

Questions for Mr. Thomas Perez
Assistant Attorney General, Department of Justice
From Senator Jon Kyl
Senate Committee on Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights
"Protecting the Civil Rights of American Muslims"
March 29, 2011

1. What is the federal government doing to protect former Muslims from harassment by Muslim extremists? The penalty for leaving Islam under medieval Islamic law is death. Many extremist groups believe in these barbaric and immoral doctrines, and have threatened converts from Islam with death and serious bodily injury. Has the United States investigated or prosecuted any such cases?

Response:

The Civil Rights Division prosecutes hate crimes directed at persons because of their religion, and this includes persons who change their religion. A Civil Rights Division official met with the group Former Muslims United on February 19, 2010 to discuss threats against former Muslims, and encouraged the group to forward any threats that they receive. The Civil Rights Division has received at least one such report of receipt of a threat, involving a threat originating outside of the United States. To date, the United States has not opened formal investigations in such cases, or prosecuted any such crimes, but we encourage anyone with information about such a crime to report it.

2. Robert Spencer, an American scholar of Islam and a critic of Islamic extremism, recently noted on his website that he has received the following emailed death threats during the last two years:

- **"Robert Spencer has his right to speech. But someday he will slip up, he will visit a place that doesn't honor such infidel 'rights.' And what a day they will have with him. You've heard of head cheese and blood pudding? See, modern hip Muslims like me like to be look different than everybody else in Western society. And we don't like to believe Islam has any real enemies left. But Robert Spencer, well, he will see the sacred text come to life ... 'fuel the fires of hell ...' only when they are done with him. Peace and Love." - September 29, 2010**
- **"Robert Spencer the Second, born on February 27, 1962, is a hairy man who ... currently lives on [specific street] in [specific city] with [specific relatives] ..." - July 28, 2010, from Greenbelt, Maryland**

- "Killing of this man is a model... SPENCER-Model..Spencer himself deserves the same? he should be sloughtered like that man. Silencing the EVIL." -- April 4, 2010
- "THIS IS AN OPEN THREAT TO YOU AND YOUR ORGANIZATION TO STAY AWAY FROM MUSLIMS AND ISLAM IF YOU KNOW WHAT IS GOOD FOR YOU. YOU SON OF A BITCH . YOUR MOTHER WAS A C**K-SUCKING WHORE . IF YOU GOT THE GUTS AND BALLS PRINT THIS ON YOUR WEB SITE AND TELL PEOPLE THAT YOU ARE BEING THREATENED. U FILTHY C**K-SUCKER HAVE A NICE DAY" - December 8, 2009
- "Yes. Yes . . . We finally reached out him. Ka'ab Binu Ashraf has been traced. He will be soon found. Will this be like VAN-Gooooordhd. I am not sure. Allah Knows . . . But Spencer you will pay the price . . . Just wait to pay the price." - September 28, 2009
- "Robert It was really good I found you in a local supermarket. and I followed you . . . so i know your address now . . . tell you fool followers you are going to be deceased very soon . . . any one taking your seat and getting killed? I am sure most of your followers are cheeky cowards." - September 28, 2009
- "Do me a favor Spencer and put this as a blog post like you do to all those threatening mails. Be careful, I am very near to you. I located you and I know you have little security around you. I am coming to slit your throat with a bland knife . . . and it will pain a lot . . . since you misled a lot of people and became a fitnah on earth . . . it is a duty of a good muslim to kill you! go report this to FBI or CIA . . . And don't worry, I won't attack you unguarded . . . but i will surely kill you in the most easy manner possible because I don't like to slaughter human beings . . . Die and go to hell . . . for sure . . . and yea I have a new name for you . . . Robert 'hawknoseinhell' spencer." - September 28, 2009
- "YOu are the most f**king person I have ever seen. Enrooted in islamic hatred, you think your personal statements on Prophet Muhammed will be deemed appropriate. Motherf**ker, I am coming to kill you. I will hack the head off your face and i will kill your family. Wait for your doom. From A mujahid" - October 2, 2006

Mr. Spencer also states that he has contacted the FBI repeatedly about these and other death threats, and that he does so whenever a new death threat comes in. Yet he also reports that there have been no FBI investigations and arrests resulting from any of these threats and his reports to FBI.

Section 875(c) of title 18, United States, clearly makes it a federal criminal offense to send threats such as these by email. It provides that anyone who "transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both."

In light of section 875(c)'s clear proscription on the threats quoted above, why has there been no investigation of or arrests resulting from any of the above threats that Mr. Spencer has received and reported to the FBI?

Response:

Mr. Spencer registered multiple complaints with the FBI's Joint Terrorism Task Force in Bedford, Massachusetts, between June 2005 and August 2010. These complaints were documented in the FBI's Guardian database. (Guardian is an incident-reporting and management system that collects and manages terrorist threats and reports of suspicious activities. Guardian is intended to ensure that all threats to U.S. persons and interests and suspicious activities with a nexus to terrorism are properly investigated.) The FBI took appropriate steps, including contacting Mr. Spencer, to investigate the threats and ensure his safety.

3. Section 248(c)(1) of title 18, United States Code, provides a civil remedy, including statutory damages, to any person who is "intimidated" or otherwise harassed in relation to his participation in certain activities.

Would you support enactment of a similar cause of action that awards similar damages to anyone who is threatened with death or physical injury on account of his commentary on religious or political issues or other matters of public concern?

Response:

The Department condemns religious discrimination, is firmly committed to the principles of free expression and free exercise of religion guaranteed by the First Amendment, and would be pleased to review any specific legislative proposals that you would like the Administration to review.

I would note that the Department of Justice presently enforces section 245 of title 18, which provides criminal penalties for the willful interference, by force or threat of force, with a person because he/she is or was participating in, or aiding or encouraging other persons to participate in any of certain activities without discrimination as to certain enumerated factors, including religion. The Department also enforces section 249 of title 18, the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, which

prohibits willfully causing bodily or attempting to cause bodily injury with a dangerous weapon when if the crime was motivated by bias, including bias based on a person's religion. In addition as the question notes, the Department has the authority under the Freedom of Access to Clinic Entrances Act (FACE), 18 U.S.C. § 248, to seek criminal or civil penalties in response to threats of force and physical obstruction of reproductive health facilities or places of religious worship.

4. I have been advised that the FBI's hate crimes data do not differentiate between Muslims who are being targeted by non-Muslims on the one hand, and "apostate" Muslims being targeted by fellow Muslims on the other. Is that true?

Response:

The current FBI hate crimes data sheet that forms the basis of its Hate Crimes Report has six categories for religion-based hate crimes, Anti-Jewish, Anti-Catholic, Anti-Protestant, Anti-Islamic (Moslem), Anti-Other Religion, and Anti-Atheism/Agnosticism. On July 6, 2011, the FBI published an updated version of the form, containing seven categories for religion-based hate crimes: Anti-Jewish, Anti-Catholic, Anti-Protestant, Anti-Islamic (Muslim), Anti-Other Religion, Anti-Multiple Religions, Group, and Anti-Atheism/Agnosticism. Neither form has a separate category for "apostate Muslims".

5. Does the U.S. government regard organizations with longstanding ties to the Muslim Brotherhood as reliable partners for outreach to the Muslim American community?

Response:

The Civil Rights Division enforces civil rights laws, including but not limited to criminal laws that protect individuals within the United States from bias motivated violence. The Civil Rights Division engages in outreach with a wide range of Muslim American individuals, communities and community organizations as we do with various communities that face civil rights issues, in order to inform the public about the statutes we enforce, and to ensure that we receive all the information we need to carry out our civil rights law enforcement mission. The scope and nature of any particular outreach effort will vary according to the circumstances and the law enforcement goals we seek to advance. The Civil Rights Division does not meet with the Muslim Brotherhood. The Civil Rights Division reaches out to the same groups under the current Administration as it did under the prior Administration.

6. The Director of National Intelligence James Clapper, who described "the Muslim community as a source of advice, counsel and wisdom" in ferreting out extremists in its midst. What organizations and individuals does the Administration consider to be such sources? Are any of these organizations or individuals on which the Administration relies for advice and counsel associated now or in the past with the Muslim Brotherhood? Have any of them been identified as unindicted co-conspirators in the federal terrorism-financing prosecutions?

Response:

This question is directed toward the Director of National Intelligence and specific statements he made. The Civil Rights Division is not in a position to respond to this question.

7. The Obama administration co-sponsored a version of the Organization of Islamic Cooperation's resolution calling on governments to criminalize criticism of religion in the UN Human Rights Council in September 2009. How can such initiatives be reconciled with the First Amendment?

Response:

The Obama Administration has not supported any Organization of Islamic Cooperation (OIC) resolutions that call on governments to criminalize criticism of religion. In fact, the Obama Administration, like its predecessor, steadfastly opposed the resolution traditionally proposed by the OIC that sought to protect religions from "defamation" and to prohibit speech critical of religions because such protections are inconsistent with human rights law, in which individuals, not religions, are the subject of protection and because such prohibitions on speech run counter to international law and U.S. protections on free speech. As part of this opposition, the United States lobbied strongly for votes against this traditional "defamation of religions" resolution. Over the past decade, while the OIC-supported resolution passed the UN Human Rights Council each year, it did so by increasingly diminishing margins, in part due to U.S. lobbying efforts. This year (2011), the OIC faced the prospect of finally losing the vote on its resolution, due in large part to U.S. lobbying. It therefore decided not to run the "defamation" resolution, but instead to adopt an entirely new and consensus-oriented approach to combating discrimination and violence based on religion or belief that is entirely compatible with U.S. First Amendment protections and U.S. practice. The new resolution does not purport to protect religion against criticism, and confines criminalization of speech to "incitement to imminent violence," which is consistent with the U.S. constitutional standard. The consensus resolution focuses on pragmatic and effective approaches such as interfaith outreach and engagement

and other techniques that have proven effective in U.S. practice. The U.S. did not co-sponsor the new resolution, but did join in its passage by consensus.

In 2009, the United States co-sponsored with Egypt a resolution on Freedom of Expression, which calls on governments to protect freedom of expression. The resolution does not condone bans on speech that criticize religions. The aforementioned OIC resolution on combating discrimination and violence based on religion and belief on which we joined consensus earlier this year incorporates some language from the 2009 U.S.-Egypt Freedom of Expression resolution and makes clear that broad bans on speech are not condoned, but rather calls for awareness building, education and other steps that are consistent with U.S. practice and do not infringe on freedom of speech.

Questions for Mr. Thomas Perez
Assistant Attorney General, Department of Justice
From Senator Chuck Grassley
Senate Committee on Judiciary
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1. Housing Testing Program

In 2008, a complaint was filed with the DOJ Office of the Inspector General (OIG) regarding Darryl Foster, then head of the Housing Testing Program in the Housing and Civil Enforcement Section of the Civil Rights Division. The OIG investigation involved allegations that Foster had engaged in an inappropriate relationship with the president of an organization over whom he had oversight responsibility for approving contracts with and requests for payments by the organization. Foster was demoted in May 2008 and reassigned to the Voting Section, also receiving a 7-day suspension of duration.

Question:

(1)(a) What were the specific findings of the OIG report?

Response:

The Department expects the highest standards of behavior from all its employees. When issues are discovered, appropriate measures are taken. As a general matter, the Privacy Act and the Department's longstanding policies regarding the confidentiality of Department personnel decisions limit our ability to comment publicly on the merits of specific allegations of misconduct about individual Department employees.

(1)(b) How large was the budget that Foster was responsible for overseeing as head of the Housing Testing Program?

Response:

For fiscal years 2007-2009, the contractor budgets for the Housing Testing Program were as follows:

Fiscal Year 2007: \$235,593
Fiscal Year 2008: \$206,733
Fiscal Year 2009: \$86,751

(1)(c) For what behavior was Foster demoted?

Response:

See the response provided to subpart A, of this question, above.

(1)(d) What kind of message does it send when employees guilty of misconduct are only transferred between sections instead of being fired?

Response:

See the response provided to subpart A, of this question, above.