be justified by a  
24 compelling governmental interest even if the law has the incidental effect of  
25 burdening a particular religious practice.” *Church of the Lukumi Babalu Aye*, 508  
26 U.S. at 531. “A law failing to satisfy these requirements must be justified by a  
27 compelling governmental interest and must be narrowly tailored to advance that  
28 interest.” *Id.* at 531-32. “The free exercise inquiry asks whether government has

1 placed a substantial burden on the observation of a central religious belief or practice  
2 and, if so, whether a compelling governmental interest justifies the burden.”

3 *Hernandez*, 490 U.S. at 699.

4 Defendants identify the compelling interest here as the government’s interest in  
5 “protecting its borders and preventing and investigating potential acts of terrorism.”  
6 (Mot. at 27.) Defendants cite several cases supporting the proposition that the  
7 government has a compelling interest in this area. (*Id.*) See *Haig*, 453 U.S. at 307 (“It  
8 is obvious and unarguable that no governmental interest is more compelling than the  
9 security of the Nation.”) (citation and internal quotation marks omitted);

10 *Humanitarian L. Project*, 561 U.S. at 28 (“Everyone agrees that the Government’s  
11 interest in combating terrorism is an urgent objective of the highest order.”); *Flores-*  
12 *Montano*, 541 U.S. at 152 (“The Government’s interest in preventing the entry of  
13 unwanted persons and effects is at its zenith at the international border.”); *Al*  
14 *Haramain Islamic Found.*, 686 F.3d at 980 (“On the other side of the scale, the  
15 government’s interest in national security cannot be understated.”); *Tabbaa*, 509 F.3d  
16 at 103 (“It is undisputed that the government’s interest in protecting the nation from  
17 terrorism constitutes a compelling state interest.”)

18 The court notes that case law holding that the government’s action was *not*  
19 narrowly tailored typically addresses conduct broader than the questioning alleged  
20 here. Cf. *Shelton v. Tucker*, 364 U.S. 479, 488 (1960) (law not narrowly tailored  
21 where statute required teachers to list “the church to which he belongs, or to which he  
22 has given financial support,” “his political party, and every political organization to  
23 which he may have contributed over a five-year period” and “every conceivable kind  
24 of associational tie—social, professional, political, avocational, or religious”); *id.*  
25 (“[E]ven though the governmental purpose be legitimate and substantial, that purpose  
26 cannot be pursued by means that broadly stifle fundamental personal liberties when  
27 the end can be more narrowly achieved.”). See also *Fulton v. City of Philadelphia,*  
28 *Pa.*, 141 S. Ct. 1868, 1882 (2021) (holding that City of Philadelphia violated Free

1 Exercise Clause where it conditioned a religious agency’s ability to participate in the  
2 foster care system on the agency agreeing to certify same-sex couples as foster  
3 parents).

4 Additionally, some of Plaintiffs’ allegations support the conclusion that the  
5 questioning alleged in this case would be a narrowly tailored means of achieving the  
6 compelling government interest of maintaining border security. For example, the  
7 Complaint alleges that Plaintiffs Kariye and Mouslli have been on the U.S.  
8 government watchlist for several years preceding the incidents of questioning. (*See*  
9 Compl. ¶¶ 58-59 (Plaintiff Kariye has been experiencing travel issues consistent with  
10 placement on a government watchlist since 2013); *id.* ¶¶ 94-95 (Plaintiff Mouslli has  
11 been experiencing travel issues consistent with placement on a government watchlist  
12 since 2013).) The court notes that the legality of the U.S. government’s Terrorist  
13 Screening Database—the government’s watchlist of known or suspected terrorists—  
14 has been upheld by several Circuits. *See Elhady v. Kable*, 993 F.3d 208, 213 (4th Cir.  
15 2021) (describing the database as “the federal government’s consolidated watchlist of  
16 known or suspected terrorists” and holding that “any wholesale reworking or  
17 significant modification of the program rests within the purview of the democratic  
18 branches”); *Abdi v. Wray*, 942 F.3d 1019, 1024 (10th Cir. 2019) (holding no due  
19 process claim from placement on the list); *Beydoun v. Sessions*, 871 F.3d 459, 467  
20 (6th Cir. 2017) (holding plaintiffs did not adequately allege their fundamental rights  
21 were violated from placement on the list).

22 As for Plaintiff Shah, the Complaint alleges that CBP officers reviewed  
23 Plaintiff Shah’s notebook during secondary inspection and that the religious  
24 questioning was due to the contents of Plaintiff Shah’s notebook. (*See* Compl. ¶ 118.)  
25 The Complaint further alleges that in response to a request for information regarding  
26 the questioning, CBP produced a redacted version of an incident report stating that  
27 Plaintiff Shah’s detention and questioning was “Terrorist Related.” (*Id.* ¶ 134.) The  
28 incident report and Plaintiff Shah’s allegations of the questioning both indicate that

1 the questioning began only after Defendants examined his belongings and read the  
2 contents of his journal. (*See id.* ¶¶ 118, 134.) The court notes that the Complaint does  
3 not allege why Plaintiffs Kariye and Mouslli are on government watchlists or what  
4 was included in the contents of Plaintiff Shah’s notebook—the key facts that appear to  
5 have precipitated the incidents of religious questioning.

6 Even if Plaintiffs had sufficiently alleged a substantial burden, the court finds  
7 that Plaintiffs have not sufficiently addressed how Defendants’ questioning did not  
8 further a compelling government interest. Accordingly, the court **GRANTS** the  
9 Motion as to Plaintiffs’ Free Exercise Clause claim (Count 2).

#### 10 **D. Third Claim (Violation of the First Amendment Right to Free Association)**

11 “The First Amendment prohibits government from ‘abridging the freedom of  
12 speech, or of the press; or the right of the people peaceably to assemble, and to  
13 petition the Government for a redress of grievances.’” *Ams. for Prosperity Found. v.*  
14 *Bonta*, 141 S. Ct. 2373, 2382 (2021). The Supreme Court “has ‘long understood as  
15 implicit in the right to engage in activities protected by the First Amendment a  
16 corresponding right to associate with others.’” *Id.* (quoting *Roberts v. United States*  
17 *Jaycees*, 468 U.S. 609, 622 (1984)). “[T]he freedom of association may be violated  
18 where a group is required to take in members it does not want . . . where individuals  
19 are punished for their political affiliation . . . or where members of an organization are  
20 denied benefits based on the organization’s message.” *Id.* at 2382. In addition, “[i]t is  
21 hardly a novel perception that compelled disclosure of affiliation with groups engaged  
22 in advocacy may constitute as effective a restraint on freedom of association as [other]  
23 forms of governmental action.” *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449,  
24 462 (1958).

25 In *Ams. for Prosperity Found.*, the Supreme Court explained the standard of  
26 review that applies to First Amendment challenges to compelled disclosure:  
27  
28

1 We have since settled on a standard referred to as “exacting scrutiny.”  
2 *Buckley v. Valeo*, 424 U.S. 1, 64, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (per  
3 curiam). Under that standard, there must be “a substantial relation between  
4 the disclosure requirement and a sufficiently important governmental  
5 interest.” *Doe v. Reed*, 561 U.S. 186, 196, 130 S.Ct. 2811, 177 L.Ed.2d  
6 493 (2010) (internal quotation marks omitted). “To withstand this scrutiny,  
7 the strength of the governmental interest must reflect the seriousness of the  
8 actual burden on First Amendment rights.” *Ibid.* (internal quotation marks  
9 omitted). Such scrutiny, we have held, is appropriate given the “deterrent  
10 effect on the exercise of First Amendment rights” that arises as an  
11 “inevitable result of the government’s conduct in requiring disclosure.”  
12 *Buckley*, 424 U.S., at 65, 96 S.Ct. 612.

13 141 S. Ct. at 2373.

14 Here, Plaintiffs argue that “by compelling Plaintiffs to disclose sensitive  
15 associational information and retaining that information for decades, border officers  
16 do not further any valid government interest, and their questions are not narrowly  
17 tailored to the detection of terrorists.” (Opp. at 26.) Plaintiffs point to Defendants’  
18 religious questioning, including questions such as “Are you Sunni or Shi’a?” and  
19 “What mosque do you attend?” as violating Plaintiffs’ right to freedom of association.  
20 (*Id.* (citing Compl. ¶¶ 19, 35, 47, 77, 81, 85, 90, 117).) According to Plaintiffs,  
21 Defendants’ religious questioning and the retention of Plaintiffs’ information cannot  
22 survive the “exacting scrutiny” standard the Supreme Court set forth in *Ams. for*  
23 *Prosperity Found.* (Opp. at 26.)

24 The parties do not dispute that the relevant governmental interest here is  
25 securing the border and preserving national security. (*See generally* Mot. and Opp.)  
26 Plaintiffs identify the harm to their associational rights as Defendants’ questioning and  
27 the retention of Plaintiffs’ information. (Opp. at 26.) Defendants argue the  
28 questioning at issue is “plainly intertwined with the compelling governmental interests  
of securing the border and preserving national security.” (Mot. at 28.)

Accordingly, the relevant question before the court is whether there is a  
“substantial relation between the disclosure requirement and a sufficiently important

1 governmental interest.” *Reed*, 561 U.S. at 196. Based on the allegations in the  
2 Complaint, the court finds that there is a plausible, substantial relation between  
3 Defendants’ compelled disclosure—the religious questioning of Plaintiffs and  
4 collection of information—and the governmental interests of securing the border and  
5 preserving national security. Indeed, as discussed above, certain of Plaintiffs’  
6 allegations appear to provide an explanation for Defendants’ questioning of Plaintiffs.

7 The Complaint alleges that Plaintiffs Kariye and Mouslli have been on U.S.  
8 government watchlists since 2013 and 2017, respectively. (*See* Compl. ¶¶ 58-59, 94-  
9 95.) *Cf. Tabbaa*, 509 F.3d at 94 (affirming district court’s grant of summary judgment  
10 on plaintiffs’ freedom of association claim based on Muslim travelers’ experiences of  
11 being searched and questioned at the border even where “Plaintiffs had no criminal  
12 records, and at no time did CBP have reasonable suspicion that any particular plaintiff  
13 had committed a crime or was associated with terrorists”). Additionally, as  
14 Defendants argue, for Plaintiff Kariye, who works as an “imam at a local mosque”  
15 (Compl. ¶ 8), questions about his associations could plausibly be considered questions  
16 related to his occupation. (Mot. at 18.)

17 As for Plaintiff Shah—the only Plaintiff not alleged to be on a government  
18 watchlist—the court finds that the same “substantial relation between the disclosure  
19 requirement and a sufficiently important governmental interest” exists. *Reed*, 561  
20 U.S. at 196. As discussed above, Plaintiff Shah’s questioning followed a search of the  
21 contents of his journal. (*See* Compl. ¶ 118 (“When Mr. Shah asked Officer 2 why he  
22 was asking these questions, the officer responded, “I’m asking because of what we  
23 found in your journal”).) The court notes that the Complaint as currently pled alleges  
24 that Plaintiff was selected for secondary inspection after a trip to Serbia and Bosnia  
25 and that the report of the interview was later labeled as “Terrorist Related.” (*Id.*  
26 ¶¶ 108, 134.)

27 Even if Plaintiffs had sufficiently alleged a substantial disclosure under the  
28 First Amendment, based on the allegations regarding Plaintiffs’ questioning, the court

1 would find that Defendants have met their burden to show that the disclosure is  
2 narrowly tailored to advance a compelling government interest. (*See supra*, Section  
3 C.) Because the court would find that the government has met this more stringent  
4 standard, it necessarily follows that the government satisfies the lower standard of  
5 “exacting scrutiny”, which requires only that there be a plausible “substantial relation  
6 between the disclosure requirement and a sufficiently important governmental  
7 interest.” *Reed*, 561 U.S. at 196.

8 Moreover, the court finds that Plaintiffs’ cited authority regarding disclosures of  
9 information is not sufficiently analogous to the facts of this case to be persuasive.  
10 (*See Opp.* at 26-29) (citing *Ams. for Prosperity Found.*, 141 S. Ct. at 2379-89 (holding  
11 that California’s requirement for charitable organization to disclose the identities of  
12 their major donors through tax documents to the California Attorney General’s Office  
13 violates the First Amendment right to free association); *Shelton*, 364 U.S. at 488  
14 (invalidating Arkansas statute requiring teachers in state-supported schools or colleges  
15 to file an affidavit revealing “the church to which he belongs, or to which he has given  
16 financial support,” “his political party, and every political organization to which he  
17 may have contributed over a five-year period,” and “every conceivable kind of  
18 associational tie—social, professional, political, avocational, or religious”); *Bursey v.*  
19 *United States*, 466 F.2d 1059, 1085-88 (9th Cir. 1972) (reversing decision of district  
20 court to hold witnesses who were members of the staff of The Black Panther  
21 newspaper in contempt for refusing to answer certain questions propounded by federal  
22 grand jury); *Clark v. Libr. of Cong.*, 750 F.2d 89, 104 (D.C. Cir. 1984) (reversing  
23 decision of district court dismissing employee’s complaint against the Library of  
24 Congress regarding investigation into the employee’s activities with a political group  
25 affiliated with the Socialist Workers Party); *MacPherson v. I.R.S.*, 803 F.2d 479, 484  
26 (9th Cir. 1986) (affirming the district court’s grant of summary judgment to Internal  
27 Revenue Service regarding surveillance of plaintiff connected with the “tax protester”  
28 movement but noting that even “‘incidental’ surveillance and recording of innocent

1 people exercising their First Amendment rights may have [a] ‘chilling effect’” on  
2 those rights); *Guan v. Mayorkas*, 530 F. Supp. 3d 237, 266 (E.D.N.Y. 2021) (holding  
3 that the journalist-plaintiffs “plausibly alleged that they were targeted for additional  
4 scrutiny based on their exercise of their First Amendment rights through their  
5 journalism and association with their sources and other members of the media, and  
6 that this additional scrutiny constituted a substantial burden”).

7 To the contrary, the court notes that Plaintiffs specifically do not cite cases that  
8 are more factually analogous to the allegations of the Complaint—in other words,  
9 cases implicating border security and national security concerns. *See, e.g., Tabbaa*,  
10 509 F.3d at 103 (“[T]he [government’s] reach was carefully circumscribed: it applied  
11 only to those conferences about which the government had specific intelligence  
12 regarding the possible congregation of suspected terrorists, it was limited to routine  
13 screening measures, and it was confined to those individuals, regardless of their  
14 religion, whom CBP could establish had attended the conferences in question.”);  
15 *Humanitarian L. Project v. Reno*, 205 F.3d 1130, 1133 (9th Cir. 2000) (affirming  
16 district court’s denial of preliminary injunction to plaintiffs alleging that statute  
17 prohibiting contributions of support to foreign terrorist organizations “infringes their  
18 associational rights under the First Amendment”).

19 Accordingly, the court **GRANTS** the Motion as to Plaintiffs’ Freedom of  
20 Association claim (Count 3).

#### 21 **E. Fourth Claim (Violation of the First Amendment (Retaliation))**

22 A plaintiff asserting a First Amendment retaliation claim must allege the  
23 following three elements: “(1) [they were] engaged in a constitutionally protected  
24 activity, (2) the defendant’s actions would chill a person of ordinary firmness from  
25 continuing to engage in the protected activity and (3) the protected activity was a  
26 substantial or motivating factor in the defendant’s conduct.” *O’Brien v. Welty*, 818  
27 F.3d 920, 932 (9th Cir. 2016) (citation omitted); *see also Blair v. Bethel Sch. Dist.*,  
28 608 F.3d 540, 543 (9th Cir. 2010) (listing the same three elements).

1 Plaintiffs’ First Amendment Retaliation claim is only asserted as to Plaintiff  
2 Shah and concerns Defendants’ alleged retaliation against him for engaging in  
3 protected activity. (Opp. at 29-32.) As a threshold matter, the parties do not  
4 sufficiently address whether Plaintiff Shah’s activity satisfies the first element of a  
5 “constitutionally protected activity.” *O’Brien v. Welty*, 818 F.3d at 932. Plaintiffs  
6 describe the activity as Plaintiff Shah’s “documenting his religious expression and  
7 thoughts, and asserting his rights to border officers.” (Opp. at 30.) Defendants state  
8 “assuming *arguendo* that Plaintiff Shah engaged in constitutionally protected activity,  
9 the complaint fails to allege either an ‘adverse action’ or a causal relationship between  
10 that activity and Defendants’ alleged actions.” (Mot. at 31.)

11 The court observes that constitutionally protected activity encompasses  
12 expression of views, other than categories of speech courts have held to be  
13 unprotected by the First Amendment. *See Chaplinsky v. State of New Hampshire*, 315  
14 U.S. 568, 571-72 (1942) (“There are certain well-defined and narrowly limited classes  
15 of speech, the prevention and punishment of which have never been thought to raise  
16 any Constitutional problem. These include the lewd and obscene, the profane, the  
17 libelous, and the insulting or ‘fighting’ words.”); *New York Times Co. v. Sullivan*, 376  
18 U.S. 254, 269 (1964) (“Like insurrection, contempt, advocacy of unlawful acts, breach  
19 of the peace, obscenity, solicitation of legal business, and the various other formulae  
20 for the repression of expression that have been challenged in this Court, libel can  
21 claim no talismanic immunity from constitutional limitations.”). *See also Obsidian*  
22 *Fin. Grp., LLC v. Cox*, 740 F.3d 1284, 1291 (9th Cir. 2014) (holding in the context of  
23 a First Amendment defamation claim that “[t]he protections of the First Amendment  
24 do not turn on whether the defendant was a trained journalist, formally affiliated with  
25 traditional news entities, engaged in conflict-of-interest disclosure, went beyond just  
26 assembling others’ writings, or tried to get both sides of a story.”).

27 Here, the court finds that Plaintiff Shah’s writing in a personal journal and  
28 verbal speech constitute expression of views. *See Kaplan v. California*, 413 U.S. 115,

1 119-20 (1973) (“As with pictures, films, paintings, drawings, and engravings, both  
2 oral utterance and the printed word have First Amendment protection until they  
3 collide with the long-settled position of this Court that obscenity is not protected by  
4 the Constitution.”); *ETW Corp. v. Jireh Pub., Inc.*, 332 F.3d 915, 924 (6th Cir. 2003)  
5 (“The protection of the First Amendment is not limited to written or spoken words,  
6 but includes other mediums of expression, including music, pictures, films,  
7 photographs, paintings, drawings, engravings, prints, and sculptures.”). Accordingly,  
8 the court finds that Plaintiffs have sufficiently alleged the first element of  
9 constitutionally protected activity regarding Plaintiff Shah’s writing in his journal and  
10 his verbal communications with border officers.

11 As for the second element, the court finds that Plaintiffs have not sufficiently  
12 alleged that Defendants’ actions would “chill a person of ordinary firmness from  
13 continuing to engage in the protected activity.” *O’Brien*, 818 F.3d at 932. The  
14 parties’ dispute regarding the second element focuses on whether Defendants’ actions  
15 constitute a “routine” search under the Fourth Amendment, such that it would not chill  
16 a person of ordinary firmness. (*See* Mot. at 31-32 (arguing that Plaintiff Shah’s border  
17 inspection was “routine” and that a two-hour inspection was not “atypical”); *Opp.* at  
18 30 (arguing that Defendants’ search of Plaintiff Shah’s journal was non-routine, but  
19 that even if the search were routine, “the duration and scope of the inspection were  
20 nonetheless retaliatory”).)

21 The test under the second element is “generic and objective.” *O’Brien*, 818  
22 F.3d at 933. “Whether [a plaintiff] himself was, or would have been, chilled is not the  
23 test.” *Id.* Accordingly, the court considers whether Plaintiff Shah’s allegations  
24 regarding his secondary inspection, questioning, and delay would “chill a person of  
25 ordinary firmness” from continuing to write in his journal and assert his constitutional  
26 rights, not whether Plaintiff Shah “was, or would have been chilled.” *Id.* Here,  
27 Plaintiff Shah alleges he was escorted to a secondary inspection area by two CBP  
28 officers who searched his belongings. (Compl. ¶¶ 111-15). The search included

1 review of Plaintiff Shah’s personal journal, phone, and laptop. (*Id.* ¶¶ 113-16, 123-  
2 26). Plaintiff Shah was then asked a series of questions about his religious beliefs,  
3 practices, and associations. (*Id.* ¶¶ 117-19, 127-29). The process of being escorted to  
4 secondary inspection, searched, and questioned by CBP officers took approximately  
5 two hours. (*Id.* ¶ 130.)

6 Based on the allegations of the Complaint as applied to the law regarding  
7 border searches, the court finds that Plaintiffs have not sufficiently alleged the second  
8 element—that a person of ordinary firmness would be chilled from continuing the  
9 protected activity. In *United States v. Cotterman*, the Ninth Circuit explained the  
10 contours of the scope of border searches:

11  
12 The broad contours of the scope of searches at our international borders  
13 are rooted in “the long-standing right of the sovereign to protect itself by  
14 stopping and examining persons and property crossing into this country.”  
15 *Ramsey*, 431 U.S. at 616, 97 S. Ct. 1972. Thus, border searches form “a  
16 narrow exception to the Fourth Amendment prohibition against  
17 warrantless searches without probable cause.” *Seljan*, 547 F.3d at 999  
18 (internal quotation marks and citation omitted). Because “[t]he  
19 Government’s interest in preventing the entry of unwanted persons and  
20 effects is at its zenith at the international border,” *United States v. Flores–*  
*Montano*, 541 U.S. 149, 152, 124 S. Ct. 1582, 158 L. Ed. 2d 311 (2004),  
border searches are generally deemed “reasonable simply by virtue of the  
fact that they occur at the border.” *Ramsey*, 431 U.S. at 616, 97 S. Ct. 1972.

21 This does not mean, however, that at the border “anything goes.” *Seljan*,  
22 547 F.3d at 1000. Even at the border, individual privacy rights are not  
23 abandoned but “[b]alanced against the sovereign’s interests.” *United*  
24 *States v. Montoya de Hernandez*, 473 U.S. 531, 539, 105 S. Ct. 3304, 87  
25 L. Ed. 2d 381 (1985). That balance “is qualitatively different . . . than in  
26 the interior” and is “struck much more favorably to the Government.” *Id.*  
27 at 538, 540, 105 S. Ct. 3304. Nonetheless, the touchstone of the Fourth  
28 Amendment analysis remains reasonableness. *Id.* at 538, 105 S. Ct. 3304.  
The reasonableness of a search or seizure depends on the totality of the  
circumstances, including the scope and duration of the deprivation.

709 F.3d 952, 960 (9th Cir. 2013).

1           The Ninth Circuit has repeatedly held in the context of Fourth Amendment  
2 challenges that initial border searches of electronic devices and personal documents  
3 such as letters are reasonable even without particularized suspicion. *See United States*  
4 *v. Seljan*, 547 F.3d 993, 1003 (9th Cir. 2008) (“An envelope containing personal  
5 correspondence is not uniquely protected from search at the border.”); *United States v.*  
6 *Abbouchi*, 502 F.3d 850, 856 (9th Cir. 2007) (“Customs officers at the Louisville UPS  
7 hub did not need reasonable suspicion to search the contents of [a] UPS package  
8 [containing immigration documents, handwritten notes, and an identification booklet]  
9 because the search took place at the functional equivalent of the border.”); *United*  
10 *States v. Tsai*, 282 F.3d 690, 696 (9th Cir. 2002) ([T]he INS looked briefly through  
11 [the traveler’s] briefcase and luggage. The scope of the search clearly placed it within  
12 our cases’ definition of a routine border search, requiring neither warrant nor  
13 individualized suspicion.”); *Cotterman*, 709 F.3d at 960 (“[T]he legitimacy of the  
14 initial search of [the traveler’s] electronic devices at the border is not in doubt.  
15 Officer Alvarado turned on the devices and opened and viewed image files while the  
16 [travelers] waited to enter the country.”); *United States v. Arnold*, 533 F.3d 1003,  
17 1009 (9th Cir. 2008) (holding that plaintiff “failed to distinguish how the search of his  
18 laptop and its electronic contents is logically any different from the suspicionless  
19 border searches of travelers’ luggage that the Supreme Court and we have allowed”  
20 where CBP officers “simply “had [plaintiff] boot [the laptop] up, and looked at what  
21 [plaintiff] had inside”).

22           Here, the court observes that the question is not whether Plaintiff Shah’s search  
23 and questioning violated the Fourth Amendment; instead, the question is whether a  
24 person of ordinary firmness would have been chilled from engaging in protected  
25 activity in violation of the First Amendment. But given Ninth Circuit and Supreme  
26 Court case law regarding what constitutes a routine border search, the court cannot say  
27 that Plaintiff Shah’s border search—involving a search of his personal journal, phone,  
28 and laptop, being asked a series of questions about his religious beliefs, practices, and

1 associations, and being in secondary inspection for approximately two hours (Compl.  
2 ¶¶ 108-30)—would chill a person of ordinary firmness. As discussed above, searches  
3 of personal documents and electronic devices are routine. *Cf. Cotterman*, 709 F.3d at  
4 966 (federal agents performed a “computer strip search” where “[a]fter their initial  
5 search at the border, customs agents made copies of the hard drives and performed  
6 forensic evaluations of the computers that took days to turn up contraband.”). The  
7 same is true for multi-hour delays at the border. *See Flores-Montano*, 541 U.S. at 155  
8 n.3 (“We think it clear that delays of one to two hours at international borders are to  
9 be expected.”). Further examination or questioning based on information uncovered  
10 in a search is also routine. *Cotterman*, 709 F.3d at 967 (“In practical terms . . . border  
11 officials will conduct further, forensic examinations where their suspicions are  
12 aroused by what they find or by other factors. Reasonable suspicion leaves ample  
13 room for agents to draw on their expertise and experience to pick up on subtle cues  
14 that criminal activity may be afoot.”); *United States v. Bravo*, 295 F.3d 1002, 1008  
15 (9th Cir. 2002) (“Detention and questioning during routine searches at the border are  
16 considered reasonable within the meaning of the Fourth Amendment.”). *See also*  
17 *Tabbaa*, 509 F.3d at 98-99 (“Plaintiffs complain that they were required to answer  
18 intrusive questions about their activities at [a religious] conference, the content of the  
19 lectures they attended, and their reasons for attending. But these questions are not  
20 materially different than the types of questions border officers typically ask  
21 prospective entrants in an effort to determine the places they have visited and the  
22 purpose and duration of their trip.”). Accordingly, the court finds that Plaintiffs have  
23 not sufficiently alleged that Defendants’ actions would chill a person of ordinary  
24 firmness from continuing to engage in the protected activity.

25 As for the third element of causation, the court also finds that Plaintiffs have not  
26 sufficiently alleged that the protected activity was a “substantial or motivating factor  
27 in the defendant’s conduct.” *O’Brien*, 818 F.3d at 932. “To prevail on such a claim, a  
28 plaintiff must establish a ‘causal connection’ between the government defendant’s

1 ‘retaliatory animus’ and the plaintiff’s ‘subsequent injury.’” *Nieves v. Bartlett*, 139 S.  
2 Ct. 1715, 1722 (2019) (citation omitted). “It is not enough to show that an official  
3 acted with a retaliatory motive and that the plaintiff was injured—the motive must  
4 cause the injury.” *Id.* The connection “must be a ‘but-for’ cause, meaning that the  
5 adverse action against the plaintiff would not have been taken absent the retaliatory  
6 motive.” *Id.* Here, Plaintiff Shah alleges that when he asked the CBP officer why the  
7 officer was asking these questions, the officer responded, “I’m asking because of what  
8 we found in your journal.” (*Id.* ¶ 118.) Although Plaintiffs argue that the CBP  
9 officer’s statement shows retaliatory animus (see Opp. at 31), the court finds that the  
10 allegations more plausibly suggest that the questions asked were follow-up questions  
11 from the routine search. *See Cotterman*, 709 F.3d at 967 (“In practical terms . . .  
12 border officials will conduct further, forensic examinations where their suspicions are  
13 aroused by what they find or by other factors.”). In other words, the allegations more  
14 plausibly allege that the questions resulted from *information* learned in the routine  
15 search rather than as retaliation for Plaintiff Shah maintaining a personal journal or  
16 speaking with border officers. Accordingly, the court finds that Plaintiffs have not  
17 sufficiently alleged that the protected activity was a substantial or motivating factor in  
18 Defendants’ conduct.

19 Accordingly, the court **GRANTS** the Motion as to Plaintiffs’ First Amendment  
20 Retaliation claim (Count 4).

#### 21 **F. Fifth Claim (Violation of the Fifth Amendment Due Process Right to** 22 **Equal Protection)**

23 The Due Process Clause of the Fifth Amendment provides that “[n]o person  
24 shall be . . . deprived of life, liberty, or property, without due process of law.” U.S.  
25 Const. amend. I. “But the concepts of equal protection and due process, both  
26 stemming from our American ideal of fairness, are not mutually exclusive.” *Bolling v.*  
27 *Sharpe*, 347 U.S. 497, 499 (1954). “This Court’s approach to Fifth Amendment equal  
28 protection claims has always been precisely the same as to equal protection claims

1 under the Fourteenth Amendment.” *Weinberger v. Wiesenfeld*, 420 U.S. 636, 638 n.2  
2 (1975). “The Equal Protection Clause of the Fourteenth Amendment commands that  
3 no State shall ‘deny to any person within its jurisdiction the equal protection of the  
4 laws,’ which is essentially a direction that all persons similarly situated should be  
5 treated alike.” *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439  
6 (1985) (quoting *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). “The Equal Protection  
7 Clause does not forbid classifications. It simply keeps governmental decisionmakers  
8 from treating differently persons who are in all relevant respects alike.” *Nordlinger v.*  
9 *Hahn*, 505 U.S. 1, 10 (1992). “To prevail on an Equal Protection claim, plaintiffs  
10 must show that a class that is similarly situated has been treated disparately.” *Ariz.*  
11 *Dream Act Coal. v. Brewer*, 855 F.3d 957, 966 (9th Cir. 2017) (citation omitted).

12 “The first step in equal protection analysis is to identify the state’s classification  
13 of groups.” *Country Classic Dairies, Inc. v. State of Mont., Dep’t of Com. Milk*  
14 *Control Bureau*, 847 F.2d 593, 596 (9th Cir. 1988). “The next step in equal protection  
15 analysis would be to determine the level of scrutiny.” *Id.* In *McLean v. Crabtree*, the  
16 Ninth Circuit explained the proper application of this two-step analysis:

17  
18 Analysis of an equal protection claim alleging an improper statutory  
19 classification involves two steps. Appellants must first show that the  
20 statute, either on its face or in the manner of its enforcement, results in  
21 members of a certain group being treated differently from other persons  
22 based on membership in that group . . . . Proof of discriminatory intent is  
23 required to show that state action having a disparate impact violates the  
24 Equal Protection Clause . . . . Second, if it is demonstrated that a  
25 cognizable class is treated differently, the court must analyze under the  
26 appropriate level of scrutiny whether the distinction made between the  
27 groups is justified.

28 173 F.3d 1176, 1185 (9th Cir. 1999).

Here, Plaintiffs allege Defendants’ written policies permit border officers to  
question all Americans about their religious beliefs, practices, and associations.

1 (Compl. ¶ 23.) Plaintiffs allege ICE requires officers who work at ports of entry to  
2 carry a sample questionnaire to guide their interrogations of travelers, which includes  
3 questions about a traveler’s religious beliefs, practices, and associations. (*Id.*)  
4 Plaintiffs further allege CBP has a policy that allows it to collect and maintain  
5 information about an individual’s religious beliefs, practices, and associations in  
6 numerous circumstances. (*Id.*) Moreover, Plaintiffs allege Defendants have a policy  
7 and/or practice of *intentionally* targeting selected Muslims (or individuals perceived to  
8 be Muslim) for religious questioning. (*Id.* ¶ 24.) Plaintiffs further allege travelers  
9 perceived as practicing faiths other than Islam are not routinely subjected to similarly  
10 intrusive questioning about their religious beliefs, practices, and associations. (*Id.*)  
11 According to Plaintiffs, the religious questioning of Muslims typically takes place in  
12 the context of “secondary inspection,” a procedure by which CBP detains, questions,  
13 and searches certain travelers before they are permitted to enter the country. (*Id.*  
14 ¶ 25.)

15 The court analyzes Plaintiffs’ Fifth Amendment Due Process claim under the  
16 same lens as a Fourteenth Amendment Equal Protection claim. *See Weinberger*, 420  
17 U.S. at 638 n.2. The first step is to “identify the state’s classification of groups.”  
18 *Country Classic Dairies*, 847 F.2d at 596. Here, Plaintiffs identify the government’s  
19 classification as being based on religion. (Compl. ¶ 24.) Under the first step of the  
20 analysis, religion is a suspect class. *See City of New Orleans v. Dukes*, 427 U.S. 297,  
21 303 (1976) (“Unless a classification trammels fundamental personal rights or is drawn  
22 upon inherently suspect distinctions such as race, religion, or alienage, our decisions  
23 presume the constitutionality of the statutory discriminations and require only that the  
24 classification challenged be rationally related to a legitimate state interest.”); *Al Saud*  
25 *v. Days*, 36 F.4th 949, 953 (9th Cir. 2022) (“Religion is a suspect class.”). The court  
26 finds that Plaintiffs have sufficiently alleged that they “as members of a certain group  
27 [are] being treated differently from other persons based on membership in that group.”  
28 *McLean*, 173 F.3d at 1185. Specifically, Plaintiffs allege that although border officers

1 are permitted to question all Americans about their religious beliefs, practices, and  
2 associations, Defendants are “targeting selected Muslims (or individuals perceived to  
3 be Muslim) for religious questioning.” (*See* Compl. ¶¶ 23-24.)

4 The court interprets Plaintiffs’ claims as challenging both alleged decisions: (1)  
5 Defendants’ decision to bring Plaintiffs into secondary inspection; and (2)  
6 Defendants’ decision to ask Plaintiffs religious questions during secondary inspection.  
7 (*Opp.* at 32-34.) However, the court finds that Plaintiffs have not sufficiently alleged  
8 a plausible factual basis for inferring that either experience—being pulled into  
9 secondary inspection or asked religious questions—were undertaken because of  
10 Plaintiffs’ religion. In other words, without this causal link, the court finds that  
11 Plaintiffs’ Equal Protection claim fails to plausibly allege a necessary element. *See*  
12 *McLean*, 173 F.3d at 1185 (“Appellants must first show that the statute, either on its  
13 face or in the manner of its enforcement, results in members of a certain group being  
14 treated differently from other persons based on membership in that group . . . . Proof  
15 of discriminatory intent is required to show that state action having a disparate impact  
16 violates the Equal Protection Clause.”). The court addresses the allegations regarding  
17 each Plaintiff below.

18 **a. Plaintiffs Kariye and Mouslli Have Not Sufficiently Alleged Equal**  
19 **Protection Claims**

20 The Complaint alleges that Plaintiffs Kariye and Mouslli only began  
21 experiencing issues with travel after they were placed on government watchlists. (*See*  
22 *id.* ¶¶ 58-59 (Plaintiff Kariye alleges he began experiencing issues consistent with  
23 placement on a government watchlist beginning in 2013), *id.* ¶ 95 (Plaintiff Mouslli  
24 alleges the same beginning in 2017). The Complaint further alleges all nine instances  
25 of religious questioning experienced by Plaintiffs Kariye and Mouslli post-date their  
26 alleged placement on government watchlists. (*See id.* ¶¶ 33-57 (first religious  
27 questioning incident of Plaintiff Kariye occurred in September 2017), ¶¶ 75-93 (first  
28 religious questioning incident of Plaintiff Mouslli occurred in August 2018.) The

1 Complaint also links Plaintiff Kariye and Mouslli’s placement on government  
2 watchlists to their experiences during international travel. (*See id.* ¶ 58 (“On  
3 information and belief, Imam Kariye has been placed on a U.S. government watchlist,  
4 and he will continue to be subject to detention, searches, and questioning, including  
5 religious questioning, each time he returns to the United States from international  
6 travel.”); *id.* ¶ 94 (“On information and belief, Mr. Mouslli has been placed on a U.S.  
7 government watchlist, and he will continue to be subject to detention, searches, and  
8 questioning, including religious questioning, each time he returns to the United States  
9 from international travel.”). Accordingly, based on the allegations of the Complaint,  
10 the court finds that Plaintiffs Kariye and Mouslli have not plausibly alleged that they  
11 experienced secondary inspection and religious questioning because of Defendants’  
12 discriminatory intent regarding their religion. To the contrary, the court finds that the  
13 facts as alleged raise the inference that Plaintiffs Kariye and Mouslli experienced  
14 secondary inspection and religious questioning because of their placement on  
15 government watchlists.

16 **b. Plaintiff Shah Has Not Sufficiently Alleged an Equal Protection**  
17 **Claim**

18 As for Plaintiff Shah, the Complaint alleges Plaintiff Shah is not on a  
19 government watchlist but still experienced a single instance of religious questioning in  
20 May 2019. (*Id.* ¶¶ 107-43.) The Complaint alleges Plaintiff Shah was returning from  
21 a trip to Serbia and Bosnia and that after passing through primary inspection “without  
22 incident,” an officer “stopped him in the baggage retrieval area and asked him to  
23 accompany him for a search.” (*Id.* ¶ 109.) After being escorted to secondary  
24 inspection, officers began to search Plaintiff Shah’s belongings. (*Id.* ¶ 111.) One of  
25 the officers reviewed a notebook that Plaintiff Shah had been carrying in his  
26 backpack, “a personal journal that Mr. Shah had kept for years.” (*Id.* ¶ 113.) The  
27 officer then “pointed out that many of the notes in Mr. Shah’s journal were related to  
28 religion,” “asked Mr. Shah why and where he had taken the notes and whether he had

1 traveled in the Middle East,” and told Plaintiff Shah that “they were trying to make  
2 sure Mr. Shah was a “safe person.” (*Id.* ¶ 114.) One of the officers then began asking  
3 Plaintiff “a series of questions about his religious beliefs, practices, and associations.”  
4 (*Id.* ¶ 117.) When Plaintiff Shah asked the officer why he was asking these questions,  
5 the officer responded, “I’m asking because of what we found in your journal.” (*Id.*  
6 ¶ 118.)

7 The court agrees with Plaintiffs that comparison to a different group is not  
8 necessary to assert an Equal Protection claim. (*See Opp.* at 33.) The Ninth Circuit  
9 has made this clear, holding that “Plaintiffs bringing disparate treatment claims, either  
10 under the Equal Protection Clause or under antidiscrimination statutes, may, as we  
11 have explained . . . point to comparators as circumstantial evidence of unlawful  
12 discriminatory intent” but that “a relevant comparator is not an element of a disparate  
13 treatment claim.” *Ballou v. McElvain*, 29 F.4th 413, 424 (9th Cir. 2022). *See also*  
14 *Pac. Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142, 1159 (9th Cir.  
15 2013) (“[R]equiring anti-discrimination plaintiffs to prove the existence of a better-  
16 treated entity would lead to unacceptable results.”).

17 Yet, the Ninth Circuit has also made clear that there must be sufficient factual  
18 allegations to support an inference of discrimination or discriminatory intent. “Mere  
19 indifference to the effects of a decision on a particular class does not give rise to an  
20 equal protection claim. . . and conclusory statements of bias do not carry the  
21 nonmoving party’s burden in opposition to a motion for summary judgment.”  
22 *Thornton v. City of St. Helens*, 425 F.3d 1158, 1167 (9th Cir. 2005). *See also*  
23 *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1026 (9th Cir. 1998) (“We  
24 have held that § 1983 claims based on Equal Protection violations must plead  
25 intentional unlawful discrimination or allege facts that are at least susceptible of an  
26 inference of discriminatory intent.”); *California Parents*, 973 F.3d at 1018 (affirming  
27 dismissal of Equal Protection claims where the complaint alleged that “the Standards  
28 and Framework discriminate against Hinduism by treating it less favorably than other

1 religions” but “[t]he allegations contain no reference to State Board policy, nor do the  
2 allegations describe any materials used in the classroom from which such a policy  
3 could be inferred.”); *Young v. John*, 2018 WL 4619483, at \*9 (C.D. Cal. Aug. 14,  
4 2018), report and recommendation adopted, 2018 WL 4616342 (C.D. Cal. Sept. 24,  
5 2018) (finding that Plaintiff did not sufficiently allege discrimination based on  
6 membership in a protected class where Plaintiff “allege[d] Defendant’s actions  
7 “stem[ ] from an obvious racist and prejudice, hate filled emotion towards Blacks and  
8 Muslims. . . but does not assert any facts to suggest that Defendant intentionally  
9 treated Plaintiff differently as compared to other similarly situated individuals.”);  
10 *Jimenez v. Ruelas*, 2007 WL 9723456, at \*5 (C.D. Cal. Mar. 31, 2007) (“Here,  
11 plaintiff’s conclusory statement that he was discriminated against because of his race,  
12 without providing any additional facts to support this statement, is insufficient to  
13 support an equal protection claim.”); *Davis v. John*, 485 F. Supp. 3d 1207, 1222 (C.D.  
14 Cal. 2020) (finding plaintiff adequately alleged discriminatory intent where the  
15 defendant, a prison official, allegedly “aggressively and angrily ordered the removal  
16 of the Nation of Islam symbol from a multi-denominational chapel and podium  
17 although members of other faiths were permitted to display their religion’s symbols in  
18 that location” and stated that “Black Muslims could not display their religious symbol  
19 because both the chapel and podium supposedly were reserved for Christians.”).

20 Here, the court finds that Plaintiff Shah has not plausibly alleged that he  
21 experienced secondary inspection and religious questioning because of Defendants’  
22 discriminatory intent regarding his religion. First, the court notes that the Complaint  
23 does not include sufficient allegations regarding why Plaintiff Shah was singled out  
24 for secondary inspection. As currently pled, the Complaint merely states that Plaintiff  
25 Shah passed through primary inspection but was asked in the baggage retrieval area to  
26 go to secondary inspection. (Compl. ¶ 109.) Second, the court notes that the  
27 Complaint alleges the officers involved only began asking questions about Plaintiff  
28 Shah’s religious practices after reviewing the contents of his personal journal. (*See id.*

¶¶ 113-18. The journal “include[d] expressions of his beliefs and devotion and other notes pertaining to his faith and religious practice.” (*Id.* ¶ 141). Yet, as discussed above, border officers are permitted to conduct further inspection based on information uncovered during a routine search. *See Cotterman*, 709 F.3d at 967 (“In practical terms . . . border officials will conduct further, forensic examinations where their suspicions are aroused by what they find or by other factors. Reasonable suspicion leaves ample room for agents to draw on their expertise and experience to pick up on subtle cues that criminal activity may be afoot.”); *Bravo*, 295 F.3d at 1008 (“Detention and questioning during routine searches at the border are considered reasonable within the meaning of the Fourth Amendment.”). Based on these facts, the court finds that the allegations regarding Plaintiff Shah do not sufficiently raise the inference that he was selected for secondary inspection or asked religious questions based on discriminatory intent regarding his religion. *See Iqbal*, 556 U.S. at 680 (a Complaint must “nudge . . . claims of invidious discrimination across the line from conceivable to plausible”) (citation and internal quotation marks omitted).

The court finds that Plaintiffs have not sufficiently alleged the first step of an equal protection claim—that there is discriminatory intent causing “members of a certain group [to be] treated differently from other persons based on membership in that group.” *McLean*, 173 F.3d at 1185. Accordingly, the court does not reach the second step of the analysis—whether “under the appropriate level of scrutiny . . . the distinction made between the groups is justified.” *Id.*

Accordingly, the court **GRANTS** the Motion as to Plaintiffs’ Fifth Amendment Due Process claim (Count 5).

### **G. Sixth Claim (Violation of the Religious Freedom Restoration Act)**

Under the Religious Freedom Restoration Act of 1993 (“RFRA”), 42 U.S.C. §§ 2000bb *et seq.*, the “[g]overnment shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).” 42 U.S.C. § 2000bb-1(a). Subsection (b)

1 provides that the “[g]overnment may substantially burden a person’s exercise of  
2 religion only if it demonstrates that application of the burden to the person—(1) is in  
3 furtherance of a compelling governmental interest; and (2) is the least restrictive  
4 means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-  
5 1(b).

6 “To establish a prima facie RFRA claim, a plaintiff must present evidence  
7 sufficient to allow a trier of fact rationally to find the existence of two elements. First,  
8 the activities the plaintiff claims are burdened by the government action must be an  
9 “exercise of religion.” *Navajo Nation*, 535 F.3d at 1068. “Second, the government  
10 action must ‘substantially burden’ the plaintiff’s exercise of religion. *Id.* “If the  
11 plaintiff cannot prove either element, his RFRA claim fails.” *Id.* “Conversely, should  
12 the plaintiff establish a substantial burden on his exercise of religion, the burden of  
13 persuasion shifts to the government to prove that the challenged government action is  
14 in furtherance of a ‘compelling governmental interest’ and is implemented by ‘the  
15 least restrictive means.’” *Id.* “If the government cannot so prove, the court must find  
16 a RFRA violation.”

17 As explained by the Ninth Circuit in *Navajo Nation*, the definition of  
18 “substantial burden” under RFRA is identical to the definitions adopted by the  
19 Supreme Court in *Sherbert* and *Yoder*:

20  
21 Under RFRA, a “substantial burden” is imposed only when individuals are  
22 forced to choose between following the tenets of their religion and  
23 receiving a governmental benefit (*Sherbert*) or coerced to act contrary to  
24 their religious beliefs by the threat of civil or criminal sanctions (*Yoder*).  
25 Any burden imposed on the exercise of religion short of that described by  
26 *Sherbert* and *Yoder* is not a “substantial burden” within the meaning of  
27 RFRA, and does not require the application of the compelling interest test  
28 set forth in those two cases.

*Id.* at 1069-70.

1 Thus, “the government must establish both a compelling interest and the least  
2 restrictive means to withstand a RFRA challenge.” *Id.* at 1076. “The additional  
3 statutory requirement of a least restrictive means is triggered only by a finding that a  
4 substantial burden exists; that is the sole and threshold issue in this case. Absent a  
5 substantial burden, the government need not establish a compelling interest, much less  
6 prove it has adopted the least restrictive means.” *Id.*

7 Unlike the Free Exercise Clause of the First Amendment, a challenged  
8 “exercise of religion” under RFRA includes “any exercise of religion, whether or not  
9 compelled by, or central to, a system of religious belief.” 42 U.S.C. § 2000bb–2(4);  
10 *id.* § 2000cc–5(7)(A). “RFRA’s amended definition of ‘exercise of religion’ merely  
11 expands the scope of what may not be substantially burdened from ‘central tenets’ of a  
12 religion to ‘any exercise of religion.’” *Navajo Nation*, 535 F.3d at 1077. This  
13 amended definition “does not change what level or kind of interference constitutes a  
14 ‘substantial burden’ upon such religious exercise.” *Id.*

15 **a. Plaintiffs Have Not Sufficiently Alleged a Substantial Burden**

16 Under *Navajo Nation*, “[t]o establish a prima facie RFRA claim, a plaintiff  
17 must present evidence sufficient to allow a trier of fact rationally to find the existence  
18 of two elements. First, the activities the plaintiff claims are burdened by the  
19 government action must be an “exercise of religion. . . Second, the government action  
20 must ‘substantially burden’ the plaintiff’s exercise of religion.” *Id.* at 1068. The court  
21 assumes—and the parties do not contest—that the activities at issue are an “exercise  
22 of religion.” *Id.* But for the same reasons as discussed above in the court’s analysis  
23 of Plaintiffs’ Free Exercise claim, the court is not persuaded that Plaintiffs have  
24 plausibly alleged that they were deprived of a government benefit under *Sherbert* or  
25 coerced to act contrary to their religious beliefs under *Yoder*. *Navajo Nation*, 535  
26 F.3d at 1070.

27 First, under *Sherbert*, Plaintiffs argue they were deprived of the benefit of being  
28 allowed to reenter the United States. (*See Opp.* at 20 (“The governmental benefit—or

1 in this case, right—that hangs in the balance each time Plaintiffs travel internationally  
2 is permission to reenter their own country”).) Assuming that permission to reenter the  
3 United States is a government benefit, the court finds the Complaint does not  
4 plausibly allege that Plaintiffs were deprived of such a benefit. To the contrary,  
5 although Plaintiffs experienced secondary inspection on ten occasions, the Complaint  
6 alleges Plaintiffs were allowed to reenter the United States on each such occasion,  
7 albeit after some delay. (*See generally*, Compl.) *See also Flores-Montano*, 541 U.S.  
8 at 155 n.3 (2004) (“We think it clear that delays of one to two hours at international  
9 borders are to be expected.”); *Haig*, 453 U.S. at 306 (“[T]he freedom to travel  
10 abroad . . . is subordinate to national security and foreign policy considerations; as  
11 such, it is subject to reasonable governmental regulation. The Court has made it plain  
12 that the *freedom* to travel outside the United States must be distinguished from the  
13 *right* to travel within the United States.”) (emphasis in original).

14 Second, under *Yoder*, Plaintiffs argue they are coerced because if they “do not  
15 reveal information about their religious beliefs and practices, they risk being subjected  
16 to further harassment and detention for an unknown period of time” and “border  
17 officers implicitly (and even explicitly) threaten Plaintiffs with sanctions for not  
18 complying.” (Opp. at 20.) The court observes that the coercion argued by Plaintiffs  
19 here appears to be pressure to “reveal information about their religious beliefs and  
20 practices.” (*Id.*) However, the Ninth Circuit has described the coercion contemplated  
21 by *Yoder* as an individual being “coerced to act contrary to their religious beliefs by  
22 the threat of civil or criminal sanctions.” *Navajo Nation*, 535 F.3d at 1075. Here, the  
23 Complaint does not sufficiently allege why revealing information about Plaintiffs’  
24 religious beliefs and practices is contrary to their religious beliefs. Nor does the  
25 Complaint sufficiently allege what civil or criminal sanctions were threatened by  
26 Defendants. (*See* Compl. ¶ 49 (Plaintiff Kariye alleges a CBP officer told him that if  
27 he did not cooperate, “CBP would make things harder for him.”).)  
28

1           Accordingly, the court finds that the Complaint does not plausibly allege  
2 Plaintiffs were deprived of the government benefit of reentering the United States or  
3 that by revealing information about their religious beliefs and practices, they were  
4 coerced to act contrary to their religious beliefs, such that Plaintiffs have not  
5 sufficiently alleged a substantial burden to sustain their RFRA claim.

6           **b. Plaintiffs Do Not Sufficiently Address Whether the Questioning is a**  
7           **Narrowly Tailored Means of Achieving a Compelling Government**  
8           **Interest**

9           Even if Plaintiffs had adequately alleged a substantial burden, Plaintiffs do not  
10 sufficiently address how Defendants’ questioning is not a narrowly tailored means of  
11 achieving a compelling government interest. (*See generally* Opp.) As discussed  
12 above, there is no dispute that the government has a compelling interest in protecting  
13 its borders and preventing acts of terrorism. *See Haig*, 453 U.S. at 307; *Humanitarian*  
14 *L. Project*, 561 U.S. at 28; *Flores-Montano*, 541 U.S. at 152 (2004); *Al Haramain*  
15 *Islamic Found.*, 686 F.3d at 980; *Tabbaa*, 509 F.3d at 103. Plaintiffs’ RFRA claim  
16 thus fails for the same reason as their Free Exercise claim—Plaintiffs do not  
17 sufficiently address why, even if the religious questioning were to constitute a  
18 substantial burden, that burden is not a narrowly tailored means of achieving the  
19 government’s interest in protecting its borders and preventing acts of terrorism. (*See*  
20 *generally* Opp.) Accordingly, the court finds that even if Plaintiffs had sufficiently  
21 alleged a substantial burden, they have not sufficiently alleged why the questioning at  
22 issue here is not the least restrictive means of advancing a compelling government  
23 interest.

24           Accordingly, the court **GRANTS** the Motion as to Plaintiffs’ RFRA claim  
25 (Count 6).

26 ///

27 ///

28 ///

1 **IV. DISPOSITION**

2 For the reasons set forth above, Defendants’ Motion is **GRANTED**. Plaintiffs’  
3 claims are **DISMISSED WITHOUT PREJUDICE AND WITH LEAVE TO**  
4 **AMEND**. Should Plaintiffs desire to file an Amended Complaint that addresses the  
5 issues in this ruling, Plaintiffs must file and serve it within **thirty (30)** days of service  
6 of notice of ruling.

7  
8 **IT IS SO ORDERED.**

9  
10  
11 DATED: October 12, 2022

  
\_\_\_\_\_  
Hon. Fred W. Slaughter  
UNITED STATES DISTRICT JUDGE

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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; MARK MORGAN,  
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,  
28 Acting Executive Associate Director,  
Homeland Security Investigations, in  
his official capacity,

*Defendants.*

**COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF**

No. 2:22-CV-01916

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21  
22  
23  
24  
25  
26  
27  
28  
*\*Motion for pro hac vice admission to be filed*

1 INTRODUCTION

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

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

23 3. This practice also violates the Religious Freedom Restoration Act  
24 (“RFRA”), 42 U.S.C. § 2000bb *et seq.* It imposes substantial pressure on Plaintiffs  
25 to modify or abandon certain religious practices and expression while traveling,  
26 contrary to their religious beliefs, in an effort to avoid calling further attention to  
27 their Muslim faith and incurring additional intrusive questioning.

28 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 Chris Magnus is the Commissioner of CBP. He has authority  
8 over all CBP policies and practices, including those challenged in this lawsuit.  
9 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. On information and belief, CRCL never resumed its investigation or  
22 issued findings about whether border questioning about religious beliefs and  
23 practices complies with federal law.

24 22. Religious questioning of Muslim Americans at ports of entry continues  
25 today, as Plaintiffs’ experiences demonstrate.

26 23. Far from prohibiting this unconstitutional and unlawful conduct,  
27 Defendants’ written policies permit border officers to question Americans about  
28 their religious beliefs, practices, and associations. For example, ICE requires its

1 officers who work at ports of entry to carry with them a sample questionnaire to  
2 guide their interrogations of travelers, which includes intrusive questions about a  
3 traveler’s religious beliefs, practices, and associations. CBP has a policy that allows  
4 it to collect and maintain information about an individual’s religious beliefs,  
5 practices, and associations in numerous circumstances. On information and belief,  
6 CBP views the collection and retention of Plaintiffs’ responses to the religious  
7 questioning described herein as authorized by its policy.

8       24. But Defendants’ border officers do not direct these intrusive questions  
9 to all travelers. Rather, Defendants have a policy and/or practice of intentionally  
10 targeting selected Muslims (or individuals perceived to be Muslim) for religious  
11 questioning. While Defendants’ border officers routinely and intentionally single out  
12 Muslim Americans to demand answers to religious questions, travelers perceived as  
13 practicing faiths other than Islam are not routinely subjected to similarly intrusive  
14 questioning about their religious beliefs, practices, and associations.

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

18       26. The secondary inspection environment is inherently coercive:

- 19       a. Border officers carry weapons, typically identify themselves as  
20 border officers or wear government uniforms, and command  
21 travelers to enter and remain in the secondary inspection areas.
- 22       b. Travelers are not free to leave those areas until officers give them  
23 permission.
- 24       c. Secondary inspection areas are separated from the public areas of  
25 airports or other ports of entry.
- 26       d. During the secondary inspection process, border officers typically  
27 take possession of travelers’ passports and routinely conduct  
28 physical searches and/or searches of travelers’ belongings, including

1           their electronic devices. Border officers use the coercive nature of  
2           the secondary inspection environment to compel Muslim American  
3           travelers to answer intrusive questions about their religious beliefs,  
4           practices, and associations.

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

9           28. CBP officers are required to create a record of every secondary  
10          inspection at an airport or land crossing. As part of this record, they routinely  
11          document travelers' responses to questions asked during secondary inspections,  
12          including Muslim Americans' coerced responses to questions about their religious  
13          beliefs, practices, and associations. When HSI agents are involved in or otherwise  
14          present during secondary inspection, they also routinely create and maintain records  
15          of the secondary inspection, including Muslim Americans' coerced responses to  
16          questions about their religious beliefs, practices, and associations.

17          29. Border officers input the records of secondary inspections into DHS  
18          databases, including a DHS database called TECS, which is the updated and  
19          modified version of the former Treasury Enforcement Communications System.  
20          TECS functions as a repository for the sharing of information among tens of  
21          thousands of federal, state, local, tribal, and foreign law enforcement,  
22          counterterrorism, and border security agencies.

- 23               a. TECS users include personnel from CBP, ICE, the Federal Bureau  
24               of Investigation, Department of Defense, Transportation Security  
25               Administration, U.S. Citizenship and Immigration Services, U.S.  
26               Drug Enforcement Administration, and Department of State.
- 27               b. TECS data is also accessible to officers from over 45,000 state and  
28               local police departments.

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

2 30. Being Muslim and practicing Islam are protected religious belief and  
3 activity. Religious belief and practice do not indicate that an individual has or is  
4 engaged in any immigration or customs-related crime within CBP’s enforcement  
5 mandate. Nor does being Muslim or practicing Islam indicate that an individual has  
6 or is engaged in any other unlawful activity. Accordingly, Muslim travelers’  
7 personal religious information is not germane to any legitimate purpose that  
8 Defendants may assert.

9 **RELIGIOUS QUESTIONING OF PLAINTIFFS BY**  
10 **DEFENDANTS’ BORDER OFFICERS**

11 **Abdirahman Aden Kariye**

12 31. Imam Abdirahman Aden Kariye is a U.S. citizen and an imam at a  
13 mosque in Bloomington, Minnesota. He is a prominent member of the local Muslim  
14 and interfaith communities, as well as an active participant in civic life and charitable  
15 endeavors.

16 32. CBP officers have questioned Imam Kariye about his Muslim faith on  
17 at least five occasions. On each occasion, the environment was coercive: CBP  
18 officers wearing uniforms and carrying weapons commanded Imam Kariye to enter  
19 and remain in an area separated from other travelers, usually a windowless room.  
20 They took Imam Kariye’s belongings from him, searched his electronic devices, and  
21 questioned him at length.

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

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

26 34. Upon his arrival at the Seattle-Tacoma International Airport, Imam  
27 Kariye was detained for secondary inspection by CBP in a small, windowless room.  
28



1           41. A CBP officer took notes during Imam Kariye’s detention, including  
2 while Imam Kariye responded to CBP’s questions about his religious beliefs,  
3 practices, and associations.

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

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

12           43. During the detention, the CBP officer questioned Imam Kariye about  
13 his religious associations. In particular, the officer questioned Imam Kariye about a  
14 youth sports league that he helped to run. Although Imam Kariye had not informed  
15 the officer that he was Muslim, the officer asked whether the sports league was “for  
16 black and white kids, or is it just for Muslim kids?” Imam Kariye understood the  
17 question as an acknowledgment of his Islamic faith and an attempt to ascertain what  
18 kinds of religious activities he participated in.

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

22           45. The CBP officer took notes during Imam Kariye’s detention, including  
23 while Imam Kariye responded to CBP’s questioning about his religious beliefs and  
24 associations.

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

26           46. On August 16, 2020, CBP officers again subjected Imam Kariye to  
27 religious questioning during secondary inspection at the Seattle-Tacoma  
28 International Airport. Imam Kariye was returning to the United States from a

1 vacation with a friend. He had traveled from Turkey to Seattle, Washington, via the  
2 Netherlands. CBP officers had photographs of Imam Kariye that they used to  
3 identify him when he came off the jet bridge. Multiple CBP officers detained him  
4 for several hours in a small, windowless room. To the best of Imam Kariye’s  
5 recollection, one of the officers, a supervisor, was named “Abdullah Shafaz” or  
6 something close to it.

7 47. During the detention, CBP officers questioned Imam Kariye about his  
8 religious beliefs, practices, and associations. These questions included:

- 9 a. What type of Muslim are you?
- 10 b. Are you Sunni or Shi’a?
- 11 c. Are you Salafi or Sufi?
- 12 d. What type of Islamic lectures do you give?
- 13 e. Where did you study Islam?
- 14 f. How is knowledge transmitted in Islam?
- 15 g. Do you listen to music?
- 16 h. What kind of music do you listen do?
- 17 i. What are your views on Ibn Taymiyyah?

18 48. Imam Kariye understood the questions regarding music (religious  
19 opinions about which can vary among Muslims) and his views on Ibn Taymiyyah, a  
20 medieval Muslim scholar, as designed to elicit information about the nature and  
21 strength of his religious beliefs and practices.

22 49. During the detention, a CBP officer threatened Imam Kariye multiple  
23 times with retaliation. The officer said that, if Imam Kariye did not cooperate, CBP  
24 would make things harder for him. The officer also said that Imam Kariye was  
25 welcome to challenge the legality of the detention, but if he did so publicly or went  
26 to the media, CBP would make things harder for him during his future travels.

27 50. Imam Kariye answered the CBP officers’ questions because he was not  
28 free to leave without the permission of a CBP officer and reasonably felt that he had

1 no choice but to answer, based on the coercive circumstances of his detention.

2 51. A CBP officer took notes during Imam Kariye’s detention, including  
3 while Imam Kariye responded to CBP’s questions about his religious beliefs,  
4 practices, and associations.

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

11 ***Fifth Religious Questioning Incident: January 1, 2022***

12 53. On January 1, 2022, a plainclothes CBP officer subjected Imam Kariye  
13 to religious questioning during secondary inspection at the Minneapolis-Saint Paul  
14 Airport. Imam Kariye was returning to the United States from a trip to Somalia,  
15 Kenya, and the United Arab Emirates, where he had traveled for vacation and to visit  
16 family. The officer detained Imam Kariye for approximately an hour and a half.

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

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

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

27 57. During each of these five religious questioning incidents, Imam  
28 Kariye’s travel and identification documents were valid, and he was not transporting

1 contraband.

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

3 58. On information and belief, Imam Kariye has been placed on a 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.

7 59. For years, Imam Kariye has experienced travel issues consistent with  
8 placement on a U.S. government watchlist. Frequently between 2013 and 2019, and  
9 persistently from 2020 to the present, Imam Kariye has been unable to print his  
10 boarding passes for domestic or international flights from the internet or self-service  
11 kiosks at the airport, and airline agents must receive clearance from a supervisor or  
12 government agency before providing Imam Kariye with his boarding pass. That  
13 process typically takes approximately an hour and has taken up to two hours.  
14 Whenever Imam Kariye takes a domestic or international flight, his boarding pass is  
15 marked with “SSSS,” which indicates “Secondary Security Screening Selection,”  
16 and he is subject to additional screening. Placement on a watchlist consistently  
17 results in a traveler’s boarding pass being stamped with “SSSS.”

18 60. Whenever Imam Kariye returns to the United States following  
19 international travel, whether by plane or by car, he is subject to secondary inspection.  
20 Whenever Imam Kariye returns to a U.S. airport following international travel, CBP  
21 officers are either waiting for him at the arrival gate or meet him at primary  
22 inspection. The officers then escort Imam Kariye to a secondary inspection area,  
23 where CBP officers detain and question him. Imam Kariye does not know why the  
24 U.S. government has placed him on a watchlist.

25 61. Imam Kariye travels internationally frequently for leisure and to visit  
26 family abroad, including his father and other family who live in East Africa. He has  
27 also traveled internationally for religious pilgrimages. He intends to continue to  
28 travel internationally in the near future. When he does so, upon his return home to

1 the United States, he is at substantial risk of again being questioned by CBP officers  
2 about his religious beliefs, practices, and associations.

3 ***CBP's religious questioning causes Imam Kariye significant distress.***

4 62. CBP officers ask Imam Kariye intrusive and personal questions about  
5 his religious beliefs, practices, and associations because he is a Muslim.

6 63. Religious questioning by CBP harms Imam Kariye and impedes his  
7 religious practice.

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

13 65. CBP's invasive questions regarding Imam Kariye'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 Imam Kariye 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, Imam Kariye feels  
23 marginalized and like an outsider when coming home to his own country.

24 66. CBP's religious questioning also imposes substantial pressure on Imam  
25 Kariye to modify or curb his religious expression and practices, contrary to his  
26 sincere religious beliefs. In particular, when traveling back to the United States from  
27 abroad, Imam Kariye modifies or eliminates certain religious practices 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, Imam  
2 Kariye cannot fully practice and express his faith in the way that he otherwise would  
3 while traveling.

4 67. For example, CBP’s religious questioning imposes substantial pressure  
5 on Imam Kariye to modify his religious dress while traveling back to the United  
6 States. Imam Kariye typically wears a Muslim cap, known as a kufi, when he is in  
7 public. Wearing a kufi is a common religious practice for many Muslim men. For  
8 Imam Kariye, the kufi represents his Muslim identity. It emulates the dress of the  
9 Prophet Mohammad, and it signifies love and reverence for him.

10 68. Despite his sincerely held religious belief that he should wear his kufi  
11 in public, Imam Kariye no longer wears his kufi at the airport or the border when  
12 returning home to the United States from abroad, in order to avoid additional CBP  
13 scrutiny and religious questioning.

14 69. CBP’s religious questioning also imposes substantial pressure on Imam  
15 Kariye to modify his prayer practice while traveling back into the United States. As  
16 a Muslim, Imam Kariye believes that he must pray at five specific times each day.  
17 This prayer practice involves kneeling on the ground in a particular direction (toward  
18 Mecca), bowing, and placing his forehead to the ground in prayer. However, to avoid  
19 additional CBP scrutiny and religious questioning, Imam Kariye typically refrains  
20 from these physical acts of prayer at the airport and the border, even though he would  
21 ordinarily pray in this manner during the religiously designated prayer times.

22 70. CBP’s religious questioning also imposes substantial pressure on Imam  
23 Kariye to avoid carrying religious texts while traveling back into the United States.  
24 As a Muslim and an imam, Imam Kariye’s religious duties require him to study a  
25 variety of religious texts, such as the Quran, commentaries on the Quran, and Islamic  
26 jurisprudence in matters relating to family law and the rules pertaining to charity.  
27 However, to avoid additional CBP scrutiny and religious questioning, Imam Kariye  
28 no longer carries physical copies of these texts with him when he travels home to

1 the United States from abroad, hindering his ability to study these texts while  
2 traveling.

3 71. Imam Kariye is proud to be a Muslim. His sincere religious beliefs  
4 counsel him to wear a kufi in public, pray in a particular manner, and study various  
5 religious texts. It causes him distress to forgo wearing his kufi, modify his prayer  
6 practice, and avoid carrying religious texts as he travels. Nevertheless, because of  
7 CBP's practice of subjecting him to intrusive questions about his faith, he takes these  
8 protective measures when traveling back into the United States to avoid calling  
9 attention to his religion and incurring additional scrutiny and religious questioning  
10 by CBP.

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

19 **Mohamad Mouslli**

20 73. Plaintiff Mohamad Mouslli is a U.S. citizen who is Muslim. He lives in  
21 Gilbert, Arizona, with his wife and three children, all U.S. citizens. Mr. Mouslli  
22 works in commercial real estate.

23 74. On the last four occasions that Mr. Mouslli has traveled internationally,  
24 CBP officers have subjected him to religious questioning upon his return home to  
25 the United States. On each occasion, the environment was coercive: CBP officers  
26 wearing uniforms and carrying weapons commanded Mr. Mouslli to enter and  
27 remain in an area separated from other travelers. They took Mr. Mouslli's belongings  
28 from him, searched his electronic devices, and questioned him at length.

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

75. 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.

76. 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.

77. 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.

78. 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.

79. 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 19, 2019***

80. On or about August 19, 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.

81. 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           82. 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           83. 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           84. 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           85. 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           86. 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           87. 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           88. 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           89. 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 90. 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 91. 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 92. 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 93. 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 ***CBP's religious questioning of Mr. Mouslli is substantially likely to recur***  
18 ***and causes him significant distress.***

19 94. On information and belief, Mr. Mouslli has been placed on a U.S.  
20 government watchlist, and he will continue to be subject to detention, searches, and  
21 questioning, including religious questioning, each time he returns to the United  
22 States from international travel.

23 95. In late 2017, Mr. Mouslli began experiencing travel issues consistent  
24 with placement on a U.S. government watchlist. Since 2017, Mr. Mouslli has been  
25 unable to print his boarding passes for domestic or international flights from the  
26 internet or self-service kiosks at the airport, and airline agents must receive clearance  
27 from a supervisor or government agency before providing Mr. Mouslli with his  
28 boarding pass. Whenever Mr. Mouslli takes a domestic or international flight, his

1 boarding pass is marked with “SSSS,” and he is subject to additional screening.  
2 Whenever Mr. Mouslli returns to the United States following international travel,  
3 whether by plane or by car, he is subject to secondary inspection. Whenever Mr.  
4 Mouslli returns to a U.S. airport following international travel, CBP officers are  
5 waiting for him at the arrival gate. The officers then escort Mr. Mouslli to a  
6 secondary inspection area, where CBP officers detain and question Mr. Mouslli. Mr.  
7 Mouslli does not know why the U.S. government has placed him on a watchlist.

8 96. Mr. Mouslli considered taking a trip with his son to Dubai in February  
9 2022 to visit his family. However, he decided that this particular trip would not be  
10 worth the difficulty, discomfort, and stigma of CBP scrutiny in secondary inspection,  
11 including CBP’s religious questioning.

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

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

19 99. CBP officers ask Mr. Mouslli intrusive questions about his religious  
20 beliefs, practices, and associations because he is a Muslim.

21 100. Religious questioning by CBP harms Mr. Mouslli and impedes his  
22 religious practice.

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

28 102. CBP’s invasive questions regarding Mr. Mouslli’s religious beliefs,

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

11 103. CBP’s religious questioning also imposes substantial pressure on Mr.  
12 Mouslli to modify his religious expression and practices, contrary to his sincere  
13 religious beliefs. In particular, when traveling back to the United States from abroad,  
14 Mr. Mouslli eliminates certain religious practices and expression to avoid calling  
15 attention to his faith and incurring additional scrutiny and religious questioning by  
16 CBP. Because of CBP’s scrutiny and religious questioning, Mr. Mouslli cannot fully  
17 practice and express his faith in the way that he otherwise would while traveling.

18 104. For example, CBP’s religious questioning imposes substantial pressure  
19 on Mr. Mouslli to modify his prayer practice while traveling back into the United  
20 States. As a Muslim, Mr. Mouslli believes he must pray at five specific times each  
21 day. This prayer practice involves kneeling on the ground in a particular direction  
22 (toward Mecca), bowing, and placing his forehead to the ground in prayer. However,  
23 to avoid additional CBP scrutiny and religious questioning, Mr. Mouslli refrains  
24 from these physical acts of prayer at the airport and the border, even though he would  
25 ordinarily pray in this manner during the religiously designated prayer times.

26 105. Mr. Mouslli is proud to be a Muslim. His sincere religious beliefs  
27 counsel him to pray in a particular way. It causes him distress to forgo physical acts  
28 of prayer at the airport and in secondary inspection. Nevertheless, because of CBP’s

1 practice of subjecting him to intrusive questions about his faith, he takes these  
2 protective measures when traveling back into the United States to avoid calling  
3 attention to his religion and incurring additional scrutiny and religious questioning  
4 by CBP.

5 106. Religious questioning by CBP has made and continues to make Mr.  
6 Mouslli feel anxious and distressed, particularly because of the invasive and personal  
7 nature of religious questioning and the stigma of being targeted because he is  
8 Muslim.

9 **Hameem Shah**

10 107. Plaintiff Hameem Shah is a U.S. citizen and Muslim who works in  
11 financial services. Mr. Shah lives in Plano, Texas.

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

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

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

21 111. Officer 1 escorted Mr. Shah to a secondary inspection area. There,  
22 Officer 1 and a second officer (“Officer 2”) began to search Mr. Shah’s belongings.  
23 To the best of Mr. Shah’s recollection, Officer 2’s last name was “Gonzalez” or  
24 something close to it.

25 112. The environment was coercive: both officers were wearing uniforms  
26 and carrying weapons, and they commanded Mr. Shah to enter and remain in an area  
27 separated from travelers who were not subject to secondary inspection.

28 113. Officer 2 reviewed a notebook that Mr. Shah had been carrying in his

1 backpack—a personal journal that Mr. Shah had kept for years. Mr. Shah told  
2 Officer 2 that the notebook was a personal journal and asked him not to read it, but  
3 Officer 2 persisted.

4 114. Officer 2 pointed out that many of the notes in Mr. Shah’s journal were  
5 related to religion. He asked Mr. Shah why and where he had taken the notes and  
6 whether he had traveled in the Middle East. Officer 1 told Mr. Shah that they were  
7 trying to make sure Mr. Shah was a “safe person.”

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

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

15 117. While he and Mr. Shah were alone, Officer 2 asked Mr. Shah a series  
16 of questions about his religious beliefs, practices, and associations. The officer’s  
17 questions included the following:

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

23 118. When Mr. Shah asked Officer 2 why he was asking these questions, the  
24 officer responded, “I’m asking because of what we found in your journal.”

25 119. Mr. Shah answered Officer 2’s questions because he was not free to  
26 leave without the permission of a CBP officer and reasonably felt that he had no  
27 choice but to answer, based on the coercive circumstances of his detention.

28 120. Later, Officer 1 returned with the supervisor. To the best of Mr. Shah’s

1 recollection, the supervisor’s last name was “Lambrano,” or something close to it.  
2 Mr. Shah told the supervisor that he did not consent to a search of his electronic  
3 devices. Mr. Shah stated that he wanted to stand up for his constitutional rights.

4 121. The supervisor informed Mr. Shah that his reluctance to allow  
5 inspection of his devices had made the officers more suspicious of him.

6 122. Mr. Shah asked to speak with an attorney immediately. Officer 1  
7 responded by asking, “Why? You’re not under arrest.”

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

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

20 125. Officer 1 told Mr. Shah he needed to continue looking through Mr.  
21 Shah’s journal using a computer, and he left the secondary inspection area with the  
22 journal.

23 126. Mr. Shah again objected to the search of his phone and his journal.

24 127. About twenty to thirty minutes after Officer 1 had left, he returned with  
25 Mr. Shah’s journal; he was accompanied by an officer or agent in plain clothes  
26 (“Officer 3”). To the best of Mr. Shah’s recollection, Officer 3’s name was “Ali,” or  
27 something close to it. On information and belief, Officer 3 was an HSI agent.

28 128. Officer 3 asked Mr. Shah about aspects of his religious associations that

1 Mr. Shah had recorded in his personal journal. Specifically, Officer 3 asked Mr.  
2 Shah about the identity of a local imam in the Phoenix area.

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

7 130. Approximately two hours after he was taken to secondary inspection,  
8 the officers returned Mr. Shah’s passport and allowed him to leave.

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

17 132. The fact that Officer 2 viewed this content, particularly photos of Mr.  
18 Shah’s family members, made Mr. Shah feel extremely distressed and  
19 uncomfortable.

20 133. Mr. Shah’s travel and identification documents were valid, and he was  
21 not transporting contraband.

22 134. In response to requests under the Freedom of Information Act and the  
23 Privacy Act, CBP has provided Mr. Shah with a redacted document stating that his  
24 detention and questioning was “Terrorist Related.” This document is labeled “IOIL,”  
25 which is a type of incident report entered into TECS. The document includes the  
26 following description:

27 During examination of his belongings, subject was very  
28 cautious and focused on his journal that was found in

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his hand carry. Subject demanded for us not to read his journal because he felt that it was an invasion of his privacy. [Redacted] Upon reading the journal, some notes regarding his work and religion were found. Subject stated he’s self-employed working as a financial trader. Subject didn’t want to elaborate on the type of work he does but just mentioned that he is able to work remotely. Subject’s notes regarding his religion (Islam) seemed to be passages from an individual he calls [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.

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

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

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

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

138. Religious questioning by CBP and HSI harms Mr. Shah and impedes his religious practice.

1           139. Defendants maintain records pertaining to Mr. Shah’s religious beliefs,  
2 practices, and associations, as a result of border officers’ questioning of Mr. Shah  
3 about these topics. In addition, on information and belief, Defendants maintain  
4 copies of the contents of his journal and phone, collected in retaliation for the  
5 religious contents of the journal and his invocation of his rights. Defendants’  
6 unlawful retention of such information in government systems causes Mr. Shah  
7 ongoing, irreparable distress and harm for which he has no adequate remedy at law.

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

19           141. CBP’s and HSI’s religious questioning of Mr. Shah also imposes  
20 substantial pressure on him to modify his religious practices, contrary to his sincere  
21 religious beliefs. As part of his religious practice, Mr. Shah regularly writes in a  
22 personal journal. These writings include expressions of his beliefs and devotion and  
23 other notes pertaining to his faith and religious practice. Mr. Shah’s journal is a vital  
24 outlet for his religious expression. In meditating on religious questions or issues, he  
25 often revisits his previous entries and draws on them for spiritual inspiration.  
26 However, the next time Mr. Shah travels internationally, he intends to leave his  
27 journal at home to avoid having it become a basis for Defendants’ practice of  
28 targeting Muslims for religious questioning. As a result, he will be unable to

1 document his religious expression and thoughts or consult previous entries while he  
2 is out of the country.

3 142. Mr. Shah is proud to be a Muslim, and the prospect of leaving his  
4 journal at home when traveling internationally is distressing to him. Nevertheless,  
5 he intends to take this protective measure to avoid incurring additional religious  
6 questioning and retaliatory scrutiny by CBP and HSI.

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

12 **CAUSES OF ACTION**

13 **CLAIM I**

14 **Violation of the First Amendment**

15 **Establishment Clause**

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

17 144. Plaintiffs herein incorporate by reference the allegations above.

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

23 146. Defendants’ border officers have subjected Plaintiffs to religious  
24 questioning on at least ten separate occasions, and Defendants retain Plaintiffs’  
25 responses to such questioning.

26 147. Defendants engage in a policy and/or practice of singling out and  
27 targeting Muslims, including Plaintiffs, for religious questioning during secondary  
28 inspections because of their adherence to Islam. As part of this policy and/or practice

1 of religious questioning, Defendants retain records that reflect answers to religious  
2 questions and thus contain information about the religious beliefs, practices, and  
3 associations of Muslims, including Plaintiffs.

4 148. Defendants’ conduct, as set forth above, violates the fundamental  
5 principle of denominational neutrality by targeting Muslims for religious  
6 questioning during secondary inspections. Americans who practice other faiths are  
7 not routinely subject to similar questioning about their beliefs and practices during  
8 secondary inspections.

9 149. Defendants’ conduct, as set forth above, does not further any  
10 compelling government interest and is not narrowly tailored to achieve any such  
11 interest.

12 150. Defendants’ conduct, as set forth above, also does not have a  
13 predominantly secular purpose. Rather, it has the predominant purpose and effect of  
14 inhibiting and conveying hostility toward Islam and its adherents, including  
15 Plaintiffs. It also fosters excessive government entanglement with religion.

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

19 152. Alternatively, even if Defendants do not engage in a policy and/or  
20 practice of singling out Muslims in particular for religious questioning, Defendants’  
21 border officers nevertheless subject Plaintiffs to intrusive religious questioning;  
22 Defendants retain records reflecting answers to such questioning; and Defendants  
23 have a policy and/or practice of subjecting travelers to religious questioning during  
24 secondary inspections. This policy and/or practice does not have a predominantly  
25 secular purpose. Its predominant purpose and effect are to inhibit and convey  
26 hostility toward religion by subjecting travelers to intrusive and personal questioning  
27 about their religious beliefs. It also fosters excessive government entanglement with  
28 religion. Moreover, subjecting travelers of any faith to religious questioning during

1 secondary inspection is religiously coercive because it places substantial pressure on  
2 people of faith, including Plaintiffs, to hide, suppress, or otherwise alter their faith  
3 and religious practice.

4 153. As a result, Defendants have violated the Establishment Clause of the  
5 First Amendment to the U.S. Constitution and will continue to do so if Plaintiffs are  
6 not afforded the relief below.

7 **CLAIM II**

8 **Violation of the First Amendment**

9 **Free Exercise Clause**

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

11 154. Plaintiffs herein incorporate by reference the allegations above.

12 155. The Free Exercise Clause “protect[s] religious observers against  
13 unequal treatment” and “guard[s] against the government’s imposition of “special  
14 disabilities on the basis of religious views or religious status.” *Trinity Lutheran*  
15 *Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019, 2021 (2017) (internal  
16 quotation marks and citations omitted). Government actions that treat individuals  
17 unequally based on their religious status are subject to the “strictest scrutiny.” *Id.* at  
18 2019.

19 156. Defendants’ border officers have subjected Plaintiffs to religious  
20 questioning on at least ten separate occasions, and Defendants retain Plaintiffs’  
21 responses to such questioning.

22 157. Defendants engage in a policy and/or practice of singling out and  
23 targeting Muslims, including Plaintiffs, for religious questioning during secondary  
24 inspections because of their adherence to Islam. As part of this policy and/or practice  
25 of religious questioning, Defendants retain records that reflect answers to religious  
26 questions and thus contain information about the religious beliefs, practices, and  
27 associations of Muslims, including Plaintiffs.

28 158. Defendants’ conduct, as set forth above, is not religiously neutral or

1 generally applicable. It treats Muslims unequally vis-à-vis travelers of other faiths  
2 and, based on their religious status, imposes on Muslims special disabilities while  
3 traveling.

4 159. Defendants’ conduct, as set forth above, does not advance any  
5 compelling government interest and is not narrowly tailored to achieve any such  
6 interest.

7 160. Alternatively, even if Defendants do not engage in a policy and/or  
8 practice of singling out Muslims in particular for religious questioning, Defendants’  
9 border officers nevertheless subject Plaintiffs to intrusive religious questioning;  
10 Defendants retain records reflecting answers to such questioning; and Defendants  
11 have a policy and/or practice of subjecting travelers to religious questioning during  
12 secondary inspections. This policy and/or practice targets people of faith based on  
13 their religious status and is thus subject to strict scrutiny. It does not advance any  
14 compelling government interest and is not narrowly tailored to achieve any such  
15 interest.

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

19 **CLAIM III**

20 **Violation of the First Amendment**

21 **Right to Free Association**

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

23 162. Plaintiffs herein incorporate by reference the allegations above.

24 163. The Supreme Court has “long understood as implicit in the right to  
25 engage in activities protected by the First Amendment a right to associate with  
26 others,” and has recognized “the vital relationship between freedom to associate and  
27 privacy in one’s associations.” *Americans for Prosperity Found. v. Bonta*, 141 S. Ct.  
28 2373, 2382 (2021) (internal quotation marks and citations omitted). Government

1 actions compelling disclosure of one’s associations are subject to exacting scrutiny.  
2 *Id.* at 2383–84.

3 164. Defendants’ border officers have repeatedly subjected Plaintiffs to  
4 questioning about their religious associations, and Defendants retain Plaintiffs’  
5 responses to such questioning.

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

12 166. Defendants’ border officers question Plaintiffs about their religious  
13 associations in inherently coercive environments, thereby compelling Plaintiffs to  
14 disclose information revealing constitutionally protected associational activities.

15 167. There is no substantial relationship between Defendants’ acquisition of  
16 this information and a sufficiently important government interest, and the acquisition  
17 is not narrowly tailored to achieve any such interest.

18 168. There is no substantial relationship between Defendants’ retention of  
19 this information and a sufficiently important government interest, and the retention  
20 is not narrowly tailored to achieve any such interest.

21 169. Alternatively, even if Defendants do not engage in a policy and/or  
22 practice of singling out Muslims in particular for religious questioning, Defendants’  
23 border officers nevertheless subject Plaintiffs to intrusive religious questioning;  
24 Defendants retain records reflecting answers to such questioning; and Defendants  
25 have a policy and/or practice of subjecting travelers to religious questioning during  
26 secondary inspections. There is no substantial relationship between the acquisition  
27 or retention of this information and a sufficiently important government interest, and  
28 neither the acquisition nor retention is narrowly tailored to achieve any such interest.

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

4 **CLAIM IV**  
5 **Violation of the First Amendment**  
6 **(Retaliation)**  
7 **(by Mr. Shah against all Defendants)**

8 171. Plaintiffs herein incorporate by reference the allegations above.

9 172. Two CBP officers and one HSI officer violated Mr. Shah’s First  
10 Amendment rights by retaliating against him for exercising his constitutionally  
11 protected rights to freedom of religion and freedom of speech. Mr. Shah engaged in  
12 constitutionally protected activities, including writing notes about his religious  
13 beliefs and practices in a journal that he carried during his travels, and stating to  
14 border officers that he did not wish to be searched, that he did not consent to a search  
15 of his electronic devices, and that he wanted to stand up for his constitutional rights.

16 173. The officers’ retaliatory adverse actions included prolonged detention;  
17 extensive questioning, including but not limited to additional religious questioning;  
18 a search of Mr. Shah’s phone, including private messages, emails and photos; and a  
19 search of Mr. Shah’s private journal.

20 174. The officers’ statements and behavior clearly indicated a substantial  
21 causal relationship between Mr. Shah’s constitutionally protected activity and the  
22 retaliatory adverse actions. In particular, the officers’ statements and behavior  
23 clearly indicated that they took these adverse actions as retaliation for Mr. Shah’s  
24 religious beliefs reflected in his journal, as well as his statements to the officers  
25 invoking his rights.

26 175. These adverse actions chill Mr. Shah from documenting his religious  
27 expression and thoughts while out of the country and from asserting his  
28 constitutional rights while in secondary inspection. These adverse actions would also

1 chill a person of ordinary firmness from continuing to engage in constitutionally  
2 protected activity.

3 176. Defendants maintain records illegally obtained through the retaliatory  
4 searches and questioning.

5 **CLAIM V**

6 **Violation of the Fifth Amendment**

7 **Due Process Right to Equal Protection**

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

9 177. Plaintiffs herein incorporate by reference the allegations above.

10 178. The Due Process Clause of the Fifth Amendment to the U.S.  
11 Constitution provides that “[n]o person shall . . . be deprived of life, liberty, or  
12 property, without due process of law.” The Due Process Clause contains an equal  
13 protection component. Under the right to equal protection, government action  
14 discriminating “along suspect lines like . . . religion” is subject to strict scrutiny.  
15 *Burlington Northern Railroad Co. v. Ford*, 504 U.S. 648, 651 (1992).

16 179. Defendants’ border officers have subjected Plaintiffs to religious  
17 questioning on at least ten separate occasions, and Defendants retain Plaintiffs’  
18 responses to such questioning.

19 180. Defendants engage in a policy and/or practice of singling out and  
20 targeting Muslims, including Plaintiffs, for religious questioning during secondary  
21 inspections because of their adherence to Islam. As part of this policy and/or practice  
22 of religious questioning, Defendants retain records that reflect answers to religious  
23 questions and thus contain information about the religious beliefs, practices, and  
24 associations of Muslims, including Plaintiffs.

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

27 182. Defendants’ conduct, as set forth above, is substantially motivated by  
28 an intent to discriminate against Muslims, on whom it has a disparate effect relative

1 to adherents of other faiths, because Defendants’ border officers do not routinely  
2 subject travelers of other faiths to similar questioning about their religious beliefs  
3 and practices.

4 183. Defendants’ conduct, as set forth above, stigmatizes Plaintiffs as  
5 Muslims and condemns their religion as one that is the subject of intense suspicion  
6 and distrust, different from any other religion.

7 184. Defendants’ conduct, as set forth above, does not advance any  
8 compelling government interest and is not narrowly tailored to achieve any such  
9 interest.

10 185. By discriminating against Plaintiffs in this manner, Defendants have  
11 violated the equal protection component of the Due Process Clause of the Fifth  
12 Amendment to the U.S. Constitution and will continue to do so if Plaintiffs are not  
13 afforded the relief below.

14 **CLAIM VI**

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

16 **42 U.S.C. § 2000bb et seq.**

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

18 186. Plaintiffs herein incorporate by reference the allegations above.

19 187. Defendants’ border officers have repeatedly subjected Plaintiffs to  
20 religious questioning during secondary inspections and have recorded Plaintiffs’  
21 responses in DHS databases, where Plaintiffs’ personal religious information will be  
22 retained for up to three-quarters of a century and accessible to tens of thousands of  
23 law enforcement agencies.

24 188. Defendants’ conduct imposes a substantial burden on Plaintiffs’  
25 exercise of their sincerely held religious beliefs because it places on Plaintiffs  
26 substantial pressure to modify or eliminate certain religious practices and expression  
27 while traveling, in order to avoid calling attention to their religion and being  
28 subjected to additional intrusive questioning about it.



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Dated: March 24, 2022

Respectfully submitted,  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
AMERICAN CIVIL LIBERTIES UNION OF  
MINNESOTA  
ACLU FOUNDATION OF SOUTHERN  
CALIFORNIA

By: /s/ Mohammad Tajsar  
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(Additional counsel continued on next page)

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

ABDIRAHMAN ADEN KARIYE,  
*et al.*,

*Plaintiffs,*

v.

ALEJANDRO MAYORKAS,  
Secretary of the U.S. Department of  
Homeland Security, in his official  
capacity, *et al.*,

*Defendants.*

Case No. 2:22-cv-01916-FWS-GJS

**PLAINTIFFS' NOTICE OF  
APPEAL**

Honorable Fred W. Slaughter  
**United States District Judge**

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*Counsel for Plaintiffs*

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that all Plaintiffs hereby appeal to the United States Court of Appeals for the Ninth Circuit from the judgment entered in this action on September 5, 2023, *see* ECF No. 81, pursuant to the Court's order granting Defendants' motion to dismiss Plaintiffs' First Amended Complaint, *see* ECF No. 73.

Dated: September 18, 2023

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

AMERICAN CIVIL LIBERTIES UNION  
OF MINNESOTA

ACLU FOUNDATION OF SOUTHERN  
CALIFORNIA

COOLEY LLP

By:  /s/ Ashley Gorski

Ashley Gorski  
American Civil Liberties Union  
Foundation

*Counsel for Plaintiffs*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA (Western Division - Los Angeles)  
CIVIL DOCKET FOR CASE #: 2:22-cv-01916-FWS-GJS**

Abdirahman Aden Kariye et al v. Alejandro Mayorkas et al  
Assigned to: Judge Fred W. Slaughter  
Referred to: Magistrate Judge Gail J. Standish  
Case in other court: 9th CCA, 23-55790  
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 03/24/2022  
Date Terminated: 09/05/2023  
Jury Demand: None  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
03/24/2022	<a href="#">1</a>	COMPLAINT Receipt No: ACACDC-32999794 - Fee: \$402, filed by Plaintiffs Abdirahman Aden Kariye, Hameem Shah, Mohamad Mouslli. (Attorney Mohammad K Tajsar added to party Abdirahman Aden Kariye(pty:pla), Attorney Mohammad K Tajsar added to party Mohamad Mouslli(pty:pla), Attorney Mohammad K Tajsar added to party Hameem Shah(pty:pla))(Tajsar, Mohammad) (Entered: 03/24/2022)
03/24/2022	<a href="#">2</a>	CIVIL COVER SHEET filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah. (Tajsar, Mohammad) (Entered: 03/24/2022)
03/24/2022	<a href="#">3</a>	Request for Clerk to Issue Summons on Complaint (Attorney Civil Case Opening), <a href="#">1</a> filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah. (Tajsar, Mohammad) (Entered: 03/24/2022)
03/24/2022	<a href="#">4</a>	NOTICE of Interested Parties filed by Plaintiffs All Plaintiffs, (Tajsar, Mohammad) (Entered: 03/24/2022)
03/25/2022	<a href="#">5</a>	NOTICE OF ASSIGNMENT to District Judge Otis D. Wright, II and Magistrate Judge Gail J. Standish. (car) (Entered: 03/25/2022)
03/25/2022	<a href="#">6</a>	NOTICE TO PARTIES OF COURT-DIRECTED ADR PROGRAM filed. (car) (Entered: 03/25/2022)
03/25/2022	<a href="#">7</a>	Notice to Counsel Re Consent to Proceed Before a United States Magistrate Judge. (car) (Entered: 03/25/2022)
03/25/2022	<a href="#">8</a>	60 DAY Summons Issued re Complaint (Attorney Civil Case Opening), <a href="#">1</a> as to Defendants Steve K. Francis, Tae D. Johnson, Alejandro Mayorkas, Mark Morgan. (car) (Entered: 03/25/2022)
03/25/2022	<a href="#">9</a>	NOTICE OF PRO HAC VICE APPLICATION DUE for Non-Resident Attorney Ashley Gorski. A document recently filed in this case lists you as an out-of-state attorney of record. However, the Court has not been able to locate any record that you are admitted to the Bar of this Court, and you have not filed an application to appear Pro Hac Vice in this case. Accordingly, within 5 business days of the date of this notice, you must either (1) have your local counsel file an application to appear Pro Hac Vice (Form G-64) and pay the applicable fee, or (2) complete the next section of this form and return it to the court at <a href="mailto:cacd_attyadm@caed.uscourts.gov">caed_attyadm@caed.uscourts.gov</a> . You have been removed as counsel of record from the docket in this case, and you will not be added back to the docket until your Pro Hac Vice status has been resolved. (car) (Entered: 03/25/2022)
03/25/2022	<a href="#">10</a>	NOTICE OF PRO HAC VICE APPLICATION DUE for Non-Resident Attorney Scarlet Kim. A document recently filed in this case lists you as an out-of-state attorney of record. However, the Court has not been able to locate any record that you are admitted to the Bar of this Court, and you have not filed an application to appear Pro Hac Vice in this case. Accordingly, within 5 business days of the date of this notice, you must either (1) have your local counsel file an application to appear Pro Hac Vice (Form G-64) and pay the applicable fee, or (2) complete the next section of this form and return it to the court at <a href="mailto:cacd_attyadm@caed.uscourts.gov">caed_attyadm@caed.uscourts.gov</a> . You have been removed as counsel of record from the docket in this case, and you will not be added back to the docket until your Pro Hac Vice status has been resolved. (car) (Entered: 03/25/2022)
03/25/2022	<a href="#">11</a>	NOTICE OF PRO HAC VICE APPLICATION DUE for Non-Resident Attorney Sarah Taitz. A document recently filed in this case lists you as an out-of-state attorney of record. However, the Court has not been able to locate any record that you are admitted to the Bar of this Court, and you have not filed an application to appear Pro Hac Vice in this case. Accordingly, within 5 business days of the date of this notice, you must either (1) have your local counsel file an application to appear Pro Hac Vice (Form G-64) and pay the applicable fee, or (2) complete the next section of this form and return it to the court at <a href="mailto:cacd_attyadm@caed.uscourts.gov">caed_attyadm@caed.uscourts.gov</a> . You have been removed as counsel of record from the docket in this case, and you will not be added back to the docket until your Pro Hac Vice status has been resolved. (car) (Entered: 03/25/2022)
03/25/2022	<a href="#">12</a>	NOTICE OF PRO HAC VICE APPLICATION DUE for Non-Resident Attorney Daniel Mach. A document recently filed in this case lists you as an out-of-state attorney of record. However, the Court has not been able to locate any record that you are admitted to the Bar of this Court, and you have not filed an application to appear Pro Hac Vice

		in this case. Accordingly, within 5 business days of the date of this notice, you must either (1) have your local counsel file an application to appear Pro Hac Vice (Form G-64) and pay the applicable fee, or (2) complete the next section of this form and return it to the court at <a href="mailto:cacd_attyadm@cacd.uscourts.gov">cacd_attyadm@cacd.uscourts.gov</a> . You have been removed as counsel of record from the docket in this case, and you will not be added back to the docket until your Pro Hac Vice status has been resolved. (car) (Entered: 03/25/2022)
03/25/2022	<a href="#">13</a>	NOTICE OF PRO HAC VICE APPLICATION DUE for Non-Resident Attorney Teresa Nelson. A document recently filed in this case lists you as an out-of-state attorney of record. However, the Court has not been able to locate any record that you are admitted to the Bar of this Court, and you have not filed an application to appear Pro Hac Vice in this case. Accordingly, within 5 business days of the date of this notice, you must either (1) have your local counsel file an application to appear Pro Hac Vice (Form G-64) and pay the applicable fee, or (2) complete the next section of this form and return it to the court at <a href="mailto:cacd_attyadm@cacd.uscourts.gov">cacd_attyadm@cacd.uscourts.gov</a> . You have been removed as counsel of record from the docket in this case, and you will not be added back to the docket until your Pro Hac Vice status has been resolved. (car) (Entered: 03/25/2022)
03/28/2022	<a href="#">14</a>	APPLICATION of Non-Resident Attorney Ashley Gorski to Appear Pro Hac Vice on behalf of Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah (Pro Hac Vice Fee - \$500 Fee Paid, Receipt No. ACACDC-33015515) filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah. (Attachments: # <a href="#">1</a> Proposed Order) (Tajsar, Mohammad) (Entered: 03/28/2022)
03/28/2022	<a href="#">15</a>	APPLICATION of Non-Resident Attorney Sarah Taitz to Appear Pro Hac Vice on behalf of Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah (Pro Hac Vice Fee - \$500 Fee Paid, Receipt No. ACACDC-33015517) filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah. (Attachments: # <a href="#">1</a> Proposed Order) (Tajsar, Mohammad) (Entered: 03/28/2022)
03/28/2022	<a href="#">16</a>	APPLICATION of Non-Resident Attorney Scarlet Kim to Appear Pro Hac Vice on behalf of Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah (Pro Hac Vice Fee - \$500 Fee Paid, Receipt No. ACACDC-33015520) filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah. (Attachments: # <a href="#">1</a> Proposed Order) (Tajsar, Mohammad) (Entered: 03/28/2022)
03/28/2022	<a href="#">17</a>	APPLICATION of Non-Resident Attorney Daniel Mach to Appear Pro Hac Vice on behalf of Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah (Pro Hac Vice Fee - \$500 Fee Paid, Receipt No. ACACDC-33015522) filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah. (Attachments: # <a href="#">1</a> Proposed Order) (Tajsar, Mohammad) (Entered: 03/28/2022)
03/28/2022	<a href="#">18</a>	APPLICATION of Non-Resident Attorney Teresa J. Nelson to Appear Pro Hac Vice on behalf of Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah (Pro Hac Vice Fee - \$500 Fee Paid, Receipt No. ACACDC-33015526) filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah. (Attachments: # <a href="#">1</a> Proposed Order) (Tajsar, Mohammad) (Entered: 03/28/2022)
03/28/2022	<a href="#">19</a>	MINUTE ORDER (IN CHAMBERS) by Judge Otis D. Wright, II. This action has been assigned to the calendar of Judge Otis D. Wright II Counsel are STRONGLY encouraged to review the Central District's website for additional information. See minute order for details. (lom) Modified on 3/28/2022 (lom). Modified on 3/31/2022 (lom). (Entered: 03/28/2022)
03/28/2022	<a href="#">20</a>	NOTICE of Deficiency in Electronically Filed Pro Hac Vice Application RE: APPLICATION of Non-Resident Attorney Ashley Gorski to Appear Pro Hac Vice on behalf of Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah (Pro Hac Vice Fee - \$500 Fee Paid, Receipt No. ACACDC-33015515) <a href="#">14</a> , APPLICATION of Non-Resident Attorney Scarlet Kim to Appear Pro Hac Vice on behalf of Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah (Pro Hac Vice Fee - \$500 Fee Paid, Receipt No. ACACDC-33015520) <a href="#">16</a> . The following error(s) was/were found: Local Rule 83-2.1.3.3(a) Application not complete: state bars to which the applicant has been admitted are not listed. (lt) (Entered: 03/28/2022)
03/28/2022	<a href="#">21</a>	NOTICE of Deficiency in Electronically Filed Pro Hac Vice Application RE: APPLICATION of Non-Resident Attorney Teresa J. Nelson to Appear Pro Hac Vice on behalf of Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah (Pro Hac Vice Fee - \$500 Fee Paid, Receipt No. ACACDC-33015526) <a href="#">18</a> . The following error(s) was/were found: Local Rule 83-2.1.3.3(a) Application not complete: state bars to which the applicant has been admitted are not listed. Local Rule 83-2.1.3.3(d) Certificate of Good Standing not attached for every state bar listed to which the applicant has been admitted. (lt) (Entered: 03/28/2022)
03/31/2022	<a href="#">22</a>	ORDER by Judge Otis D. Wright, II: granting <a href="#">15</a> Non-Resident Attorney Sarah M. Taitz APPLICATION to Appear Pro Hac Vice on behalf of Abdirahman Aden Kariye, Mohamad Mouslli and for Hameem Shah, designating Mohammad K. Tajsar as local counsel. (lom) (Entered: 03/31/2022)
03/31/2022	<a href="#">23</a>	ORDER by Judge Otis D. Wright, II: granting <a href="#">17</a> Non-Resident Attorney Daniel Mach APPLICATION to Appear Pro Hac Vice on behalf of Abdirahman Aden Kariye, Mohamad Mouslli and for Hameem Shah, designating Mohammad K. Tajsar as local counsel. (lom) (Entered: 03/31/2022)
04/01/2022	<a href="#">24</a>	ORDER by Judge Otis D. Wright, II: denying <a href="#">14</a> Non-Resident Attorney Ashley Gorski APPLICATION to Appear Pro Hac Vice on behalf of Abdirahman Aden Kariye, Mohamad Mouslli, and Hameem Shah. See order for details.

		(lom) (Entered: 04/01/2022)
04/01/2022	<a href="#">25</a>	ORDER by Judge Otis D. Wright, II: denying <a href="#">16</a> Non-Resident Attorney Scarlet Kim APPLICATION to Appear Pro Hac Vice on behalf of Abdirahman Aden Kariye, Mohamad Mouslli, and Hameem Shah. See order for details. (lom) (Entered: 04/01/2022)
04/04/2022	<a href="#">26</a>	Second APPLICATION of Non-Resident Attorney Ashley M. Gorski to Appear Pro Hac Vice on behalf of Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah (Pro Hac Vice Fee - \$500 Previously Paid on 3/28/2022, Receipt No. ACACDC-33015515) filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah. (Attachments: # <a href="#">1</a> Proposed Order) (Tajsar, Mohammad) (Entered: 04/04/2022)
04/04/2022	<a href="#">27</a>	Second APPLICATION of Non-Resident Attorney Scarlet Kim to Appear Pro Hac Vice on behalf of Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah (Pro Hac Vice Fee - \$500 Previously Paid on 3/28/2022, Receipt No. ACACDC-33015520) filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah. (Attachments: # <a href="#">1</a> Proposed Order) (Tajsar, Mohammad) (Entered: 04/04/2022)
04/04/2022	<a href="#">28</a>	Second APPLICATION of Non-Resident Attorney Teresa J. Nelson to Appear Pro Hac Vice on behalf of Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah (Pro Hac Vice Fee - \$500 Previously Paid on 3/28/2022, Receipt No. ACACDC-33015526) filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah. (Attachments: # <a href="#">1</a> Proposed Order) (Tajsar, Mohammad) (Entered: 04/04/2022)
04/07/2022	<a href="#">29</a>	ORDER by Judge Otis D. Wright, II: granting <a href="#">18</a> <a href="#">28</a> Non-Resident Attorney Teresa J. Nelson APPLICATION to Appear Pro Hac Vice on behalf of Abdirahman Aden Kariye, Mohamad Mouslli and for Hameem Shah, designating Mohammad K. Tajsar as local counsel. (lom) (Entered: 04/07/2022)
04/07/2022	<a href="#">30</a>	ORDER by Judge Otis D. Wright, II: granting <a href="#">27</a> Non-Resident Attorney Scarlet Kim APPLICATION to Appear Pro Hac Vice on behalf of Abdirahman Aden Kariye, Mohamad Mouslli and for Hameem Shah, designating Mohammad K. Tajsar as local counsel. (lom) (Entered: 04/07/2022)
04/07/2022	<a href="#">31</a>	ORDER by Judge Otis D. Wright, II: granting <a href="#">26</a> Non-Resident Attorney Ashley M. Gorski APPLICATION to Appear Pro Hac Vice on behalf of Abdirahman Aden Kariye, Mohamad Mouslli and for Hameem Shah, designating Mohammad K. Tajsar as local counsel. (lom) (Entered: 04/07/2022)
04/13/2022	<a href="#">32</a>	PROOF OF SERVICE Executed by Plaintiff Abdirahman Aden Kariye, Hameem Shah, Mohamad Mouslli, upon Defendant All Defendants. Service of the Summons and Complaint were executed upon the United States Attorneys Office by delivering a copy to C. Veloz, person authorized to accept service. Executed upon the Attorney Generals Office of the United States by delivering a copy to Emily Sase, person authorized to accept service. Executed upon the officer agency or corporation by delivering a copy to person authorized to accept service. Service was executed in compliance with Federal Rules of Civil Procedure. Due diligence declaration NOT attached. Registered or certified mail return receipt attached. (Tajsar, Mohammad) (Entered: 04/13/2022)
04/14/2022	<a href="#">33</a>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: Service of Summons and Complaint Returned Executed as to USA <a href="#">32</a> . The following error(s) was/were found: It appears filer edited docket entry and erroneously removed service date and system calculation of answer due date etc. (Clerk has checked and answer due date was created on internal deadlines). Filer is advised not to remove CM system populated information in future filings. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (lc) (Entered: 04/14/2022)
04/20/2022	<a href="#">34</a>	ORDER OF THE CHIEF JUDGE (#OCJ 22-076) approved by Judge Philip S. Gutierrez. Pursuant to the recommended procedure adopted by the Court for the CREATION OF CALENDAR of Judge Slaughter, Fred W., this case is transferred from Judge Otis D. Wright, II to the calendar of Judge Fred W. Slaughter for all further proceedings. The case number will now reflect the initials of the transferee Judge 2:22-cv-01916-FWS-GJSx. (sn) (Entered: 04/21/2022)
04/27/2022	<a href="#">35</a>	REASSIGNMENT ORDER by Judge Fred W. Slaughter: Please refer to Order for complete details. (jp) (Entered: 04/27/2022)
05/12/2022	<a href="#">36</a>	STATEMENT Case Management filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah re: Order <a href="#">35</a> . (Gorski, Ashley) (Entered: 05/12/2022)
05/17/2022	<a href="#">37</a>	NOTICE of Appearance filed by attorney Leslie C Vigen on behalf of Defendants Steve K. Francis, Tae D. Johnson, Alejandro Mayorkas, Mark Morgan (Attorney Leslie C Vigen added to party Steve K. Francis(pty:dft), Attorney Leslie C Vigen added to party Tae D. Johnson(pty:dft), Attorney Leslie C Vigen added to party Alejandro Mayorkas(pty:dft), Attorney Leslie C Vigen added to party Mark Morgan(pty:dft))(Vigen, Leslie) (Entered: 05/17/2022)
05/20/2022	<a href="#">38</a>	CIVIL STANDING ORDER by Judge Fred W. Slaughter. (mku) (Entered: 05/20/2022)
05/27/2022	<a href="#">39</a>	Joint STIPULATION to Exceed Page Limitation as to Motion to Dismiss filed by defendant Steve K. Francis, Tae D. Johnson, Alejandro Mayorkas, Mark Morgan. (Attachments: # <a href="#">1</a> Proposed Order)(Vigen, Leslie) (Entered: 05/27/2022)

		05/27/2022)
05/31/2022	<a href="#">40</a>	NOTICE OF MOTION AND MOTION to Dismiss Case filed by Defendants Steve K. Francis, Tae D. Johnson, Alejandro Mayorkas, Mark Morgan. Motion set for hearing on 7/28/2022 at 10:00 AM before Judge Fred W. Slaughter. (Attachments: # <a href="#">1</a> Memorandum, # <a href="#">2</a> Proposed Order) (Vigen, Leslie) (Entered: 05/31/2022)
06/02/2022	<a href="#">41</a>	ORDER by Judge Fred W. Slaughter Pursuant to stipulation <a href="#">39</a> , the briefing schedule for Defendants' forthcoming motion to dismiss shall be as follows: Defendants shall file their motion on 5/31/2022; Plaintiffs shall file their response on 6/27/2022; and Defendants shall file their reply on 7/14/2022. The memoranda of points and authorities in support of Defendants' motion and Plaintiffs response, respectively, shall not exceed 35 pages in length. (jp) (Entered: 06/02/2022)
06/06/2022	<a href="#">42</a>	ORDER SETTING RULE 26(f) SCHEDULING CONFERENCE by Judge Fred W. Slaughter. Scheduling Conference set for 9/1/2022 at 9:00 a.m. See Order for details. (mku) (Entered: 06/06/2022)
06/27/2022	<a href="#">43</a>	NOTICE OF MOTION AND MOTION to Continue Scheduling Conference from 9/1/2022 to at least 30 days after the issuance of an Order resolving Defendants' Motion to Dismiss filed by Defendants Steve K. Francis, Tae D. Johnson, Alejandro Mayorkas, Mark Morgan. Motion set for hearing on 7/28/2022 at 10:00 AM before Judge Fred W. Slaughter. (Attachments: # <a href="#">1</a> Declaration of Leslie Cooper Vigen, # <a href="#">2</a> Proposed Order) (Vigen, Leslie) (Entered: 06/27/2022)
06/27/2022	<a href="#">44</a>	MEMORANDUM in Opposition to NOTICE OF MOTION AND MOTION to Dismiss Case <a href="#">40</a> filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah. (Attachments: # <a href="#">1</a> Proposed Order)(Gorski, Ashley) (Entered: 06/27/2022)
07/11/2022	<a href="#">45</a>	EX PARTE APPLICATION to Exceed Page Limitation Reply Brief in Support of Defendants' Motion to Dismiss filed by Defendants Steve K. Francis, Tae D. Johnson, Alejandro Mayorkas, Mark Morgan. (Attachments: # <a href="#">1</a> Proposed Order) (Vigen, Leslie) (Entered: 07/11/2022)
07/12/2022	<a href="#">46</a>	ORDER ON DEFENDANTS' EX PARTE APPLICATION TO EXPAND PAGE LIMITS <a href="#">45</a> by Judge Fred W. Slaughter that the Application is GRANTED. The reply brief in support of Defendants' Motion to Dismiss <a href="#">40</a> shall not exceed 20 pages in length. (jp) (Entered: 07/12/2022)
07/14/2022	<a href="#">47</a>	REPLY In Support of NOTICE OF MOTION AND MOTION to Dismiss Case <a href="#">40</a> filed by Defendants Steve K. Francis, Tae D. Johnson, Alejandro Mayorkas, Mark Morgan. (Vigen, Leslie) (Entered: 07/14/2022)
07/27/2022	<a href="#">48</a>	NOTICE of Change of Lead Counsel changing lead counsel from Mohammad K. Tajsar, Heather L. Weaver to Ashley M. Gorski. filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah, (Gorski, Ashley) (Entered: 07/27/2022)
07/28/2022	<a href="#">49</a>	MINUTES OF Hearing on Defendant's Motion to Dismiss Case <a href="#">40</a> and Defendant's Motion to Continue Scheduling Conference from 9/1/2022 to at least 30 days after the issuance of an Order resolving Defendants' Motion to Dismiss <a href="#">43</a> held before Judge Fred W. Slaughter: Motion hearings held on Zoom. The Court hears oral argument from the parties. The Court takes the Motions under submission. Order to issue. Court Reporter: Debbie Gale. Attorneys for Plaintiff: Ashley Gorski; Attorneys for Defendant: Leslie Vigen. Courtroom Deputy: Melissa Kunig; Time in Court: 0:25. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. TEXT ONLY ENTRY. (mku) (Entered: 07/28/2022)
08/18/2022	<a href="#">50</a>	JOINT REPORT Rule 26(f) Discovery Plan ; estimated length of trial 4 days, filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah.. (Gorski, Ashley) (Entered: 08/18/2022)
08/19/2022	<a href="#">51</a>	SCHEDULING NOTICE by Judge Fred W. Slaughter: The court, on its own motion, hereby CONTINUES the Scheduling Conference set for 9/1/22 at 9:00 a.m. to *9/22/2022 at 9:00 a.m.*THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (mku) TEXT ONLY ENTRY (Entered: 08/19/2022)
09/09/2022	<a href="#">52</a>	Joint STIPULATION for Protective Order filed by Defendants Steve K. Francis, Tae D. Johnson, Alejandro Mayorkas, Mark Morgan.(Vigen, Leslie) (Entered: 09/09/2022)
09/13/2022	<a href="#">53</a>	STIPULATED PROTECTIVE ORDER by Magistrate Judge Gail J. Standish re Stipulation for Protective Order <a href="#">52</a> . See Order for details. (es) (Entered: 09/14/2022)
09/19/2022	<a href="#">54</a>	SCHEDULING NOTICE by Judge Fred W. Slaughter: The court, on its own motion, hereby CONTINUES the Scheduling Conference set for 9/22/22 at 9:00 a.m. to *10/13/2022 at 9:00 a.m.* THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (mku) TEXT ONLY ENTRY (Entered: 09/19/2022)
10/07/2022	<a href="#">55</a>	NOTICE of Appearance filed by attorney John H. Hemann on behalf of Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah (Attorney John H. Hemann added to party Abdirahman Aden Kariye(pty:pla), Attorney John H. Hemann added to party Mohamad Mouslli(pty:pla), Attorney John H. Hemann added to party Hameem Shah(pty:pla))(Hemann, John) (Entered: 10/07/2022)
10/07/2022	<a href="#">56</a>	NOTICE of Appearance filed by attorney Hannah E. Pollack on behalf of Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah (Attorney Hannah E. Pollack added to party Abdirahman Aden Kariye(pty:pla),

		Attorney Hannah E. Pollack added to party Mohamad Mouslli(pty:pla), Attorney Hannah E. Pollack added to party Hameem Shah(pty:pla))(Pollack, Hannah) (Entered: 10/07/2022)
10/11/2022	<a href="#">57</a>	NOTICE of Appearance filed by attorney Brett Hom De Jarnette on behalf of Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah (Attorney Brett Hom De Jarnette added to party Abdirahman Aden Kariye(pty:pla), Attorney Brett Hom De Jarnette added to party Mohamad Mouslli(pty:pla), Attorney Brett Hom De Jarnette added to party Hameem Shah(pty:pla))(De Jarnette, Brett) (Entered: 10/11/2022)
10/12/2022	<a href="#">58</a>	ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT <a href="#">40</a> by Judge Fred W. Slaughter, Defendants' Motion is GRANTED. Plaintiffs' claims are DISMISSED WITHOUT PREJUDICE AND WITH LEAVE TO AMEND. Should Plaintiffs desire to file an Amended Complaint that addresses the issues in this ruling, Plaintiffs must file and serve it within thirty (30) days of service of notice of ruling. (jp) (Entered: 10/12/2022)
10/12/2022	<a href="#">59</a>	MINUTES SCHEDULING ORDER by Judge Fred W. Slaughter: The Court, having reviewed the pleadings and the parties' submissions pursuant to FRCP 26(f), VACATES the Scheduling Conference set for 10/13/2022 and sets the following schedule: Bench Trial set for 9/19/2023 at 8:30 AM. Final Pretrial Conference and Hearing on Motions in Limine set for 9/7/2023 at 8:30 AM. Last Date to Hear Motion to Amend Pleadings/Add Parties: 12/15/2022. Non-Expert Discovery Cut-Off: 3/9/2023. Last Date to Hear Motions: 6/15/2023. Deadline to Complete Settlement Conference: 6/29/2023. Motions in Limine with Proposed Orders: 8/17/2023. Joint Proposed Final Pretrial Conference Order: 8/24/2023. (See document for further information). (jp) (Entered: 10/12/2022)
10/12/2022	<a href="#">60</a>	ORDER ON PRETRIAL AND TRIAL PROCEDURES (CIVIL CASES) by Judge Fred W. Slaughter. (mku) (Entered: 10/12/2022)
11/14/2022	<a href="#">61</a>	FIRST AMENDED COMPLAINT against Defendants All Defendants amending Complaint (Attorney Civil Case Opening), <a href="#">1</a> , filed by Plaintiffs Abdirahman Aden Kariye, Hameem Shah, Mohamad Mouslli(Gorski, Ashley) (Entered: 11/14/2022)
11/15/2022	<a href="#">62</a>	NOTICE of Appearance filed by attorney Elizabeth Sanchez Santiago on behalf of Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah (Attorney Elizabeth Sanchez Santiago added to party Abdirahman Aden Kariye(pty:pla), Attorney Elizabeth Sanchez Santiago added to party Mohamad Mouslli(pty:pla), Attorney Elizabeth Sanchez Santiago added to party Hameem Shah(pty:pla))(Santiago, Elizabeth) (Entered: 11/15/2022)
11/17/2022	<a href="#">63</a>	Notice of Appearance or Withdrawal of Counsel: for attorney Scarlet Kim counsel for Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah. Scarlet Kim is no longer counsel of record for the aforementioned party in this case for the reason indicated in the G-123 Notice. Filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, and Hameem Shah. (Kim, Scarlet) (Entered: 11/17/2022)
11/22/2022	<a href="#">64</a>	Joint STIPULATION for Extension of Time to File Response to Complaint filed by Defendants Steve K. Francis, Tae D. Johnson, Alejandro Mayorkas, Troy Miller, Mark Morgan. (Attachments: # <a href="#">1</a> Proposed Order)(Attorney Leslie C Vigen added to party Troy Miller(pty:dft))(Vigen, Leslie) (Entered: 11/22/2022)
11/28/2022	<a href="#">65</a>	ORDER RE JOINT STIPULATION FOR BRIEFING SCHEDULE AND EXPANSION OF PAGE LIMITS <a href="#">64</a> by Judge Fred W. Slaughter. Having read and considered the Parties Joint Stipulation for Briefing Schedule and Expansion of Page Limits <a href="#">64</a> (the Application), and good cause appearing, the court ORDERS the following: 1. The briefing schedule for Defendants forthcoming Motion to Dismiss the First Amended Complaint (the Motion) shall be as follows: a. Defendants shall file the Motion on or before December 27, 2022. b. Plaintiffs shall file their response to the Motion on or before February 10, 2023. c. Defendants shall file their reply in support of the Motion on or before February 27, 2023. (SEE DOCUMENT FOR FURTHER DETAILS.) (rolm) (Entered: 11/28/2022)
12/20/2022	<a href="#">66</a>	NOTICE of Appearance filed by attorney Laurel Lum on behalf of Defendants Steve K. Francis, Tae D. Johnson, Alejandro Mayorkas, Troy Miller (Attorney Laurel Lum added to party Steve K. Francis(pty:dft), Attorney Laurel Lum added to party Tae D. Johnson(pty:dft), Attorney Laurel Lum added to party Alejandro Mayorkas(pty:dft), Attorney Laurel Lum added to party Troy Miller(pty:dft))(Lum, Laurel) (Entered: 12/20/2022)
12/23/2022	<a href="#">67</a>	NOTICE of Appearance filed by attorney Samuel Rebo on behalf of Defendants Steve K. Francis, Tae D. Johnson, Alejandro Mayorkas, Troy Miller (Attorney Samuel Rebo added to party Steve K. Francis(pty:dft), Attorney Samuel Rebo added to party Tae D. Johnson(pty:dft), Attorney Samuel Rebo added to party Alejandro Mayorkas(pty:dft), Attorney Samuel Rebo added to party Troy Miller(pty:dft))(Rebo, Samuel) (Entered: 12/23/2022)
12/27/2022	<a href="#">68</a>	Second NOTICE OF MOTION AND MOTION to Dismiss Case filed by Defendants Steve K. Francis, Tae D. Johnson, Alejandro Mayorkas, Troy Miller. Motion set for hearing on 3/23/2023 at 10:00 AM before Judge Fred W. Slaughter. (Attachments: # <a href="#">1</a> Memorandum of Points and Authorities, # <a href="#">2</a> Proposed Order) (Vigen, Leslie) (Entered: 12/27/2022)
12/27/2022	<a href="#">69</a>	REQUEST FOR JUDICIAL NOTICE re Second NOTICE OF MOTION AND MOTION to Dismiss Case <a href="#">68</a> filed by Defendants Steve K. Francis, Tae D. Johnson, Alejandro Mayorkas, Troy Miller. (Attachments: # <a href="#">1</a> Exhibit A - McAleenan Memorandum, # <a href="#">2</a> Exhibit B - CBP Standards of Conduct, # <a href="#">3</a> Proposed Order)(Vigen, Leslie) (Entered: 12/27/2022)

02/10/2023	<a href="#">70</a>	MEMORANDUM in Opposition to Second NOTICE OF MOTION AND MOTION to Dismiss Case <a href="#">68</a> filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah. (Attachments: # <a href="#">1</a> Proposed Order)(Gorski, Ashley) (Entered: 02/10/2023)
02/27/2023	<a href="#">71</a>	REPLY in support of Second NOTICE OF MOTION AND MOTION to Dismiss Case <a href="#">68</a> filed by Defendants Steve K. Francis, Tae D. Johnson, Alejandro Mayorkas, Troy Miller. (Vigen, Leslie) (Entered: 02/27/2023)
03/23/2023	<a href="#">72</a>	MINUTES OF Hearing on Defendant's Second Motion to Dismiss Case <a href="#">68</a> held before Judge Fred W. Slaughter: Motion hearing held. The Court hears oral argument from the parties. The Court takes the Motion under submission. Order to issue. Court Reporter: Miriam Baird. Attorneys for Plaintiff: Ashley Gorski, Mohamman Tajsar; Attorneys for Defendant: Leslie Vigen. Courtroom Deputy: Melissa H. Kunig; Time in Court: 0:37. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. TEXT ONLY ENTRY. (mku) (Entered: 03/23/2023)
07/19/2023	<a href="#">73</a>	[NOTICE OF CLERICAL ERROR ISSUED DATED ON 7/20/2023, SEE DOCKET ENTRY NO. <a href="#">74</a> ] - MINUTES ORDER GRANTING Defendants' Motion to Dismiss <a href="#">68</a> by Judge Fred W. Slaughter: Defendants' Motion is GRANTED. Plaintiffs' claims are DISMISSED WITHOUT PREJUDICE AND WITH LEAVE TO AMEND. Should Plaintiffs desire to file a Second Amended Complaint that addresses the issues in this ruling, Plaintiffs must file and serve it within thirty (30) days of service of notice of ruling. (MD JS-6. Case Terminated.) (See document for further information). (jp) Modified on 7/20/2023 (jp). (Entered: 07/19/2023)
07/20/2023	<a href="#">74</a>	NOTICE OF CLERICAL ERROR: Due to clerical error Re: Minute Order Granting Motion to Dismiss <a href="#">73</a> was docketed and closed in error. Administratively Reopen. (MD JS-5. Case Reopened.) (jp) (Entered: 07/20/2023)
08/01/2023	<a href="#">75</a>	Notice filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah. <i>of Intent Not to File a Second Amended Complaint</i> (Gorski, Ashley) (Entered: 08/01/2023)
08/15/2023	<a href="#">76</a>	(IN CHAMBERS) ORDER by Judge Fred W. Slaughter: The court is in receipt of the Notice of Intent Not to File a Second Amended Complaint (Notice of Intent) filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, and Hameem Shah (collectively, Plaintiffs). (Dkt. <a href="#">75</a> .) Plaintiffs state they elect not to file an amended pleading and request that the court enter a final judgment. (Id.) The court has not received a response to Plaintiffs Notice of Intent from Defendants Alejandro Mayorkas, Tae D. Johnson, Steve K. Francis, and Troy Miller (collectively, Defendants). (See generally Dkt.) Accordingly, the parties are ORDERED to each submit a proposed final judgment within seven (7) days of this Order. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (mku) TEXT ONLY ENTRY (Entered: 08/15/2023)
08/16/2023	<a href="#">77</a>	NOTICE OF LODGING filed <i>with Proposed Judgment</i> re Generic Text Only Entry,,, <a href="#">76</a> (Attachments: # <a href="#">1</a> Proposed Order)(Gorski, Ashley) (Entered: 08/16/2023)
08/23/2023	<a href="#">78</a>	NOTICE OF LODGING filed <i>with Proposed Judgment</i> re Generic Text Only Entry,,, <a href="#">76</a> (Attachments: # <a href="#">1</a> Exhibit Proposed Judgment)(Vigen, Leslie) (Entered: 08/23/2023)
08/23/2023	<a href="#">79</a>	Joint STIPULATION for Extension of Time to File Proposed Judgment filed by Defendant Steve K. Francis, Tae D. Johnson, Alejandro Mayorkas, Troy Miller. (Attachments: # <a href="#">1</a> Proposed Order)(Vigen, Leslie) (Entered: 08/23/2023)
08/28/2023	<a href="#">80</a>	ORDER Re Joint Stipulation for Nunc Pro Tunc Extension of Time to File <a href="#">79</a> by Judge Fred W. Slaughter, the court GRANTS the Stipulation and ORDERS the following: Defendants' deadline to submit a proposed final judgment is EXTENDED by one day, until 8/23/2023, nunc pro tunc. (jp) (Entered: 08/28/2023)
09/05/2023	<a href="#">81</a>	JUDGMENT by Judge Fred W. Slaughter, in favor of Alejandro Mayorkas, Steve K. Francis, Tae D. Johnson, Troy Miller against Abdirahman Aden Kariye, Hameem Shah, Mohamad Mouslli (MD JS-6, Case Terminated). (rolm) (Entered: 09/05/2023)
09/15/2023	<a href="#">82</a>	Notice of Appearance or Withdrawal of Counsel: for attorney Sarah M. Taitz counsel for Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah. Sarah Taitz is no longer counsel of record for the aforementioned party in this case for the reason indicated in the G-123 Notice. Filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah. (Taitz, Sarah) (Entered: 09/15/2023)
09/18/2023	<a href="#">83</a>	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah. Appeal of Judgment <a href="#">81</a> , Order on Motion to Dismiss Case,, <a href="#">73</a> . (Appeal Fee - \$505 Fee Paid, Receipt No. ACACDC-36058856.) (Attachments: # <a href="#">1</a> Exhibit Representation Statement)(Gorski, Ashley) (Entered: 09/18/2023)
09/19/2023	<a href="#">84</a>	NOTIFICATION from Ninth Circuit Court of Appeals of case number assigned and briefing schedule. Appeal Docket No. 23-55790 assigned to Notice of Appeal to 9th Circuit Court of Appeals, <a href="#">83</a> as to plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah. (mat) (Entered: 09/20/2023)
10/17/2023	<a href="#">85</a>	DESIGNATION of Record on Appeal by Plaintiffs Abdirahman Aden Kariye, Mohamad Mouslli, Hameem Shah re <a href="#">83</a> (Gorski, Ashley) (Entered: 10/17/2023)