



FLORIDA INTERNATIONAL UNIVERSITY

STATEMENT OF

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DEAN OF THE COLLEGE OF LAW
FLORIDA INTERNATIONAL UNIVERSITY

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS AND HUMAN RIGHTS

HEARING ENTITLED
“PROTECTING THE CIVIL RIGHTS OF AMERICAN MUSLIMS”

MARCH 29, 2011

COLLEGE OF LAW
OFFICE OF THE DEAN

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Chairman Durbin, Ranking Member Graham and distinguished Members of the Committee:

I have been asked to provide testimony regarding the civil rights of American Muslims. I appreciate the opportunity to appear before you to address this important issue.

As the title of today's hearing references American Muslims, I think it appropriate to begin by discussing two such individuals.

The first is a student at the law school where I am now Dean.¹ He is one of our student leaders, and in fact, is a candidate for student body president. I asked him to send me an email about himself. This is what he wrote:

I am a Muslim, born and raised in the United States.

I suppose by most people's standards my childhood was pretty normal. I went to school, tried to get out of doing my homework, and spent entirely too much time watching TV. The truth is I was pretty lazy. But that changed when I went to high school. I attended Estero High School, in Estero Florida, where I was introduced to the Army's Junior Reserves Officer Training Corp (JROTC). I loved the JROTC program. It taught me what it meant to be a leader and why it was important to take responsibility for my actions. I actually excelled in the program. In fact, I was the first cadet in my class to be made a cadet officer, and I ultimately reached the program's highest rank, Cadet Lieutenant Colonel. But it is not my successes in JROTC that I remember most about high school. Rather, what I remember most about high school is the confusion, the fear that overcame me on September 11, 2001, when our teacher turned on the classroom television just in time for us to witness the live coverage of the second hijacked plane crashing into the second tower of the world trade center. I knew that my country had been attacked. So I did what I knew was right, five months later I enlisted in the military.

I enlisted in the Florida Army National Guard on February 7, 2002, and I transferred to Regular Active Duty Army on July 27, 2003. I served three years as a Military Intelligence Analyst in the Security and Intelligence Department of the 44th Medical Command at Fort Bragg, NC. After I finished my tour at Fort Bragg, I served one year in the Busan Military Intelligence Detachment in Busan, South Korea. And to this day, I serve as an intelligence Analyst in the Army Reserves as part of Detachment 1, 2500 Military Intelligence Group.

In late 2007, I left active duty so that I could go to law school. Today, I am second year law student at Florida International University College of Law.

¹ I serve as Dean of the College of Law at Florida International University. FIU is South Florida's recently-established, public law school. We have graduated six classes, and this year, we were ranked for the first time by U.S. News and World Reports.

This student's name is Mohamed T. Al-Darsani. Last summer, he was selected as one of only 25 first year law students in the nation to intern for the Army's Judge Advocate General Corps. His goal is to become a JAG attorney.

The second individual about whom I would like to speak is a young woman by the name of Nashala Hearn. Ms. Hearn testified before this Committee in June 2004. At the time, she was about 11 year old.

Nashala's story begins in Oklahoma at the start of the 2003 school year, when she told her sixth grade public school teacher that she was Muslim, and that as part of her faith, she wore a headscarf, or hijab. The teacher at that time did not object, and Nashala happily attended school for the next month. That changed on September 11, 2003, when her teacher asked her to remove her headscarf. The school permitted students to wear both non-religious and religious head-coverings, including baseball caps and kippahs, but wanted her to remove her headscarf because it "frightened" other students. Nashala declined, and was sent to the principal's office. Her question for the principal was rather precocious: "My friends can wear their crosses to school. Why can't I wear my hijab?" The principal insisted that she remove her headscarf, and when Nashala declined, citing both her faith and modesty, the principal suspended her from school. Nashala returned to school on October 7, still wearing her headscarf, and was again suspended.

I authorized the Department of Justice to intervene in Nashala's case, a fact I remember with a bit of irony, because shortly after we intervened to protect Nashala's liberties, the nation of France enacted legislation forbidding religious symbols and clothing in schools. France banned headscarves, kippahs, crosses and any other religious clothing or jewelry. Our government, by contrast, protected religious expression.

I speak about these two individuals because I think their stories highlight principles that make our nation great. The first of these principles is that foremost we are all Americans. I grew up under the presidency of Ronald Reagan, and have read many of his speeches. A less known talk, but one that captured this principle well, was his response to a question from a high school student in Suitland, Maryland, near the end of his presidency in January 1988. When asked what America stood for, he said:

But this thing about America -- I got a letter from a man the other day, and I'll share it with you. This man said you can go to live in Turkey, but you can't become a Turk. You can go to live in Japan, but you cannot become Japanese -- or Germany or France -- and named all the others. But he said anyone from any corner of the world can come to America and become an American.

Mr. Al-Darsani is an American. Mr. Al-Darsani's thoughts and his actions were undeniably American: "I knew that my country had been attacked, [s]o I did what I knew was right, five months later I enlisted in the military."

Second, we are a nation build on principles of freedom, and high on the list of freedoms is freedom of religious expression. Indeed, as is well known to this Committee, this freedom pre-dates our Constitution. Virginia's Statute for Religious Freedom, written by Thomas Jefferson in 1779, for example, held:

"[N]o man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, *nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief*; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities."

The emphasis is added to highlight a corollary of religious freedom, namely the duty to oppose discrimination on the basis of religious belief.

Nashala's situation was an opportunity for a public school to teach this principle of freedom, and to teach its corollary. School officials could have taken this opportunity to talk about America's early settlers and their search for freedom to express their faith. They could have taken this opportunity to teach basic civics, a topic sometimes lacking in our system of education. They could have taken this opportunity to say that fear is wrong, that respect and tolerance for another's faith is right, and that these are founding principles of our nation. Instead, the school officials fed the fear, signaling to Nashala's fellow sixth-graders that the headscarf, and by extension that her faith, should be suppressed.

Nashala's case, unfortunately, offers an insight into our nature. Our nation is strong because we respond to attack with resolve. History has shown the need, however, for leadership that tempers resolve with wisdom.² President George W. Bush understood this, when on September 17, 2001, he visited the Islamic Center of Washington D.C. to remind a resolute nation that "[t]hose who feel like they can intimidate our fellow citizens to take out their anger ... should be ashamed of that kind of behavior." This was not the message many Americans wanted to hear at that time, but the President chose to lead, rather than to be led.

The Justice Department likewise responded following 9-11. Starting in September, 2001, the Department of Justice took great effort to address post-9/11 backlash against Arab-Americans, Muslim-Americans and others, who though members of different faiths (such as Sikh-Americans) were nonetheless the target of backlash. From 2001 through early 2005, the Department investigated more than 630 "backlash" incidents, which resulted in nearly 150 state and local prosecutions (many with federal assistance), and the federal prosecution of 27 defendants in 22 cases. Some were particularly violent. Two incidents, for example, targeted the Islamic Center of El Paso, Texas. In *United States v. Bjarnason*, the Defendant was convicted of e-mailing a threat to burn down the mosque, and in *United States v. Nunez-Flores*, the Defendant was sentenced to imprisonment for 171 months for throwing a "Molotov Cocktail" at the same Islamic Center of El Paso Mosque. Many of these efforts were due to the work of Ralph Boyd, who served as Assistant Attorney General from 2001 through 2003.

The Department's efforts were not limited to criminal actions. We filed in educational and employment settings as well. I already discussed the Hearn matter, and I read that the Division continues to litigate the complaint against the New York

² See e.g., *Korematsu v. United States*, 323 U.S. 214 (1944).

Metropolitan Transit Authority for prohibiting employees from wearing headscarves with their uniforms (a policy that was applied inconsistently, with many employees permitted to wear hats and non-Muslim religious head coverings).

Sometimes, matters can be more subtle and discrimination is expressed through biased land-use or institutional regulations. RLUIPA is a statute that can be of particular help in these settings. The Religious Land Use and Institutionalized Persons Act is among those few pieces of major legislation with such overwhelming support as to pass both the Congress and the Senate by unanimous voice votes. Enacted in 2000, RLUIPA responds to concerns that land-use or institutional rules are often used to extinguish the religious practices of less popular faiths – be they Christian, Jewish, Islamic or other. The statute has received more attention of late, yet I believe it remains underused.

The Department's informal responses to 9-11 were as important as its legal actions. After 9-11, the Civil Rights Division began to host regular meetings between senior representatives from the Arab-American and Muslim-American communities and the leadership of key government agencies, including the FBI and many Homeland agencies. These meetings focused on finding solutions to shared problems, and they worked well. The community representatives often raised valid points and offered useful suggestions. Because all relevant agencies were at the table, valid points could be addressed and suggestions adopted without interagency squabble. Put simply, having all relevant agencies at the table reduced the "ping-pong" effect, where an individual may visit one agency, only to be told that a matter is within the jurisdiction of another agency; and then visit that other agency, only to be told that the matter is within the jurisdiction of the first. These meetings also generated trust between government and the represented communities. The designation of a Special Counsel to the Assistant Attorney General for Post 9-11 National Origin Discrimination was particularly important. The special counsel was tasked with coordinating the Civil Rights Division's various efforts on this issue, and in particular, would follow up on the various matters raised at these meetings to help ensure resolutions.

These efforts following 9-11 were important. They set a tone. They reminded those who might be tempted to take out their anger on an entire community that such actions were wrong. They helped assure Americans like Mr. Al-Darsani that their government would act to protect their rights. This said, these efforts were not without controversy. The appointment of a special counsel to the assistant attorney general, for example, was discussed. Should an individual be appointed to address the rights of a particular community? Such a measure was admittedly extraordinary. History, however, shows that the decision to proceed in this manner was correct. 9-11 was an extraordinary and terrible event, and thus efforts to curb post 9-11 backlash had to be extraordinary as well.

I would like to close with two additional thoughts.

First, I want to thank Assistant Attorney General Perez and the men and women of the Civil Rights Division for their work. I have had the opportunity to review

Assistant Attorney General Perez's testimony. He graciously notes that much of Division's efforts have been ongoing since 2001 and I want to thank him for referencing some of the work done in 2001 to 2005 period.

Second, as we approach the 10th Anniversary of 9-11, I feel obligated to state the obvious. As a nation, we have not forgotten the events of ten years ago. Emotions remain charged, and the desire to blame remains high. Now is good time to remember that no community has a monopoly on any particular type of crime. Now is good time to temper resolve with wisdom and to uphold our principles, as our former President did on September 17th.

Chairman Durbin, Ranking Member Graham and distinguished Members of the Committee, I thank you for your time and I look forward to your questions on this important issue.