

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH
JEFF SESSIONS, ALABAMA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
JEFF FLAKE, ARIZONA
DAVID VITTER, LOUISIANA
DAVID A. PERDUE, GEORGIA
THOM TILLIS, NORTH CAROLINA

PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
CHARLES E. SCHUMER, NEW YORK
RICHARD J. DURBIN, ILLINOIS
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
AL FRANKEN, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

January 27, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable Thomas R. Kane
Acting Director
Federal Bureau of Prisons
Washington, D.C. 20534

Dear Acting Director Kane:

Thank you for your response, dated October 9, 2015, to my questions following the July 10, 2015 briefing on the vetting and background check process for religious prison contractors.

As I noted in my original letter to the federal Bureau of Prisons (BOP) on April 7, 2015, Islamic extremism in U.S. prisons is a bipartisan concern – and unfortunately a real concern. According to a Wall Street Journal article, a number of former state and federal officials continue to voice alarm about the level of influence radical Islamic groups have within the prison system.¹ There has been considerable concern within the BOP community that individual inmates are vulnerable to recruitment for terrorist related activity. Mr. Harley Lappin, former Director of BOP, provided testimony to Congress regarding his concerns “that inmates are particularly vulnerable to recruitment by terrorists,” and he further noted that “we must guard against the spread of terrorism and extremist ideologies.”² In addition, former Senator John Kerry, as Chairman of the Senate Foreign Relations Committee, stated in 2010, “Three dozen U.S. citizens who converted to Islam while in prison have travelled to Yemen, possibly for al Qaeda training.”³ Likewise, in 2011, then-Secretary of the Department of Homeland Security, Janet Napolitano, noted that the federal government and states were “[c]ollaborating to develop a mitigation strategy for terrorist use of prisons for radicalization and recruitment.”⁴

¹ Ayaan Hirsi Ali, *America's Academies for Jihad*, WALL STREET JOURNAL (March 31, 2015).

² *Terrorist Recruitment and Infiltration in the United States: Hearing Before the Subcommittee on Terrorism and Homeland Security*, Senate Judiciary Committee, 2003.

³ Rep. Peter King citing Senator Kerry, *The threat of Muslim radicalization in U.S. prisons*, THE HILL (June 15, 2011).

⁴ *Id.*

In light of these concerns, and after the BOP's briefing to my staff, the BOP attempted to clarify the process by which its Institutional Religious Services Department primarily contracts with individual religious services providers. It was revealed that the BOP "may use religious endorsing organizations to help confirm the credentials of individual contractors."⁵ As an example, your staff provided a list of Islamic Chaplaincy Endorsers, but it remains unclear what vetting processes or background investigations, if any, the endorsing entities are subject to. The endorsers appear to add significant credibility to the potential religious contractor, aiding in the BOP's decision to ultimately hire that individual.

Notably, one of the BOP's Islamic Chaplaincy Endorsers is the Islamic Society of North American (ISNA). The ISNA was named by the Department of Justice in a trial brief as an unindicted co-conspirator in the Holy Land Foundation terrorist financing case.⁶ Moreover, DOJ designated ISNA as a "member[] of the US Muslim Brotherhood."⁷ And in 2009, a federal district court ruled that the "Government has produced ample evidence to establish the association[] of [] ISNA [] with HLF [Holy Land Foundation for Relief and Development], the Islamic Association of Palestine [], and with Hamas."⁸ It appears, therefore, that the BOP is relying on an organization with associations to terrorist organizations and one that the DOJ named as an unindicted co-conspirator in a terrorist financing case to confirm credentials of those attempting to provide religious services to federal inmates. If accurate, this information is deeply troubling.

In addition, during the briefing and in the BOP's follow up, it was noted that the BOP does not use social media to perform rudimentary background checks. For example, Mr. Fouad ElBayly, a religious service contractor at a BOP facility, was terminated from employment because of news stories regarding incendiary and violently threatening statements he made in the past about individuals who spoke negatively about Islam.⁹ If the BOP had performed a rudimentary internet search on Mr. ElBayly prior to hiring him, it would have found the questionable statements. This is concerning because information relevant to a background inquiry is often readily available via the internet.

⁵ Attachment A.

⁶ List of Unindicted Co-conspirators and/or Joint Venturers, Attach. A to Government's Trial Brief at 8, United States of America v. Holy Land Foundation for Relief and Development, et al. No. 3:04-CR-240-G (N.D. Tex. July 16, 2007).

⁷ *Id.*

⁸ Memorandum and Opinion Order at 15, United States of America v. Holy Land Foundation for Relief and Development, et al. No. 3:04-CR-0240-P (N.D. Tex. July 1, 2009).

⁹ In my April 7, 2015 letter to BOP, I noted that according to news reports, Mr. ElBayly contended that Ms. Ayaan Hirsi Ali's stances on Islam's treatment of women warranted the death penalty. Ayaan Hirsi Ali, *America's Academies for Jihad*, WALL STREET JOURNAL (March 31, 2015); Chuck Ross, *Imam Who Said Ayaan Hirsi Ali Deserved Death Penalty Was Hired By DOJ To Teach Muslim Classes to Federal Prisoners*, DAILY CALLER (March 3, 2015).

It is imperative that the BOP take every measure possible to ensure the safety of its personnel within federal prisons and take all reasonable measures to ensure that Islamic extremism is stopped at the gates of each prison. Currently, it is not clear whether the BOP is doing so.

Accordingly, please provide the following information:

1. Please describe in detail the process by which someone becomes a religious endorsing organization. How does BOP ensure endorsers with ties to terrorism are not permitted to endorse?
2. Why is the BOP using ISNA as a Chaplaincy Endorser?
3. With respect to the procedure by which a contractor can be allowed admission to a BOP facility prior to the completion of a Moderate Background Investigation (MBI), is the BOP required to entertain a pre-employment waiver request if an MBI is submitted to the Office of Personnel Management but is not completed? If so, was this pre-employment waiver request submitted and authorized for Mr. ElBayly? And finally, if it was submitted and authorized, please provide all records, including the memorandum from the Head of the Component with jurisdiction over Mr. ElBayly, to that effect.
4. How many religious contractors from FY 2014-FY 2015 are currently employed whose background check is still not complete?
5. In “Action Step 1” within the BOP’s October 9, 2015 response,¹⁰ it notes that a compliance survey of all institutions was performed in order to assess “adherence to policy and guidance related to religious service providers.” The BOP further noted that “concerns were identified with adherence to guidance” and that “not all institutions were adhering with a series of guidance memorandums issued in 2004.”
 - a. What questions were asked or information requested as part of this compliance survey?
 - b. Please explain in detail the concerns identified from the compliance survey.
 - c. Please describe in detail which guidance memoranda were ignored.
 - d. Please list each institution that did not adhere to the guidance memoranda.
 - e. With respect to the concerns identified, what actions has the BOP taken, or will take, to remedy the concerns identified?

¹⁰ Attachment A.

6. Will the Bureau mandate an affirmative duty to require its employees to search social media or internet search engines for statements that may conflict with its standard of operations or to verify the chaplains' answers to questions posed during the interview process? If not, why not?

Please number your responses according to their corresponding questions. Please submit your responses by February 10, 2016. If you have any questions, contact Katherine Nikas or Josh Flynn-Brown of my Committee Staff at (202) 224-5225. Thank you for your cooperation.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary