

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

Defendants.

**STATEMENT OF
UNDISPUTED FACTS IN
SUPPORT OF
PLAINTIFFS' MOTION
FOR SUMMARY
JUDGMENT**

Case No. 07-11796 (GAO)

**STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

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

- A. Professor Habib is a South African citizen who currently resides there. Habib Decl. ¶ 1.
- B. Professor Habib is currently a Deputy Vice Chancellor at the University of Johannesburg. Habib Decl. ¶ 3.
- C. Professor Habib has held high-level positions in prestigious academic institutions, as well as non-profit and quasi-governmental organizations. Habib Decl. ¶ 3.
- D. Professor Habib's research and scholarship focuses on democracy, governance, race and identity, public policy and social movements. Habib Decl. ¶¶ 4-7.
- E. Professor Habib is an authoritative voice on South African policy matters. Habib Decl. ¶¶ 4-11; Habib Decl. Exh. A-C; Hillsman Decl. ¶ 16; Fam Decl. ¶ 12; Najimy Decl. ¶ 11.
- F. Professor Habib has worked closely with government officials and institutions to study and solve policy problems. Habib Decl. ¶¶ 7-8.

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

- A. Professor Habib has obtained U.S. visas in the past. Habib Decl. ¶¶ 13-14, 36.
- B. Professor Habib obtained a PhD from the City University of New York and lived in the U.S. for approximately three years. Habib Decl. ¶¶ 2, 13.
- C. Professor Habib frequently travels outside of South Africa to speak with scholars, researchers, and government officials. Habib Decl. ¶ 12.
- D. Prior to October 2006, Professor Habib traveled to the U.S. to give speeches and to attend meetings and conferences. Habib Decl. ¶¶ 13-14.
- E. Professor Habib collaborates with U.S. scholars, officials, and institutions. Habib Decl. ¶¶ 8-9, 14-15, 44-46; Hillsman Decl. ¶ 17.
- F. Professor Habib's ability to travel to the U.S. to collaborate with scholars and researchers is vital to his professional endeavors. Habib Decl. ¶¶ 9, 14-15, 44-46.

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

- A. In October 2006, defendants revoked Professor Habib's 10-year, multiple entry visa, without explanation. Habib Decl. ¶¶ 16-21; Habib Decl. Exh. D-I.
- B. Officials in Washington were responsible for the revocation of his visa. Habib Decl. ¶¶ 17, 24, 29; Habib Decl. Exh. K.
- C. Defendants revoked the visas of Professor Habib's wife and two sons. Habib Decl. ¶¶ 23-24; Habib Decl. Exh. J-K.
- 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. Habib Decl. ¶¶ 19-25; Habib Decl. Exh. D-L; Hillsman Decl. ¶ 20; Hillsman Decl. Exh. B; Nelson Decl. ¶ 7; Nelson Decl. Exh. A-B.

- E. Despite the revocation of his visa, Professor Habib continued to receive invitations to speak in the U.S. Habib Decl. ¶¶ 26, 32.
- 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. Habib Decl. ¶¶ 27-29.
- G. Professor Habib had a visa interview at the U.S. Embassy in Johannesburg on May 11, 2007. Habib Decl. ¶¶ 29-30.
- 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. Habib Decl. ¶ 30; Habib Decl. Exh. M.
- 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. Habib Decl. ¶¶ 31-32.
- 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. Habib Decl. ¶ 32; Hillsman Decl. ¶¶ 18-23.
- 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. Habib Decl. ¶ 35; Habib Decl. Exh. N.
- L. The government also denied Professor Habib a waiver of inadmissibility. Habib Decl. ¶ 35; Habib Decl. Exh. N.
- M. The government has not provided any basis or explanation for its inadmissibility determination or its waiver denial. Habib Decl. ¶¶ 35-36, 43.
- N. The visa denial and waiver denial determinations were made by officials in Washington. Habib Decl. ¶¶ 34-35; Habib Decl. Exh. N.

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.

- 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. Habib Decl. ¶¶ 26, 32; Hillsman Decl. ¶¶ 21-23.
- B. Fostering a global exchange of ideas is important to plaintiffs. Hillsman Decl. ¶¶ 9-15; Fam Decl. ¶¶ 6-10; Najimy Decl. ¶¶ 5-9; Nelson Decl. ¶¶ 5-6.
- C. Plaintiffs have invited Professor Habib to speak at events they are hosting in June and August. Habib Decl. ¶ 32; Hillsman Decl. ¶ 24; Fam Decl. ¶¶ 11-12; Najimy Decl. ¶¶ 10-11; Nelson Decl. ¶ 7.
- 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. Habib Decl. ¶¶ 26, 32; Hillsman Decl. ¶¶ 24-26; Fam Decl. ¶¶ 11, 13; Najimy Decl. ¶¶ 13, 16; Nelson Decl. ¶ 9.
- 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. Hillsman Decl. ¶¶ 21-29; Fam Decl. ¶¶ 11-15; Najimy Decl. ¶¶ 13-16; Nelson Decl. ¶¶ 9-12.

- F. The government's exclusion of Professor Habib has caused and will cause plaintiffs administrative and economic harms. Hillsman Decl. ¶¶ 21, 27; Fam Decl. ¶¶ 14-15; Najimy Decl. ¶ 16; Nelson Decl. ¶¶ 11-12.

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

- A. Professor Habib has condemned terrorism publicly and privately. Habib Decl. ¶¶ 37-39, 43.
- B. Professor Habib is a proponent of peaceful advocacy for social justice. Habib Decl. ¶¶ 38-39, 47; Fam Decl. ¶ 12; Najimy Decl. ¶ 11.
- C. Terrorism is inconsistent with Professor Habib's scholarship and the model of social change for which he advocates. Habib Decl. ¶ 39.
- 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. Habib Decl. ¶¶ 7-9, 14-15, 38-39; Hillsman Decl. ¶ 17.
- E. Professor Habib has never engaged in terrorism or supported terrorism or a terrorist organization. Habib Decl. ¶¶ 36-39, 43.
- F. South African officials have questioned the U.S. government's claim that Professor Habib has ties to terrorism. Habib Decl. ¶ 43; Habib Decl. Exh. L, Q.
- 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. Habib Decl. ¶¶ 40-42; Habib Decl. Exh. A-B, O-P.

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

- A. Since 2001, numerous foreign scholars, writers, and activists have found themselves suddenly barred from the U.S. Nelson Decl. ¶¶ 13-23; Nelson Decl. Exh. A-L.
- B. Many have been excluded on vague or unspecified national security grounds, under circumstances that appear ideologically-motivated. Nelson Decl. ¶¶ 13-23; Nelson Decl. Exh. A-L.