

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SAWSAAN TABBAA, HASSAN SHIBLY,
ASMAA ELSHINAWY, KAREMA ATASSI,
and GALEB RIZEK,

Plaintiffs,

-versus-

MICHAEL CHERTOFF, Secretary of the United
States Department of Homeland Security;
ROBERT C. BONNER, Commissioner of the
United States Customs and Border Protection;
MICHAEL D'AMBROSIO, Director of Field
Operations in Buffalo, United States Customs
and Border Protection; and JOSEPH J. WILSON,
Buffalo Port Director for the United States
Customs and Border Protection,

Defendants.

COMPLAINT

05 Civ.

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PRELIMINARY STATEMENT

1. This civil-rights lawsuit seeks to vindicate the right of American citizens who are Muslim to attend religious conferences outside the country without being detained, interrogated, fingerprinted, and photographed upon their return to the United States simply for having attended these conferences. The United States Department of Homeland Security has implemented a policy or practice authorizing such actions and, as a result, the plaintiffs and dozens of other American citizens who are Muslim were unlawfully detained, interrogated, fingerprinted, and photographed near Buffalo, New York, when they returned from a large Islamic conference that took place in Toronto, Canada in December 2004. The American citizens subjected to this mistreatment were

singled out by federal border agents solely because they had attended an Islamic conference.

2. The plaintiffs are five American citizens who are Muslim and who attended the December conference in Toronto for entirely lawful religious reasons. Traveling in four separate vehicles, the plaintiffs were detained at the Canadian-American border near Buffalo when border agents learned that they had attended the conference. Despite the fact that the plaintiffs were citizens and had valid American passports or other valid identification, they were held involuntarily for as long as six and one-half hours, were interrogated about the conference, and were fingerprinted and photographed. During the detentions, border agents confiscated cell phones when they learned that those being held were attempting to contact lawyers or the media. None of the plaintiffs had engaged in any unlawful conduct nor any other conduct that would justify the mistreatment to which they were subjected.

3. The same religious conference is scheduled to take place again in December 2005, and the plaintiffs all want to attend it but are reluctant to do so if they will be subjected to similar treatment. Moreover, all of them fear misuse by the federal government of the information, fingerprints, and photographs that the plaintiffs were forced to surrender. The government's actions have had and will continue to have a substantial impact on the plaintiffs' ability to exercise their lawful rights.

4. The defendants' actions violated the plaintiffs' rights under the First and Fourth Amendments to the United States Constitution and under the Religious Freedom Restoration Act. The plaintiffs seek a declaration that the defendants' actions were unlawful, a declaration that their policies and practices are unlawful, an injunction against

further enforcement of those policies and practices, and an injunction requiring expungement from all federal databases of all information, fingerprints, and photographs unlawfully obtained from the plaintiffs.

JURISDICTION AND VENUE

5. This court has subject matter jurisdiction over the plaintiffs' claims pursuant to 28 U.S.C. §§ 1331, 1343(a)(4). Jurisdiction to grant declaratory judgment is conferred by 28 U.S.C. §§ 2201, 2202. Injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure.

6. Venue is proper in this action pursuant to 28 U.S.C. § 1391(e) in that at least one of the plaintiffs resides in the Eastern District of New York.

PARTIES

Plaintiffs

7. SAWSAAN TABBAA is a United States citizen who is Muslim and resides in Amherst, New York.

8. HASSAN SHIBLY is a United States citizen who is Muslim and resides in Amherst, New York.

9. ASMAA ELSHINAWY is a United States citizen who is Muslim and resides in Brooklyn, New York.

10. KAREMA ATASSI is a United States citizen who is Muslim and resides in Williamsville, New York.

11. GALEB RIZEK is a United States citizen who is Muslim and resides in Niagara Falls, New York.

Defendants

12. MICHAEL CHERTOFF is the Secretary of the United States Department of Homeland Security (DHS) and has authority over all DHS policies, procedures, and practices relating to the entry of American citizens into the United States, including entry at border crossings near Buffalo, New York. Mr. Chertoff is sued in his official capacity.

13. ROBERT C. BONNER is the Commissioner of the United States Customs and Border Protection (CBP), an agency within the United States Department of Homeland Security. In that capacity Mr. Bonner has authority over DHS policies, procedures, and practices relating to entry at border crossings into the United States, including entry at border crossings near Buffalo, New York. Mr. Bonner is sued in his official capacity.

14. MICHAEL D'AMBROSIO is the director of field operations in Buffalo for the CBP. Upon information and belief, in that capacity Mr. D'Ambrosio has direct responsibility for and oversight over DHS policies, procedures, and practices relating to entry at the border crossings near Buffalo, New York. Mr. D'Ambrosio is sued in his official capacity

15. JOSEPH J. WILSON is the Port Director in Buffalo for the CPB. Upon information and belief, in that capacity Mr. Wilson has direct responsibility for and oversight over DHS policies, procedures, and practices relating to entry at the border crossings near Buffalo, New York. Mr. Wilson is sued in his official capacity.

FACTUAL ALLEGATIONS

GENERAL ALLEGATIONS

16. On three occasions since January 2003 a large religious conference known as the Reviving the Islamic Spirit (RIS) Conference has been held in Toronto, Canada.

Organized by college students and considered to be the largest Islamic conference in Canada, the RIS Conference is a mainstream cultural and religious gathering that advocates peace, tolerance, and unity. It features speakers, includes religious activities, and has been endorsed by prominent politicians.

17. The most recent RIS Conference took place in late December 2004 at a stadium in downtown Toronto called the Skydome. As in prior years, the Canadian government welcomed the December 2004 conference. Several Canadian officials addressed the conference, including the Premier of Ontario, Dalton McGuinty; Toronto Mayor David Miller; and Commissioner Giuliano Zaccardelli of the Royal Canadian Mounted Police. Premier McGuinty expressed his best wishes for an inspirational conference, stating, “I applaud the thousands of enthusiastic young people who have come together this weekend in a spirit of optimism to explore ways in which Muslim youth can make a difference in the life of their community—and make the world a better place.” The conference began with a call to prayer, and attendees prayed collectively on each day of the conference. On several occasions, attendees listened collectively to recitations from the Quran.

18. Among the conference’s keynote speakers was Hamza Yusuf, an American citizen and prominent Imam from Hayward, California, who has advised President Bush

on several occasions on matters regarding Islam. Mr. Yusuf sat near First Lady Laura Bush during President Bush's September 20, 2001 address to a joint session of Congress.

19. All of the plaintiffs attended the December 2004 RIS Conference. They did so to learn more about their religion and to participate in lectures by renowned Muslim scholars. Moreover, the plaintiffs attended the conference to congregate with and learn from other members of their faith and looked forward to associating with other Muslims at the conference. Some of the plaintiffs attended the conference to reaffirm their religious faith. One plaintiff considers her attendance at the annual conference her local 'hajj,' or pilgrimage.

20. The plaintiffs' activities at the conference were entirely lawful, and nothing about those activities would provide any basis for suspecting the plaintiffs of unlawful conduct.

21. As happened with dozens of other RIS Conference participants, when the plaintiffs arrived at the border near Buffalo, New York to return to the United States, agents of the United States Customs and Border Protection (CBP) singled them out when they learned of the plaintiffs' attendance at the conference. Some who were wearing traditional Muslim clothing as they arrived at the border were asked about the conference before being asked any other question about their visit to Canada. In every instance, border agents told them they could not pass over the border and instead directed them into a nearby building, where dozens of other Muslim American citizens who had attended the conference were being detained.

22. All five of the plaintiffs are American citizens. At the time they were detained, four of them had in their possession and provided to border agents valid United States passports; the fifth provided a valid New York State driver's license, which was legally

sufficient for entry into the United States. Nothing about the plaintiffs' identification would provide any reasonable basis for believing or suspecting that the documents were invalid or falsified. Upon information and belief, border agents had no reason to doubt that the plaintiffs were United States citizens when they detained them.

23. The plaintiffs were detained for many hours in a room that was cold and lacked adequate seating. Several children who were detained cried about their hands turning blue from the cold and from watching their parents and siblings being subjected to humiliating interrogations and being taken away by armed federal agents.

24. During their detention, the plaintiffs and others were interrogated about the conference. They were asked questions such as: What was the conference about? What did you do at the conference? Why did you attend the conference? What did the speakers discuss? Did anyone ask you to harm Americans? At no time during their detention were the plaintiffs asked questions bearing on their citizenship.

25. As they realized what was happening to them, some of the plaintiffs attempted to use their cell phones to contact attorneys, the media, or family members to tell them about their detention. When border agents learned of this, they prohibited such calls, and border agents seized cellular phones from several of the plaintiffs.

26. Following the interrogations, border agents moved the plaintiffs to separate rooms to be frisked. Agents forced several of the plaintiffs to turn around, put their hands on the wall, and kicked their feet wide open -- almost knocking over one of the plaintiffs -- as agents patted them down. One female plaintiff was asked to remove her hijab -- a traditional Muslim headscarf -- and when she refused an agent inserted her fingers under the hijab and searched around the woman's head and behind her ears.

27. Next, federal agents digitally fingerprinted the plaintiffs. Some refused to be fingerprinted, but the agents told them that they had no choice. One plaintiff cried throughout the experience as an agent roughly grabbed her hand and forced her to submit to the fingerprinting. The agents refused to explain why they were fingerprinting the plaintiffs.

28. Following the fingerprinting, the agents digitally photographed the plaintiffs.

29. After subjecting the plaintiffs to this involuntary detention, interrogation, frisking, fingerprinting, and photographing, border agents released them.

30. When plaintiffs returned to their vehicles, they found that the vehicles had been searched.

31. Border agents do not routinely detain interrogate, frisk, fingerprint, or photograph United States citizens returning to this country. The plaintiffs did not consent to being detained, interrogated, fingerprinted or photographed.

32. Upon information and belief, the interrogation, frisking, fingerprinting, and photographing of the plaintiffs was not intended to or reasonably likely to produce information relevant to ascertaining whether the plaintiffs were citizens. At no time during the detention of the plaintiffs did border agents have any basis for believing that the plaintiffs were not citizens. All of the plaintiffs were detained substantially longer than necessary to ascertain their citizenship had there been any reasonable doubt about their citizenship.

33. At no time did any reasonable basis exist to believe that any of the plaintiffs were seeking to bring into the country any unauthorized items. Upon information and belief, nothing about the detention, interrogation, fingerprinting, or photographing of the

plaintiffs was intended or reasonably likely to produce any information about whether the plaintiffs were seeking to bring into the country any unauthorized items.

34. Upon information and belief, defendants created and maintain records in CBP and other databases regarding the plaintiffs' December 2004 Buffalo border-crossings, including records of plaintiffs' fingerprints and photographs.

35. A considerable public controversy arose when the government's actions came to light. According to media accounts, Department of Homeland Security spokesperson Kristie Clemens stated that DHS agents had detained anyone who said they attended the RIS Conference. She sought to justify the government's actions by stating that "conferences such as the one that these 34 individuals just left in Toronto may be used by terrorist organizations to promote terrorist activities." In other reported remarks Ms. Clemens stated that DHS believed that future similar conferences will be used for similar purposes.

36. During a meeting between local community leaders and Buffalo area DHS officials about the government's treatment of those returning from the RIS Conference, DHS officials stated that the detentions, interrogations, fingerprinting, and photographing resulted from a directive from DHS headquarters in Washington, D.C. In response to questions about whether such actions will be repeated, DHS officials have refused to answer the question or have said that they could make no assurances that such actions will not be repeated.

37. These statements and actions by high-level DHS officials are consistent with statements made by border agents to the plaintiffs indicating that the agents were following orders from their supervisors. Agents told the plaintiffs that they were waiting

for clearance calls from their superiors, that their supervisors ordered them to detain “certain people,” and that higher authorities were forcing them to keep plaintiffs in detention. One plaintiff was told that “this is a new system” and that “you’re going to be seeing this at the border.”

38. The next RIS Conference is scheduled to take place in December 2005. All of the plaintiffs wish to attend that conference but fear that they will be detained, interrogated about their participation in the conference, fingerprinted, and photographed solely because of their attendance at the conference. The plaintiffs also are concerned about what the government has done or intends to do with the information, fingerprints, and photographs it has obtained and that it may obtain if the plaintiffs attend future conferences. If they were to attend the conference, the plaintiffs likely would pass through border crossings in the Buffalo area.

39. Upon information and belief, the defendants have authorized and have in place a policy or practice of detaining, interrogating, fingerprinting, and photographing American citizens who are Muslim and who are returning from Muslim religious conferences outside the United States. All of the plaintiffs were subjected to this policy or practice in December 2004 and, because they intend to attend such conferences in the future, all of the plaintiffs are at risk of being subjected to this policy and practice in the future.

40. The defendants’ actions have been taken under the color of law.

INDIVIDUAL PLAINTIFFS

Sawsan Tabbaa and Hassan Shibly

41. Plaintiff SAWSAN TABBAA is a United States citizen who works as a clinical assistant instructor of orthodontics at the SUNY University at Buffalo Dental School.

Her son, plaintiff HASSAN SHIBLY, is an 18-year-old United States citizen who is a political science major at the SUNY University at Buffalo.

42. Ms. Tabbaa, Mr. Shibly, and Ms. Tabbaa's other three children attended the RIS Conference in December 2004. Ms. Tabbaa considers the conference her local hajj, or pilgrimage. She looks forward to the opportunity to meet other people who share a similar culture and faith. Mr. Shibly attended to learn more about Islam, to contribute to Muslim unity, and to learn more about cultural dialogue between Muslims and members of other religious faiths. Ms. Tabbaa and Mr. Shibly also attended the previous two RIS conferences.

43. The Tabbaa family arrived at the border after midnight on December 27, with Ms. Tabbaa and her daughter wearing a hijab, as is their religious custom. They each had valid United States passports, which an agent asked for and they provided. The CBP agent then asked why they were in Canada, and Mr. Shibly replied that the family attended the RIS Conference. The agent told them they had all been selected for a random inspection and ordered them to park their car and wait in a nearby building.

44. Upon entering the building, the family was shocked to see several Muslim families who had attended the RIS Conference, including friends who had left Toronto four hours before them. They saw an elderly couple with their two young children sleeping in their arms, several babies, and a pregnant woman who looked very pale and had swollen eyes. The Tabbaa family also saw several families who attend their mosque.

45. Mr. Shibly complained to agents that they were selectively targeting Muslims who attended the conference and that the detentions were clearly not random. When he complained that some of his friends had already been in detention for four hours, an agent

responded, “Well, maybe you’ll be here for eight hours.” Another agent told him to stop complaining because she was just following orders from her supervisors.

46. Mr. Shibly asked permission to take photographs in order to document the detentions. The agent told Mr. Shibly “absolutely not.”

47. Out of desperation and fear, Mr. Shibly attempted to contact the media for help. He placed several phone calls from his cellular phone until a border agent requested that Mr. Shibly place his phone calls outside the building. After realizing that he was contacting the media, the agent then ordered Mr. Shibly not to use his telephone. Shortly thereafter, agents prohibited all detainees from making any phone calls.

48. Ms. Tabbaa’s three-year-old daughter was awake though the night crying. Her hands turned blue because of the cold.

49. After the family waited anxiously for several hours, agents ordered the family to complete some forms. Agents then directed Mr. Shibly to an isolated room with two armed guards, who ordered Mr. Shibly to empty his pockets. The agents turned Mr. Shibly to face the wall and kicked his legs open so forcefully that Mr. Shibly almost fell to the ground. The agents administered a pat-down search.

50. After the degrading search, agents took Mr. Shibly to be fingerprinted and photographed. He protested that he was not a criminal and did not want to be fingerprinted or photographed, but the agents ordered Mr. Shibly to cooperate and forcefully took Mr. Shibly’s hand for a digital scan of his fingerprints. Mr. Shibly told the officers that he felt humiliated and degraded.

51. Agents then ordered Ms. Tabbaa to provide her fingerprints. Ms. Tabbaa peacefully refused, stating that she wanted to leave the detention center and go home.

She said that she did not want to be fingerprinted unless the agents had some reason to suspect her of a crime. The agents told her that she could not leave unless she submitted to being fingerprinted. An agent said that if she tried to leave the agent would track her down and she would be placed in a holding cell.

52. Afraid that the agents would hurt her family, Ms. Tabbaa agreed to follow the agents into a separate room to be fingerprinted. Ms. Tabbaa's youngest daughter was frightened and crying and would not let go of her mother. Ms. Tabbaa cried as well as agents forcibly separated her from her daughter.

53. Once inside the fingerprinting room, Ms. Tabbaa again protested to the agents in the room that she did not wish to be fingerprinted. An agent then seized Ms. Tabbaa's hand and forced her to be fingerprinted. Ms. Tabbaa pleaded with the agent, stating "I don't want to do this, this is humiliating," but the agent would not let go of her hands. Ms. Tabbaa cried.

54. Ms. Tabbaa asked an agent if she was being detained because she had attended the RIS Conference. The agent replied, "If I tell you, I'll lose my job." Another agent told her to stop asking questions because "you have no rights at the border."

55. At approximately 5:30 a.m., after detaining them for approximately three and one-half hours, border agents released Ms. Tabbaa, Mr. Shibly, and their family.

56. Ms. Tabbaa and Mr. Shibly want to attend future RIS conferences, but they are worried about being subjected to the same degrading treatment. Mr. Shibly does not want to sacrifice his right to attend the conference because of the government's actions.

57. Ms. Tabbaa and Mr. Shibly are both very concerned about the government's use of the information it obtained during the interrogations and detention. They are worried

that the government maintains files about them and their family members who attended the religious conference, that the information was shared with other government agencies, such as the FBI, and that they will be singled out again by the government in the future.

Asmaa Elshinawy

58. Plaintiff ASMAA ELSHINAWY is a 20-year-old United States citizen who is a teaching assistant at an early childhood center. Ms. Elshinawy attended the December 2004 RIS Conference to learn more about her religion. It was her first time attending the RIS Conference.

59. Ms. Elshinawy left the conference in a car with five girlfriends and arrived at a Buffalo area border crossing late in the afternoon of December 27. A CBP agent asked them if they were United States citizens. They all replied yes, and the agent asked for their passports. Ms. Elshinawy and her friends all provided valid U.S. passports to the agent. Although the women had not yet mentioned their reasons for visiting Canada, the agent asked the women if they had been “at the conference.” When they replied that they had, the agent ordered them to pull the car over. One of Ms. Elshinawy’s friends asked why they were being pulled over, but the agent would not respond.

60. While she and her friends were detained in a building for hours, Ms. Elshinawy noticed that others who appeared not to be Muslim were passing in and out of the building without difficulty and that agents were apologizing to them for the delay even though they had not been held for nearly as long as Ms. Elshinawy and other Muslim-looking people had been held.

61. After several hours of detention, an agent asked Ms. Elshinawy and her friends why they had attended the RIS Conference. One of Ms. Elshinawy's friends responded that they attended to learn more about improving the image of Islam in North America. The agent replied with disbelief and insinuated that they were not telling the truth.

62. Agents interrogated Ms. Elshinawy and some of her friends about their participation in the RIS Conference, including what they had done at the conference, why they had attended the conference, what had happened at the conference, and what the speeches were about.

63. Agents required Ms. Elshinawy and her friends to surrender their cellular phones.

64. Eventually, agents called Ms. Elshinawy into a private room. An agent administered a pat-down search and asked if Ms. Elshinawy had any weapons hidden in her undergarments. Ms. Elshinawy replied that she did not. She was embarrassed and offended by this question and felt that the government had labeled her a criminal because she is Muslim.

65. Ms. Elshinawy was then directed to a different room to be digitally fingerprinted and photographed. Ms. Elshinawy protested that she did not want to be fingerprinted or photographed. Agents informed her that she had no choice and said that it was "standard procedure."

66. Ms. Elshinawy and her friends were finally released at approximately 9:00 p.m. on December 27. When Ms. Elshinawy and the others arrived back at the car, they found it in disarray. A video camera they had in the car was open and on its side, and seemed to have been viewed. A friend of Ms. Elshinawy's was concerned that border agents had

watched the video footage, which contained images of the vehicle occupants without their hijabs on. They complained to a supervisor about the condition of the car.

67. Ms. Elshinawy wants to attend future RIS conferences. She is afraid, however, that government officials will again detain and harass her if she attends the conference. She also is concerned that the government has information about her, including her fingerprints and photographs and that that information may now be in government databases or on government lists.

Karema Atassi

68. Plaintiff KAREMA ATASSI is a 22-year-old United States citizen who is a graduate student at the SUNY University at Buffalo studying school counseling. Ms. Atassi attended the RIS Conference to hear from the many respected Muslim scholars at the conference and to learn more about her religion. Ms. Atassi also looked forward to associating with other Muslims. She attended the conference with her husband, Tamer Osman; her mother, brother, infant son, and a friend. Ms. Atassi also attended the RIS conference in January 2004.

69. After the conference ended on December 26, 2004, Ms. Atassi and her family left Toronto late in the day to drive back to their home in Williamsville, New York. They arrived at a Buffalo area border crossing at approximately 11:30 p.m. As is her religious custom, Ms. Atassi wore a hijab; Mr. Osman wore a kufi, a traditional Muslim hat.

70. When Ms. Atassi and her family arrived at the border, they had in their possession their valid United States passports, which they provided to a CBP agent who asked them their reason for visiting Canada. Mr. Osman, who was driving the family minivan, replied that they were returning from “an Islamic conference.” The agent asked whether

the conference was the one “at the Skydome?” When Ms. Atassi and her family confirmed that they had been at the RIS Conference in Toronto, the agent ordered them to pull over and to report to a nearby building. The agent seized the family’s passports.

71. Inside the building, Ms. Atassi noticed that a large number of the people being detained appeared to be Muslim. Some of them told her that many Muslims had been detained earlier and had just been released.

72. Agents refused to explain to Ms. Atassi why she and her family were being held and what would happen to them, even though the family repeatedly asked for an explanation. Ms. Atassi’s brother wanted to call family members to tell them that the family had been detained, but agents prohibited him from using his cellular phone. As the family’s fear grew, the brother attempted to contact a lawyer. Again, an agent forbade him from making any such contact.

73. Ms. Atassi grew frustrated and angry as the night progressed. Some of the agents scared her and told her, “Don’t you know that you have no rights at the border?” Several agents told her that higher authorities were forcing them to keep the family in detention. A supervisor admitted to Ms. Atassi that she and her family were not being detained pursuant to a random selection. Another agent informed her husband that CBP had a new policy of fingerprinting people like them.

74. After being detained for several hours and then being asked to complete some forms, Ms. Atassi and her family were interrogated. Agents asked family members how they knew each other and why had they traveled in the past to certain Middle Eastern countries. Agents then separated Mr. Osman from the rest of the family and interrogated him individually. They asked him about the nature and content of the RIS Conference

and demanded to know whether anyone had asked him to harm Americans. The family was humiliated and offended by the suggestion that they were terrorists or criminals.

75. After the interrogation, agents took Ms. Atassi to a separate room to be frisked. Agents then digitally fingerprinted and photographed her. Ms. Atassi did not want to be searched, fingerprinted, or photographed, but she felt that she had no choice. She was scared and intimidated. It was clear to her that she would be arrested if she refused.

76. After approximately five hours in detention, Ms. Atassi and her family were released. By the time they were allowed to leave, it was approximately 4:30 in the morning.

77. Ms. Atassi would like to attend future RIS conferences. She fears, however, that she will be detained, interrogated, fingerprinted and photographed once again. On the other hand, she wants to be able to learn more about her religion.

78. Ms. Atassi is worried about what will happen with the information obtained by the government during the detention.

Galeb Rizek

79. Plaintiff GALEB RIZEK is a 33-year-old United States citizen who is the general manager of a hotel in Niagara Falls, New York. He attended the December 2004 RIS Conference because he wanted to learn more about his religion and to ask questions of Muslim scholars.

80. Mr. Rizek left Toronto after the conference ended on December 26 with his brother and uncle. They arrived at a Buffalo area border crossing just before midnight. A CBP agent asked for identification, and Mr. Rizek provided his valid New York State driver's license. Mr. Rizek works in the travel industry and crosses the border frequently

with his driver's license and has not previously encountered any problems. The agent then asked where in Canada Mr. Rizek had visited. When he responded that they had been in Toronto, the agent asked, "Did you go to the conference?" Mr. Rizek said yes, and the agent seized his driver's license and ordered Mr. Rizek to report to a nearby building.

81. Mr. Rizek was astonished to see so many Muslim attendees of the RIS Conference in the detention center, including other members of his family who had been traveling in another car. Mr. Rizek was particularly surprised because he knew that most of the Muslims he recognized were U.S. citizens.

82. About the detentions, a supervisor told Mr. Rizek that they were carrying out orders from above. Another agent said, "This is a new system," and suggested it was a pilot program that had been used in airports. The agent said, "You're going to be seeing this at the border."

83. Agents prohibited Mr. Rizek and the other detainees from using their cellular phones.

84. Mr. Rizek's sister, who had returned from the conference in a separate car and was seven months pregnant, was also in detention. At one point during the night, agents ordered her to lift her shirt to prove that she was pregnant.

85. After agents eventually ordered him to fill out some forms, an agent interrogated Mr. Rizek, asking questions such as: Where did you go? What did you do? Did anyone ask you to donate money? The agent also asked if anyone tried to recruit him for terrorist activity. Mr. Rizek replied, "No."

86. During his interrogation, Mr. Rizek asked the agent if he had done anything wrong or if he was under arrest. The agent responded that he was only following procedure. Mr. Rizek asked if the agent does this to everyone who crosses the border. The agent initially responded, "No," but after receiving a strange look from another CBP agent, he changed his answer to "Yes."

87. After the interrogation, the agents forced Mr. Rizek to stand up, remove his coat, and place his hands on the wall. The agents kicked his feet open and administered a pat-down search.

88. Agents then told Mr. Rizek that he would be fingerprinted. Mr. Rizek protested that he was not comfortable giving his fingerprints. An agent replied that he would stay in indefinite detention until he agreed to be fingerprinted. The agents then fingerprinted and photographed Mr. Rizek.

89. At approximately 5:30 a.m., Mr. Rizek's car keys were taken and his car was searched. At approximately 6:30 a.m. and after approximately six and one-half hours of detention, Mr. Rizek was released.

90. Mr. Rizek wants to attend the RIS Conference again in the future, but he is very worried about being subjected to the same treatment and that is substantially affecting his willingness to attend future conferences.

91. Mr. Rizek is anxious about what will happen to the records obtained by the government during his interrogation, fingerprinting, and photographing. He worries that the information was placed in a government database and shared with other government agencies.

92. Approximately one month after his border detention, Mr. Rizek crossed the border into Canada again. On that occasion, Mr. Rizek provided his identification to the border agent, the agent looked back at him and asked whether he had been pulled over a few weeks earlier. The agent then took out a newspaper clipping about the December 2004 border detention incident. After Mr. Rizek responded that he was that individual, the border agent waved him through and said, “You get out of here now.”

CAUSES OF ACTION

FIRST CAUSE OF ACTION

93. The defendants’ actions violated the plaintiffs’ right of freedom of religion under the First Amendment to the United States Constitution.

SECOND CAUSE OF ACTION

94. The defendants’ actions violated the plaintiffs’ rights of free speech and assembly under the First Amendment to the United States Constitution.

THIRD CAUSE OF ACTION

95. The defendants’ actions violated the plaintiffs’ rights to be free from unreasonable searches and seizures under the Fourth Amendment to the United States Constitution.

FOURTH CAUSE OF ACTION

96. The defendants' actions violated the plaintiffs' rights under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.*

WHEREFORE the plaintiffs respectfully request that the Court:

- 1) Assume jurisdiction over this matter;
- 2) Declare that the defendants have violated the plaintiffs' rights under the First and Fourth Amendments to the United States Constitution and under the Religious Freedom Restoration Act;
- 3) Enjoin the defendants from detaining, interrogating, fingerprinting, and photographing United States citizens who are Muslim because they are returning to the country after having attended religious conferences;
- 4) Order the defendants to return all information, fingerprints, and photographs unlawfully obtained from the plaintiffs and to expunge from government databases or otherwise destroy any information, fingerprints, or photographs that cannot be returned;
- 5) Award the plaintiffs reasonable attorneys' fees and costs; and
- 6) Grant any other relief the court deems appropriate.

Respectfully submitted,

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