

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

AMERICAN SOCIOLOGICAL ASSOCIATION;  
AMERICAN ASSOCIATION OF UNIVERSITY  
PROFESSORS; AMERICAN-ARAB ANTI-  
DISCRIMINATION COMMITTEE; BOSTON  
COALITION FOR PALESTINIAN RIGHTS, and  
ADAM HABIB,

Plaintiffs,

v.

MICHAEL CHERTOFF, in his official capacity as  
Secretary of the Department of Homeland Security;  
CONDOLIEZZA RICE, in her official capacity as  
Secretary of State,

Defendants.

**SECOND AMENDED  
COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

Case No. 07-11796 (GAO)

**SECOND AMENDED COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

1. This is a lawsuit for declaratory and injunctive relief challenging the government's exclusion of an otherwise admissible foreign scholar from the United States in order to prevent United States citizens and residents from hearing speech that they are entitled to hear under the First Amendment.

2. Professor Adam Habib, a symbolic plaintiff in this suit, is a national of South Africa, a prominent human rights activist, and a world-renowned scholar of democracy, governance, and social movements. Professor Habib is also a vocal critic of various aspects of U.S. foreign policy, including the war in Iraq. Until quite recently, Professor Habib traveled frequently to the U.S. to lecture, attend conferences, and meet with scholars, foundations, and representatives of government institutions; Professor Habib also lived in the U.S. for three years while obtaining his PhD from the City

University of New York's Graduate Center. In October 2006, however, Customs and Border officials revoked Professor Habib's 10-year visa without explanation when he arrived at John F. Kennedy Airport ("JFK"). Refused entry into the U.S., Professor Habib was unable to attend scheduled meetings with U.S.-based scholars and representatives from U.S. and international agencies, universities, and foundations.

3. Professor Habib remains excluded today, to the detriment of organizations and individuals that have invited him to speak at events in the U.S. On May 11, 2007, Professor Habib filed an application for a new visa that would allow him to attend upcoming speaking engagements in the U.S. – most urgently, the American Sociological Association ("ASA")'s August 2007 Annual Meeting in New York City. Plaintiffs filed this lawsuit in September 2007 after the government failed to process the visa application in time for Professor Habib to attend the ASA event, and after the application continued to languish although Professor Habib had informed the government that he had received invitations to speak at other upcoming events hosted by plaintiffs the ASA, the American Association of University Professors ("AAUP"), the American-Arab Anti-Discrimination Committee's ("ADC") Massachusetts Chapter ("ADC-MA"), and the Boston Coalition for Palestinian Rights ("BCPR"), as well as an invitation to speak at an event hosted by the Association for Research on Nonprofit Organizations and Voluntary Action ("ARNOVA"), and a preliminary, verbal invitation to speak at an event hosted by the Ash Institute for Democratic Governance and Innovation at Harvard University's Kennedy School of Government.

4. On October 26, 2007, the government denied Professor Habib's visa application, invoking 8 U.S.C. § 1182(a)(3)(B)(i)(I), which renders inadmissible anyone who has "engaged in a terrorist activity." The government did not supply the factual

basis for this determination. The government did not indicate the specific statutory provision upon which it was relying or the kind of terrorist activity it was accusing Professor Habib of committing even though “engag[ing] in terrorist activity” is defined by statute to encompass many different types of activity. The government also denied Professor Habib a waiver of inadmissibility, without explanation.

5. The government’s exclusion of Professor Habib on the ground that he has engaged in terrorist activity is baseless. Professor Habib had never engaged in terrorist activity, in any sense of the phrase. Plaintiffs believe that Professor Habib is being barred not because of his activity but because of his political speech and associations.

6. The government’s continuing exclusion of Professor Habib prevents Professor Habib from attending speaking engagements inside the U.S. and, most relevant to this lawsuit, prevents U.S. citizens and residents from meeting with him and inhibits them from hearing his views, in violation of their First Amendment rights. Plaintiffs seek a declaration that defendants’ exclusion of Professor Habib violates plaintiffs’ First Amendment rights and violates the Administrative Procedures Act. Plaintiffs also seek an injunction barring defendants from excluding Professor Habib on the basis of 8 U.S.C. § 1182(a)(3)(B)(i)(I) or on the basis of speech that U.S. residents have a constitutional right to hear.

### **JURISDICTION AND VENUE**

7. Jurisdiction is properly vested in this Court pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-706 over causes of action arising under 5 U.S.C. §§ 701-706, 8 U.S.C. § 1182, and the First Amendment to the United States Constitution. The Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28

U.S.C. § 2201, et seq. This Court has authority to award costs and attorneys' fees under 28 U.S.C. § 2412.

8. Venue is proper in this district under 28 U.S.C. § 1391(e).

### **PLAINTIFFS**

9. The ASA, founded in 1905, is a non-profit membership association based in Washington, D.C., dedicated to advancing sociology as a scientific discipline and profession serving the public good. With over 14,000 members, the ASA encompasses sociologists who are faculty members at colleges and universities, researchers, practitioners, and students. Approximately 20 percent of the members work in government, business, or non-profit organizations. The ASA sues on its own behalf and on behalf of its members.

10. The AAUP is a non-profit organization based in Washington, D.C., with approximately 44,000 members consisting of university faculty, librarians, graduate students, and academic professionals. The AAUP's mission is to advance academic freedom and shared governance, to define fundamental professional values and standards for higher education, and to ensure higher education's contribution to the common good. The AAUP sues on its own behalf and on behalf of its members.

11. The ADC is a civil rights organization committed to defending the rights of people of Arab descent and promoting their rich cultural heritage. The ADC, which is non-sectarian and non-partisan, is the largest Arab-American grassroots civil rights organization in the U.S. It was founded in 1980 by former U.S. Senator James Abourezk; it has 38 chapters nationwide and members in all 50 states. With headquarters in Washington, D.C., ADC operates field offices in Boston, New York, New Jersey, Detroit,

and San Francisco. The ADC-MA is a local chapter of the ADC. ADC-MA is an inclusive organization with members throughout the state of Massachusetts.

12. The BCPR, a grassroots organization in Boston, Massachusetts, was established in 2000 by people of conscience united by the belief that peace will be possible only when there is justice and self-determination for the Palestinian people and protection of their human rights. The BCPR sponsors educational events, rallies, teach-ins and media campaigns throughout the Boston area to educate people about the history of the Israeli-Palestinian conflict. The BCPR sues on its own behalf and on behalf of its members.

13. Adam Habib, a symbolic plaintiff in this suit, is a national of South Africa and currently resides there. Professor Habib, who earned his Ph.D. in Political Science from the City University of New York's Graduate Center, is one of South Africa's leading scholars and social commentators on issues of democracy, good governance, and public policy. He is currently Deputy Vice-Chancellor of Research, Innovation and Advancement at the University of Johannesburg.

### **DEFENDANTS**

14. Defendant Condoleezza Rice is Secretary of State and has ultimate authority over the operations of the Department of State. In that capacity and through her agents she is authorized to deem aliens inadmissible to the U.S. Defendant Rice is sued in her official capacity.

15. Defendant Michael Chertoff is Secretary of Homeland Security and has ultimate authority over the operations of the Department of Homeland Security. In that capacity and through his agents he is authorized to deem aliens inadmissible to the U.S. Defendant Chertoff is sued in his official capacity.

## STATUTORY AND REGULATORY FRAMEWORK

16. An alien is ordinarily ineligible for entry into the U.S. unless he or she is in possession of a valid visa. See 8 U.S.C. § 1182(a)(7)(B)(i)(II). Certain classes of aliens are ineligible to receive visas pursuant to various grounds for inadmissibility established by Congress. See 8 U.S.C. § 1182.

17. The Department of State has statutory authority to revoke a valid visa in certain circumstances. See 8 U.S.C. § 1201(i).

18. Non-citizens outside the country typically apply for, and are either issued or denied, visas at a U.S. consulate abroad. Under certain circumstances, however, consular officials are required to seek guidance and direction from Department of State or Homeland Security officials in Washington D.C. For example, where a visa applicant is perceived potentially to be ineligible for a visa pursuant to any of the terrorism-related grounds for inadmissibility, 8 U.S.C. § 1182(a)(3)(B), a consular official must seek a “Security Advisory Opinion” from officials in Washington, *see* Foreign Affairs Manual § 40.32 n. 1, 2, 3, and is foreclosed from granting or denying a visa application without direction from those officials, *id.* § 40.6 note.

19. The provision that the government has invoked to exclude Professor Habib is 8 U.S.C. § 1182(a)(3)(B)(i)(I), which renders inadmissible anyone who “has engaged in a terrorist activity.” The term “engage in terrorist activity” is defined at 8 U.S.C. § 1182(a)(3)(B)(iv), and encompasses numerous distinct activities including: committing a violent terrorist act, inciting others to commit violent terrorist acts, preparing or planning a terrorist activity, soliciting things of value for a terrorist activity or terrorist organizations, soliciting individuals to engage in terrorist activity or to be members in a terrorist organization, and providing material support to a terrorist

organization. The term “terrorist organization” is defined at 8 U.S.C. § 1182(a)(3)(B)(vi), and includes organizations designated by the Secretary of State but also undesignated organizations of two or more people who engage in terrorist activity, as that term is defined in 8 U.S.C. § 1182(a)(3)(B)(iv).

20. Inadmissibility based on terrorism-related grounds, including 8 U.S.C. §1182(a)(3)(B)(i)(I), may be waived. See 8 U.S.C. § 1182(d)(3).

## **FACTUAL BACKGROUND**

### **The Exclusion of Professor Adam Habib**

21. Adam Habib is a Muslim who was born in South Africa in 1965. Professor Habib earned his Doctorate in Political Science from the Graduate Center of the City University of New York in 1998. He also holds an M.A. from the University of Natal and a B.A. from the University of Witwatersand, both South African institutions.

22. Professor Habib is a world-renowned researcher, scholar, and political commentator and is an expert on issues of democracy, governance, race, and South African politics, public policy, and social movements. He has published more than 60 edited books, book chapters, and national and international journal articles on these topics.

23. Professor Habib recently assumed the post of Deputy Vice-Chancellor of Research, Innovation and Advancement at the University of Johannesburg. Before assuming that position, he was Executive Director of the Democracy and Governance Program at the Human Sciences Research Council (“HSRC”), an organization created by statute in 1968 to foster development in South Africa and Africa through social-scientific projects for use by the public sector, government, non-governmental organizations, and international development organizations, in partnership with researchers globally. Earlier

in his career, Professor Habib held a research position at the University of KwaZulu-Natal; had a teaching post at the University of Durban-Westville; founded and directed the Center for Civil Society, a think tank devoted to strengthening the non-profit and volunteer sector; and held editorial posts at a number of well-known South African social science and political science journals.

24. Professor Habib has been a member of many professional and non-profit associations, including some in the U.S.

25. Professor Habib has worked closely with government institutions throughout the world. Professor Habib regularly advises government officials and testifies before government bodies on policy matters. The South African press and public often seek his analysis and comment on matters of national importance. Professor Habib is also a frequent editorial contributor to major South African newspapers. Each year since 2002, the Financial Mail, one of South Africa's leading financial magazines, has described Professor Habib as one of the 300 most influential opinion makers in South Africa.

26. Professor Habib is also a prominent human rights advocate. He promotes strong, healthy democracies and social and economic equality. He publicly assails social and political injustice, both in South Africa and elsewhere. Professor Habib vigorously opposed apartheid, and he was jailed for two weeks in June 1986 under state of emergency legislation imposed by the apartheid regime.

27. Professor Habib has publicly criticized the war in Iraq and certain U.S. policies. He spoke at a march against the Iraq war in 2003, and he is affiliated with a number of South African organizations that have been highly critical of the war. He has also publicly criticized the U.S. government's indefinite detention of prisoners at



Guantanamo Bay and the U.S. practice of “rendering” terrorism suspects to third countries known to torture prisoners. In his writings and public speeches, Professor Habib has repeatedly condemned terrorism but urged governments to respond to the threat of terrorism with policies that are consistent with human rights norms and the rule of law. Professor Habib has also publicly criticized certain U.S. policies in Africa.

The October 2006 Revocation of Professor Habib’s 10-Year Multiple Entry B Visa

28. Professor Habib frequently travels outside South Africa to speak and meet with scholars, researchers, government bodies, and non-profit organizations.

29. Until October 2006, Professor Habib visited the U.S. frequently to study, lecture, attend board meetings and conferences, and meet, work, and collaborate with other scholars. Professor Habib lived in New York City for three years while working towards his Ph.D.

30. On the morning of October 21, 2006, Professor Habib, along with his wife, an executive with the State Information Technology Agency who was traveling on separate business, and a delegation of scholars and researchers from HSRC, arrived in New York for a week-long series of meetings with governmental and international bodies, academic institutions, research institutions, and foundations. The HSRC delegation was scheduled to meet with, among others, officials from the United Nations Democracy Fund, the World Bank, the State Department’s Office of the U.S. Global AIDS Coordinator, the National Institutes of Health, the National Science Foundation, and the Centers for Disease Control and Prevention. The delegation was also scheduled to meet with representatives from research institutions such as the Social Science Research Council, the Center for Global Development, and the National Academies, and with scholars from Columbia University, George Washington University, and Spelman

College. Additionally, the delegation was slated to meet with representatives from U.S. foundations including the Carnegie Foundation, the Henry J. Kaiser Family Foundation, and the Open Society Institute. Professor Habib had scheduled individual meetings with scholars from Columbia University, the City University of New York, Sarah Lawrence College, and the University of Virginia.

31. Upon arrival at JFK airport, neither Professor Habib's wife nor any member of the HSRC delegation encountered a problem entering the country. Professor Habib, however, was detained for more than seven hours, questioned by U.S. Customs and Border officials, and prevented from entering the U.S. During his detention, Professor Habib was questioned about his political views and was asked whether he belonged to or had supported any terrorist organizations.

32. Eventually, border officials told Professor Habib that his visa had been revoked by the Department of State, specifically by Deputy Assistant Secretary of State for Visa Affairs Tony Edson, and that he could either withdraw his application for admission or be deported to South Africa. Professor Habib chose to withdraw his application. He was escorted by armed guards to a return flight to Johannesburg. He arrived back in South Africa approximately 40 hours after he had left for the U.S.

33. Professor Habib's exclusion from the U.S. garnered widespread media coverage in South Africa and the U.S. South African radio programs, editorial pages, and op-eds denounced the U.S. government's actions and demanded an explanation. The Associated Press reported that the State Department "acknowledged that it had revoked Habib's visa but declined to say why." Clare Nullis, [South African Anti-Corruption Campaigner Refused Entry at JFK](#), Associated Press, Oct. 24, 2006. A South African newspaper reported that, according to a Department of Homeland Security

spokeswoman in Washington, “her file showed that Habib had been ‘deemed inadmissible,’ but she was unable to say why.” Dianne Hawker, Row Brews as US Kicks Out Top SA Academic, Cape Argus, Oct. 25, 2006. The Washington Post reported that a U.S. Embassy spokesperson “confirmed the incident but said he did not know why Habib had been denied entry.” Craig Timberg, Prominent S. African Denied Entry Into U.S., Washington Post, Oct. 26, 2006. The Embassy spokesperson told the South African press that he was looking into the matter.

34. In the months following his ordeal at JFK, Professor Habib inquired repeatedly with U.S. agencies and U.S. officials, both in Washington and in South Africa, in an effort to learn why his visa had been revoked and how he could rectify any problem. Immediately upon his return to South Africa, Professor Habib sought an explanation for the incident from the U.S. Embassy in Pretoria. Professor Habib also wrote to the Department of Homeland Security requesting any government records relating to him, and explaining his desire to resolve the matter quickly as he had upcoming speaking engagements in the U.S. On January 16, 2007, Professor Habib wrote to the State Department, seeking an explanation for the JFK incident and reiterating his desire to resolve the issue quickly because of his upcoming speaking engagement. All of these efforts were unsuccessful. With the exception of a letter from Cleatus P. Hunt, Acting Director of Field Programs with Customs and Border Protection (“CBP”), stating that a search of Professor Habib’s name in the CBP database “produced no records” responsive to his request, Professor Habib received no substantive response to his inquiries.

35. South African officials and government bodies protested and made inquiries through diplomatic channels. The South African Foreign Affairs Department requested an explanation for Professor Habib’s exclusion from the State Department.

The South African Ambassador to the U.S. also sought information on the matter. South Africa's Human Rights Commission filed a formal complaint with the U.S. Embassy in Pretoria. The HSRC filed a complaint with the U.S. Embassy. Still the U.S. government provided no justification for its exclusion of Professor Habib. The Deputy Foreign Minister Aziz Pahad stated in a media briefing that the situation was "unacceptable" and remarked on the "worrying trend" of increasing numbers of South Africans being turned away at U.S. borders without explanation. Wyndam Hartley, Pahad Concerned by US Expulsions, Business Day, Oct. 27, 2006.

36. Inquiries and protests from U.S.-based organizations were also unavailing, as discussed further below.

37. Three months after the JFK incident, a U.S. consular official contacted Professor Habib's wife to inform her that the State Department was revoking her visa and the visas of Professor Habib's two children. The revocations prevented Professor Habib's eleven year old son, Irfan, who had been invited to participate in the Junior Ambassadors' Program – a program created by President Dwight Eisenhower in 1956 to encourage international understanding and peace – from joining the South African delegation and visiting the U.S.

38. On January 17, 2007, Professor Habib wrote to the State Department to protest the revocation of his family's visas, and to ask whether, and if so why, he and his family were now officially barred from entering the U.S. On February 22, 2007, Maura Harty, Assistant Secretary for Consular Affairs responded by letter. For the first time, Professor Habib was informed that his visa had been "prudentially revoked under section 222(i) of the U.S. Immigration and Nationality Act as a result of information the United States Government received, indicating [he] may not be eligible for the visa." The letter

did not explain the nature of the “information” but it indicated that Professor Habib could apply for another visa. With respect to the revocation of his family’s visas, Ms. Harty stated only that “U.S. immigration statutes provide for a finding of ineligibility in some circumstances for the family members of another individual deemed ineligible for visa issuance.” Ms. Harty was presumably referring to the INA’s security provisions.

39. The exclusion of Professor Habib (and his family) continued to draw strong condemnation in South Africa and the U.S. Aziz Pahad, South African Deputy Minister of Foreign Affairs, called Habib’s exclusion “wrong” and condemned the insinuation that Professor Habib or his family were in any way a national security threat. A number of U.S. organizations sent letters of protest to the responsible U.S. agencies.

40. The revocation of Professor Habib’s visa prevented him from meeting and speaking with scholars, students, government officials, foundation officials, and research colleagues. The revocation of his visa also required Professor Habib to decline numerous invitations to lecture, attend conferences, and meet with scholars in the U.S. But for defendants’ actions, Professor Habib would have accepted some or all of these invitations. The revocation of Professor Habib’s visa also threw into question his ability to fulfill future speaking obligations in the U.S. to which he had already committed.

#### Professor Habib’s May 2007 Visa Application

41. Despite the revocation of his visa, Professor Habib continued to receive invitations to speak in the U.S. On May 9, 2007, Professor Habib contacted the U.S. Consulate in Johannesburg (“the consulate”) in order to schedule an appointment to submit a B visa application, a nonimmigrant visa that would allow him to enter the U.S. to attend, speak at, and participate in various events in the U.S., including the ASA’s August 2007 Annual Meeting in New York City.

42. At the time Professor Habib submitted his visa application, the State Department website indicated that, at the consulate in Johannesburg, the “Typical Wait Time (Calendar Days) for a Nonimmigrant Visa Interview Appointment” was 21 days. It indicated that the “Typical Wait Time (Workdays) for a Nonimmigrant Visa to be Processed” was 2 days. While the website stated and continues to state that these wait times do not include “the time required for additional special clearance or administrative processing,” the website states that “[m]ost special clearances are resolved within 30 days of application.”

43. The consulate scheduled the required interview for May 11, 2007. At the interview, Professor Habib submitted his visa application and was interviewed by Charles Luoma-Overstreet, Senior Consul and Country Consular Coordinator for South Africa. During the course of the interview, Luoma-Overstreet inquired whether Professor Habib had received any explanation from U.S. officials about why he was denied entry in October 2006. Luoma-Overstreet indicated that it had been the Department of Homeland Security, and not the State Department, that had been responsible for the revocation. Luoma-Overstreet inquired about Professor Habib’s brief, but unlawful, detention by the apartheid regime in 1986. Luoma-Overstreet also asked Professor Habib questions about his political views and associations and whether he had any ties to terrorism. Professor Habib denied any involvement with groups engaged in or supportive of terrorism.

44. At the conclusion of Professor Habib’s visa interview, Luoma-Overstreet explained that Professor Habib’s application would be processed in Washington. Luoma-Overstreet presented Professor Habib with a pre-prepared letter, signed by Luoma-Overstreet, which stated that Professor Habib’s application required “administrative processing and additional clearance/review in Washington,” and that

further action in his case was suspended pursuant to 8 U.S.C. § 1201(g), “pending the receipt and review” of information from Washington. The letter also stated that because the “review involves Washington-based offices outside of [the] Consulate,” the Senior Consul was “unable to provide a firm estimate of how long the process [would] take to complete.”

45. From June to August, Professor Habib made numerous efforts to obtain information about the status of his visa application, in part because he wanted to ensure that his application would be processed in time for him to attend the ASA Annual Meeting in August. On July 11, 2007, Professor Habib received a phone call from John Webster, an official at the U.S. Consulate in Johannesburg, who informed Professor Habib that the consulate had called Washington to follow up on his visa application the previous week and that State Department officials in Washington had promised the consulate it would have a final answer on the application by the week of July 16, 2007. When that date passed without action, Professor Habib inquired again; this time, a consular official reported that the State Department officials in Washington would have a response by July 30, 2007. Again, that date passed without action on the visa application. Between July 30, 2007 and August 7, 2007, Professor Habib and his colleague at HSRC, Emelda Manjezi, made frequent status inquiries to consular official John Webster. Each time they were informed that the State Department officials in Washington had not yet rendered a decision, that the application was still active and pending, and that the consulate had no further information.

46. During the same period, plaintiffs’ counsel also made various attempts to obtain information from State Department officials in Washington. In late June 2007, plaintiffs’ counsel contacted David Jones, an Assistant United States Attorney in the

Southern District of New York who represents the State Department in *American Academy of Religion v. Chertoff*, No. 06-588 (S.D.N.Y. filed Jan. 25, 2006), a suit that presents similar issues. Plaintiffs' counsel requested that Mr. Jones either inquire with the State Department as to Professor Habib's application or provide plaintiffs' counsel with the name of the appropriate person to contact at the State Department about the matter. Mr. Jones stated that he would contact the State Department. On July 2, 2007, Mr. Jones wrote to plaintiffs' counsel, and reported that the State Department had "confirmed that Mr. Habib's application [was] pending and active" and that "they [were] aware of the date of the conference." On August 1, 2007, plaintiffs' counsel wrote to Mr. Jones, asking whether he would be willing to pass along another inquiry to the State Department and expressing hope that "this problem will be resolved and that the State Department will act on Professor Habib's visa before the New York conference date." Mr. Jones agreed to convey the message and inquiry to the State Department. On August 3, 2007, Mr. Jones's colleague, Assistant United States Attorney Kristin Vassallo, called plaintiffs' counsel and reported that the State Department was aware of Professor Habib's August conference date and travel plans and that the Department was still processing the visa application.

47. On August 7, 2007, 48 hours before Professor Habib was scheduled to depart to New York, consular officials informed Professor Habib that officials in Washington were still processing his visa application and that it would not be adjudicated before his scheduled departure to the U.S. The next day, Professor Habib informed the ASA that he would be unable to speak at his scheduled panel on August 11, 2007. Professor Habib, who was in Italy at the time, flew back to Johannesburg, instead of to New York as he had planned.



48. Since filing his visa application in May 2007, Professor Habib has received numerous invitations to speak to U.S. audiences throughout the remainder of 2007 and 2008. He has been invited to speak at the ARNOVA's November 2007 Annual Meeting in Indiana, the AAUP's June 2008 Annual Meeting in Washington D.C., the ASA's August 2008 Annual Meeting in Boston, and a public event hosted by the BCPR and the ADC-MA in Boston that same month. He has also received a preliminary, verbal invitation to speak at a March 2008 conference on governance at the Ash Institute for Democratic Governance and Innovation at Harvard University's John F. Kennedy School of Government. Professor Habib informed the U.S. consulate of these upcoming speaking engagements but his visa application continued to languish.

49. On September 25, 2007, after Professor Habib's visa application had been pending without decision for almost five months, plaintiffs commenced this action. Plaintiffs alleged that the government's failure to adjudicate his visa application within a reasonable period of time and his continuing exclusion from the U.S. violated the Administrative Procedures Act and the First Amendment.

50. On October 26, 2007, Professor Habib returned home from an overseas trip to find a message from Luoma-Overstreet, U.S. Senior Consul in Johannesburg. Professor Habib promptly returned the call. Luoma-Overstreet informed Professor Habib that his visa application had been denied. Professor Habib inquired as to the specific basis for the government's determination but Luoma-Overstreet stated that he could not provide any further information and suggested that he did not know the specific basis. Upon Professor Habib's request, Luoma-Overstreet faxed to Professor Habib the visa denial letter. The letter, dated October 26, 2007 and signed by Luoma-Overstreet, stated that the State Department had "concluded an interagency review of the prudential

revocation of [Professor Habib's] nonimmigrant visa" and that the State Department "ha[d] upheld a finding of [his] inadmissibility under section 212(a)(3)(B)(i)(I) of the United States Immigration and Nationality Act." The letter further stated that State Department had considered Professor Habib's eligibility for a waiver of inadmissibility but that the State Department "ha[d] determined that it [would] not recommend a waiver" in his case. As a result, according to the letter, the consulate could take "no further action" on his application.

51. Professor Habib has never engaged in terrorist activities, in any sense of the term. He has been a consistent campaigner for democracy and human rights and he has repeatedly condemned terrorism and terrorist acts. Since 2001, numerous foreign scholars, human rights activists, and writers have been barred from the U.S. without explanation or on unspecified national security grounds under circumstances that suggest the government is excluding these scholars not for legitimate security reasons but rather because the government disfavors their politics. Plaintiffs believe that Professor Habib's exclusion is part of this pattern.

**The Impact of Professor Habib's Exclusion  
On Plaintiffs' and Others' First Amendment Rights**

52. Professor Habib travels frequently to speak to audiences outside South Africa. However, defendants' actions continue to prevent Professor Habib from entering the U.S. to speak to American audiences.

53. Because of defendants' actions, Professor Habib has been excluded from the U.S. since October 2006. Professor Habib continues to receive invitations to speak in the U.S., to U.S. audiences. Defendants' actions have prevented and continue to prevent Professor Habib from attending events in the U.S. that he otherwise would have attended or would attend.

## The American Sociological Association

54. As the national association for sociologists, the ASA provides services to its members, and works to promote the vitality, visibility, and diversity of the discipline. Working at the national and international levels, the ASA aims to articulate policy and implement programs likely to have the broadest possible impact for sociology now and in the future. The ASA furthers its mission through conferences, meetings, publications, and other member services.

55. As the largest single association of sociologists in the world, the ASA strives to engage, to foster dialogue between, and to encourage collaboration with sociologists from all continents. Global exchange of knowledge is vital to the advancement of science. The ASA believes that every field of science, sociology included, is international in scope because science, by its very nature, transcends national and cultural boundaries.

56. The ASA furthers a global dialogue between sociologists in myriad ways. While the ASA is the national association for sociologists in the U.S., the ASA has a significant number of non-U.S. members. In 2008, the ASA will be introducing a new category of membership called *International Associate* membership in order to make the ASA's journals and activities more accessible to sociologists outside the U.S. The ASA represents the U.S. in the International Sociological Association ("ISA"), and a number of the ASA's members hold leadership positions in ISA. The ASA has also successfully sought funding from the U.S. government that has enabled the ASA's U.S.-based members and other sociologists to travel abroad to attend conferences.

57. The ASA also fosters a global dialogue among sociologists at its Annual

Meeting. The ASA's Annual Meeting, held each year in a major U.S. city and once a decade in Canada, is the major sociological meeting each year for American sociologists. Over 6,000 people attend each year, including a substantial number of international scholars. In the past three years, attendees at the meeting have included scholars from throughout Europe, Asia, Africa, the Middle East, and South America. In recent years, the ASA has secured outside funding to bring international scholars to its Annual Meeting from organizations such as the Ford Foundation, the Mellon Foundation, and the Open Society Institute Foundation.

58. The ASA engages a national and international audience through its publication of nine scholarly journals and one research-based general audience magazine.

59. The ASA has historically supported the free exchange of ideas across national, state, cultural and social borders, and has actively protested restrictions on the free movement of scholars and students and barriers to scholarly inquiry and exchange.

60. The ASA and its members frequently invite foreign scholars to lecture, attend conferences, and meet other scholars inside the U.S.

61. Defendants' exclusion of Professor Habib has compromised and continues to compromise the ability of the ASA and its members to meet with Professor Habib, to hear him speak, and to collaborate with him on academic projects. It also entirely deprives them of their ability to invite him to lecture, attend conferences, and meet other scholars inside the U.S.

62. Prior to the revocation of his visa in October 2006, Professor Habib regularly attended and gave presentations at sociology-related events and conferences attended by ASA members throughout the world, including the U.S. Professor Habib

also works on scholarly projects in collaboration with ASA members here in the U.S. and in other countries.

63. In September 2006, one month before his visa was revoked at JFK, the ASA invited Professor Habib to speak at its Annual Meeting scheduled for August 2007. The theme of the meeting was *Is Another World Possible: Sociological Perspectives on Contemporary Politics*. Professor Habib was invited to participate on a panel entitled “Globalization and Resistance,” together with domestic and international scholars. Other slated participants included Carlos Crespos, a Bolivian scholar; Joel Rocamora, a Filipino scholar; Raka Ray, a scholar from the University of California; and Susan Eckstein, a scholar from Boston University. Because Professor Habib is one of South Africa’s most respected social scientists, one of Africa’s leading scholars of democratization and political change, and one of the editors of an important new collection of essays entitled *Voices of Protest: Social Movements in Post-Apartheid South Africa*, the ASA panel organizers believed Professor Habib’s participation was vital to the dialogue. Professor Habib accepted the invitation.

64. After extending its invitation to Professor Habib, the ASA actively protested the defendants’ revocation of Professor Habib’s visa. On February 1, 2007, the ASA sent a letter to Secretary of State Condoleezza Rice expressing its concern that Professor Habib’s exclusion “directly contradicts our nation’s heretofore enviable status as the world’s destination for the free exchange of scholarly ideas,” and its “hope that the Department of State will reconsider its position and facilitate Dr. Habib’s efforts to enter this country in time for his participation in [the ASA’s] August 2007 meeting.” The ASA emphasized that because of the U.S.’s “long and enviable history as the world’s foremost host to scholarship . . . the United States owes it to the world’s peoples, as well as to our

own, to sustain vigorous intellectual exchange, which is the foundation of democratic institutions.”

65. Defendants’ exclusion of Professor Habib, and the uncertainty as to whether defendants would adjudicate his visa in time for the Annual Meeting, created administrative and logistical burdens for the ASA.

66. Defendants’ revocation of Professor Habib’s visa, and their failure to adjudicate his 2007 visa application, prevented Professor Habib from attending the ASA’s Annual Meeting. Because Professor Habib could not deliver his paper himself, and because it was too late for the ASA to secure a replacement speaker, another ASA member and colleague of Professor Habib’s summarized the paper Professor Habib was prepared to present. The paper was entitled “Speaking to Global Debates with a National Lens: South African Social Movements in Comparative Perspective.” Professor Habib’s inability to attend the conference meant that the ASA and its members were denied the opportunity to meet with Professor Habib. They were denied the opportunity to hear him deliver his prepared presentation, to hear him respond to other speakers and to questions from the audience, to talk with Professor Habib in person, and to interact with him throughout the conference. They were also prevented from engaging in the informal networking and exchange of ideas that make its Annual Meeting of unique value to the ASA’s members.

67. Because the ASA continues to believe that it is important for its members to have an opportunity to hear Professor Habib’s ideas and engage him in face-to-face debate and discussion, the ASA has invited Professor Habib to speak at its next Annual Meeting, which will be held in Boston in August 2008. The theme of the 2008 Annual Meeting is “*Worlds of Work*.” Professor Habib has accepted the invitation.

68. Certain ASA members would also like to invite Professor Habib to speak in the U.S. in the future. For example, Dr. Frances Fox Piven, the outgoing ASA President as well as Professor Habib's colleague and former professor, would like to invite him to speak to students in the Political Science Department at the City University of New York's Graduate Center. Gay Seidman, Professor Habib's colleague, would like to invite Professor Habib to deliver a lecture to her students in the African Studies seminar at the University of Wisconsin, Madison.

#### The American Association of University Professors

69. The AAUP has long held the belief that the free circulation of scholars is an integral part of academic freedom and that the unfettered search for knowledge is indispensable for the strengthening of a free and orderly world.

70. Since its founding in 1915, the AAUP has been committed to defending and promoting academic freedom in the U.S. The AAUP believes that academic freedom comprises the liberty to learn as well as to teach. The AAUP articulated this principle in 1967 during its 53rd Annual Meeting when it affirmed, in a "Resolution on Restraints on Visiting Speakers," the belief that "the freedom to hear is an essential condition of a university community and an inseparable part of academic freedom" and that "the right to examine issues and seek truth is prejudiced to the extent that the university is open to some but not to others whom members of the university also judge desirable to hear." In 1976, during its 62nd Annual Meeting, the AAUP passed a "Resolution on the Free Circulation of Scholars" that stated that "[t]he free circulation of scholars to countries other than their own, to participate in symposia and to accept invitations for temporary teaching assignments, is essential to ensure the exposure of faculty and students to the broadest spectrum of academic approaches and viewpoints."

71. In furtherance of its commitment to academic freedom, the AAUP has repeatedly urged reform of U.S. immigration laws in order to facilitate visits to this country by foreign scholars and students. In the 1950s, for example, the AAUP passed resolutions at three Annual Meetings urging the removal of administrative and legislative barriers to admission of foreign scholars and students to this country. During the 1970s and 1980s, the AAUP spoke out repeatedly against provisions of the McCarran-Walter Act that barred the admission of individuals thought to be associated with the Communist party. Those provisions were used to exclude, among others, Nobel Laureate Gabriel Garcia Marquez, Chilean poet and Nobel Laureate Pablo Neruda, as well as Graham Greene, Patricia Lara, Farley Mowat, Carlos Fuentes, and Dario Fo.

72. The AAUP has repeatedly intervened on behalf of foreign scholars who were excluded from the U.S. on the basis of their political beliefs and associations. It has also advocated against restrictions on American scholars' right to travel to foreign countries to lecture, attend conferences, and meet with their academic counterparts.

73. The AAUP and its members frequently invite foreign scholars to lecture, attend conferences, and meet with academics in the U.S.

74. The AAUP has actively protested defendants' exclusion of Professor Habib. In October 2006, after defendants revoked Professor Habib's visa, the AAUP wrote to the Secretaries of State and Homeland Security to "urge that the government facilitate, rather than hinder, Professor Habib's entering the United States" to attend upcoming speaking engagements. Noting that it was far from the first time in recent years that the AAUP was writing to protest the exclusion of a foreign scholar under like circumstances, the letter demanded that the government "remove barriers to the visits of other foreign scholars to this country." In January 2007, the AAUP wrote once again to



protest Professor Habib's exclusion and the revocation of his family's visas, and sought an explanation for and reconsideration of the government's actions. The AAUP noted that the government's actions continued to strike it as "at odds with this nation's historic commitment to the free exchange of ideas," and that "[i]f left uncorrected, they will take their toll on the willingness of those in the academic community abroad to visit with their counterparts in this country and indeed on the reputation of our country as an advocate of the free search for knowledge."

75. The AAUP has invited Professor Habib to deliver a plenary address to the AAUP membership at the AAUP's 93rd annual meeting to be held in June of 2008 in Washington, D.C. Professor Habib accepted the invitation.

76. Defendants' exclusion of Professor Habib compromises the ability of the AAUP and its members to meet with Professor Habib, to hear him speak, and to collaborate with him on academic projects. It also deprives them of their ability to invite him to lecture, attend conferences, and meet other scholars inside the U.S.

#### The American-Arab Anti-Discrimination Committee

77. The ADC is committed to empowering Arab-Americans, defending the civil rights of all people of Arab heritage in the United States, promoting civic participation, encouraging a balanced U.S. foreign policy in the Middle East, and supporting freedom and development in the Arab world.

78. Public education is a vital part of the ADC's mission. To this end the ADC regularly holds public programs, seminars, and conferences, and publishes public education documents concerning, among other things, U.S. Middle East policy. Similarly, the ADC's local chapter in Massachusetts works to promote a more balanced

U.S. Middle East policy, to serve as a reliable source for the news media and educators on that topic, and it hosts public education events to further those goals.

79. The ADC-MA strives to further a public dialogue about how to bring a peaceful resolution to the Israeli-Palestinian conflict and believes that international voices are an important component of that public dialogue.

80. The ADC has historically promoted an open academic discourse about the Arab and Muslim worlds and has protested the exclusion of Arab and Muslim scholars invited to speak or teach in the U.S. For example, in 2004, the ADC led a campaign against the government's exclusion of Professor Tariq Ramadan, a widely respected scholar of Islam who was prevented from accepting a teaching post at the University of Notre Dame as a result of the State Department's revocation of his visa, and who remains excluded from the U.S. today.

81. The ADC and its members frequently invite foreign scholars to lecture, attend conferences, and meet other scholars inside the U.S. The ADC-MA invites foreign scholars to speak at its events when those scholars already will be in the Boston area.

82. The ADC-MA has invited Professor Habib to speak at a public event co-sponsored by the BCPR and the ADC-MA, aimed at examining the parallels and distinctions between the response to the apartheid regime in South Africa and the Palestinian response to the Israeli-Palestinian conflict. The event is scheduled to take place in Boston in August 2008. The purpose of the event is to debate how, and whether, those parallels can or should be drawn, and how lessons from the anti-apartheid movement might apply to a non-violent resolution of the Israeli-Palestinian conflict. The ADC-MA invited Professor Habib to speak on this topic because it believes his expertise on the anti-apartheid struggle will provide an important comparative perspective and help

inform the community of ways to bring the Israeli-Palestinian conflict to an end without resort to violence.

83. Defendants' exclusion of Professor Habib compromises the ability of the ADC and its members to meet with Professor Habib, and to hear him speak. It also deprives them of their ability to invite him to speak, attend conferences, engage with other scholars, and interact with the U.S. public.

#### The Boston Coalition for Palestinian Rights

84. The BCPR was founded by people in the Boston area of diverse ethnicities, religious faiths, and professional backgrounds to educate the public about the Israeli-Palestinian conflict. The BCPR believes that people in the U.S. should be better informed about the realities of the Israeli-Palestinian conflict. To this end, the BCPR hosts public events, teach-ins, and rallies on the subject. The BCPR also works to impact media coverage of the conflict and effect policy changes consistent with human rights norms. The BCPR strives to stimulate public conversation about how to bring the Israeli-Palestinian conflict to a peaceful solution.

85. The BCPR believes that international voices are vital to the debate about how to find a peaceful solution to the Israeli-Palestinian conflict. The BCPR believes that U.S. audiences suffer when foreign voices are shut out of important debates, particularly debates about international and foreign policy matters, because they are deprived of the opportunity for engagement with the international community and cut off from different cultures and beliefs.

86. The BCPR regularly organizes public events and conferences, by itself or in conjunction with other organizations, at which foreign scholars are invited to speak and meet with local audiences; often the events will consist of speakers from a number of

different countries. For example, the BCPR participated in a recent conference that featured Archbishop Emeritus Desmond Tutu from South Africa, a professor from Israel, and a professor from the Netherlands. The BCPR typically invites foreign scholars to speak at its events when it knows a particular scholar already will be visiting the U.S.

87. As discussed above, the BCPR has invited Professor Habib to speak at a public event co-sponsored by the BCPR and the ADC-MA scheduled to take place in Boston in August 2008 that will examine the anti-apartheid movement in South Africa and the Israeli-Palestinian conflict. The BCPR invited Professor Habib to speak on this topic because he is an internationally-recognized scholar of social movements and can draw on his personal experiences in the anti-apartheid movement.

88. Defendants' exclusion of Professor Habib compromises the ability of the BCPR and its members to meet with Professor Habib and to hear him speak. It also deprives them of their ability to invite him to speak, attend conferences, engage with other scholars, and interact with the U.S. public.

### **CAUSES OF ACTION**

89. Defendants' denial of a visa and a waiver of inadmissibility to Professor Habib violate the Administrative Procedures Act because defendants' actions are contrary to U.S. plaintiffs' constitutional rights, in excess of statutory limitation or authority, and arbitrary and capricious.

90. Defendants' denial of a visa and a waiver of inadmissibility to Professor Habib violate the First Amendment.

### **PRAYER FOR RELIEF**

For the foregoing reasons, plaintiffs pray that the Court:

91. Declare that defendants' denial of a visa and a waiver of inadmissibility to

Professor Habib violate the First Amendment and the Administrative Procedures Act;

92. Enjoin defendants from relying on 8 U.S.C. § 1182(a)(3)(B)(i)(I) to exclude Professor Habib;

93. Enjoin defendants from denying a visa to Professor Habib on the basis of speech that U.S. residents have a constitutional right to hear;

94. Award plaintiffs fees and costs pursuant to 28 U.S.C. § 2412; and

95. Grant any other and further relief as is appropriate and necessary.

Respectfully submitted,

/s/ Melissa Goodman

MELISSA GOODMAN (Admitted *Pro Hac Vice*)  
JAMEEL JAFFER (Admitted *Pro Hac Vice*)  
NASRINA BARGZIE (Admitted *Pro Hac Vice*)  
American Civil Liberties Union Foundation  
125 Broad Street, 18th Floor  
New York, NY 10004-2400  
(212) 549-2500

JUDY RABINOVITZ (Admitted *Pro Hac Vice*)  
American Civil Liberties Union Foundation  
Immigrants' Rights Project  
125 Broad Street, 18th Floor  
New York, NY 10004-2400  
(212) 549-2618

SARAH R. WUNSCH (BBO # 548767)  
JOHN REINSTEIN (BBO # 416120)  
ACLU of Massachusetts  
211 Congress Street, 3rd Floor  
Boston, MA 02110  
(617) 482-3170

Attorneys for Plaintiffs

December 3, 2007