

**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,

Plaintiffs,

v.

CONDOLEEZZA RICE, in her official capacity as
Secretary of State,

Defendant.¹

Case No. 07-11796 (GAO)

ANSWER TO SECOND AMENDED COMPLAINT

Defendant hereby submits its Answer to Plaintiffs' Second Amended Complaint (SAC) for Declaratory and Injunctive Relief.

1. Paragraph One consists of Plaintiffs' portrayal of the action to which no responsive pleading is required.

2. Defendant admits the allegations in Paragraph Two that Adam Habib is a national of South Africa and that he has previously traveled to the United States. Defendant admits that in October 2006 he was denied entry to the United States by the Department of Homeland Security (DHS) and U.S. Customs and Border Protection (CBP) at John F. Kennedy Airport (JFK).

Defendant denies that DHS/CBP revoked Mr. Habib's visa and avers that the State Department revoked Mr. Habib's visa. Defendant lacks sufficient information and knowledge to admit or

¹ Pursuant to the Court's December 8, 2008, Order, Michael S. Chertoff was dismissed as a Defendant, leaving Secretary Rice as the only Defendant in this case.

deny whether Mr. Habib lived in the United States. Defendant denies all other allegations in Paragraph Two.

3. Defendant avers that Mr. Habib was found inadmissible to the United States by a Consular Officer adjudicating the visa application that Mr. Habib filed on May 11, 2007, and that Plaintiffs filed this lawsuit in September 2007. Defendant denies all other allegations in Paragraph Three.

4. Defendant admits that on October 26, 2007, a Consular Officer denied Mr. Habib's visa application on the ground that he "engaged in a terrorist activity" pursuant to 8 U.S.C. § 1182(a)(3)(B)(i)(I). Defendant admits that it did not inform Mr. Habib of the factual basis for the determination. Defendant admits that "engage in terrorist activity" is defined pursuant to 8 U.S.C. § 1182(a)(3)(B)(iv) to encompass many different types of activity. Defendant admits that it denied Mr. Habib a waiver of inadmissibility without explanation. Defendant denies the allegation that it did not indicate the specific statutory provision upon which it was relying and avers that it identified 8 U.S.C. § 1182(a)(3)(B)(i)(I) as the basis for finding Mr. Habib inadmissible. Defendant denies any remaining allegations in Paragraph Four.

5. Defendant denies that the government's exclusion of Mr. Habib on the ground that he has engaged in terrorist activity is baseless. The remainder of Paragraph Five sets forth Plaintiffs' portrayal of the action, including legal conclusions, to which no responsive pleading is required. To the extent that a response is deemed necessary, Defendant denies Plaintiffs' allegations.

6. Defendant admits that the government's determination that Mr. Habib is inadmissible prevents Mr. Habib from coming to the United States for any purpose, absent a waiver,

exemption from inadmissibility, or other change in circumstances. Defendant denies the remaining allegations in sentence one. Sentences two and three consist of statements of the relief Plaintiffs seek, to which no responsive pleading is required. To the extent that a response is deemed necessary, Defendant denies the allegations.

JURISDICTION AND VENUE

7. Paragraph Seven sets forth conclusions of law to which no response is required. To the extent that a response is deemed necessary, Defendant denies the allegations of Paragraph Seven.

8. Paragraph Eight sets forth conclusions of law to which no response is required. To the extent that a response is deemed necessary, Defendant denies the allegations of Paragraph Eight.

PLAINTIFFS

9. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Nine and therefore denies the allegations.

10. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Ten and therefore denies the allegations.

11. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Eleven and therefore denies the allegations.

12. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Twelve and therefore denies the allegations.

13. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Thirteen and therefore denies the allegations. Defendant notes that Mr.

Habib has been dismissed as a party to this action.

DEFENDANT

14. Defendant admits that Condoleezza Rice is Secretary of State and that she is sued in her official capacity. Defendant avers that the Secretary of State did not exercise her authority to deny any visa relevant to this case and further avers that a Consular Officer denied Mr. Habib's visa. The remaining allegations in Paragraph Fourteen set forth conclusions of law to which no response is required. To the extent that a response is deemed necessary, Defendant denies the allegations.

15. Defendant notes that Department of Homeland Security Secretary Michael Chertoff has been dismissed as a party to this action. Thus, Defendant denies that Mr. Chertoff is a Defendant in this action.

STATUTORY AND REGULATORY FRAMEWORK

16. Paragraph Sixteen sets forth conclusions of law to which no response is required.

17. Paragraph Seventeen sets forth conclusions of law to which no response is required.

18. Defendant avers that, absent some exception, aliens generally must apply for visas at a United States Consulate abroad and that, in accordance with State Department regulations, where a Consular Officer has reasonable grounds for believing an alien is inadmissible under the terrorism-related provisions of the Immigration and Nationality Act (INA), the Consular Officer must request a Security Advisory Opinion from the State Department. Defendant denies the remaining allegations, except that it refers the Court to the referenced provision of the Foreign Affairs Manual, which is publicly available, for an accurate statement of its contents.

19. Defendant admits the allegations in Paragraph Nineteen.

20. Paragraph Twenty sets forth conclusions of law to which no response is required. To the extent that a response is deemed necessary, Defendant denies the allegations.

FACTUAL BACKGROUND

The Exclusion of Adam Habib

21. Defendant admits the allegation in sentence two of Paragraph Twenty-One. Defendant lacks sufficient information and knowledge to admit or deny the allegations in sentences one and three of Paragraph Twenty-One and therefore denies the allegations.

22. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Twenty-Two and therefore denies the allegations.

23. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Twenty-Three and therefore denies the allegations.

24. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Twenty-Four and therefore denies the allegations.

25. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Twenty-Five and therefore denies the allegations.

26. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Twenty-Six and therefore denies the allegations.

27. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Twenty-Seven and therefore denies the allegations.

The October Revocation of Mr. Habib's 10-Year Multiple Entry B Visa

28. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Twenty-Eight and therefore denies the allegations.

29. Defendant admits that Mr. Habib has previously visited the United States but lacks sufficient information and knowledge to admit or deny the remaining allegations of Paragraph Twenty-Nine and therefore denies the allegations.

30. Defendant admits that on October 21, 2006, Mr. Habib arrived at JFK airport in New York with his wife. Defendant lacks sufficient information and knowledge to admit or deny the remaining allegations of Paragraph Thirty and therefore denies the allegations.

31. Defendant admits that, upon arrival at JFK airport on October 21, 2006, Mr. Habib was detained and questioned about issues relevant to determining admissibility under INA § 212(a)(3)(B) and was denied entry into the United States. Defendant neither admits nor denies allegations about the visa status of Mr. Habib's spouse or children, averring that such information is confidential in accordance with INA § 222(f) and, furthermore, has no relevance to this proceeding. Defendant lacks sufficient information and knowledge to admit or deny the remaining allegations of Paragraph Thirty-One and therefore denies the allegations.

32. Defendant admits that Mr. Habib's visa was revoked by the State Department and that he was so informed. Defendant also admits that Mr. Habib withdrew his application for admission and boarded a flight returning to South Africa. Defendant lacks sufficient information and knowledge to admit or deny the remaining allegations of Paragraph Thirty-Two and therefore denies the allegations.

33. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Thirty-Three and therefore denies the allegations.

34. Defendant admits that on January 16, 2007, Mr. Habib wrote a letter to the State Department and that Mr. Habib has not been issued a United States visa. Defendant denies that

Mr. Habib was not given a substantive response to his inquiries, averring that he was informed that his visa application was denied because he was found inadmissible under INA § 212(a)(3)(B)(i)(I) and that the content of the referenced letter speaks for itself. Defendant lacks sufficient information and knowledge to admit or deny the remaining allegations in Paragraph Thirty-Four and therefore denies the allegations.

35. Defendant admits that it received certain communications from the Government of South Africa or its representatives relative to the visa application of Mr. Habib and admits that Defendant has not provided to any South African official the factual basis for the United States government decision, but denies that it "provided no justification" for its action. Defendant lacks sufficient information and knowledge to admit or deny the remaining allegations in Paragraph Thirty-Five and therefore denies the allegations.

36. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Thirty-Six and therefore denies the allegations.

37. Defendant neither admits nor denies allegations about the visa status of Mr. Habib's spouse or children, averring that such information is confidential in accordance with INA § 222(f) and, furthermore, has no relevance to this proceeding. Defendant lacks sufficient information and knowledge to admit or deny the remaining allegations in Paragraph Thirty-Seven and therefore denies the allegations.

38. Defendant admits that on January 17, 2007, Mr. Habib wrote to the State Department to protest the revocations of his family's visas and to ask whether and, if so, why he and his family were now officially barred from entering the United States. Defendant also admits that on February 22, 2007, Maura Harty, Assistant Secretary for Consular Affairs, responded by letter.

Defendant denies that the February 22, 2007, letter constituted the first time Mr. Habib was informed that his visa had been revoked, but Defendant lacks sufficient information and knowledge to admit or deny the remaining allegations in sentence three of Paragraph Thirty-Eight and therefore denies the allegations. The remainder of Paragraph Thirty-Eight consists of Plaintiffs' characterization of correspondence and, to the extent that a response is deemed necessary, Defendant avers that the referenced letter speaks for itself and denies the remaining allegations.

39. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Thirty-Nine and therefore denies the allegations.

40. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Forty and therefore denies the allegations.

41. Defendant admits that in May 2007, Mr. Habib contacted the United States Consulate in Johannesburg, South Africa, to schedule an appointment relative to an application for a B visa. Defendant lacks sufficient information and knowledge to admit or deny the remaining allegations in Paragraph Forty-One and therefore denies the allegations.

42. Defendant admits that the Consulate typically posts on its website information concerning wait times for processing of nonimmigrant visas, which may include estimates of the average time required for special clearances. Defendant lacks sufficient information and knowledge to admit or deny the remaining allegations in Paragraph Forty-Two and therefore denies the allegations.

43. Defendant admits that Mr. Habib was scheduled for his visa interview on May 11, 2007, and that he was interviewed on that date by Consular Officer Charles Luoma-Overstreet.

Defendant further admits that the Consular Officer asked Mr. Habib questions relevant to a determination of admissibility under the INA, including INA § 212(a)(3)(B). Defendant neither admits nor denies the remaining allegations, which relate to the specific content of the interview, as such information is confidential under INA § 222(f).

44. Defendant admits that Consular Officer Charles Luoma-Overstreet presented Mr. Habib with a letter he signed as Senior Consul and Country Consular Coordinator for South Africa. The remainder of Paragraph Forty-Four consists of Plaintiffs' characterization of correspondence and, to the extent that a response is deemed necessary, Defendant avers that the referenced letter speaks for itself. Defendant further avers that Mr. Habib's visa application led to a request for a Security Advisory Opinion considered by relevant United States government agencies in Washington. Defendant lacks sufficient information and knowledge to admit or deny the remaining allegations in Paragraph Forty-Four and therefore denies the allegations.

45. Defendant admits that Mr. Habib made inquiries before and after July 16, 2007, regarding the status of his visa application. Defendant admits that the Consulate remained in contact with Mr. Habib regarding the status of his visa application. Defendant denies that John Webster told Mr. Habib that State Department officials in Washington had promised the Consulate it would have a final answer regarding Mr. Habib's visa application by the week of July 16, 2007, or that the State Department ever gave Mr. Habib a date certain regarding a final decision on his application. Defendant lacks sufficient information and knowledge to admit or deny the remaining allegations in Paragraph Forty-Five and therefore denies the allegations.

46. Defendant admits that Mr. Habib's counsel made inquiries to State Department officials in Washington relative to Mr. Habib's visa application and admits the allegations

regarding contacts between Plaintiffs' counsel and Assistant United States Attorneys in the Southern District of New York. Defendant lacks sufficient information and knowledge to admit or deny the remaining allegations in Paragraph Forty-Six and therefore denies the allegations.

47. Defendant admits that on August 7, 2007, consular officials informed Mr. Habib that his visa application would not be adjudicated before Mr. Habib's scheduled departure to the United States. Defendant lacks sufficient information and knowledge to admit or deny the remaining allegations in Paragraph Forty-Seven and therefore denies the allegations.

48. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Forty-Eight and therefore denies the allegations.

49. Defendant admits the allegations in the first sentence of Paragraph Forty-Nine. The remainder of Paragraph Forty-Nine consists of Plaintiffs' characterization of the SAC and, to the extent that a response is deemed necessary, Defendant avers that the SAC speaks for itself and denies the remaining allegations.

50. Defendant admits that a Consular Officer denied Mr. Habib's visa by letter signed by Mr. Luoma-Overstreet dated October 26, 2007. Defendant also admits that the visa denial letter stated that the State Department had "concluded an interagency review of the prudential revocation of [Mr. 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." Defendant also admits that the letter stated that the State Department had considered Mr. 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 and could take "no further action" on his application. Defendant lacks sufficient information and knowledge to admit or

deny the remaining allegations in Paragraph Fifty and therefore denies the allegations.

51. Defendant lacks sufficient information and knowledge to admit or deny the allegations in the first, second, and fourth sentences of Paragraph Fifty-One and therefore denies the allegations. Defendant denies the allegation in the third sentence of Paragraph Fifty-One.

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

52. Defendant admits that Mr. Habib was found inadmissible and, absent a waiver, exemption from inadmissibility, or other change in circumstances, he is unable to obtain a United States visa or enter the United States. Defendant denies that its actions, rather than United States law, are the reason for this restriction. Defendant lacks sufficient information and knowledge to admit or deny the remaining allegations in Paragraph Fifty-Two and therefore denies the allegations.

53. Defendant admits that since October 2006 Mr. Habib has been unable to obtain a United States visa or enter the United States. Defendant denies that its actions, rather than United States law, are the reason for this restriction. Defendant lacks sufficient information and knowledge to admit or deny the remaining allegations in Paragraph Fifty-Three and therefore denies the allegations.

The American Sociological Association

54. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Fifty-Four and therefore denies the allegations.

55. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Fifty-Five and therefore denies the allegations.

56. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Fifty-Six and therefore denies the allegations.

57. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Fifty-Seven and therefore denies the allegations.

58. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Fifty-Eight and therefore denies the allegations.

59. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Fifty-Nine and therefore denies the allegations.

60. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Sixty and therefore denies the allegations.

61. Defendant admits that Mr. Habib was found inadmissible and, absent a waiver, exemption from inadmissibility, or other change in circumstances, he is unable to obtain a United States visa or enter the United States. Defendant further admits that, due to Mr. Habib's inadmissibility, the ability of the American Sociological Association (ASA) and its members to bring Mr. Habib to the United States to lecture, to attend conferences, and to meet other scholars inside the United States is compromised only to the extent that Mr. Habib's inadmissibility precludes him from coming to the United States for such lectures, conference attendance, and meetings with other scholars. Defendant avers that such lectures, conferences, and meetings could occur through the use of alternative communications methods such as videoconferencing or could occur outside the United States. Defendant lacks sufficient information and knowledge to admit or deny any remaining allegations in Paragraph Sixty-One and therefore denies the allegations.

62. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Sixty-Two and therefore denies the allegations.

63. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Sixty-Three and therefore denies the allegations.

64. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Sixty-Four. To the extent that such a letter exists, Defendant avers that the letter speaks for itself.

65. Defendant denies that its enforcement of the INA with respect to Mr. Habib, and the uncertainty as to whether Defendant would adjudicate his visa in time for the ASA Annual Meeting, created administrative and logistical burdens for the ASA. Defendant denies any remaining allegations of Paragraph Sixty-Five.

66. Defendant admits that it revoked Mr. Habib's visa and did not complete adjudication of his May 2007 visa application until October 2007. It denies any failure to comply with any applicable laws or regulations and denies that Mr. Habib's inability to attend the conference meant that the ASA and its members were denied the opportunity to meet with Mr. Habib. Defendant further denies that ASA and its members were denied the opportunity to hear Mr. Habib deliver his prepared presentation, to hear him respond to other speakers and to questions from the audience, to talk with Mr. Habib, and to interact with him throughout the conference. Defendant also denies that ASA and its members were prevented from engaging in the informal networking and exchange of ideas that make its Annual Meeting of unique value to the ASA's members. Defendant lacks sufficient information and knowledge to admit or deny the remaining allegations in Paragraph Sixty-Six and therefore denies the allegations.

67. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Sixty-Seven and therefore denies the allegations.

68. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Sixty-Eight and therefore denies the allegations.

The American Association of University Professors

69. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Sixty-Nine and therefore denies the allegations.

70. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Seventy and therefore denies the allegations.

71. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Seventy-One and therefore denies the allegations.

72. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Seventy-Two and therefore denies the allegations.

73. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Seventy-Three and therefore denies the allegations.

74. Paragraph Seventy-Four consists of Plaintiffs' characterization of correspondence and, to the extent that a response is deemed necessary, Defendant avers that the referenced letters speak for themselves and denies any remaining allegations.

75. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Seventy-Five and therefore denies the allegations.

76. Defendant admits that Mr. Habib was found inadmissible and, absent a waiver, exemption from inadmissibility, or other change in circumstances, he is unable to obtain a United

States visa or enter the United States. Defendant further admits that, due to Mr. Habib's inadmissibility, the ability of the American Association of University Professors (AAUP) and its members to bring Mr. Habib to the United States to meet him; to hear him speak; to collaborate with him on academic projects; and to invite him to lecture, attend conferences, and to meet other scholars inside the United States is compromised only to the extent that Mr. Habib's inadmissibility precludes him from coming to the United States for such meetings, speeches, collaborations, invitations, conferences, and meetings with other scholars inside the United States. Defendant avers that such meetings, speeches, collaborations, invitations, conferences, and meetings with other scholars could occur through the use of alternative communications methods such as videoconferencing or could occur outside the United States. Defendant lacks sufficient information and knowledge to admit or deny any remaining allegations in Paragraph Seventy-Six and therefore denies the allegations.

The American-Arab Anti-Discrimination Committee

77. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Seventy-Seven and therefore denies the allegations.

78. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Seventy-Eight and therefore denies the allegations.

79. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Seventy-Nine and therefore denies the allegations.

80. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Eighty and therefore denies the allegations.

81. Defendant lacks sufficient information and knowledge to admit or deny the

allegations in Paragraph Eighty-One and therefore denies the allegations.

82. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Eighty-Two and therefore denies the allegations.

83. Defendant admits that, due to Mr. Habib's inadmissibility, the ability of the American-Arab Anti-Discrimination Committee (ADC) and its members to meet with Mr. Habib and to hear him speak is compromised only to the extent that Mr. Habib's inadmissibility precludes him from coming to the United States for such meetings and speeches. Defendant denies that Mr. Habib's inadmissibility deprives the ADC and its members of the ability to invite Mr. Habib to speak, attend conferences, engage with other scholars, and interact with the United States public. Defendant avers that such speeches, conferences, engagement, and interaction could occur through the use of alternative communications methods such as videoconferencing or could occur outside the United States.

The Boston Coalition for Palestinian Rights

84. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Eighty-Four and therefore denies the allegations.

85. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Eighty-Five and therefore denies the allegations.

86. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Eighty-Six and therefore denies the allegations.

87. Defendant lacks sufficient information and knowledge to admit or deny the allegations in Paragraph Eighty-Seven and therefore denies the allegations.

88. Defendant admits that, due to Mr. Habib's inadmissibility, the ability of the Boston Coalition for Palestinian Rights (BCPR) and its members to meet with Mr. Habib and to hear him speak is compromised only to the extent that Mr. Habib's inadmissibility precludes him from coming to the United States for such meetings and speeches. Defendant denies that Mr. Habib's inadmissibility deprives the BCPR and its members of the ability to invite Mr. Habib to speak, attend conferences, engage with other scholars, and interact with the United States public. Defendant avers that such speeches, conferences, engagement, and interaction could occur through the use of alternative communications methods such as videoconferencing or could occur outside the United States.

CAUSES OF ACTION

89. Defendant denies that its denial of a visa and a waiver of inadmissibility to Mr. Habib violates the Administrative Procedure Act.

90. Defendant denies that its denial of a visa and a waiver of inadmissibility to Mr. Habib violates the First Amendment.

PRAYER FOR RELIEF

The remainder of the SAC constitutes Plaintiffs' request for relief to which no responsive pleading is necessary. To the extent that a response is deemed necessary, Defendant denies the prayer for relief and denies that Plaintiffs are entitled to the relief sought in the SAC or to any relief whatsoever.

FIRST AFFIRMATIVE DEFENSE

The SAC fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs have suffered no actual injury.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs suffered no imminent or irreparable injury.

FOURTH AFFIRMATIVE DEFENSE

This Court lacks jurisdiction over Plaintiffs' cause of action under the Administrative Procedure Act.

FIFTH AFFIRMATIVE DEFENSE

This Court lacks jurisdiction over Plaintiffs' cause of action under the Declaratory Judgment Act.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to establish that they have been deprived of the right to receive speech with regard to their allegation that a Constitutional violation has occurred, thereby warranting dismissal of this action.

SEVENTH AFFIRMATIVE DEFENSE

Relief should be denied Plaintiffs as an exercise of judicial discretion to withhold relief.

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EIGHTH AFFIRMATIVE DEFENSE

Although Defendant does not presently have specific facts in support of its remaining defenses, it wishes to put counsel for Plaintiffs on notice that it raises the affirmative defenses set forth in Fed. R. Civ. P. 8 should subsequent discovery disclose facts that support those defenses. Defendant further reserves the right to plead any and all affirmative defenses that may become applicable.

Dated: January 14, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer to Second Amended Complaint was served on this 14th day of January 2009 via electronic filing system to all applicable counsel and by first class mail to all counsel below:

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