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

ABDIRAHMAN ADEN KARIYE, et  
al.,

Plaintiffs,

v.

ALEJANDRO MAYORKAS, et al.,

Defendants.

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

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

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

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

## 18 **I. Background**

### 19 **A. Summary of Complaint Allegations**

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

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

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

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

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

10 (*Id.* ¶ 18.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

17 (*Id.*)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 14 **b. Plaintiff Mouslli**

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

27 ///

28 ///

1                   **c. Plaintiff Shah**

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

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

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

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

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

15 (*Id.*)

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

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

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

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

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

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

(*Id.*)

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

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



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

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

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

1           **C.           Procedural History**

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

7           **II.       Legal Standard**

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

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

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

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

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

9  
10 Review is limited to the contents of the complaint. *See Enesco Corp. v.*  
11 *Price/Costco, Inc.*, 146 F.3d 1083, 1085 (9th Cir. 1998). All allegations  
12 of material fact are taken as true and construed in the light most favorable  
13 to the nonmoving party. *See id.* The court need not, however, accept as  
14 true allegations that contradict matters properly subject to judicial notice  
15 or by exhibit. *See Mullis v. United States Bankr. Ct.*, 828 F.2d 1385, 1388  
16 (9th Cir.1987). Nor is the court required to accept as true allegations that  
17 are merely conclusory, unwarranted deductions of fact, or unreasonable  
18 inferences. *See Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55  
19 (9th Cir. 1994).

20 266 F.3d 979, 988 (9th Cir. 2001).

### 21 III. DISCUSSION

#### 22 A. Plaintiffs Have Sufficiently Alleged the Existence of an Official Practice, 23 Policy or Custom of Targeting Muslim Americans for Religious 24 Questioning<sup>1</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28

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

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

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

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



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

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

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

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

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

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

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

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

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

25 473 U.S. at 537-38.

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

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

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

11 431 U.S. at 616-19.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

13 141 S. Ct. at 2373.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

*Id.* at 1069-70.

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

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

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

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

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

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

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

28

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

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

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

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

26 ///

27 ///

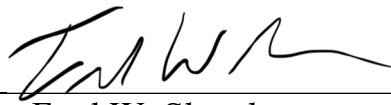
28 ///

1 **IV. DISPOSITION**

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

7  
8 **IT IS SO ORDERED.**

9  
10  
11 DATED: October 12, 2022

12   
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14 Hon. Fred W. Slaughter  
15 UNITED STATES DISTRICT JUDGE  
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