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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,
Acting Executive Associate Director,
Homeland Security Investigations, in
his official capacity,

27 *Defendants.*
28

AMENDED COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF

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

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INTRODUCTION

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

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

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

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

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

8 **JURISDICTION AND VENUE**

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

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

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

18 **PARTIES**

19 *Plaintiffs*

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

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

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

27 *Defendants*

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

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

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

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

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

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

16 **FACTUAL BACKGROUND**

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

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

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

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

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

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

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

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

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

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

1 today, as Plaintiffs' experiences demonstrate.

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

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

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

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

1 airports or other ports of entry.

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

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

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

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

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

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

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

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

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

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

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

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

1 violence or other unlawful activity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 government watchlists in error.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 scrutiny and religious questioning.

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

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

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

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

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

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

14 **Mohamad Mouslli**

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

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

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First Religious Questioning Incident: August 9, 2018

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

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

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

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

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

Second Religious Questioning Incident: August 6, 2019

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **Hameem Shah**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **CAUSES OF ACTION**

16 **CLAIM I**

17 **Violation of the First Amendment**

18 **Establishment Clause**

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

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

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

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

1 closing agreement).

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

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

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

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

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

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

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

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

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

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

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

22 CLAIM II

23 Violation of the First Amendment

24 Free Exercise Clause

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

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

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

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

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

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

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

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

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

1 narrowly tailored to achieve any such interest.

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

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

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

21 **CLAIM III**

22 **Violation of the First Amendment**

23 **Right to Free Association**

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **CLAIM IV**

16 **Violation of the First Amendment**

17 **(Retaliation)**

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

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

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

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

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

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

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

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

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

22 **CLAIM V**

23 **Violation of the Fifth Amendment**

24 **Due Process Right to Equal Protection**

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **CLAIM VI**

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

11 **42 U.S.C. § 2000bb *et seq.***

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

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

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

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

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

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

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

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

9 **REQUEST FOR RELIEF**

10 Wherefore, Plaintiffs respectfully request that this Court:

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

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28 U.S.C. § 2412; and

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

Dated: November 14, 2022

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

AMERICAN CIVIL LIBERTIES UNION OF
MINNESOTA

ACLU FOUNDATION OF SOUTHERN
CALIFORNIA

By: /s/ Ashley Gorski

Ashley Gorski

Attorney for Plaintiffs