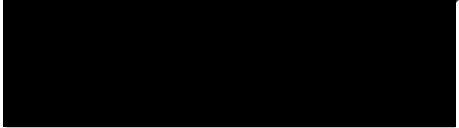




Jay Alan Sekulow, J.D., Ph.D.
Chief Counsel

July 12, 2016

Karen Neuman
Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security



RE: FOIA Request to U.S. Department of Homeland Security Regarding Decision(s) to Revise Training Material, Other Documents, and/or “Lexicon” by Removing or Editing Islam-Related Terms or References

Dear Ms. Neuman:

This letter is a request (“Request”) in accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and the corresponding department/agency implementing regulations.

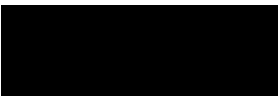
The Request is made by the American Center for Law and Justice (“ACLJ”)¹ on behalf of itself and over 81,000 of its members. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, this Request seeks any and all records pertaining to decisions by the U.S. Department of Homeland Security (“DHS”) and/or any of its components to revise any guidance, directive, training material, other document, and/or government lexicon by removing Islam-related terms or references.

Background

Pursuant to DHS FOIA regulation 6 C.F.R. §5.3(b), this Background addresses “the date, title or name, author, recipient, and subject matter of the record[s]” requested, to the extent known.

¹ The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.



I. June 28, 2016, Senate Committee Hearing Regarding “Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism”

On June 28, 2016, the Senate Judiciary Committee, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, held a hearing entitled “Willful Blindness: Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism.”² According to Sen. Charles Grassley, the Judiciary Committee Chairman, “One key reason for this failure is the President’s resistance to facing the truth about threats to our country when they don’t line up neatly with his predetermined policies or preferred ideological narratives.”³

One of the panelists giving testimony at the hearing was Farhana Khera (“Khera”), President and Executive Director of Muslim Advocates. According to her testimony:

In November 2011, President Obama’s then-Counterterrorism Advisor John Brennan agreed the White House would create an interagency task force to create review processes and build rigorous standards to ensure training material is not biased. However, the task force has had no public accountability, and has not assessed the pervasiveness of these biased training materials and whether the agents and officials involved were subject to any disciplinary action. Moreover, although there was reportedly a review and purge of a limited portion of training materials by the FBI, no commitment has been made to review intelligence products that mirror these biased training materials. We also have received no assurance that law enforcement and other government employees who participated in these trainings have been retrained. **We are concerned that these biased trainings and intelligence products continue to drive racial and religious profiling at every stage of the intelligence-gathering and investigative processes.**⁴

According to Khera:

Far too many of our nation’s public officials and political leaders engage in hateful and blatantly bigoted anti-Muslim rhetoric. Public officials must

²*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. (2016), available at <http://www.judiciary.senate.gov/meetings/willful-blindness-consequences-of-agency-efforts-to-deemphasize-radical-islam-in-combating-terrorism>*

³*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. (2016) (statement of Sen. Chuck Grassley, Chairman, S. J. Comm.), available at <https://www.judiciary.senate.gov/imo/media/doc/06-28-16p%20Grassley%20Statement.pdf>.*

⁴*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. 4 (2016) (testimony of Farhana Y. Khera, President and Executive Director, Muslim Advocates), available at <https://www.judiciary.senate.gov/imo/media/doc/06-28-16%20Khera%20Testimony.pdf>.*

understand that such rhetoric carries grave consequences for American Muslims and those who are perceived to be Muslim in the U.S.⁵

“To address bigoted training materials,” Khera submitted the following recommendations:

- a) **Audit all federal law enforcement and intelligence gathering training and educational materials to identify and remove information that is factually incorrect or exhibits bias against any race, ethnicity, religion, or national origin;**
- b) Implement a mandatory retraining program for all federal, state and local law enforcement officials who have been subjected to biased and discriminatory trainings provided by the federal government or with federal funds;
- c) Pursue disciplinary action against those agents and officials engaging in discriminatory conduct and responsible for these training materials; and
- d) Require federal agencies that provide law enforcement and homeland security funding to state and local governments to condition such funding on carrying out training or otherwise using federal funds in a manner that upholds our nation’s commitment to equal treatment and equal justice under the law and barring the use of trainers or materials that exhibit bias against any race, ethnicity, religion, or national origin.⁶

Khera has advanced her position and these specific recommendations at least as far back as 2011, as is addressed in greater detail in Section III, *infra*.

Sen. Ted Cruz, who chairs the Subcommittee conducting this hearing, stated in his opening remarks:

In 2011, the group ‘Muslim Advocates’ sent a letter to the Obama administration claiming the federal government had somehow become infected with “false and highly offensive training materials about Muslims and Islam,” and demanding that such “bigoted and distorted materials’ be “purge[d]”—I would note that was their word, not mine “purged”—and was also advocating for the creation of an interagency task force to address this problem.

In a lightning quick response—a rather unusual occurrence in our bloated bureaucracy—current CIA director John Brennan (then the President’s Homeland Security advisor) agreed to create such a task force, and claimed that the federal government had indeed produced “offensive training” that urgently needed to be dealt with in order to “reflect the vision that the President has put forward.”⁷

⁵*Id.* at 10.

⁶*Id.* at 16.

⁷*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong.*

As Sen. Cruz explained:

[I]n November 2011, the Department of Homeland Security released its “Domestic Terrorism and Homegrown Extremism Lexicon.” It made no reference to Islamic terrorism, despite being, on its face, an alleged “lexicon” that included “anarchist extremists,” “animal rights extremists,” “environmental extremists,” and “racist skinhead extremists.” Yet somehow, “radical Islamic extremists” were nowhere mentioned in the FBI’s supposed lexicon. Similarly, the FBI’s “Counterterrorism Analytical Lexicon” makes no reference to “Islam,” “radical Islam,” “jihad,” or any other such term. By way of comparison, the 9/11 Commission report, released in 2004, mentioned “jihad” 126 times and “Islam” 322 times.⁸

Sen. Cruz identified two government officials who were invited by the Committee to appear before the committee but declined to do so: “John P. Carlin, an Assistant Attorney General for the Department of Justice’s National Security Division, and Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch.”⁹

II. June 2016 DHS Report and Recommendation to Purge Government Lexicon of Islam

On June 9, 2016, the Homeland Security Advisory Council (HSAC), Countering Violent Extremism (CVE) Subcommittee released its Interim Report and Recommendations (“DHS CVE Report”; the “Report”).¹⁰ As one media outlet reported, the Report was published “[l]ess than a week before Omar Mateen walked into an Orlando gay club and killed or wounded more than 100 people.”¹¹

According to the DHS CVE Report, the “government must avoid stigmatizing specific communities.”¹² And:

Ultimately, the approaches this report recommends for the Department will help it evolve over time and adapt to the changing nature of violent extremism itself, namely, the convergence and alliances of violent extremist groups across the full

(2016) (statement of Sen. Ted Cruz, Chairman, S. Comm. on Oversight, Agency Action, Federal Rights and Federal Courts) available at https://www.cruz.senate.gov/?p=press_release&id=2704.

⁸*Id.*

⁹*Id.*

¹⁰HOMELAND SECURITY ADVISORY COUNCIL: COUNTERING VIOLENT EXTREMISM S. COMM., 114TH CONG., INTERIM REP. AND RECOMMENDATIONS (2016), [hereinafter Countering Violent Extremism] available at <https://www.dhs.gov/sites/default/files/publications/HSAC/HSAC%20CVE%20Final%20Interim%20Report%20June%209%202016%20508%20compliant.pdf>.

¹¹Peter Hasson, *Homeland Security Instructed to Combat Violent Extremism with Political Correctness*, DAILY CALLER (Jun. 13, 2016, 4:25 PM), <http://dailycaller.com/2016/06/13/homeland-security-instructed-to-combat-violent-extremism-with-political-correctness/>.

¹²*Id.*

spectrum of grievances: To include those that espouse and/or undertake violence justified through various ideologies, to include anarchists, sovereign citizens, white-supremacists, and others.¹³

A “**Key Recommendation**” expressed in the Report was that, “[g]iven the evolving threat and how the process of radicalization itself is evolving,” DHS should “update and change the rules on how government uses lexicon.”¹⁴ And, under the heading, “**Recommendation 3: Change Our Lexicon by Shifting How We Speak with Each Other and the World.**” the Report asserted:

There is a disagreement among scholars, government officials, and activists about the right lexicon to use around the issues of violent extremism. **At the same time, report after report has recommended that the U.S. Government be consistent in its language and its meaning, highlighting that tone and word choice matter. Under no circumstance should we be using language that will alienate or be disrespectful of fellow Americans.** Thus, we need to be clearer in what we mean and how we say it. Further, we are at a particular moment on the world stage with global events driving fear, political and cultural rhetoric leaning on sharp and divisive language, and deep polarization and distrust across communities. All of this is set against the backdrop of digitally connected recruitment efforts that are actively trying to exploit differences and create divisions across U.S. society. We must speak with honor and respect about all communities within the United States. We should give dignity to the many histories and diversities within our nation and advocate for a consistent whole of government approach that utilizes agreed terms and words. **Tone and word choice matter.**¹⁵

In further support of its recommendation, the Report explained:

Often without knowing it, we have constructed language in daily use that promotes an “us and them” narrative of division. Though it was within the context of the “War on Terror,” the Department’s 2008 guidance about lexicon is important to review as it has bearing on groups like ISIL. It instructs the Department to ensure terminology is “properly calibrated to diminish the recruitment efforts of extremists who argue that the West is at war with Islam.”¹⁶

The Report recommended the following specific actions concerning lexicon:

Actions:

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.*

¹⁶*Id.*

1. Renew efforts to describe CVE, its origin of soft power, and attempt to re-establish the term to ensure that prevention programs are not inter-mingled with surveillance or intelligence-gathering programs.
2. **Bring consistency into government use of language and meaning.**
3. **Ensure the Department reviews the 2008 directive and uses a vocabulary when discussing extremism that avoids the “us versus them” framing.**
4. **Reject religiously-charged terminology and problematic positioning by using plain meaning American English.**
 - a. **US v THEM: For example, use “American Muslim” rather than “Muslim American”; “Muslim communities” rather than “Muslim world.”**
 - b. **AMERICAN ENGLISH: For example, on using American English instead of religious, legal and cultural terms like “jihad,” “sharia,” “takfir” or “umma.”¹⁷**

The DHS CVE Report referred to and incorporated a 2008 DHS directive issued by the DHS Office for Civil Rights and Civil Liberties, entitled “Terminology to Define the Terrorists: Recommendations from American Muslims.”¹⁸ According to the DHS directive, “**Words matter.** The terminology that senior government officials use must accurately identify the nature of the challenges that face our generation.”¹⁹ And, “**our terminology must be properly calibrated to diminish the recruitment efforts of extremists who argue that the West is at war with Islam.**”²⁰

Importantly, Khera’s June 28, 2016, committee testimony and the June 9, 2016, DHS CVE recommendations followed a series of reported events and correspondence regarding certain organizations’ request to the White House that “offensive” terms concerning Islam be purged from federal training materials.

III. Muslim Advocates Coalition 2011 Letter to White House and White House Response

By letter dated October 19, 2011, to then Assistant to the president for Homeland Security and Counterterrorism John Brennan (“Brennan”), a coalition of “Muslim, Arab and South Asian organizations”²¹ led by Khera, expressed disapproval of “the federal government’s use of biased,

¹⁷*Id.*

¹⁸U.S. DEP’T OF HOMELAND SECURITY: OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES, TERMINOLOGY TO DEFINE THE TERRORISTS: RECOMMENDATIONS FROM AMERICAN MUSLIMS (Jan. 2008), *available at* https://www.dhs.gov/xlibrary/assets/dhs_crcl_terminology_08-1-08_accessible.pdf

¹⁹*Id.*

²⁰*Id.*

²¹AlMaghrib Institute; American Coalition for Good Government; American Muslim Association of Lawyers; American Muslim Voice; American Pakistan Foundation; American-Arab Anti-Discrimination Committee (ADC); Arab American Association of New York; Arab American Institute (AAI); Arab Community Center for Economic and Social Services (ACCESS); Arab Muslim American Federation (AMAF); Bay Area Association of Muslim Lawyers (BAAML); Capitol Area Muslim Bar Association; Council of Islamic Organizations of Greater Chicago

false and highly offensive training materials about Muslims and Islam.”²² Khera “request[ed] that the White House immediately create an interagency task force to address this problem, with a fair and transparent mechanism for input from the Muslim, Arab, and South Asian communities, including civil rights lawyers, religious leaders, and law enforcement experts.”²³

According to the 2011 coalition letter:

The use of bigoted trainers and materials like those above is not only highly offensive, disparaging the faith of millions of Americans, but leads to biased policing that targets individuals and communities based on religion, not evidence of wrongdoing. Inaccurate and bigoted training materials also foster fear and suspicion of American Muslims amongst law enforcement and the general public, increasing discrimination, bullying, harassment and anti-Muslim violence.²⁴

The 2011 coalition letter continued:

We urge you to create an interagency task force, led by the White House, tasked with the following responsibilities:

- 1. Review all trainers and training materials at government agencies, including all FBI intelligence products used such as the FBI intranet, FBI library and JTTF training programs; US Attorney training programs; U.S. Department of Homeland Security, U.S. Department of Defense, and US military intranet, libraries and training materials, resources and experts;**
- 2. Purge all federal government training materials of biased materials;**

(CIOGC); Council of Islamic Organizations of Michigan (CIOM); Council on American-Islamic Relations (CAIR); DRUM – Desis Rising Up and Moving; EMERGE-USA; Florida Muslim Bar Association; Georgia Association of Muslim Lawyers; Houston Shifa Services Foundation; Indian Muslim Relief & Charities (IMRC); Islamic Circle of North America (ICNA); Islamic Information Center; Islamic Medical Association of North America (IMANA); Islamic Networks Group (ING); Islamic Relief USA; Islamic Shura Council of Southern California; Islamic Society of Greater Houston (ISGH); Islamic Society of North America (ISNA); KARAMAH: Muslim Women Lawyers for Human Rights; Majlis Ash-Shura (Islamic Leadership Council) of Metropolitan NY; Michigan Muslim Bar Association; Muslim Advocates; Muslim American Civil Liberties Coalition (MACLC); Muslim American Society (MAS); Muslim Bar Association of Chicago; Muslim Bar Association of New York; Muslim Bar Association of Southern California; Muslim Congress/Justice360; Muslim Consultative Network (MCN); Muslim Lawyers Association of Houston; Muslim Legal Fund of America (MLFA); Muslim Peace Coalition USA; Muslim Progressive Traditionalist Alliance; Muslim Public Affairs Council (MPAC); National Muslim Law Students Association; National Network for Arab American Communities (NNAAC); New England Muslim Bar Association; Northern California Islamic Council; Ohio Muslim Bar Association; Pakistani American Bar Association (PABA); Pakistani American Leadership Center (PAL-C); Pakistani American Public Affairs Committee; Somali Action Alliance; South Asian Americans Leading Together (SAALT); South Asian Network (SAN); and Women in Islam, Inc.

²²Letter to DHS John Brennan on FBI's Use of Biased Experts and Training Materials, MUSLIMADVOCATES.ORG (Oct. 27, 2011), <https://www.muslimadvocates.org/letter-to-dhs-john-brennan-on-fbis-use-of-biased-experts-and-training-materials/>

²³*Id.*

²⁴*Id.*

3. Implement a mandatory re-training program for FBI agents, U.S. Army officers, and all federal, state and local law enforcement who have been subjected to biased training;
4. Ensure that personnel reviews are conducted and all trainers and other government employees who promoted biased trainers and training materials are effectively disciplined;
5. Implement quality control processes to ensure that bigoted trainers and biased materials are not developed or utilized in the future; and
6. **Issue guidance clearly stating that religious practice and political advocacy are protected activities under the First Amendment, not indicators of violence, and shall not be the basis for surveillance or investigation.**²⁵

Brennan responded to the 2011 coalition letter by letter dated November 3, 2011, addressed to Khera, and acknowledged awareness of certain “examples of substandard and offensive training that some United States Government elements have either sponsored or delivered.”²⁶ Brennan referenced “[o]ur National Strategy for Empowering Local Partners to Prevent Violent Extremism in the United States,” which “highlights competent training as an area of priority focus.”²⁷ According to Brennan, the National Strategy “emphasizes that our security is ‘inextricably linked to our values,’ including ‘the promotion of an inclusive society.’”²⁸

According to the letter, in November 2010, the White House’s National Security Staff identified training as a critical area for improvement” and “**tasked the Department of Homeland Security (DHS) to form an Interagency Working Group on Training to catalogue, review, and improve CVE-related instruction across all levels of government.**”²⁹

According to Brennan:

Recent efforts of this working group include: (1) a **CVE Training Guidance and Best Practices paper, which will give specific guidance to federal, state, local, and tribal government officials charged with organizing training related to CVE, CT, or cultural awareness;** and (2) an Information Bulletin on CVE Training, which provides additional guidance to state, local, and tribal entities that regularly leverage federal grants to fund CVE-related trainings. DHS has sent both documents to all DHS grantees, state and local governments, state and local law enforcement, relevant community stakeholders, and interagency partners.³⁰

²⁵*Id.*

²⁶*Training Letter to Khera*, MUSLIMADVOCATES.ORG (Nov. 3, 2011), <http://www.muslimadvocates.org/files/JOB-CVE-training-letter-to-Khera-11.3.11.pdf>

²⁷*Id.*

²⁸*Id.*

²⁹*Id.*

³⁰*Id.*

And:

In addition to these specific actions, **Departments and Agencies are taking aggressive steps to create broader review processes and build rigorous CVE curriculum standards. These include: (1) collecting all training materials that contain cultural or religious content, including information related to Islam or Muslims; (2) establishing a process, in consultation with subject matter experts, to ensure that such materials comply with core American values, professional standards, and the United States Constitution; and (3) writing guidance for CVE training, which will be shared with components, field offices, and external partners. Moreover, we are committed to engaging in a sustained dialogue with all relevant stakeholders on these issues as we move forward.**³¹

Speaking of the examples of substandard and offensive training, Brennan explained “[t]hey do not reflect the vision that the President has put forward.”³² He concluded his letter by stating: **“we are currently developing an implementation plan for our Domestic CVE Strategy, which will provide further detailed information on the specific steps necessary to improve CVE and cultural competency training across the United States Government and measure progress.”**³³

IV. FBI “Purge” in 2012

As reported in the media, in February 2012, an FBI “inquiry has uncovered and purged over 700 pages of documentation from approximately 300 presentations given to agents since 9/11” and “more disclosures may be forthcoming.”³⁴ According to reports: “The FBI purged documents according to four criteria: ‘factual errors’; ‘poor taste’; employment of ‘stereotypes’ about Arabs or Muslims; or presenting information that ‘lacked precision.’”³⁵ According to Judicial Watch:

The FBI memos and other documents reveal that the agency purged its anti-terrorism training curricula of material determined by an undisclosed group of “Subject Matter Experts” (SME) to be “offensive” to Muslims. The excised material included references linking the Muslim Brotherhood to terrorism, tying Al Qaeda to the 1993 World Trade Center and Khobar Towers bombings, and suggesting that “young male immigrants of Middle Eastern appearance ... may fit the terrorist profile best.”³⁶

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Spencer Ackerman, *FBI Purges Hundreds of Terrorism Documents in Islamophobia Probe*, WIRED.COM (Feb. 15, 2012, 6:30 AM), <https://www.wired.com/2012/02/hundreds-fbi-documents-muslims/>

³⁵ *Id.*

³⁶ *DHS May Ban “Religiously-Charged” Terms Jihad, Sharia to Avert “Us Versus Them” in Anti-Terror Programs*, JUDICIALWATCH.ORG (Jun. 23, 2016), <http://www.judicialwatch.org/blog/2016/06/avert-us-versus-dhs-told-ban-religiously-charged-terms-jihad-sharia-anti-terror-programs/>

V. Muslim Advocates Coalition 2014 Letter to White House

By letter dated August 14, 2014, addressed to Lisa O. Monaco, Assistant to the President for Homeland Security and Counterterrorism, a similar but expanded group of organizations³⁷ urged “immediate action to end the use of anti-Muslim training materials and address anti-Muslim conduct exhibited by agencies throughout the federal government.”³⁸

In this 2014 coalition letter, the organizations expressed appreciation “that the White House has recently decried ‘the use of racial or ethnic stereotypes, slurs, or other similar language by employees’ as ‘both unacceptable and inconsistent with the country’s core values.’”³⁹ According to the letter, “[t]he White House directed the Director of National Intelligence (DNI) to undertake an assessment of Intelligence Community policies, training standards or directives that promote diversity and tolerance, and, as necessary, make any recommendations, changes, or additional reforms.”⁴⁰

The organizations expressed disappointment that DNI only expanded “multicultural and diversity sensitivity training and re-establish an external advisory board on diversity and inclusion.”⁴¹

³⁷ Advocacy for Principled Action in Government American Center for Outreach; American Civil Liberties Union; American-Arab Anti-Discrimination Committee (ADC) Arab American Action Network (AAAN); Arab American Association of New York; Arab American Institute; Asian American Legal Defense and Education Fund (AALDEF); Asian Americans Advancing Justice - Asian Law Caucus; Asian Americans Advancing Justice - Los Angeles; Auburn Seminary; Center for Constitutional Rights; Center for National Security Studies; Center for New Community; Council on American-Islamic Relations (CAIR); Council of Islamic Organizations of Greater Chicago; Creating Law Enforcement Accountability & Responsibility (CLEAR); Defending Dissent Foundation; DRUM - South Asian Organizing Center; Electronic Frontier Foundation; Emerge USA; Franciscan Action Network; Gay & Lesbian Advocates & Defenders (GLAD); Georgia Association of Muslim Lawyers (GAML); Human Rights Campaign; Illinois Coalition for Immigrant and Refugee Rights (ICIRR); Imam Hussain Islamic Center; Interfaith Alliance; Islamic Information Center of America; Islamic Networks Group (ING); Jews Against Islamophobia; Jews for Racial and Economic Justice; Lambda Legal; Majlis Ash-Shura (Islamic Leadership Council) of Metropolitan NY; Mexican American Legal Defense and Educational Fund (MALDEF); Michigan Muslim Bar Association (MMBA); Michigan Muslim Community Council (MMCC); Military Religious Freedom Foundation; Muslim Advocates; Muslim Alliance in North America (MANA); Muslim American Civil Liberties Coalition (MACLC); Muslim American Community Association; Muslim Bar Association of New York; Muslim Bar Association of Southern California; Muslim Legal Fund of America (MLFA); Muslim Peace Coalition USA; Muslim Progressive Traditionalist Alliance; Muslim Public Affairs Council; NAACP; NAACP New York State Conference; National Asian Pacific American Bar Association (NAPABA) National Center for Lesbian Rights; National Center for Transgender Equality; National Gay and Lesbian Task Force; National Lawyers Guild; National Muslim Law Students Association; National Religious Campaign Against Torture; New Jersey Muslim Lawyers Association (NJMLA); OneAmerica; Progressive Congress; Sikh American Legal Defense and Education Fund (SALDEF); South Asian Americans Leading Together (SAALT); The Hindu Temple Society of North America; The Interfaith Center of New York; The International Institute of Tolerance; The Leadership Conference on Civil and Human Rights; The National Network for Arab American Communities (NNAAC); The Queens Federation of Churches; The Sikh Coalition; Transgender Law Center; T’ruah: The Rabbinic Call for Human Rights; UMMA Community Clinic; United Sikhs; Universal Muslim Association of America (UMAA); and Women in Islam Inc.

³⁸ *Letter to Lisa O. Monaco: Coalition Letter Trainings*, MUSLIMADVOCATES.ORG (Aug. 14, 2014), http://www.muslimadvocates.org/files/FINALCoalitionLetterTrainings_8.14.14.pdf

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

They continued: “**These measures may be necessary, but they do not directly address the persistent problem of law enforcement and intelligence agencies using anti- Muslim training materials** and engaging in discriminatory law enforcement.”⁴²

They expressed disappointment that, contrary to Brennan’s assurances in his letter of November 3, 2011, “there has been no accounting to the public about any task force on or assessment of the pervasiveness of these biased training materials.”⁴³ And, “although there was reportedly a review and purge of a limited portion of training materials by the FBI, no commitment has been made to review intelligence products that mirror these biased training materials.”⁴⁴

The letter continued: “Without executive branch actions, including those we recommend below, trainings that perpetuate gross stereotypes and false information about Islam and Muslims will continue to proliferate at the state and local level.”⁴⁵

And:

The use of anti-Muslim trainers and materials is not only highly offensive, disparaging the faith of millions of Americans, but leads to biased policing that targets individuals and communities based on religion, not evidence of wrongdoing. Government training materials that include religious epithets also foster fear and suspicion of American Muslims among law enforcement and the general public, increasing discrimination, bullying, harassment, and anti-Muslim violence.⁴⁶

Accordingly, the letter urged Monaco to “undertake the following steps:”

- (1) Audit all federal law enforcement and intelligence gathering training and educational materials to identify and remove information that is factually incorrect or exhibits bias against any race, ethnicity, religion, or national origin;**
- (2) Implement a mandatory retraining program for all federal, state and local law enforcement officials who have been subjected to biased and discriminatory trainings provided by the federal government or with federal funds;**
- (3) Pursue disciplinary action against those agents and officials engaging in discriminatory conduct and responsible for these training materials;
- (4) Require federal agencies that provide law enforcement and homeland security funding to state and local governments to condition such funding on carrying out training or otherwise using federal funds in a manner that upholds our nation’s commitment to equal treatment and equal justice under the law and barring the

⁴²*Id.*

⁴³*Id.*

⁴⁴*Id.*

⁴⁵*Id.*

⁴⁶*Id.*

use of trainers or materials that exhibit bias against any race, ethnicity, religion, or national origin.⁴⁷

Records Requested

For purposes of this Request, the term “record” is “any information” that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recordings, or other material. The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government or private account or server, consistent with the holdings of *Competitive Enterprise Institute v. Office of Science and Technology Policy*, No. 15-5128 (D.C. Cir. July 5, 2016)⁴⁸ (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

For purposes of this Request, the term “briefing” includes, but is not limited to, any in-person meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person.

For purposes of this Request, the term “DHS official” includes, but is not limited to, any person who is (1) employed by or on behalf of the U.S. Department of Homeland Security in any capacity; (2) contracted for services by or on behalf of the U.S. Department of Homeland Security in any capacity; or (3) appointed by the President of the United States to serve in any capacity at the U.S. Department of Homeland Security; all without regard to the component or office in which that person serves.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is March 1, 2012, to the date this Request is processed.

Pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, ACLJ hereby requests that the U.S. Department of Homeland Security produce the following within twenty (20) business days:

1. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff, or employee, referencing or regarding in any way the June 2016 Homeland Security Advisory Council (HSAC), Countering Violent Extremism (CVE) Subcommittee Interim Report and Recommendations.⁴⁹

⁴⁷*Id.*

⁴⁸[https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/\\$file/15-5128-1622973.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/$file/15-5128-1622973.pdf)

⁴⁹Countering Violent Extremism, *supra* note 10.

2. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, referencing or regarding in any way Farhana Khera's June 28, 2016, testimony⁵⁰ to the Senate Judiciary Committee, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, at the hearing entitled "Willful Blindness: Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism," or any request, proposal or recommendation articulated by Khera in her testimony.
3. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, referencing or regarding in any way the August 14, 2014, letter⁵¹ to Monaco or any of the letter's content, requests or recommendations.
4. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the content of government training material or curricula, with respect to use of the words "Islam," "Islamic," "radical Islam," "radical Islamist," "radical Islamic," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other religious, Islamic or Arabic references.
5. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the use of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, or any other publicized or non-publicized document.
6. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the use of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, or any other publicized or non-publicized document.
7. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *from March 1, 2012, to August 13, 2014*, identifying any terms, words, titles or phrases for possible or actual removal, modification, or replacement with English translations, in or from any DHS or DHS component regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

⁵⁰Testimony of Farhana Y. Khera, *supra* note 4.

⁵¹Letter to Lisa O. Monaco, *supra* note 38.

8. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *on or after* August 14, 2014, identifying any terms, words, titles or phrases for possible or actual removal, modification, or replacement with English translations, in or from any DHS or DHS component regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

9. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *on or after* August 14, 2014, containing any discussion of the benefits, advantages, drawbacks, disadvantages, or any other indication of a rationale for or against the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

10. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *on or after* August 14, 2014, containing any approval, instruction, direction, or order for the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

11. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *on or after* August 14, 2014, containing the name of any person involved in the decision or any discussion of a possible decision to remove, exclude, modify, replace, and/or translate from Arabic to English, the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

12. Any and all records, including but not limited to any communications or briefings prepared, or sent to John P. Carlin, Assistant Attorney General for the Department of Justice's National Security Division, his staff or employee, by any DHS official, staff or employee, *on or after* August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia,"

“takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

13. Any and all records, including but not limited to any communications or briefings received by any DHS official, staff or employee, from John P. Carlin, Assistant Attorney General for the Department of Justice’s National Security Division, his staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

14. Any and all records, including but not limited to any communications or briefings prepared, or sent to Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch, his staff or employee, by any DHS official, staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

15. Any and all records, including but not limited to any communications or briefings received by any DHS official, staff or employee, from Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch, his staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

16. Any and all records reflecting or in any way regarding any in person meeting or briefing, regardless of where such meeting or briefing occurred, between or attended by any DHS official, staff or employee and *[any non-governmental organization whose name is on the August 14, 2014 coalition letter to Monaco]*.

17. Any and all records of any communications or briefings that were, on or after August 14, 2014, prepared by or for, reviewed by or for, received by or from, sent by or to, or otherwise

transmitted between, any DHS official, staff or employee and/or [any non-governmental organization whose name is on the August 14, 2014 coalition letter to Monaco].

18. Any and all records of any communications or briefings prepared, reviewed or sent, on or after August 14, 2014, by any DHS official, staff or employee to Farhana Khera, her staff, or any other employee or representative of Muslim Advocates.

19. Any and all records of any communications or briefings received or reviewed, on or after August 14, 2014, by any DHS official, staff or employee from Farhana Khera, her staff, or any other employee or representative of Muslim Advocates.

CONCLUSION

As you are undoubtedly aware, President Obama's Freedom of Information Act Memorandum of January 21, 2009, declares:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. . . .⁵²

As such, if this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions.

⁵²PRESIDENT BARACK OBAMA, MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES RE: FREEDOM OF INFORMATION ACT (Jan. 21, 2009), *available at* https://www.whitehouse.gov/the_press_office/FreedomofInformationAct.

Moreover, as explained in an accompanying memorandum, the ACLJ is entitled to expedited processing of this Request as well as a waiver of all fees associated with it. ACLJ reserves the right to appeal a decision to withhold any information sought by this request and/or to deny the separate application for expedited processing and waiver of fees.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jay Alan Sekulow, Chief Counsel
Colby M. May, Senior Counsel
Craig L. Parshall, Special Counsel
Benjamin P. Sisney, Senior Litigation Counsel
American Center for Law and Justice



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Handwritten signature of Jay Alan Sekulow in cursive.

Jay Alan Sekulow
Chief Counsel

Handwritten signature of Colby M. May in cursive.

Colby M. May
Senior Counsel

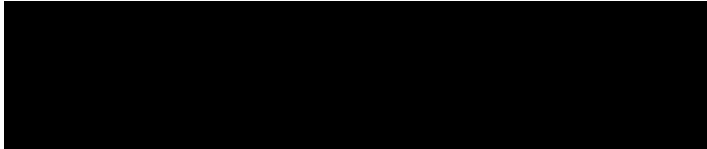
cc: DHS Office for Civil Rights and Civil Liberties (CRCL)
Federal Law Enforcement Training Center (FLETC)
DHS Office of Intelligence & Analysis (I&A)
Transportation Security Administration (TSA)
United States Immigration & Customs Enforcement (ICE)
United States Customs & Border Protection (CBP)



Jay Alan Sekulow, J.D., Ph.D.
Chief Counsel

July 12, 2016

United States Customs & Border Protection (CBP)
FOIA Officer



RE: FOIA Request to U.S. Department of Homeland Security Regarding Decision(s) to Revise Training Material, Other Documents, and/or “Lexicon” by Removing or Editing Islam-Related Terms or References

Dear Ms. Burroughs:

This letter is a request (“Request”) in accordance with the Freedom of Information Act (“FOIA”). 5 U.S.C. § 552 *et seq.*, and the corresponding department/agency implementing regulations.

The Request is made by the American Center for Law and Justice (“ACLJ”)¹ on behalf of itself and over 81,000 of its members. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, this Request seeks any and all records pertaining to decisions by the U.S. Department of Homeland Security (“DHS”) and/or any of its components to revise any guidance, directive, training material, other document, and/or government lexicon by removing Islam-related terms or references.

Background

Pursuant to DHS FOIA regulation 6 C.F.R. §5.3(b), this Background addresses “the date, title or name, author, recipient, and subject matter of the record[s]” requested, to the extent known.

I. June 28, 2016, Senate Committee Hearing Regarding “Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism”

¹ The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.



On June 28, 2016, the Senate Judiciary Committee, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, held a hearing entitled “Willful Blindness: Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism.”² According to Sen. Charles Grassley, the Judiciary Committee Chairman, “One key reason for this failure is the President’s resistance to facing the truth about threats to our country when they don’t line up neatly with his predetermined policies or preferred ideological narratives.”³

One of the panelists giving testimony at the hearing was Farhana Khera (“Khera”), President and Executive Director of Muslim Advocates. According to her testimony:

In November 2011, President Obama’s then-Counterterrorism Advisor John Brennan agreed the White House would create an interagency task force to create review processes and build rigorous standards to ensure training material is not biased. However, the task force has had no public accountability, and has not assessed the pervasiveness of these biased training materials and whether the agents and officials involved were subject to any disciplinary action. Moreover, although there was reportedly a review and purge of a limited portion of training materials by the FBI, no commitment has been made to review intelligence products that mirror these biased training materials. We also have received no assurance that law enforcement and other government employees who participated in these trainings have been retrained. **We are concerned that these biased trainings and intelligence products continue to drive racial and religious profiling at every stage of the intelligence-gathering and investigative processes.**⁴

According to Khera:

Far too many of our nation’s public officials and political leaders engage in hateful and blatantly bigoted anti-Muslim rhetoric. Public officials must understand that such rhetoric carries grave consequences for American Muslims and those who are perceived to be Muslim in the U.S.⁵

²*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. (2016), available at <http://www.judiciary.senate.gov/meetings/willful-blindness-consequences-of-agency-efforts-to-deemphasize-radical-islam-in-combating-terrorism>*

³*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. (2016) (statement of Sen. Chuck Grassley, Chairman, S. J. Comm.), available at <https://www.judiciary.senate.gov/imo/media/doc/06-28-16p%20Grassley%20Statement.pdf>.*

⁴*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. 4 (2016) (testimony of Farhana Y. Khera, President and Executive Director, Muslim Advocates), available at <https://www.judiciary.senate.gov/imo/media/doc/06-28-16%20Khera%20Testimony.pdf>.*

⁵*Id.* at 10.

“To address bigoted training materials,” Khera submitted the following recommendations:

- a) **Audit all federal law enforcement and intelligence gathering training and educational materials to identify and remove information that is factually incorrect or exhibits bias against any race, ethnicity, religion, or national origin;**
- b) Implement a mandatory retraining program for all federal, state and local law enforcement officials who have been subjected to biased and discriminatory trainings provided by the federal government or with federal funds;
- c) Pursue disciplinary action against those agents and officials engaging in discriminatory conduct and responsible for these training materials; and
- d) Require federal agencies that provide law enforcement and homeland security funding to state and local governments to condition such funding on carrying out training or otherwise using federal funds in a manner that upholds our nation’s commitment to equal treatment and equal justice under the law and barring the use of trainers or materials that exhibit bias against any race, ethnicity, religion, or national origin.⁶

Khera has advanced her position and these specific recommendations at least as far back as 2011, as is addressed in greater detail in Section III, *infra*.

Sen. Ted Cruz, who chairs the Subcommittee conducting this hearing, stated in his opening remarks:

In 2011, the group ‘Muslim Advocates’ sent a letter to the Obama administration claiming the federal government had somehow become infected with “false and highly offensive training materials about Muslims and Islam,” and demanding that such “bigoted and distorted materials’ be “purge[d]”—I would note that was their word, not mine “purged”—and was also advocating for the creation of an interagency task force to address this problem.

In a lightning quick response—a rather unusual occurrence in our bloated bureaucracy—current CIA director John Brennan (then the President’s Homeland Security advisor) agreed to create such a task force, and claimed that the federal government had indeed produced “offensive training” that urgently needed to be dealt with in order to “reflect the vision that the President has put forward.”⁷

As Sen. Cruz explained:

⁶*Id.* at 16.

⁷*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. (2016) (statement of Sen. Ted Cruz, Chairman, S. Comm. on Oversight, Agency Action, Federal Rights and Federal Courts) available at https://www.cruz.senate.gov/?p=press_release&id=2704.*

[I]n November 2011, the Department of Homeland Security released its “Domestic Terrorism and Homegrown Extremism Lexicon.” It made no reference to Islamic terrorism, despite being, on its face, an alleged “lexicon” that included “anarchist extremists,” “animal rights extremists,” “environmental extremists,” and “racist skinhead extremists.” Yet somehow, “radical Islamic extremists” were nowhere mentioned in the FBI’s supposed lexicon. Similarly, the FBI’s “Counterterrorism Analytical Lexicon” makes no reference to “Islam,” “radical Islam,” “jihad,” or any other such term. By way of comparison, the 9/11 Commission report, released in 2004, mentioned “jihad” 126 times and “Islam” 322 times.⁸

Sen. Cruz identified two government officials who were invited by the Committee to appear before the committee but declined to do so: “John P. Carlin, an Assistant Attorney General for the Department of Justice’s National Security Division, and Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch.”⁹

II. June 2016 DHS Report and Recommendation to Purge Government Lexicon of Islam

On June 9, 2016, the Homeland Security Advisory Council (HSAC), Countering Violent Extremism (CVE) Subcommittee released its Interim Report and Recommendations (“DHS CVE Report”; the “Report”).¹⁰ As one media outlet reported, the Report was published “[l]ess than a week before Omar Mateen walked into an Orlando gay club and killed or wounded more than 100 people.”¹¹

According to the DHS CVE Report, the “government must avoid stigmatizing specific communities.”¹² And:

Ultimately, the approaches this report recommends for the Department will help it evolve over time and adapt to the changing nature of violent extremism itself, namely, the convergence and alliances of violent extremist groups across the full spectrum of grievances: To include those that espouse and/or undertake violence justified through various ideologies, to include anarchists, sovereign citizens, white-supremacists, and others.¹³

⁸*Id.*

⁹*Id.*

¹⁰HOMELAND SECURITY ADVISORY COUNCIL: COUNTERING VIOLENT EXTREMISM S. COMM., 114TH CONG., INTERIM REP. AND RECOMMENDATIONS (2016), [hereinafter Countering Violent Extremism] *available at* <https://www.dhs.gov/sites/default/files/publications/HSAC/HSAC%20CVE%20Final%20Interim%20Report%20June%209%202016%20508%20compliant.pdf>.

¹¹Peter Hasson, *Homeland Security Instructed to Combat Violent Extremism with Political Correctness*, DAILY CALLER (Jun. 13, 2016, 4:25 PM), <http://dailycaller.com/2016/06/13/homeland-security-instructed-to-combat-violent-extremism-with-political-correctness/>.

¹²*Id.*

¹³*Id.*

A “**Key Recommendation**” expressed in the Report was that, “[g]iven the evolving threat and how the process of radicalization itself is evolving.” DHS should “update and change the rules on how government uses lexicon.”¹⁴ And, under the heading, “**Recommendation 3: Change Our Lexicon by Shifting How We Speak with Each Other and the World,**” the Report asserted:

There is a disagreement among scholars, government officials, and activists about the right lexicon to use around the issues of violent extremism. **At the same time, report after report has recommended that the U.S. Government be consistent in its language and its meaning, highlighting that tone and word choice matter. Under no circumstance should we be using language that will alienate or be disrespectful of fellow Americans.** Thus, we need to be clearer in what we mean and how we say it. Further, we are at a particular moment on the world stage with global events driving fear, political and cultural rhetoric leaning on sharp and divisive language, and deep polarization and distrust across communities. All of this is set against the backdrop of digitally connected recruitment efforts that are actively trying to exploit differences and create divisions across U.S. society. We must speak with honor and respect about all communities within the United States. We should give dignity to the many histories and diversities within our nation and advocate for a consistent whole of government approach that utilizes agreed terms and words. **Tone and word choice matter.**¹⁵

In further support of its recommendation, the Report explained:

Often without knowing it, we have constructed language in daily use that promotes an “us and them” narrative of division. Though it was within the context of the “War on Terror,” the Department’s 2008 guidance about lexicon is important to review as it has bearing on groups like ISIL. It instructs the Department to ensure terminology is “properly calibrated to diminish the recruitment efforts of extremists who argue that the West is at war with Islam.”¹⁶

The Report recommended the following specific actions concerning lexicon:

Actions:

1. Renew efforts to describe CVE, its origin of soft power, and attempt to re-establish the term to ensure that prevention programs are not inter-mingled with surveillance or intelligence-gathering programs.
2. **Bring consistency into government use of language and meaning.**
3. **Ensure the Department reviews the 2008 directive and uses a vocabulary when discussing extremism that avoids the “us versus them” framing.**

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

4. **Reject religiously-charged terminology and problematic positioning by using plain meaning American English.**
 - a. **US v THEM:** For example, use “American Muslim” rather than “Muslim American”; “Muslim communities” rather than “Muslim world.”
 - b. **AMERICAN ENGLISH:** For example, on using American English instead of religious, legal and cultural terms like “jihad,” “sharia,” “takfir” or “umma.”¹⁷

The DHS CVE Report referred to and incorporated a 2008 DHS directive issued by the DHS Office for Civil Rights and Civil Liberties, entitled “Terminology to Define the Terrorists: Recommendations from American Muslims.”¹⁸ According to the DHS directive, “**Words matter.** The terminology that senior government officials use must accurately identify the nature of the challenges that face our generation.”¹⁹ And, “**our terminology must be properly calibrated to diminish the recruitment efforts of extremists who argue that the West is at war with Islam.**”²⁰

Importantly, Khera’s June 28, 2016, committee testimony and the June 9, 2016, DHS CVE recommendations followed a series of reported events and correspondence regarding certain organizations’ request to the White House that “offensive” terms concerning Islam be purged from federal training materials.

III. Muslim Advocates Coalition 2011 Letter to White House and White House Response

By letter dated October 19, 2011, to then Assistant to the president for Homeland Security and Counterterrorism John Brennan (“Brennan”), a coalition of “Muslim, Arab and South Asian organizations”²¹ led by Khera, expressed disapproval of “the federal government’s use of biased,

¹⁷*Id.*

¹⁸U.S. DEP’T OF HOMELAND SECURITY: OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES, TERMINOLOGY TO DEFINE THE TERRORISTS: RECOMMENDATIONS FROM AMERICAN MUSLIMS (Jan. 2008), *available at* https://www.dhs.gov/xlibrary/assets/dhs_crcl_terminology_08-1-08_accessible.pdf

¹⁹*Id.*

²⁰*Id.*

²¹AlMaghrib Institute; American Coalition for Good Government; American Muslim Association of Lawyers; American Muslim Voice; American Pakistan Foundation; American-Arab Anti-Discrimination Committee (ADC); Arab American Association of New York; Arab American Institute (AAI); Arab Community Center for Economic and Social Services (ACCESS); Arab Muslim American Federation (AMAF); Bay Area Association of Muslim Lawyers (BAAML); Capitol Area Muslim Bar Association; Council of Islamic Organizations of Greater Chicago (CIOGC); Council of Islamic Organizations of Michigan (CIOM); Council on American-Islamic Relations (CAIR); DRUM – Desis Rising Up and Moving; EMERGE-USA; Florida Muslim Bar Association; Georgia Association of Muslim Lawyers; Houston Shifa Services Foundation; Indian Muslim Relief & Charities (IMRC); Islamic Circle of North America (ICNA); Islamic Information Center; Islamic Medical Association of North America (IMANA); Islamic Networks Group (ING); Islamic Relief USA; Islamic Shura Council of Southern California; Islamic Society of Greater Houston (ISGH); Islamic Society of North America (ISNA); KARAMAH: Muslim Women Lawyers for Human Rights; Majlis Ash-Shura (Islamic Leadership Council) of Metropolitan NY; Michigan Muslim Bar Association; Muslim Advocates; Muslim American Civil Liberties Coalition (MACLC); Muslim American Society

false and highly offensive training materials about Muslims and Islam.”²² Khera “request[ed] that the White House immediately create an interagency task force to address this problem, with a fair and transparent mechanism for input from the Muslim, Arab, and South Asian communities, including civil rights lawyers, religious leaders, and law enforcement experts.”²³

According to the 2011 coalition letter:

The use of bigoted trainers and materials like those above is not only highly offensive, disparaging the faith of millions of Americans, but leads to biased policing that targets individuals and communities based on religion, not evidence of wrongdoing. Inaccurate and bigoted training materials also foster fear and suspicion of American Muslims amongst law enforcement and the general public, increasing discrimination, bullying, harassment and anti-Muslim violence.²⁴

The 2011 coalition letter continued:

We urge you to create an interagency task force, led by the White House, tasked with the following responsibilities:

- 1. Review all trainers and training materials at government agencies, including all FBI intelligence products used such as the FBI intranet, FBI library and JTTF training programs; US Attorney training programs; U.S. Department of Homeland Security, U.S. Department of Defense, and US military intranet, libraries and training materials, resources and experts;**
- 2. Purge all federal government training materials of biased materials;**
3. Implement a mandatory re-training program for FBI agents, U.S. Army officers, and all federal, state and local law enforcement who have been subjected to biased training;
4. Ensure that personnel reviews are conducted and all trainers and other government employees who promoted biased trainers and training materials are effectively disciplined;

(MAS); Muslim Bar Association of Chicago; Muslim Bar Association of New York; Muslim Bar Association of Southern California; Muslim Congress/Justice360; Muslim Consultative Network (MCN); Muslim Lawyers Association of Houston; Muslim Legal Fund of America (MLFA); Muslim Peace Coalition USA; Muslim Progressive Traditionalist Alliance; Muslim Public Affairs Council (MPAC); National Muslim Law Students Association; National Network for Arab American Communities (NNAAC); New England Muslim Bar Association; Northern California Islamic Council; Ohio Muslim Bar Association; Pakistani American Bar Association (PABA); Pakistani American Leadership Center (PAL-C); Pakistani American Public Affairs Committee; Somali Action Alliance; South Asian Americans Leading Together (SAALT); South Asian Network (SAN); and Women in Islam, Inc.

²²Letter to DHS John Brennan on FBI's Use of Biased Experts and Training Materials, MUSLIMADVOCATES.ORG (Oct. 27, 2011), <https://www.muslimadvocates.org/letter-to-dhs-john-brennan-on-fbis-use-of-biased-experts-and-training-materials/>

²³*Id.*

²⁴*Id.*

5. Implement quality control processes to ensure that bigoted trainers and biased materials are not developed or utilized in the future; and
6. **Issue guidance clearly stating that religious practice and political advocacy are protected activities under the First Amendment, not indicators of violence, and shall not be the basis for surveillance or investigation.**²⁵

Brennan responded to the 2011 coalition letter by letter dated November 3, 2011, addressed to Khera, and acknowledged awareness of certain “examples of substandard and offensive training that some United States Government elements have either sponsored or delivered.”²⁶ Brennan referenced “[o]ur National Strategy for Empowering Local Partners to Prevent Violent Extremism in the United States,” which “highlights competent training as an area of priority focus.”²⁷ According to Brennan, the National Strategy “emphasizes that our security is ‘inextricably linked to our values,’ including ‘the promotion of an inclusive society.’”²⁸

According to the letter, in November 2010, the White House’s National Security Staff identified training as a critical area for improvement” and “tasked the Department of Homeland Security (DHS) to form an Interagency Working Group on Training to catalogue, review, and improve CVE-related instruction across all levels of government.”²⁹

According to Brennan:

Recent efforts of this working group include: (1) a **CVE Training Guidance and Best Practices paper, which will give specific guidance to federal, state, local, and tribal government officials charged with organizing training related to CVE, CT, or cultural awareness;** and (2) an Information Bulletin on CVE Training, which provides additional guidance to state, local, and tribal entities that regularly leverage federal grants to fund CVE-related trainings. DHS has sent both documents to all DHS grantees, state and local governments, state and local law enforcement, relevant community stakeholders, and interagency partners.³⁰

And:

In addition to these specific actions, **Departments and Agencies are taking aggressive steps to create broader review processes and build rigorous CVE curriculum standards. These include: (1) collecting all training materials that contain cultural or religious content, including information related to Islam**

²⁵ *Id.*

²⁶ *Training Letter to Khera*, MUSLIMADVOCATES.ORG (Nov. 3, 2011), <http://www.muslimadvocates.org/files/JOB-CVE-training-letter-to-Khera-11.3.11.pdf>

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

or Muslims; (2) establishing a process, in consultation with subject matter experts, to ensure that such materials comply with core American values, professional standards, and the United States Constitution; and (3) writing guidance for CVE training, which will be shared with components, field offices, and external partners. Moreover, we are committed to engaging in a sustained dialogue with all relevant stakeholders on these issues as we move forward.³¹

Speaking of the examples of substandard and offensive training, Brennan explained “[t]hey do not reflect the vision that the President has put forward.”³² He concluded his letter by stating: “we are currently developing an implementation plan for our Domestic CVE Strategy, which will provide further detailed information on the specific steps necessary to improve CVE and cultural competency training across the United States Government and measure progress.”³³

IV. FBI “Purge” in 2012

As reported in the media, in February 2012, an FBI “inquiry has uncovered and purged over 700 pages of documentation from approximately 300 presentations given to agents since 9/11” and “more disclosures may be forthcoming.”³⁴ According to reports: “The FBI purged documents according to four criteria: ‘factual errors’; ‘poor taste’; employment of ‘stereotypes’ about Arabs or Muslims; or presenting information that ‘lacked precision.’”³⁵ According to Judicial Watch:

The FBI memos and other documents reveal that the agency purged its anti-terrorism training curricula of material determined by an undisclosed group of “Subject Matter Experts” (SME) to be “offensive” to Muslims. The excised material included references linking the Muslim Brotherhood to terrorism, tying Al Qaeda to the 1993 World Trade Center and Khobar Towers bombings, and suggesting that “young male immigrants of Middle Eastern appearance ... may fit the terrorist profile best.”³⁶

V. Muslim Advocates Coalition 2014 Letter to White House

By letter dated August 14, 2014, addressed to Lisa O. Monaco, Assistant to the President for Homeland Security and Counterterrorism, a similar but expanded group of organizations³⁷ urged

³¹*Id.*

³²*Id.*

³³*Id.*

³⁴Spencer Ackerman, *FBI Purges Hundreds of Terrorism Documents in Islamophobia Probe*, WIREDCOM (Feb. 15, 2012, 6:30 AM), <https://www.wired.com/2012/02/hundreds-fbi-documents-muslims/>

³⁵*Id.*

³⁶*DHS May Ban “Religiously-Charged” Terms Jihad, Sharia to Avert “Us Versus Them” in Anti-Terror Programs*, JUDICIALWATCH.ORG (Jun. 23, 2016), <http://www.judicialwatch.org/blog/2016/06/avert-us-versus-dhs-told-ban-religiously-charged-terms-jihad-sharia-anti-terror-programs/>

³⁷Advocacy for Principled Action in Government American Center for Outreach; American Civil Liberties Union; American-Arab Anti-Discrimination Committee (ADC) Arab American Action Network (AAAN); Arab American Association of New York; Arab American Institute; Asian American Legal Defense and Education Fund

“immediate action to end the use of anti-Muslim training materials and address anti-Muslim conduct exhibited by agencies throughout the federal government.”³⁸

In this 2014 coalition letter, the organizations expressed appreciation “that the White House has recently decried ‘the use of racial or ethnic stereotypes, slurs, or other similar language by employees’ as ‘both unacceptable and inconsistent with the country’s core values.’”³⁹ According to the letter, “[t]he White House directed the Director of National Intelligence (DNI) to undertake an assessment of Intelligence Community policies, training standards or directives that promote diversity and tolerance, and, as necessary, make any recommendations, changes, or additional reforms.”⁴⁰

The organizations expressed disappointment that DNI only expanded “multicultural and diversity sensitivity training and re-establish an external advisory board on diversity and inclusion.”⁴¹ They continued: “**These measures may be necessary, but they do not directly address the persistent problem of law enforcement and intelligence agencies using anti-Muslim training materials and engaging in discriminatory law enforcement.**”⁴²

They expressed disappointment that, contrary to Brennan’s assurances in his letter of November 3, 2011, “there has been no accounting to the public about any task force on or assessment of the

(AALDEF); Asian Americans Advancing Justice - Asian Law Caucus; Asian Americans Advancing Justice - Los Angeles; Auburn Seminary; Center for Constitutional Rights; Center for National Security Studies; Center for New Community; Council on American-Islamic Relations (CAIR); Council of Islamic Organizations of Greater Chicago; Creating Law Enforcement Accountability & Responsibility (CLEAR); Defending Dissent Foundation; DRUM - South Asian Organizing Center; Electronic Frontier Foundation; Emerge USA; Franciscan Action Network; Gay & Lesbian Advocates & Defenders (GLAD); Georgia Association of Muslim Lawyers (GAML); Human Rights Campaign; Illinois Coalition for Immigrant and Refugee Rights (ICIRR); Imam Hussain Islamic Center; Interfaith Alliance; Islamic Information Center of America; Islamic Networks Group (ING); Jews Against Islamophobia; Jews for Racial and Economic Justice; Lambda Legal; Majlis Ash-Shura (Islamic Leadership Council) of Metropolitan NY; Mexican American Legal Defense and Educational Fund (MALDEF); Michigan Muslim Bar Association (MMBA); Michigan Muslim Community Council (MMCC); Military Religious Freedom Foundation; Muslim Advocates; Muslim Alliance in North America (MANA); Muslim American Civil Liberties Coalition (MACLC); Muslim American Community Association; Muslim Bar Association of New York; Muslim Bar Association of Southern California; Muslim Legal Fund of America (MLFA); Muslim Peace Coalition USA; Muslim Progressive Traditionalist Alliance; Muslim Public Affairs Council; NAACP; NAACP New York State Conference; National Asian Pacific American Bar Association (NAPABA) National Center for Lesbian Rights; National Center for Transgender Equality; National Gay and Lesbian Task Force; National Lawyers Guild; National Muslim Law Students Association; National Religious Campaign Against Torture; New Jersey Muslim Lawyers Association (NJMLA); OneAmerica; Progressive Congress; Sikh American Legal Defense and Education Fund (SALDEF); South Asian Americans Leading Together (SAALT); The Hindu Temple Society of North America; The Interfaith Center of New York; The International Institute of Tolerance; The Leadership Conference on Civil and Human Rights; The National Network for Arab American Communities (NNAAC); The Queens Federation of Churches; The Sikh Coalition; Transgender Law Center; T’ruah: The Rabbinic Call for Human Rights; UMMA Community Clinic; United Sikhs; Universal Muslim Association of America (UMAA); and Women in Islam Inc.

³⁸Letter to Lisa O. Monaco: Coalition Letter Trainings, MUSLIMADVOCATES.ORG (Aug. 14, 2014), http://www.muslimadvocates.org/files/FINALCoalitionLetterTrainings_8.14.14.pdf

³⁹*Id.*

⁴⁰*Id.*

⁴¹*Id.*

⁴²*Id.*

pervasiveness of these biased training materials.”⁴³ And, “although there was reportedly a review and purge of a limited portion of training materials by the FBI, no commitment has been made to review intelligence products that mirror these biased training materials.”⁴⁴

The letter continued: “Without executive branch actions, including those we recommend below, trainings that perpetuate gross stereotypes and false information about Islam and Muslims will continue to proliferate at the state and local level.”⁴⁵

And:

The use of anti-Muslim trainers and materials is not only highly offensive, disparaging the faith of millions of Americans, but leads to biased policing that targets individuals and communities based on religion, not evidence of wrongdoing. Government training materials that include religious epithets also foster fear and suspicion of American Muslims among law enforcement and the general public, increasing discrimination, bullying, harassment, and anti-Muslim violence.⁴⁶

Accordingly, the letter urged Monaco to “undertake the following steps:”

- (1) Audit all federal law enforcement and intelligence gathering training and educational materials to identify and remove information that is factually incorrect or exhibits bias against any race, ethnicity, religion, or national origin;**
- (2) Implement a mandatory retraining program for all federal, state and local law enforcement officials who have been subjected to biased and discriminatory trainings provided by the federal government or with federal funds;**
- (3) Pursue disciplinary action against those agents and officials engaging in discriminatory conduct and responsible for these training materials;
- (4) Require federal agencies that provide law enforcement and homeland security funding to state and local governments to condition such funding on carrying out training or otherwise using federal funds in a manner that upholds our nation’s commitment to equal treatment and equal justice under the law and barring the use of trainers or materials that exhibit bias against any race, ethnicity, religion, or national origin.⁴⁷

⁴⁵ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

Records Requested

For purposes of this Request, the term “record” is “any information” that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recordings, or other material. The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government *or private* account or server, consistent with the holdings of *Competitive Enterprise Institute v. Office of Science and Technology Policy*, No. 15-5128 (D.C. Cir. July 5, 2016)⁴⁸ (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

For purposes of this Request, the term “briefing” includes, but is not limited to, any in-person meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person.

For purposes of this Request, the term “DHS official” includes, but is not limited to, any person who is (1) employed by or on behalf of the U.S. Department of Homeland Security in any capacity; (2) contracted for services by or on behalf of the U.S. Department of Homeland Security in any capacity; or (3) appointed by the President of the United States to serve in any capacity at the U.S. Department of Homeland Security; all without regard to the component or office in which that person serves.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is March 1, 2012, to the date this Request is processed.

Pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, ACLJ hereby requests that the U.S. Department of Homeland Security produce the following within twenty (20) business days:

1. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff, or employee, referencing or regarding in any way the June 2016 Homeland Security Advisory Council (HSAC), Countering Violent Extremism (CVE) Subcommittee Interim Report and Recommendations.⁴⁹

2. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, referencing or regarding in any way Farhana Khera’s June

⁴⁸[https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/\\$file/15-5128-1622973.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/$file/15-5128-1622973.pdf)

⁴⁹Countering Violent Extremism, *supra* note 10.

28, 2016, testimony⁵⁰ to the Senate Judiciary Committee, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, at the hearing entitled “Willful Blindness: Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism,” or any request, proposal or recommendation articulated by Khera in her testimony.

3. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, referencing or regarding in any way the August 14, 2014, letter⁵¹ to Monaco or any of the letter’s content, requests or recommendations.

4. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the content of government training material or curricula, with respect to use of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamist,” “radical Islamic,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other religious, Islamic or Arabic references.

5. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the use of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, in any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, or any other publicized or non-publicized document.

6. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the use of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, in any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, or any other publicized or non-publicized document.

7. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *from March 1, 2012, to August 13, 2014*, identifying any terms, words, titles or phrases for possible or actual removal, modification, or replacement with English translations, in or from any DHS or DHS component regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

8. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *on or after August 14, 2014*, identifying any terms, words, titles or phrases for possible or actual removal,

⁵⁰Testimony of Farhana Y. Khera, *supra* note 4.

⁵¹Letter to Lisa O. Monaco, *supra* note 38.

modification, or replacement with English translations, in or from any DHS or DHS component regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

9. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, containing any discussion of the benefits, advantages, drawbacks, disadvantages, or any other indication of a rationale for or against the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

10. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, containing any approval, instruction, direction, or order for the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

11. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, containing the name of any person involved in the decision or any discussion of a possible decision to remove, exclude, modify, replace, and/or translate from Arabic to English, the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

12. Any and all records, including but not limited to any communications or briefings prepared, or sent to John P. Carlin, Assistant Attorney General for the Department of Justice's National Security Division, his staff or employee, by any DHS official, staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin,

memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

13. Any and all records, including but not limited to any communications or briefings received by any DHS official, staff or employee, from John P. Carlin, Assistant Attorney General for the Department of Justice's National Security Division, his staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

14. Any and all records, including but not limited to any communications or briefings prepared, or sent to Michael B. Steinbach, the Executive Assistant Director for the FBI's National Security Branch, his staff or employee, by any DHS official, staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

15. Any and all records, including but not limited to any communications or briefings received by any DHS official, staff or employee, from Michael B. Steinbach, the Executive Assistant Director for the FBI's National Security Branch, his staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

16. Any and all records reflecting or in any way regarding any in person meeting or briefing, regardless of where such meeting or briefing occurred, between or attended by any DHS official, staff or employee and *[any non-governmental organization whose name is on the August 14, 2014 coalition letter to Monaco]*.

17. Any and all records of any communications or briefings that were, on or after August 14, 2014, prepared by or for, reviewed by or for, received by or from, sent by or to, or otherwise transmitted between, any DHS official, staff or employee and/or *[any non-governmental organization whose name is on the August 14, 2014 coalition letter to Monaco]*.

18. Any and all records of any communications or briefings prepared, reviewed or sent, on or after August 14, 2014, by any DHS official, staff or employee to Farhana Khera, her staff, or any other employee or representative of Muslim Advocates.

19. Any and all records of any communications or briefings received or reviewed, on or after August 14, 2014, by any DHS official, staff or employee from Farhana Khera, her staff, or any other employee or representative of Muslim Advocates.

CONCLUSION

As you are undoubtedly aware, President Obama's Freedom of Information Act Memorandum of January 21, 2009, declares:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. . . .⁵²

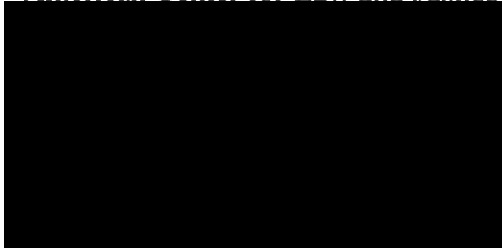
As such, if this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions.

⁵²PRESIDENT BARACK OBAMA, MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES RE: FREEDOM OF INFORMATION ACT (Jan. 21, 2009), *available at* https://www.whitehouse.gov/the_press_office/FreedomofInformationAct.

Moreover, as explained in an accompanying memorandum, the ACLJ is entitled to expedited processing of this Request as well as a waiver of all fees associated with it. ACLJ reserves the right to appeal a decision to withhold any information sought by this request and/or to deny the separate application for expedited processing and waiver of fees.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jay Alan Sekulow, Chief Counsel
Colby M. May, Senior Counsel
Craig L. Parshall, Special Counsel
Benjamin P. Sisney, Senior Litigation Counsel
American Center for Law and Justice



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Handwritten signature of Jay Alan Sekulow in cursive.

Jay Alan Sekulow
Chief Counsel

Handwritten signature of Colby M. May in cursive.

Colby M. May
Senior Counsel

cc: Karen Neuman, Chief FOIA Officer, DHS Privacy Office
Office for Civil Rights and Civil Liberties (CRCL)
Federal Law Enforcement Training Center (FLETC)
Office of Intelligence & Analysis (I&A)
Transportation Security Administration (TSA)
United States Immigration & Customs Enforcement (ICE)

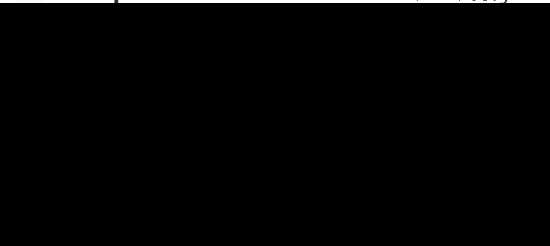


**American Center
for Law & Justice**

*Jay Alan Sekulow, J.D., Ph.D.
Chief Counsel*

July 12, 2016

Office for Civil Rights and Civil Liberties (CRCL)
The Privacy Office
U.S. Department of Homeland Security



RE: FOIA Request to U.S. Department of Homeland Security Regarding Decision(s) to Revise Training Material, Other Documents, and/or “Lexicon” by Removing or Editing Islam-Related Terms or References

Dear Sir or Ma’am:

This letter is a request (“Request”) in accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and the corresponding department/agency implementing regulations.

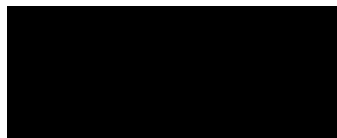
The Request is made by the American Center for Law and Justice (“ACLJ”)¹ on behalf of itself and over 81,000 of its members. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, this Request seeks any and all records pertaining to decisions by the U.S. Department of Homeland Security (“DHS”) and/or any of its components to revise any guidance, directive, training material, other document, and/or government lexicon by removing Islam-related terms or references.

Background

Pursuant to DHS FOIA regulation 6 C.F.R. §5.3(b), this Background addresses “the date, title or name, author, recipient, and subject matter of the record[s]” requested, to the extent known.

¹ The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.



I. June 28, 2016, Senate Committee Hearing Regarding “Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism”

On June 28, 2016, the Senate Judiciary Committee, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, held a hearing entitled “Willful Blindness: Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism.”² According to Sen. Charles Grassley, the Judiciary Committee Chairman, “One key reason for this failure is the President’s resistance to facing the truth about threats to our country when they don’t line up neatly with his predetermined policies or preferred ideological narratives.”³

One of the panelists giving testimony at the hearing was Farhana Khera (“Khera”), President and Executive Director of Muslim Advocates. According to her testimony:

In November 2011, President Obama’s then-Counterterrorism Advisor John Brennan agreed the White House would create an interagency task force to create review processes and build rigorous standards to ensure training material is not biased. However, the task force has had no public accountability, and has not assessed the pervasiveness of these biased training materials and whether the agents and officials involved were subject to any disciplinary action. Moreover, although there was reportedly a review and purge of a limited portion of training materials by the FBI, no commitment has been made to review intelligence products that mirror these biased training materials. We also have received no assurance that law enforcement and other government employees who participated in these trainings have been retrained. **We are concerned that these biased trainings and intelligence products continue to drive racial and religious profiling at every stage of the intelligence-gathering and investigative processes.**⁴

According to Khera:

Far too many of our nation’s public officials and political leaders engage in hateful and blatantly bigoted anti-Muslim rhetoric. Public officials must

²*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. (2016), available at <http://www.judiciary.senate.gov/meetings/willful-blindness-consequences-of-agency-efforts-to-deemphasize-radical-islam-in-combating-terrorism>*

³*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. (2016) (statement of Sen. Chuck Grassley, Chairman, S. J. Comm.), available at <https://www.judiciary.senate.gov/imo/media/doc/06-28-16p%20Grassley%20Statement.pdf>.*

⁴*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. 4 (2016) (testimony of Farhana Y. Khera, President and Executive Director, Muslim Advocates), available at <https://www.judiciary.senate.gov/imo/media/doc/06-28-16%20Khera%20Testimony.pdf>.*

understand that such rhetoric carries grave consequences for American Muslims and those who are perceived to be Muslim in the U.S.⁵

“To address bigoted training materials,” Khera submitted the following recommendations:

- a) **Audit all federal law enforcement and intelligence gathering training and educational materials to identify and remove information that is factually incorrect or exhibits bias against any race, ethnicity, religion, or national origin;**
- b) Implement a mandatory retraining program for all federal, state and local law enforcement officials who have been subjected to biased and discriminatory trainings provided by the federal government or with federal funds;
- c) Pursue disciplinary action against those agents and officials engaging in discriminatory conduct and responsible for these training materials; and
- d) Require federal agencies that provide law enforcement and homeland security funding to state and local governments to condition such funding on carrying out training or otherwise using federal funds in a manner that upholds our nation’s commitment to equal treatment and equal justice under the law and barring the use of trainers or materials that exhibit bias against any race, ethnicity, religion, or national origin.⁶

Khera has advanced her position and these specific recommendations at least as far back as 2011, as is addressed in greater detail in Section III, *infra*.

Sen. Ted Cruz, who chairs the Subcommittee conducting this hearing, stated in his opening remarks:

In 2011, the group ‘Muslim Advocates’ sent a letter to the Obama administration claiming the federal government had somehow become infected with “false and highly offensive training materials about Muslims and Islam,” and demanding that such “bigoted and distorted materials’ be “purge[d]”—I would note that was their word, not mine “purged”—and was also advocating for the creation of an interagency task force to address this problem.

In a lightning quick response—a rather unusual occurrence in our bloated bureaucracy—current CIA director John Brennan (then the President’s Homeland Security advisor) agreed to create such a task force, and claimed that the federal government had indeed produced “offensive training” that urgently needed to be dealt with in order to “reflect the vision that the President has put forward.”⁷

⁵*Id.* at 10.

⁶*Id.* at 16.

⁷*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong.*

As Sen. Cruz explained:

[I]n November 2011, the Department of Homeland Security released its “Domestic Terrorism and Homegrown Extremism Lexicon.” It made no reference to Islamic terrorism, despite being, on its face, an alleged “lexicon” that included “anarchist extremists,” “animal rights extremists,” “environmental extremists,” and “racist skinhead extremists.” Yet somehow, “radical Islamic extremists” were nowhere mentioned in the FBI’s supposed lexicon. Similarly, the FBI’s “Counterterrorism Analytical Lexicon” makes no reference to “Islam.” “radical Islam,” “jihad,” or any other such term. By way of comparison, the 9/11 Commission report, released in 2004, mentioned “jihad” 126 times and “Islam” 322 times.⁸

Sen. Cruz identified two government officials who were invited by the Committee to appear before the committee but declined to do so: “John P. Carlin, an Assistant Attorney General for the Department of Justice’s National Security Division, and Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch.”⁹

II. June 2016 DHS Report and Recommendation to Purge Government Lexicon of Islam

On June 9, 2016, the Homeland Security Advisory Council (HSAC), Countering Violent Extremism (CVE) Subcommittee released its Interim Report and Recommendations (“DHS CVE Report”; the “Report”).¹⁰ As one media outlet reported, the Report was published “[l]ess than a week before Omar Mateen walked into an Orlando gay club and killed or wounded more than 100 people.”¹¹

According to the DHS CVE Report, the “government must avoid stigmatizing specific communities.”¹² And:

Ultimately, the approaches this report recommends for the Department will help it evolve over time and adapt to the changing nature of violent extremism itself, namely, the convergence and alliances of violent extremist groups across the full

(2016) (statement of Sen. Ted Cruz, Chairman, S. Comm. on Oversight, Agency Action, Federal Rights and Federal Courts) *available at* https://www.cruz.senate.gov/?p=press_release&id=2704.

⁸*Id.*

⁹*Id.*

¹⁰HOMELAND SECURITY ADVISORY COUNCIL: COUNTERING VIOLENT EXTREMISM S. COMM., 114TH CONG., INTERIM REP. AND RECOMMENDATIONS (2016), [hereinafter Countering Violent Extremism] *available at* <https://www.dhs.gov/sites/default/files/publications/HSAC/HSAC%20CVE%20Final%20Interim%20Report%20June%209%202016%20508%20compliant.pdf>.

¹¹Peter Hasson, *Homeland Security Instructed to Combat Violent Extremism with Political Correctness*, DAILY CALLER (Jun. 13, 2016, 4:25 PM), <http://dailycaller.com/2016/06/13/homeland-security-instructed-to-combat-violent-extremism-with-political-correctness/>.

¹²*Id.*

spectrum of grievances: To include those that espouse and/or undertake violence justified through various ideologies, to include anarchists, sovereign citizens, white-supremacists, and others.¹³

A “**Key Recommendation**” expressed in the Report was that, “[g]iven the evolving threat and how the process of radicalization itself is evolving,” DHS should “update and change the rules on how government uses lexicon.”¹⁴ And, under the heading, “**Recommendation 3: Change Our Lexicon by Shifting How We Speak with Each Other and the World,**” the Report asserted:

There is a disagreement among scholars, government officials, and activists about the right lexicon to use around the issues of violent extremism. **At the same time, report after report has recommended that the U.S. Government be consistent in its language and its meaning, highlighting that tone and word choice matter. Under no circumstance should we be using language that will alienate or be disrespectful of fellow Americans.** Thus, we need to be clearer in what we mean and how we say it. Further, we are at a particular moment on the world stage with global events driving fear, political and cultural rhetoric leaning on sharp and divisive language, and deep polarization and distrust across communities. All of this is set against the backdrop of digitally connected recruitment efforts that are actively trying to exploit differences and create divisions across U.S. society. We must speak with honor and respect about all communities within the United States. We should give dignity to the many histories and diversities within our nation and advocate for a consistent whole of government approach that utilizes agreed terms and words. **Tone and word choice matter.**¹⁵

In further support of its recommendation, the Report explained:

Often without knowing it, we have constructed language in daily use that promotes an “us and them” narrative of division. Though it was within the context of the “War on Terror,” the Department’s 2008 guidance about lexicon is important to review as it has bearing on groups like ISIL. It instructs the Department to ensure terminology is “properly calibrated to diminish the recruitment efforts of extremists who argue that the West is at war with Islam.”¹⁶

The Report recommended the following specific actions concerning lexicon:

Actions:

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

1. Renew efforts to describe CVE, its origin of soft power, and attempt to re-establish the term to ensure that prevention programs are not inter-mingled with surveillance or intelligence-gathering programs.
2. **Bring consistency into government use of language and meaning.**
3. **Ensure the Department reviews the 2008 directive and uses a vocabulary when discussing extremism that avoids the “us versus them” framing.**
4. **Reject religiously-charged terminology and problematic positioning by using plain meaning American English.**
 - a. **US v THEM:** For example, use “American Muslim” rather than “Muslim American”; “Muslim communities” rather than “Muslim world.”
 - b. **AMERICAN ENGLISH:** For example, on using American English instead of religious, legal and cultural terms like “jihad,” “sharia,” “takfir” or “umma.”¹⁷

The DHS CVE Report referred to and incorporated a 2008 DHS directive issued by the DHS Office for Civil Rights and Civil Liberties, entitled “Terminology to Define the Terrorists: Recommendations from American Muslims.”¹⁸ According to the DHS directive, “**Words matter.** The terminology that senior government officials use must accurately identify the nature of the challenges that face our generation.”¹⁹ And, “**our terminology must be properly calibrated to diminish the recruitment efforts of extremists who argue that the West is at war with Islam.**”²⁰

Importantly, Khera’s June 28, 2016, committee testimony and the June 9, 2016, DHS CVE recommendations followed a series of reported events and correspondence regarding certain organizations’ request to the White House that “offensive” terms concerning Islam be purged from federal training materials.

III. Muslim Advocates Coalition 2011 Letter to White House and White House Response

By letter dated October 19, 2011, to then Assistant to the president for Homeland Security and Counterterrorism John Brennan (“Brennan”), a coalition of “Muslim, Arab and South Asian organizations”²¹ led by Khera, expressed disapproval of “the federal government’s use of biased,

¹⁷*Id.*

¹⁸U.S. DEP’T OF HOMELAND SECURITY: OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES, TERMINOLOGY TO DEFINE THE TERRORISTS: RECOMMENDATIONS FROM AMERICAN MUSLIMS (Jan. 2008), *available at* https://www.dhs.gov/xlibrary/assets/dhs_crcl_terminology_08-1-08_accessible.pdf

¹⁹*Id.*

²⁰*Id.*

²¹AlMaghrib Institute; American Coalition for Good Government; American Muslim Association of Lawyers; American Muslim Voice; American Pakistan Foundation; American-Arab Anti-Discrimination Committee (ADC); Arab American Association of New York; Arab American Institute (AAI); Arab Community Center for Economic and Social Services (ACCESS); Arab Muslim American Federation (AMAF); Bay Area Association of Muslim Lawyers (BAAML); Capitol Area Muslim Bar Association; Council of Islamic Organizations of Greater Chicago

false and highly offensive training materials about Muslims and Islam.”²² Khera “request[ed] that the White House immediately create an interagency task force to address this problem, with a fair and transparent mechanism for input from the Muslim, Arab, and South Asian communities, including civil rights lawyers, religious leaders, and law enforcement experts.”²³

According to the 2011 coalition letter:

The use of bigoted trainers and materials like those above is not only highly offensive, disparaging the faith of millions of Americans, but leads to biased policing that targets individuals and communities based on religion, not evidence of wrongdoing. Inaccurate and bigoted training materials also foster fear and suspicion of American Muslims amongst law enforcement and the general public, increasing discrimination, bullying, harassment and anti- Muslim violence.²⁴

The 2011 coalition letter continued:

We urge you to create an interagency task force, led by the White House, tasked with the following responsibilities:

- 1. Review all trainers and training materials at government agencies, including all FBI intelligence products used such as the FBI intranet, FBI library and JTTF training programs; US Attorney training programs; U.S. Department of Homeland Security, U.S. Department of Defense, and US military intranet, libraries and training materials, resources and experts;**
- 2. Purge all federal government training materials of biased materials;**

(CIOGC); Council of Islamic Organizations of Michigan (CIOM); Council on American-Islamic Relations (CAIR); DRUM - Desis Rising Up and Moving; EMERGE-USA; Florida Muslim Bar Association; Georgia Association of Muslim Lawyers; Houston Shifa Services Foundation; Indian Muslim Relief & Charities (IMRC); Islamic Circle of North America (ICNA); Islamic Information Center; Islamic Medical Association of North America (IMANA); Islamic Networks Group (ING); Islamic Relief USA; Islamic Shura Council of Southern California; Islamic Society of Greater Houston (ISGH); Islamic Society of North America (ISNA); KARAMAH: Muslim Women Lawyers for Human Rights; Majlis Ash-Shura (Islamic Leadership Council) of Metropolitan NY; Michigan Muslim Bar Association; Muslim Advocates; Muslim American Civil Liberties Coalition (MACLC); Muslim American Society (MAS); Muslim Bar Association of Chicago; Muslim Bar Association of New York; Muslim Bar Association of Southern California; Muslim Congress/Justice360; Muslim Consultative Network (MCN); Muslim Lawyers Association of Houston; Muslim Legal Fund of America (MLFA); Muslim Peace Coalition USA; Muslim Progressive Traditionalist Alliance; Muslim Public Affairs Council (MPAC); National Muslim Law Students Association; National Network for Arab American Communities (NNAAC); New England Muslim Bar Association; Northern California Islamic Council; Ohio Muslim Bar Association; Pakistani American Bar Association (PABA); Pakistani American Leadership Center (PAL-C); Pakistani American Public Affairs Committee; Somali Action Alliance; South Asian Americans Leading Together (SAALT); South Asian Network (SAN); and Women in Islam, Inc.

²²*Letter to DHS John Brennan on FBI's Use of Biased Experts and Training Materials*, MUSLIMADVOCATES.ORG (Oct. 27, 2011), <https://www.muslimadvocates.org/letter-to-dhs-john-brennan-on-fbis-use-of-biased-experts-and-training-materials/>

²³*Id.*

²⁴*Id.*

3. Implement a mandatory re-training program for FBI agents, U.S. Army officers, and all federal, state and local law enforcement who have been subjected to biased training;
4. Ensure that personnel reviews are conducted and all trainers and other government employees who promoted biased trainers and training materials are effectively disciplined;
5. Implement quality control processes to ensure that bigoted trainers and biased materials are not developed or utilized in the future; and
6. **Issue guidance clearly stating that religious practice and political advocacy are protected activities under the First Amendment, not indicators of violence, and shall not be the basis for surveillance or investigation.**²⁵

Brennan responded to the 2011 coalition letter by letter dated November 3, 2011, addressed to Khera, and acknowledged awareness of certain “examples of substandard and offensive training that some United States Government elements have either sponsored or delivered.”²⁶ Brennan referenced “[o]ur National Strategy for Empowering Local Partners to Prevent Violent Extremism in the United States,” which “highlights competent training as an area of priority focus.”²⁷ According to Brennan, the National Strategy “emphasizes that our security is ‘inextricably linked to our values,’ including ‘the promotion of an inclusive society.’”²⁸

According to the letter, in November 2010, the White House’s National Security Staff identified training as a critical area for improvement” and “tasked the Department of Homeland Security (DHS) to form an Interagency Working Group on Training to catalogue, review, and improve CVE-related instruction across all levels of government.”²⁹

According to Brennan:

Recent efforts of this working group include: (1) a **CVE Training Guidance and Best Practices paper, which will give specific guidance to federal, state, local, and tribal government officials charged with organizing training related to CVE, CT, or cultural awareness;** and (2) an Information Bulletin on CVE Training, which provides additional guidance to state, local, and tribal entities that regularly leverage federal grants to fund CVE-related trainings. DHS has sent both documents to all DHS grantees, state and local governments, state and local law enforcement, relevant community stakeholders, and interagency partners.³⁰

²⁵ *Id.*

²⁶ *Training Letter to Khera*, MUSLIMADVOCATES.ORG (Nov. 3, 2011), <http://www.muslimadvocates.org/files/JOB-CVE-training-letter-to-Khera-11.3.11.pdf>

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

And:

In addition to these specific actions, **Departments and Agencies are taking aggressive steps to create broader review processes and build rigorous CVE curriculum standards. These include: (1) collecting all training materials that contain cultural or religious content, including information related to Islam or Muslims; (2) establishing a process, in consultation with subject matter experts, to ensure that such materials comply with core American values, professional standards, and the United States Constitution; and (3) writing guidance for CVE training, which will be shared with components, field offices, and external partners. Moreover, we are committed to engaging in a sustained dialogue with all relevant stakeholders on these issues as we move forward.**³¹

Speaking of the examples of substandard and offensive training, Brennan explained “[t]hey do not reflect the vision that the President has put forward.”³² He concluded his letter by stating: **“we are currently developing an implementation plan for our Domestic CVE Strategy, which will provide further detailed information on the specific steps necessary to improve CVE and cultural competency training across the United States Government and measure progress.”**³³

IV. FBI “Purge” in 2012

As reported in the media, in February 2012, an FBI “inquiry has uncovered and purged over 700 pages of documentation from approximately 300 presentations given to agents since 9/11” and “more disclosures may be forthcoming.”³⁴ According to reports: “The FBI purged documents according to four criteria: ‘factual errors’; ‘poor taste’; employment of ‘stereotypes’ about Arabs or Muslims; or presenting information that ‘lacked precision.’”³⁵ According to Judicial Watch:

The FBI memos and other documents reveal that the agency purged its anti-terrorism training curricula of material determined by an undisclosed group of “Subject Matter Experts” (SME) to be “offensive” to Muslims. The excised material included references linking the Muslim Brotherhood to terrorism, tying Al Qaeda to the 1993 World Trade Center and Khobar Towers bombings, and suggesting that “young male immigrants of Middle Eastern appearance ... may fit the terrorist profile best.”³⁶

³¹*Id.*

³²*Id.*

³³*Id.*

³⁴Spencer Ackerman, *FBI Purges Hundreds of Terrorism Documents in Islamophobia Probe*, WIRED.COM (Feb. 15, 2012, 6:30 AM), <https://www.wired.com/2012/02/hundreds-fbi-documents-muslims/>

³⁵*Id.*

³⁶*DHS May Ban “Religiously Charged” Terms Jihad, Sharia to Avert “Us Versus Them” in Anti-Terror Programs*, JUDICIALWATCH.ORG (Jun. 23, 2016), <http://www.judicialwatch.org/blog/2016/06/avert-us-versus-dhs-told-ban-religiously-charged-terms-jihad-sharia-anti-terror-programs/>

V. Muslim Advocates Coalition 2014 Letter to White House

By letter dated August 14, 2014, addressed to Lisa O. Monaco, Assistant to the President for Homeland Security and Counterterrorism, a similar but expanded group of organizations³⁷ urged “immediate action to end the use of anti-Muslim training materials and address anti-Muslim conduct exhibited by agencies throughout the federal government.”³⁸

In this 2014 coalition letter, the organizations expressed appreciation “that the White House has recently decried ‘the use of racial or ethnic stereotypes, slurs, or other similar language by employees’ as ‘both unacceptable and inconsistent with the country’s core values.’”³⁹ According to the letter, “[t]he White House directed the Director of National Intelligence (DNI) to undertake an assessment of Intelligence Community policies, training standards or directives that promote diversity and tolerance, and, as necessary, make any recommendations, changes, or additional reforms.”⁴⁰

The organizations expressed disappointment that DNI only expanded “multicultural and diversity sensitivity training and re-establish an external advisory board on diversity and inclusion.”⁴¹

³⁷ Advocacy for Principled Action in Government American Center for Outreach; American Civil Liberties Union; American-Arab Anti-Discrimination Committee (ADC) Arab American Action Network (AAAN); Arab American Association of New York; Arab American Institute; Asian American Legal Defense and Education Fund (AALDEF); Asian Americans Advancing Justice - Asian Law Caucus; Asian Americans Advancing Justice - Los Angeles; Auburn Seminary; Center for Constitutional Rights; Center for National Security Studies; Center for New Community; Council on American-Islamic Relations (CAIR); Council of Islamic Organizations of Greater Chicago; Creating Law Enforcement Accountability & Responsibility (CLEAR); Defending Dissent Foundation; DRUM - South Asian Organizing Center; Electronic Frontier Foundation; Emerge USA; Franciscan Action Network; Gay & Lesbian Advocates & Defenders (GLAD); Georgia Association of Muslim Lawyers (GAML); Human Rights Campaign; Illinois Coalition for Immigrant and Refugee Rights (ICIRR); Imam Hussain Islamic Center; Interfaith Alliance; Islamic Information Center of America; Islamic Networks Group (ING); Jews Against Islamophobia; Jews for Racial and Economic Justice; Lambda Legal; Majlis Ash-Shura (Islamic Leadership Council) of Metropolitan NY; Mexican American Legal Defense and Educational Fund (MALDEF); Michigan Muslim Bar Association (MMBA); Michigan Muslim Community Council (MMCC); Military Religious Freedom Foundation; Muslim Advocates; Muslim Alliance in North America (MANA); Muslim American Civil Liberties Coalition (MACLC); Muslim American Community Association; Muslim Bar Association of New York; Muslim Bar Association of Southern California; Muslim Legal Fund of America (MLFA); Muslim Peace Coalition USA; Muslim Progressive Traditionalist Alliance; Muslim Public Affairs Council; NAACP; NAACP New York State Conference; National Asian Pacific American Bar Association (NAPABA) National Center for Lesbian Rights; National Center for Transgender Equality; National Gay and Lesbian Task Force; National Lawyers Guild; National Muslim Law Students Association; National Religious Campaign Against Torture; New Jersey Muslim Lawyers Association (NJMLA); OneAmerica; Progressive Congress; Sikh American Legal Defense and Education Fund (SALDEF); South Asian Americans Leading Together (SAALT); The Hindu Temple Society of North America; The Interfaith Center of New York; The International Institute of Tolerance; The Leadership Conference on Civil and Human Rights; The National Network for Arab American Communities (NNAAC); The Queens Federation of Churches; The Sikh Coalition; Transgender Law Center; T’ruah: The Rabbinic Call for Human Rights; UMMA Community Clinic; United Sikhs; Universal Muslim Association of America (UMAA); and Women in Islam Inc.

³⁸ *Letter to Lisa O. Monaco: Coalition Letter Trainings*, MUSLIMADVOCATES.ORG (Aug. 14, 2014), http://www.muslimadvocates.org/files/FINALCoalitionLetterTrainings_8.14.14.pdf

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

They continued: **“These measures may be necessary, but they do not directly address the persistent problem of law enforcement and intelligence agencies using anti- Muslim training materials and engaging in discriminatory law enforcement.”**⁴²

They expressed disappointment that, contrary to Brennan’s assurances in his letter of November 3, 2011, “there has been no accounting to the public about any task force on or assessment of the pervasiveness of these biased training materials.”⁴³ And, “although there was reportedly a review and purge of a limited portion of training materials by the FBI, no commitment has been made to review intelligence products that mirror these biased training materials.”⁴⁴

The letter continued: “Without executive branch actions, including those we recommend below, trainings that perpetuate gross stereotypes and false information about Islam and Muslims will continue to proliferate at the state and local level.”⁴⁵

And:

The use of anti-Muslim trainers and materials is not only highly offensive, disparaging the faith of millions of Americans, but leads to biased policing that targets individuals and communities based on religion, not evidence of wrongdoing. Government training materials that include religious epithets also foster fear and suspicion of American Muslims among law enforcement and the general public, increasing discrimination, bullying, harassment, and anti-Muslim violence.⁴⁶

Accordingly, the letter urged Monaco to “undertake the following steps:”

- (1) Audit all federal law enforcement and intelligence gathering training and educational materials to identify and remove information that is factually incorrect or exhibits bias against any race, ethnicity, religion, or national origin;**
- (2) Implement a mandatory retraining program for all federal, state and local law enforcement officials who have been subjected to biased and discriminatory trainings provided by the federal government or with federal funds;**
- (3) Pursue disciplinary action against those agents and officials engaging in discriminatory conduct and responsible for these training materials;
- (4) Require federal agencies that provide law enforcement and homeland security funding to state and local governments to condition such funding on carrying out training or otherwise using federal funds in a manner that upholds our nation’s commitment to equal treatment and equal justice under the law and barring the

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

use of trainers or materials that exhibit bias against any race, ethnicity, religion, or national origin.⁴⁷

Records Requested

For purposes of this Request, the term “record” is “any information” that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recordings, or other material. The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government or private account or server, consistent with the holdings of *Competitive Enterprise Institute v. Office of Science and Technology Policy*, No. 15-5128 (D.C. Cir. July 5, 2016)⁴⁸ (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

For purposes of this Request, the term “briefing” includes, but is not limited to, any in-person meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person.

For purposes of this Request, the term “DHS official” includes, but is not limited to, any person who is (1) employed by or on behalf of the U.S. Department of Homeland Security in any capacity; (2) contracted for services by or on behalf of the U.S. Department of Homeland Security in any capacity; or (3) appointed by the President of the United States to serve in any capacity at the U.S. Department of Homeland Security; all without regard to the component or office in which that person serves.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is March 1, 2012, to the date this Request is processed.

Pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, ACLJ hereby requests that the U.S. Department of Homeland Security produce the following within twenty (20) business days:

1. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff, or employee, referencing or regarding in any way the June 2016 Homeland Security Advisory Council (HSAC), Countering Violent Extremism (CVE) Subcommittee Interim Report and Recommendations.⁴⁹

⁴⁷*Id.*

⁴⁸[https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/\\$file/15-5128-1622973.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/$file/15-5128-1622973.pdf)

⁴⁹Countering Violent Extremism, *supra* note 10.

2. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, referencing or regarding in any way Farhana Khera's June 28, 2016, testimony⁵⁰ to the Senate Judiciary Committee, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, at the hearing entitled "Willful Blindness: Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism," or any request, proposal or recommendation articulated by Khera in her testimony.
3. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, referencing or regarding in any way the August 14, 2014, letter⁵¹ to Monaco or any of the letter's content, requests or recommendations.
4. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the content of government training material or curricula, with respect to use of the words "Islam," "Islamic," "radical Islam," "radical Islamist," "radical Islamic," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other religious, Islamic or Arabic references.
5. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the use of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, or any other publicized or non-publicized document.
6. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the use of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, or any other publicized or non-publicized document.
7. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *from March 1, 2012, to August 13, 2014*, identifying any terms, words, titles or phrases for possible or actual removal, modification, or replacement with English translations, in or from any DHS or DHS component regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

⁵⁰Testimony of Farhana Y. Khera, *supra* note 4.

⁵¹Letter to Lisa O. Monaco, *supra* note 38.

8. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *on or after* August 14, 2014, identifying any terms, words, titles or phrases for possible or actual removal, modification, or replacement with English translations, in or from any DHS or DHS component regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

9. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, containing any discussion of the benefits, advantages, drawbacks, disadvantages, or any other indication of a rationale for or against the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

10. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, containing any approval, instruction, direction, or order for the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

11. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, containing the name of any person involved in the decision or any discussion of a possible decision to remove, exclude, modify, replace, and/or translate from Arabic to English, the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

12. Any and all records, including but not limited to any communications or briefings prepared, or sent to John P. Carlin, Assistant Attorney General for the Department of Justice's National Security Division, his staff or employee, by any DHS official, staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia,"

“takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

13. Any and all records, including but not limited to any communications or briefings received by any DHS official, staff or employee, from John P. Carlin, Assistant Attorney General for the Department of Justice’s National Security Division, his staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

14. Any and all records, including but not limited to any communications or briefings prepared, or sent to Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch, his staff or employee, by any DHS official, staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

15. Any and all records, including but not limited to any communications or briefings received by any DHS official, staff or employee, from Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch, his staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

16. Any and all records reflecting or in any way regarding any in person meeting or briefing, regardless of where such meeting or briefing occurred, between or attended by any DHS official, staff or employee and [*any non-governmental organization whose name is on the August 14, 2014 coalition letter to Monaco*].

17. Any and all records of any communications or briefings that were, on or after August 14, 2014, prepared by or for, reviewed by or for, received by or from, sent by or to, or otherwise

transmitted between, any DHS official, staff or employee and/or [any non-governmental organization whose name is on the August 14, 2014 coalition letter to Monaco].

18. Any and all records of any communications or briefings prepared, reviewed or sent, on or after August 14, 2014, by any DHS official, staff or employee to Farhana Khera, her staff, or any other employee or representative of Muslim Advocates.

19. Any and all records of any communications or briefings received or reviewed, on or after August 14, 2014, by any DHS official, staff or employee from Farhana Khera, her staff, or any other employee or representative of Muslim Advocates.

CONCLUSION

As you are undoubtedly aware, President Obama's Freedom of Information Act Memorandum of January 21, 2009, declares:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. . . .⁵²

As such, if this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions.

⁵²PRESIDENT BARACK OBAMA, MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES RE: FREEDOM OF INFORMATION ACT (Jan. 21, 2009), available at https://www.whitehouse.gov/the_press_office/FreedomofInformationAct.

Moreover, as explained in an accompanying memorandum, the ACLJ is entitled to expedited processing of this Request as well as a waiver of all fees associated with it. ACLJ reserves the right to appeal a decision to withhold any information sought by this request and/or to deny the separate application for expedited processing and waiver of fees.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jay Alan Sekulow, Chief Counsel
Colby M. May, Senior Counsel
Craig L. Parshall, Special Counsel
Benjamin P. Sisney, Senior Litigation Counsel
American Center for Law and Justice



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Handwritten signature of Jay Alan Sekulow in cursive.

Jay Alan Sekulow
Chief Counsel

Handwritten signature of Colby M. May in cursive.

Colby M. May
Senior Counsel

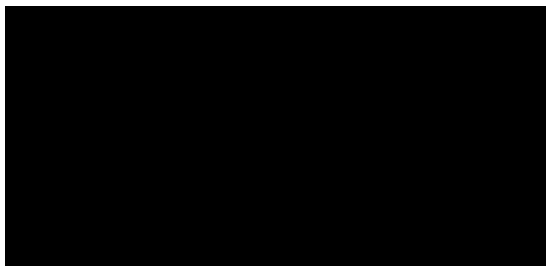
cc: Karen Neuman, Chief FOIA Officer, DHS Privacy Office
Federal Law Enforcement Training Center (FLETC)
DHS Office of Intelligence & Analysis (I&A)
Transportation Security Administration (TSA)
United States Immigration & Customs Enforcement (ICE)
United States Customs & Border Protection (CBP)



Jay Alan Sekulow, J.D., Ph.D.
Chief Counsel

July 12, 2016

Federal Law Enforcement Training Center (FLETC)
Freedom of Information Act Officer



RE: FOIA Request to U.S. Department of Homeland Security Regarding Decision(s) to Revise Training Material, Other Documents, and/or “Lexicon” by Removing or Editing Islam-Related Terms or References

Dear Sir or Ma’am:

This letter is a request (“Request”) in accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and the corresponding department/agency implementing regulations.

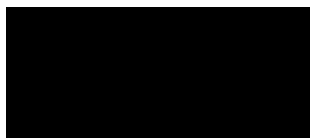
The Request is made by the American Center for Law and Justice (“ACLJ”)¹ on behalf of itself and over 81,000 of its members. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, this Request seeks any and all records pertaining to decisions by the U.S. Department of Homeland Security (“DHS”) and/or any of its components to revise any guidance, directive, training material, other document, and/or government lexicon by removing Islam-related terms or references.

Background

Pursuant to DHS FOIA regulation 6 C.F.R. §5.3(b), this Background addresses “the date, title or name, author, recipient, and subject matter of the record[s]” requested, to the extent known.

¹ The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.



I. June 28, 2016, Senate Committee Hearing Regarding “Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism”

On June 28, 2016, the Senate Judiciary Committee, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, held a hearing entitled “Willful Blindness: Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism.”² According to Sen. Charles Grassley, the Judiciary Committee Chairman, “One key reason for this failure is the President’s resistance to facing the truth about threats to our country when they don’t line up neatly with his predetermined policies or preferred ideological narratives.”³

One of the panelists giving testimony at the hearing was Farhana Khera (“Khera”), President and Executive Director of Muslim Advocates. According to her testimony:

In November 2011, President Obama’s then-Counterterrorism Advisor John Brennan agreed the White House would create an interagency task force to create review processes and build rigorous standards to ensure training material is not biased. However, the task force has had no public accountability, and has not assessed the pervasiveness of these biased training materials and whether the agents and officials involved were subject to any disciplinary action. Moreover, although there was reportedly a review and purge of a limited portion of training materials by the FBI, no commitment has been made to review intelligence products that mirror these biased training materials. We also have received no assurance that law enforcement and other government employees who participated in these trainings have been retrained. **We are concerned that these biased trainings and intelligence products continue to drive racial and religious profiling at every stage of the intelligence-gathering and investigative processes.**⁴

According to Khera:

Far too many of our nation’s public officials and political leaders engage in hateful and blatantly bigoted anti-Muslim rhetoric. Public officials must

²*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. (2016), available at <http://www.judiciary.senate.gov/meetings/willful-blindness-consequences-of-agency-efforts-to-deemphasize-radical-islam-in-combating-terrorism>*

³*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. (2016) (statement of Sen. Chuck Grassley, Chairman, S. J. Comm.), available at <https://www.judiciary.senate.gov/imo/media/doc/06-28-16p%20Grassley%20Statement.pdf>.*

⁴*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. 4 (2016) (testimony of Farhana Y. Khera, President and Executive Director, Muslim Advocates), available at <https://www.judiciary.senate.gov/imo/media/doc/06-28-16%20Khera%20Testimony.pdf>.*

understand that such rhetoric carries grave consequences for American Muslims and those who are perceived to be Muslim in the U.S.⁵

“To address bigoted training materials,” Khera submitted the following recommendations:

- a) **Audit all federal law enforcement and intelligence gathering training and educational materials to identify and remove information that is factually incorrect or exhibits bias against any race, ethnicity, religion, or national origin;**
- b) Implement a mandatory retraining program for all federal, state and local law enforcement officials who have been subjected to biased and discriminatory trainings provided by the federal government or with federal funds;
- c) Pursue disciplinary action against those agents and officials engaging in discriminatory conduct and responsible for these training materials; and
- d) Require federal agencies that provide law enforcement and homeland security funding to state and local governments to condition such funding on carrying out training or otherwise using federal funds in a manner that upholds our nation’s commitment to equal treatment and equal justice under the law and barring the use of trainers or materials that exhibit bias against any race, ethnicity, religion, or national origin.⁶

Khera has advanced her position and these specific recommendations at least as far back as 2011, as is addressed in greater detail in Section III, *infra*.

Sen. Ted Cruz, who chairs the Subcommittee conducting this hearing, stated in his opening remarks:

In 2011, the group ‘Muslim Advocates’ sent a letter to the Obama administration claiming the federal government had somehow become infected with “false and highly offensive training materials about Muslims and Islam,” and demanding that such “bigoted and distorted materials’ be “purge[d]”—I would note that was their word, not mine “purged”—and was also advocating for the creation of an interagency task force to address this problem.

In a lightning quick response—a rather unusual occurrence in our bloated bureaucracy—current CIA director John Brennan (then the President’s Homeland Security advisor) agreed to create such a task force, and claimed that the federal government had indeed produced “offensive training” that urgently needed to be dealt with in order to “reflect the vision that the President has put forward.”⁷

⁵*Id.* at 10.

⁶*Id.* at 16.

⁷*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong.*

As Sen. Cruz explained:

[I]n November 2011, the Department of Homeland Security released its “Domestic Terrorism and Homegrown Extremism Lexicon.” It made no reference to Islamic terrorism, despite being, on its face, an alleged “lexicon” that included “anarchist extremists,” “animal rights extremists,” “environmental extremists,” and “racist skinhead extremists.” Yet somehow, “radical Islamic extremists” were nowhere mentioned in the FBI’s supposed lexicon. Similarly, the FBI’s “Counterterrorism Analytical Lexicon” makes no reference to “Islam,” “radical Islam,” “jihad,” or any other such term. By way of comparison, the 9/11 Commission report, released in 2004, mentioned “jihad” 126 times and “Islam” 322 times.⁸

Sen. Cruz identified two government officials who were invited by the Committee to appear before the committee but declined to do so: “John P. Carlin, an Assistant Attorney General for the Department of Justice’s National Security Division, and Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch.”⁹

II. June 2016 DHS Report and Recommendation to Purge Government Lexicon of Islam

On June 9, 2016, the Homeland Security Advisory Council (HSAC), Countering Violent Extremism (CVE) Subcommittee released its Interim Report and Recommendations (“DHS CVE Report”; the “Report”).¹⁰ As one media outlet reported, the Report was published “[l]ess than a week before Omar Mateen walked into an Orlando gay club and killed or wounded more than 100 people.”¹¹

According to the DHS CVE Report, the “government must avoid stigmatizing specific communities.”¹² And:

Ultimately, the approaches this report recommends for the Department will help it evolve over time and adapt to the changing nature of violent extremism itself, namely, the convergence and alliances of violent extremist groups across the full

(2016) (statement of Sen. Ted Cruz, Chairman, S. Comm. on Oversight, Agency Action, Federal Rights and Federal Courts) *available at* https://www.cruz.senate.gov/?p=press_release&id=2704.

⁸*Id.*

⁹*Id.*

¹⁰HOMELAND SECURITY ADVISORY COUNCIL: COUNTERING VIOLENT EXTREMISM S. COMM., 114TH CONG., INTERIM REP. AND RECOMMENDATIONS (2016), [hereinafter Countering Violent Extremism] *available at* <https://www.dhs.gov/sites/default/files/publications/HSAC/HSAC%20CVE%20Final%20Interim%20Report%20June%209%202016%20508%20compliant.pdf>.

¹¹Peter Hasson, *Homeland Security Instructed to Combat Violent Extremism with Political Correctness*, DAILY CALLER (Jun. 13, 2016, 4:25 PM), <http://dailycaller.com/2016/06/13/homeland-security-instructed-to-combat-violent-extremism-with-political-correctness/>.

¹²*Id.*

spectrum of grievances: To include those that espouse and/or undertake violence justified through various ideologies, to include anarchists, sovereign citizens, white-supremacists, and others.¹³

A “**Key Recommendation**” expressed in the Report was that, “[g]iven the evolving threat and how the process of radicalization itself is evolving,” DHS should “update and change the rules on how government uses lexicon.”¹⁴ And, under the heading, “**Recommendation 3: Change Our Lexicon by Shifting How We Speak with Each Other and the World,**” the Report asserted:

There is a disagreement among scholars, government officials, and activists about the right lexicon to use around the issues of violent extremism. **At the same time, report after report has recommended that the U.S. Government be consistent in its language and its meaning, highlighting that tone and word choice matter. Under no circumstance should we be using language that will alienate or be disrespectful of fellow Americans.** Thus, we need to be clearer in what we mean and how we say it. Further, we are at a particular moment on the world stage with global events driving fear, political and cultural rhetoric leaning on sharp and divisive language, and deep polarization and distrust across communities. All of this is set against the backdrop of digitally connected recruitment efforts that are actively trying to exploit differences and create divisions across U.S. society. We must speak with honor and respect about all communities within the United States. We should give dignity to the many histories and diversities within our nation and advocate for a consistent whole of government approach that utilizes agreed terms and words. **Tone and word choice matter.**¹⁵

In further support of its recommendation, the Report explained:

Often without knowing it, we have constructed language in daily use that promotes an “us and them” narrative of division. Though it was within the context of the “War on Terror,” the Department’s 2008 guidance about lexicon is important to review as it has bearing on groups like ISIL. It instructs the Department to ensure terminology is “properly calibrated to diminish the recruitment efforts of extremists who argue that the West is at war with Islam.”¹⁶

The Report recommended the following specific actions concerning lexicon:

Actions:

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.*

¹⁶*Id.*

1. Renew efforts to describe CVE, its origin of soft power, and attempt to re-establish the term to ensure that prevention programs are not inter-mingled with surveillance or intelligence-gathering programs.
2. **Bring consistency into government use of language and meaning.**
3. **Ensure the Department reviews the 2008 directive and uses a vocabulary when discussing extremism that avoids the “us versus them” framing.**
4. **Reject religiously-charged terminology and problematic positioning by using plain meaning American English.**
 - a. **US v THEM:** For example, use “American Muslim” rather than “Muslim American”; “Muslim communities” rather than “Muslim world.”
 - b. **AMERICAN ENGLISH:** For example, on using American English instead of religious, legal and cultural terms like “jihad,” “sharia,” “takfir” or “umma.”¹⁷

The DHS CVE Report referred to and incorporated a 2008 DHS directive issued by the DHS Office for Civil Rights and Civil Liberties, entitled “Terminology to Define the Terrorists: Recommendations from American Muslims.”¹⁸ According to the DHS directive, “**Words matter.** The terminology that senior government officials use must accurately identify the nature of the challenges that face our generation.”¹⁹ And, “**our terminology must be properly calibrated to diminish the recruitment efforts of extremists who argue that the West is at war with Islam.**”²⁰

Importantly, Khera’s June 28, 2016, committee testimony and the June 9, 2016, DHS CVE recommendations followed a series of reported events and correspondence regarding certain organizations’ request to the White House that “offensive” terms concerning Islam be purged from federal training materials.

III. Muslim Advocates Coalition 2011 Letter to White House and White House Response

By letter dated October 19, 2011, to then Assistant to the president for Homeland Security and Counterterrorism John Brennan (“Brennan”), a coalition of “Muslim, Arab and South Asian organizations”²¹ led by Khera, expressed disapproval of “the federal government’s use of biased,

¹⁷*Id.*

¹⁸U.S. DEP’T OF HOMELAND SECURITY: OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES, TERMINOLOGY TO DEFINE THE TERRORISTS: RECOMMENDATIONS FROM AMERICAN MUSLIMS (Jan. 2008), *available at* https://www.dhs.gov/xlibrary/assets/dhs_crcl_terminology_08-1-08_accessible.pdf

¹⁹*Id.*

²⁰*Id.*

²¹AlMaghrib Institute; American Coalition for Good Government; American Muslim Association of Lawyers; American Muslim Voice; American Pakistan Foundation; American-Arab Anti-Discrimination Committee (ADC); Arab American Association of New York; Arab American Institute (AAI); Arab Community Center for Economic and Social Services (ACCESS); Arab Muslim American Federation (AMAF); Bay Area Association of Muslim Lawyers (BAAML); Capitol Area Muslim Bar Association; Council of Islamic Organizations of Greater Chicago

false and highly offensive training materials about Muslims and Islam.”²² Khera “request[ed] that the White House immediately create an interagency task force to address this problem, with a fair and transparent mechanism for input from the Muslim, Arab, and South Asian communities, including civil rights lawyers, religious leaders, and law enforcement experts.”²³

According to the 2011 coalition letter:

The use of bigoted trainers and materials like those above is not only highly offensive, disparaging the faith of millions of Americans, but leads to biased policing that targets individuals and communities based on religion, not evidence of wrongdoing. Inaccurate and bigoted training materials also foster fear and suspicion of American Muslims amongst law enforcement and the general public, increasing discrimination, bullying, harassment and anti-Muslim violence.²⁴

The 2011 coalition letter continued:

We urge you to create an interagency task force, led by the White House, tasked with the following responsibilities:

- 1. Review all trainers and training materials at government agencies, including all FBI intelligence products used such as the FBI intranet, FBI library and JTTF training programs; US Attorney training programs; U.S. Department of Homeland Security, U.S. Department of Defense, and US military intranet, libraries and training materials, resources and experts;**
- 2. Purge all federal government training materials of biased materials;**

(CIOGC); Council of Islamic Organizations of Michigan (CIOM); Council on American-Islamic Relations (CAIR); DRUM – Desis Rising Up and Moving; EMERGE-USA; Florida Muslim Bar Association; Georgia Association of Muslim Lawyers; Houston Shifa Services Foundation; Indian Muslim Relief & Charities (IMRC); Islamic Circle of North America (ICNA); Islamic Information Center; Islamic Medical Association of North America (IMANA); Islamic Networks Group (ING); Islamic Relief USA; Islamic Shura Council of Southern California; Islamic Society of Greater Houston (ISGH); Islamic Society of North America (ISNA); KARAMAH: Muslim Women Lawyers for Human Rights; Majlis Ash-Shura (Islamic Leadership Council) of Metropolitan NY; Michigan Muslim Bar Association; Muslim Advocates; Muslim American Civil Liberties Coalition (MACLC); Muslim American Society (MAS); Muslim Bar Association of Chicago; Muslim Bar Association of New York; Muslim Bar Association of Southern California; Muslim Congress/Justice360; Muslim Consultative Network (MCN); Muslim Lawyers Association of Houston; Muslim Legal Fund of America (MLFA); Muslim Peace Coalition USA; Muslim Progressive Traditionalist Alliance; Muslim Public Affairs Council (MPAC); National Muslim Law Students Association; National Network for Arab American Communities (NNAAC); New England Muslim Bar Association; Northern California Islamic Council; Ohio Muslim Bar Association; Pakistani American Bar Association (PABA); Pakistani American Leadership Center (PAL-C); Pakistani American Public Affairs Committee; Somali Action Alliance; South Asian Americans Leading Together (SAALT); South Asian Network (SAN); and Women in Islam, Inc.

²²Letter to DHS John Brennan on FBI's Use of Biased Experts and Training Materials, MUSLIMADVOCATES.ORG (Oct. 27, 2011), <https://www.muslimadvocates.org/letter-to-dhs-john-brennan-on-fbis-use-of-biased-experts-and-training-materials/>

²³*Id.*

²⁴*Id.*

3. Implement a mandatory re-training program for FBI agents, U.S. Army officers, and all federal, state and local law enforcement who have been subjected to biased training;
4. Ensure that personnel reviews are conducted and all trainers and other government employees who promoted biased trainers and training materials are effectively disciplined;
5. Implement quality control processes to ensure that bigoted trainers and biased materials are not developed or utilized in the future; and
6. **Issue guidance clearly stating that religious practice and political advocacy are protected activities under the First Amendment, not indicators of violence, and shall not be the basis for surveillance or investigation.**²⁵

Brennan responded to the 2011 coalition letter by letter dated November 3, 2011, addressed to Khera, and acknowledged awareness of certain “examples of substandard and offensive training that some United States Government elements have either sponsored or delivered.”²⁶ Brennan referenced “[o]ur National Strategy for Empowering Local Partners to Prevent Violent Extremism in the United States,” which “highlights competent training as an area of priority focus.”²⁷ According to Brennan, the National Strategy “emphasizes that our security is ‘inextricably linked to our values,’ including ‘the promotion of an inclusive society.’”²⁸

According to the letter, in November 2010, the White House’s National Security Staff identified training as a critical area for improvement” and “tasked the Department of Homeland Security (DHS) to form an Interagency Working Group on Training to catalogue, review, and improve CVE-related instruction across all levels of government.”²⁹

According to Brennan:

Recent efforts of this working group include: (1) a **CVE Training Guidance and Best Practices paper, which will give specific guidance to federal, state, local, and tribal government officials charged with organizing training related to CVE, CT, or cultural awareness;** and (2) an Information Bulletin on CVE Training, which provides additional guidance to state, local, and tribal entities that regularly leverage federal grants to fund CVE-related trainings. DHS has sent both documents to all DHS grantees, state and local governments, state and local law enforcement, relevant community stakeholders, and interagency partners.³⁰

²⁵*Id.*

²⁶*Training Letter to Khera*, MUSLIMADVOCATES.ORG (Nov. 3, 2011), <http://www.muslimadvocates.org/files/JOB-CVE-training-letter-to-Khera-11.3.11.pdf>

²⁷*Id.*

²⁸*Id.*

²⁹*Id.*

³⁰*Id.*

And:

In addition to these specific actions, **Departments and Agencies are taking aggressive steps to create broader review processes and build rigorous CVE curriculum standards. These include: (1) collecting all training materials that contain cultural or religious content, including information related to Islam or Muslims; (2) establishing a process, in consultation with subject matter experts, to ensure that such materials comply with core American values, professional standards, and the United States Constitution; and (3) writing guidance for CVE training, which will be shared with components, field offices, and external partners. Moreover, we are committed to engaging in a sustained dialogue with all relevant stakeholders on these issues as we move forward.**³¹

Speaking of the examples of substandard and offensive training, Brennan explained “[t]hey do not reflect the vision that the President has put forward.”³² He concluded his letter by stating: **“we are currently developing an implementation plan for our Domestic CVE Strategy, which will provide further detailed information on the specific steps necessary to improve CVE and cultural competency training across the United States Government and measure progress.”**³³

IV. FBI “Purge” in 2012

As reported in the media, in February 2012, an FBI “inquiry has uncovered and purged over 700 pages of documentation from approximately 300 presentations given to agents since 9/11” and “more disclosures may be forthcoming.”³⁴ According to reports: “The FBI purged documents according to four criteria: ‘factual errors’; ‘poor taste’; employment of ‘stereotypes’ about Arabs or Muslims; or presenting information that ‘lacked precision.’”³⁵ According to Judicial Watch:

The FBI memos and other documents reveal that the agency purged its anti-terrorism training curricula of material determined by an undisclosed group of “Subject Matter Experts” (SME) to be “offensive” to Muslims. The excised material included references linking the Muslim Brotherhood to terrorism, tying Al Qaeda to the 1993 World Trade Center and Khobar Towers bombings, and suggesting that “young male immigrants of Middle Eastern appearance ... may fit the terrorist profile best.”³⁶

³¹*Id.*

³²*Id.*

³³*Id.*

³⁴Spencer Ackerman, *FBI Purges Hundreds of Terrorism Documents in Islamophobia Probe*, WIREDCOM (Feb. 15, 2012, 6:30 AM), <https://www.wired.com/2012/02/hundreds-fbi-documents-muslims/>

³⁵*Id.*

³⁶*DHS May Ban “Religiously Charged” Terms Jihad, Sharia to Avert “Us Versus Them” in Anti-Terror Programs*, JUDICIALWATCH.ORG (Jun. 23, 2016), <http://www.judicialwatch.org/blog/2016/06/avert-us-versus-dhs-told-ban-religiously-charged-terms-jihad-sharia-anti-terror-programs/>

V. Muslim Advocates Coalition 2014 Letter to White House

By letter dated August 14, 2014, addressed to Lisa O. Monaco, Assistant to the President for Homeland Security and Counterterrorism, a similar but expanded group of organizations³⁷ urged “immediate action to end the use of anti-Muslim training materials and address anti-Muslim conduct exhibited by agencies throughout the federal government.”³⁸

In this 2014 coalition letter, the organizations expressed appreciation “that the White House has recently decried ‘the use of racial or ethnic stereotypes, slurs, or other similar language by employees’ as ‘both unacceptable and inconsistent with the country’s core values.’”³⁹ According to the letter, “[t]he White House directed the Director of National Intelligence (DNI) to undertake an assessment of Intelligence Community policies, training standards or directives that promote diversity and tolerance, and, as necessary, make any recommendations, changes, or additional reforms.”⁴⁰

The organizations expressed disappointment that DNI only expanded “multicultural and diversity sensitivity training and re-establish an external advisory board on diversity and inclusion.”⁴¹

³⁷ Advocacy for Principled Action in Government American Center for Outreach; American Civil Liberties Union; American-Arab Anti-Discrimination Committee (ADC) Arab American Action Network (AAAN); Arab American Association of New York; Arab American Institute; Asian American Legal Defense and Education Fund (AALDEF); Asian Americans Advancing Justice - Asian Law Caucus; Asian Americans Advancing Justice - Los Angeles; Auburn Seminary; Center for Constitutional Rights; Center for National Security Studies; Center for New Community; Council on American-Islamic Relations (CAIR); Council of Islamic Organizations of Greater Chicago; Creating Law Enforcement Accountability & Responsibility (CLEAR); Defending Dissent Foundation; DRUM - South Asian Organizing Center; Electronic Frontier Foundation; Emerge USA; Franciscan Action Network; Gay & Lesbian Advocates & Defenders (GLAD); Georgia Association of Muslim Lawyers (GAML); Human Rights Campaign; Illinois Coalition for Immigrant and Refugee Rights (ICIRR); Imam Hussain Islamic Center; Interfaith Alliance; Islamic Information Center of America; Islamic Networks Group (ING); Jews Against Islamophobia; Jews for Racial and Economic Justice; Lambda Legal; Majlis Ash-Shura (Islamic Leadership Council) of Metropolitan NY; Mexican American Legal Defense and Educational Fund (MALDEF); Michigan Muslim Bar Association (MMBA); Michigan Muslim Community Council (MMCC); Military Religious Freedom Foundation; Muslim Advocates; Muslim Alliance in North America (MANA); Muslim American Civil Liberties Coalition (MACLC); Muslim American Community Association; Muslim Bar Association of New York; Muslim Bar Association of Southern California; Muslim Legal Fund of America (MLFA); Muslim Peace Coalition USA; Muslim Progressive Traditionalist Alliance; Muslim Public Affairs Council; NAACP; NAACP New York State Conference; National Asian Pacific American Bar Association (NAPABA) National Center for Lesbian Rights; National Center for Transgender Equality; National Gay and Lesbian Task Force; National Lawyers Guild; National Muslim Law Students Association; National Religious Campaign Against Torture; New Jersey Muslim Lawyers Association (NJMLA); OneAmerica; Progressive Congress; Sikh American Legal Defense and Education Fund (SALDEF); South Asian Americans Leading Together (SAALT); The Hindu Temple Society of North America; The Interfaith Center of New York; The International Institute of Tolerance; The Leadership Conference on Civil and Human Rights; The National Network for Arab American Communities (NNAAC); The Queens Federation of Churches; The Sikh Coalition; Transgender Law Center; T’ruah: The Rabbinic Call for Human Rights; UMMA Community Clinic; United Sikhs; Universal Muslim Association of America (UMAA); and Women in Islam Inc.

³⁸ *Letter to Lisa O. Monaco: Coalition Letter Trainings*. MUSLIMADVOCATES.ORG (Aug. 14, 2014), http://www.muslimadvocates.org/files/FINALCoalitionLetterTrainings_8.14.14.pdf

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

They continued: “**These measures may be necessary, but they do not directly address the persistent problem of law enforcement and intelligence agencies using anti- Muslim training materials** and engaging in discriminatory law enforcement.”⁴²

They expressed disappointment that, contrary to Brennan’s assurances in his letter of November 3, 2011, “there has been no accounting to the public about any task force on or assessment of the pervasiveness of these biased training materials.”⁴³ And, “although there was reportedly a review and purge of a limited portion of training materials by the FBI, no commitment has been made to review intelligence products that mirror these biased training materials.”⁴⁴

The letter continued: “Without executive branch actions, including those we recommend below, trainings that perpetuate gross stereotypes and false information about Islam and Muslims will continue to proliferate at the state and local level.”⁴⁵

And:

The use of anti-Muslim trainers and materials is not only highly offensive, disparaging the faith of millions of Americans, but leads to biased policing that targets individuals and communities based on religion, not evidence of wrongdoing. Government training materials that include religious epithets also foster fear and suspicion of American Muslims among law enforcement and the general public, increasing discrimination, bullying, harassment, and anti-Muslim violence.⁴⁶

Accordingly, the letter urged Monaco to “undertake the following steps:”

- (1) Audit all federal law enforcement and intelligence gathering training and educational materials to identify and remove information that is factually incorrect or exhibits bias against any race, ethnicity, religion, or national origin;**
- (2) Implement a mandatory retraining program for all federal, state and local law enforcement officials who have been subjected to biased and discriminatory trainings provided by the federal government or with federal funds;**
- (3) Pursue disciplinary action against those agents and officials engaging in discriminatory conduct and responsible for these training materials;**
- (4) Require federal agencies that provide law enforcement and homeland security funding to state and local governments to condition such funding on carrying out training or otherwise using federal funds in a manner that upholds our nation’s commitment to equal treatment and equal justice under the law and barring the**

⁴²*Id.*

⁴³*Id.*

⁴⁴*Id.*

⁴⁵*Id.*

⁴⁶*Id.*

use of trainers or materials that exhibit bias against any race, ethnicity, religion, or national origin.⁴⁷

Records Requested

For purposes of this Request, the term “record” is “any information” that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recordings, or other material. The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government or private account or server, consistent with the holdings of *Competitive Enterprise Institute v. Office of Science and Technology Policy*, No. 15-5128 (D.C. Cir. July 5, 2016)⁴⁸ (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

For purposes of this Request, the term “briefing” includes, but is not limited to, any in-person meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person.

For purposes of this Request, the term “DHS official” includes, but is not limited to, any person who is (1) employed by or on behalf of the U.S. Department of Homeland Security in any capacity; (2) contracted for services by or on behalf of the U.S. Department of Homeland Security in any capacity; or (3) appointed by the President of the United States to serve in any capacity at the U.S. Department of Homeland Security; all without regard to the component or office in which that person serves.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is March 1, 2012, to the date this Request is processed.

Pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, ACLJ hereby requests that the U.S. Department of Homeland Security produce the following within twenty (20) business days:

1. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff, or employee, referencing or regarding in any way the June 2016 Homeland Security Advisory Council (HSAC). Countering Violent Extremism (CVE) Subcommittee Interim Report and Recommendations.⁴⁹

⁴⁷*Id.*

⁴⁸[https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/\\$file/15-5128-1622973.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/$file/15-5128-1622973.pdf)

⁴⁹Countering Violent Extremism, *supra* note 10.

2. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, referencing or regarding in any way Farhana Khera's June 28, 2016, testimony⁵⁰ to the Senate Judiciary Committee, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, at the hearing entitled "Willful Blindness: Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism," or any request, proposal or recommendation articulated by Khera in her testimony.
3. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, referencing or regarding in any way the August 14, 2014, letter⁵¹ to Monaco or any of the letter's content, requests or recommendations.
4. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the content of government training material or curricula, with respect to use of the words "Islam," "Islamic," "radical Islam," "radical Islamist," "radical Islamic," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other religious, Islamic or Arabic references.
5. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the use of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, or any other publicized or non-publicized document.
6. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the use of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, or any other publicized or non-publicized document.
7. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *from March 1, 2012, to August 13, 2014*, identifying any terms, words, titles or phrases for possible or actual removal, modification, or replacement with English translations, in or from any DHS or DHS component regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

⁵⁰Testimony of Farhana Y. Khera, *supra* note 4.

⁵¹Letter to Lisa O. Monaco, *supra* note 38.

8. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *on or after* August 14, 2014, identifying any terms, words, titles or phrases for possible or actual removal, modification, or replacement with English translations, in or from any DHS or DHS component regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

9. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *on or after* August 14, 2014, containing any discussion of the benefits, advantages, drawbacks, disadvantages, or any other indication of a rationale for or against the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

10. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *on or after* August 14, 2014, containing any approval, instruction, direction, or order for the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

11. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *on or after* August 14, 2014, containing the name of any person involved in the decision or any discussion of a possible decision to remove, exclude, modify, replace, and/or translate from Arabic to English, the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

12. Any and all records, including but not limited to any communications or briefings prepared, or sent to John P. Carlin, Assistant Attorney General for the Department of Justice's National Security Division, his staff or employee, by any DHS official, staff or employee, *on or after* August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia,"

“takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

13. Any and all records, including but not limited to any communications or briefings received by any DHS official, staff or employee, from John P. Carlin, Assistant Attorney General for the Department of Justice’s National Security Division, his staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

14. Any and all records, including but not limited to any communications or briefings prepared, or sent to Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch, his staff or employee, by any DHS official, staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

15. Any and all records, including but not limited to any communications or briefings received by any DHS official, staff or employee, from Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch, his staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

16. Any and all records reflecting or in any way regarding any in person meeting or briefing, regardless of where such meeting or briefing occurred, between or attended by any DHS official, staff or employee and [*any non-governmental organization whose name is on the August 14, 2014 coalition letter to Monaco*].

17. Any and all records of any communications or briefings that were, on or after August 14, 2014, prepared by or for, reviewed by or for, received by or from, sent by or to, or otherwise

transmitted between, any DHS official, staff or employee and/or [any non-governmental organization whose name is on the August 14, 2014 coalition letter to Monaco].

18. Any and all records of any communications or briefings prepared, reviewed or sent, on or after August 14, 2014, by any DHS official, staff or employee to Farhana Khera, her staff, or any other employee or representative of Muslim Advocates.

19. Any and all records of any communications or briefings received or reviewed, on or after August 14, 2014, by any DHS official, staff or employee from Farhana Khera, her staff, or any other employee or representative of Muslim Advocates.

CONCLUSION

As you are undoubtedly aware, President Obama's Freedom of Information Act Memorandum of January 21, 2009, declares:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. . . .⁵²

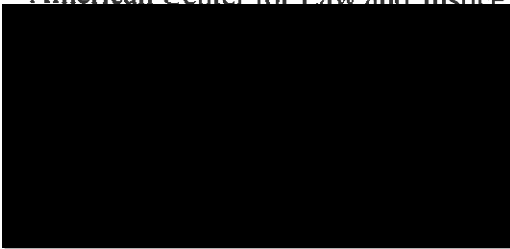
As such, if this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions.

⁵²PRESIDENT BARACK OBAMA, MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES RE: FREEDOM OF INFORMATION ACT (Jan. 21, 2009), available at https://www.whitehouse.gov/the_press_office/FreedomofInformationAct.

Moreover, as explained in an accompanying memorandum, the ACLJ is entitled to expedited processing of this Request as well as a waiver of all fees associated with it. ACLJ reserves the right to appeal a decision to withhold any information sought by this request and/or to deny the separate application for expedited processing and waiver of fees.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jay Alan Sekulow, Chief Counsel
Colby M. May, Senior Counsel
Craig L. Parshall, Special Counsel
Benjamin P. Sisney, Senior Litigation Counsel
American Center for Law and Justice



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Handwritten signature of Jay Alan Sekulow in cursive.

Jay Alan Sekulow
Chief Counsel

Handwritten signature of Colby M. May in cursive.

Colby M. May
Senior Counsel

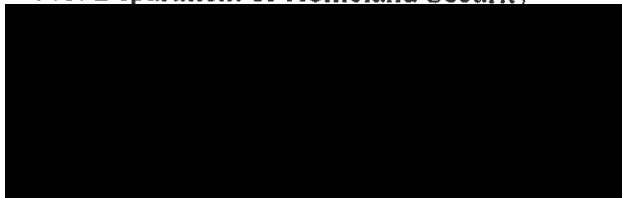
cc: Karen Neuman, Chief FOIA Officer, DHS Privacy Office
Office for Civil Rights and Civil Liberties (CRCL)
DHS Office of Intelligence & Analysis (I&A)
Transportation Security Administration (TSA)
United States Immigration & Customs Enforcement (ICE)
United States Customs & Border Protection (CBP)



Jay Alan Sekulow, J.D., Ph.D.
Chief Counsel

July 12, 2016

Office of Intelligence & Analysis (I&A)
U.S. Department of Homeland Security



RE: FOIA Request to U.S. Department of Homeland Security Regarding Decision(s) to Revise Training Material, Other Documents, and/or “Lexicon” by Removing or Editing Islam-Related Terms or References

Dear Mr. Henry:

This letter is a request (“Request”) in accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and the corresponding department/agency implementing regulations.

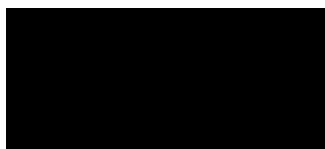
The Request is made by the American Center for Law and Justice (“ACLJ”)¹ on behalf of itself and over 81,000 of its members. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, this Request seeks any and all records pertaining to decisions by the U.S. Department of Homeland Security (“DHS”) and/or any of its components to revise any guidance, directive, training material, other document, and/or government lexicon by removing Islam-related terms or references.

Background

Pursuant to DHS FOIA regulation 6 C.F.R. §5.3(b), this Background addresses “the date, title or name, author, recipient, and subject matter of the record[s]” requested, to the extent known.

¹ The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.



I. June 28, 2016, Senate Committee Hearing Regarding “Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism”

On June 28, 2016, the Senate Judiciary Committee, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, held a hearing entitled “Willful Blindness: Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism.”² According to Sen. Charles Grassley, the Judiciary Committee Chairman, “One key reason for this failure is the President’s resistance to facing the truth about threats to our country when they don’t line up neatly with his predetermined policies or preferred ideological narratives.”³

One of the panelists giving testimony at the hearing was Farhana Khera (“Khera”), President and Executive Director of Muslim Advocates. According to her testimony:

In November 2011, President Obama’s then-Counterterrorism Advisor John Brennan agreed the White House would create an interagency task force to create review processes and build rigorous standards to ensure training material is not biased. However, the task force has had no public accountability, and has not assessed the pervasiveness of these biased training materials and whether the agents and officials involved were subject to any disciplinary action. Moreover, although there was reportedly a review and purge of a limited portion of training materials by the FBI, no commitment has been made to review intelligence products that mirror these biased training materials. We also have received no assurance that law enforcement and other government employees who participated in these trainings have been retrained. **We are concerned that these biased trainings and intelligence products continue to drive racial and religious profiling at every stage of the intelligence-gathering and investigative processes.**⁴

According to Khera:

Far too many of our nation’s public officials and political leaders engage in hateful and blatantly bigoted anti-Muslim rhetoric. Public officials must

²*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. (2016), available at <http://www.judiciary.senate.gov/meetings/willful-blindness-consequences-of-agency-efforts-to-deemphasize-radical-islam-in-combating-terrorism>*

³*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. (2016) (statement of Sen. Chuck Grassley, Chairman, S. J. Comm.), available at <https://www.judiciary.senate.gov/imo/media/doc/06-28-16p%20Grassley%20Statement.pdf>.*

⁴*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. 4 (2016) (testimony of Farhana Y. Khera, President and Executive Director, Muslim Advocates), available at <https://www.judiciary.senate.gov/imo/media/doc/06-28-16%20Khera%20Testimony.pdf>.*

understand that such rhetoric carries grave consequences for American Muslims and those who are perceived to be Muslim in the U.S.⁵

“To address bigoted training materials,” Khera submitted the following recommendations:

- a) **Audit all federal law enforcement and intelligence gathering training and educational materials to identify and remove information that is factually incorrect or exhibits bias against any race, ethnicity, religion, or national origin;**
- b) Implement a mandatory retraining program for all federal, state and local law enforcement officials who have been subjected to biased and discriminatory trainings provided by the federal government or with federal funds;
- c) Pursue disciplinary action against those agents and officials engaging in discriminatory conduct and responsible for these training materials; and
- d) Require federal agencies that provide law enforcement and homeland security funding to state and local governments to condition such funding on carrying out training or otherwise using federal funds in a manner that upholds our nation’s commitment to equal treatment and equal justice under the law and barring the use of trainers or materials that exhibit bias against any race, ethnicity, religion, or national origin.⁶

Khera has advanced her position and these specific recommendations at least as far back as 2011, as is addressed in greater detail in Section III, *infra*.

Sen. Ted Cruz, who chairs the Subcommittee conducting this hearing, stated in his opening remarks:

In 2011, the group ‘Muslim Advocates’ sent a letter to the Obama administration claiming the federal government had somehow become infected with “false and highly offensive training materials about Muslims and Islam,” and demanding that such “bigoted and distorted materials’ be “purge[d]”—I would note that was their word, not mine “purged”—and was also advocating for the creation of an interagency task force to address this problem.

In a lightning quick response—a rather unusual occurrence in our bloated bureaucracy—current CIA director John Brennan (then the President’s Homeland Security advisor) agreed to create such a task force, and claimed that the federal government had indeed produced “offensive training” that urgently needed to be dealt with in order to “reflect the vision that the President has put forward.”⁷

⁵*Id.* at 10.

⁶*Id.* at 16.

⁷*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong.*

As Sen. Cruz explained:

[I]n November 2011, the Department of Homeland Security released its “Domestic Terrorism and Homegrown Extremism Lexicon.” It made no reference to Islamic terrorism, despite being, on its face, an alleged “lexicon” that included “anarchist extremists,” “animal rights extremists,” “environmental extremists,” and “racist skinhead extremists.” Yet somehow, “radical Islamic extremists” were nowhere mentioned in the FBI’s supposed lexicon. Similarly, the FBI’s “Counterterrorism Analytical Lexicon” makes no reference to “Islam,” “radical Islam,” “jihad,” or any other such term. By way of comparison, the 9/11 Commission report, released in 2004, mentioned “jihad” 126 times and “Islam” 322 times.⁸

Sen. Cruz identified two government officials who were invited by the Committee to appear before the committee but declined to do so: “John P. Carlin, an Assistant Attorney General for the Department of Justice’s National Security Division, and Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch.”⁹

II. June 2016 DHS Report and Recommendation to Purge Government Lexicon of Islam

On June 9, 2016, the Homeland Security Advisory Council (HSAC), Countering Violent Extremism (CVE) Subcommittee released its Interim Report and Recommendations (“DHS CVE Report”; the “Report”).¹⁰ As one media outlet reported, the Report was published “[l]ess than a week before Omar Mateen walked into an Orlando gay club and killed or wounded more than 100 people.”¹¹

According to the DHS CVE Report, the “government must avoid stigmatizing specific communities.”¹² And:

Ultimately, the approaches this report recommends for the Department will help it evolve over time and adapt to the changing nature of violent extremism itself, namely, the convergence and alliances of violent extremist groups across the full

(2016) (statement of Sen. Ted Cruz, Chairman, S. Comm. on Oversight, Agency Action, Federal Rights and Federal Courts) *available at* https://www.cruz.senate.gov/?p=press_release&id=2704.

⁸*Id.*

⁹*Id.*

¹⁰HOMELAND SECURITY ADVISORY COUNCIL: COUNTERING VIOLENT EXTREMISM S. COMM., 114TH CONG., INTERIM REP. AND RECOMMENDATIONS (2016), [hereinafter *Countering Violent Extremism*] *available at* <https://www.dhs.gov/sites/default/files/publications/HSAC/HSAC%20CVE%20Final%20Interim%20Report%20June%209%202016%20508%20compliant.pdf>.

¹¹Peter Hasson, *Homeland Security Instructed to Combat Violent Extremism with Political Correctness*, DAILY CALLER (Jun. 13, 2016, 4:25 PM), <http://dailycaller.com/2016/06/13/homeland-security-instructed-to-combat-violent-extremism-with-political-correctness/>.

¹²*Id.*

spectrum of grievances: To include those that espouse and/or undertake violence justified through various ideologies, to include anarchists, sovereign citizens, white-supremacists, and others.¹³

A “**Key Recommendation**” expressed in the Report was that, “[g]iven the evolving threat and how the process of radicalization itself is evolving,” DHS should “update and change the rules on how government uses lexicon.”¹⁴ And, under the heading, “**Recommendation 3: Change Our Lexicon by Shifting How We Speak with Each Other and the World,**” the Report asserted:

There is a disagreement among scholars, government officials, and activists about the right lexicon to use around the issues of violent extremism. **At the same time, report after report has recommended that the U.S. Government be consistent in its language and its meaning, highlighting that tone and word choice matter. Under no circumstance should we be using language that will alienate or be disrespectful of fellow Americans.** Thus, we need to be clearer in what we mean and how we say it. Further, we are at a particular moment on the world stage with global events driving fear, political and cultural rhetoric leaning on sharp and divisive language, and deep polarization and distrust across communities. All of this is set against the backdrop of digitally connected recruitment efforts that are actively trying to exploit differences and create divisions across U.S. society. We must speak with honor and respect about all communities within the United States. We should give dignity to the many histories and diversities within our nation and advocate for a consistent whole of government approach that utilizes agreed terms and words. **Tone and word choice matter.**¹⁵

In further support of its recommendation, the Report explained:

Often without knowing it, we have constructed language in daily use that promotes an “us and them” narrative of division. Though it was within the context of the “War on Terror,” the Department’s 2008 guidance about lexicon is important to review as it has bearing on groups like ISIL. It instructs the Department to ensure terminology is “properly calibrated to diminish the recruitment efforts of extremists who argue that the West is at war with Islam.”¹⁶

The Report recommended the following specific actions concerning lexicon:

Actions:

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.*

¹⁶*Id.*

1. Renew efforts to describe CVE, its origin of soft power, and attempt to re-establish the term to ensure that prevention programs are not inter-mingled with surveillance or intelligence-gathering programs.
2. **Bring consistency into government use of language and meaning.**
3. **Ensure the Department reviews the 2008 directive and uses a vocabulary when discussing extremism that avoids the “us versus them” framing.**
4. **Reject religiously-charged terminology and problematic positioning by using plain meaning American English.**
 - a. **US v THEM:** For example, use “American Muslim” rather than “Muslim American”; “Muslim communities” rather than “Muslim world.”
 - b. **AMERICAN ENGLISH:** For example, on using American English instead of religious, legal and cultural terms like “jihad,” “sharia,” “takfir” or “umma.”¹⁷

The DHS CVE Report referred to and incorporated a 2008 DHS directive issued by the DHS Office for Civil Rights and Civil Liberties, entitled “Terminology to Define the Terrorists: Recommendations from American Muslims.”¹⁸ According to the DHS directive, “**Words matter.** The terminology that senior government officials use must accurately identify the nature of the challenges that face our generation.”¹⁹ And, “**our terminology must be properly calibrated to diminish the recruitment efforts of extremists who argue that the West is at war with Islam.**”²⁰

Importantly, Khera’s June 28, 2016, committee testimony and the June 9, 2016, DHS CVE recommendations followed a series of reported events and correspondence regarding certain organizations’ request to the White House that “offensive” terms concerning Islam be purged from federal training materials.

III. Muslim Advocates Coalition 2011 Letter to White House and White House Response

By letter dated October 19, 2011, to then Assistant to the president for Homeland Security and Counterterrorism John Brennan (“Brennan”), a coalition of “Muslim, Arab and South Asian organizations”²¹ led by Khera, expressed disapproval of “the federal government’s use of biased,

¹⁷*Id.*

¹⁸U.S. DEP’T OF HOMELAND SECURITY: OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES, TERMINOLOGY TO DEFINE THE TERRORISTS: RECOMMENDATIONS FROM AMERICAN MUSLIMS (Jan. 2008), *available at* https://www.dhs.gov/xlibrary/assets/dhs_crcl_terminology_08-1-08_accessible.pdf

¹⁹*Id.*

²⁰*Id.*

²¹AlMaghrib Institute; American Coalition for Good Government; American Muslim Association of Lawyers; American Muslim Voice; American Pakistan Foundation; American-Arab Anti-Discrimination Committee (ADC); Arab American Association of New York; Arab American Institute (AAI); Arab Community Center for Economic and Social Services (ACCESS); Arab Muslim American Federation (AMAF); Bay Area Association of Muslim Lawyers (BAAML); Capitol Area Muslim Bar Association; Council of Islamic Organizations of Greater Chicago

false and highly offensive training materials about Muslims and Islam.”²² Khera “request[ed] that the White House immediately create an interagency task force to address this problem, with a fair and transparent mechanism for input from the Muslim, Arab, and South Asian communities, including civil rights lawyers, religious leaders, and law enforcement experts.”²³

According to the 2011 coalition letter:

The use of bigoted trainers and materials like those above is not only highly offensive, disparaging the faith of millions of Americans, but leads to biased policing that targets individuals and communities based on religion, not evidence of wrongdoing. Inaccurate and bigoted training materials also foster fear and suspicion of American Muslims amongst law enforcement and the general public, increasing discrimination, bullying, harassment and anti-Muslim violence.²⁴

The 2011 coalition letter continued:

We urge you to create an interagency task force, led by the White House, tasked with the following responsibilities:

- 1. Review all trainers and training materials at government agencies, including all FBI intelligence products used such as the FBI intranet, FBI library and JTTF training programs; US Attorney training programs; U.S. Department of Homeland Security, U.S. Department of Defense, and US military intranet, libraries and training materials, resources and experts;**
- 2. Purge all federal government training materials of biased materials;**

(CIOGC); Council of Islamic Organizations of Michigan (CIOM); Council on American-Islamic Relations (CAIR); DRUM – Desis Rising Up and Moving; EMERGE-USA; Florida Muslim Bar Association; Georgia Association of Muslim Lawyers; Houston Shifa Services Foundation; Indian Muslim Relief & Charities (IMRC); Islamic Circle of North America (ICNA); Islamic Information Center; Islamic Medical Association of North America (IMANA); Islamic Networks Group (ING); Islamic Relief USA; Islamic Shura Council of Southern California; Islamic Society of Greater Houston (ISGH); Islamic Society of North America (ISNA); KARAMAH: Muslim Women Lawyers for Human Rights; Majlis Ash-Shura (Islamic Leadership Council) of Metropolitan NY; Michigan Muslim Bar Association; Muslim Advocates; Muslim American Civil Liberties Coalition (MACLC); Muslim American Society (MAS); Muslim Bar Association of Chicago; Muslim Bar Association of New York; Muslim Bar Association of Southern California; Muslim Congress/Justice360; Muslim Consultative Network (MCN); Muslim Lawyers Association of Houston; Muslim Legal Fund of America (MLFA); Muslim Peace Coalition USA; Muslim Progressive Traditionalist Alliance; Muslim Public Affairs Council (MPAC); National Muslim Law Students Association; National Network for Arab American Communities (NNAAC); New England Muslim Bar Association; Northern California Islamic Council; Ohio Muslim Bar Association; Pakistani American Bar Association (PABA); Pakistani American Leadership Center (PAL-C); Pakistani American Public Affairs Committee; Somali Action Alliance; South Asian Americans Leading Together (SAALT); South Asian Network (SAN); and Women in Islam, Inc.

²²*Letter to DHS John Brennan on FBI's Use of Biased Experts and Training Materials*, MUSLIMADVOCATES.ORG (Oct. 27, 2011), <https://www.muslimadvocates.org/letter-to-dhs-john-brennan-on-fbis-use-of-biased-experts-and-training-materials/>

²³*Id.*

²⁴*Id.*

3. Implement a mandatory re-training program for FBI agents, U.S. Army officers, and all federal, state and local law enforcement who have been subjected to biased training;
4. Ensure that personnel reviews are conducted and all trainers and other government employees who promoted biased trainers and training materials are effectively disciplined;
5. Implement quality control processes to ensure that bigoted trainers and biased materials are not developed or utilized in the future; and
6. **Issue guidance clearly stating that religious practice and political advocacy are protected activities under the First Amendment, not indicators of violence, and shall not be the basis for surveillance or investigation.**²⁵

Brennan responded to the 2011 coalition letter by letter dated November 3, 2011, addressed to Khera, and acknowledged awareness of certain “examples of substandard and offensive training that some United States Government elements have either sponsored or delivered.”²⁶ Brennan referenced “[o]ur **National Strategy for Empowering Local Partners to Prevent Violent Extremism in the United States,**” which “**highlights competent training as an area of priority focus.**”²⁷ According to Brennan, the National Strategy “**emphasizes that our security is ‘inextricably linked to our values,’ including ‘the promotion of an inclusive society.’**”²⁸

According to the letter, in November 2010, the White House’s National Security Staff identified training as a critical area for improvement” and “**tasked the Department of Homeland Security (DHS) to form an Interagency Working Group on Training to catalogue, review, and improve CVE-related instruction across all levels of government.**”²⁹

According to Brennan:

Recent efforts of this working group include: (1) a **CVE Training Guidance and Best Practices paper, which will give specific guidance to federal, state, local, and tribal government officials charged with organizing training related to CVE, CT, or cultural awareness;** and (2) an Information Bulletin on CVE Training, which provides additional guidance to state, local, and tribal entities that regularly leverage federal grants to fund CVE-related trainings. DHS has sent both documents to all DHS grantees, state and local governments, state and local law enforcement, relevant community stakeholders, and interagency partners.³⁰

²⁵*Id.*

²⁶*Training Letter to Khera*, MUSLIMADVOCATES.ORG (Nov. 3, 2011), <http://www.muslimadvocates.org/files/JOB-CVE-training-letter-to-Khera-11.3.11.pdf>

²⁷*Id.*

²⁸*Id.*

²⁹*Id.*

³⁰*Id.*

And:

In addition to these specific actions, **Departments and Agencies are taking aggressive steps to create broader review processes and build rigorous CVE curriculum standards. These include: (1) collecting all training materials that contain cultural or religious content, including information related to Islam or Muslims; (2) establishing a process, in consultation with subject matter experts, to ensure that such materials comply with core American values, professional standards, and the United States Constitution; and (3) writing guidance for CVE training, which will be shared with components, field offices, and external partners. Moreover, we are committed to engaging in a sustained dialogue with all relevant stakeholders on these issues as we move forward.**³¹

Speaking of the examples of substandard and offensive training, Brennan explained “[t]hey do not reflect the vision that the President has put forward.”³² He concluded his letter by stating: **“we are currently developing an implementation plan for our Domestic CVE Strategy, which will provide further detailed information on the specific steps necessary to improve CVE and cultural competency training across the United States Government and measure progress.”**³³

IV. FBI “Purge” in 2012

As reported in the media, in February 2012, an FBI “inquiry has uncovered and purged over 700 pages of documentation from approximately 300 presentations given to agents since 9/11” and “more disclosures may be forthcoming.”³⁴ According to reports: “The FBI purged documents according to four criteria: ‘factual errors’; ‘poor taste’; employment of ‘stereotypes’ about Arabs or Muslims; or presenting information that ‘lacked precision.’”³⁵ According to Judicial Watch:

The FBI memos and other documents reveal that the agency purged its anti-terrorism training curricula of material determined by an undisclosed group of “Subject Matter Experts” (SME) to be “offensive” to Muslims. The excised material included references linking the Muslim Brotherhood to terrorism, tying Al Qaeda to the 1993 World Trade Center and Khobar Towers bombings, and suggesting that “young male immigrants of Middle Eastern appearance ... may fit the terrorist profile best.”³⁶

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Spencer Ackerman, *FBI Purges Hundreds of Terrorism Documents in Islamophobia Probe*, WIRED.COM (Feb. 15, 2012, 6:30 AM), <https://www.wired.com/2012/02/hundreds-fbi-documents-muslims/>

³⁵ *Id.*

³⁶ *DHS May Ban “Religiously Charged” Terms Jihad, Sharia to Avert “Us Versus Them” in Anti-Terror Programs*, JUDICIALWATCH.ORG (Jun. 23, 2016), <http://www.judicialwatch.org/blog/2016/06/avert-us-versus-dhs-told-ban-religiously-charged-terms-jihad-sharia-anti-terror-programs/>

V. Muslim Advocates Coalition 2014 Letter to White House

By letter dated August 14, 2014, addressed to Lisa O. Monaco, Assistant to the President for Homeland Security and Counterterrorism, a similar but expanded group of organizations³⁷ urged “immediate action to end the use of anti-Muslim training materials and address anti-Muslim conduct exhibited by agencies throughout the federal government.”³⁸

In this 2014 coalition letter, the organizations expressed appreciation “that the White House has recently decried ‘the use of racial or ethnic stereotypes, slurs, or other similar language by employees’ as ‘both unacceptable and inconsistent with the country’s core values.’”³⁹ According to the letter, “[t]he White House directed the Director of National Intelligence (DNI) to undertake an assessment of Intelligence Community policies, training standards or directives that promote diversity and tolerance, and, as necessary, make any recommendations, changes, or additional reforms.”⁴⁰

The organizations expressed disappointment that DNI only expanded “multicultural and diversity sensitivity training and re-establish an external advisory board on diversity and inclusion.”⁴¹

³⁷Advocacy for Principled Action in Government American Center for Outreach; American Civil Liberties Union; American-Arab Anti-Discrimination Committee (ADC) Arab American Action Network (AAAN); Arab American Association of New York; Arab American Institute; Asian American Legal Defense and Education Fund (AALDEF); Asian Americans Advancing Justice - Asian Law Caucus; Asian Americans Advancing Justice - Los Angeles; Auburn Seminary; Center for Constitutional Rights; Center for National Security Studies; Center for New Community; Council on American-Islamic Relations (CAIR); Council of Islamic Organizations of Greater Chicago; Creating Law Enforcement Accountability & Responsibility (CLEAR); Defending Dissent Foundation; DRUM - South Asian Organizing Center; Electronic Frontier Foundation; Emerge USA; Franciscan Action Network; Gay & Lesbian Advocates & Defenders (GLAD); Georgia Association of Muslim Lawyers (GAML); Human Rights Campaign; Illinois Coalition for Immigrant and Refugee Rights (ICIRR); Imam Hussain Islamic Center; Interfaith Alliance; Islamic Information Center of America; Islamic Networks Group (ING); Jews Against Islamophobia; Jews for Racial and Economic Justice; Lambda Legal; Majlis Ash-Shura (Islamic Leadership Council) of Metropolitan NY; Mexican American Legal Defense and Educational Fund (MALDEF); Michigan Muslim Bar Association (MMBA); Michigan Muslim Community Council (MMCC); Military Religious Freedom Foundation; Muslim Advocates; Muslim Alliance in North America (MANA); Muslim American Civil Liberties Coalition (MACLC); Muslim American Community Association; Muslim Bar Association of New York; Muslim Bar Association of Southern California; Muslim Legal Fund of America (MLFA); Muslim Peace Coalition USA; Muslim Progressive Traditionalist Alliance; Muslim Public Affairs Council; NAACP; NAACP New York State Conference; National Asian Pacific American Bar Association (NAPABA) National Center for Lesbian Rights; National Center for Transgender Equality; National Gay and Lesbian Task Force; National Lawyers Guild; National Muslim Law Students Association; National Religious Campaign Against Torture; New Jersey Muslim Lawyers Association (NJMLA); OneAmerica; Progressive Congress; Sikh American Legal Defense and Education Fund (SALDEF); South Asian Americans Leading Together (SAALT); The Hindu Temple Society of North America; The Interfaith Center of New York; The International Institute of Tolerance; The Leadership Conference on Civil and Human Rights; The National Network for Arab American Communities (NNAAC); The Queens Federation of Churches; The Sikh Coalition; Transgender Law Center; T’ruah: The Rabbinic Call for Human Rights; UMMA Community Clinic; United Sikhs; Universal Muslim Association of America (UMAA); and Women in Islam Inc.

³⁸*Letter to Lisa O. Monaco: Coalition Letter Trainings*, MUSLIMADVOCATES.ORG (Aug. 14, 2014), http://www.muslimadvocates.org/files/FINALCoalitionLetterTrainings_8.14.14.pdf

³⁹*Id.*

⁴⁰*Id.*

⁴¹*Id.*

They continued: “**These measures may be necessary, but they do not directly address the persistent problem of law enforcement and intelligence agencies using anti- Muslim training materials** and engaging in discriminatory law enforcement.”⁴²

They expressed disappointment that, contrary to Brennan’s assurances in his letter of November 3, 2011, “there has been no accounting to the public about any task force on or assessment of the pervasiveness of these biased training materials.”⁴³ And, “although there was reportedly a review and purge of a limited portion of training materials by the FBI, no commitment has been made to review intelligence products that mirror these biased training materials.”⁴⁴

The letter continued: “Without executive branch actions, including those we recommend below, trainings that perpetuate gross stereotypes and false information about Islam and Muslims will continue to proliferate at the state and local level.”⁴⁵

And:

The use of anti-Muslim trainers and materials is not only highly offensive, disparaging the faith of millions of Americans, but leads to biased policing that targets individuals and communities based on religion, not evidence of wrongdoing. Government training materials that include religious epithets also foster fear and suspicion of American Muslims among law enforcement and the general public, increasing discrimination, bullying, harassment, and anti-Muslim violence.⁴⁶

Accordingly, the letter urged Monaco to “undertake the following steps:”

- (1) Audit all federal law enforcement and intelligence gathering training and educational materials to identify and remove information that is factually incorrect or exhibits bias against any race, ethnicity, religion, or national origin;**
- (2) Implement a mandatory retraining program for all federal, state and local law enforcement officials who have been subjected to biased and discriminatory trainings provided by the federal government or with federal funds;**
- (3) Pursue disciplinary action against those agents and officials engaging in discriminatory conduct and responsible for these training materials;
- (4) Require federal agencies that provide law enforcement and homeland security funding to state and local governments to condition such funding on carrying out training or otherwise using federal funds in a manner that upholds our nation’s commitment to equal treatment and equal justice under the law and barring the

⁴²*Id.*

⁴³*Id.*

⁴⁴*Id.*

⁴⁵*Id.*

⁴⁶*Id.*

use of trainers or materials that exhibit bias against any race, ethnicity, religion, or national origin.⁴⁷

Records Requested

For purposes of this Request, the term “record” is “any information” that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recordings, or other material. The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government or private account or server, consistent with the holdings of *Competitive Enterprise Institute v. Office of Science and Technology Policy*, No. 15-5128 (D.C. Cir. July 5, 2016)⁴⁸ (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

For purposes of this Request, the term “briefing” includes, but is not limited to, any in-person meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person.

For purposes of this Request, the term “DHS official” includes, but is not limited to, any person who is (1) employed by or on behalf of the U.S. Department of Homeland Security in any capacity; (2) contracted for services by or on behalf of the U.S. Department of Homeland Security in any capacity; or (3) appointed by the President of the United States to serve in any capacity at the U.S. Department of Homeland Security; all without regard to the component or office in which that person serves.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is March 1, 2012, to the date this Request is processed.

Pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, ACLJ hereby requests that the U.S. Department of Homeland Security produce the following within twenty (20) business days:

1. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff, or employee, referencing or regarding in any way the June 2016 Homeland Security Advisory Council (HSAC), Countering Violent Extremism (CVE) Subcommittee Interim Report and Recommendations.⁴⁹

⁴⁷*Id.*

⁴⁸[https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/\\$file/15-5128-1622973.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/$file/15-5128-1622973.pdf)

⁴⁹Countering Violent Extremism, *supra* note 10.

2. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, referencing or regarding in any way Farhana Khera's June 28, 2016, testimony⁵⁰ to the Senate Judiciary Committee, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, at the hearing entitled "Willful Blindness: Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism," or any request, proposal or recommendation articulated by Khera in her testimony.
3. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, referencing or regarding in any way the August 14, 2014, letter⁵¹ to Monaco or any of the letter's content, requests or recommendations.
4. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the content of government training material or curricula, with respect to use of the words "Islam," "Islamic," "radical Islam," "radical Islamist," "radical Islamic," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other religious, Islamic or Arabic references.
5. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the use of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, or any other publicized or non-publicized document.
6. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the use of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, or any other publicized or non-publicized document.
7. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *from March 1, 2012, to August 13, 2014*, identifying any terms, words, titles or phrases for possible or actual removal, modification, or replacement with English translations, in or from any DHS or DHS component regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

⁵⁰Testimony of Farhana Y. Khera, *supra* note 4.

⁵¹Letter to Lisa O. Monaco, *supra* note 38.

8. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *on or after* August 14, 2014, identifying any terms, words, titles or phrases for possible or actual removal, modification, or replacement with English translations, in or from any DHS or DHS component regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

9. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, containing any discussion of the benefits, advantages, drawbacks, disadvantages, or any other indication of a rationale for or against the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

10. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, containing any approval, instruction, direction, or order for the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

11. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, containing the name of any person involved in the decision or any discussion of a possible decision to remove, exclude, modify, replace, and/or translate from Arabic to English, the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

12. Any and all records, including but not limited to any communications or briefings prepared, or sent to John P. Carlin, Assistant Attorney General for the Department of Justice's National Security Division, his staff or employee, by any DHS official, staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia,"

“takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

13. Any and all records, including but not limited to any communications or briefings received by any DHS official, staff or employee, from John P. Carlin, Assistant Attorney General for the Department of Justice’s National Security Division, his staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

14. Any and all records, including but not limited to any communications or briefings prepared, or sent to Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch, his staff or employee, by any DHS official, staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

15. Any and all records, including but not limited to any communications or briefings received by any DHS official, staff or employee, from Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch, his staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

16. Any and all records reflecting or in any way regarding any in person meeting or briefing, regardless of where such meeting or briefing occurred, between or attended by any DHS official, staff or employee and [*any non-governmental organization whose name is on the August 14, 2014 coalition letter to Monaco*].

17. Any and all records of any communications or briefings that were, on or after August 14, 2014, prepared by or for, reviewed by or for, received by or from, sent by or to, or otherwise

transmitted between, any DHS official, staff or employee and/or [any non-governmental organization whose name is on the August 14, 2014 coalition letter to Monaco].

18. Any and all records of any communications or briefings prepared, reviewed or sent, on or after August 14, 2014, by any DHS official, staff or employee to Farhana Khera, her staff, or any other employee or representative of Muslim Advocates.

19. Any and all records of any communications or briefings received or reviewed, on or after August 14, 2014, by any DHS official, staff or employee from Farhana Khera, her staff, or any other employee or representative of Muslim Advocates.

CONCLUSION

As you are undoubtedly aware, President Obama's Freedom of Information Act Memorandum of January 21, 2009, declares:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. . . .⁵²

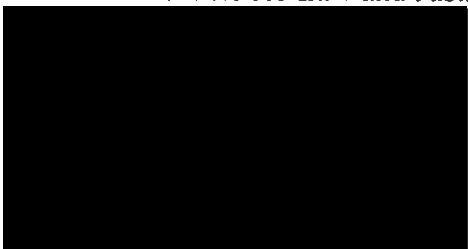
As such, if this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions.

⁵²PRESIDENT BARACK OBAMA, MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES RE: FREEDOM OF INFORMATION ACT (Jan. 21, 2009), *available at* https://www.whitehouse.gov/the_press_office/FreedomofInformationAct.

Moreover, as explained in an accompanying memorandum, the ACLJ is entitled to expedited processing of this Request as well as a waiver of all fees associated with it. ACLJ reserves the right to appeal a decision to withhold any information sought by this request and/or to deny the separate application for expedited processing and waiver of fees.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jay Alan Sekulow, Chief Counsel
Colby M. May, Senior Counsel
Craig L. Parshall, Special Counsel
Benjamin P. Sisney, Senior Litigation Counsel
American Center for Law and Justice



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Handwritten signature of Jay Alan Sekulow in black ink.

Jay Alan Sekulow
Chief Counsel

Handwritten signature of Colby M. May in black ink.

Colby M. May
Senior Counsel

cc: Karen Neuman, Chief FOIA Officer, DHS Privacy Office
Office for Civil Rights and Civil Liberties (CRCL)
Federal Law Enforcement Training Center (FLETC)
Transportation Security Administration (TSA)
United States Immigration & Customs Enforcement (ICE)
United States Customs & Border Protection (CBP)



Jay Alan Sekulow, J.D., Ph.D.
Chief Counsel

July 12, 2016

United States Immigration & Customs Enforcement (ICE)
Freedom of Information Act Office



RE: FOIA Request to U.S. Department of Homeland Security Regarding Decision(s) to Revise Training Material, Other Documents, and/or “Lexicon” by Removing or Editing Islam-Related Terms or References

Dear Ms. Pavlik-Keenan and Mr. Pineiro:

This letter is a request (“Request”) in accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and the corresponding department/agency implementing regulations.

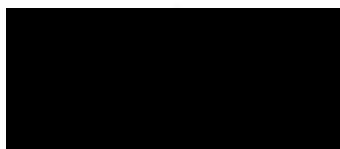
The Request is made by the American Center for Law and Justice (“ACLJ”)¹ on behalf of itself and over 81,000 of its members. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, this Request seeks any and all records pertaining to decisions by the U.S. Department of Homeland Security (“DHS”) and/or any of its components to revise any guidance, directive, training material, other document, and/or government lexicon by removing Islam-related terms or references.

Background

Pursuant to DHS FOIA regulation 6 C.F.R. §5.3(b), this Background addresses “the date, title or name, author, recipient, and subject matter of the record[s]” requested, to the extent known.

¹ The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.



I. June 28, 2016, Senate Committee Hearing Regarding “Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism”

On June 28, 2016, the Senate Judiciary Committee, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, held a hearing entitled “Willful Blindness: Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism.”² According to Sen. Charles Grassley, the Judiciary Committee Chairman, “One key reason for this failure is the President’s resistance to facing the truth about threats to our country when they don’t line up neatly with his predetermined policies or preferred ideological narratives.”³

One of the panelists giving testimony at the hearing was Farhana Khera (“Khera”), President and Executive Director of Muslim Advocates. According to her testimony:

In November 2011, President Obama’s then-Counterterrorism Advisor John Brennan agreed the White House would create an interagency task force to create review processes and build rigorous standards to ensure training material is not biased. However, the task force has had no public accountability, and has not assessed the pervasiveness of these biased training materials and whether the agents and officials involved were subject to any disciplinary action. Moreover, although there was reportedly a review and purge of a limited portion of training materials by the FBI, no commitment has been made to review intelligence products that mirror these biased training materials. We also have received no assurance that law enforcement and other government employees who participated in these trainings have been retrained. **We are concerned that these biased trainings and intelligence products continue to drive racial and religious profiling at every stage of the intelligence-gathering and investigative processes.**⁴

According to Khera:

Far too many of our nation’s public officials and political leaders engage in hateful and blatantly bigoted anti-Muslim rhetoric. Public officials must

²*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. (2016), available at <http://www.judiciary.senate.gov/meetings/willful-blindness-consequences-of-agency-efforts-to-deemphasize-radical-islam-in-combating-terrorism>*

³*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. (2016) (statement of Sen. Chuck Grassley, Chairman, S. J. Comm.), available at <https://www.judiciary.senate.gov/imo/media/doc/06-28-16p%20Grassley%20Statement.pdf>.*

⁴*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. 4 (2016) (testimony of Farhana Y. Khera, President and Executive Director, Muslim Advocates), available at <https://www.judiciary.senate.gov/imo/media/doc/06-28-16%20Khera%20Testimony.pdf>.*

understand that such rhetoric carries grave consequences for American Muslims and those who are perceived to be Muslim in the U.S.⁵

“To address bigoted training materials,” Khera submitted the following recommendations:

- a) **Audit all federal law enforcement and intelligence gathering training and educational materials to identify and remove information that is factually incorrect or exhibits bias against any race, ethnicity, religion, or national origin;**
- b) Implement a mandatory retraining program for all federal, state and local law enforcement officials who have been subjected to biased and discriminatory trainings provided by the federal government or with federal funds;
- c) Pursue disciplinary action against those agents and officials engaging in discriminatory conduct and responsible for these training materials; and
- d) Require federal agencies that provide law enforcement and homeland security funding to state and local governments to condition such funding on carrying out training or otherwise using federal funds in a manner that upholds our nation’s commitment to equal treatment and equal justice under the law and barring the use of trainers or materials that exhibit bias against any race, ethnicity, religion, or national origin.⁶

Khera has advanced her position and these specific recommendations at least as far back as 2011, as is addressed in greater detail in Section III, *infra*.

Sen. Ted Cruz, who chairs the Subcommittee conducting this hearing, stated in his opening remarks:

In 2011, the group ‘Muslim Advocates’ sent a letter to the Obama administration claiming the federal government had somehow become infected with “false and highly offensive training materials about Muslims and Islam,” and demanding that such “bigoted and distorted materials’ be “purge[d]”—I would note that was their word, not mine “purged”—and was also advocating for the creation of an interagency task force to address this problem.

In a lightning quick response—a rather unusual occurrence in our bloated bureaucracy—current CIA director John Brennan (then the President’s Homeland Security advisor) agreed to create such a task force, and claimed that the federal government had indeed produced “offensive training” that urgently needed to be dealt with in order to “reflect the vision that the President has put forward.”⁷

⁵*Id.* at 10.

⁶*Id.* at 16.

⁷*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong.*

As Sen. Cruz explained:

[I]n November 2011, the Department of Homeland Security released its “Domestic Terrorism and Homegrown Extremism Lexicon.” It made no reference to Islamic terrorism, despite being, on its face, an alleged “lexicon” that included “anarchist extremists,” “animal rights extremists,” “environmental extremists,” and “racist skinhead extremists.” Yet somehow, “radical Islamic extremists” were nowhere mentioned in the FBI’s supposed lexicon. Similarly, the FBI’s “Counterterrorism Analytical Lexicon” makes no reference to “Islam,” “radical Islam,” “jihad,” or any other such term. By way of comparison, the 9/11 Commission report, released in 2004, mentioned “jihad” 126 times and “Islam” 322 times.⁸

Sen. Cruz identified two government officials who were invited by the Committee to appear before the committee but declined to do so: “John P. Carlin, an Assistant Attorney General for the Department of Justice’s National Security Division, and Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch.”⁹

II. June 2016 DHS Report and Recommendation to Purge Government Lexicon of Islam

On June 9, 2016, the Homeland Security Advisory Council (HSAC), Countering Violent Extremism (CVE) Subcommittee released its Interim Report and Recommendations (“DHS CVE Report”; the “Report”).¹⁰ As one media outlet reported, the Report was published “[l]ess than a week before Omar Mateen walked into an Orlando gay club and killed or wounded more than 100 people.”¹¹

According to the DHS CVE Report, the “government must avoid stigmatizing specific communities.”¹² And:

Ultimately, the approaches this report recommends for the Department will help it evolve over time and adapt to the changing nature of violent extremism itself, namely, the convergence and alliances of violent extremist groups across the full

(2016) (statement of Sen. Ted Cruz, Chairman, S. Comm. on Oversight, Agency Action, Federal Rights and Federal Courts) available at https://www.cruz.senate.gov/?p=press_release&id=2704.

⁸*Id.*

⁹*Id.*

¹⁰HOMELAND SECURITY ADVISORY COUNCIL: COUNTERING VIOLENT EXTREMISM S. COMM., 114TH CONG., INTERIM REP. AND RECOMMENDATIONS (2016), [hereinafter Countering Violent Extremism] available at <https://www.dhs.gov/sites/default/files/publications/HSAC/HSAC%20CVE%20Final%20Interim%20Report%20June%209%202016%20508%20compliant.pdf>.

¹¹Peter Hasson, *Homeland Security Instructed to Combat Violent Extremism with Political Correctness*, DAILY CALLER (Jun. 13, 2016, 4:25 PM), <http://dailycaller.com/2016/06/13/homeland-security-instructed-to-combat-violent-extremism-with-political-correctness/>.

¹²*Id.*

spectrum of grievances: To include those that espouse and/or undertake violence justified through various ideologies, to include anarchists, sovereign citizens, white-supremacists, and others.¹³

A “**Key Recommendation**” expressed in the Report was that, “[g]iven the evolving threat and how the process of radicalization itself is evolving,” DHS should “update and change the rules on how government uses lexicon.”¹⁴ And, under the heading, “**Recommendation 3: Change Our Lexicon by Shifting How We Speak with Each Other and the World.**” the Report asserted:

There is a disagreement among scholars, government officials, and activists about the right lexicon to use around the issues of violent extremism. **At the same time, report after report has recommended that the U.S. Government be consistent in its language and its meaning, highlighting that tone and word choice matter. Under no circumstance should we be using language that will alienate or be disrespectful of fellow Americans.** Thus, we need to be clearer in what we mean and how we say it. Further, we are at a particular moment on the world stage with global events driving fear, political and cultural rhetoric leaning on sharp and divisive language, and deep polarization and distrust across communities. All of this is set against the backdrop of digitally connected recruitment efforts that are actively trying to exploit differences and create divisions across U.S. society. We must speak with honor and respect about all communities within the United States. We should give dignity to the many histories and diversities within our nation and advocate for a consistent whole of government approach that utilizes agreed terms and words. **Tone and word choice matter.**¹⁵

In further support of its recommendation, the Report explained:

Often without knowing it, we have constructed language in daily use that promotes an “us and them” narrative of division. Though it was within the context of the “War on Terror,” the Department’s 2008 guidance about lexicon is important to review as it has bearing on groups like ISIL. It instructs the Department to ensure terminology is “properly calibrated to diminish the recruitment efforts of extremists who argue that the West is at war with Islam.”¹⁶

The Report recommended the following specific actions concerning lexicon:

Actions:

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

1. Renew efforts to describe CVE, its origin of soft power, and attempt to re-establish the term to ensure that prevention programs are not inter-mingled with surveillance or intelligence-gathering programs.
2. **Bring consistency into government use of language and meaning.**
3. **Ensure the Department reviews the 2008 directive and uses a vocabulary when discussing extremism that avoids the “us versus them” framing.**
4. **Reject religiously-charged terminology and problematic positioning by using plain meaning American English.**
 - a. **US v THEM: For example, use “American Muslim” rather than “Muslim American”; “Muslim communities” rather than “Muslim world.”**
 - b. **AMERICAN ENGLISH: For example, on using American English instead of religious, legal and cultural terms like “jihad,” “sharia,” “takfir” or “umma.”¹⁷**

The DHS CVE Report referred to and incorporated a 2008 DHS directive issued by the DHS Office for Civil Rights and Civil Liberties, entitled “Terminology to Define the Terrorists: Recommendations from American Muslims.”¹⁸ According to the DHS directive, “**Words matter.** The terminology that senior government officials use must accurately identify the nature of the challenges that face our generation.”¹⁹ And, “**our terminology must be properly calibrated to diminish the recruitment efforts of extremists who argue that the West is at war with Islam.**”²⁰

Importantly, Khera’s June 28, 2016, committee testimony and the June 9, 2016, DHS CVE recommendations followed a series of reported events and correspondence regarding certain organizations’ request to the White House that “offensive” terms concerning Islam be purged from federal training materials.

III. Muslim Advocates Coalition 2011 Letter to White House and White House Response

By letter dated October 19, 2011, to then Assistant to the president for Homeland Security and Counterterrorism John Brennan (“Brennan”), a coalition of “Muslim, Arab and South Asian organizations”²¹ led by Khera, expressed disapproval of “the federal government’s use of biased,

¹⁷*Id.*

¹⁸U.S. DEP’T OF HOMELAND SECURITY: OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES, TERMINOLOGY TO DEFINE THE TERRORISTS: RECOMMENDATIONS FROM AMERICAN MUSLIMS (Jan. 2008), *available at* https://www.dhs.gov/xlibrary/assets/dhs_crcl_terminology_08-1-08_accessible.pdf

¹⁹*Id.*

²⁰*Id.*

²¹AlMaghrib Institute; American Coalition for Good Government; American Muslim Association of Lawyers; American Muslim Voice; American Pakistan Foundation; American-Arab Anti-Discrimination Committee (ADC); Arab American Association of New York; Arab American Institute (AAI); Arab Community Center for Economic and Social Services (ACCESS); Arab Muslim American Federation (AMAF); Bay Area Association of Muslim Lawyers (BAAML); Capitol Area Muslim Bar Association; Council of Islamic Organizations of Greater Chicago

false and highly offensive training materials about Muslims and Islam.”²² Khera “request[ed] that the White House immediately create an interagency task force to address this problem, with a fair and transparent mechanism for input from the Muslim, Arab, and South Asian communities, including civil rights lawyers, religious leaders, and law enforcement experts.”²³

According to the 2011 coalition letter:

The use of bigoted trainers and materials like those above is not only highly offensive, disparaging the faith of millions of Americans, but leads to biased policing that targets individuals and communities based on religion, not evidence of wrongdoing. Inaccurate and bigoted training materials also foster fear and suspicion of American Muslims amongst law enforcement and the general public, increasing discrimination, bullying, harassment and anti-Muslim violence.²⁴

The 2011 coalition letter continued:

We urge you to create an interagency task force, led by the White House, tasked with the following responsibilities:

- 1. Review all trainers and training materials at government agencies, including all FBI intelligence products used such as the FBI intranet, FBI library and JTTF training programs; US Attorney training programs; U.S. Department of Homeland Security, U.S. Department of Defense, and US military intranet, libraries and training materials, resources and experts;**
- 2. Purge all federal government training materials of biased materials;**

(CIOGC); Council of Islamic Organizations of Michigan (CIOM); Council on American-Islamic Relations (CAIR); DRUM – Desis Rising Up and Moving; EMERGE-USA; Florida Muslim Bar Association; Georgia Association of Muslim Lawyers; Houston Shifa Services Foundation; Indian Muslim Relief & Charities (IMRC); Islamic Circle of North America (ICNA); Islamic Information Center; Islamic Medical Association of North America (IMANA); Islamic Networks Group (ING); Islamic Relief USA; Islamic Shura Council of Southern California; Islamic Society of Greater Houston (ISGH); Islamic Society of North America (ISNA); KARAMAH: Muslim Women Lawyers for Human Rights; Majlis Ash-Shura (Islamic Leadership Council) of Metropolitan NY; Michigan Muslim Bar Association; Muslim Advocates; Muslim American Civil Liberties Coalition (MACLC); Muslim American Society (MAS); Muslim Bar Association of Chicago; Muslim Bar Association of New York; Muslim Bar Association of Southern California; Muslim Congress/Justice360; Muslim Consultative Network (MCN); Muslim Lawyers Association of Houston; Muslim Legal Fund of America (MLFA); Muslim Peace Coalition USA; Muslim Progressive Traditionalist Alliance; Muslim Public Affairs Council (MPAC); National Muslim Law Students Association; National Network for Arab American Communities (NNAAC); New England Muslim Bar Association; Northern California Islamic Council; Ohio Muslim Bar Association; Pakistani American Bar Association (PABA); Pakistani American Leadership Center (PAL-C); Pakistani American Public Affairs Committee; Somali Action Alliance; South Asian Americans Leading Together (SAALT); South Asian Network (SAN); and Women in Islam, Inc.

²²Letter to DHS John Brennan on FBI's Use of Biased Experts and Training Materials, MUSLIMADVOCATES.ORG (Oct. 27, 2011), <https://www.muslimadvocates.org/letter-to-dhs-john-brennan-on-fbis-use-of-biased-experts-and-training-materials/>

²³*Id.*

²⁴*Id.*

3. Implement a mandatory re-training program for FBI agents, U.S. Army officers, and all federal, state and local law enforcement who have been subjected to biased training;
4. Ensure that personnel reviews are conducted and all trainers and other government employees who promoted biased trainers and training materials are effectively disciplined;
5. Implement quality control processes to ensure that bigoted trainers and biased materials are not developed or utilized in the future; and
6. **Issue guidance clearly stating that religious practice and political advocacy are protected activities under the First Amendment, not indicators of violence, and shall not be the basis for surveillance or investigation.**²⁵

Brennan responded to the 2011 coalition letter by letter dated November 3, 2011, addressed to Khera, and acknowledged awareness of certain “examples of substandard and offensive training that some United States Government elements have either sponsored or delivered.”²⁶ Brennan referenced “[o]ur National Strategy for Empowering Local Partners to Prevent Violent Extremism in the United States,” which “highlights competent training as an area of priority focus.”²⁷ According to Brennan, the National Strategy “emphasizes that our security is ‘inextricably linked to our values,’ including ‘the promotion of an inclusive society.’”²⁸

According to the letter, in November 2010, the White House’s National Security Staff identified training as a critical area for improvement” and “tasked the Department of Homeland Security (DHS) to form an Interagency Working Group on Training to catalogue, review, and improve CVE-related instruction across all levels of government.”²⁹

According to Brennan:

Recent efforts of this working group include: (1) a **CVE Training Guidance and Best Practices paper, which will give specific guidance to federal, state, local, and tribal government officials charged with organizing training related to CVE, CT, or cultural awareness;** and (2) an Information Bulletin on CVE Training, which provides additional guidance to state, local, and tribal entities that regularly leverage federal grants to fund CVE-related trainings. DHS has sent both documents to all DHS grantees, state and local governments, state and local law enforcement, relevant community stakeholders, and interagency partners.³⁰

²⁵*Id.*

²⁶*Training Letter to Khera*, MUSLIMADVOCATES.ORG (Nov. 3, 2011), <http://www.muslimadvocates.org/files/JOB-CVE-training-letter-to-Khera-11.3.11.pdf>

²⁷*Id.*

²⁸*Id.*

²⁹*Id.*

³⁰*Id.*

And:

In addition to these specific actions, **Departments and Agencies are taking aggressive steps to create broader review processes and build rigorous CVE curriculum standards. These include: (1) collecting all training materials that contain cultural or religious content, including information related to Islam or Muslims; (2) establishing a process, in consultation with subject matter experts, to ensure that such materials comply with core American values, professional standards, and the United States Constitution; and (3) writing guidance for CVE training, which will be shared with components, field offices, and external partners. Moreover, we are committed to engaging in a sustained dialogue with all relevant stakeholders on these issues as we move forward.**³¹

Speaking of the examples of substandard and offensive training, Brennan explained “[t]hey do not reflect the vision that the President has put forward.”³² He concluded his letter by stating: **“we are currently developing an implementation plan for our Domestic CVE Strategy, which will provide further detailed information on the specific steps necessary to improve CVE and cultural competency training across the United States Government and measure progress.”**³³

IV. FBI “Purge” in 2012

As reported in the media, in February 2012, an FBI “inquiry has uncovered and purged over 700 pages of documentation from approximately 300 presentations given to agents since 9/11” and “more disclosures may be forthcoming.”³⁴ According to reports: “The FBI purged documents according to four criteria: ‘factual errors’; ‘poor taste’; employment of ‘stereotypes’ about Arabs or Muslims; or presenting information that ‘lacked precision.’”³⁵ According to Judicial Watch:

The FBI memos and other documents reveal that the agency purged its anti-terrorism training curricula of material determined by an undisclosed group of “Subject Matter Experts” (SME) to be “offensive” to Muslims. The excised material included references linking the Muslim Brotherhood to terrorism, tying Al Qaeda to the 1993 World Trade Center and Khobar Towers bombings, and suggesting that “young male immigrants of Middle Eastern appearance ... may fit the terrorist profile best.”³⁶

³¹*Id.*

³²*Id.*

³³*Id.*

³⁴Spencer Ackerman, *FBI Purges Hundreds of Terrorism Documents in Islamophobia Probe*, WIRED.COM (Feb. 15, 2012, 6:30 AM), <https://www.wired.com/2012/02/hundreds-fbi-documents-muslims/>

³⁵*Id.*

³⁶*DHS May Ban “Religiously-Charged” Terms Jihad, Sharia to Avert “Us Versus Them” in Anti-Terror Programs*, JUDICIALWATCH.ORG (Jun. 23, 2016), <http://www.judicialwatch.org/blog/2016/06/avert-us-versus-dhs-told-ban-religiously-charged-terms-jihad-sharia-anti-terror-programs/>

V. Muslim Advocates Coalition 2014 Letter to White House

By letter dated August 14, 2014, addressed to Lisa O. Monaco, Assistant to the President for Homeland Security and Counterterrorism, a similar but expanded group of organizations³⁷ urged “immediate action to end the use of anti-Muslim training materials and address anti-Muslim conduct exhibited by agencies throughout the federal government.”³⁸

In this 2014 coalition letter, the organizations expressed appreciation “that the White House has recently decried ‘the use of racial or ethnic stereotypes, slurs, or other similar language by employees’ as ‘both unacceptable and inconsistent with the country’s core values.’”³⁹ According to the letter, “[t]he White House directed the Director of National Intelligence (DNI) to undertake an assessment of Intelligence Community policies, training standards or directives that promote diversity and tolerance, and, as necessary, make any recommendations, changes, or additional reforms.”⁴⁰

The organizations expressed disappointment that DNI only expanded “multicultural and diversity sensitivity training and re-establish an external advisory board on diversity and inclusion.”⁴¹

³⁷ Advocacy for Principled Action in Government American Center for Outreach; American Civil Liberties Union; American-Arab Anti-Discrimination Committee (ADC) Arab American Action Network (AAAN); Arab American Association of New York; Arab American Institute; Asian American Legal Defense and Education Fund (AALDEF); Asian Americans Advancing Justice - Asian Law Caucus; Asian Americans Advancing Justice - Los Angeles; Auburn Seminary; Center for Constitutional Rights; Center for National Security Studies; Center for New Community; Council on American-Islamic Relations (CAIR); Council of Islamic Organizations of Greater Chicago; Creating Law Enforcement Accountability & Responsibility (CLEAR); Defending Dissent Foundation; DRUM - South Asian Organizing Center; Electronic Frontier Foundation; Emerge USA; Franciscan Action Network; Gay & Lesbian Advocates & Defenders (GLAD); Georgia Association of Muslim Lawyers (GAML); Human Rights Campaign; Illinois Coalition for Immigrant and Refugee Rights (ICIRR); Imam Hussain Islamic Center; Interfaith Alliance; Islamic Information Center of America; Islamic Networks Group (ING); Jews Against Islamophobia; Jews for Racial and Economic Justice; Lambda Legal; Majlis Ash-Shura (Islamic Leadership Council) of Metropolitan NY; Mexican American Legal Defense and Educational Fund (MALDEF); Michigan Muslim Bar Association (MMBA); Michigan Muslim Community Council (MMCC); Military Religious Freedom Foundation; Muslim Advocates; Muslim Alliance in North America (MANA); Muslim American Civil Liberties Coalition (MACLC); Muslim American Community Association; Muslim Bar Association of New York; Muslim Bar Association of Southern California; Muslim Legal Fund of America (MLFA); Muslim Peace Coalition USA; Muslim Progressive Traditionalist Alliance; Muslim Public Affairs Council; NAACP; NAACP New York State Conference; National Asian Pacific American Bar Association (NAPABA) National Center for Lesbian Rights; National Center for Transgender Equality; National Gay and Lesbian Task Force; National Lawyers Guild; National Muslim Law Students Association; National Religious Campaign Against Torture; New Jersey Muslim Lawyers Association (NJMLA); OneAmerica; Progressive Congress; Sikh American Legal Defense and Education Fund (SALDEF); South Asian Americans Leading Together (SAALT); The Hindu Temple Society of North America; The Interfaith Center of New York; The International Institute of Tolerance; The Leadership Conference on Civil and Human Rights; The National Network for Arab American Communities (NNAAC); The Queens Federation of Churches; The Sikh Coalition; Transgender Law Center; T’ruah: The Rabbinic Call for Human Rights; UMMA Community Clinic; United Sikhs; Universal Muslim Association of America (UMAA); and Women in Islam Inc.

³⁸ *Letter to Lisa O. Monaco: Coalition Letter Trainings*, MUSLIMADVOCATES.ORG (Aug. 14, 2014), http://www.muslimadvocates.org/files/FINALCoalitionLetterTrainings_8.14.14.pdf

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

They continued: **“These measures may be necessary, but they do not directly address the persistent problem of law enforcement and intelligence agencies using anti- Muslim training materials and engaging in discriminatory law enforcement.”**⁴²

They expressed disappointment that, contrary to Brennan’s assurances in his letter of November 3, 2011, “there has been no accounting to the public about any task force on or assessment of the pervasiveness of these biased training materials.”⁴³ And, “although there was reportedly a review and purge of a limited portion of training materials by the FBI, no commitment has been made to review intelligence products that mirror these biased training materials.”⁴⁴

The letter continued: “Without executive branch actions, including those we recommend below, trainings that perpetuate gross stereotypes and false information about Islam and Muslims will continue to proliferate at the state and local level.”⁴⁵

And:

The use of anti-Muslim trainers and materials is not only highly offensive, disparaging the faith of millions of Americans, but leads to biased policing that targets individuals and communities based on religion, not evidence of wrongdoing. Government training materials that include religious epithets also foster fear and suspicion of American Muslims among law enforcement and the general public, increasing discrimination, bullying, harassment, and anti-Muslim violence.⁴⁶

Accordingly, the letter urged Monaco to “undertake the following steps:”

- (1) Audit all federal law enforcement and intelligence gathering training and educational materials to identify and remove information that is factually incorrect or exhibits bias against any race, ethnicity, religion, or national origin;**
- (2) Implement a mandatory retraining program for all federal, state and local law enforcement officials who have been subjected to biased and discriminatory trainings provided by the federal government or with federal funds;**
- (3) Pursue disciplinary action against those agents and officials engaging in discriminatory conduct and responsible for these training materials;
- (4) Require federal agencies that provide law enforcement and homeland security funding to state and local governments to condition such funding on carrying out training or otherwise using federal funds in a manner that upholds our nation’s commitment to equal treatment and equal justice under the law and barring the

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

use of trainers or materials that exhibit bias against any race, ethnicity, religion, or national origin.⁴⁷

Records Requested

For purposes of this Request, the term “record” is “any information” that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recordings, or other material. The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government or private account or server, consistent with the holdings of *Competitive Enterprise Institute v. Office of Science and Technology Policy*, No. 15-5128 (D.C. Cir. July 5, 2016)⁴⁸ (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

For purposes of this Request, the term “briefing” includes, but is not limited to, any in-person meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person.

For purposes of this Request, the term “DHS official” includes, but is not limited to, any person who is (1) employed by or on behalf of the U.S. Department of Homeland Security in any capacity; (2) contracted for services by or on behalf of the U.S. Department of Homeland Security in any capacity; or (3) appointed by the President of the United States to serve in any capacity at the U.S. Department of Homeland Security; all without regard to the component or office in which that person serves.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is March 1, 2012, to the date this Request is processed.

Pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, ACLJ hereby requests that the U.S. Department of Homeland Security produce the following within twenty (20) business days:

1. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff, or employee, referencing or regarding in any way the June 2016 Homeland Security Advisory Council (HSAC), Countering Violent Extremism (CVE) Subcommittee Interim Report and Recommendations.⁴⁹

⁴⁷*Id.*

⁴⁸[https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/\\$file/15-5128-1622973.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/$file/15-5128-1622973.pdf)

⁴⁹Countering Violent Extremism, *supra* note 10.

2. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, referencing or regarding in any way Farhana Khera's June 28, 2016, testimony⁵⁰ to the Senate Judiciary Committee, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, at the hearing entitled "Willful Blindness: Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism," or any request, proposal or recommendation articulated by Khera in her testimony.
3. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, referencing or regarding in any way the August 14, 2014, letter⁵¹ to Monaco or any of the letter's content, requests or recommendations.
4. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the content of government training material or curricula, with respect to use of the words "Islam," "Islamic," "radical Islam," "radical Islamist," "radical Islamic," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other religious, Islamic or Arabic references.
5. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the use of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, or any other publicized or non-publicized document.
6. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the use of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, or any other publicized or non-publicized document.
7. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *from March 1, 2012, to August 13, 2014*, identifying any terms, words, titles or phrases for possible or actual removal, modification, or replacement with English translations, in or from any DHS or DHS component regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

⁵⁰Testimony of Farhana Y. Khera, *supra* note 4.

⁵¹Letter to Lisa O. Monaco, *supra* note 38.

8. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *on or after* August 14, 2014, identifying any terms, words, titles or phrases for possible or actual removal, modification, or replacement with English translations, in or from any DHS or DHS component regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

9. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, containing any discussion of the benefits, advantages, drawbacks, disadvantages, or any other indication of a rationale for or against the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

10. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, containing any approval, instruction, direction, or order for the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

11. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, containing the name of any person involved in the decision or any discussion of a possible decision to remove, exclude, modify, replace, and/or translate from Arabic to English, the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

12. Any and all records, including but not limited to any communications or briefings prepared, or sent to John P. Carlin, Assistant Attorney General for the Department of Justice's National Security Division, his staff or employee, by any DHS official, staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia,"

“takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

13. Any and all records, including but not limited to any communications or briefings received by any DHS official, staff or employee, from John P. Carlin, Assistant Attorney General for the Department of Justice’s National Security Division, his staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

14. Any and all records, including but not limited to any communications or briefings prepared, or sent to Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch, his staff or employee, by any DHS official, staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

15. Any and all records, including but not limited to any communications or briefings received by any DHS official, staff or employee, from Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch, his staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

16. Any and all records reflecting or in any way regarding any in person meeting or briefing, regardless of where such meeting or briefing occurred, between or attended by any DHS official, staff or employee and [*any non-governmental organization whose name is on the August 14, 2014 coalition letter to Monaco*].

17. Any and all records of any communications or briefings that were, on or after August 14, 2014, prepared by or for, reviewed by or for, received by or from, sent by or to, or otherwise

transmitted between, any DHS official, staff or employee and/or [any non-governmental organization whose name is on the August 14, 2014 coalition letter to Monaco].

18. Any and all records of any communications or briefings prepared, reviewed or sent, on or after August 14, 2014, by any DHS official, staff or employee to Farhana Khera, her staff, or any other employee or representative of Muslim Advocates.

19. Any and all records of any communications or briefings received or reviewed, on or after August 14, 2014, by any DHS official, staff or employee from Farhana Khera, her staff, or any other employee or representative of Muslim Advocates.

CONCLUSION

As you are undoubtedly aware, President Obama's Freedom of Information Act Memorandum of January 21, 2009, declares:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. . . .⁵²

As such, if this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions.

⁵²PRESIDENT BARACK OBAMA, MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES RE: FREEDOM OF INFORMATION ACT (Jan. 21, 2009), available at https://www.whitehouse.gov/the_press_office/FreedomofInformationAct.

Moreover, as explained in an accompanying memorandum, the ACLJ is entitled to expedited processing of this Request as well as a waiver of all fees associated with it. ACLJ reserves the right to appeal a decision to withhold any information sought by this request and/or to deny the separate application for expedited processing and waiver of fees.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jay Alan Sekulow, Chief Counsel
Colby M. May, Senior Counsel
Craig L. Parshall, Special Counsel
Benjamin P. Sisney, Senior Litigation Counsel
American Center for Law and Justice



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Handwritten signature of Jay Alan Sekulow in cursive.

Jay Alan Sekulow
Chief Counsel

Handwritten signature of Colby M. May in cursive.

Colby M. May
Senior Counsel

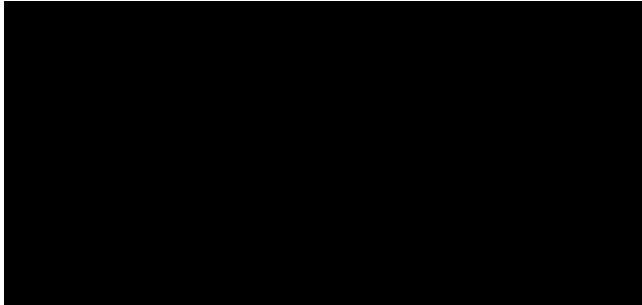
cc: Karen Neuman, Chief FOIA Officer, DHS Privacy Office
Office for Civil Rights and Civil Liberties (CRCL)
Federal Law Enforcement Training Center (FLETC)
Office of Intelligence & Analysis (I&A)
Transportation Security Administration (TSA)
United States Customs & Border Protection (CBP)



Jay Alan Sekulow, J.D., Ph.D.
Chief Counsel

July 12, 2016

Transportation Security Administration (TSA)
Freedom of Information Act Branch



RE: FOIA Request to U.S. Department of Homeland Security Regarding Decision(s) to Revise Training Material, Other Documents, and/or “Lexicon” by Removing or Editing Islam-Related Terms or References

Dear Ms. McCoy:

This letter is a request (“Request”) in accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and the corresponding department/agency implementing regulations.

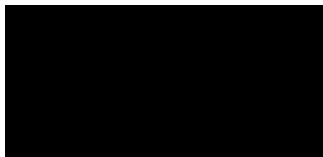
The Request is made by the American Center for Law and Justice (“ACLJ”)¹ on behalf of itself and over 81,000 of its members. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, this Request seeks any and all records pertaining to decisions by the U.S. Department of Homeland Security (“DHS”) and/or any of its components to revise any guidance, directive, training material, other document, and/or government lexicon by removing Islam-related terms or references.

Background

Pursuant to DHS FOIA regulation 6 C.F.R. §5.3(b), this Background addresses “the date, title or name, author, recipient, and subject matter of the record[s]” requested, to the extent known.

¹ The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.



I. June 28, 2016, Senate Committee Hearing Regarding “Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism”

On June 28, 2016, the Senate Judiciary Committee, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, held a hearing entitled “Willful Blindness: Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism.”² According to Sen. Charles Grassley, the Judiciary Committee Chairman, “One key reason for this failure is the President’s resistance to facing the truth about threats to our country when they don’t line up neatly with his predetermined policies or preferred ideological narratives.”³

One of the panelists giving testimony at the hearing was Farhana Khera (“Khera”), President and Executive Director of Muslim Advocates. According to her testimony:

In November 2011, President Obama’s then-Counterterrorism Advisor John Brennan agreed the White House would create an interagency task force to create review processes and build rigorous standards to ensure training material is not biased. However, the task force has had no public accountability, and has not assessed the pervasiveness of these biased training materials and whether the agents and officials involved were subject to any disciplinary action. Moreover, although there was reportedly a review and purge of a limited portion of training materials by the FBI, no commitment has been made to review intelligence products that mirror these biased training materials. We also have received no assurance that law enforcement and other government employees who participated in these trainings have been retrained. **We are concerned that these biased trainings and intelligence products continue to drive racial and religious profiling at every stage of the intelligence-gathering and investigative processes.**⁴

According to Khera:

Far too many of our nation’s public officials and political leaders engage in hateful and blatantly bigoted anti-Muslim rhetoric. Public officials must

²*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. (2016), available at <http://www.judiciary.senate.gov/meetings/willful-blindness-consequences-of-agency-efforts-to-deemphasize-radical-islam-in-combating-terrorism>*

³*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. (2016) (statement of Sen. Chuck Grassley, Chairman, S. J. Comm.), available at <https://www.judiciary.senate.gov/imo/media/doc/06-28-16p%20Grassley%20Statement.pdf>.*

⁴*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong. 4 (2016) (testimony of Farhana Y. Khera, President and Executive Director, Muslim Advocates), available at <https://www.judiciary.senate.gov/imo/media/doc/06-28-16%20Khera%20Testimony.pdf>.*

understand that such rhetoric carries grave consequences for American Muslims and those who are perceived to be Muslim in the U.S.⁵

“To address bigoted training materials,” Khera submitted the following recommendations:

- a) **Audit all federal law enforcement and intelligence gathering training and educational materials to identify and remove information that is factually incorrect or exhibits bias against any race, ethnicity, religion, or national origin;**
- b) Implement a mandatory retraining program for all federal, state and local law enforcement officials who have been subjected to biased and discriminatory trainings provided by the federal government or with federal funds;
- c) Pursue disciplinary action against those agents and officials engaging in discriminatory conduct and responsible for these training materials; and
- d) Require federal agencies that provide law enforcement and homeland security funding to state and local governments to condition such funding on carrying out training or otherwise using federal funds in a manner that upholds our nation’s commitment to equal treatment and equal justice under the law and barring the use of trainers or materials that exhibit bias against any race, ethnicity, religion, or national origin.⁶

Khera has advanced her position and these specific recommendations at least as far back as 2011, as is addressed in greater detail in Section III, *infra*.

Sen. Ted Cruz, who chairs the Subcommittee conducting this hearing, stated in his opening remarks:

In 2011, the group ‘Muslim Advocates’ sent a letter to the Obama administration claiming the federal government had somehow become infected with “false and highly offensive training materials about Muslims and Islam,” and demanding that such “bigoted and distorted materials’ be “purge[d]”—I would note that was their word, not mine “purged”—and was also advocating for the creation of an interagency task force to address this problem.

In a lightning quick response—a rather unusual occurrence in our bloated bureaucracy—current CIA director John Brennan (then the President’s Homeland Security advisor) agreed to create such a task force, and claimed that the federal government had indeed produced “offensive training” that urgently needed to be dealt with in order to “reflect the vision that the President has put forward.”⁷

⁵*Id.* at 10.

⁶*Id.* at 16.

⁷*Willful Blindness: Consequences of Agency Efforts to Deemphasize Radical Islam in Combating Terrorism, Hearing before the Subcomm. On Oversight, Agency Action, Federal Rights and Federal Courts, 114th Cong.*

As Sen. Cruz explained:

[I]n November 2011, the Department of Homeland Security released its “Domestic Terrorism and Homegrown Extremism Lexicon.” It made no reference to Islamic terrorism, despite being, on its face, an alleged “lexicon” that included “anarchist extremists,” “animal rights extremists,” “environmental extremists,” and “racist skinhead extremists.” Yet somehow, “radical Islamic extremists” were nowhere mentioned in the FBI’s supposed lexicon. Similarly, the FBI’s “Counterterrorism Analytical Lexicon” makes no reference to “Islam,” “radical Islam,” “jihad,” or any other such term. By way of comparison, the 9/11 Commission report, released in 2004, mentioned “jihad” 126 times and “Islam” 322 times.⁸

Sen. Cruz identified two government officials who were invited by the Committee to appear before the committee but declined to do so: “John P. Carlin, an Assistant Attorney General for the Department of Justice’s National Security Division, and Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch.”⁹

II. June 2016 DHS Report and Recommendation to Purge Government Lexicon of Islam

On June 9, 2016, the Homeland Security Advisory Council (HSAC), Countering Violent Extremism (CVE) Subcommittee released its Interim Report and Recommendations (“DHS CVE Report”; the “Report”).¹⁰ As one media outlet reported, the Report was published “[l]ess than a week before Omar Mateen walked into an Orlando gay club and killed or wounded more than 100 people.”¹¹

According to the DHS CVE Report, the “government must avoid stigmatizing specific communities.”¹² And:

Ultimately, the approaches this report recommends for the Department will help it evolve over time and adapt to the changing nature of violent extremism itself, namely, the convergence and alliances of violent extremist groups across the full

(2016) (statement of Sen. Ted Cruz, Chairman, S. Comm. on Oversight, Agency Action, Federal Rights and Federal Courts) available at https://www.cruz.senate.gov/?p=press_release&id=2704.

⁸*Id.*

⁹*Id.*

¹⁰HOMELAND SECURITY ADVISORY COUNCIL: COUNTERING VIOLENT EXTREMISM S. COMM., 114TH CONG., INTERIM REP. AND RECOMMENDATIONS (2016), [hereinafter Countering Violent Extremism] available at <https://www.dhs.gov/sites/default/files/publications/HSAC/HSAC%20CVE%20Final%20Interim%20Report%20June%209%202016%20508%20compliant.pdf>.

¹¹Peter Hasson, *Homeland Security Instructed to Combat Violent Extremism with Political Correctness*, DAILY CALLER (Jun. 13, 2016, 4:25 PM), <http://dailycaller.com/2016/06/13/homeland-security-instructed-to-combat-violent-extremism-with-political-correctness/>.

¹²*Id.*

spectrum of grievances: To include those that espouse and/or undertake violence justified through various ideologies, to include anarchists, sovereign citizens, white-supremacists, and others.¹³

A “**Key Recommendation**” expressed in the Report was that, “[g]iven the evolving threat and how the process of radicalization itself is evolving,” DHS should “update and change the rules on how government uses lexicon.”¹⁴ And, under the heading, “**Recommendation 3: Change Our Lexicon by Shifting How We Speak with Each Other and the World,**” the Report asserted:

There is a disagreement among scholars, government officials, and activists about the right lexicon to use around the issues of violent extremism. **At the same time, report after report has recommended that the U.S. Government be consistent in its language and its meaning, highlighting that tone and word choice matter. Under no circumstance should we be using language that will alienate or be disrespectful of fellow Americans.** Thus, we need to be clearer in what we mean and how we say it. Further, we are at a particular moment on the world stage with global events driving fear, political and cultural rhetoric leaning on sharp and divisive language, and deep polarization and distrust across communities. All of this is set against the backdrop of digitally connected recruitment efforts that are actively trying to exploit differences and create divisions across U.S. society. We must speak with honor and respect about all communities within the United States. We should give dignity to the many histories and diversities within our nation and advocate for a consistent whole of government approach that utilizes agreed terms and words. **Tone and word choice matter.**¹⁵

In further support of its recommendation, the Report explained:

Often without knowing it, we have constructed language in daily use that promotes an “us and them” narrative of division. Though it was within the context of the “War on Terror,” the Department’s 2008 guidance about lexicon is important to review as it has bearing on groups like ISIL. It instructs the Department to ensure terminology is “properly calibrated to diminish the recruitment efforts of extremists who argue that the West is at war with Islam.”¹⁶

The Report recommended the following specific actions concerning lexicon:

Actions:

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

1. Renew efforts to describe CVE, its origin of soft power, and attempt to re-establish the term to ensure that prevention programs are not inter-mingled with surveillance or intelligence-gathering programs.
2. **Bring consistency into government use of language and meaning.**
3. **Ensure the Department reviews the 2008 directive and uses a vocabulary when discussing extremism that avoids the “us versus them” framing.**
4. **Reject religiously-charged terminology and problematic positioning by using plain meaning American English.**
 - a. **US v THEM:** For example, use “American Muslim” rather than “Muslim American”; “Muslim communities” rather than “Muslim world.”
 - b. **AMERICAN ENGLISH:** For example, on using American English instead of religious, legal and cultural terms like “jihad,” “sharia,” “takfir” or “umma.”¹⁷

The DHS CVE Report referred to and incorporated a 2008 DHS directive issued by the DHS Office for Civil Rights and Civil Liberties, entitled “Terminology to Define the Terrorists: Recommendations from American Muslims.”¹⁸ According to the DHS directive, “**Words matter.** The terminology that senior government officials use must accurately identify the nature of the challenges that face our generation.”¹⁹ And, “**our terminology must be properly calibrated to diminish the recruitment efforts of extremists who argue that the West is at war with Islam.**”²⁰

Importantly, Khera’s June 28, 2016, committee testimony and the June 9, 2016, DHS CVE recommendations followed a series of reported events and correspondence regarding certain organizations’ request to the White House that “offensive” terms concerning Islam be purged from federal training materials.

III. Muslim Advocates Coalition 2011 Letter to White House and White House Response

By letter dated October 19, 2011, to then Assistant to the president for Homeland Security and Counterterrorism John Brennan (“Brennan”), a coalition of “Muslim, Arab and South Asian organizations”²¹ led by Khera, expressed disapproval of “the federal government’s use of biased,

¹⁷*Id.*

¹⁸U.S. DEP’T OF HOMELAND SECURITY: OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES, TERMINOLOGY TO DEFINE THE TERRORISTS: RECOMMENDATIONS FROM AMERICAN MUSLIMS (Jan. 2008), *available at* https://www.dhs.gov/xlibrary/assets/dhs_crcl_terminology_08-1-08_accessible.pdf

¹⁹*Id.*

²⁰*Id.*

²¹AlMaghrib Institute; American Coalition for Good Government; American Muslim Association of Lawyers; American Muslim Voice; American Pakistan Foundation; American-Arab Anti-Discrimination Committee (ADC); Arab American Association of New York; Arab American Institute (AAI); Arab Community Center for Economic and Social Services (ACCESS); Arab Muslim American Federation (AMAF); Bay Area Association of Muslim Lawyers (BAAML); Capitol Area Muslim Bar Association; Council of Islamic Organizations of Greater Chicago

false and highly offensive training materials about Muslims and Islam.”²² Khera “request[ed] that the White House immediately create an interagency task force to address this problem, with a fair and transparent mechanism for input from the Muslim, Arab, and South Asian communities, including civil rights lawyers, religious leaders, and law enforcement experts.”²³

According to the 2011 coalition letter:

The use of bigoted trainers and materials like those above is not only highly offensive, disparaging the faith of millions of Americans, but leads to biased policing that targets individuals and communities based on religion, not evidence of wrongdoing. Inaccurate and bigoted training materials also foster fear and suspicion of American Muslims amongst law enforcement and the general public, increasing discrimination, bullying, harassment and anti-Muslim violence.²⁴

The 2011 coalition letter continued:

We urge you to create an interagency task force, led by the White House, tasked with the following responsibilities:

1. **Review all trainers and training materials at government agencies, including all FBI intelligence products used such as the FBI intranet, FBI library and JTTF training programs; US Attorney training programs; U.S. Department of Homeland Security, U.S. Department of Defense, and US military intranet, libraries and training materials, resources and experts;**
2. **Purge all federal government training materials of biased materials;**

(CIOGC); Council of Islamic Organizations of Michigan (CIOM); Council on American-Islamic Relations (CAIR); DRUM – Desis Rising Up and Moving; EMERGE-USA; Florida Muslim Bar Association; Georgia Association of Muslim Lawyers; Houston Shifa Services Foundation; Indian Muslim Relief & Charities (IMRC); Islamic Circle of North America (ICNA); Islamic Information Center; Islamic Medical Association of North America (IMANA); Islamic Networks Group (ING); Islamic Relief USA; Islamic Shura Council of Southern California; Islamic Society of Greater Houston (ISGH); Islamic Society of North America (ISNA); KARAMAH: Muslim Women Lawyers for Human Rights; Majlis Ash-Shura (Islamic Leadership Council) of Metropolitan NY; Michigan Muslim Bar Association; Muslim Advocates; Muslim American Civil Liberties Coalition (MACLC); Muslim American Society (MAS); Muslim Bar Association of Chicago; Muslim Bar Association of New York; Muslim Bar Association of Southern California; Muslim Congress/Justice360; Muslim Consultative Network (MCN); Muslim Lawyers Association of Houston; Muslim Legal Fund of America (MLFA); Muslim Peace Coalition USA; Muslim Progressive Traditionalist Alliance; Muslim Public Affairs Council (MPAC); National Muslim Law Students Association; National Network for Arab American Communities (NNAAC); New England Muslim Bar Association; Northern California Islamic Council; Ohio Muslim Bar Association; Pakistani American Bar Association (PABA); Pakistani American Leadership Center (PAL-C); Pakistani American Public Affairs Committee; Somali Action Alliance; South Asian Americans Leading Together (SAALT); South Asian Network (SAN); and Women in Islam, Inc.

²²Letter to DHS John Brennan on FBI's Use of Biased Experts and Training Materials, MUSLIMADVOCATES.ORG (Oct. 27, 2011), <https://www.muslimadvocates.org/letter-to-dhs-john-brennan-on-fbis-use-of-biased-experts-and-training-materials/>

²³*Id.*

²⁴*Id.*

3. Implement a mandatory re-training program for FBI agents, U.S. Army officers, and all federal, state and local law enforcement who have been subjected to biased training;
4. Ensure that personnel reviews are conducted and all trainers and other government employees who promoted biased trainers and training materials are effectively disciplined;
5. Implement quality control processes to ensure that bigoted trainers and biased materials are not developed or utilized in the future; and
6. **Issue guidance clearly stating that religious practice and political advocacy are protected activities under the First Amendment, not indicators of violence, and shall not be the basis for surveillance or investigation.**²⁵

Brennan responded to the 2011 coalition letter by letter dated November 3, 2011, addressed to Khera, and acknowledged awareness of certain “examples of substandard and offensive training that some United States Government elements have either sponsored or delivered.”²⁶ Brennan referenced “[o]ur National Strategy for Empowering Local Partners to Prevent Violent Extremism in the United States,” which “highlights competent training as an area of priority focus.”²⁷ According to Brennan, the National Strategy “emphasizes that our security is ‘inextricably linked to our values,’ including ‘the promotion of an inclusive society.’”²⁸

According to the letter, in November 2010, the White House’s National Security Staff identified training as a critical area for improvement” and “tasked the Department of Homeland Security (DHS) to form an Interagency Working Group on Training to catalogue, review, and improve CVE-related instruction across all levels of government.”²⁹

According to Brennan:

Recent efforts of this working group include: (1) a **CVE Training Guidance and Best Practices paper, which will give specific guidance to federal, state, local, and tribal government officials charged with organizing training related to CVE, CT, or cultural awareness;** and (2) an Information Bulletin on CVE Training, which provides additional guidance to state, local, and tribal entities that regularly leverage federal grants to fund CVE-related trainings. DHS has sent both documents to all DHS grantees, state and local governments, state and local law enforcement, relevant community stakeholders, and interagency partners.³⁰

²⁵ *Id.*

²⁶ *Training Letter to Khera*, MUSLIMADVOCATES.ORG (Nov. 3, 2011), <http://www.muslimadvocates.org/files/JOB-CVE-training-letter-to-Khera-11.3.11.pdf>

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

And:

In addition to these specific actions, **Departments and Agencies are taking aggressive steps to create broader review processes and build rigorous CVE curriculum standards. These include: (1) collecting all training materials that contain cultural or religious content, including information related to Islam or Muslims; (2) establishing a process, in consultation with subject matter experts, to ensure that such materials comply with core American values, professional standards, and the United States Constitution; and (3) writing guidance for CVE training, which will be shared with components, field offices, and external partners. Moreover, we are committed to engaging in a sustained dialogue with all relevant stakeholders on these issues as we move forward.**³¹

Speaking of the examples of substandard and offensive training, Brennan explained “[t]hey do not reflect the vision that the President has put forward.”³² He concluded his letter by stating: **“we are currently developing an implementation plan for our Domestic CVE Strategy, which will provide further detailed information on the specific steps necessary to improve CVE and cultural competency training across the United States Government and measure progress.”**³³

IV. FBI “Purge” in 2012

As reported in the media, in February 2012, an FBI “inquiry has uncovered and purged over 700 pages of documentation from approximately 300 presentations given to agents since 9/11” and “more disclosures may be forthcoming.”³⁴ According to reports: “The FBI purged documents according to four criteria: ‘factual errors’; ‘poor taste’; employment of ‘stereotypes’ about Arabs or Muslims; or presenting information that ‘lacked precision.’”³⁵ According to Judicial Watch:

The FBI memos and other documents reveal that the agency purged its anti-terrorism training curricula of material determined by an undisclosed group of “Subject Matter Experts” (SME) to be “offensive” to Muslims. The excised material included references linking the Muslim Brotherhood to terrorism, tying Al Qaeda to the 1993 World Trade Center and Khobar Towers bombings, and suggesting that “young male immigrants of Middle Eastern appearance ... may fit the terrorist profile best.”³⁶

³¹*Id.*

³²*Id.*

³³*Id.*

³⁴Spencer Ackerman, *FBI Purges Hundreds of Terrorism Documents in Islamophobia Probe*, WIRED.COM (Feb. 15, 2012, 6:30 AM), <https://www.wired.com/2012/02/hundreds-fbi-documents-muslims/>

³⁵*Id.*

³⁶*DHS May Ban “Religiously - Charged” Terms Jihad, Sharia to Avert “Us Versus Them” in Anti-Terror Programs*, JUDICIALWATCH.ORG (Jun. 23, 2016), <http://www.judicialwatch.org/blog/2016/06/avert-us-versus-dhs-told-ban-religiously-charged-terms-jihad-sharia-anti-terror-programs/>

V. Muslim Advocates Coalition 2014 Letter to White House

By letter dated August 14, 2014, addressed to Lisa O. Monaco, Assistant to the President for Homeland Security and Counterterrorism, a similar but expanded group of organizations³⁷ urged “immediate action to end the use of anti-Muslim training materials and address anti-Muslim conduct exhibited by agencies throughout the federal government.”³⁸

In this 2014 coalition letter, the organizations expressed appreciation “that the White House has recently decried ‘the use of racial or ethnic stereotypes, slurs, or other similar language by employees’ as ‘both unacceptable and inconsistent with the country’s core values.’”³⁹ According to the letter, “[t]he White House directed the Director of National Intelligence (DNI) to undertake an assessment of Intelligence Community policies, training standards or directives that promote diversity and tolerance, and, as necessary, make any recommendations, changes, or additional reforms.”⁴⁰

The organizations expressed disappointment that DNI only expanded “multicultural and diversity sensitivity training and re-establish an external advisory board on diversity and inclusion.”⁴¹

³⁷ Advocacy for Principled Action in Government American Center for Outreach; American Civil Liberties Union; American-Arab Anti-Discrimination Committee (ADC) Arab American Action Network (AAAN); Arab American Association of New York; Arab American Institute; Asian American Legal Defense and Education Fund (AALDEF); Asian Americans Advancing Justice - Asian Law Caucus; Asian Americans Advancing Justice - Los Angeles; Auburn Seminary; Center for Constitutional Rights; Center for National Security Studies; Center for New Community; Council on American-Islamic Relations (CAIR); Council of Islamic Organizations of Greater Chicago; Creating Law Enforcement Accountability & Responsibility (CLEAR); Defending Dissent Foundation; DRUM - South Asian Organizing Center; Electronic Frontier Foundation; Emerge USA; Franciscan Action Network; Gay & Lesbian Advocates & Defenders (GLAD); Georgia Association of Muslim Lawyers (GAML); Human Rights Campaign; Illinois Coalition for Immigrant and Refugee Rights (ICIRR); Imam Hussain Islamic Center; Interfaith Alliance; Islamic Information Center of America; Islamic Networks Group (ING); Jews Against Islamophobia; Jews for Racial and Economic Justice; Lambda Legal; Majlis Ash-Shura (Islamic Leadership Council) of Metropolitan NY; Mexican American Legal Defense and Educational Fund (MALDEF); Michigan Muslim Bar Association (MMBA); Michigan Muslim Community Council (MMCC); Military Religious Freedom Foundation; Muslim Advocates; Muslim Alliance in North America (MANA); Muslim American Civil Liberties Coalition (MACLC); Muslim American Community Association; Muslim Bar Association of New York; Muslim Bar Association of Southern California; Muslim Legal Fund of America (MLFA); Muslim Peace Coalition USA; Muslim Progressive Traditionalist Alliance; Muslim Public Affairs Council; NAACP; NAACP New York State Conference; National Asian Pacific American Bar Association (NAPABA) National Center for Lesbian Rights; National Center for Transgender Equality; National Gay and Lesbian Task Force; National Lawyers Guild; National Muslim Law Students Association; National Religious Campaign Against Torture; New Jersey Muslim Lawyers Association (NJMLA); OneAmerica; Progressive Congress; Sikh American Legal Defense and Education Fund (SALDEF); South Asian Americans Leading Together (SAALT); The Hindu Temple Society of North America; The Interfaith Center of New York; The International Institute of Tolerance; The Leadership Conference on Civil and Human Rights; The National Network for Arab American Communities (NNAAC); The Queens Federation of Churches; The Sikh Coalition; Transgender Law Center; T’ruah: The Rabbinic Call for Human Rights; UMMA Community Clinic; United Sikhs; Universal Muslim Association of America (UMAA); and Women in Islam Inc.

³⁸ *Letter to Lisa O. Monaco: Coalition Letter Trainings*, MUSLIMADVOCATES.ORG (Aug. 14, 2014), http://www.muslimadvocates.org/files/FINALCoalitionLetterTrainings_8.14.14.pdf

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

They continued: “**These measures may be necessary, but they do not directly address the persistent problem of law enforcement and intelligence agencies using anti- Muslim training materials** and engaging in discriminatory law enforcement.”⁴²

They expressed disappointment that, contrary to Brennan’s assurances in his letter of November 3, 2011, “there has been no accounting to the public about any task force on or assessment of the pervasiveness of these biased training materials.”⁴³ And, “although there was reportedly a review and purge of a limited portion of training materials by the FBI, no commitment has been made to review intelligence products that mirror these biased training materials.”⁴⁴

The letter continued: “Without executive branch actions, including those we recommend below, trainings that perpetuate gross stereotypes and false information about Islam and Muslims will continue to proliferate at the state and local level.”⁴⁵

And:

The use of anti-Muslim trainers and materials is not only highly offensive, disparaging the faith of millions of Americans, but leads to biased policing that targets individuals and communities based on religion, not evidence of wrongdoing. Government training materials that include religious epithets also foster fear and suspicion of American Muslims among law enforcement and the general public, increasing discrimination, bullying, harassment, and anti-Muslim violence.⁴⁶

Accordingly, the letter urged Monaco to “undertake the following steps:”

- (1) Audit all federal law enforcement and intelligence gathering training and educational materials to identify and remove information that is factually incorrect or exhibits bias against any race, ethnicity, religion, or national origin;**
- (2) Implement a mandatory retraining program for all federal, state and local law enforcement officials who have been subjected to biased and discriminatory trainings provided by the federal government or with federal funds;**
- (3) Pursue disciplinary action against those agents and officials engaging in discriminatory conduct and responsible for these training materials;**
- (4) Require federal agencies that provide law enforcement and homeland security funding to state and local governments to condition such funding on carrying out training or otherwise using federal funds in a manner that upholds our nation’s commitment to equal treatment and equal justice under the law and barring the**

⁴²*Id.*

⁴³*Id.*

⁴⁴*Id.*

⁴⁵*Id.*

⁴⁶*Id.*

use of trainers or materials that exhibit bias against any race, ethnicity, religion, or national origin.⁴⁷

Records Requested

For purposes of this Request, the term “record” is “any information” that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recordings, or other material. The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government or private account or server, consistent with the holdings of *Competitive Enterprise Institute v. Office of Science and Technology Policy*, No. 15-5128 (D.C. Cir. July 5, 2016)⁴⁸ (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

For purposes of this Request, the term “briefing” includes, but is not limited to, any in-person meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person.

For purposes of this Request, the term “DHS official” includes, but is not limited to, any person who is (1) employed by or on behalf of the U.S. Department of Homeland Security in any capacity; (2) contracted for services by or on behalf of the U.S. Department of Homeland Security in any capacity; or (3) appointed by the President of the United States to serve in any capacity at the U.S. Department of Homeland Security; all without regard to the component or office in which that person serves.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is March 1, 2012, to the date this Request is processed.

Pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, ACLJ hereby requests that the U.S. Department of Homeland Security produce the following within twenty (20) business days:

1. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff, or employee, referencing or regarding in any way the June 2016 Homeland Security Advisory Council (HSAC), Countering Violent Extremism (CVE) Subcommittee Interim Report and Recommendations.⁴⁹

⁴⁷*Id.*

⁴⁸[https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/\\$file/15-5128-1622973.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/$file/15-5128-1622973.pdf)

⁴⁹Countering Violent Extremism, *supra* note 10.

2. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, referencing or regarding in any way Farhana Khera's June 28, 2016, testimony⁵⁰ to the Senate Judiciary Committee, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, at the hearing entitled "Willful Blindness: Consequences of Agency Efforts To Deemphasize Radical Islam in Combating Terrorism," or any request, proposal or recommendation articulated by Khera in her testimony.
3. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, referencing or regarding in any way the August 14, 2014, letter⁵¹ to Monaco or any of the letter's content, requests or recommendations.
4. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the content of government training material or curricula, with respect to use of the words "Islam," "Islamic," "radical Islam," "radical Islamist," "radical Islamic," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other religious, Islamic or Arabic references.
5. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the use of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, or any other publicized or non-publicized document.
6. Any and all records, communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, on or after August 14, 2014, referencing or regarding in any way the use of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, or any other publicized or non-publicized document.
7. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *from March 1, 2012, to August 13, 2014*, identifying any terms, words, titles or phrases for possible or actual removal, modification, or replacement with English translations, in or from any DHS or DHS component regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

⁵⁰Testimony of Farhana Y. Khera, *supra* note 4.

⁵¹Letter to Lisa O. Monaco, *supra* note 38.

8. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *on or after* August 14, 2014, identifying any terms, words, titles or phrases for possible or actual removal, modification, or replacement with English translations, in or from any DHS or DHS component regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

9. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *on or after* August 14, 2014, containing any discussion of the benefits, advantages, drawbacks, disadvantages, or any other indication of a rationale for or against the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

10. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *on or after* August 14, 2014, containing any approval, instruction, direction, or order for the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

11. Any and all records, including but not limited to any communications or briefings prepared, reviewed, sent or received by any DHS official, staff or employee, *on or after* August 14, 2014, containing the name of any person involved in the decision or any discussion of a possible decision to remove, exclude, modify, replace, and/or translate from Arabic to English, the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia," "takfir," "umma," or any other Islamic or Arabic references, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

12. Any and all records, including but not limited to any communications or briefings prepared, or sent to John P. Carlin, Assistant Attorney General for the Department of Justice's National Security Division, his staff or employee, by any DHS official, staff or employee, *on or after* August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words "Islam," "Islamic," "radical Islam," "radical Islamic," "radical Islamist," "Muslim," "jihad," "Allahu Akbar," "sharia,"

“takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

13. Any and all records, including but not limited to any communications or briefings received by any DHS official, staff or employee, from John P. Carlin, Assistant Attorney General for the Department of Justice’s National Security Division, his staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

14. Any and all records, including but not limited to any communications or briefings prepared, or sent to Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch, his staff or employee, by any DHS official, staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

15. Any and all records, including but not limited to any communications or briefings received by any DHS official, staff or employee, from Michael B. Steinbach, the Executive Assistant Director for the FBI’s National Security Branch, his staff or employee, on or after August 14, 2014, containing any discussion of the removal, exclusion, modification, replacement, and/or translation from Arabic to English, of the words “Islam,” “Islamic,” “radical Islam,” “radical Islamic,” “radical Islamist,” “Muslim,” “jihad,” “Allahu Akbar,” “sharia,” “takfir,” “umma,” or any other Islamic or Arabic references, and/or the rationale therefore, in or from any proposed regulation, regulation, strategy, report, recommendation, bulletin, memoranda, press release, paper, standard, directive, guidance, lexicon, training material or curricula, or any other publicized or non-publicized document.

16. Any and all records reflecting or in any way regarding any in person meeting or briefing, regardless of where such meeting or briefing occurred, between or attended by any DHS official, staff or employee and [*any non-governmental organization whose name is on the August 14, 2014 coalition letter to Monaco*].

17. Any and all records of any communications or briefings that were, on or after August 14, 2014, prepared by or for, reviewed by or for, received by or from, sent by or to, or otherwise

transmitted between, any DHS official, staff or employee and/or [any non-governmental organization whose name is on the August 14, 2014 coalition letter to Monaco].

18. Any and all records of any communications or briefings prepared, reviewed or sent, on or after August 14, 2014, by any DHS official, staff or employee to Farhana Khera, her staff, or any other employee or representative of Muslim Advocates.

19. Any and all records of any communications or briefings received or reviewed, on or after August 14, 2014, by any DHS official, staff or employee from Farhana Khera, her staff, or any other employee or representative of Muslim Advocates.

CONCLUSION

As you are undoubtedly aware, President Obama's Freedom of Information Act Memorandum of January 21, 2009, declares:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. . . .⁵²

As such, if this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions.

⁵²PRESIDENT BARACK OBAMA, MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES RE: FREEDOM OF INFORMATION ACT (Jan. 21, 2009), available at https://www.whitehouse.gov/the_press_office/FreedomofInformationAct.

Moreover, as explained in an accompanying memorandum, the ACLJ is entitled to expedited processing of this Request as well as a waiver of all fees associated with it. ACLJ reserves the right to appeal a decision to withhold any information sought by this request and/or to deny the separate application for expedited processing and waiver of fees.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jay Alan Sekulow, Chief Counsel
Colby M. May, Senior Counsel
Craig L. Parshall, Special Counsel
Benjamin P. Sisney, Senior Litigation Counsel
American Center for Law and Justice



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Handwritten signature of Jay Alan Sekulow in cursive.

Jay Alan Sekulow
Chief Counsel

Handwritten signature of Colby M. May in cursive.

Colby M. May
Senior Counsel

cc: Karen Neuman, Chief FOIA Officer, DHS Privacy Office
Office for Civil Rights and Civil Liberties (CRCL)
Federal Law Enforcement Training Center (FLETC)
Office of Intelligence & Analysis (I&A)
United States Immigration & Customs Enforcement (ICE)
United States Customs & Border Protection (CBP)