

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

AMERICAN SOCIOLOGICAL ASSOCIATION;
AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS; AMERICAN-ARAB
ANTIDISCRIMINATION 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; CONDOLEEZZA RICE, in her official
capacity as Secretary of State,

Defendants.

Case No. 07-11796 (GAO)

**DEFENDANTS' RESPONSE
TO PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS**

I. Professor Habib is a prominent South African scholar and political commentator.

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph I. Defendants further assert that Mr. Habib's alleged prominence is immaterial and irrelevant to this case.

A. Professor Habib is a South African citizen who currently resides there.

Not disputed.

B. Professor Habib is currently a Deputy Vice Chancellor at the University of Johannesburg.

Not disputed, although Defendants assert that Mr. Habib's current Deputy Vice Chancellor position is immaterial and irrelevant to this case.

C. Professor Habib has held high-level positions in prestigious academic institutions, as well as non-profit and quasi-governmental organizations.

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph I.C. Defendants further assert that Mr. Habib's former work positions are immaterial and irrelevant to this case.

D. Professor Habib's research and scholarship focuses on democracy, governance, race and identity, public policy and social movements.

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph I.D. Defendants further assert that Mr. Habib's prior research and scholarship are immaterial and irrelevant to this case.

E. Professor Habib is an authoritative voice on South African policy matters.

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph I.E. Defendants further assert that whether Mr. Habib has an "authoritative voice on South African policy matters" is immaterial and irrelevant to this case.

F. Professor Habib has worked closely with government officials and institutions to study and solve policy problems.

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph I.F. Defendants further assert that whether Mr. Habib has "worked closely with government officials and institutions to study and solve policy problems" is immaterial and irrelevant to this case.

II. Prior to October 2006, Professor Habib obtained U.S. visas and traveled to the U.S.

The fact is not disputed; however, Defendants assert that Mr. Habib's prior receipt of visas and travel to the United States are immaterial and irrelevant to this case in which Plaintiffs only challenge a Consular Officer's denial of a visa in October 2007 on grounds that Mr. Habib engaged in terrorist activity, and the State Department's decision not to recommend a waiver of this inadmissibility.

A. Professor Habib has obtained U.S. visas in the past.

The fact is not disputed; however, Defendants assert that Mr. Habib's prior receipt of visas and travel to the United States is immaterial and irrelevant to this case in which Plaintiffs only challenge a Consular Officer's denial of a visa in October

2007 on grounds that Mr. Habib engaged in terrorist activity, and the State Department's decision not to recommend a waiver of this inadmissibility.

B. Professor Habib obtained a PhD from the City University of New York and lived in the U.S. for approximately three years.

The fact is not disputed; however, Defendants assert the fact is immaterial and irrelevant.

C. Professor Habib frequently travels outside of South Africa to speak with scholars, researchers, and government officials.

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph II.C. Defendants further assert that the fact is immaterial and irrelevant.

D. Prior to October 2006, Professor Habib traveled to the U.S. to give speeches and to attend meetings and conferences.

The fact is not disputed; however, Defendants assert that Mr. Habib's prior receipt of visas and travel to the United States is immaterial and irrelevant to this case in which Plaintiffs only challenge a Consular Officer's denial of a visa in October 2007 on grounds that Mr. Habib engaged in terrorist activity, and the State Department's decision not to recommend a waiver of this inadmissibility.

E. Professor Habib collaborates with U.S. scholars, officials, and institutions.

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph II.E. Defendants further assert that the fact is immaterial and irrelevant.

F. Professor Habib's ability to travel to the U.S. to collaborate with scholars and researchers is vital to his professional endeavors.

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph II.F. Defendants further assert that the fact is immaterial and irrelevant.

III. The government has excluded Professor Habib from the U.S. since October 2006.

Not disputed.

A. In October 2006, defendants revoked Professor Habib's 10-year, multiple entry visa, without explanation.

The fact is not disputed; however, Defendants assert that Mr. Habib's prior revocation of a visa is immaterial and irrelevant to this case in which Plaintiffs only challenge a Consular Officer's denial of a visa in October 2007 on grounds that Mr. Habib engaged in terrorist activity, and the State Department's decision not to recommend a waiver of this inadmissibility.

B. Officials in Washington were responsible for the revocation of his visa.

The fact is not disputed; however, Defendants assert their Mr. Habib's prior revocation of a visa is immaterial and irrelevant to this case in which Plaintiffs only challenge a Consular Officer's denial of a visa in October 2007 on grounds that Mr. Habib engaged in terrorist activity, and the State Department's decision not to recommend a waiver of this inadmissibility.

C. Defendants revoked the visas of Professor Habib's wife and two sons.

The fact is not disputed; however, Defendants assert that its actions with respect to Mr. Habib's wife and two sons are immaterial and irrelevant to this case in which Plaintiffs only challenge a Consular Officer's denial of Mr. Habib's visa in October 2007 on grounds that Mr. Habib engaged in terrorist activity, and the State Department's decision not to recommend a waiver of this inadmissibility.

D. Although numerous officials, organizations, scholars, members of the press, both American and South African, and Professor Habib himself sought an explanation for the visa revocation, the only explanation the U.S. government provided was that the visa had been prudentially revoked.

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph III.D. with respect to anyone other than Mr. Habib, who, the Defendants know to have sought an explanation for his visa revocation. Defendants further assert that Mr. Habib's prior revocation of a visa – and whether or not the United States Government provided a reason therefor – is immaterial and irrelevant to this case in which Plaintiffs only challenge a Consular Officer's denial of a visa in October 2007 on grounds that Mr. Habib engaged in terrorist activity, and the State Department's decision not to recommend a waiver of this inadmissibility.

- E. Despite the revocation of his visa, Professor Habib continued to receive invitations to speak in the U.S.**

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph III.E.

- F. On May 11, 2007, Professor Habib applied for a B visa which would have allowed him to enter the U.S. for speaking engagements, including events hosted by plaintiffs.**

It is not disputed that Mr. Habib applied for a B visa. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph III.F.

- G. Professor Habib had a visa interview at the U.S. Embassy in Johannesburg on May 11, 2007.**

Not disputed.

- H. After the interview, Professor Habib was presented with a letter that informed him that his application required further processing by officials in Washington, and that the consulate could not act on the application until it received direction from Washington.**

Disputed. Paragraph III.H. constitutes Plaintiffs' characterization of a letter from Consular Officer Luoma-Overstreet to Mr. Habib, and Defendants do not concur with Plaintiffs' characterization.

- I. In response to his inquiries about the status of his pending visa application, Professor Habib repeatedly was informed that officials in Washington, rather than consular officials, were processing his application and making the visa determination.**

Disputed. Also, what Mr. Habib recalls as to what he was "repeatedly . . . informed" about the status of his visa application is irrelevant and immaterial.

- J. The government failed to adjudicate Professor Habib's visa application in time for him to fulfill a speaking engagement at an event hosted by plaintiff ASA.**

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph III.J. Defendants also dispute Plaintiffs' accusation that the Government "failed" to adjudicate Mr. Habib's

application in any given time when the Government did not fail to meet any deadline relevant to the visa adjudication process. Defendants further assert that this fact is also irrelevant and immaterial to a case challenging the denial of a visa and the denial of a recommendation to waive inadmissibility.

- K. In October 2007, the government denied Professor Habib's visa application on the grounds that he was inadmissible under Section 212(a)(3)(B)(i)(I) of the Immigration and Nationality Act, which bars from entry those who have engaged in terrorist activity.**

Not disputed.

- L. The government also denied Professor Habib a waiver of inadmissibility.**

Not disputed that Defendant State Department declined to recommend to the Department of Homeland Security that Mr. Habib's inadmissibility be waived and that his inadmissibility was not waived as a result of the State Department's refusal to recommend such waiver.

- M. The government has not provided any basis or explanation for its inadmissibility determination or its waiver denial.**

Disputed. The Government provided a letter to Mr. Habib providing the applicant with the statutory basis for his inadmissibility determination.

- N. The visa denial and waiver denial determinations were made by officials in Washington.**

Disputed as to the denial; undisputed as to the waiver. Defendants further assert that the location of officials who may have played a part in these actions is irrelevant and immaterial to this lawsuit.

- IV. The government's exclusion of Professor Habib has prevented U.S. audiences, including plaintiffs and their members, from engaging Professor Habib in face-to-face discussion and debate.**

Disputed. Mr. Habib can engage in discussion and debate from outside the United States using modern videoconferencing technology or satellite hook-up.

- A. The revocation of Professor Habib's visa forced Professor Habib to cancel speaking engagements in the U.S., including an engagement with plaintiff ASA.**

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph IV.A. Defendants further assert that Mr. Habib can engage in discussion and debate from outside the United States using modern videoconferencing technology or satellite hook-up.

- B. Fostering a global exchange of ideas is important to plaintiffs.**

Not disputed, but irrelevant and immaterial to this lawsuit about the denial of a visa and denial of a recommendation for a waiver of inadmissibility.

- C. Plaintiffs have invited Professor Habib to speak at events they are hosting in June and August.**

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph IV.C.

- D. The visa and waiver denials prevent Professor Habib from attending upcoming speaking engagements in the U.S. and from accepting invitations for speaking engagements in the U.S., including events hosted by plaintiffs.**

Disputed. Mr. Habib can engage in discussion and debate from outside the United States with Plaintiffs inside the United States using modern videoconferencing technology or satellite hook-up.

- E. The government's denial of a visa and waiver of inadmissibility to Professor Habib has prevented and continues to prevent plaintiffs, their members, and the U.S. public from engaging Professor Habib in face-to-face discussion and debate.**

Disputed.

- F. The government's exclusion of Professor Habib has caused and will cause plaintiffs administrative and economic harms.**

Disputed.

- V. Professor Habib has not engaged in or supported terrorism.**

Disputed.

A. Professor Habib has condemned terrorism publicly and privately.

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph V.A. Plaintiffs' characterization of Mr. Habib's condemnations is also immaterial and irrelevant to this case.

B. Professor Habib is a proponent of peaceful advocacy for social justice.

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph V.B. Plaintiffs' characterization of Mr. Habib's issues for which he is a proponent is also immaterial and irrelevant to this case.

C. Terrorism is inconsistent with Professor Habib's scholarship and the model of social change for which he advocates.

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph V.C. Plaintiffs' characterization of Mr. Habib's scholarship and consistency with terrorism is also immaterial and irrelevant to this case.

D. Professor Habib frequently works with governments, international bodies, institutions, and scholars, including U.S. institutions and scholars, to solve policy problems through peaceful means.

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph V.D. Plaintiffs' characterization of Mr. Habib's efforts in solving "policy problems through peaceful means" is also immaterial and irrelevant to this case.

E. Professor Habib has never engaged in terrorism or supported terrorism or a terrorist organization.

Disputed.

F. South African officials have questioned the U.S. government's claim that Professor Habib has ties to terrorism.

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph V.F. Defendants further assert that whether or not "South African officials have questioned the U.S. Government's claim" is immaterial and irrelevant to this case.

- G. Professor Habib is a vocal critic of certain U.S. terrorism policies and the war in Iraq, and generally has urged governments to respond to the threat of terrorism in a manner consistent with human rights norms and the rule of law.**

Disputed. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph V.G. Defendants further assert that Plaintiffs' characterization of Mr. Habib's vocal criticism is also immaterial and irrelevant to this case.

- VI. The government is excluding non-citizens from the country without explanation and under circumstances that appear ideologically motivated.**

Disputed.

- A. Since 2001, numerous foreign scholars, writers, and activists have found themselves suddenly barred from the United States.**

Disputed.

- B. Many have been excluded on vague or unspecified national security grounds, under circumstances that appear ideologically-motivated.**

Disputed.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANTS'**
RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS was served via
the Court's ECF Filing System on this 20th day of March 2008 to the following counsel:

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