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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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AMERICAN ACADEMY OF RELIGION,	:	
AMERICAN ASSOCIATION OF UNIVERSITY	:	
PROFESSORS, PEN AMERICAN CENTER,	:	
and TARIQ RAMADAN,	:	
	:	ECF CASE
Plaintiffs,	:	
	:	06 Civ. 588 (PAC)
- 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.	:	
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DEFENDANTS' STATEMENT PURSUANT TO LOCAL
 CIVIL RULE 56.1(b) IN OPPOSITION TO PLAINTIFFS'
 MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF
DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

I. RESPONSE TO PLAINTIFFS' STATEMENT

Defendants Michael Chertoff, in his official capacity as Secretary of the Department of Homeland Security, and Condoleezza Rice, in her official capacity as Secretary of State, by their attorney, Michael J. Garcia, United States Attorney for the Southern District of New York, respectfully submit this Statement Pursuant to Local

Civil Rule 56.1(b) in Opposition to Plaintiffs’ Motion for Summary Judgment and in Support of Defendants’ Cross-Motion for Summary Judgment. As explained in the accompanying memorandum of law, the denial of Tariq Ramadan’s visa application by a Consular Officer is not reviewable in this Court, and the Court may not entertain plaintiffs’ challenge to that denial or their request that the Court inquire into or weigh the information considered by or thought process of the relevant consular official in denying the visa application. Therefore, plaintiffs’ factual assertions below are immaterial to the extent intended to undermine consular officer determinations relating to Ramadan’s visa application and do not support their demand for summary judgment. Nevertheless, subject to the foregoing objections and without conceding the materiality of any of plaintiffs’ assertions, Defendants respond as follows to the factual assertions made in the following paragraphs of Plaintiffs’ Rule 56.1 Statement:

I.A., I.B. and I.C. - Admit.

II.A., II.B. and II.C. - Neither contest nor concede the assertions in paragraphs II.A., II.B. and II.C., except deny the assertion in paragraph II.C. to the extent it is contrary to the consular officer’s fact-finding concerning Ramadan, or to the Government’s assertion that the consular officer found, as a factual matter, that Ramadan satisfied all legal conditions of a finding of inadmissibility based on his material support of nondesignated terrorist organizations. See Declaration of John O. Kinder (“Kinder Decl.”) ¶ 12, Ex. A.

III.A Deny to the extent paragraph III.A. suggests that the Government determined that Ramadan was inadmissible pursuant to the endorse or espouse provision. Rather, the State Department prudentially revoked his visa pursuant to statutory authority

and procedures described at paragraphs 5 and 6 of the Kinder Declaration, and Ramadan has never been denied a visa or excluded from the United States pursuant to the endorse or espouse provision. See Kinder Decl. ¶ 15.

III.B. Neither concede nor contest, except admit that the prudential revocation of Ramadan's visa prevented him from accepting a teaching post at Notre Dame.

III.C. Admit, except deny to the extent paragraph III.C. suggests that the Government violated any duty to act or unduly delayed action on any visa application, submitted in October 2004, that became moot upon when Ramadan resigned his position with Notre Dame in December 2004.

III.D. Admit.

III.E. Admit, except to the extent it fails to note that this was a follow up to an interview held in September 2005.

III.F. Admit, except deny to extent paragraph III.F. suggests that the Government violated any duty to act or unduly delayed action on any visa application by Ramadan.

III.G. Neither contest nor concede the characterization of the basis for the visa denial, but admit that a consular officer denied Ramadan's visa application in September 2006. See Kinder Decl. ¶ 12-13, Ex. A.

III.H. Because this assertion concerns the evidence considered by and thought processes of the consular officer who determined Ramadan's visa application, neither contest nor concede paragraph III.H., but note that the asserted undisputed fact is both immaterial as a matter of law, and unsupported by competent evidence to the extent it depends on an account of a hearsay statement made by government litigation counsel and not stipulated to by the parties.

III.I. This is an ambiguous assertion. Admit that the defendants have not found Ramadan inadmissible based on any other provision, and, further, acknowledge that defendants are not relying on any other provision for purposes of this litigation. However, defendants deny any other alleged facts that might be implicit in the plaintiff's statement.

IV.A. Neither contest nor concede.

IV.B. Admit.

IV.C. Admit to the extent that Ramadan's inability to enter the United States makes it impossible for persons within the United States to meet with him in person within the United States. Deny that persons within the United States are prevented from conferring with Ramadan either by telephonic, internet, videoconference or other technological means, or by travelling outside the United States and meeting with him in person.

IV.D. Deny that plaintiffs have identified "substantial administrative and economic harms" given the feasibility of alternative means of interacting with Ramadan or receiving his ideas, and given that the asserted expense of arranging and conducting teleconferences is offset by the avoidance of travel-related and other relevant fees and expenses.

IV.E. Admit.

V.A. Neither contest nor concede.

V.B. Admit that Ramadan made donations to ASP; neither contest nor concede plaintiffs' characterization of those donations and what prompted them.

V.C. Deny to the extent paragraph V.C. could be construed to assert a lack of basis for the consular determination, based on Ramadan's own statement to the consular officer, that he made contributions to CBSP, see Kinder Decl. ¶ 11; neither concede nor contest the assertion concerning whether Ramadan in fact donated funds to CBSP.

V.D. Admit that Professor Ramadan stated in a 2005 visa application and in his visa interview that he made donations to CBSP. See Kinder Decl. ¶ 11.

VI.A. Neither concede nor contest.

VI.B. Neither concede nor contest.

VI.C. Neither concede nor contest.

VI.D. Neither concede nor contest.

VI.E. Neither concede nor contest.

VI.F. Neither concede nor contest.

VII.A. Neither concede nor contest.

VII.B. Neither concede nor contest.

VII.C. Neither concede nor contest.

VII.D. Neither concede nor contest.

VII.E. Neither concede nor contest.

VII.F. Deny as a legal conclusion and/or an inference not supported by competent evidence and deny that European legal standards and factual determinations regarding the legitimacy of undesignated terrorist organizations, within the meaning of the INA, have any bearing on this proceeding.

VII.F.i. Neither concede nor contest.

VII.F.ii. Neither concede nor contest.

VII.F.iii. Neither concede nor contest.

VII.F.iv. Neither concede nor contest.

VII.F.v. Neither concede nor contest.

VII.F.vi. Neither concede nor contest.

VII.F.vii. Admit.

VII.F.viii. Admit.

VII.F.ix. Neither concede nor contest.

VII.G. Deny as a legal conclusion and/or an inference not supported by competent evidence and deny that European legal standards and factual determinations regarding the legitimacy of undesignated terrorist organizations, within the meaning of the INA, have any bearing on this proceeding.

VII.G.i. Neither concede nor contest.

VII.G.ii. Neither concede nor contest.

VII.G.iii. Neither concede nor contest.

VII.G.iv. Neither concede nor contest.

VII.G.v. Admit.

VII.G.vi. Neither concede nor contest.

VII.G.vii. Admit.

VII.G.viii. Admit.

VII.G.ix. Neither concede nor contest.

VIII.A. Admit. See Declaration of Paul M. Morris (“Morris Decl.”) ¶ 9.

VIII.B. Admit. See Morris Decl. ¶¶ 10-11.

VIII.C. Deny. The Government has never found Ramadan inadmissible pursuant to the endorse or espouse provision. See Kinder Decl. ¶ 15.

IX.A. Deny, except admit that one passage of the Foreign Affairs Manual describes the purpose of the endorse or espouse provision as applying to aliens who voice “irresponsible expressions of opinion,” and aver that that excerpt is irrelevant, relates to a superseded version of the statute, and is taken out of context, as it merely characterized the general purpose of the provision, and was to be applied in accord with the statutory terms.

IX.B. Aver that this statement is nonmaterial in light of the doctrine of consular nonreviewability, but, in any event, deny, and aver that the Government has never excluded Ramadan pursuant to the endorse or espouse provision. See Kinder Decl. ¶ 15.

X.A. Deny. Aver that the State Department has found only one alien inadmissible pursuant to the endorse or espouse provision, and that individual was admitted pursuant to waivers of inadmissibility. See Declaration of Andrew C. Kotval (“Kotval Decl.”) ¶ 3. Further, aver that the Department of Homeland Security has excluded only one person at a port of entry based on the endorse or espouse provision, and identified nine other aliens as potentially excludable on that basis but not formally refused them entry. See Morris Decl. ¶¶ 9-11. Of these, to the Government’s knowledge, none was a scholar or academic, and none was traveling for purposes of giving speeches or attending conferences while in the United States. See id. ¶ 12.

X.B. Deny any alleged failing of the Government, averring that INA Sec. 222(f) precludes disclosure of visa records such as plaintiffs suggest should be disclosed. Further, deny the statement as based on noncompetent purported evidence and as based

on legal contentions rather than fact, and deny the statement to the extent it implies that the United States as a general matter fails properly to apply relevant provisions of the INA, in connection with visa applications and applications for admission to the United States.

X.C. Deny the statement as based on noncompetent purported evidence and as based on legal contentions rather than fact, and deny the statement to the extent it implies that the United States as a general matter fails properly to apply relevant provisions of the INA in connection with visa applications and applications for admission to the United States.

XI.A. Admit.

XI.B. Admit, except declines to endorse plaintiffs' assertions that laws they opposed in fact were improper.

XI.C. Admit.

XI.D. Deny as nonfactual and unsupported by competent evidence insofar as "substantial resources" is a conclusory or legal characterization of facts, rather than a fact; neither contest nor concede that plaintiffs have conducted activities or programs relating to terrorism and related topics.

XII.A. Deny as nonfactual and unsupported by competent evidence, and aver that this assertion is backed by declarants' uncorroborated and unsupported statements of opinion which are not competent to support the proposition asserted.

XII.B. To the extent the statement is argument or unsupported by competent, non-hearsay evidence, deny.

XII.C. To the extent the statement is argument or unsupported by competent evidence, deny. Aver that asserted harms flowing from uncertainty concerning whether an invited alien will be admitted flow not solely from the endorse or espouse provision, but from the entire body of law governing admission of aliens. Further aver that the complained-of costs and inconvenience of teleconferencing may be lower than travel-related expenses necessary for meeting in person with an alien, and that any qualitative difference between in-person communication and video link does not preclude effective communication with an alien who is not physically present.

XII.D. Deny. See response to paragraph XII.C.

XII.E. Deny as a nonfactual, subjective assertion not supported by competent evidence.

XII.F. Deny as a nonfactual, subjective assertion not supported by competent evidence.

XIII.A. Admit.

XIII.B. Deny as a nonfactual, subjective assertion not supported by competent evidence, and as a legal contention concerning the purpose underlying a statute.

XIII.C. Admit that, to the extent alien authors endorse or espouse terrorism, they risk being excluded under the endorse or espouse provision should they apply for admission to the United States. Deny as not supported by competent evidence the legal contention concerning the broad scope of applicability of the provision.

XIII.D. Neither contest nor concede.

XIII.E. Neither contest nor concede.

II. STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

A. Revocation of Ramadan's H-1B Visa and His October 4, 2004 Visa Application

1. On May 5, 2004, Tariq Ramadan was issued an H-1B non-immigrant visa to work as a professor at the University of Notre Dame. See Kinder Decl. ¶ 4.

2. Following the issuance of that visa, the State Department received information, in the ordinary course of business, that might have led to a determination that Ramadan was inadmissible to the United States, and therefore, not entitled to a visa. See id.

3. On July 28, 2004, the State Department prudentially revoked Ramadan's H-1B visa pursuant to 8 U.S.C. § 1201(i), based on the information it had received. See id. ¶ 7.

4. No determination was made as to Ramadan's actual inadmissibility under any provision of 8 U.S.C. § 1182(a)(3). See id.

5. Ramadan reapplied for an H-1B visa on October 4, 2004. See id. ¶ 8.

6. The visa was refused on the same date pursuant to 8 U.S.C. § 1201(g), an administrative refusal used to close a case pending the receipt of further information. See id.

7. In December 2004, before the consulate could complete a review of the application, Ramadan withdrew his acceptance of Notre Dame's job offer. See id. ¶ 9.

8. Accordingly, the Department of Homeland Security ("DHS") revoked the validity of the petition for non-immigrant worker Notre Dame had filed on Ramadan's behalf. See id.

9. Because there was no longer a valid petition on which to base Ramadan's visa application, the application was rendered moot. See id.

B. Ramadan’s September 16, 2005 Visa Application

10. On September 16, 2005, Ramadan submitted an application for a B-1/B-2 non-immigrant visa at the United States Embassy in Bern, Switzerland. See id. ¶ 10.

11. Thereafter, two interviews of Ramadan were conducted: an initial interview in September 2005, and a follow-up interview in December 2005. See id.

12. During these interviews, Ramadan stated that he had made donations to the Comité de Bienfaisance et de Secours aux Palestiniens (“CBSP”) and the Association de Secours Palestinien (“ASP”). See id. ¶ 11; see also Second Declaration of Tariq Ramadan (“Ramadan Suppl. Decl.”) ¶ 10, 13 (admitting financial donations to ASP between 1998 and 2002 and disclosing these donations in visa interview, and acknowledging that he “may have stated in [his] visa interview” that he also gave money to CBSP).

13. Based on statements Ramadan provided during his interviews and other available information, including a Security Advisory Opinion provided by the Department of State in accordance with standard State Department procedures,² Aaron Martz, a Consular Officer working in the Consular Section of the United States Embassy in Bern, Switzerland, exercised his authority under 8 U.S.C. § 1201(g), on September 19, 2006, and denied Ramadan’s application for a visa on the basis of 8 U.S.C. §§ 1182(a)(3)(B)(i)(I) and 1182(a)(3)(B)(iv)(VI), concerning Ramadan’s provision of material support to undesignated terrorist organizations. See Kinder Decl. ¶ 12.

² Pursuant to the Foreign Affairs Manual, a consular official must submit all visa applications involving possible inadmissibility under 8 U.S.C. § 1182(a)(3)(B) for a Security Advisory Opinion. See 9 F.A.M. § 40.32 N1.2

14. Ramadan was notified by telephone on September 19, 2006, and in a letter of that same date, that his application had been refused. See id. at ¶ 14, Ex. A; Ramadan Suppl. Decl. ¶ 9, Ex. E.

15. The determination of ineligibility under 8 U.S.C. sections 1182(a)(3)(B)(i)(I) and 1182(a)(3)(B)(iv)(VI) was based on findings that Ramadan in fact satisfied each of the statutory requirements establishing inadmissibility under those provisions. See Kinder Decl. ¶ 13.

C. Facts Pertaining to Plaintiffs' Lack of Standing

16. Plaintiffs have identified no alien with whom they wished to meet in the United States, but who was excluded pursuant to the endorse or espouse provision.

17. Ramadan has never been found inadmissible on the basis of the endorse or espouse provision. See Kinder Decl. ¶ 15.

18. The Government waived inadmissibility for the only person denied a visa by the State Department under the provision. See Kotval Decl. ¶ 3.

19. The Department of Homeland Security has deemed only ten people inadmissible under the endorse or espouse provision. See Declaration of Paul Morris ¶¶ 9-11.

20. Of these, to the Government's knowledge, none was a scholar or academic, and none was traveling for purposes of giving speeches or attending conferences while in

the United States. See id. ¶ 12.

Dated: New York, New York
May 21, 2007

Respectfully submitted,

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