

**UNITED STATES DISTRICT COURT
FOR THE 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;
CONDOLEEZZA RICE, in her official capacity as
Secretary of State,

Defendants.

**MOTION FOR
CERTIFICATION TO
THE SECRETARY OF
STATE TO RELEASE
VISA RECORDS**

Case No. 06-588 (PAC)

**MOTION FOR CERTIFICATION TO THE SECRETARY OF STATE TO RELEASE
VISA RECORDS**

Plaintiffs American Academy of Religion (AAR), American Association of University Professors (AAUP), PEN American Center (PEN), and Tariq Ramadan respectfully request that the Court certify to the Secretary of State that the visa file of Tariq Ramadan is “needed by the court in the interest of the ends of justice in a case pending before the court.” 8 U.S.C. § 1202(f).

Plaintiffs set out the relevant factual background in their Complaint, filed on Jan. 25, 2006, and in their Memorandum in Support of Motion for Preliminary Injunction (“Memorandum”), filed today. In brief: In 2004, Professor Ramadan was offered a tenured professorship at the University of Notre Dame. Ramadan Decl. ¶ 13.¹ In July 2004, defendants revoked the visa that would have permitted Professor Ramadan to assume that

¹ References herein to declarations are references to declarations submitted today by plaintiffs in support of their Motion for Preliminary Injunction.

post. *Id.* ¶ 14. A spokesperson for defendant Department of Homeland Security informed the press that the visa had been revoked “because of a section in federal law that applies to aliens who have used a ‘position of prominence within any country to endorse or espouse terrorist activity.’” *Id.* ¶ 14, Exh. G (*Muslim Scheduled to Teach at Notre Dame Has Visa Revoked*, Los Angeles Times, Aug. 25, 2004).

Since 2004, plaintiffs have urged defendants to reconsider their view that Professor Ramadan is inadmissible under that provision (or any other) and have sought defendants’ assurance that Professor Ramadan will not be excluded in the future. DeConcini Decl. ¶ 21, Exh. E (Letter from AAR and Middle East Studies Association to Secretaries Powell and Ridge, Aug. 30, 2004); Buck Decl. ¶ 17, Exh. F (Letter from Robert M. O’Neil to Secretaries Powell and Ridge, Aug. 27, 2004); *id.* ¶ 19, Exh. G. (Letter from Roger Bowen to Secretaries Rice and Chertoff, March 29, 2005). These efforts have been unavailing. DeConcini Decl. ¶ 22, Exh. F (Letter from State Department to AAR and MESA, Sept. 3, 2004); Buck Decl. ¶ 19, Exh. H (Letter from State Department to AAUP, April 19, 2005); *id.* ¶ 19, Exh. I (Letter from Department of Homeland Security to AAUP, April 18, 2005). Yet defendants have never pointed to any evidence that Professor Ramadan has endorsed or espoused terrorism. The public record, meanwhile, is replete with evidence that Professor Ramadan opposes terrorism and has consistently condemned it. *See* Memorandum, pp. 11-18.

The Immigration and Nationality Act provides, in relevant part:

The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that in the discretion of the Secretary of State certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case

pending before the court.

8 U.S.C. §1202(f). The INA thus allows the Secretary of State, upon a certification of a court, to disclose a visa file that is needed in litigation. *See Zambrano v. I.N.S.*, 972 F.2d 1122, 1125 (9th Cir. 1992) (noting that 8 U.S.C. § 1202(f) “expressly allow[s] for disclosure in legal proceedings”), *vacated on other grounds*, 509 U.S. 918 (1993); *Medina-Hincapie v. Dep’t of State*, 700 F.2d 737, 741 (D.C. Cir. 1983) (noting that, pursuant to 8 U.S.C. § 1202(f), the Secretary “has the discretion to disclose section 222(f) material to a court which certifies that the information is needed in the interest of justice in a pending case”); *Association for Women in Science v. Califano*, 566 F.2d 339, 346 n.38 (D.C. Cir. 1977) (characterizing 8 U.S.C. § 1202(f) as a statute that “specifically provides that confidential reports must be furnished to a requesting court”).

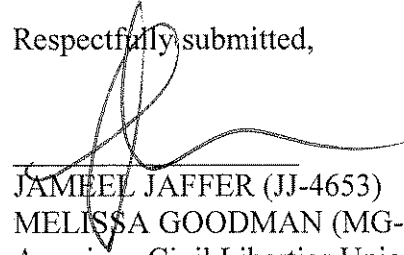
Plaintiffs believe that certification under this provision is appropriate here. Access to Professor Ramadan’s visa file will enable plaintiffs to determine the basis on which defendants concluded in 2004 that Professor Ramadan had endorsed or espoused terrorism; on what basis defendants continue to regard Professor Ramadan as inadmissible today; and for what reasons defendants have failed to act on a nonimmigrant visa application that Professor Ramadan submitted in September 2005.² As plaintiffs explain in their Memorandum, the continuing exclusion of Professor Ramadan has caused, and continues to cause, irreparable injury to their First Amendment rights. *See* Memorandum, pp. 9-11. Plaintiffs believe that certification is appropriate in these circumstances. *Cf. Maizus v. Weldor Trust Reg.*, 144 F.R.D. 34, 36 (S.D.N.Y. 1992) (discussing court’s decision to “so order[] a Certification of

² By “Professor Ramadan’s visa file,” plaintiffs mean any record of the Department of State, or of diplomatic and consular offices of the United States, pertaining to the issuance, revocation, or refusal of a visa to Tariq Ramadan.

Need pursuant to 8 U.S.C. § 1202(f)” where records were relevant to determination of whether defendant had willfully failed to appear).

Plaintiffs have informed defendants of their intent to file this motion, and defendants have indicated that they take no position on it at this time.

Respectfully submitted,



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