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3. Whether CBP officers are subjecting other travelers who are Muslim or appear to be Muslim to illegal and/or inappropriate questioning about their religious and political beliefs, associations, religious practices and charitable activities in violation of law or policy.

4. What standards govern how information provided by an individual in response to questioning about protected beliefs, associations, or activities is recorded
and/or reported to, entered into, or disseminated through databases, or by
other means, to other components of DHS, other government agencies, or
persons or entities outside the government, and the standards governing the
retention and destruction of such information.

Over the past several years, at ports, land border crossings, and international
airports across the country, U.S. persons who are Muslim, or who are perceived to be Muslim, have been targeted by CBP officers for questioning about topics including their religious identity, what mosque they attend, how often they pray, their religious charitable giving, and their views on U.S. military engagement in Iraq and Afghanistan. Some have had the contents of their electronic devices, such as laptops and cell phones, searched and copied.

The U.S. government has a legitimate interest in verifying the identity and citizenship or legal status of individuals seeking to reenter the country. It also rightfully has an interest in ensuring that individuals who pose a threat to national security are detected and brought to justice. No legitimate government interest is served, however, when CBP officers question a U.S. person about his or her religious or political beliefs, associations, and religious practices and charitable activities in the absence of a reasonable suspicion, based on credible evidence, that the individual has engaged in criminal activity, and a nexus between such questions and the suspected activity. This practice harms our country's national security interests by wasting scarce government resources, generating false leads, and eroding the trust of these religious and racial/ethnic communities in law enforcement and government.

Questioning individuals about their protected religious and political beliefs, associations, and activities may infringe upon rights guaranteed by the Constitution and federal law—rights that are not surrendered at the border. These questions are not routine and, like any non-routine border search, are prohibited by the Fourth Amendment absent reasonable suspicion that the person has committed a crime, United States v. Montoya de Hernandez, 473 U.S. 531, 541 (1985). Similarly, government officials who question or search individuals at the border must respect those individuals' First Amendment rights to freedom of expressive association and free exercise of religion and rights under the Religious Freedom of Restoration Act (RFRA). See Tabbaa v. Chertoff, 509 F.3d 89, 102 (2d Cir. 2007) (finding that actions by CBP officers towards U.S. citizens seeking reentry to the United States burdened their right to association, thereby triggering First Amendment protection); id. at 105-06 (noting that both the Free Exercise Clause of the First Amendment and RFRA circumscribe government questioning and searches of individuals at the border when such action is not the result of a rule of general applicability and imposes a substantial burden on plaintiffs' exercise of faith),

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Today, however, CBP officials are acting contrary to these fundamental rights and protections as illustrated by the experiences of each of the five individuals described in Appendix A. Each of these individuals is a U.S. citizen with a constitutional right to re-enter the United States from abroad. Yet, after determining their citizenship, CBP officers asked each person questions about their protected beliefs, associations, and activities. For example, CBP officers asked (b) (6) why he had converted to Islam, (b) (6) about his opinion of the U.S. occupation in Iraq, and
about how often he prays in the course of a day. See App. A. The government officials involved in each of these cases went far beyond asking routine and permissible questions to verify a prospective entrant's citizenship and identity, and the purpose and duration of the entrant's trip abroad. See United States v. Silva, 715 F.2d 43, 47 (2d Cir. 1983) (routine questions include those about "citizenship, the length and purpose of [a prospective entrant's] trip to Canada, [and] what items she had acquired or bought in Canada"). Several of these individuals were also subjected to lengthy detention.

We are not aware of any evidence supporting a reasonable suspicion that any of
these individuals were or are involved in criminal activity. Even if CBP had reasonable suspicion, based on credible evidence, that these individuals were involved in criminal activity, questioning travelers about their First Amendment-protected beliefs, associations, and activities is only permissible in the narrowest of circumstances to establish whether further law enforcement action is necessary (e.g., when an individual suspect's description is premised upon such characteristics). It appears that the government officials who questioned these five individuals failed to respect their rights

It appears that CBP policy not only fails to prohibit, but actually permits officers to target U.S. persons who are Muslim, or who are perceived to be Muslim, for questioning about protected beliefs, associations and activities. When our client, (b) (6) wrote to CBP to complain that border agents had questioned him about his religious identity and practices, the chief officer of a CBP Field Office responded via email, "CBP Officers target extremists. In 2001, the U.S. was attacked by Islamist extremists. If a CBP Officer inquires as to a person's religious beliefs in order to uncover signs of extremist tendencies, that Officer is well within his authority." This response supports our concern that the questioning described is representative of a systemic problem: the targeting of Muslim travelers, or those who are perceived to be Muslim, for questions about their religious beliefs, associations, and practices, without any suspicion that they have engaged in criminal activity or any nexus between the questions and suspected activity that would permit this type of questioning.

We are also concerned with how DHS and CBP are storing and disseminating information collected during questioning of U.S. persons at the border, particularly the ways in which they share information with the Federal Bureau of Investigations ("FBI"). Timothy Healy, the Director of the Terrorist Screening Center of the FBI, has publicly described the Terrorist Enforcement Communication System ("TECS") as a system used by CBP "to screen individuals at air, land, and sea ports of entry."4We have reason to believe that at least some of this information, unlawfully collected, is being saved and shared with other federal agencies. See, e.g., App. A at 1 (discussing questioning of
(b) (6)

Individuals questioned about their First Amendment-protected beliefs, activities,

Sincerely,

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Laura Murphy
Director, Washington Legislative Office