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; CONDOLEEZZA RICE, in her official capacity as Secretary of State, Defendants.	**DECLARATION OF CARY NELSON** Case No. 06-588 (PAC)

DECLARATION OF CARY NELSON

I, Cary Nelson, of Champaign, Illinois, do declare:

1. I am the President of the American Association of University Professors (AAUP), a post I have held since June 2006. I have been a member of the AAUP since April 1, 1993. I was a member of the AAUP's national governing Council from 1995 through 2006; was the AAUP's Second Vice President for three two-year terms, from 2000 through 2006; and was an *ex officio* member of the AAUP's Executive Committee from 2000 through 2006.

2. I am the Jubilee Professor of Liberal Arts and Sciences and Professor of English at the University of Illinois at Urbana-Champaign, where I have taught for the past 36 years. I received my Bachelor of Arts Degree from Antioch College in Ohio in June of 1967, and my Ph.D. in English from the University of Rochester in Rochester,

New York, in June 1970. I was a National Defense Education Act Fellow from 1967 through 1970.

3. In my capacity as President of the AAUP, I preside at meetings of the AAUP's Council and of the Executive Committee of the Council; represent the AAUP at meetings of other organizations; serve *ex officio* on all standing committees of the Association and as a member of the executive committees of all state conferences; appoint members of standing committees; and participate with the elected leadership, the AAUP's General Secretary, and other staff in the development of Association policy.

The American Association of University Professors

4. The AAUP is a non-profit organization based in Washington, D.C., with approximately 45,000 members consisting of university and college faculty, graduate students, librarians, and academic professionals.

5. The AAUP's mission is to advance academic freedom and shared governance in the academic profession, to define fundamental professional values and standards for higher education, and to ensure higher education's contribution to the common good. Founded in 1915, the AAUP has helped to shape American higher education by developing the standards and procedures that maintain quality in education and support academic freedom in this country's colleges and universities.

6. Regular membership in the AAUP is open to all full-time and part-time faculty, librarians, graduate students, and academic professionals at two- and four-year accredited public and private colleges and universities. The AAUP has over 500 local campus chapters and 39 statewide organizations. Leadership is provided by biennially elected national officers drawn from colleges and universities across the country. The

Association is governed by an elected national Council that meets twice a year, and by an Executive Committee that meets four times a year.

7. Since its founding in 1915, the AAUP has been committed to defending and promoting academic freedom in the United States. The 1940 *Statement of Principles on Academic Freedom and Tenure*, which was jointly drafted by the AAUP and the Association of American Colleges and Universities, states that academic freedom protects the right of teachers to "full freedom in research and in the publication of the results" and "to freedom in the classroom in discussing their subject." Academic freedom requires the liberty to learn as well as to teach. The AAUP articulated this principle in 1967 at its Fifty-third Annual Meeting, when it affirmed in the resolution on "Restraints on Visiting Speakers" "its belief that the freedom to hear is an essential condition of a university community and an inseparable part of academic freedom," and that "the right to examine issues and seek truth is prejudiced to the extent that the university is open to some but not to others whom members of the university also judge desirable to hear." In 1976, at its Sixty-second Annual Meeting, the AAUP in a resolution on the "Free Circulation of Scholars" stated that "The free circulation of scholars to countries other than their own, to participate in symposia and to accept invitations for temporary teaching assignments, is essential to ensure the exposure of faculty and students to the broadest spectrum of academic approaches and viewpoints."

8. Thousands of faculty members call on the AAUP each year for advice and assistance. The AAUP is best known for assisting individuals whose academic freedom or due process rights have been threatened or violated. In addition to this "case work," the Association works with Congress and state legislators to promote effective higher

education legislation. The Association also issues policy statements on various topics of importance to the academic community. Recent examples include a statement responding to the Report of the Spellings Commission on the Future of Higher Education and a statement critiquing the recent passage of Michigan's Proposal 2 on affirmative action. The AAUP annually publishes a nationally acclaimed faculty salary report that includes a comprehensive analysis of faculty salaries and benefits. In addition to its regular programs and conferences, the AAUP issues reports each year on subjects of special interest. Recent initiatives include publication of a Faculty Gender Equity Indicator and a report on Institutional Review Boards for human subjects research. The AAUP also drafts and participates in amicus briefs in cases affecting academic freedom and other issues in higher education; most recently, the AAUP joined amici curiae briefs in cases before the Supreme Court raising the constitutionality of racial diversity policies in public education, and in the ACLU's suit against the National Security Agency's warrantless wiretapping program, to protest the program's effects on academic freedom and the ability of scholars effectively to conduct international research.

9. The AAUP also hosts or participates in a number of events involving international scholars and students, which are often sponsored by the U.S. Department of State, Bureau of Educational and Cultural Affairs, or the Meridian International Center. Most recently, staff have met with academic delegations from countries including Angola, Bahrain, China, Iraq, Libya, Oman, Pakistan, and South Africa (October 2006); Turkmenistan (September 2006); Japan (September 2006); and Tunisia, Morocco, and Syria (March 2006). The AAUP staff and leaders also meet with visiting faculty and administrators representing foreign institutions. Recent exchanges include the Institute of

Economics and Business and Institute for Language and Translation, Kazakhstan (November 2004); the National Graduate Institute for Policy Studies, Japan (March 2005); and Hiroshima University, Japan (September 2005). The AAUP has also worked with major faculty associations in other countries, including the Danish Association of Masters and Ph.D's; the Association of University Staff (New Zealand); the Fédération Québecoise des Professeures et Professeurs d'Université (Canada); the Canadian Association of University Teachers; the Swedish Association of University Teachers; the National Tertiary Education Union (Australia); the University and College Union (United Kingdom); and the Irish Federation of University Teachers. In addition, the staff and leaders of the AAUP have presented at or participated in other international academic gatherings and conferences, including at the Canadian Association of University Teachers; the Conference on Contingent Academic Labor, which was held in Canada in 2006 and welcomed scholars from Canada, the United States, and Mexico; Educational International, including the December 2005 Education International meeting in Melbourne, Australia; and an upcoming June 2007 forum on global academic freedom at the Central European University in Budapest, Hungary.

10. The AAUP also has strategic alliances with several groups that focus on the threat to scholars abroad. The AAUP is a member of the Network for Education and Academic Rights (NEAR), in which the AAUP actively participates on issues of academic freedom and educational rights. In addition, the AAUP collaborates with the NYU-based Scholars at Risk Network, which arranges short-term academic posts and safe havens for foreign scholars who are threatened by violence, threats, arrest, and other forms of intimidation or persecution.

11. The AAUP has sought to bring attention in various other ways to recent severe dangers posed to faculty and researchers abroad. The September/October 2004 issue of *Academe*, the AAUP's bimonthly bulletin, focused on "Rebuilding Academia Around the World," including articles on postwar challenges for universities in Iraq, the development of higher education in Afghanistan, and the hurdles facing threatened foreign academics who flee their home countries and settle in the United States. In November 2004 the AAUP's Council also approved the establishment of an International Academic Freedom Fund to help in supporting foreign faculty in danger. In addition, in July 2006, the AAUP and the Middle East Studies Association jointly released a statement titled "Iraq: Higher Education and Academic Freedom in Danger," condemning violence against academics in Iraq. The AAUP also devoted much of the September/October 2006 issue of Academe to an issue on academic boycotts of foreign countries. And in November 2006, the AAUP's General Secretary sent a letter to Zalmay Khalilzad, the United States Ambassador to Iraq, expressing deep concern over the kidnapping of employees of Iraq's Ministry of Higher Education and Scientific Research. All this international work by the AAUP is undertaken to promote academic freedom, to address issues of concern in global higher education, and to facilitate international faculty ties.

12. Because the AAUP believes that the free circulation of scholars is inextricably connected to the free exchange of ideas, the AAUP has repeatedly urged reform of United States immigration laws in order to facilitate visits to this country by foreign scholars and students. In the 1950s, for example, the AAUP passed resolutions at three Annual Meetings urging the removal of administrative and legislative barriers to

admission of foreign scholars and students to this country. During the 1970s and 1980s, the AAUP spoke out against provisions of the McCarran-Walter Act that barred the admission of individuals thought to be associated with the Communist party. In 1981, the AAUP passed a resolution against portions of the Immigration and Nationality Act that permitted the denial of visas to "persons intending to visit this country on non-immigrant status for bona fide academic reasons . . . because of their political beliefs or associations." Those provisions were used to exclude, among many others, Gabriel Garcia Marquez, Pablo Neruda, Graham Greene, Carlos Fuentes, and Dario Fo. In addition, on the judicial front, the AAUP filed an amicus brief in the 1987 Supreme Court case of *Abourezk v. Reagan*, urging the Court to consider the academic freedom implications of travel restrictions on foreign scholars.

13. The AAUP has promoted support for academic freedom in other ways. In September 2002, for example, the AAUP established the Special Committee on Academic Freedom and National Security in a Time of Crisis ("Special Committee"). The Special Committee identified and commented on national security issues that have emerged since September 11, 2001, and on their implications for academic freedom. The Special Committee published a report in November 2003, *Academic Freedom and National Security in a Time of Crisis* (Nov/Dec ACADEME, 2003), which asserted that "freedom of inquiry and the open exchange of ideas are crucial to the nation's security, and . . . the nation's security and, ultimately, its well-being are damaged by practices that discourage or impair freedom." The report stresses the importance of foreign students and scholars to the U.S. academic community. It notes that recently-implemented immigration policies were creating a backlog of visa applications, causing delayed start

dates for many scholars and an overall decline in the number of international students enrolled in American universities. The report expresses concern that immigration policies were excluding foreign scholars by casting too wide a net in screening out potential terrorists.

14. In 2005, as part of an effort to promote "fair and timely procedures for noncitizens who seek visas . . . to study, teach, or collaborate with researchers in the United States," the AAUP's Committee on Government Relations adopted international education and scholarship as one of its major federal legislative priorities. With the new Congress convening in 2007 and re-evaluating the Higher Education Act, the Committee on Government Relations will continue to keep a close watch on this issue. The Association has monitored and taken positions on legislation to reform visa procedures; submitted comments on regulations regarding the difficulties faced by foreign students and scholars waiting to enter this country to conduct research in U.S. colleges and universities; issued general statements supporting more rational visa policies to ensure the exchange of ideas among American and international scholars; and responded to reports of particular scholars having difficulties with visa procedures in this country.

15. The AAUP has repeatedly protested the exclusion of scholars on ideological grounds. In February 1986, for example, the President of the AAUP wrote to the Secretary of State expressing concern over the prospect that a visa would be denied (as it ultimately was) to Dr. Joyce de Wangen-Blau, a professor who had been invited to speak in New York City at the March 22 opening of the first Kurdish library in North America. In 1983, the General Secretary wrote to the Secretary of State regarding the denials of visas to two Cuban philosophy professors who had been invited to participate

in a conference sponsored by the American Philosophical Association, and to a professor at the University of the West Indies who was scheduled to participate in a conference at the University of Cincinnati. As discussed below, the AAUP has formally protested more recent exclusions as well.

16. The AAUP has also advocated against restrictions on the right of American scholars to travel to foreign countries to lecture, attend conferences, and meet with their academic counterparts. In March 2004, for example, the AAUP wrote to the Office of Foreign Assets Control to protest actions taken by that office to bar scholars in the United States from traveling to Cuba to attend an international conference on brain injury.

The Effect of the Ideological Exclusion Provision on the AAUP

17. The AAUP and its members believe that exclusion of scholars on ideological grounds skews and impoverishes academic and political debate inside the United States, creates artificial barriers between scholars in the United States and their counterparts in the rest of the world, and deprives United States citizens and residents of information that they need in order to make responsible and informed decisions about matters of political importance.

18. The ideological exclusion provision contained in 8 U.S.C. § 1182(a)(3)(B)(i)(VII) (hereinafter, the "ideological exclusion" provision), is especially odious because the terms it employs – "endorse," "espouse," and "persuade" – are vague and are nowhere defined in the statute. Because these terms are vague and undefined, the AAUP is concerned that the ideological exclusion provision could readily be used to exclude, for example, foreign scholars who have criticized the detention of "enemy

combatants" at Guantánamo Bay Naval Base; foreign scholars who have argued that terrorism is a predictable consequence of United States foreign policy; foreign scholars who have contended that the war in Iraq is unlawful; foreign scholars who have argued that the insurgency in Iraq is legitimate; or foreign scholars who have condemned the inclusion of a particular organization on the government's list of Foreign Terrorist Organizations. The AAUP does not take a position on the merits of any of the above arguments, but it firmly believes that the government should not have the authority to prevent U.S. citizens from hearing them.

19. The ideological exclusion provision compromises the ability of the AAUP's members to meet with foreign scholars, to engage them in academic and political debate, and to collaborate with them on academic projects. Faculty members routinely invite foreign scholars to speak at and participate in conferences sponsored by their academic institutions. The ideological exclusion provision inappropriately constrains this kind of academic exchange.

20. The AAUP believes that the ideological exclusion provision is problematic on its face, but the government's August 2004 invocation of the provision to explain the exclusion of Professor Ramadan raises the additional concern that the provision is being interpreted extremely broadly. While Professor Ramadan has criticized U.S. foreign policy, he has consistently spoken out against terrorism, as this Court noted in its June 2006 ruling.

21. The exclusion of Professor Ramadan negatively affected the AAUP and its members in several ways. The AAUP invited Professor Ramadan to deliver a plenary address at the AAUP's Annual Meeting in June 2005. The theme of that meeting was

"Academic Freedom and National Security." Professor Ramadan accepted but was unable to attend because the Department of Homeland Security revoked the validity of Professor Ramadan's work visa and he was therefore unable to obtain an entry visa. The uncertainty surrounding whether Professor Ramadan would obtain an entry visa caused the AAUP to incur additional administrative and technological costs of approximately two thousand dollars ($2000), including costs to link Professor Ramadan to the meeting through videoconference.

22. In addition, although the AAUP ultimately provided its members with an opportunity to hear Professor Ramadan speak by videoconference, AAUP members were unable to meet with Professor Ramadan, to interact with him face-to-face, or to benefit from his participation in the remainder of the conference program. Videoconference communications, while informative, do not supplant face-to-face meetings, which facilitate debate, collaboration, and academic exchange more generally. Many of AAUP's members expressed regret that Professor Ramadan was not physically present.

23. The AAUP also invited Professor Ramadan as a speaker to its Ninety-second Annual Meeting in June 2006. Professor Ramadan again accepted the invitation, and again was precluded from attending because the government would not grant him a visa. The AAUP had to secure a speaker who would be able to address the audience in person and interact directly with participants, which Professor Ramadan was prohibited from doing, and for a second time the AAUP and its members were denied the opportunity to meet with Professor Ramadan face-to-face.

24. Because the AAUP continues to believe that it is important for its members to have an opportunity to hear Professor Ramadan's ideas and engage him in

face-to-face debate and discussion, the AAUP has invited Professor Ramadan to speak at its 94th Annual Meeting, which will be held in Washington, D.C., in June 2008. The AAUP will be celebrating the 50th anniversary of the AAUP's Alexander Meiklejohn Awards for Academic Freedom, and has asked Professor Ramadan to give the address honoring award recipients; Professor Ramadan has accepted the invitation.

25. The AAUP's concerns about the ideological exclusion extend beyond the Ramadan case. Many well-regarded scholars research, write and teach internationally about various issues that could be encompassed by the broad sweep of the ideological exclusion provision. Such scholars include Rogelio Alonso, a terrorism expert and professor at King Juan Carlos University in Madrid; Gavin Cameron, who studies the political dynamics of terrorism and the spread of weapons of mass destruction at the University of Calgary at Alberta; David Martin Jones, a lecturer at the University of Queensland in Australia who has written on political Islam; Xavier Raufer, a terrorism and counter-terrorism expert and the Director of the Institute of Criminology at the University of Paris; Dia'a Rashwan, an expert in terrorism and Islamic militant groups at the Al-Ahram Center for Political and Strategic Studies in Cairo, Egypt; and Magnus Ranstorp of the Swedish National Defence College, who is a leading international expert on Hezbollah, Hamas, al-Qaeda, and other militant Islamic movements. While some of these scholars write about controversial subjects, these are exactly the types of subjects to which the AAUP, its members and the public need access in order to ensure robust academic exchanges and assess some of the most serious debates occurring in academia today.

26. The AAUP is particularly concerned about the ideological exclusion provision because records obtained through the Freedom of Information Act (FOIA) show that the government is construing the provision in the broadest possible way. An excerpt from the State Department's Foreign Affairs Manual (FAM), for example, states that the ideological exclusion provision is directed at foreign nationals who voice "irresponsible expressions of opinion." 9 FAM 40.32 n.6.2 (attached hereto as Exhibit A). What constitutes an "irresponsible expression[] of opinion" is left to the judgment of executive officers. Other documents obtained through the FOIA make clear that the government has formally relied on the ideological exclusion provision to bar a foreign national from the country in at least one case and has deemed others to be inadmissible under the provision in multiple instances. FOIA documents (attached hereto as Exhibit B).

27. A recent spate of cases in which foreign scholars have been barred from the U.S. provides further reason for concern about the use and potential use of the ideological exclusion provision. In early 2005, the State Department refused a visa to Dora Maria Tellez, a Nicaraguan historian who had been appointed the Robert F. Kennedy visiting professor in Latin American studies at Harvard University's Divinity School. Professor Tellez became Nicaragua's minister of health and a parliamentary leader after playing a leading role in the 1979 revolution overthrowing Nicaragua's U.S.-backed dictator. The State Department explained that Professor Tellez had been refused a visa because of her participation in "terrorist acts," but Professor Tellez had been permitted to enter the U.S. on many occasions between 1979 and 2005. Duncan

Campbell, *U.S. Bars Nicaragua Heroine as "Terrorist,"* The Guardian, Mar. 4, 2005 (attached hereto as Exhibit C).

28. In June 2006, Yoannis Milios, a Greek professor of Marxist economic thought, was detained at JFK Airport, interrogated for several hours about his political views, and ultimately denied entry to the country. His exclusion prevented him from delivering a paper at the University of New York at Stonybrook. Like Professor Tellez, Professor Milios had previously visited the U.S. on many occasions without incident. The AAUP wrote to the Departments of State and Homeland Security to protest Professor Milios's exclusion, but the government has still not offered any public explanation for its action. *See* Letter from the American Association of University Professors to Secretary of State Condoleezza Rice and Secretary of Homeland Security Michael Chertoff, June 20, 2006 (attached hereto as Exhibit D). Professor Milios submitted a new visa application in July 2006 but the government has thus far failed to adjudicate it.

29. In October 2006, border officials cancelled the visa of Professor Adam Habib, a prominent South African human rights activist who was invited to the U.S. to meet with officials from the World Bank, National Institute of Health, and Center for Disease Control. Although Professor Habib had a valid visa and had visited the U.S. on many occasions before, he was turned away at the border after a detention of several hours. The AAUP wrote to the Departments of State and Homeland Security to urge that the government reconsider its decision to deny entry to Professor Adam Habib. *See* Letter from the American Association of University Professors to Director of the Office of Diplomatic and Public Liaison Julie Furuta-Toy and Executive Director of Admissibility Requirements and Mitigation Control Paul M. Morris, Oct. 27, 2006

(attached hereto as Exhibit E). Despite the AAUP's letter, the government failed to reconsider its decision or even provide a public explanation for the exclusion. In January 2007, the government revoked the visas of Professor Habib's wife and children, again without explanation. After these revocations, the AAUP wrote to the State Department again. *See* Letter from the American Association of University Professors to Secretary of State Condoleezza Rice, Jan. 18, 2007 (attached hereto as Exhibit F). The State Department recently sent the AAUP a letter purporting to explain Professor Habib's exclusion. The letter states that Professor Habib's visa was "prudentially revoked . . . based on information received after the visa was issued which indicated he may be ineligible for the visa and inadmissible to the United States." *See* Letter from Director of the Office of Diplomatic and Public Liaison Julie Furuta-Toy to the American Association of University Professors, Jan. 8, 2007 (attached hereto as Exhibit G).

30. In 2005, Waskar Ari, a Bolivian historian of Aymara Indian decent, was refused a visa that would have permitted him to accept an Assistant Professorship at the University of Nebraska. In addition to refusing to issue Professor Ari a work visa (a refusal that continues today), the State Department also cancelled his student visa. According to a statement from a State Department spokesperson in March 2006, the student visa was cancelled pursuant to a "terrorism-related section of U.S. legislation on the granting of visas." Burton Bollag, *U.S. Withholds Visa From Bolivian Scholar Hired to Teach at U. of Nebraska*, Chronicle of Higher Education, Mar. 3, 2006 (attached hereto as Exhibit H). In February 2006, the AAUP wrote to the Departments of State and Homeland Security to protest the exclusion of Professor Ari. *See* Letter from the American Association of University Professors to Secretary of State Condoleezza Rice

and Secretary of Homeland Security Michael Chertoff, Feb. 28, 2006 (attached hereto as Exhibit I). Despite the AAUP's letter, the government has still not provided any public explanation for its actions.

31. In early 2003, Carlos Alzugaray Treto, one of Cuba's leading experts on Cuban-American relations, a former Cuban ambassador to the United Nations, and a frequent lecturer at American universities, was denied a visa to address an international conference in Dallas. The State Department pointed to a section of the Immigration and Nationality Act that permits the president to exclude foreigners whose presence "would be detrimental to the interests of the United States." Burton Bollag, *A Cuban Scholar Shut Out*, The Chronicle of Higher Education, Apr. 11, 2003 (attached hereto as Exhibit J).

32. These exclusions, taken collectively, show a pattern that is profoundly troubling to the AAUP. It is increasingly evident that scholars are being barred – whether under the ideological exclusion provision or otherwise – simply because the government disfavors their politics. That the government believes that scholars can and should be excluded from the U.S. because of their political views only deepens the AAUP's concern about the use and potential use of the ideological exclusion provision.

33. It is important to note that the invidious effect of the ideological exclusion provision extends beyond those cases in which the provision is formally invoked. Those who invite foreign scholars to lecture, attend conferences, or meet with academics in the United States must take into account the *possibility* that invited foreign scholars will be excluded. That possibility influences decisions about which foreign scholars should be invited in the first place. This is particularly true because the exclusion of a foreign

scholar under the ideological exclusion provision (or under terrorism grounds more generally) stigmatizes both the foreign scholar and the person or organization that has invited that scholar into the United States. Moreover, the AAUP does not want to expose the foreign scholars it invites to ideological scrutiny. Particularly because the ideological exclusion provision is vague and extremely broad, the category of foreign scholars who are effectively excluded by the ideological exclusion provision is broader than the category of people who are actually deemed inadmissible by the government.

34. Even foreign scholars who are admitted into the United States may censor themselves for fear that they will be excluded in the future. The extension of the ideological exclusion provision into the deportation context by recent legislation ensures a similar censoring effect on scholars who are *residents* in the United States. Scholars who are residents in the U.S. though not U.S. citizens bring a wealth of knowledge to various fields of study. They have unique perspectives that contribute to the academic debate within the United States. Subjecting these scholars to possible deportation based on ideas and viewpoints effectively prohibits these ideas from being discussed in the United States.

35. The uncertainty that stems from the ideological exclusion provision harms the AAUP and its members in other ways. Uncertainty about whether invited scholars will be permitted to enter the country undermines the ability of the AAUP and its members to plan conferences and events in the United States and to publicize those conferences and events before they take place. Travel arrangements must be made and facilities secured at the last minute, and hotel reservations must be confirmed in advance without knowing if foreign scholars will be able to attend. The uncertainty created by the

without knowing if foreign scholars will be able to attend. The uncertainty created by the ideological exclusion provision is an obvious deterrent to inviting foreign scholars – particularly controversial ones – to address the AAUP's members.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 20 day of Feb, 2007.

Cary Nelson

EXHIBIT A

9 FAM 40.32 NOTES

(CT:VISA-734; 05-03-2005)
(Office of Origin: CA/VO/L/R)

9 FAM 40.32 N1 SCOPE OF INA 212(A)(3)(B)

9 FAM 40.32 N1.1 Background and Summary

(CT:VISA-734; 05-03-2005)

a. The Immigration Act of 1990 (Public Law 101-649) generally amended subsection (a) of Immigration and Nationality Act (INA) 212 by replacing the previous 43 classes of excludable aliens with 9 broad classes, each with subclasses. New INA 212(a)(3)(B), Terrorist Activities, incorporated aspects of former INA 212(a)(27) and (29).

b. The Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132) expanded the scope of INA 212(a)(3)(B), to make inadmissible, representatives and members of organizations designated by the Secretary under INA 219 as foreign terrorist organizations (FTOs) (See 9 FAM 40.32 N2.3 (1).). That same year, the Illegal Immigration Reform and Immigrant Responsibility Act (Public Law 104-208) amended INA 212(a)(3)(B)(i) again to make inadmissible, any alien who, "under circumstances indicating an intention to cause death or serious bodily harm," incited terrorist activity. The new provision applied retroactively to all such incitement activities, regardless of when they occurred.

c. Following the terrorist attacks on September 11, 2001, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), expanded the scope of INA 212(a)(3)(B) in several important respects:

(1) The Secretary was given new authority to designate organizations as terrorist organizations for purposes of INA 212(a)(3)(B) if certain criteria are met. Organizations so designated are listed on the "Terrorist Exclusion List" or "TEL." (See 9 FAM 40.32 N2.3(2)).

(2) A definition of "terrorist organization" was added for the first time. Under the definition, three categories of entities are considered "terrorist organizations" for purposes of section INA 212(a)(3)(B):

(a) The first category consists of entities designated by the

death or serious bodily harm.

(2) The applicant, a professor, is a strong nationalist whose lectures regularly blame "foreigners" for his country's problems and argues that the only solution to these problems is that "foreigners" should be driven out of the country. During the school year, the press reports that some of the students at the school have been purchasing weapons and seeking to obtain and manufacture explosives. Police notify the faculty that they are investigating several students for weapons-related offenses. At the end of a week of particularly strong anti-foreign sentiment, the applicant gives a special lecture entitled "A Call to Action." With the knowledge that the students under investigation are in the audience, the applicant begins his lecture with: "The time has come for action!" He then reiterates throughout his lecture that: "The only solution to the country's problems is to purge our great land of these foreigners once and for all through whatever means necessary." Shortly thereafter, some of his students detonated a truck bomb outside a restaurant frequented by foreign nationals, killing several foreign nationals and injuring many restaurant employees.

Analysis: The use of any explosive with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property is a terrorist activity. In the example, the applicant helps foster anti-foreign sentiments and then, during a particularly tense period, urges students to act to drive "foreigners" from the country "through whatever means necessary." Under these circumstances, you would have reasonable ground to believe that the applicant's speech incited terrorist activity. The fact that the applicant knew that several students likely had access to weapons and/or explosives and that those students were in attendance at his special lecture would provide you with reasonable ground to believe that the applicant intended to cause death or serious bodily harm.

Note: The Patriot Act amended INA 212(a)(3)(B)'s definition of engaging in terrorist activity to also include incitement (see INA 212(a)(3)(B)(iv)(I)). As a result, a person who is inadmissible under INA 212(a)(3)(B)(i)(III) for inciting terrorist activity will also now be inadmissible under INA 212(a)(3)(B)(i)(I), for committing a terrorist activity.

(3) **Public Endorsement** - An alien may be excludable if the alien uses the alien's position of prominence with any country to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the

Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities. This provision does not require a finding of specific intent (as is the case in the incitement provisions discussed in paragraph (1) above); rather it is directed at irresponsible expressions of opinion by prominent aliens who are able to influence the actions of others. An example might be a community leader who publicly praised Al Qaida in the wake of a terrorist attack for which it claimed responsibility, and who urged the community not to cooperate with efforts by law enforcement officials to bring those responsible to justice. You may not find an alien inadmissible under this provision without the necessary determination by the Secretary of State. Accordingly, if you believe that an alien in a position of prominence may be inadmissible under this provision, report all of the relevant facts to us and request a determination of whether the alien's activities undermine U.S. efforts to reduce or eliminate terrorist activities. Referral to the Department in such cases ensures that relevant foreign policy and national security concerns are considered.

9 FAM 40.32 N7 THE PALESTINE LIBERATION ORGANIZATION (PLO)

(CT:VISA-734; 05-03-2005)

Any alien who is an officer, official, representative, or spokesperson of the PLO is considered to be engaged in terrorist activity and therefore inadmissible under INA 212(a)(3)(b)(i). INA 212(a)(3)(B)(i) applies only to those individuals who are currently PLO officers, officials, representatives, or spokespersons. Applicants who no longer occupy such positions, and persons who are merely current or former members or employees, but are not officers, officials, representatives, or spokespersons, are not ineligible under this section. You should be alert to the possibility, however, that such applicants may be ineligible under INA 212(a)(3)(B) for other reasons, such as having participated in preparing, planning, or conducting terrorist activities.

EXHIBIT B

United States Department of State

Deputy Assistant Secretary
for Visa Services

Washington, D.C. 20522-0113

January 16, 2007

Melissa Goodman, Esq.
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004

Re: ACLU v. Department of State, Civil Action No. 05 Civ. 9509 (PAC)
Statistical information on visa denials

Dear Ms. Goodman:

Pursuant to the terms of the settlement of the lawsuit captioned above, the Department of State has compiled statistical data on the Department's use of the "endorse or espouse terrorist activity" provision of the Immigration and Nationality Act to deny visa applications from October 26, 2001 to the present. The current relevant provision (8 U.S.C. § 1182(a)(3)(B)(i)(VII)) makes inadmissible any alien who "endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization." Prior to May 11, 2005, the relevant provision (then codified at 8 U.S.C. § 1182(a)(3)(B)(i)(VI)) made inadmissible any alien who "has used the alien's position of prominence within any country to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities."

Although the Department of State does not maintain statistical data of this nature, the Department exercised due diligence in conducting a search of Department records in order to ascertain the requested information to resolve this lawsuit. The Department has found only one alien, a Lebanese national, inadmissible on the basis of the "endorse or espouse terrorist activity" statutory provision cited above. Although that individual was found inadmissible on three separate occasions, in each case a visa ultimately was issued to the individual on the basis of a waiver issued by the Department of Homeland Security. The relevant visas were issued on March 19, 2005, October 11, 2005, and October 4, 2006.

Sincerely,

Stephen A. Edson

Customs and Border Protection

[redacted] b2, b7c

Date: September 25, 2005

TO: Port Director [redacted] b6, b7c

FROM: [redacted]
Executive Director, [redacted] b2, b7c
Customs and Border Protection

Subject [redacted] b2, b7c

Based on a complete review of all information available to the National Targeting Center, and in consultation with [redacted] b2, b7c in the case of [redacted] b6, b7c

1. Sufficient derogatory information exists to preclude the admission of the above applicant under the following exclusion ground(s):

212(a)(3)(B)(i)(VII)

This finding is based upon review of information held at [redacted] b2, b7c. For further information, please contact [redacted]. This record must be retained by the Port of Entry whether the applicant is ultimately admitted or refused entry.

[redacted] b6, b7c

[redacted] b2, b7c
Executive Director, [redacted]
Customs and Border Protection

017

FLT/VESS#: AA 936 AMERICAN AIRLINES
DOC TYPE: P #: [redacted] CNTRY: VE VENEZUELA SEX: M
DNAME(LAST): [redacted] FRST: [redacted] DOB: [redacted] b6,b7c
RFRD BY: [redacted] CBP OFFCR-C DTE: 09252005 TME: 1959
REASON:
PORT TEAM INTERCEPT PLANESIDE/[redacted] MATCH b2,b7e

NO FIN NUMBER
SNAME(LAST): [redacted] FRST: [redacted] DOB: [redacted] b6,b7c
NATIONALITY: VE VENEZUELA
DISPOSITION: WD WITHDRAWAL (I275) - NIV/BCC CA ADMIT UNTIL DATE:
CHARGE (CODED): 3A2 UNLAWFUL ACTIVITY RE [redacted] b2,b7e
DEFERRED TO POE: FIN#: [redacted] b2
SECONDARY OFFICER: [redacted] -CBP OFFCR-C b6,b7c 09/25/2005 21:57
COMMENTS: REFERRAL CODE:
THE SUBJECT WAS ALLOWED TO WITHDRAW HIS APPLICATION FOR ADMISSION IN LIEU OF REMOVAL PROCEEDINGS UNDER SECTION 235(B)(1) OF THE INA. [redacted] HAS ENOUGH DEROGATORY INFORMATION TO PRECLUDE THE SUBJECT'S ADMISSION. [redacted] LOG #[redacted]. b2,b7c
[redacted] b6,b7c

[redacted] b2

SIGNIFICANT INCIDENT REPORTING REFERENCE
TERRORIST/TERRORISM RELATED INCIDENT

SUBJECT INFORMATION
NAME: [redacted]
DOB: [redacted]
COB: Venezuela
CITIZENSHIP: Venezuela
HEIGHT: 6'0 WEIGHT: 165 EYES: Brown HAIR: Brown
ADDRESS: [redacted] b6, b7c

DOCUMENTS
TYPE: Passport # [redacted]
COUNTRY: Venezuela
ISSUE DATE: 09/10/2003
EXPIRATION: 09/10/2008
ISSUED AT: Caracas, Venezuela

TYPE: B1/B2 U.S. Non-Immigrant Visa (foil # [redacted])
COUNTRY: United States
ISSUE DATE: 11/05/2003
EXPIRE DATE: 11/04/2013
ISSUED AT: Caracas, Venezuela

ARRIVAL INFORMATION:
DATE/TIME: 09/25/2005 19:40
FLIGHT: AA 936
ARRIVING FROM: Caracas, Venezuela

SUMMARY OF INCIDENT:
Subject arrived to Miami International Airport on 09/25/2005 aboard American Airlines flight 936 from Caracas, Venezuela. PORT team members intercepted the subject disembarking the flight. The subject presented Venezuelan passport # [redacted] b6,b7c containing U.S. NIV (# [redacted]) upon request. Subject was escorted to the primary inspection area and referred to CBPI secondary as a [redacted] match b2,b7e ([redacted]). [redacted] and [redacted] b6,b7c were present upon arrival to CBP secondary and conducted an interview. Subject declared and was in possession of $21,475.00 US dollars. Subject completed a FinCEN form 105. Subject claimed to be coming to purchase Chinese made sewing machines for his company ([redacted]) in Caracas, Venezuela. Subject was in possession of 2 b6,b7c bags. All were searched with negative results. [redacted] was notified (LOG# [redacted]). The b2,b7e [redacted] faxed a [redacted] stating: " Sufficient derogatory b2,b7e information exists to preclude the admission of the above applicant under the following exclusion ground: 212(a)(3)(B)(i)(VII)". The subject was allowed to withdraw his

application for admission and will be returned to Caracas, Venezuela on the next available flight.

[redacted] INFORMATION
TYPE: [redacted] /Possibly Excludable for Terrorist Activities
AGENCY: CBP [redacted]
TECS RECORD ID: [redacted]
OWNER: [redacted]

b2, b7e
b6, b7c

TYPE: [redacted] for Terrorist Organization Member
AGENCY: [redacted]
NIC NUMBER: [redacted]
ORI: [redacted]

b2, b7e

RELEVANT COMPUTER QUERIES: [redacted]

b2, b7e

AGENCIES NOTIFIED:
[redacted] Log # [redacted]
[redacted] Duty Agent [redacted] and [redacted] Special Agent [redacted].

b2, b7e
b2, b7e
b6, b7c

SUBJECT'S ITINERARY:
Embarkation point: CCS
Route of travel: CCS-MIA-CCS
Destination: Days Inn at 7250 NW 11th Street, Miami, FL

DISPOSITION:
I-275 - [redacted] - Subject found inadmissible per 212(a)(3)(B)(i)(VII) of the INA. Subject is scheduled to depart the United States on 09/26/05 aboard an American Airlines flight AA2907 to Caracas, Venezuela, ETD: 06:30.

b6, b7c

*SIR was telephonically approved by APD [redacted]

b6, b7c

Customs and Border Protection

[redacted] b2, b7e

Date: September 16, 2005

TO: Port Director [redacted] b6, b7c

FROM: [redacted]
Executive Director, [redacted] b2, b7e
Customs and Border Protection

Subject: [redacted]

Based on a complete review of all information available to [redacted], and in consultation with the [redacted], in the case of [redacted]: b2, b7e b6, b7c

Sufficient derogatory information exists to preclude the admission of the above applicant under the following ground(s) of inadmissibility:

212(a)(3)(B)(i)(VII)

This matter is based upon review of information held at [redacted]. For further information, please contact [redacted]. This record must be retained by the Port of Entry whether the applicant is ultimately admitted or refused entry. b2, b7e

[redacted] b6, b7c

[redacted]
Executive Director, [redacted] b2, b7e
Customs and Border Protection

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[redacted] MIAMI, AIRPORT CONCOURSE E [redacted]
FLT/VES#: CM 300 COPA - COMPANIA PANAME
DOC TYPE: P #: [redacted] CNTRY: IT ITALY SEX: F
DNAME(LAST): [redacted] FRST: [redacted] DOB: [redacted]] b6,b7C
RFRD BY: [redacted] CBP OFFICER SERIES-C DTE: 09162005 TME: 1458
REASON:
US VISIT GREEN/POS MTCH [redacted]/ESCORTED BY PORT TEAM ROVER/ b2,b7E
[redacted] b6,b7C NO FIN NUMBER
SNAME(LAST): FRST: DOB:
NATIONALITY: IT ITALY
DISPOSITION: WR VISA WAIVER/REFUSED ADMIT UNTIL DATE:
CHARGE (CODED): 3B TERRORIST ACTIVITIES
DEFERRED TO POE: b6,b7C FIN#: [redacted] b2
SECONDARY OFFICER: [redacted]-CBP OFFCR-C 09/16/2005 22:21
COMMENTS: b6,b7C REFERRAL CODE:
[redacted]/SUBJECT WAS FOUND TO BE INADMISSIBLE TO THE UNITED STATES UNDER SECT
ION 212(A)(3)(B)(I)(VII) OF THE INA.FINAL DISPOSITION: VWP REFUSAL-SUBJECT IS B
EING DENIED ENTRY UNDER SECTION 217 OF THE INA.

([redacted]) ([redacted]) ([redacted]) ([redacted]) [redacted] b2
([redacted]) ([redacted]) ([redacted] ([redacted])

AT 11:40- POCC was contacted by [redacted] regarding a passenger scheduled to arrive at MIA aboard Copa Airlines flight 300 from Guayaquil, Ecuador who is hitting on a [redacted], TECS record ID# [redacted]. Passenger was identified as [redacted], DOB: [redacted], COC: Italy, pp# [redacted]. [redacted] activity log number [redacted] was issued. Hold for [redacted] determination.

14:50 Subject was escorted to passport control hard secondary inspection by CBP PORT Team Officers [redacted] and [redacted]. Subject claims she is visiting her son, [redacted] Social Security # [redacted], who applied for Political Asylum, A# [redacted], who resides at [redacted]. Her daughter, [redacted] who also applied for Political Asylum, A# [redacted], but returned to live in Barranquilla, Colombia. [redacted] first husband is [redacted] a.k.a [redacted] one of the leaders of the F.A.R.C. in Colombia who was extradited from Colombia last year, 2004. [redacted] claims she has not seen [redacted] since 1987. Her current husband is [redacted], national of Chile born on [redacted], passport # [redacted] last entry to the United States was on December 14, 2003 who now resides with her in Barranquilla, Colombia. Subject is traveling with $6,900 USD. Subject claims she works for [redacted] imports and exports as a Commercial Manager located at the Barranquilla Free Zone.

16:10 Subject was interviewed by PORT Officer [redacted] and [redacted]. A hundred percent baggage inspection was completed, no derogatory information was found during baggage inspection or interview.

16:50 [redacted] Forwarded the [redacted] stating that there is sufficient derogatory information to preclude the admission of the above applicant under the following ground of inadmissibility 212(a)(3)(B)(i)(VII) of the INA. Subject will be refused in accordance with INA section 8 CFR 217.4(a)(1) under the Visa Waiver Permanent Program A# [redacted].

Subject will be departing to Bogotá, Colombia via Panama City, Panama on 09/17/05 aboard Copa Airlines flight number CM 489 Estimated Time Of Departure is 07:50 hours.

SIR was telephonically approved by APD [redacted] via Chief [redacted]

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Refusal of Admission/Paro into the United Stat

TO: Department of Manpower and Immigration
Immigration Division, Canada
Blackpool, Quebec, Canada
Location

September 13, 2005
Date and Time of Inspection

FROM: USINS
CHAMPLAIN, NY, POE
Location

[redacted] b6,b7C
CBP OFFICER
Preparing Officer (Print)

SUBJECT: The alien(s) named below has (have) been:

☒ Refused admission into the United States

☐ Refused admission and paroled into the United States

Family Name (Capital Letters)	First Name	Initial	Date of Birth	Nationality
#1 [redacted]	[redacted]		[redacted]	CANADA
#2 [redacted]	[redacted]		[redacted]	CANADA
#3.				
#4.				
#5.				

b6 b7C

REASONS FOR EXCLUDABILITY OR PAROLE b2,b7e

212(a)(3)(B)(i)(II)
SUBJECTS [redacted], DOB [redacted]. A CITIZEN OF CANADA BORN IN IRAN TRAVELING ON CANADIAN PASSPORT [redacted] AND DAUGHTER [redacted], DOB [redacted], A CANADIAN CITIZEN ALSO BORN IRAN TRAVELLING ON CANADIAN CITIZENSHIP ID [redacted]. BOTH SUBJECTS CLAIMED THEY WERE DESTINED TO NEW YORK CITY FOR A PLEASURE TRIP. THEY WERE PASSENGERS ABOARD THE TRAILWAYS BUS. SUBJECT CHECKS ON [redacted] WERE NEGATIVE. SUBJECT [redacted] HAD POSITIVE [redacted] AS BEING A POSSIBLE TERRORIST ORGANIZATION MEMBER AND ON A TERRORIST WATCHLIST. SUBJECT IS ALSO ASSOCIATED WITH RECORDS [redacted] AND [redacted]. MOTHER WAS A PRIOR 7A1 AT THE ALEXANDRIA BAY POE ON 04/17/2005. BOTH SUBJECTS BAGS WERE RETREIVED AND SUBJECTS WERE ESCORTED TO SECONDARY. TWO ARMED FEMALE OFFICERS PATTED BOTH SUBJECTS DOWN. SUBJECT [redacted] WAS PLACED IN A HOLDING CELL. DETENTION LOG INITIATED AT 0050 HRS. [redacted] IMMEDIATELY CALLED [redacted] OFFICER [redacted] INITIATED REF # [redacted]. [redacted] RESPONDED AT 0155 HRS THAT SUBJECT [redacted] IS POSITIVE [redacted]. [redacted] NOTIFED [redacted] AT 0225 HRS. [redacted] INITIATED LOG [redacted]. CHIEF [redacted] NOTIFIED OF SITUATION BY [redacted]. SUBJECTS BAGS WERE SCANNED WITH BOTH RADIATION PAGER AND RIID BEFORE EXAMINATION WITH NEGATIVE RESULTS. SUBJECTS POCKET TRASH AND LUGGAGE CONTENTS WERE COPIED. [redacted] ATTEMPTED TO INTERVIEW [redacted] BUT SHE DECLINED TO ANSWER ANY OF HER QUESTIONS. SUBJECT DID MAKE A COMMENT REGARDING IF THE NEW IRANIAN PRESIDENT WAS GOING TO BE TREATED LIKE SHE WAS. [redacted]. INTERVIEWED DAUGHTER [redacted]. DAUGHTER CLAIMED THEAT THEIR INTENTION WAS TO GO TO THE UNITED NATIONS FOR A DEMONSTRATION. SHE CLAIMED SHE WAS JUST GOING TO SEE NEW YORK AND HER MOTHER WAS TO PROTEST. THEY HAD PLANNED TO STAY AT THE DAYS INN HOTEL IN NEWARK, NJ. DAUGHTER WAS APPREHENSIVE AND DID NOT GIVE-UP ANY OTHER ADDITIONAL INFORMATION AS SHE DID NOT WANT HER MOTHER TO GET INTO TROUBLE. [redacted] ...(CONTINUED ON I-831)

b6 b7C b2 b2 b7e b6,b7C

INDICATE ALL RELEVANT ACTIONS BELOW

YES NO

☒ ☐ Alien(s) advised of right to a hearing?
☒ ☐ Hearing waived? If NO, details above.
☒ ☐ I-160A Sent to Canadian POE?
☐ ☒ Radio message sent? Number:
☐ ☒ I-561 (L/O) prepared?
☐ ☐ Alien(s) paroled? Details Above.
☐ ☒ Lookout intercept? Details above.
☐ ☒ I-160 completed

[redacted] b6,b7C
CBP OFFICER
Referring Officer (Print)

[redacted] b6,b7C
SUPERVISORY CBP OFFICER
(Receiving Officer)

[redacted] b2,b7e

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Form I-160A (Rev. 7-12-81)N

U.S. Department of Justice
Immigration and Naturalization Service

Continuation Page for Form I-160A

Alien's Name	File Number	Date
		September 13, 2005

NOTIFIED AND RESPONDED TO INTERVIEW SUBJECTS. SUBJECT [redacted] IS BELIEVED TO BE A MEMBER OF THE MEK, WHICH IS A DESIGNATED TERRORIST ORGANIZATION BY THE US DEPARTMENT OF STATE. BOTH SUBJECTS REFUSED 212(A)(3)(B)(I)(VII) PER PORT DIRECTOR [redacted] [redacted] RECEIVED STATING THAT "SUFFICENT DEROGATORY INFORMATION EXISTS TO PRECLUDETHE ADMISSION OF THE ABOVE APPLICANT UNDER THE FOLLOWING GROUND(S): 212(A)(3)(B)(I)(VII)". SUBJECT [redacted] QUALIFIES FOR THESE CHARGES AS SHE DOES NOT WORK AND LIVES WITH HER PARENTS. SUBJECTS WERE ENROLLED IN [redacted] WAS ASSIGNED A# [redacted], FBI# [redacted] AND FINS# [redacted]. [redacted] WAS ASSIGNED A# [redacted], FBI# [redacted] AND FINS# [redacted]

b6, b7C
b2, b7E
b6, b7C
b6, b7C
b2, b7E
b6, b7C
b2
b6
b7C

Customs and Border Protection

[redacted] b2, b7e

Date: September 13, 2005

TO: Port Director, [redacted] b6, b7c

FROM: [redacted]
Executive Director, [redacted]
Customs and Border Protection

Subject: [redacted] b2

Based on a complete review of all information available to the [redacted], and in consultation with the [redacted], in the case of [redacted] b6, b7c b2 b7

Sufficient derogatory information exists to preclude the admission of the above applicant under the following exclusion ground(s):

212(a)(3)(B)(i)(VII)

This matter is based upon review of information held at the [redacted]. For further information, please contact the [redacted]. This record must be retained by the Port of Entry whether the applicant is ultimately admitted or refused entry. b2, b7

[redacted] b6, b7c

Executive Director, [redacted] b2, b7e
Customs and Border Protection

Customs and Border Protection

[redacted] b2, b7e

[redacted]

Date: September 13, 2005

TO: Port Director, [redacted] b6, b7C

FROM: [redacted]
Executive Director, [redacted] b2, b7e
Customs and Border Protection

Subject: [redacted] b2

Based on a complete review of all information available to the [redacted], and in consultation with the [redacted] b2, b7e
in the case of [redacted] b6, b7C

Sufficient derogatory information exists to preclude the admission of the above applicant under the following exclusion ground(s):

212(a)(3)(B)(i)(VII)

This matter is based upon review of information held at the [redacted] b2, b7e
[redacted] This record must be retained by the Port of Entry whether the applicant is ultimately admitted or refused entry.

[redacted] b6, b7C

Executive Director, [redacted] b2, b7e
Customs and Border Protection

Customs and Border Protection

[redacted]] b2, b7e

[redacted]

Date: January 15, 2006

TO: Port Director [redacted]] b6, b7C

FROM: [redacted]
Executive Director, [redacted]] b2, b7e
Customs and Border Protection

Subject: [redacted]

Based on a complete review of all information available to [redacted]] b2, b7C
[redacted], and in consultation with [redacted]
in the case of [redacted] b6, b7C

1. Sufficient derogatory information exists to preclude the admission of the above applicant under the following exclusion ground(s):

212(a)(3)(B)(i)(VII)

This finding is based upon review of information held at [redacted]] b2, b7e
[redacted]r. For further information, please contact
the [redacted]. This record must be
retained by the Port of Entry whether the applicant is ultimately admitted or refused entry.

[redacted]] b6, b7C

[redacted] b2, b7e
Executive Director, [redacted]
Customs and Border Protection

[redacted] MIAMI, AIRPORT CONCOURSE E [redacted] b2
FLT/VES#: AA 2108 AMERICAN AIRLINES
DOC TYPE: V #: [redacted] CNTRY: CR COSTA RICA SEX: F
DNAME(LAST): [redacted] FRST: [redacted] DOB: [redacted]] b6, b7c
RFRD BY: [redacted] CBP OFFICER SERIES-C DTE: 01152006 TME: 1321
REASON:
POSSIBLE MATCH/ESCORTED BY PORT TEAM:WAS US VISITED(NEG RESULTS)

NO FIN NUMBER
SNAME(LAST): FRST: DOB:
NATIONALITY: CR COSTA RICA
DISPOSITION: WD WITHDRAWAL (I275) - NIV/BCC CA ADMIT UNTIL DATE:
CHARGE (CODED): 3B TERRORIST ACTIVITIES
DEFERRED TO POE: FIN#: [redacted] b2
SECONDARY OFFICER: [redacted] CBP OFFCR-C 01/15/2006 21:24] b6, b7c
COMMENTS: REFERRAL CODE:
[redacted], THE SUBJECT IS FOUND TO BE INADMISSIBLE TO THE UNITED STATES UNDE
R SECTION 212(A)(3)(B)(I)(VII) OF THE INA.
FINAL DISPOSITION: I-275-SUBJECT WAS ALLOWED TO WITHDRAW HER APPLICATION FOR AD
MISSION IN LIEU OF REMOVAL PROCEEDINGS UNDER SECTION 235(B)(1) OF THE INA.

[redacted] b2

SIGNIFICANT INCIDENT REPORTING REFERENCE
TERRORIST/TERRORISM RELATED INCIDENT

b6, b7c

SUBJECT INFORMATION
NAME: [redacted]
DOB: [redacted]
POB: San Jose, Costa Rica
COC: Costa Rica

DOCUMENTS
TYPE: Costa Rican Passport number [redacted]
ISSUE DATE: 07/07/1998
EXPIRATION: 07/07/2008

TYPE: B1/B2 NIV Foil number [redacted]
ISSUE DATE: 07/14/1998
EXPIRATION: 07/13/2008
ISSUED AT: San Jose

ARRIVAL INFORMATION
DATE/TIME: 01/15/2006 ETA: 12:58
FLIGHT: AA2108
ARRIVING FROM: San Jose, Costa Rica

TRAVEL COMPANIONS
NAME: [redacted]
DOB: [redacted]
RELATIONSHIP: Mother
DISPOSITION: Admitted B2

NAME: [redacted]
DOB: [redacted]
RELATIONSHIP: Daughter
DISPOSITION: Admitted B2

NAME: [redacted]
DOB: [redacted]
RELATIONSHIP: Son
DISPOSITION: Admitted B2

SUMMARY OF INCIDENT
On 01/15/2006, [redacted] arrived to the Miami International Airport aboard American Airlines flight 2108 from San Jose, Costa Rica. PORT team members intercepted the subject disembarking the flight. The subject presented Costa Rican passport number [redacted] containing U.S. NIV Foil number [redacted] upon request. Subject was escorted to the primary inspection area and referred to CBPI

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b2, b7e

secondary as a [redacted] match ([redacted] RECORD ID# [redacted]) and [redacted] record for Terrorist Organization Member [redacted] # [redacted]. [redacted] and [redacted] were contacted and declined to conduct an interview. Subject claimed to be coming to the United States to visit a friend, [redacted], in Monroe, North Carolina for one week and then visit [redacted], ex sister in law, in Chapel Hill, North Carolina before returning to Costa Rica. A 100% bag exam was conducted with negative results. [redacted] was notified (LOG# [redacted]). The [redacted] Unit faxed a [redacted] stating: " Sufficient derogatory information exists to preclude the admission of the above applicant under the following exclusion ground: 212(a)(3)(B)(i)(VII)". The subject was allowed to withdraw her application/an I-275 was executed. Subject is scheduled to return to San Jose, Costa Rica on 01/16/2006 aboard American Airlines flight AA937, ETD: 11:49.

b6, b7c

b2, b7e

LOOKOUT INFORMATION
TYPE: [redacted] Possibly Excludable for Terrorist Activities
AGENCY: CBP-[redacted]
TECS RECORD ID: [redacted]
OWNER: [redacted]

b2, b7e

b6, b7c

TYPE: [redacted] for Terrorist Organization Member
AGENCY: [redacted]
[redacted] NUMBER: [redacted]
ORI: [redacted]

b2, b7e

RELEVANT COMPUTER QUERIES
[redacted]

b2, b7e

AGENCIES NOTIFIED
[redacted]: Log # [redacted]
[redacted] and [redacted]

b2, b7e

b6, b7c

SUBJECT'S ITINERARY
SJO-MIA-SJO

DISPOSITION
I-275 – [redacted] Subject found inadmissible pursuant to section 212(a)(3)(B)(i)(VII) of the INA. Subject is scheduled to depart the United States on 01/16/2006 aboard American Airlines flight number AA937, ETD: 11:49 AM.

b6, b7c

*** SIR was telephonically reviewed and approved by APD [redacted]. *** b6, b7c

U.S. CUSTOMS AND BORDER PROTECTION
Office of Anti-Terrorism

Expanded Terror-Related Grounds for Alien Inadmissibility

Summary and Potential Application

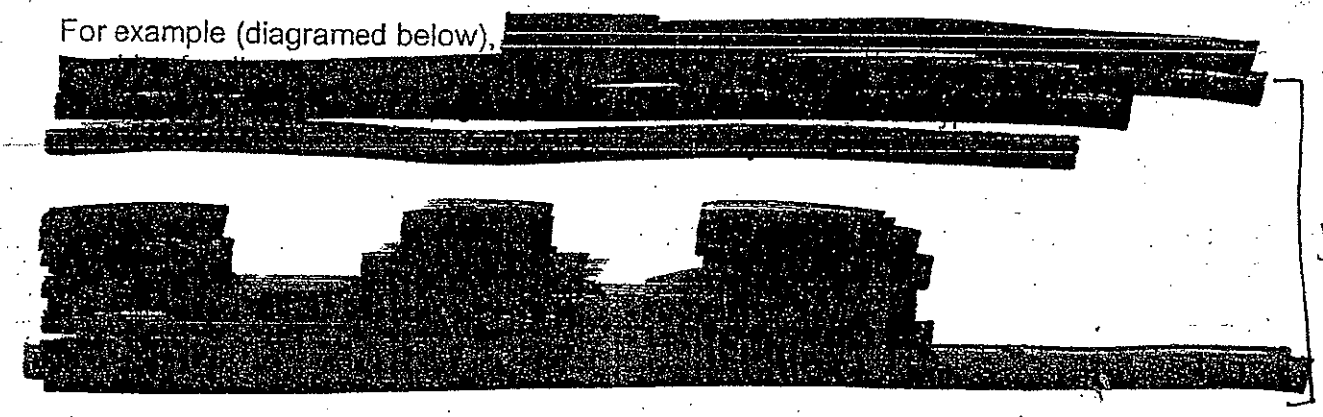
As amended in May 2005, by the REAL ID Act (P.L. 109-13, Division B), the Immigration and Nationality Act (INA) provides nine terror-related grounds for alien inadmissibility (attachment A). The REAL ID Act expanded six of the grounds both directly and by expanding the underlying definitions used in the grounds (see attachments B and C). The cumulative effect of these changes is to expand the ability of CBP to deny, or potentially deny entry into the United States to aliens for terror-related grounds.

"Terrorist Organization"

The INA distinguishes between two types of terrorist organizations: USG-designated terrorist organizations and non-USG-designated terrorist organizations referred to in this analysis as type III terrorist organizations. The REAL ID Act expanded the INA's definition of a type III terrorist organization as "a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in" the INA's definition of engaged in terrorist activity (see attachment B).

The expanded definition of a type III terrorist organization was designed to allow the U.S. to target groups that provide support (financial and otherwise) to terrorist organization, but do not directly commit, incite, plan, prepare or gather information for a terrorist activity as previously required in the INA. The definition does not require the type-III terrorist organization to have criminal intent, and includes the activities of subgroups.

For example (diagramed below),



CBP Impact: Based upon the REAL ID Act's changes to the INA, CBP can now deny admission to any alien who:

- is a representative of a type III terrorist organization, with no need to prove criminal intent. Previously, only representatives of designated terrorist organizations were inadmissible. A representative is defined as any officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity;
- is a member of a type III terrorist organization unless the alien can meet the new higher threshold demonstrating "by clear and convincing evidence" that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;
- espouses or endorses terrorist activity, or persuades others to support terrorist activity or a terrorist organization, with no need to prove criminal intent. This is particularly potent given the expanded definition of type III terrorist organizations. Previously, the espousal grounds only applied to aliens who used positions of prominence to endorse or espouse terrorist activity, and did so in a way that undermined U.S. anti-terrorism efforts;
- receives military-type training from or on behalf a terrorist organization, with no need to prove criminal intent. Previously, receiving military training from a terrorist organization was only a deportable offense. Military training is defined as training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm or other weapon, including any weapon of mass destruction.
- knew, or reasonably should have known, that he was providing material support to a member of a designated terrorist organization;
- knew, or reasonably should have known, that he was providing material support to a member of a type III terrorist organization, unless the alien can meet the new higher threshold demonstrating "by clear and convincing evidence" that the alien did not know and should not have known that the group was a terrorist organization; and,
- solicited funds, membership or provided material support for a type III terrorist organization, unless the alien can meet the new higher threshold demonstrating "by clear and convincing evidence" that the alien did not know and should not have known the group was a terrorist organization.

Attachments

Attachment A – Terror-related grounds for inadmissibility
Attachment B – Definition of "engage in terrorist activity"
Attachment C – Definition of "terrorist organization"
Attachment D – Side-by-side of INA language before and after the REAL ID Act

Attachment A – Terror-Related Grounds for Inadmissibility

As amended in May 2005, by Section 103 of the REAL ID Act (P.L. 109-13, Division B), the Immigration and Nationality Act (INA) section 212 (a)(3)(B)(i) provides nine terror-related grounds for alien inadmissibility for any alien who:

I. has engaged in a terrorist activity;
II. a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable grounds to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in section(a)(3)(B)(iv) of the INA);
III. has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;
IV. is a representative (as defined in section 212 (a)(3)(B)(v) of the INA) of –
    a. a terrorist organization (as defined in section(a)(3)(B)(vi) of the INA; or
    b. a political, social or other group that endorses or espouses terrorist activity;
V. is a member of a terrorist organization described in section 212(a)(3)(B)(iv)(I) or (II) of the INA);
VI. is a member of a terrorist organization described in section 212(a)(3)(B)(iv)(III) of the INA), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;
VII. endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;
VIII. has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in section 212(a)(3)(B)(iv) of the INA); or
IX. is the spouse or child of an alien who is inadmissible under section 212(a)(3)(B)(i) of the INA, if the activity causing the alien to be found inadmissible occurred within the last 5 years, is inadmissible.

The REAL ID Act expands grounds I, II, IV, VI, VII, and VIII.

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Attachment B – Definition of "engage in terrorist activity"

"Engage in terrorist activity", as defined in the INA (section 212(a)(3)(B)(iv)) and as amended by the REAL ID Act, means an activity in an individual capacity or as a member of an organization:

I. to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;
II. to prepare or plan a terrorist activity;
III. to gather information on potential targets for terrorist activity;
IV. to solicit funds or other things of value for –
    a. a terrorist activity;
    b. a terrorist organization described in section 212(a)(3)(B)(vi)(I) or (II) of the INA; or
    c. a terrorist organization describe in section 212(a)(3)(B)(vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;
V. to solicit any individual –
    a. to engage in conduct otherwise described in section 212(a)(3)(B)(iv);
    b. for membership in a terrorist organization described in section 212(a)(3)(B)(vi)(I)or(II); or
    c. for membership in a terrorist organization described in section 212(a)(3)(B)(vi)(III) unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or
VI. to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training –
    a. for the commission of a terrorist activity;
    b. to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;
    c. to a terrorist organization described in section 212(a)(3)(B)(vi)(I) or (II) or to any member of such an organization; or
    d. to a terrorist organization described in section 212(a)(3)(B)(vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.

Attachment C – Definition of "terrorist organization"

For the purposes of the INA, there are functionally two types of terrorist organizations: USG-designated terrorist organizations (I and II below) and non-USG-designated terrorist organizations (III below), referred to in this analysis as a "type III terrorist organization". The full definition of "Terrorist organization" as defined in the INA (section 212(a)(3)(B)(vi)) and amended by the REAL ID Act means an organization:

I. designated under section 219 of the INA;
II. otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in the activities described in section 212(a)(3)(B)(iv)(I) through (VI); or
III. that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in section 212(a)(3)(B)(iv)(I) through (VI).

ATTACHMENT D – SIDE-BY-SIDE OF INA LANGUAGE before and after the REAL ID Act

Inadmissibility Due to Terrorist and Terrorist-Related Activities As defined in INA section 212(a)(3)(B)(i) any alien who (as follows) is inadmissible --		
	Pre-REAL ID Act	**As Amended by the REAL ID Act**
No Change	(I) has engaged in a terrorist activity,	(I) has engaged in a terrorist activity; or
Changes Marked	(II) a consular officer or the Attorney General, knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv)); or	(II) a consular officer, the Attorney General, **or the Secretary of Homeland Security** knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv)); or
No Change	(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity; or	(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity; or
Changes Marked	(IV) is a representative (ad defined in clause (v)) of – a. a *foreign* terrorist organization, ~~as designated by the Secretary of State under section 219~~, or b. a political, social or other ~~similar group whose public endorsement of acts of terrorist activity the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities~~; or	(IV) is a representative (as defined in clause (v)) of – a. a terrorist organization **(as defined in clause (vi))**; or b. a political, social, or other group **that endorses or espouses terrorist activity**; or
Changes Marked	Is a member of a foreign terrorist organization ~~as designated by the Secretary of State under section 219~~, or an organization which the alien knows or should have known is a terrorist organization;	(V) **is a member of a terrorist organization described in subclause (I) or (II) of clause (vi); or** (VI) **is a member of a terrorist organization described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization; or**
Changes Marked	(VI) ~~has used the alien's position of prominence within any country~~ to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, ~~in a way that the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities~~; or	(VII) endorses or espouses terrorist activity or persuades others **to endorse or espouse** terrorist activity or support a terrorist organization; or
	No similar subclause.	(VIII) has received military-type training (as defined in

		section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or
No Change	(VII) is the spouse or child of an alien who is inadmissible under this section, if the activity causing the alien to be found inadmissible occurred within the last 5 years.	(IX) is the spouse or child of an alien who is inadmissible under this section, if the activity causing the alien to be found inadmissible occurred within the last 5 years.

*Note: In both prior law and the REAL ID Act, an alien who is an officer, official, representative, or spokesman of the PLO is inadmissible: "An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for the purposes of this Act, to be engaged in a terrorist activity.

"terrorist organization" As defined in INA section 212(a)(3)(B)(vi) means an organization --		
	Pre-REAL ID Act	**As Amended by the REAL ID Act**
No Change	(I) designated under section 219;	(I) designated under section 219;
Changes Marked	(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General, after finding that the organization engages in the activities described in subclause ~~(I), (II), or (III)~~ of clause (iv), ~~or that the organization provides material support to further terrorist activity~~; or	(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General **or the Secretary of Homeland Security, as a terrorist organization**, after finding that the organization engages in the activities described in subclauses **(I) through (VI)** of clause (iv); or
Changes Marked	(III) that is a group of two or more individuals, whether organized or not, which engages in the activities described in subclause (I), (II), or (III) of clause (iv).	(III) that is a group of two or more individuals, whether organized or not, which engages in, **or has a subgroup which engages in,** the activities described in subclauses **(I) through (VI)** of clause (iv).

"engage in terrorist activity" As defined in INA section 212(a)(3)(B)(iv) means, in an individual capacity or as a member of an organization –		
	Pre-REAL ID Act	**As Amended by the REAL ID Act**
No Change	(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity; or	(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity; or
No Change	(II) to prepare or plan a terrorist activity; or	(II) to prepare or plan a terrorist activity; or
No Change	(III) to gather information on potential targets for terrorist activity; or	(III) to gather information on potential targets for terrorist activity; or
Changes Marked	(IV) to solicit funds or other things of value for – a. a terrorist activity; b. a terrorist organization described in clause (vi)(I) or (vi)(II); or c. a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate that he did not know, and should not reasonably have known, ~~that the solicitation would further the organization's terrorist activity~~; or	(IV) to solicit funds or other things of value for – a. a terrorist activity; b. a terrorist organization described in clause (vi)(I) or (vi)(II); or c. a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate **by clear and convincing evidence** that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or
Changes Marked	(V) to solicit any individual – a. to engage in conduct otherwise described in this subsection; b. for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or c. for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate that he did not know, and should not reasonably have known, ~~that the solicitation would further the organization's terrorist activity~~; or	(V) to solicit any individual – a. to engage in conduct otherwise described in this subsection; b. for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or c. for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate **by clear and convincing evidence** that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or
Changes Marked	(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives,	(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives,

	or training – a. for the commission of a terrorist activity; b. to an individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity; c. to a terrorist organization described in subclause (I) or (II) of clause (vi); or d. to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate that the actor did not know, and should not reasonably have known, ~~that the solicitation would further the organization's terrorist activity~~.	or training – a. for the commission of a terrorist activity; b. to any individual who the actor knows, or reasonabl should know, has committed or plans to commit a terrorist activity; c. to a terrorist organization described in subclause (I) or (II) of clause (vi) **or to any member of such an organization**; or d. to a terrorist organization described in section 212(a)(3)(B)(vi)(III), or to any member of such an organization, unless the actor can demonstrate **by clear and convincing evidence** that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.

U.S. CUSTOMS AND BORDER PROTECTION
Office of Anti-Terrorism

Summary of the expanded terror-related grounds for alien inadmissibility

Based upon changes made to the INA by the REAL ID Act, P.L. 109-13, Division B

1. **Automatically Inadmissible** – Aliens who:

   - Are representatives of type III terrorist organizations;
   - Espouse or endorse terrorist activity, or persuade others to support terrorist activities or terrorist organizations (no mens rea requirement);
   - Receive military-type training from or on behalf of a terrorist organization (no mens rea requirement); or,
   - Knew, or reasonably should have known, that they were providing material support to a member of a designated terrorist organization.

2. **Higher Threshold** – Aliens who must demonstrate "by clear and convincing evidence" that the alien did not know, and should not reasonably have known . . . are aliens who are:

   - Members of type III terrorist organizations;
   - Knew, or reasonably should have known, that they were providing material support to a member of a type III terrorist organization; or,
   - Solicited funds, membership or provided material support for a type III terrorist organization.

Examples of potential applications of the expanded terror-related grounds for alien inadmissibility

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EXHIBIT C

US bars Nicaragua heroine as 'terrorist'

Writers and academics voice anger as state department refuses visa to let Sandinista revolutionary take up post as Harvard professor

Duncan Campbell
Friday March 4, 2005

Guardian

The woman who epitomised the 1979 Nicaraguan revolution that overthrew the dictator Anastasio Somoza has been denied entry to the US to take up her post as a Harvard professor on the grounds that she had been involved in "terrorism".

The decision to bar Dora Maria Tellez, one of the best-known figures in recent Latin American history, who has frequently visited the US in the past, has been attacked by academics and writers.

It comes at a time when President George Bush has appointed as his new intelligence chief a man associated with the "dirty war" against the Sandinistas in Nicaragua.

A spokeswoman for Harvard University said it was "very disappointed" that she would not be taking up her appointment.

Ms Tellez was a young medical student when she became a commandante with the leftwing Sandinistas in their campaign to topple the dictator.

She was Commander 2' in 1978 when a group of guerrillas took over the National Palace and held 2,000 government officials hostage in a two-day standoff. After negotiations, she and the other guerrillas were allowed to leave the country. The event was seen as a key moment that indicated the Somoza regime could be overthrown.

She later led the brigade that took Leon, the first city to fall to the Sandinistas in the revolution, and she is celebrated as one of the popular figures of the revolution. She became minister of health in the first elected Sandinista administration.

Last year Ms Tellez, now a historian, was appointed as the Robert F Kennedy visiting professor in Latin American studies in the divinity department at Harvard, a post which is shared with the Rockefeller Centre for Latin American Studies. She was due to start teaching students this spring.

The US state department has told her she is ineligible because of involvement in "terrorist acts". A spokesman for the department confirmed yesterday that she had been denied a visa under a section making those who had been involved in terrorist acts ineligible. He said he could not comment further on the reasons for the ban.

"I have no idea why they are refusing me a visa," said Ms Tellez from her home in Managua yesterday. "I have been in the US many times before - on holidays, at conferences, on official business."

A number of academics and writers are protesting against the ban. "It is absurd," said Gioconda Belli, the Nicaraguan writer who was also an active member of the Sandinistas and is now based in Los Angeles. "Dora Maria is an outstanding woman who fought against a dictatorship. If fighting against tyranny is 'terrorism' how does the United States justify the invasion of Iraq? It is an insult."

Ms Belli, whose memoirs of her time as a Sandinista, The Country Under My Skin, was published two years ago, said many people were puzzled and angry about the decision.

Professor Andres Perez Baltodano, a Nicaraguan sociologist based in Toronto, said: "Dora Maria is as much a terrorist as George Washington." He described the taking of the National Palace as a heroic act which had helped to lead to the overthrow of a dictator.

The US, under President Ronald Reagan, opposed the Sandinistas even after they had been elected in 1984 and supported the contras, or counter-revolutionaries in their attempts to overthrow them.

In the 1987 Irangate scandal, it was discovered that the US was secretly supplying arms to Iran in exchange for money being channelled to the contras. When Mr Bush took office he rehabilitated a number of people associated with the contras and one, John Negroponte, is now his chief of intelligence responsible for dealing with terrorism.

EXHIBIT D

Letter Regarding John Milios (June 2006)

June 20, 2006

The Honorable Condoleezza Rice
Secretary of State
Department of State
2201 C Street
Washington, DC 20520

The Honorable Michael Chertoff
Secretary of Homeland Security
Department of Homeland Security
Washington, DC 20280

Dear Secretary Rice and Secretary Chertoff:

We write again to express our strong concern with the decision of the Department of State and the Department of Homeland Security to bar a foreign scholar from entering this country to participate in an academic conference. On June 8, Professor John Milios, a faculty member at the National Technical University of Athens who was to present a paper at a conference on "How Class Works" at the State University of New York at Stony Brook, was denied entry into the United States upon his arrival at JFK international airport because of purported irregularities in his visa. The visa was issued in 1996 and was set to expire on November 6, 2006. Since 1996 and prior to June 8, he had been allowed entry into the country on five separate occasions to participate in academic meetings, including a meeting in February 2003 of the Eastern Economic Association. He reports that he was questioned at the airport by US officials about his political ideas and his political affiliations, and he reports further that upon his return to Greece the American consul in Athens also queried him about the same subjects. Professor Milios is active in Greek national politics, is a member of the Syriza party (Coalition of the Radical Left), and has twice been a candidate for the Greek parliament.

In our letter to you of February 28 (a copy is enclosed for your convenience) with respect to the case of Professor Waskar Ari, we wrote that our concern about that case was "deepened because it appears to be another instance of the government's barring entry of a scholar who wishes to visit this country for legitimate academic reasons." The government's barring entry of Professor Milios is one more instance, so the available information indicates, of the administration's seeming disregard for our society's commitment to academic freedom. As you both are aware, and as Secretary Rice well knows from her experience as a professor and administrator at Stanford University, opportunities for the free exchange of ideas among scholars are essential to the search for knowledge. Preventing these exchanges because of objections to the political activities or associations of participating scholars is at odds with this fundamental purpose.

We would welcome hearing directly from you about this important matter.

Sincerely,
Jonathan Knight
Director, Program in Academic Freedom and Tenure

1012 Fourteenth Street, NW, Suite #500; Washington, DC 20005
Phone: 202-737-5900 | Fax: 202-737-5526

EXHIBIT E

AAUP
American Association of University Professors
Academic Freedom for a Free Society

October 27, 2006

Ms. Julie Furuta-Toy
Director, Office of Diplomatic and Public Liaison
Visa Services
Department of State
Washington, DC 20520

Mr. Paul M. Morris
Executive Director, Admissibility Requirements and Migration Control
Office of Field Operations
U.S. Customs and Border Protection
Department of Homeland Security
Washington, DC 20229

Dear Ms. Furuta-Toy and Mr. Morris:

We have corresponded with your offices previously with regard to decisions of the Department of State and the Department of Homeland Security to keep foreign academics from entering this country for legitimate academic reasons. Our writing again is prompted by the decision of government officials to deny entry into the United States of Professor Adam Habib, a citizen of South Africa, upon his arrival at JFK international airport on October 21. Professor Habib is an officer of the South African Human Sciences Research Council (HSRC), and was a member of an HSRC delegation scheduled to meet with donor institutions in this country, among them the Social Science Research Council, Columbia University, the National Institutes of Health, and the World Bank. Before October 21, Professor Habib had been allowed entry into the United States nearly two dozen times since obtaining a Ph.D. in political science from the City University of New York, including some half-dozen visits since September 11, 2001. He reports that he was given no reason for the decision.

Professor Habib has written to the U.S. Customs and Border Protection office seeking an explanation for a decision that on its face, like similar decisions which occasioned our earlier letters to you, raises troubling implications for academic freedom (a copy of his letter is enclosed for your convenience). In his letter, Professor Habib points out that he has accepted an invitation to participate in a 2007 meeting sponsored by the American Sociological Association to be held

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Web: www.aaup.org

in New York City. We urge that the government facilitate, rather than hinder, Professor Habib's entering the United States to attend this meeting, much as we urge it to remove barriers to the visits of other foreign scholars to this country.

Sincerely,

Roger W. Bowen
General Secretary

cc: Professor Adam Habib

EXHIBIT F

AAUP
American Association of University Professors
Academic Freedom for a Free Society

January 18, 2007

The Honorable Condoleezza Rice
Secretary of State
Department of State
2201 C Street
Washington, DC 20520

Dear Secretary Rice:

Last October, we wrote to the Department of State as well as to the Department of Homeland Security to register our concern over the decision of government officials to deny entry into the United States of Professor Adam Habib, a citizen of South Africa. (A copy of that letter is enclosed for your convenience.) That decision, as with similar governmental decisions to bar entry into this country of academics scheduled to meet with their counterparts in various academic fora, struck us then and continues to strike us as at odds with this nation's historic commitment to the free exchange of ideas. Because Professor Habib accepted an invitation to participate in a meeting this year sponsored by the American Sociological Association, we hoped that the Department of State would reconsider its position and facilitate his entering the country. Much to our dismay, however, Professor Habib informed us today that he was notified earlier this week by the American consulate in Johannesburg that the State Department has revoked the visas of his wife and his two children for travel to the United States, thereby seeming to preclude the possibility of his being issued a visa. No reason was given for this extraordinary decision, just as no reason was given for the action directed earlier against Professor Habib.

We urge that you personally review these decisions. If left uncorrected, they will take their toll on the willingness of those in the academic community abroad to visit with their counterparts in this country and indeed on the reputation of our country as an advocate of the free search for knowledge.

Sincerely,

Jonathan Knight
Director
Program in Academic Freedom and Tenure

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Washington, DC 20005-3465
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Web: www.aaup.org

EXHIBIT G

United States Department of State
Washington, D.C. 20520

January 8, 2007

Mr. Roger W. Bowen, General Secretary
American Association of University Professors
1012 Fourteenth Street, NW, Suite 500
Washington, DC 20005-3465

Dear Mr. Bowen:

This is in response to your letter of October 27. Your letter expresses concerns on behalf of the American Association of University Professors (AAUP) regarding the visa revocation of Professor Adam Habib. Due to mail screening procedures, we have only recently received your letter. We appreciate your patience in awaiting a response.

The Department of State administers the visa program in strict accordance with the U.S. Immigration and Nationality Act (INA) and associated regulations. We are fundamentally committed to the policy of "secure borders, open doors," by maintaining the integrity and security of our borders, while facilitating legitimate travel to the United States by international visitors. Rest assured that the State Department has always supported academic freedom and will continue to encourage students and scholars from all over the world to come to the United States.

The revocation of Professor Habib's visa is not an attempt to prevent him from sharing ideas with others in the United States. The Department both appreciates and understands that the free exchange of ideas is one of the hallmarks that make this country great. Professor Habib's visa was prudentially revoked pursuant to INA § 221(i), based on information received after the visa was issued which indicated that he may be ineligible for the visa and inadmissible to the United States. While we understand and are sensitive to AAUP's concerns about this matter, the Department must abide by all U.S. regulations. While specific information regarding visa applications is considered confidential under INA § 222(f), we assure you that the initial adjudication, and subsequent revocation, of Professor Habib's visa was in full compliance with U.S. law.

Your letter mentions that Professor Habib would like to travel to the United States in 2007 to participate in a meeting sponsored by the American Sociological Association. He is welcome to submit a new visitor visa application at the U.S. Embassy or Consulate General nearest his residence. The application will be given full and fair consideration in accordance with the INA and all associated regulations.

We hope this information is helpful.

Sincerely,

Julie Furuta-Toy
Director
Office of Public and Diplomatic Liaison
Visa Services

EXHIBIT H

THE CHRONICLE OF HIGHER EDUCATION

International

http://chronicle.com/weekly/v52/i26/26a04402.htm

From the issue dated March 3, 2006

U.S. Withholds Visa From Bolivian Scholar Hired to Teach at U. of Nebraska

By BURTON BOLLAG

A Bolivian scholar hired by the University of Nebraska at Lincoln has been unable to take up his post because the federal government has withheld his visa. The case has again raised concern over what critics have described as the arbitrary use of government power to keep foreign academics out of the United States.

Waskar T. Ari earned a Ph.D. in history from Georgetown University in 2005 and was hired by Nebraska as an assistant professor of history and ethnic studies. His job was to have begun last August.

Barbara S. Weinstein, a history professor at the University of Maryland at College Park, called the situation "very disturbing." Ms. Weinstein is president-elect of the American Historical Association, which has spoken out on behalf of Mr. Ari.

The government's reason for not issuing the visa, she speculated, seems related to his ethnicity. Mr. Ari is a member of the Aymara people, one of the largest indigenous Indian groups that together account for two thirds of Bolivia's eight million people. "He has certainly never been a member of any movement that would be of a security concern to the U.S. government," she said.

Mr. Ari is a scholar of the religious beliefs and political activism among indigenous Bolivians. He has served as a consultant to the World Bank and the Inter-American Development Bank on social and economic issues facing Bolivia's indigenous people. Last year he served as the representative of Bolivia's umbrella peasant-and-indigenous organization to a committee of the Organization of American States that was drafting an indigenous-rights declaration.

Last December Bolivia elected its first indigenous president, Evo Morales, a leftist who has opposed U.S.-backed efforts to eradicate the cultivation of the coca plant. Coca is the main ingredient in cocaine. Mr. Morales is also an Aymara.

Peter S. Levitov, Nebraska's associate dean of international affairs, said the history department was "particularly excited" to have hired Mr. Ari. His specialty in the indigenous peoples of the Andes region would make a fruitful match with the department's strengths in indigenous peoples of the central part of the United States, he said.

In a letter sent in February to Secretary of State Condoleezza Rice and subsequently made public, the historical association wrote: "We recognize that there may be individuals who pose a genuine security risk... . However, in Dr. Ari's case, we feel there are no perceptible grounds for such treatment. Within the Aymara community of Bolivia, he is widely recognized as a voice of moderation."

Mr. Ari's situation recalls the case of Tariq Ramadan, a prominent Swiss Muslim scholar who was appointed to a tenured professorship at the University of Notre Dame in 2004 but was unable to assume the post after the federal government revoked his visa (*The Chronicle,* September 10, 2004). Mr. Ramadan subsequently took a position at a British university.

In January the American Civil Liberties Union filed a lawsuit challenging a provision of the USA Patriot Act that was used to deny a visa to Mr. Ramadan. In the lawsuit, the ACLU said the government was using the provision broadly to exclude from the United States people whose views it disfavors.

'Derogatory Information'

Last June, shortly after it hired Mr. Ari, the University of Nebraska paid $1,000 for an expedited application to the U.S. immigration service to have him declared eligible to apply for a visa for a professional job in the United States. Now, nine months later, the service's Web site shows the application as "pending."

The university says it has not received any explanation from the immigration service, which is part of the Department of Homeland Security.

But it appears that the government has classified Mr. Ari as a threat to American security. Mr. Ari had been living in the Washington area when he was hired by Nebraska, and returned home to Bolivia for what he expected would be a short stay to settle his affairs and pick up a new visa. But when he visited the U.S. Consulate last summer in the Bolivian capital, La Paz, U.S. officials took his passport and stamped "canceled" over his student visa, which was about to expire anyway.

Asked about the situation, a spokeswoman at the State Department's Bureau of Consular Affairs checked Mr. Ari's file and said the cancellation of his old visa was done under a terrorism-related section of U.S. legislation on the granting of visas. "We have derogatory information that renders him ineligible," she said, but declined to add any further information.

Reached by telephone at his home in La Paz, Mr. Ari described being in a kind of limbo, waiting for the United States to make a decision on his case. Initially, when he was unable to return to the United States, he worked in a real-estate agency "just to pay the bills," he said. Now he has a temporary teaching job at Bolivia's biggest public institution, the Greater University of San Andrés.

Mr. Ari is one of only a few members of Latin America's large indigenous population to have attained a Ph.D. When he enrolled at a university two decades ago, however, "it was very hard to get a higher education in Bolivia if you had an indigenous name," he said. So he applied under an assumed name, "Juan Arias." Only halfway through his graduate studies in the United States did he decide to start using his real name again.

Mr. Ari said that he considers the United States his second "fatherland," adding that "many indigenous people think I'm too pro-American."

"It must be some big mistake," he said of his situation, adding, "I believe in justice. The truth will win out."

http://chronicle.com
Section: International
Volume 52, Issue 26, Page A44

EXHIBIT I

AAUP
American Association of University Professors
Academic Freedom for a Free Society

28 February 2006

CORRECTED COPY

The Honorable Condoleezza Rice
Secretary of State
Department of State
2201 C Street, NW
Washington, DC 20520

The Honorable Michael Chertoff
Secretary of Homeland Security
Department of Homeland Security
Washington, DC 20528

Dear Secretary Rice and Secretary Chertoff:

I write to express the deep concern of the American Association of University Professors, the leading organization in the United States devoted to advancing principles of academic freedom, with the decision of the Department of State and the Department of Homeland Security to not issue a visa to Professor Waskar Ari, a citizen of Bolivia, who has been appointed to a faculty position at the University of Nebraska-Lincoln that was to have started last fall. The effect of the decision is to bar him from entering the country. We understand that Professor Ari was awarded the Ph.D. in history by Georgetown University in 2004, that he was a visiting faculty member at Western Michigan University in the spring of 2005, that he was last in the United States in May 2005, and that he learned of the visa decision last June while visiting family in Bolivia. Neither the Department of State nor the Department of Homeland Security has provided an explanation of the visa decision to either Professor Ari or to the University of Nebraska-Lincoln.

Our concern about Professor Ari's case is deepened because it appears to be another instance of the government's barring entry of a scholar who wishes to visit this country for legitimate academic reasons. We see a troubling pattern emerging in which foreign scholars offered appointments at American universities or invited to attend academic conferences are prevented from entering the United States because of their perceived political beliefs or associations. Professor Ari's case and earlier ones—they include the 2004 case of Professor Tariq Ramadan, a Swiss citizen who was appointed to a faculty position at the University of Notre Dame, and in the same year the case of sixty-

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five Cuban scholars who had been scheduled to participate in an international conference sponsored by the Latin American Studies Association that was held in Las Vegas—point to a disturbing disregard on the part of the Bush administration for our society's commitment to academic freedom.

We join the American Historical Association and the University of Nebraska-Lincoln in urging the Department of State and the Department of Homeland Security to reconsider their position and allow Professor Ari to take up his faculty appointment at the University of Nebraska-Lincoln.

Sincerely,

Roger W. Bowen
General Secretary

cc: Professor Barbara Weinstein, President-Elect, American Historical Association
Arnita Jones, Executive Director, American Historical Association
Chancellor Harvey Perlman, University of Nebraska-Lincoln
Professor Kenneth Winkle, Chair, Department of History, University of Nebraska-Lincoln
Professor Marcela Raffaelli, Director, Institute for Ethnic Studies, University of Nebraska-Lincoln
Peter S. Levitov, Associate Dean of International Affairs, University of Nebraska-Lincoln
The Honorable Ben Nelson, U.S. Senator, Nebraska
The Honorable Chuck Hagel, U.S. Senator, Nebraska
The Honorable Jeff Fortenberry, U.S. Representative, Nebraska 1st District
Professor Waskar Ari