

AS FBI CONSIDERS DECLARING STATE SECRETS OVER ITS RELIGION TRAINING, ICE RELEASES ITS MARTYRDOM BORDER ENTRY QUESTIONS

Three years ago, CAIR-MI sued the Department of Homeland Security and FBI because Muslims crossing the US-Canadian border keep getting asked questions about their religion. The suit has proceeded with CAIR getting discovery that largely remains secret.

But in a cross-motion filed last week, the government got really squirrely relating to some information on how it deals with border questioning. It's worried about three things: two FBI training documents and the redacted parts of a Sample Questionnaire ICE uses at the border.

At least one of the FBI training documents provides guidance on how the Bureau investigates certain things (likely Sensitive investigative subjects), including religion. The second is a training program attended by an Agent who had asked sensitive questions to one of the plaintiffs.

As set forth in Defendants' Privilege Log of FBI Documents, FBI #2 is an "FBI operational training providing guidance on certain categories of investigations, one portion of which included questions related to religion." See Pl. Mot. Exh. E. The Log further explains that the document "contains law enforcement sensitive information, the disclosure of which would impede or impair the effectiveness of an investigation and/or

an investigative technique, method or procedure; and national security information." The Log described FBI #4 as "Training attended by CBP Officer Janos during his affiliation with the FBI Task Force (described in response to Interrogatory 9)," and explained that it is a law enforcement sensitive document, the disclosure of which could harm the effectiveness of an investigation or an investigative technique, and "contains personally identifying information about individuals not party to this action."

The government says that if the judge rules the first training program relevant to this suit, they may claim state secrets over it.

Therefore, if the Court determines that the national security information included in this document is both relevant to Plaintiffs' equal protection claim and not protected from disclosure by the law enforcement privilege, then Defendants request at least 60 days to consider whether that information is subject to an assertion of the state secrets privilege,

Since 2008, when DOJ made it okay to use religion as one factor in investigations, there have been questions about how it might play into those investigations. But apparently, DOJ would rather invoke state secrets than tell us.

Then there's the other thing the government doesn't want to reveal: its list of questions it asks (under what circumstances, it won't say) at the border. Some of those got released in a redacted list to the plaintiffs, released last week as part of a declaration explaining why the questions that get asked of selected people crossing the border can't be released altogether.

But along with asking questions about who the

interviewee's faith leader is (these questions lay at the heart of the suit), they also ask about martyrdom (though one question remains redacted).

Do you have any relatives or friends who have been martyred fighting in the defense of your beliefs?
Do you know or have you heard of anyone, in your town/village who has been martyred in defense of your beliefs?
What is/are the name(s) of the martyr(s)?
When did they become martyrs?
Where did they become martyrs?



It's hard to imagine how such questions would ever elicit a useful response – unless the desired response is just to make people nervous. Someone ideological enough to have lost associates as suicide bombers would respond affirmatively rather than hiding their own associations?

But particularly given DHS' excuse that because, as written, this questionnaire's religious questions are religion neutral, the questions on martyrdom are absurd. Not because just Jihadists foster the claim of suicide bombing (though I think even that claim could be true), but also because so many completely innocent Muslims have been killed in recent years for living in the wrong place at the wrong time. Do those people count as martyrs? Or is this another attempt to instill an odd multileveled evaluation of deaths, in which the only dead Muslims are those extremists who've deliberately killed themselves, and not the million who create the animus?

Or does DHS just plan on deporting someone years from now because someone didn't identify a relative killed in an asymmetric war as a "martyr," the word DHS itself picked?

It's clear DHS is asking religious questions (though it's not clear whether CAIR will have the ability to show that, because only Muslims get pulled into secondary, the questions end up getting posed only to Muslims). But with this odd martyrdom question, it's also hard to see

how these are effective questions.