

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ACADEMY OF RELIGION; AMERICAN
ASSOCIATION OF UNIVERSITY PROFESSORS;
PEN AMERICAN CENTER; TARIQ RAMADAN,

Plaintiffs,

v.

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

Defendants.

Case No. 06-588 (PAC)

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

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THE EXCLUSION OF PROFESSOR RAMADAN

- I. Professor Ramadan is a prominent scholar of Islam, the Muslim world, and Muslim and European identity.**
 - A. Professor Ramadan is a Swiss citizen who currently resides in the United Kingdom. Second Ramadan Decl. ¶ 1.
 - B. Professor Ramadan is currently affiliated with the University of Oxford, the Lokahi Foundation in London, and Erasmus University in Rotterdam. Second Ramadan Decl. ¶ 2.
 - C. Professor Ramadan is a prolific writer whose scholarship focuses on the situation of Muslims living in the West, and in particular the situation of Muslims who live in Europe. Second Ramadan Decl. ¶¶ 3-5; Second Ramadan Decl. Exh. A-E; Ramadan Decl. ¶¶ 4-11; Ramadan Decl. Exh. A-B; Second Roberts Decl. ¶ 26; Fitzmier Decl. ¶ 18.

- II. Professor Ramadan is a consistent and vocal opponent of terrorism and extremism.**
 - A. Professor Ramadan has condemned terrorism at every opportunity in his writing, speeches, and public appearances. Second Ramadan Decl. ¶¶ 10-11; Ramadan Decl. ¶¶ 12, 15-22, 33; Ramadan Decl. Exh. C-F, K-U, X; Second Roberts Decl. ¶ 26; Fitzmier Decl. ¶ 18; Nelson Decl. ¶ 20.
 - B. Professor Ramadan is frequently sought out to advise government officials about how to combat terrorism and extremism. Second Ramadan Decl. ¶ 11; Ramadan Decl. ¶ 21; Fitzmier Decl. ¶ 18.
 - C. Professor Ramadan has never knowingly supported a terrorist organization or terrorist activity. Second Ramadan Decl. ¶ 11.

- III. The government has been excluded Professor Ramadan from the U.S. since July 2004.**
 - A. The government revoked Professor Ramadan's H-1B visa in July 2004 and a government spokesperson pointed to the ideological exclusion provision as the basis for the revocation. Second Ramadan Decl. ¶ 6; Ramadan Decl. ¶ 13-14; Ramadan Decl. Exh G.
 - B. The revocation prevented Professor Ramadan from taking up a double-tenured teaching position at the University of Notre Dame and caused other hardships to Professor Ramadan and his family. Second Ramadan Decl. ¶¶ 6-7, 15; Ramadan Decl. ¶ 32.
 - C. Professor Ramadan resigned the Notre Dame post in December 2004 after the government failed promptly to adjudicate a second H-1B petition. Second Ramadan Decl. ¶ 7; Ramadan Decl. ¶ 24-25; Ramadan Decl. Exh. V.
 - D. Professor Ramadan applied for a B visa in September 2005 which would have allowed him to enter the U.S. for speaking engagements, including at events hosted by plaintiffs the American Academy of Religion, the American Association of University Professors, and PEN American Center. Second Ramadan Decl. ¶ 8; Ramadan Decl. ¶ 28; Ramadan Decl. Exh. W.

- E. Professor Ramadan had a visa interview at the U.S. Embassy in Bern on December 20, 2005. Second Ramadan Decl. ¶ 8; Ramadan Decl. ¶ 30.
- F. The government failed to adjudicate Professor Ramadan's B visa application until ordered to do so by this Court and the delay prevented Professor Ramadan from attending events in the U.S.. Second Ramadan Decl. ¶ 9.
- G. In September 2006 the government denied Professor Ramadan's B visa application on the basis that Professor Ramadan had donated money to European charities that (in the government's view) provided funds to Hamas. Second Ramadan Decl. ¶ 9; Second Ramadan Decl. Exh. F; Jaffer Decl. ¶ 3.
- H. The B visa denial was based solely on information Professor Ramadan voluntarily provided to the government. Jaffer Decl. ¶ 4; Second Ramadan Decl. ¶ 10.
- I. The government does not regard Professor Ramadan as inadmissible on any other basis. Jaffer Decl. ¶ 5.

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

- A. The revocation of Professor Ramadan's H1-B visa forced Professor Ramadan to cancel or decline speaking engagements in the U.S. or to present his ideas to U.S. audiences by videotape or videoconference. Second Ramadan Decl. ¶¶ 6, 15; Ramadan Decl. ¶ 23; Fitzmier Decl. ¶¶ 19, 21; Nelson Decl. ¶ 22.
- B. The government's exclusion of Professor Ramadan has prevented and continues to prevent Professor Ramadan from accepting invitations to speak in the U.S.. Second Ramadan Decl. ¶ 15; Ramadan Decl. ¶ 23, 27, 31.
- C. The government's exclusion of Professor Ramadan has prevented and continues to prevent plaintiffs, their members, and the U.S. public from engaging Professor Ramadan in face-to-face discussion and debate. Second Ramadan Decl. ¶¶ 15-16; Second Roberts Decl. ¶¶ 26-29; Fitzmier Decl. ¶¶ 18-22; Nelson Decl. ¶¶ 21-23.
- D. The government's exclusion of Professor Ramadan has caused plaintiffs substantial administrative and economic harms. Second Roberts Decl. ¶¶ 28-29, 31; Fitzmier Decl. ¶¶ 19-21; Nelson Decl. ¶¶ 21, 23.
- E. Professor Ramadan has pending a number of upcoming invitations to speak in the U.S., including invitations from plaintiffs. Second Ramadan Decl. ¶ 16; Second Roberts Decl. ¶ 30; Fitzmier Decl. ¶ 22; Nelson Decl. ¶ 24.

V. Professor Ramadan provided small donations to Association de Secours Palestinien ("ASP") a number of years ago, but never donated funds to Comité de Bienfaisance et de Secours aux Palestiniens ("CBSP").

- A. Professor Ramadan donates to many charitable organizations, large and small, some of which provide aid to Palestinians. Second Ramadan Decl. ¶ 12.
- B. Professor Ramadan provided small donations to ASP from December 1998 to July 2002 after receiving solicitations in the mail from ASP describing its efforts to provide humanitarian aid to Palestinians. Second Ramadan Decl. ¶¶ 10, 12, 14; Second Ramadan Decl. Exh. G.

- C. Professor Ramadan has never donated funds to CBSP. Second Ramadan Decl. ¶ 13.
- D. Professor Ramadan was confused about the relationship between ASP and CBSP and mistakenly stated that he had donated to CBSP in his 2005 visa application and possibly in his visa interview. Second Ramadan Decl. ¶ 13.

VI. Professor Ramadan did not know that ASP or CBSP was providing funds to Hamas or was in any way supporting terrorism.

- A. Professor Ramadan donated to ASP because he believed that it was a legitimate humanitarian organization providing legitimate aid to Palestinians. Second Ramadan Decl. ¶¶ 10, 12, 14.
- B. Professor Ramadan knew that ASP was a lawful, registered charity in Switzerland. Second Ramadan Decl. ¶ 10.
- C. Professor Ramadan received receipts from ASP, reported his donations to ASP on his tax forms, and received tax deductions for those donations. Second Ramadan Decl. ¶ 10.
- D. During the period in which he donated to ASP, Professor Ramadan did not know that ASP was providing funds to Hamas, supporting terrorism, or engaged in illegal activity under U.S. or Swiss law. Second Ramadan Decl. ¶¶ 10, 14.
- E. Professor Ramadan would not have donated to ASP if he had thought that ASP was a terrorist organization or that his money would be used for terrorism or any other illegal purpose. Second Ramadan Decl. ¶ 11.
- F. Professor Ramadan did not know CBSP was providing funds to Hamas, supporting terrorism, or was engaged in any illegal activity under U.S. or French law. Second Ramadan Decl. ¶ 13.

VII. Professor Ramadan cannot reasonably be expected to have known that ASP or CBSP was providing funds to Hamas or was in any way supporting terrorism.

- A. Many Europeans provide aid to Palestinians for entirely legitimate reasons, and often do so by providing funds to the many legitimate European charities that aid Palestinians. Benthall Decl. ¶¶ 19-27.
- B. European charities are officially-recognized, regulated, and scrutinized, and have numerous incentives to ensure that humanitarian aid does not end up supporting terrorism. Benthall Decl. ¶¶ 28-34.
- C. Donors reasonably assume that if a charity is suspected of funding terrorism it will be shut down. Benthall Decl. ¶ 35.
- D. European charities can provide aid to Palestinians without working with and through Hamas. Benthall Decl. ¶¶ 36, 38-46.
- E. A great deal of humanitarian aid in the Palestinians Territories is provided through organizations that are not administered by or affiliated with Hamas. Benthall Decl. ¶¶ 37-46.
- F. It was reasonable for Professor Ramadan to believe that ASP was among the many legitimate European charities providing aid to Palestinians without providing funds to Hamas. Benthall Decl. ¶¶ 5, 47-54.

- i. ASP described its mission in official documents as the provision of humanitarian aid to Palestinians. Benthall Decl. ¶ 50; Benthall Decl. Exh. B-C.
 - ii. ASP is, and was from 1998-2002, a lawful charity recognized by and officially registered with the Swiss government. Benthall Decl. ¶¶ 48-49, 51; Benthall Decl. Exh. B-D.
 - iii. ASP operated openly and was subject to government regulation and scrutiny. Benthall Decl. ¶¶ 30, 33-34, 48-49, 51; Benthall Decl. Exh. B-D.
 - iv. From 1998-2002, there was no reliable evidence in the public domain connecting ASP with Hamas or terrorism. Benthall Decl. ¶¶ 5, 52, 54.
 - v. From 1998-2002, ASP was not designated a terrorist organization or an organization that finances organizations that engage in terrorism by any component of the U.S. government. Benthall Decl. ¶ 52.
 - vi. No European government has ever designated ASP a terrorist organization. Benthall Decl. ¶ 52.
 - vii. The Secretary of State has never designated ASP a terrorist organization. Benthall Decl. ¶ 52.
 - viii. While the U.S. Treasury Department designated ASP a “Specially Designated Global Terrorist” Organization, it did not do so until 2003. Benthall Decl. ¶ 52; Benthall Decl. Exh. E-F; Second Ramadan Decl. ¶ 10.
 - ix. ASP has publicly denied any link to Hamas or terrorism. Benthall Decl. ¶ 53; Benthall Decl. Exh. D.
- G. It was reasonable for Professor Ramadan to believe that CBSP was among the many legitimate European charities providing aid to Palestinians without providing funds to Hamas. Benthall Decl. ¶¶ 5, 47, 55-69.
- i. CBSP is a French organization that provides aid to Palestinians. Benthall Decl. ¶¶ 56-57, 62-65; Benthall Decl. J-K, S-X.
 - ii. CBSP is, and was from 1998-2002, a lawful charity recognized by the French government. Benthall Decl. ¶ 56; Benthall Decl. Exh. G-I, L-M.
 - iii. CBSP operates openly and is subject to government regulation and scrutiny. Benthall Decl. ¶¶ 29, 33-34, 56, 58-65; Benthall Decl. Exh. G-R.
 - iv. From 1998-2002, there was no reliable evidence in the public domain connecting CBSP with Hamas or terrorism. Benthall Decl. ¶¶ 5, 66, 68-69; Benthall Decl. Exh. G.
 - v. From 1998-2002, CBSP was not designated a terrorist organization or an organization that finances organization that engage in terrorism by any component of the U.S. government. Benthall Decl. ¶ 66.
 - vi. No European government has ever designated CBSP a terrorist organization. Benthall Decl. ¶ 66.
 - vii. The Secretary of State has never designated CBSP a terrorist organization. Benthall Decl. ¶ 66.

- viii. While the U.S. Treasury Department designated CBSP a “Specially Designated Global Terrorist” Organization, it did not do so until 2003. Benthall Decl. ¶ 66; Benthall Decl. Exh. E-F.
- ix. CBSP has publicly denied any link to Hamas or terrorism. Benthall Decl. ¶ 67; Benthall Decl. Exh. H-I.

THE IDEOLOGICAL EXCLUSION PROVISION

VIII. The government uses the ideological exclusion provision to bar foreign nationals from the U.S.

- A. The government has formally relied on the ideological exclusion provision to exclude a foreign national on at least one occasion. Nelson Decl. ¶ 26; Nelson Decl. Exh. B.
- B. The government has deemed others to be inadmissible under the provision in multiple instances. Nelson Decl. ¶ 26; Nelson Decl. Exh. B.
- C. The government has “prudentially revoked” a visa – Professor Ramadan’s – on the basis of the ideological exclusion provision on at least one occasion. Fitzmier Decl. ¶ 18.

IX. The government interprets the ideological exclusion provision broadly.

- A. The government interprets the ideological exclusion provision broadly to apply to aliens who voice “irresponsible expressions of opinion.” Nelson Decl. ¶ 26; Nelson Decl. Exh. A-B.
- B. The government considered the provision broad enough to apply to Tariq Ramadan, a scholar who is a vocal opponent of terrorism. Second Roberts Decl. ¶ 26; Fitzmier Decl. ¶ 18, 27; Nelson Decl. ¶ 20.

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

- A. Since 2001, numerous foreign scholars and writers have been barred from the U.S. on apparently ideological grounds. Second Roberts Decl. ¶¶ 31-33; Second Roberts Decl. Exh. A-B; Fitzmier Decl. ¶¶ 25-26; Fitzmier Decl. Exh. A-D; Nelson Decl. ¶¶ 27-32; Nelson Decl. Exh. C-J.
- B. The government often fails to provide any explanation for exclusions that appear ideologically-motivated or explains those exclusions by vague references to national security or terrorism-related concerns. Second Roberts Decl. ¶¶ 31-32; Fitzmier Decl. ¶ 25; Fitzmier Decl. Exh. A-D; Nelson Decl. ¶¶ 27-32; Nelson Decl. Exh. C-J.
- C. The government is “prudentially” revoking visas under circumstances that appear ideologically motivated. Second Roberts Decl. ¶ 26; Nelson Decl. ¶ 29; Nelson Decl. Exh. E-G.

- XI. Plaintiffs are organizations committed to the free exchange of ideas among scholars and writers of different nationalities and backgrounds.**
- A. Plaintiffs encourage and facilitate a free exchange of ideas among scholars and writers from around the world. Second Roberts Decl. ¶¶ 5-7, 9-10, 14-16, 23; Fitzmier Decl. ¶¶ 5-7, 10-15; Nelson Decl. ¶¶ 4-8, 10-11.
 - B. Plaintiffs have a long history of advocating against immigration laws that have improperly curbed free expression, and of intervening on behalf of excluded or excludable scholars and writers. Second Roberts Decl. ¶ 11-13, 23; Second Roberts Decl. Exh. A-B; Fitzmier Decl. ¶ 26; Fitzmier Decl. Exh. E-F; Nelson Decl. ¶ 12-16; Nelson Decl. Exh. D-J.
 - C. Plaintiffs regularly hold events for their members and the public. Second Roberts Decl. ¶¶ 8, 14-16, 17-18, 20-22, 35; Fitzmier Decl. ¶¶ 8-10, 11; Nelson Decl. ¶ 9.
 - D. Plaintiffs have dedicated substantial resources to programming about the “war on terror” and related issues. Second Roberts Decl. ¶¶ 9, 18-19, 25, 27; Nelson Decl. ¶ 13; Fitzmier Decl. ¶¶ 10, 13.
- XII. The ideological exclusion has concretely injured plaintiffs.**
- A. Some foreign scholars and writers are reluctant to accept invitations, including invitations extended by plaintiffs, because they will be subjected to ideological scrutiny and possibly denied entry. Second Roberts Decl. ¶ 34; Second Roberts Decl. Exh. C.
 - B. Some of plaintiffs’ invitees have declined invitations in part because they are unwilling to be subjected to ideological scrutiny. Second Roberts Decl. ¶ 34; Second Roberts Decl. Exh. C; Fitzmier Decl. ¶ 30.
 - C. Uncertainty about whether invited scholars will be permitted to enter the country undermines plaintiffs’ ability to plan conferences and events in the U.S. and to publicize those events before they take place, causing plaintiffs financial and administrative harms. Fitzmier Decl. ¶ 27; Nelson Decl. ¶¶ 33, 35.
 - D. The ideological exclusion provision limits the number of foreign scholars with whom plaintiffs can meet which impoverishes debate inside the U.S. Fitzmier Decl. ¶¶ 17, 27-28; Nelson Decl. ¶¶ 17, 19, 32.
 - E. Application of the ideological exclusion provision stigmatizes the foreign scholar and the organization that invited the scholar to speak inside the U.S. Fitzmier Decl. ¶ 30; Nelson Decl. ¶ 33.
 - F. Foreign scholars who gain admission into the U.S. will self-censor in order to avoid future immigration consequences. Fitzmier Decl. ¶ 31; Nelson Decl. ¶ 34.
- XIII. Plaintiffs reasonably believe that the ideological exclusion provision will be used to bar plaintiffs’ invitees in the future.**
- A. Plaintiffs and their members regularly invite foreign scholars and writers to speak in the U.S. Second Roberts Decl. ¶¶ 17-18, 20-22, 35; Fitzmier Decl. ¶¶ 12, 21, 29; Nelson Decl. ¶¶ 9, 19.

- B. The ideological exclusion provision is broad and is aimed at controversial speech that is relevant to important matters of public concern. Second Roberts Decl. ¶¶ 23, 36; Fitzmier Decl. ¶¶ 16, 23, 29; Nelson Decl. ¶¶ 18, 25, 33.
- C. Many scholars and author, including plaintiffs' members, write about controversial subjects that could come within the broad sweep of the ideological exclusion provision. Fitzmier Decl. ¶¶ 13, 23; Nelson Decl. ¶ 25.
- D. Many of the foreign scholars and writers whom plaintiffs invite to speak are individuals who have written and spoken extensively about terrorism and counterterrorism in the past. Second Roberts Decl. ¶¶ 18, 23, 35; Fitzmier Decl. ¶¶ 23, 28; Nelson Decl. ¶ 25.
- E. Plaintiffs often invite foreign nationals precisely because their views are controversial, under-represented in American discourse, or concern topics that would fall within the topical ambit of the ideological exclusion provision. Second Roberts Decl. ¶ 36; Fitzmier Decl. ¶¶ 13, 23, 28-29; Nelson Decl. ¶¶ 25, 35.