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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DAVID ABRAMS,

Petitioner,

vs.

REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Respondent,

DOE 1, DOE 2, DOE 3, DOE 4, DOE 5, DOE 6, DOE 7, DOE 8,

Intervenors,

vs.

DAVID ABRAMS,

Defendant in Intervention.

Case No.: 19STCP03648

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF INTERVENORS' OPPOSITION TO PETITION FOR WRIT OF MANDATE

Judge: Hon. James C. Chalfant
Dept.: 85

Action Filed: Aug. 22, 2019

Trial Date: March 11, 2021
Time: 9:30 a.m.

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I. INTRODUCTION

This case is about protecting Intervenors and others who presented at the 2018 National Students for Justice in Palestine ("NSJP") conference at the University of California, Los Angeles ("UCLA") from the death threats, harassment, and false accusations of anti-Semitism and terrorism that activists suffer because of their advocacy for Palestinian human rights. Precisely to protect attendees and presenters from such harms, the conference was an invitation-only, private event, paid for by NSJP, a national student-led volunteer organization whose mission is to promote Palestinian human rights.

Petitioner David Abrams ("Abrams") is seeking disclosure from Respondent Regents of the University of California ("Regents") of the names of Intervenors and all 65 of the presenters at the conference under the California Public Records Act ("CPRA"). He claims that disclosure of the conference presenters' names is in the public interest because public funds were used to host the conference. No such funds were used. He also claims that disclosure is needed to ensure that UCLA met its legal obligations not to support terrorism when hosting the conference. The Regents have since provided him with the documentation showing exactly what background checks were conducted with a variety of local and federal law enforcement agencies.

Intervenors fear that if their names are disclosed, they will suffer the serious harassment other advocates of Palestinian rights have endured. Moreover, Abrams' can satisfy his purported desire to hold UCLA accountable for the way it conducted background checks on the presenters without having the presenters' names. Hence, disclosure of presenters' names is not warranted under the CPRA and would violate their constitutional rights to freedom of association, freedom of speech, and privacy. Abrams' Petition for Writ of Mandate should, therefore, be denied.

II. FACTS

A. NATIONAL STUDENTS FOR JUSTICE IN PALESTINE

NSJP is a group of students and recent graduates that builds connections among over 200 student groups that advocate for Palestinian human rights on campuses across the United States and Canada. (Ex. 1 at 2:28, 3:1.) NSJP's mission is to "empower, unify, and support student organizers" working toward "freedom, justice, and equality for the Palestinian people." (*Id.* at 2:21-23.) It is a hub for collaboration among student activists, providing organizational support, developing accessible resources

for student organizers, and connecting North American campus-based Palestinian rights organizations with the broader global movement for justice in Palestine. (*Id*. at 2:23-26.) NSJP's main activity is to hold annual conferences, which it has done since 2011. (*Id*. at 2:27-28.) In 2018, the conference was held at UCLA from November 16 to 18. (*Id*. at 3:8.)

B. INTERVENORS

Intervenors are individuals who presented at the 2018 NSJP conference, who, due to concerns of harassment, threats of physical violence and other harm, are asking the court to deny Abrams' request for disclosure of their names. (See Exs. 2 through 8.) Intervenors care deeply about Palestinian rights and advocate for that cause. (*Id*.) Some of the Intervenors have family who are directly impacted by the Israeli government's mistreatment of Palestinians and other Arabs. (Ex. 4 at 2:4-9; Ex. 5 at 2:5-12.) Intervenors believe that building community and connecting with activists in the Palestinian rights movement is essential to their human rights work. (Ex. 5 at 3:3-4; Ex. 7 at 2:21-24.) Intervenors participated in the 2018 NSJP conference to share their knowledge, receive mentorship, and build new connections. (Ex. 7 at 2:21-24.)

C. THE 2018 CONFERENCE WAS PRIVATE AND CLOSED TO THE PUBLIC

Due to past experiences of harassment and threats, the 2018 NSJP conference was a private event. (Ex. 9 at 3:7-11). To attend the conference, individuals were required to pre-register and be "verified and vouched for by a named campus Palestine solidarity group." (Ex. 4 at 2:11; Ex. 5 at 3:5-10; Ex. 6 at 2:15-18; Ex. 7 at 2:25-27; Ex. 8 at 3:18-20. See also Ex. 2 at 3:20-22; Ex. 6 at 2:21-22; Ex. 7 at 2:25-27.)

Conference organizers did not use any UCLA funds for the conference. (Ex. 9 at 2:20-28, 3:1-6.) The Students for Justice in Palestine ("SJP") chapter at UCLA declined the opportunity to use campus spaces for free because that would have required them to make the conference open to the entire university community. (*Id*. at 2:26-28, 3:1-6.) NSJP paid for conference spaces and all other expenses of the conference. (*Id*. at 2:24, 3:5.)

In the weeks leading up to the conference, organizers received death threats. (Ex. 4 at 4:16.) This emphasized the need for extra security for the conference itself, beyond the steps UCLA was taking to ensure campus safety and security. (*Id.* at 4:13-14.) Conference staffers gave attendees and presenters

nametags and wristbands when they checked into the conference. (See e.g. Ex. 2 at 3:4; Ex. 3 at 3:25; Ex. 4 at 3:27.) The conference's security personnel were stationed at the entrances to conference spaces to ensure that only individuals with nametags and wristbands were allowed to enter conference areas. (Ex. 4 at 4:1-4; Ex. 5 at 4:11-13; Ex. 7 at 3:12-16.) They also helped provide safety support at the conference by escorting attendees between buildings and accompanying them to a designated rideshare pickup location at the end of the conference. (Ex. 4 at 4:24-27, 5:1-14; Ex. 8 at 4:14-27.)

Conference organizers took steps to protect the identity of presenters from exposure. They omitted presenters' names from the conference program and did not allow attendees to take pictures or record videos. (Ex. 3 at 3:22-23; Ex. 4 at 3:20-23, 4:5-12; Ex. 5 at 4:1-2; Ex. 7 at 3:2-4.) When UCLA asked conference organizers to share the names of the presenters, the organizers did so only after receiving assurances from the university that the names would be kept confidential. (Ex. 10B at 16:3-19.) Conference organizers explained the importance of keeping this information private given the history of harassment and doxing of individuals who organize and speak at NSJP conferences. (Ex. 9 at 3:7-12.) The privacy required by conference organizers allowed Intervenors to freely associate with each other and with conference attendees without fear of harassment. (See generally Exs. 2 through 8.)

D. HARMS FACED BY PALESTINIAN HUMAN RIGHTS ACTIVISTS

Advocates for Palestinian rights frequently face harassment and other harms from individuals, anti-Palestinian organizations, and even the government of Israel.

1. Threats of Physical Violence Against Palestinian Human Rights Activists

Advocates for Palestinian rights have received rape and death threats. For example, in 2014, when the ALS Ice Bucket Challenge was popular, Ohio University ("OU") Student Senate President Megan Marzec posted a video of herself taking a "blood bucket challenge," in which she dumped fake blood on her head to protest Israel's treatment of Palestinians. (Ex. 11 at 2:6-22.) The video went viral and Marzec promptly began receiving hundreds of rape and death threats via email and social media. (*Id*. at 2:26-28.) The messages included statements like: "You deserve to join ISIS, since you love them so much, and they will rape you," and "I am going to come kill you." (*Id*. at 3:1-4.) Marzec was also accosted off-campus by an OU student, who told her: "I defend Israel. I will gladly shoot you in the face, and go to jail." (*Id*. at 3:20-22.) One night, when Marzec was alone in the university's arts

building, dozens of students threw objects at the building's windows, aggressively banged on them, and threatened to kill her. (*Id.* at 3:23-26.) Marzec could not leave the building because of the mob waiting outside and could not call for help because she did not have her phone with her. (*Id.* at 3:26-28.) Due to the nature of the threats against Marzec, OU administrators advised her to go into protective housing and travel with a police escort. (*Id.* at 3:1-14.)

2. <u>Doxing and Blacklisting of Palestinian Human Rights Activists</u>

Canary Mission is an anonymous blacklisting website that contains thousands of dossiers on Palestinian rights advocates and falsely labels them racists, anti-Semites, and supporters of terrorism.[1] (Ex. 12 at 2:25-27, 3:1-5.) Canary Mission promotes these posts on social media. (*Id.* at 3:22-23.) The self-proclaimed purpose of the site is to "make sure that 'today's radicals don't become tomorrow's employees.'" (*Id.* at 3:18-21.) Targets of Canary Mission have been fired from their jobs, interrogated by employers and university administrators, and targeted with death threats and racist, homophobic, and misogynist harassment from Canary Mission followers. (*Id.* at 3:23-27, 4:1-2.)

3. <u>Impeding and Denying Entry to Israel and Palestine</u>

The government of Israel, which controls entry into Israel/Palestine, often denies entry to people who support Palestinian rights. (Ex. 15 at 3:2-28, 4:1-2.) It also subjects people perceived to be supportive of Palestinian rights to heightened inspection and interrogation at the border. (*Id.* at 3:24-27; Ex. 4 at 2:18-21.) For instance, due to NSJP's support for Palestinian rights, Israeli policy prohibits individuals affiliated with NSJP from entering Israel and Palestine. (Ex. 12 at 4:6-9.) The government of Israel has relied on information from Canary Mission when banning individuals. (*Id.* at 3-5.)

Doe 4 is a dual citizen of Israel and the United States who organizes for Palestinian rights within the U.S. Jewish community. (Ex. 4 at 2:1-5, 3:2-3.) Over the years, Doe 4 has visited relatives in Israel many times without problems. (*Id.* at 2:17-18.) In 2019, Doe 4 visited Israel for the first time since being added to the Canary Mission blacklist. (*Id.* at 2:18.) This time, Israeli authorities pulled Doe 4 out of the line at the airport and asked them why they were visiting Israel, where they intended to go, and who they

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[1] In his declaration to the court, Abrams asserts that he does not "work" for Canary Mission. (Pet'r's Decl. 3:15.) Conspicuously missing from his statement is the assertion that he has not provided information to the site.

intended to meet. (*Id*. at 18-21.) Doe 4 is afraid that if their name is disclosed as part of the 2018 NSJP conference, it will be harder for them to visit their family in Israel. (*Id*. at 2:13-15.)

In 2015, Doe 8, who was active in their university's SJP chapter, attempted to visit Palestine. (Ex. 8 at 2:2-3, 2:12.) At the border, Israeli authorities questioned them for almost ten hours about their advocacy for Palestinian rights and involvement in SJP. (*Id*. at 2:12-14.) The Israeli government deported them and imposed a ten-year ban on their entry to Palestine. (*Id*. at 2:15-16.)

In 2016, Noah Habeeb, an Arab-American student at Tufts University, attempted to visit Israel as part of an interfaith delegation of human rights activists. (Ex. 13 at 2:1-5, 2:17-18.) As Habeeb was checking in for his flight at Dulles International Airport, an agent with Lufthansa informed him and other members of his group that they could not board their flight to Israel, because the Israeli government prohibited their entry. (*Id*. at 2:20-28.)

4. Attempts to Damage the Careers of Palestinian Human Rights Activists

Palestinian rights advocates have also had their careers threatened. Purdue University Professor Emeritus Bill Mullen was the faculty adviser for SJP at Purdue for a decade and has been involved in the movement for Palestinian rights as an activist and author. (Ex. 12 at 2:2, 4:20-23.) In 2016, Purdue received an anonymous phone call falsely accusing Mullen of sexual harassment. (*Id*. at 6:7-8.) That same year, three different anonymous websites were created in Mullen's name from the same IP address within a 10-minute timeframe. (*Id*. at 5:16-20.) One of the sites made fabricated allegations of sexual harassment, weaving in a reference to Mullen's Palestine advocacy. (*Id*. at 5:23-28.) The other sites falsely accused Mullen of anti-Semitism and of having ties to terrorism. (*Id*. 6-16-19.) Canary Mission also created a profile on Mullen, falsely linking him to Hamas. (*Id*. at 5:12-13.) None of the allegations against Mullen were substantiated. (*Id*. at 6:8-15.) The campaign against Mullen caused him extreme emotional distress as he worried about the danger to his personal and professional reputations. (*Id*. at 7:3-9.)

In 2019, Israel deported Human Rights Watch's Israel and Palestine Director Omar Shakir, citing his advocacy for Palestinian rights years earlier when he was a student at Stanford University. (Ex. 14A at 16, 22.) The deportation meant that Shakir no longer had first-hand access to the region where he conducts human rights research.

5. Intimidation and Self-Censorship

Efforts to avoid harassment and false accusations on blacklisting websites like Canary Mission impact the ability of Palestinian rights activists to effectively organize and speak publicly about their political beliefs. (Ex. 12 at 4:1-2; Ex. 2 at 2:12-13, 2:21-23; Ex. 7 at 2:10-16.) Doe 3, who is Arab-American, has limited public speech supporting Palestinian rights while in the process of applying for graduate school, over fears that such speech will attract the attention of Canary Mission and negatively impact their graduate school and career prospects. (Ex. 3 at 2:15-20.[2]) Similarly, Doe 5 keeps their support for Palestinian human rights private out of fear of blacklisting and harassment. (Ex. 5 at 2:26-27.)

E. UCLA'S SECURITY CHECKS

In advance of the 2018 NSJP conference, the UCLA Police Department ("UCPD") conducted open-source checks on NSJP and SJP at UCLA, including checking each organization's social media accounts and websites. (Ex. 10A. at 00002) Due to allegations of ties to terrorism from Abrams and others, UCPD contacted the FBI, the Joint Regional Intelligence Center, and the Orange County Intelligence Assessment Center to obtain intelligence on the event, its sponsors, the presenters, and any potential links to terrorism. (*Id.* at 00002, 00013.) In addition, UCPD checked the United Nations Security Council sanctions list, the Treasury Department's Specially Designated Nationals and Blocked Persons lists, and the State Department's Foreign Terrorist Organizations list to determine if any of the presenters or the organizations they were associated with had ties to terrorism. (*Id.* at 00013.) UCPD found no links to terrorism and no open investigations into any unlawful activity. (*Id.*)

F. ABRAMS' ATTACKS AGAINST PALESTINIAN HUMAN RIGHTS

Abrams is the executive director of the Zionist Advocacy Center ("TZAC"), a New York-based entity. (Ex. 10E.) TZAC is a registered foreign agent for an organization called the International Legal Forum, which is subsidized by the government of Israel. (Ex. 10F.)

[2] Though Doe 3 was added to Canary Mission after attending an NSJP conference in 2017, Doe 3's profile has since been dormant, and Doe 3 is concerned that renewed speech supporting Palestinian rights will draw increased attention to it. (Ex. 3 at 3:3-11.)

Abrams has a history of filing frivolous lawsuits and complaints against organizations supporting Palestinian human rights. (See Exs. 16 through 23.) In 2015, Abrams sued the Carter Center, a nonprofit organization founded by President Jimmy Carter that works on conflict resolution and enhancing freedom and democracy in the world. (Ex. 16.) Abrams' complaint alleged that by hosting conflict resolution meetings between different Palestinian groups, the Carter Center had provided material support to terrorism. (*Id.*) The court dismissed Abrams' complaint with prejudice. (Ex. 17.) In 2018, TZAC sued Oxfam, alleging that the humanitarian group defrauded the U.S. government by accepting USAID money while also funding an agricultural project in Gaza, Palestine. (Ex. 18.) After the U.S. government moved to dismiss, Abrams voluntarily dismissed the case. (Ex. 19.)

G. ABRAMS' CPRA REQUEST AND UCLA'S DISCLOSURES

On November 15, 2018, Abrams submitted a request for records to UCLA asking for, inter alia, documents sufficient to identify the 65 presenters at the 2018 NSJP conference. (Pet'r's Compl. 4:6.) Citing concerns for the safety of Palestinian rights activists, UCLA refused to disclose the names. (*Id.* Ex. 4.) Abrams then filed the current lawsuit against Regents on August 22, 2019. (Pet'r's Compl.) He alleged three public interests in favor of disclosure: the right to know whether UCLA violated its legal and contractual obligations, the right to open debate, and the right of the public to know how public funds are spent. (*Id.* at 5; Pet'r's Br. 7.) Regents disclosed to Abrams detailed records of the security checks they conducted on NSJP, SJP at UCLA, and the presenters. (Ex. 10A.) On September 11, 2020, the court granted Intervenors' motion to intervene in the case to protect against the harassment and other harms that would result if the petition were granted.

III. ARGUMENT

The Fourteenth Amendment, First Amendment, California Constitution, and CPRA preclude disclosure of the conference presenters' names because of harms the presenters are sure to face if their names are made public. Abrams asserts that Intervenors will suffer no harm if their identities are disclosed because he is not aware of any individual who was criminally threatened or harassed for speaking at an NSJP conference. (Pet'r's Br. 4:6-7.) This measure is far too narrow to provide a meaningful analysis of the harm presenters at the 2018 conference face if their names are disclosed. People who threaten and harass supporters of Palestinian rights do not, of course, limit their targets

based upon the medium through which such supporters express themselves. Though there is evidence that participation in such conferences *has indeed* led to harassment, as shown above, the record is clear: people who publicly speak out for Palestinian rights and who associate with Palestinian rights' groups are routinely subjected to severe harms regardless of where and how they advocate, not unlike activists who protested for civil rights under Jim Crow.

A. DISCLOSURE OF PRESENTERS' NAMES WOULD VIOLATE THE U.S. CONSTITUTION

1. Violation of Right to Freedom of Association

Disclosing the names of conference presenters would violate the Due Process Clause of the Fourteenth Amendment, which protects the "[i]nviolability of privacy in group association . . . particularly where a group espouses dissident beliefs." (*NAACP v. Alabama* (1958) 357 U.S. 449, 460-62; see also *Britt v. Superior Court* (1978) 20 Cal.3d 844, 853.) Freedom of association not only protects membership in a particular group, but also protects group affiliation. (See *NAACP*, 357 U.S. at 466 (applying free association protections to membership lists of the NAACP); *Brown v. Socialist Workers '74 Campaign Committee* (1982) 459 U.S. 87, 91 (applying free association protections to contributors to a political party).) A court order, even when issued at the request of a private party in a civil lawsuit, constitutes state action and is therefore subject to constitutional limitations. (See e.g. *NAACP*, 357 U.S. at 461; *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 265.)

When considering a freedom of association claim, courts assess: (i) whether disclosure will subject claimants to harassment and threats of other harm (*NAACP*, 357 U.S. at 462-63; *Bates v. City of Little Rock* (1960) 361 U.S. 516, 523-24); (ii) whether a group asking for protection engages in illegal activity (*Gibson v. Florida Legislative Investigative Committee* (1963) 372 U.S. 539, 546, 558); and (iii) if there is a compelling and overriding state interest in disclosure that is substantially related to the actual disclosure (*NAACP*, 357 U.S. at 463; *Gibson*, 372 U.S. at 546-548; *Britt*, 20 Cal.3d at 855-56). None of these factors point toward disclosure of presenters' names in this case.

a. Intervenors Have Shown Harassment and Threats

In *NAACP* and *Bates*, state governments sought disclosure of membership lists of rank-and-file members of the NAACP. (*NAACP,* 357 U.S. at 451; *Bates*, 361 U.S. at 519.) The Supreme Court found that the NAACP had shown that disclosure of their members' identities would subject them to

"harassment," "threats of bodily harm," "economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility," and would "discourage[ ] new members from joining the organization and induce[ ] former members to withdraw." (*NAACP* 357 U.S. at 462-63; *Bates*, 361 U.S. at 523-24.)[3]

Intervenors have shown that disclosure of their identities would subject them to harms similar to those at issue in the *NAACP* and *Bates* cases. (See Part II.D, *supra*.) Opponents of Palestinian rights have threatened activists with physical violence. For example, Megan Marzec received hundreds of rape and death threats, prompting her university to offer her a police escort and protective housing. (See Part II.D.1, *supra.*) Sites like Canary Mission misrepresent support for Palestinian rights as anti-Semitism and support for terrorism in an effort to blacklist activists and cut them off from educational and employment opportunities. (See Parts II.D.2 and 4, *supra*.) Further, disclosure of Intervenors' identities could lead to the very severe consequence of being denied entry by Israel and never again seeing their families. (See Part II.D.3, *supra*; Ex. 15 at 3:2-28, 4:1-2; Ex. 5 at 2:8-12.) These harms have caused many Palestinian rights activists to limit their public activism. (Ex. 3 at 2:15-20; Ex. 5 at 2:26-27.)

b. NSJP Does Not Fit Into the Narrow Category of Illegal Groups That Do Not Enjoy the Right to Free Association

The narrow exception to freedom of association – illegal activity – has no application to the present case. (*Gibson*, 372 U.S. at 558; compare *People of State of New York ex rel. Bryant v. Zimmerman* (1928) 278 U.S. 63, 76-77 (withholding free association protections from the Ku Klux Klan because of their inherently unlawful nature) with *Church of Hakeem* (1980) 110 Cal.App.3d 384, 390 (extending free association protections to group where there was no evidence that all members of the group were engaged in illegal activities or the group was inherently unlawful).) NSJP is a lawful group that advocates for Palestinian human rights. (Ex. 1 at 2:18-26.) There is zero evidence that the group is engaged in illegal activities, a fact validated by UCLA's thorough security and background checks.

[3] Abrams argues that the harm faced by disclosure must be criminal in nature. (Pet'r's Br. 4.) However, as noted above, the Supreme Court has imposed no such requirement. (See *NAACP*, at 462-63, *Bates*, at 523-24.)

c. There Is No Compelling or Overriding State Interest in the Disclosure of Presenters' Names and No Connection to a State Interest

Government action that infringes on the freedom of association can only be justified by a "valid and overriding interest of the state that is compelling," (*NAACP*, 357 U.S. at 463) and then "only if there is a substantial relation between the information sought and [the] overriding and compelling state interest." (*Gibson*, 372 U.S. at 548; see also *Britt*, 20 Cal.3d at 855-56.) In *NAACP*, the Court struck down an Alabama law requiring disclosure of the membership lists of the NAACP because there was no substantial relation between disclosure of names and the state's interest in determining whether the NAACP was conducting intrastate business in violation of Alabama law. (*NAACP*, 357 U.S. at 464-65.)

None of the interests asserted by Abrams for the disclosure of presenters' names – the public's right to know whether the university is meeting its legal and contractual obligations under the USAID contract, the right to investigate whether UCLA is allegedly hosting terrorists, the right to know how public funds are spent, and the right to open debate – are compelling state interests. Abrams has not identified and Intervenors have not found any cases where a court has deemed any of the alleged interests to be compelling. (See Pet'r's Br. 7; see Richard H. Fallon, Jr., *Strict Judicial Scrutiny* (2007) 54 UCLA L.Rev. 1267, 1273-85 (discussing government interests that courts have found compelling).)

Even if the interests identified by Abrams were compelling state interests, the disclosure of presenters' names is not substantially related to these interests. For the interest in ensuring that university funds are not supporting terrorism, the USAID grant that is the subject of UCLA's legal and contractual obligation requires UCLA to certify that it did not knowingly engage with individuals who were on the United States or United Nations sanctions lists. (Ex. 10C at 2.) According to the records Regents already provided to Abrams, the university went beyond its obligations under the contract. (See Exs. 10A and 10C.) In addition to checking the names of conference presenters and NSJP against the required terror databases, UCPD checked presenters' names with the FBI and other intelligence partners. (Ex. 10A.) Abrams' argument that he needs presenters' names to check whether UCLA has met its legal obligations is therefore specious, since he knows exactly what UCLA did to meet them. If Abrams doubts the efficacy of UCPD's research, he is free to push for policy changes.

Similarly, learning the names of conference presenters has no connection to the interest in knowing how public funds are spent. UCLA did not fund the conference, (Ex. 9 at 2:20-21) and if Abrams wants additional records on "how public monies are being spent," he is free to pursue them. Disclosing the names of conference presenters bears no relationship to public funds.

Finally, contrary to Abrams' assertion, there is no "right to open debate." (Pet'r's Compl. 5.) There is a right to free speech, and opponents of Palestinian rights are free to continue expressing their views regardless of the specific names of the conference presenters.

d. Abrams' Argument and UCLA's Security Checks Are Based on the Bigoted Premise that Palestinian Human Rights Activists Present an Inherent Security Threat

Abrams' claim that he is entitled to know the names of the conference presenters is based on the bigoted premise that Palestinian human rights activists are inherently suspect for terrorist activity. Indeed, UCLA's collection of the presenters' names and its security checks of presenters against FBI and terrorism watchlists were likewise grounded in an assumption that is often used to discriminate against Arab, Middle Eastern, and Muslim communities: that "certain groups of people [consist of] indistinguishable members who are fungible as potential terrorists." (Leti Volpp, *The Citizen and The Terrorist* (2002) 49 UCLA L.Rev. 1575, 1584.)

2. Violation of Right to Anonymous Free Speech

Anonymous speech, such as that made by Intervenors, falls squarely within the protections of the Free Speech Clause of the First Amendment. "[U]nder our Constitution, anonymous [speech] is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and dissent . . . [a]nonymity is a shield from the tyranny of the majority." (*McIntyre v. Ohio Elections Comm'n* (1995) 514 U.S. 334, 346-47.) The Supreme Court has recognized that "persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all." (*Talley v. California* (1960) 362 U.S. 60, 64.) The right to anonymous speech extends to advocacy conducted in person, even when an individual's physical identity is revealed. (See *Watchtower Bible & Tract Soc'y of New York, Inc. v. Vill. of Stratton* (2002) 536 U.S. 150, 167.) So deeply is anonymous speech rooted in our constitutional principles that the most popular explication of the Constitution encouraging its ratification was the joinder of Alexander Hamilton, James Madison, and John Jay under

pen names to publish *The Federalist Papers*. Here, Intervenors went to great lengths to preserve their anonymity at the NSJP conference. (See Part II.C, *supra*.) Disclosure of their names would violate their First Amendment right to engage in speech anonymously.

B. DISCLOSURE OF PRESENTERS' NAMES WOULD VIOLATE THE CALIFORNIA CONSTITUTION

The right to privacy is an "inalienable right" under the California Constitution. (Cal. Const., art. I, § 1.) This right is violated where there is (1) a legally protected privacy interest; (2) a reasonable expectation of privacy; and (3) conduct constituting a serious invasion of privacy. (*Hill v. National Collegiate Athletic Assoc.* (1994) 7 Cal.4th 1, 35-37.) An otherwise prohibited invasion of privacy may be legally justified if it substantively furthers a legitimate competing interest, unless the claimant can point to "feasible and effective alternatives" with "a lesser impact on privacy interests." (*Id.* at 40.)

Presenters have "legally protected privacy interests" in their freedom of association, right to anonymous speech (see Parts III.A.1 and 2, *supra*.), and informational privacy. Informational privacy is the "principal focus" or "core value" of the right to privacy. (*Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 999-1000.) It "prevents government and business interests from . . . misusing information gathered for one purpose in order to serve other purposes or to embarrass us." (*Hill*, 7 Cal.4th at 36 (internal quotes omitted); see *Porten v. University of San Francisco* (1976) 64 Cal.App.3d 825, 829-30.) In this case, SJP at UCLA disclosed Intervenors' names to UCLA for the limited purpose of allowing the university to conduct background checks without which it would not allow the conference to proceed. Particularly given Abrams' history of harassing lawsuits and his foreign ties, (see Part II.F, *supra*) if UCLA were to disclose Intervenors' names to Abrams, it would be a misuse of the information. (See *Hernandez v. Hillsides, Inc.* (2009) 47 Cal. 4th 272, 295, 297 (holding that . . . the motivations of the party intruding on another's privacy interests are relevant to privacy considerations under the California Constitution).)

Intervenors have a reasonable expectation of privacy based on both widely accepted community norms and the assurance given by UCLA that their names would be kept confidential. (See Ex. 10B at 16:9-13; *Hill*, 7 Cal.App.4th at 37; *County of Los Angeles v. Los Angeles County Employee Relations Com.* (2013) 56 Cal.4th 905, 927-28.) Abrams does not have a legitimate competing interest in the

disclosure of Intervenors' names and, even if he did, those interests are met by effective alternatives, including the Regents' redacted disclosure of the security screening process and its results, Abrams' ability to request financial records, and his right to free speech and to petition the government. (See Part III.A.1.c, *supra*.)

C. PRESENTERS' NAMES ARE EXEMPT FROM DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT

Under the CPRA, access to information is limited by specific exemptions when the interest in disclosure is outweighed by various public or private interests. (See Gov. Code, § 6254(c) (unwarranted invasion of personal privacy) and § 6255 (catch-all exemption).)

1. Nondisclosure of Presenters' Names Is Warranted Under the Privacy Exemption

Disclosure of records under the CPRA is not required if they are "[p]ersonnel, medical, *or similar files*, the disclosure of which would constitute an unwarranted invasion of personal privacy." (Gov. Code, § 6254(c) (emphasis added).) California courts look to exemption 6 of the Freedom of Information Act (5 U.S.C., § 552(b)(6)), which is substantively identical to Gov. Code, § 6254(c), when evaluating claims under the CPRA privacy exemption. (*Versaci v. Superior Court*, (2005) 127 Cal. App.4th 805, 818.) The privacy exemption applies when (i) the records sought constitute a personnel file, a medical file or other similar file; (ii) disclosure of the information would compromise substantial privacy interests; and (iii) the potential harm to individual privacy interests from disclosure outweighs the public interest in disclosure. (*Id.* at 818.)

a. Presenters' Names Constitute "Similar Files" Under § 6254(c)

The term "similar files" has a "broad, rather than a narrow, meaning." (*LAUSD v. Superior Court* (2014) 228 Cal.App.4th 222, 239; see also Annot., *When Are Government Records "Similar Files" Exempt From Disclosure Under Freedom of Information Act Provision (5 U.S.C.A. § 552(B)(6)) Exempting Certain Personnel, Medical, and "Similar" Files* (1992) 106 A.L.R. Fed. 94 (compiling federal cases assessing the "similar files" category).) The names of individuals by themselves constitute "similar files" under FOIA Exemption 6. (*Judicial Watch, Inc. v. Dep't of the Navy* (D.D.C. 2014) 25 F. Supp.3d 131, 141.) Thus, presenters' names should be considered "similar files" under the CPRA's privacy exemption.

b. Presenters Have a Substantial Privacy Interest in the Nondisclosure of Their Names

A substantial privacy interest exists if disclosure would likely lead to embarrassment, retaliation, or harassment, among other things. (*Forest Serv. Employees for Envtl. Ethics v. U.S. Forest Serv.* (9th Cir. 2008) 524 F.3d 1021, 1026; *Judicial Watch*, 25 F. Supp 3d at 141.) If presenters' names are disclosed, their opponents will likely threaten them with violence, engage in smear campaigns against them and blacklist them. (See Part II.D, *supra*.)

c. Presenters' Privacy Rights Outweigh Any Alleged Public Interest

When it comes to disclosing a person's identity under the CPRA, the public interest which must be weighed is whether such disclosure "would contribute significantly to public understanding of government activities" and serve the legislative purpose of "shed[ding] light on an agency's performance of its statutory duties." (*City of San Jose v. Superior Court*, 74 Cal.App.4th 1008, 1018-19; *Humane Society of U.S. v. Superior Court* (2013) 214 Cal.App.4th 1233, 1268.) Here, Regents have already released documents that vindicate the public interests identified by Abrams. (See Parts II.E and G, *supra*.) There is no evidence that disclosure of presenters' names would shed light on UCLA's activities more so than the documents already disclosed. (See Part III.A.1.c, *supra*.)

2. Nondisclosure of Presenters' Names is Warranted Under the CPRA's Catch-all Provision

The CPRA's catch-all exemption applies when "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code, § 6255.) Where there is a public interest in both disclosure and nondisclosure of the records, courts undertake a balancing test. (*LAUSD*, 228 Cal.App.4th at 243.)

a. There Is a Strong Public Interest Served by Nondisclosure of the Records

The CPRA does not define "public interest," and the public interest analysis is largely fact specific. (*LAUSD*, 228 Ca.App.4th at 240.) Recognized public interests in nondisclosure include privacy and the concern that disclosing names could have a chilling effect on public complaints. (*City of San Jose*, 74 Cal.App.4th at 1023.) Here disclosure would violate the presenters' constitutional rights and would expose them to harassment, threats of physical violence, and damage to their careers. (See Part II.D, *supra*.)

b. The Public Interest in Nondisclosure Clearly Outweighs the Public Interest in Disclosure

There is no public interest in the disclosure of Intervenors' names. (See Part III.C.1.c, *supra*.) Even if there were, those interests are met by effective alternatives. (See Part III.A.1.c, *supra*; accord *County of Santa Clara v. Superior Ct.* (2009) 170 Cal.App.4th 1301, 1324; *City of San Jose*, 74 Cal.App.4th at 1020.)

c. Abrams' Reliance on CBS Inc. v. Block *Is Inapt*

Abrams' reliance on *CBS Inc. v. Block* is inapt for three reasons. (Pet'r's Br. 2, 10.) First, In *CBS Inc. v. Block*, the disclosure of gun owners' names in connection with concealed weapons permits was not itself a direct violation of the owners' constitutional rights, whereas here the disclosure would violate presenters' freedom of association, free speech, and privacy. (Compare *CBS Inc. v. Block* (1986) 42 Cal.3d 646, 654, to Parts III.A.1 and 2, *supra*) Second, unlike in *CBS Inc.*, where there was no evidence that disclosure of names would subject gun owners to harassment and other harm, here, Intervenors have shown the harassment, threats of physical violence, and false accusations of terrorism and anti-Semitism they would face if their identities were disclosed. (Compare Part II.C, *supra*, to *CBS Inc.*, at 653-54.) Finally, unlike in *CBS Inc.*, here there is a narrower and less intrusive means of satisfying Abrams' asserted public interests: the disclosure of records of conference finances and background check information that does not include presenters' names. (Compare Part III.A.1.c, *supra*, to *CBS Inc.*, at 655.)

IV. CONCLUSION

For the foregoing reasons, the court should deny the Petition for Writ of Mandate, issue judgment in favor of Intervenors, and award costs and attorney fees in favor of Intervenors.

Dated: February 5, 2021

Respectfully Submitted,

/s/ Javeria Jamil

Javeria Jamil
Attorney for Intervenors

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DAVID ABRAMS,

Petitioner,

vs.

REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Respondent,

DOE 1, DOE 2, DOE 3, DOE 4, DOE 5, DOE 6, DOE 7, DOE 8,

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vs.

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Defendant in Intervention.

Case No.: 19STCP03648

INTERVENORS' EXHIBIT INDEX

Filed Concurrently with Memorandum of Points and Authorities in Support of Intervenors' Opposition to Petition for Writ of Mandate

Judge: Hon. James C. Chalfant
Dept.: 85

Action Filed: Aug. 22, 2019

Trial Date: March 11, 2021
Time: 9:30 am

INTERVENORS' EXHIBIT INDEX

Exhibit No.	Description
1	Declaration of Ayesha Khan, steering committee member of National Students for Justice in Palestine ("NSJP") from 2015 to 2019
2-8	Declarations of Does 2-8, Intervenors
9	Declaration of Gurutam Thockchom, former External Affairs Director and Finance Director for Students for Justice in Palestine at UCLA
9A	Email from Gurutam Thockchom to Mike DeLuca
10	Declaration of Attorney Javeria Jamil
10A	Documents produced by Regents of the University of California ("Regents") during discovery
10B	Excerpts from Deposition of Mike DeLuca
10C	Excerpts from UCLA's 2018 USAID Certification
10D	Documents produced by Regents during the course of this case
10E	Screenshot of David Abrams' LinkedIn profile
10F	Exhibit to Registration Statement Pursuant to the Foreign Registration Act of 1938, As Amended
11	Declaration of Megan Marzec, former Ohio University student
12	Declaration of Bill Mullen, Professor Emeritus at Purdue University
12A	Haaretz article, "Official Documents Prove: Israel Bans Young Americans Based on Canary Mission Website"
12B	Haaretz article, "Israel Publishes BDS Blacklist: These Are the 20 Groups Whose Members Will Be Denied Entry"
12C	Excerpts from Purdue University's Complaint Procedures
13	Declaration of Noah Habeeb, former Tufts University student
14	Declaration of Maya Johnston
14A	English translation of *Human Rights Watch v. Interior Minister*
14B	Hebrew original of *Human Rights Watch v. Interior Minister*
15	Declaration of Bina Ahmad
15A	NBC News article, "Israel Interrogates, Deports U.S. Citizens: Pro-Palestinian Group"
16	Complaint filed by TZAC, Inc. against The Carter Center, Inc. in Case No. 1:15-cv-2001-RC

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17	Order of dismissal with prejudice of TZAC Inc. Complaint against The Carter Center, Inc. in Case No. 1:15-cv-2001-RC
18	Complaint filed by TZAC, Inc. against Oxfam in Case No. 1:18-cv-01500-VEC
19	TZAC Inc.'s Notice of Voluntary Dismissal in Case No. 1:18-cv-01500-VEC
20	Decision and Order of Dismissal in *International Legal Forum v. The American Studied Association*, Index No. 651938/2018
21	Docket Sheet in the case of *TZAC, Inc. v. New Israel Fund*, Case No. 1:20-cv-02955-GHW
22	TZAC's Amended Complaint in *TZAC, Inc. v. New Israel Fund*, Case No. 1:20-cv-02955-GHW
23	State of New York's Statement of Interest in *TZAC, Inc. v. New Israel Fund*, Case No. 1:20-cv-02955-GHW

Exhibit 1

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Case No.: 19STCP03648

DECLARATION OF AYESHA KHAN IN SUPPORT OF INTERVENORS' OPPOSITION TO PETITION FOR WRIT OF MANDATE

Filed concurrently with Memorandum of Points and Authorities in Support of Intervenors' Opposition to Petition for Writ of Mandate

Judge: Hon. James C. Chalfant
Dept.: 85

Action Filed: Aug. 22, 2019

Trial Date: March 11, 2021
Time: 9:30 am

I, AYESHA KHAN, declare as follows:

1. I am over 18 years old and fully competent to make this declaration.

2. I make this declaration based on my personal knowledge unless otherwise indicated.

3. From 2015 to 2019, while I pursued my PhD in Microbiology and Infectious Diseases at UTHealth and MD Anderson Cancer Center in Houston, Texas, I served as a member of the Steering Committee of the National Students for Justice in Palestine (NSJP). The steering committee consists of a collective of student activists from institutions of higher education around the United States who volunteer their time to coordinate NSJP's programming and initiatives that advocate for Palestinian rights including the annual conference.

4. I obtained my undergraduate degree from the University of California, Los Angeles (UCLA) where I was a member of the student organization Students for Justice in Palestine (SJP) from 2012 to 2015. I work as a Postdoctoral Infectious Diseases Fellow and Researcher at UTHealth. Additionally, I work closely with the UCLA Alumni Association on several diversity, inclusion and equity initiatives including serving as the President of the UCLA Muslim Alumni Association including as a voting member of the UCLA Alumni Association Board Diversity Advisory Committee (2020-Present). I am also on the steering committee of U.S. Campaign for Palestinian Rights—a 501(c)(3) non-profit advocacy organization (2019-Present).

5. These roles are in addition to other leadership roles I held, such as Project Director of the Incarcerated Youth Tutorial Project in the UCLA Community Programs Office, Co-organizer of the UCLA Forum to Reclaim Diversity, and iii) UCLA Campus Tour Guide.

6. NSJP is an independent grassroots organization composed of students and recent graduates. It was established when an informal network of student activists from across the United States began organizing to build connections between local student groups working toward freedom, justice, and equality for the Palestinian people. During my time with NSJP, its mission was to empower, unify, and support student organizers as they pushed forward demands for Palestinian liberation and self-determination on their campuses. NSJP fulfilled that mission by providing a platform for collaboration, providing organizational and educational support, developing accessible resources for student organizers, and connecting student organizations supporting Palestinian rights with the broader global movement for justice in Palestine.

7. During my time in NSJP, the primary initiative for NSJP to execute its mission was the annual NSJP conference. The conference brought together students from campus Palestine solidarity

groups throughout the United States and Canada to attend skill-building, advocacy and political development workshops, network with fellow organizers, and learn about other social justice movements, including advocacy for LGBTQ+ rights; for justice and equity for Black, Indigenous, and other communities of color; and for environmental, food, immigrant and gender justice.

8. The first NSJP conference was held in 2011. Since then, NSJP has organized nine annual national conferences in partnership with independent and autonomous SJP student groups at various universities throughout the United States.

9. In 2018, NSJP held its annual conference at UCLA. The theme of the conference was "Radical Hope: Resistance in the Face of Adversity" and its goals were to: i) build stronger regional cohesion to facilitate collaborative initiatives between SJP chapters, ii) share skills in coalition building, media and publicity, fundraising, and civil rights advocacy, iii) develop movement-wide initiatives, and iv) transition from mythos to action by crafting tangible ways to apply social justice theory. I served as a primary organizer of the conference as a UCLA alumna with a long-standing and committed relationship with my alma mater from working with UCLA faculty, staff and administration. I served as one of the liaisons between NSJP and SJP UCLA which included, but is not limited to, coordinating with SJP UCLA student leaders, their supervising advisors at the UCLA Student Organizations, Leadership & Engagement (SOLE) Office and the Assistant Vice Chancellor of UCLA Campus Life.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 31, 2021.

Ayesha Khan
Ayesha Khan (Jan 31, 2021 14:44 CST)

Ayesha Khan

Adobe Sign Transaction Number: CBJCHBCAABAA9bKzP1evTg25FEzmCYhGYKdkppxscYhI

Exhibit 2

EXHIBIT 2

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vs.

DAVID ABRAMS,

Defendant in Intervention.

Case No.: 19STCP03648

DECLARATION OF DOE 2 IN SUPPORT OF INTERVENORS' OPPOSITION TO PETITION FOR WRIT OF MANDATE

Filed concurrently with Memorandum of Points and Authorities in Support of Intervenors' Opposition to Petition for Writ of Mandate

Judge: Hon. James C. Chalfant
Dept.: 85

Action Filed: Aug. 22, 2019

Trial Date: March 11, 2021
Time: 9:30 am

I, [redacted], declare as follows:

1. I am over 18 years old and fully competent to make this declaration.

2. I make this declaration based on my personal knowledge unless otherwise indicated.

3. On Saturday, November 17, 2018, I was a presenter at the National Students for Justice in Palestine ("NSJP") conference held at the University of California, Los Angeles ("UCLA"). I also attended another workshop on Saturday and the first half of a plenary session on Sunday, November 18, 2018.

4. The privacy of my association with the NSJP conference is very important to me. Anti-Palestinian activists have used my past work in the field of Palestinian human rights to defame me and to wrongly associate me with ideas and groups that I do not endorse. In 2015, I was filmed against my wishes at a talk on Palestinian liberation. The video was uploaded to YouTube with an inflammatory title implying that I believed all Israeli men were rapists. YouTube eventually removed the video. After the video was uploaded, I received harassing and threatening emails, saying things like, "Palestinian women are so filthy we would not even think of raping them." The emails made me feel very unsafe.

5. The privacy of my association with NSJP is also important to me because I am afraid that if my name were to become public, I would be placed on blacklist websites like Canary Mission. I have seen the names of many of my friends on such websites, their statements taken out of context and them being accused of anti-Semitism and terrorism. I do not want the same to happen with me.

6. Over the course of several years, even before the incident in 2015, I have been continuously harassed on Twitter when I have tweeted in support of Palestinian rights. I have been called names like "pig," "anti-Semite," and "terrorist." I have received extremely toxic tweets that have been the source of much mental anxiety for me. For instance, one Twitter user told me I should "go finger fuck myself."

7. Because of my prior experiences and the experiences of close friends, I am terrified of being doxed. I am very careful about who I share my email and information with, what I post on social media, and what I say in public forums.

8. Because I am always wary of anti-Palestinian activists taking my words out of context, I am usually measured about what I say in public settings. However, because I understood that the 2018 NSJP conference was a closed-door event where I was talking to student organizers who had been pre-screened by conference organizers before being allowed into the conference, I felt more at ease. I did not feel like I had to censor my speech.

9. I checked in to the conference on Saturday afternoon. I remember that I had to pass some UCLA campus security officers to get to the check-in table. At the check-in table, I was asked for my identification. The person at the check-in table checked my name against the list of conference attendees he had on his laptop. I was given a conference program, a wristband, and a nametag. The person helping me check-in explicitly told me that I would not be able to enter the conference space without the nametag and the wristband.

10. It seemed that the conference organizers were concerned about the safety of the event and the attendees and took safety measures. The NSJP conference organizers knew me and were familiar with my work because I had also attended the 2017 NSJP conference in Houston. However, I still did not receive a copy of the conference program until I arrived at the conference on Saturday. The conference program briefly described the content of my workshop, but did not have my name printed on it. It also did not have the names of other workshop presenters listed. When I was given the conference program at registration, I was explicitly instructed to not leave the program lying around, and to not throw it away in UCLA's trash receptacles. I remember during lunch on Saturday, while I was sitting in a courtyard with other conference attendees, someone had left behind their conference program on one of the benches. An NSJP conference staffer immediately came to pick the program up.

11. Before I could enter the building where the actual conference was being held, security personnel, who were stationed at the entrance to the building, checked to make sure that I had my nametag and wristband before allowing me inside the building.

12. It is my understanding that a friend who had not pre-registered for the conference tried to register on Sunday, but he was not allowed to register. I stepped out of the conference building into an open space to talk with him. I saw that there were a few protesters near us, but I did not pay them much attention, until a conference organizer came up to me and asked me to go inside because the protesters were taking pictures of me. I felt disturbed when I realized what was happening and immediately went inside.

13. On one of the conference days, I remember that all conference attendees, including myself, had to go from one building to another. The walk between the two buildings took about ten minutes. Before we could leave our original building, the conference organizers gathered everyone in

one of the hallways. We were asked to form two lines, close together. We were told that there was a group of protesters outside the building and on the way to the next building. Conference organizers informed us that protesters were recording videos of conference attendees and that we should cover our faces and conceal our nametags to preserve our anonymity.

14. We filed outside the original building, in two parallel lines, escorted by UCLA's campus police and the security individuals organized by the conference organizers on all four sides of the line.

15. I saw at least 100 protesters in total during our walk. Some of these protesters followed us as we walked from one building to the next. They sneered and jeered at us. They called us names like "pigs" and "anti-Semites." I heard one of them saying "the IDF is coming" and another saying "Mossad is coming." The fact that these protesters were threatening conference attendees, many of whom were Palestinian like myself, with the Israeli armed forces and Israeli intelligence agencies, made me feel extremely unsafe.

16. I saw at least one protester who was visibly agitated and excitable and walking alongside us to get as close as he could. He followed us all the way to the other building, at which point he had to stop because security did not allow him to enter the conference space.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 2, 2021.

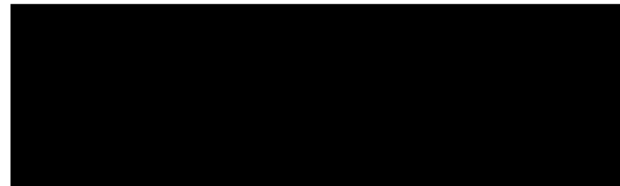

Exhibit 3

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DECLARATION OF DOE 3 IN SUPPORT OF INTERVENORS' OPPOSITION TO PETITION FOR WRIT OF MANDATE

Filed concurrently with Memorandum of Points and Authorities in Support of Intervenors' Opposition to Petition for Writ of Mandate

Judge: Hon. James C. Chalfant
Dept.: 85

Action Filed: Aug. 22, 2019

Trial Date: March 11, 2021
Time: 9:30 am

I, [redacted], declare as follows:

1. I am over 18 years old and fully competent to make this declaration.

2. I make this declaration based on my personal knowledge unless otherwise indicated.

3. I am Arab American.

4. On November 17, 2018, I presented a workshop at the National Students for Justice in Palestine ("NSJP") conference held at the University of California, Los Angeles ("UCLA"). I also attended the conference from November 16 to November 18, 2020.

5. It is important for me to maintain my privacy around my association with NSJP so that I am able to safely engage in and organize for Palestinian human rights work. After I attended the 2017 NSJP conference, I saw that the blacklisting website Canary Mission had a profile on me. The website linked to not only my social media account but also to that of my student organization. All of this made organizing for Palestinian advocacy very difficult for me. I was unable to post information about events I was planning on my social media page or on that of my organizations, out of fear that anti-Palestinian individuals and organizations, who could find these social media accounts through Canary Mission, would show up to these events to harass Palestinian rights activists. I was thus unable to get the word out to the student community. I believe this is one of the reasons that many people did not turn out to some of the events I planned.

6. I was afraid before attending the 2018 NSJP conference because of my experience being doxed on Canary Mission. I did not want my attendance at the 2018 conference to lead to further harassment. As a precaution, I deactivated my social media accounts prior to the 2018 conference and only reactivated them once the conference had ended. Even now, I do not use my full or real name on my social media accounts. In order to protect myself, I also am careful about what issues my name gets publicly associated with.

7. During the conference, I often tried to cover my face while walking to and from the conference location. I also tried to dress in such a way that it was not obvious I was with the conference group while not in the conference building (e.g., not wearing Arab/Palestinian cultural clothing such as a *kuffiyeh* or the conference T-shirt).

8. Additionally, I was particularly nervous about safety before attending the 2018 conference. I had read in the news that anti-Palestinian groups were pressuring UCLA to cancel the conference and censor our voices. It was my understanding that there would likely be large right-wing protests and that this could put me at heightened risk for doxing, harassment, or violence. Additionally,

it was my understanding that UCLA required a campus police presence, which made me uncomfortable because I have had bad experiences with police surveillance in response to my activism.

9. I am afraid of my name being disclosed publicly for several reasons. The harassment I experienced as a result of my name being on Canary Mission scared me. I did not know if I would be able to get jobs or apply for housing after I was doxed, since the first Google result for my name was falsely calling me a terrorist. I was a young college student at the time with minimal community support, and I was very unsure about what that could mean for me and my future. My Canary Mission profile has been relatively dormant and has not been updated in a long time. My name also has not been shared on their Twitter as much as it was at first. If my name were shared as a presenter at the 2018 NSJP conference, I expect that the harassment and doxing of me would continue and opponents of Palestinian rights might try to find more information about me to share publicly.

10. I also have heard stories about other activists who have been put on Canary Mission and the consequences they have faced as a result, which worries me deeply. It is my understanding that other people have been denied positions in graduate programs because of their Canary Mission profiles. I am hoping to apply to graduate school this year, and I am worried that increased harassment and doxing could jeopardize my ability to pursue my career goals. I have also heard that other people's Canary Mission profile pictures have been printed out and posted on campus in the past, calling them terrorists, and exposing them to racist violence. I am scared of the potential consequences, and I am scared for my personal safety if my name should be released as a presenter.

11. It is my understanding that conference organizers took measures to protect the identities of those presenting at the conference. I did not receive the conference program until I physically arrived at the conference. The conference program did not list my name as a workshop presenter. Nor did it list the names of any other workshop presenters.

12. I checked in to the conference on Friday. In addition to the conference program, I received a nametag and a wristband. I had to check in to the conference on Saturday and Sunday as well, when I received different color wristbands. At every check-in, conference staffers gave me explicit instructions to wear the nametag and wristband at all times when entering the conference, or I would not be allowed in to the building where the conference was being held. They also instructed me to not leave

the conference program or my nametag lying around or in one of UCLA's trash receptacles. Finally, they told me that I should take off my nametag or put it inside my shirt whenever I am in an open space. I remember hearing these instructions around safety and confidentiality repeatedly throughout the three days of the conference, at the start of the plenary sessions and when I would leave the conference every day.

13. When I checked in to the conference the first day, I saw security before I could get to the check-in table.

14. I attended the plenary session on Friday. I saw non-UCLA security posted at the entrance to the room, checking everyone's nametags and wristbands. I had a workshop the next day, and I wanted to leave the plenary with my co-presenters to go prepare for it. However, conference staffers told me I could not leave the room for safety reasons. At one point, I left to use the restroom through the back entrance and saw non-UCLA security posted at the back entrance as well. They directed me to a bathroom inside the building.

15. When I held my workshop on Saturday, I made an explicit announcement letting everyone know that no pictures or video recordings were allowed. To the best of my recollection, no one in my workshop violated that policy. The doors to the room I was presenting in remained closed throughout the conference. There was non-UCLA security present outside the door to my room checking for wristbands before allowing anyone to enter the room.

16. I also attended other workshops during the conference. I remember that in all the rooms where I attended a workshop, the windows were closed and the blinds were drawn. At some point during the conference, either the conference organizers or the workshop presenters advised us to not look outside the windows because there were people outside the building protesting the conference and trying to take pictures or record videos of conference attendees.

17. The conference was held in two different buildings to the best of my recollection. Any time I had to move from one building to the other, conference organizers always made sure that I moved as part of a group, with security flanking us on all four sides. Every time I moved from one building to the other, I would cover my face to keep my identity secure.

18. On one of the days, all conference attendees had to move from one building to another building on campus. Before we could leave our original building, conference organizers asked us to convene in the hallway of the building. There, they lined us up in two parallel lines, with non-UCLA and UCLA campus security covering us on all four sides. Conference organizers told us that there were protesters outside the building, and many of them were going to try to take our pictures. They encouraged us to cover our faces to protect our identity. I covered my face before I left the building.

19. When I got outside, I saw at least 100 protesters on my way to the next building. Some of them were really loud and were walking alongside our group. They could not get very close to us because of the wall of security between us and them.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 31, 2021.

Exhibit 4

EXHIBIT 4

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DAVID ABRAMS,

Petitioner,

vs.

REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Respondent,

DOE 1, DOE 2, DOE 3, DOE 4, DOE 5, DOE 6, DOE 7, DOE 8,

Intervenors,

vs.

DAVID ABRAMS,

Defendant in Intervention.

Case No.: 19STCP03648

DECLARATION OF DOE 4 IN SUPPORT OF INTERVENORS' OPPOSITION TO PETITION FOR WRIT OF MANDATE

Filed concurrently with Memorandum of Points and Authorities in Support of Intervenors' Opposition to Petition for Writ of Mandate

Judge: Hon. James C. Chalfant
Dept.: 85

Action Filed: Aug. 22, 2019

Trial Date: March 11, 2021
Time: 9:30 am

I, [redacted], declare as follows:

1. I am over 18 years old and fully competent to make this declaration.

2. I make this declaration based on my personal knowledge unless otherwise indicated.

3. I am Jewish-Arab American and was born in the State of Israel. Other than my parents and siblings, the entire rest of my family lives in Israel.

4. I am currently a [redacted].

5. Advocating for Palestinian rights and against the Israeli government's discriminatory policies is very important to me. My family in Israel has continued to face economic and financial repression from the government because of our Arab identity. To me, my family's historical and continued repression by the government of Israel is tied to the forced choice Arab Jews living in Israel have to make between being Arab and Jewish and to the idea of Palestine itself. I am going to law school with the intention of using my legal expertise in the future to advocate on this issue.

6. On November 17, 2018, I presented a workshop at the National Students for Justice in Palestine ("NSJP") conference held at UCLA. I also attended various workshops and sessions at the conference.

7. The privacy of my association with the NSJP conference is very important to me. It is my understanding that people who engage in Palestine-based advocacy have a difficult time being allowed into Israel or are barred from entering the country by the Israeli government. At some point in 2018, I saw that a profile had been created on me on Canary Mission. This profile does not list my participation or attendance in the 2018 NSJP conference. Before the creation of the Canary Mission profile, I had often visited Israel and had never been stopped or questioned at the border. I visited Israel in 2019. This time, Israeli airport authorities pulled me out of the passport line and questioned me for hours before finally allowing me inside the country. I believe that I was subjected to this extra questioning because of my Canary Mission profile.

8. The fact that my advocacy on Palestinian human rights is public has already had an impact on my life. I have been harassed by members of my own community and called *kapo*, or a self-hating Jew. I have received harassing messages on my social media, calling me words like "anti-Jewish" and a "stupid bitch". This harassment has had an intense mental impact on me and has caused me great anxiety. Additionally, my partner's close family members have called me and told me they will sever their relationship with my partner if I continue advocating for Palestinian human rights.

9. If the fact that I presented at the 2018 NSJP conference were disclosed, I would likely not organize with Palestinian individuals and organizations like NSJP. My public facing advocacy has been with Jewish organizations and within the Jewish community. The fact that I also organize with Palestinian organizations is not known to my family and friends, and to the best of my knowledge, to the public. I also fear that if the fact of my organizing with Palestinian organizations and individuals became known, the harassment and doxing that I currently face would intensify.

10. If I did not think that the conference would be a private, closed-door event, I do not know if I would have been open to presenting or participating in the conference.

11. I am also afraid that my career prospects as a lawyer will be negatively affected if my association with NSJP was made public.

12. After I registered for the 2018 conference, I received a confirmation email from NSJP stating that I would need a photo ID to check in to the conference. The email also stated that I would receive a conference program, a nametag, and a wristband after check-in, and that I would be required to wear the nametag and wristband at all times. Without both of these, I would be asked to leave the conference. The email also stated that no one could register for the conference at the door. This email led me to believe that the conference was a private, closed-door event.

13. The email from NSJP also stated that conference organizers expected protesters both on and off campus and that this protest had been approved by the UCLA administration. The email warned us that these protesters might try to record videos of us.

14. Before the conference, one of the NSJP conference organizers called me. He informed me that the conference program would not be released until the day of the conference. Additionally, he stated that the program would not list the names of any of the workshop presenters. Finally, he advised me that if I wanted to, I could use a fake name during my workshop and at any point in the conference. All of this led me to believe that conference organizers were taking measures to keep secure the anonymity of conference presenters.

15. I checked in to the conference on Friday. The staffer at check-in asked me for my ID and after verifying my registration on a laptop, gave me my nametag, wristband, and the conference

program. Before I could enter the conference space, individuals providing security checked my wristband and nametag.

16. Once during the conference, I forgot to wear my nametag, and the people providing security did not let me enter the building.

17. My workshop was on Saturday, November 17, 2018. Before I began the workshop, I asked people to not take pictures or record any videos. There were about 30 to 40 people in my workshop, sitting in staggered seating, so that I could see all of them clearly. I do not recall anyone taking pictures or recording videos during my workshop. I also announced that everyone at the workshop should use fake names to maintain confidentiality. I myself used a fake name when facilitating the workshop.

18. I attended many workshops during the conference. At many of the workshops, presenters started the workshop by announcing that no one was allowed to take pictures and record videos.

19. Before the conference, I received an email from a Palestinian solidarity organization, SWANA-LA, asking me to provide security support at the conference, because conference organizers expected a far-right Zionist organization to demonstrate at the conference, and because some NSJP members had received death threats.

20. On November 15, 2018, I attended a safety meeting at UCLA organized by NSJP ahead of the conference. At the meeting, individuals from the National Lawyers Guild and Jewish Voice for Peace went over the plan and provided the attendees with a de-escalation training. The security plan generally consisted of having security individuals like myself posted at various points throughout the courtyard surrounding the building where the conference would take place, and at all entrances to the building itself. Every workshop was also assigned a security supporter who could help deescalate any situation that may arise.

21. I provided security support three times during the conference. Once, I was stationed near the back entrance to one of the conference buildings to make sure that non-conference attendees did not enter the building. I saw a woman try to sneak into the building. I stopped her. She yelled at me and kept trying to move past me until UCLA's campus security arrived at the scene and escorted her away.

22. On another day, I helped escort conference attendees, as a group, from one conference building to the next. All attendees made up the inner circle of the group; security supporters like myself flanked the attendees on all four sides; UCLA campus security flanked us and made up the outermost circle. Before we started moving from one building to the next, conference organizers asked everyone to conceal their nametags and encouraged everyone to cover their faces. I saw many people cover their faces. I tucked my nametag into my shirt. Once all the conference attendees had entered the building, along with other people providing security support, I formed a human chain at the entrance to the building to stop protesters from getting inside.

23. I also provided security support the last day of the conference, when I helped escort conference attendees from the building where the conference was being held to a pickup location for rideshares. I escorted three or four groups to the rideshare location. Attendees in each group covered their faces. I saw people following each group of attendees, trying to take their pictures and record videos. Some of these people would try and get very close to the attendees in order to take their picture. I saw people yell at us, saying that they were going to capture our faces and put our information online.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 31, 2021.

Exhibit 5

EXHIBIT 5

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DAVID ABRAMS,

Petitioner,

vs.

REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Respondent,

DOE 1, DOE 2, DOE 3, DOE 4, DOE 5, DOE 6, DOE 7, DOE 8,

Intervenors,

vs.

DAVID ABRAMS,

Defendant in Intervention.

Case No.: 19STCP03648

DECLARATION OF DOE 5 IN SUPPORT OF INTERVENORS' OPPOSITION TO PETITION FOR WRIT OF MANDATE

Filed concurrently with Memorandum of Points and Authorities in Support of Intervenors' Opposition to Petition for Writ of Mandate

Judge: Hon. James C. Chalfant
Dept.: 85

Action Filed: Aug. 22, 2019

Trial Date: March 11, 2021
Time: 9:30 am

I, [redacted], declare as follows:

1. I am over 18 years old and fully competent to make this declaration.

2. I make this declaration based on my personal knowledge unless otherwise indicated.

3. I am Palestinian American, and I have family that currently resides in Palestine.

4. On November 17, 2018, I was a presenter at the National Students for Justice in Palestine ("NSJP") conference held at the University of California, Los Angeles ("UCLA"). I also attended all three days of the conference as an attendee.

5. It is important for me to preserve the anonymity of my affiliation with NSJP. If my name were made public, there is a possibility I will be barred from entering Palestine. Even though I am Palestinian, I do not have a Palestinian passport or a guaranteed right to enter the country. My U.S. passport grants me a three-month visa, but that is at the discretion of the Israeli government. I fear that if my name as a Palestinian rights activist was made public, the Israeli government would not allow me to enter because the government disagrees with my political views. This would mean that I would be cut off, possibly forever, from seeing some of my family members who reside in Palestine and who, to my understanding, are not allowed to leave the country.

6. Preserving the privacy of my association with NSJP is also important to protect my personal safety. I attended the 2017 NSJP conference in Houston. I had to evacuate the building at one point because I was told by conference staff that there was a man standing outside the conference with a gun. Additionally, at my university campus, I have witnessed first-hand the threats Palestinian activists receive. At the beginning of 2020, during a student government meeting where a measure to stifle Palestinian advocacy on campus failed, I heard an individual make a public comment threaten to join the Israeli Defense Forces and kill all Palestinians.

7. Preserving the privacy of my association with NSJP is also important so I can continue my advocacy for Palestinian rights. If the workshop I presented at the 2018 NSJP conference was not a closed-door event or if I thought my name would be disclosed, I would have reconsidered the extent of my involvement with the NSJP conference. If my name were disclosed as part of this case, it would hinder my ability to safely engage in my political advocacy at the same level or in the same way that I currently do.

8. I am also afraid of being doxed for my work on Palestinian human rights. For this reason, all my social media accounts are private, and I do not post any public pictures of myself.

9. It is important to me that I continue doing Palestinian advocacy safely. I believe keeping my association with NSJP private and being able to express dissenting views are an integral part of living in a democracy. Engaging in this work in a safe manner is core to my sense of self and important for the liberation of my family and my people.

10. For the 2018 NSJP conference, I registered both as an attendee and as a workshop presenter. As an attendee, I registered through my university's SJP chapter. My SJP selected three or four of us to go to the conference. All of us then completed one form and entered our individual information into that same form. As part of the process, we provided the name of an SJP member from our campus who could vouch for us and our activism. It is my understanding that the NSJP conference organizers did call the person I listed as a reference because that person informed me of the call.

11. It is my understanding that conference organizers had serious concerns about the security of the event and the attendees and took appropriate safety measures. Even though I was a workshop presenter, I did not receive a copy of the conference program until I arrived at the conference. I was also only told what day and time my workshop would be a couple of days before the conference. Even then, I was not told the exact location where my workshop would be held until I arrived at the conference and received a conference program.

12. I checked in to the conference on Friday evening. I saw UCLA campus security officers and other security personnel before I could get to the check-in table, which was located in a courtyard outside the building where the conference was held. I informed the person sitting at the check-in table of my name and school affiliation. I received a premade nametag and a copy of the conference program. The person at the check-in table informed me that I would not be able to enter the conference buildings if I did not have my nametag with me.

13. I had to check in every day of the conference at an outdoor check-in table before I could go inside the building where the conference was held.

14. As soon as I was checked in, conference staff told me to immediately enter the building and to not stand around outside.

15. Conference staff instructed all attendees, including myself, not to throw the conference program or our nametags in any trashcans, to invert our nametags or take them off any time we left the

building, not to wear our *kuffiyehs*, or Palestinian scarves, in outdoor spaces, and not to take any pictures or record videos. I was given these instructions when I checked in every morning, and NSJP organizers made these announcements throughout the day.

16. At my workshop on Saturday, I also instructed all attendees to not take pictures or record any videos. I also reminded everyone to keep the identities of the people present and any stories shared confidential. There was a conference staffer present in my workshop to provide security in case something happened.

17. In the workshops I attended, many presenters told attendees to not take any pictures and most, if not every, asked attendees to maintain the confidentiality of individuals and other sensitive content shared during the workshop.

18. There were one or two security guards posted at each entrance and exit to the conference building. I saw them as I walked in to the building each day of the conference. They always checked to see that I had my nametag.

19. For the Friday keynote session, there were security guards posted at each entrance of the ballroom. A security guard at the front entrance checked my nametag as I entered the ballroom. I saw the security guards posted at the back door to the ballroom when I left briefly to use the restroom. They directed me to a bathroom inside the building.

20. All the security guards I saw inside the building were members of the activist community NSJP had arranged to be at the conference. None of them were wearing UCLA police uniforms. All the UCLA campus security officers I saw remained outside the building on all three days, except at one point during the conference when they entered the building to escort a protester out.

21. On either Saturday or Sunday of the conference weekend, I was standing outside of the building with a few of my friends. Conference staffers immediately told us to go inside the building where the conference was being held.

22. On one of the conference days, all attendees had to move from one building to another. Conference organizers told us there were a large group of protesters outside who were ready to film us. For our safety, they lined us up and walked us out the building as a massive group. We were flanked on all four sides by campus police and the security individuals NSJP had arranged for.

23. Before we left the building, NSJP staffers instructed us to not engage with the protesters, to cover our faces, and to conceal our nametags.

24. I saw about 100 protesters on my walk to the other building. I removed my nametag ansd wore sunglasses. I also made sure to huddle in between my friends and keep my head down to protect my identity.

25. After the conference ended on Sunday, I walked to my car that was parked in one of the UCLA parking lots with a group of other conference attendees. I was followed halfway through campus by a group of protesters who were yelling at us and taking pictures. We covered our faces with our hands, our scarves, and our *kuffiyehs* to protect ourselves. I used my hands to cover my face in order to conceal my identity.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January Jan 31, 20___, 2021.

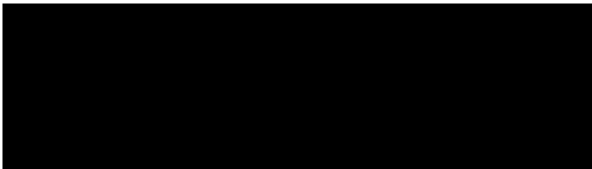

Exhibit 6

EXHIBIT 6

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DAVID ABRAMS,

Petitioner,

vs.

REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Respondent,

DOE 1, DOE 2, DOE 3, DOE 4, DOE 5, DOE 6, DOE 7, DOE 8,

Intervenors,

vs.

DAVID ABRAMS,

Defendant in Intervention.

Case No.: 19STCP03648

DECLARATION OF DOE 6 IN SUPPORT OF INTERVENORS' OPPOSITION TO PETITION FOR WRIT OF MANDATE

Filed concurrently with Memorandum of Points and Authorities in Support of Intervenors' Opposition to Petition for Writ of Mandate

Judge: Hon. James C. Chalfant
Dept.: 85

Action Filed: Aug. 22, 2019

Trial Date: March 11, 2021
Time: 9:30 am

I, [redacted], declare as follows:

1. I am over 18 years old and fully competent to make this declaration.

2. I make this declaration based on my personal knowledge unless otherwise indicated.

3. I am a citizen of both Israel and the United States.

4. On November 17, 2018, I presented a workshop at the National Students for Justice in Palestine ("NSJP") conference held at the University of California, Los Angeles ("UCLA"). I also attended various workshops and sessions at the conference.

5. It is important that I keep my association with NSJP private for two reasons. First, it is my understanding that many Palestinian activists have profiles on blacklisting profiles, such as Canary Mission, that expose personal details. I do not want people to expose information about my life that did not come from me. Second, it is my understanding that Canary Mission profiles people who support Palestinian rights and falsely accuses them of anti-Semitism and supporting terrorism. I am worried that if my name were exposed, other people will not associate with me because either they will think that I am an anti-Semite and terrorist or because they themselves would be worried about being labeled anti-Semites and terrorists.

6. It was my understanding that conference organizers would keep my name confidential. The conference program did not list my name or that of other presenters.

7. I also understood the conference to be a closed-door private event. When I registered for the conference, I had to indicate if I was a member of any Students for Justice in Palestine ("SJP") chapter, provide the location of the chapter, and name of the chapter president. If I was not associated with a SJP chapter, I had to specify how I was connected to the conference.

8. Before arriving at the conference, I received an email from conference organizers advising me that I would need a form of my identification to check in to the conference. When I checked in to the conference, conference staffers asked for my ID, checked my name against a list on their laptop, and gave me a nametag, the conference program, and a wristband. They told me I had to wear the wristband and nametag at all times. They also told me to not throw away my nametag or any conference material in any trashcans.

9. After check-in, I was speaking with some of the conference staffers when I saw an individual try to register for the conference. The conference staffers told him he could not register and turned him away.

10. I was required to check in all three days of the conference. I received a different colored wristband on each day. Every time I entered one of the two buildings where the conference was being held, security individuals checked my wristband before allowing me entry.

11. Conference organizers told me that there would be a security team looking out for people trying to disturb the event and that campus police would also be available to protect whoever needed protection during the conference.

12. I saw a lot of security on all three days of the conference. There was security posted on at every entrance to the building where my workshop was being held. I also saw security in the courtyard leading up to the building, and near the check-in table. At one point, I went to the restroom on a different level in the same building as the conference and saw police in riot gear sitting in a room.

13. Whenever I had to walk between the two buildings where the conference was being held, conference organizers made sure that I walked as part of a larger group for our own safety.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 1, 2021.

Exhibit 7

EXHIBIT 7

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DAVID ABRAMS,

Petitioner,

vs.

REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Respondent,

DOE 1, DOE 2, DOE 3, DOE 4, DOE 5, DOE 6, DOE 7, DOE 8,

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vs.

DAVID ABRAMS,

Defendant in Intervention.

Case No.: 19STCP03648

DECLARATION OF DOE 7 IN SUPPORT OF INTERVENORS' OPPOSITION TO PETITION FOR WRIT OF MANDATE

Filed concurrently with Memorandum of Points and Authorities in Support of Intervenors' Opposition to Petition for Writ of Mandate

Judge: Hon. James C. Chalfant
Dept.: 85

Action Filed: Aug. 22, 2019

Trial Date: March 11, 2021
Time: 9:30 am

I, , declare as follows:

1. I am over 18 years old and fully competent to make this declaration.

2. I make this declaration based on my personal knowledge unless otherwise indicated.

3. I am Palestinian American.

4. I attended the National Students for Justice in Palestine ("NSJP") conference held at the University of California, Los Angeles ("UCLA") in November 2018, and I presented a workshop on the second day of the conference.

5. The privacy of my association with NSJP is very important to me for two reasons. First, it is my understanding that people who are publicly known to advocate for Palestinian human rights are often barred from entering Palestine by the Israeli government. I plan to visit Palestine in the near future with my mother, and I am afraid that if my name were publicly disclosed in connection with this conference, the Israeli government would not allow me to enter the country.

6. Second, I understand that disclosing my association with the NSJP conference or advocacy for Palestinian human rights in general can land me on internet blacklists, including websites such as Canary Mission. For this reason, I was very careful not to put my full or real name when publishing articles on the issue of Palestine in the school newspaper. I have friends who have profiles on Canary Mission, where their words and actions have been taken out of context and they have been falsely painted as terrorists purely because they support Palestinian human rights. I do not want to be doxed in the same way.

7. Over the years, I have been careful about how publicly I engage in Palestinian advocacy because I am also afraid of being harassed by law enforcement. I have been told by others I know who have publicly spoken out for Palestinian human rights that they have been approached by the FBI for questioning. I do not want to be harassed by the FBI for my political views.

8. I attended the 2018 NSJP conference to engage in information and skill sharing with other students organizing for Palestinian liberation across the country. This conference was particularly important to me because the advocacy for Palestinian human rights at my university was relatively new and I wanted to build with and learn from others who had been doing this work for much longer.

9. When I registered for the conference, in addition to basic information about myself, I had to provide the name of an individual who was familiar with my advocacy on Palestinian human rights and could vouch for me.

10. It was my understanding that our identities as presenters would be kept confidential. The conference program did not list my name or that of any other workshop presenter. At my workshop and at most workshops and sessions I attended, the presenters or an NSJP staffer reminded attendees that no pictures or video recordings were allowed. Throughout the weekend, I heard conference staffers make several announcements telling attendees that we were not allowed to post about any of the workshops or events we attended on social media.

11. I also understood the conference to be a private, closed-door event. Before the conference, I received an email stating that I would need to bring photo identification with me to check in and to receive my nametag and wristband. I was also required to wear the nametag and wristband at all times, or I would not be allowed into conference spaces. The email also stated that no in-person registration would be allowed at the conference.

12. At the conference, I was required to show my wristband and nametag to people providing security support at the conference before I was allowed into the conference space. On Friday, conference staffers instructed me to use specific doors to get to the bathroom, all of which had security stationed at them. On Saturday and Sunday when most of the conference took place, I saw security roaming the halls of the building to monitor who was going in or out of workshops.

13. On one of the days, all the attendees had to go to a separate area of the campus for a meal. Conference staffers had us go together in a group. Protesters lined the path we were taking, and many marched alongside us and followed us to where we were going. I saw many of the protesters taking pictures and filming us. Conference staffers advised us to conceal our nametags and cover our faces to protect our identities. Concerned for my privacy for the reasons stated above, I covered my face with a scarf and concealed my nametag.

14. Advocating for Palestinian rights holds a very special place in my heart. It allows me to connect with people who are committed to social justice and to an advocate community that truly cares about each other's well-being. On a more personal note, Palestine advocacy is one way for me to connect to my family, who left Palestine decades ago, and pay tribute to their struggles.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 30, 2021.

Exhibit 8

EXHIBIT 8

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DAVID ABRAMS, Petitioner, vs. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent, DOE 1, DOE 2, DOE 3, DOE 4, DOE 5, DOE 6, DOE 7, DOE 8, Intervenors, vs. DAVID ABRAMS, Defendant in Intervention.	Case No.: 19STCP03648 **DECLARATION OF DOE 8 IN SUPPORT OF INTERVENORS' OPPOSITION TO PETITION FOR WRIT OF MANDATE** *Filed concurrently with Memorandum of Points and Authorities in Support of Intervenors' Opposition to Petition for Writ of Mandate* Judge: Hon. James C. Chalfant Dept.: 85 Action Filed: Aug. 22, 2019 Trial Date: March 11, 2021 Time: 9:30 am

I, [redacted], declare as follows:

1. I am over 18 years old and fully competent to make this declaration.

2. I make this declaration based on my personal knowledge unless otherwise indicated.

3. I am a Palestinian American [redacted].

4. I was an active member of my university's Students for Justice in Palestine ("SJP"), a student organization. Currently, I am an alumni mentor for the same chapter.

5. Advocacy for Palestinian rights is important to me because Israel's occupation of Palestine affects the lives of my family, those who live here in the United States and those who continue to live in Palestine.

6. On November 17, 2018, I presented a workshop at the National Students for Justice in Palestine ("NSJP") conference held at UCLA. I also attended various workshops and sessions at the conference.

7. The privacy of my association with the NSJP conference is very important for my ability to travel to Palestine. I believe that my advocacy for Palestinian human rights is the reason the Israeli government denied me entry into the country in the past. In 2015, I attempted to visit Israel. I was stopped at the border and questioned for ten hours by the Israeli Defense Forces. Most of the questioning was about my advocacy for the Boycott, Divest, and Sanctions movement and my involvement in SJP. After ten hours of questioning, Israeli authorities denied me entry and barred me from entering the country and imposed a ten-year ban. The Israeli government gave no formal reason for their denial. After the ten-year ban ends, I will attempt to visit Palestine once again. I am afraid that the public disclosure of my name in association with this conference would impose even further barriers to my entry to Palestine in the future.

8. The privacy of my association with the NSJP conference is also important to me for the preservation of my personal safety. In 2015, I attended a lecture at my university where the professor had invited the founder of the BDS movement, Omar Barghouti, as a speaker. Anti-Palestinian activists, including a rabbi who coordinated the campus Chabad, came to the lecture to protest the speaker. The rabbi loudly interrupted the students who were asking questions of the speaker. The teacher's assistant for the professor told the rabbi to stop interrupting the students. I saw the rabbi hit the teacher's assistant on her head. He was later escorted out by campus police.

9. In 2017, the same rabbi confronted me and my friends at the end of another university-sponsored event. I attended the event as part of the SJP chapter and the request of a faculty member. At

the event, an anti-Palestinian panelist stated that the biggest threat to the United States were Muslim and Middle Eastern students. I instantly stood up and respectfully asked the university's Equal Opportunity Director, who was also present at the event, to address the panelist's racist and xenophobic remark. She simply responded by saying that the university respected all opinions. After the event ended, the panelist and the Hillel rabbi cornered me, blocking me from leaving the row I was sitting in. The rabbi started yelling at us. When we were finally able to leave the room, he followed us out, and kept yelling at us. I don't remember what the rabbi said as he yelled at me because I was very scared.

10. In 2018, I organized a weeklong educational event at my university around Palestinian human rights. Against our wishes, the university administration sent campus police to watch and monitor us for the first four days of the event. I saw university police standing across the street from where I was and monitoring my every movement as I moved around in the event space. This experience of overtly being surveilled left me feeling scared for my safety.

11. Publicly disclosure of my name would discourage me from attending future conferences and building relations with other Palestinian activists because I would not want their connection with me to cause them problems. Currently, my name and information are not available on blacklist websites such as Canary Mission. It is my understanding that when one person is on a blacklist like Canary Mission, it leads to others who are associated with them being added to the list.

12. I understood the 2018 conference to be a private, closed-door event. To attend the conference, I was required to register. The registration form asked me for the name and contact information of someone who could confirm that I was part of my campus SJP chapter.

13. I also understood that the names and identities of presenters would be kept confidential. Before the conference, I was on a call with a member of the conference steering committee, who told me that my name would be kept confidential. Additionally, the conference program I received on the day of my arrival did not have my name or that of any other workshop presenters listed on it.

14. Before the conference I also received an email from conference organizers stating that we were not allowed to take pictures or record videos at the conference.

15. I was also one of the people who signed up to provide security support for the conference because it was my understanding that anti-Palestinian groups would be holding a protest on campus. On

Thursday night, before the conference, I attended a meeting with alumni and members of SJP at UCLA where we discussed a safety plan based on threats against the conference. Community organizers and pro-Palestinian groups joined us to discuss de-escalation tools that we could use. For example, we discussed forming a human blockade in case people tried to record students.

16. When I checked in to the conference on Friday, the conference staffer asked for my identification, checked my name against a list on his laptop, and gave me a nametag. He told me to carry my nametag with me at all times or I would not be allowed into the conference. He also instructed me to conceal my nametag when I was in any outdoor space. Throughout the conference, whenever I was not inside the buildings where the conference was being held, I kept my nametag in my pant pocket.

17. Before my workshop, a conference organizer told me to keep the door to my workshop room and the windows inside the room closed at all times. I understood this as a way to protect the identity of the attendees and the presenters at the workshop. During my workshop I was assigned an individual to help provide safety support in case there were any incidents.

18. On one of the conference days, all attendees had to move from one building to another building on the UCLA campus. Conference organizers gathered all attendees in the hallway of the first building. I, along with other individuals arranged by NSJP, provided safety support to the attendees by flanking the group on all four sides. Before we walked out of the building, conference organizers told everyone that there were protesters outside the building with cameras, ready to record us. They instructed everyone to conceal their nametags and cover their faces. I saw about 40 to 50 protesters when we stepped outside. Some of them moved with us and recorded videos of us without our consent. At least one man and woman come really close to me, about six inches from my face, and yelled at me. When we arrived at the second building, I formed a human chain along with other individuals providing safety to stop protesters from gaining entrance to the conference space. All this time, I saw the protesters yelling at us, calling us "sand niggers" and "terrorists."

19. I also provided safety support on Sunday, patrolling the back entrance to the building. During that time, I saw several individuals carrying Israeli flags unsuccessfully try and enter the building.

20. At the end of every day when I would leave the conference, I would cover my face with a scarf until I was off the UCLA campus.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 3, 2021.

Exhibit 9

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DAVID ABRAMS,

Petitioner,

vs.

REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Respondent,

DOE 1, DOE 2, DOE 3, DOE 4, DOE 5, DOE 6, DOE 7, DOE 8,

Intervenors,

vs.

DAVID ABRAMS,

Defendant in Intervention.

Case No.: 19STCP03648

DECLARATION OF GURUTAM THOCKCHOM IN SUPPORT OF INTERVENORS' OPPOSITION TO PETITION FOR WRIT OF MANDATE

Filed concurrently with Memorandum of Points and Authorities in Support of Intervenors' Opposition to Petition for Writ of Mandate

Judge: Hon. James C. Chalfant
Dept.: 85

Action Filed: Aug. 22, 2019

Trial Date: March 11, 2021
Time: 9:30 am

I, GURUTAM THOCKCHOM, declare as follows:

1. I am over 18 years old and fully competent to make this declaration.

2. I make this declaration based on my personal knowledge unless otherwise indicated.

3. From 2016 to 2020, I attended the University of California, Los Angeles (UCLA), earning a bachelor's degree in mathematics.

4. During my sophomore year, I joined the student organization Students for Justice in Palestine at UCLA (SJP at UCLA). I served as the organization's External Affairs Director from February 2018 to September 2018 and as the Finance Director from September 2018 to June 2019.

5. I was involved in the planning and coordination of the 2018 National Students for Justice in Palestine (NSJP) Conference, which took place at UCLA on November 16-18, 2018.

6. In May 2018, I participated in a phone call with representatives of NSJP and learned that they were looking for a student club based on the West Coast to host their 2018 student conference. SJP at UCLA decided to apply.

7. NSJP is a group that coordinates an annual meeting for members of SJP organizations from all over the country to meet each other, participate in collective movement building work, share strategies, and to analyze the situations in Palestine, on our university campuses, and within the Palestine solidarity movement as a whole.

8. Through my involvement in SJP at UCLA, I found out in June 2018 that our application to host the 2018 NSJP conference at UCLA was successful. I spent the next several months involved in conference planning. SJP at UCLA had been allocated $8,000 from the Bruin Excellence & Student Transformation Grant Program (BEST) for events and various expenses that year. After we were selected to host the conference, I applied to have a portion of that grant designated for conference costs so that it would be available to us for use at the 2018 NSJP conference. However, we did not end up using any of the BEST funds for the conference. As Finance Director for SJP at UCLA, I was responsible for tracking the organization's expenditures. We did not pay any of the costs of the conference or send any invoices to UCLA for payment. To my knowledge, NSJP paid the expenses for the conference directly.

9. One of my duties for the 2018 conference was coordinating between UCLA's administration and NSJP to secure space for conference events. As a campus organization, SJP at UCLA could reserve certain classrooms and ballrooms for free on campus. While we were planning the conference, a UCLA administrator told me that one of the stipulations for reserving certain spaces for

free as a campus organization was that the event would have to be open to the UCLA community. Because we had a specific sector of people we were inviting to the conference exclusively—members of SJP chapters—we decided to pay rental fees for the rooms rather than using them for free and having them open to the public. We rented some facilities directly under NSJP's name and other's under SJP at UCLA's name, but the fees for the rental under SJP at UCLA's name were ultimately paid by NSJP, not our chapter.

10. Just over a week before the conference, on November 7, I sent an email to Assistant Vice Chancellor Mick Deluca in response to his request for a list of conference presenters. Prior to sending the names to Mick Deluca via email, I had explained to him the risks conference organizers, speakers and presenters faced from blacklisting websites like Canary Mission, and the need to keep the names of organizers, speakers, and presenters private. I reiterated those concerns in my email, which is attached as Exhibit .

11. Before I joined SJP at UCLA, I was aware that a website called Canary Mission was doxing and blacklisting members of SJP clubs and that I faced the risk of being added to the site. I personally knew both students and professors at UCLA that were profiled on the site.

12. In November 2018, less than two weeks before the conference, I found out that a profile was created about me on Canary Mission.

13. Canary Mission had information about me that went back several months, including my participation in a protest against an event in May 2018 that I believed supported the erasure of the Palestinian identity. The protest consisted of standing around the perimeter of the room, chanting, whistling, and dancing for several minutes. Several people had bullhorns and one pulled down a flag that had been hung up. After campus police arrived, we peacefully left the room and danced the *dabke*, a Palestinian folk dance, in the lobby outside the room while the event continued inside. Canary Mission falsely describes the protest as violent, but there was no violence or threats of violence.

14. The site also falsely attributes the protest to SJP at UCLA. While I was part of SJP at UCLA at the time, I did not participate in the protest as part of the SJP at UCLA. The protest was neither planned nor sponsored by the organization.

1 15. After that protest, several of the people who participated in the protest were added to
2 Canary Mission. I was worried that I would also be added to the site. For a time I considered no longer
3 attending events about Palestine and trying to avoid being visible in my activism, but I ultimately
4 decided to continue organizing.

5 I declare under penalty of perjury under the laws of the State of California that the foregoing is
6 true and correct, and that this declaration was executed on January 31, 2021.

7 Gurutam Thockchom
8 Gurutam Thockchom (Jan 31, 2021 09:50 PST)

9 Gurutam Thockchom
Adobe Sign Transaction Number: CBJCHBCAABAArayh9KXi3guc5f2Xzxids1tQf-gaVG_p

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Exhibit 9A

EXHIBIT 9A

From: Gurutam Thockchom
Sent: Wednesday, November 7, 2018 5:22 PM
To: Deluca, Mick <mdeluca@saonet.ucla.edu>
Cc:
Subject: NSJP Speaker List and Signatory Question

Hello VC Deluca,

Thank you for meeting with us last week, and thank you for assisting in consolidating our spaces—this makes things so much more manageable for us, as I'm sure it does on your end too. As you asked, this email contains the list of speakers and workshop facilitators for the conference. Please be mindful that in past years, our speakers' names and personal information have been posted on online blacklists like Canary Mission due to their involvement in the conference. For our speakers' safety, we are not publishing this list outside of our programs, and I request that this list not be spread to an extent further than what is necessary.

One other thing—on Friday we discussed the possibility of a harassment campaign against conference organizers, with our faces posted around campus and our information posted on Canary Mission. These exact things have happened to conference organizers at previous schools, and similar harassment campaigns have been conducted against our own group in previous years. One concern that our members have is that any student can look up who the signatories of SJP are through MyUCLA, and we are worried that this information being freely available is detrimental to our safety. We brought this up with VC Kang's office, and they were amenable to **our proposal that the SOLE system be slightly modified so that signatories of any student group can opt to have their names not visible in the student organization portal.** This would also be beneficial for undocumented, queer, and other student leaders who for safety reasons would not want to be easily associated with their organizations, but still want to participate to the extent that any other student could. This small change could be impactful in protecting us from the harassment that we expect to face. How do you feel about it?

With that said, here is the list of speakers. Note that most of the workshops will be cohosted by several individuals - there are not 70 separate workshops.

Please don't hesitate to reach out to SJP at UCLA for any more questions.

Best,
Irom Thockchom
SJP at UCLA

Exhibit 10

Exhibit 10A

EXHIBIT 10A

LAW ENFORCEMENT SENSITIVE

Event: 8th Annual National Students for Justice in Palestine (SJP) Conference
Date: November 16 – 18, 2018
Time: Various (1600 Friday through 1530 Sunday)
Locations: Ackerman Grand Ballroom / Dodd Hall / Dickson Court / Pauley Pavilion Club

Event Background

National Students for Justice in Palestine (NSJP) was established in 2010 when an informal network of Students for Justice in Palestine (SJP) activists from across the country began organizing to coordinate campus efforts and host a central gathering event for their "intersectional social justice" movement. As of late 2017, there were roughly 200 chapters nationwide. Each year, they host a national conference where student organizers can attend skill-building and political development workshops, meet with fellow organizers, and learn about other social justice movements.

According to the their website, NSJP is an independent grassroots organization composed of students and recent graduates that provides support to about 200 SJP chapters on university and college campuses, as well as taking part in the broader national and global solidarity movements for Palestinian freedom and equality.

SJP groups have been accused by Jewish and pro-Israeli groups of spreading Anti-Semitic messages and even promoting or being affiliated with international terrorism.

Groups Involved

- Students for Justice in Palestine UCLA
- National Students for Justice in Palestine

Threat Assessment

Open source checks were completed on the following organizations' websites and social media accounts;

- National Students for Justice in Palestine Website - https://www.nationalsjp.org/
- National Students for Justice in Palestine Twitter - https://twitter.com/nationalsjp?lang=en
- Students for Justice in Palestine UCLA Website - http://www.sjpbruins.com/
- Students for Justice in Palestine UCLA Twitter - https://twitter.com/SJPatUCLA
- Students for Justice in Palestine UCLA Facebook - https://www.facebook.com/SJPatUCLA
- Students Supporting Israel (SSI) at UCLA Facebook - https://www.facebook.com/SSIUCLA/
- SSI National Website - http://www.ssimovement.org/
- Bruins for Israel Facebook - https://www.facebook.com/bruinsforisrael/
- Canary Mission - https://canarymission.org/
- Change.org - https://www.change.org
- Yad Yamin Facebook - https://www.facebook.com/TheYadYamin/
- Stop Antisemitism on college campuses and beyond- https://www.stopantisemitism.org/
- #UCLA Don't Host - https://mailchi.mp/e9b5df69d56f/ucla_dont_host_nsjp
- Camera on Campus - https://cameraoncampus.org/blog/anti-semitic-groups-should-not-be-given-a-platform-on-college-campuses/
- Reservists on Duty - http://onduty.org.il/about-us/

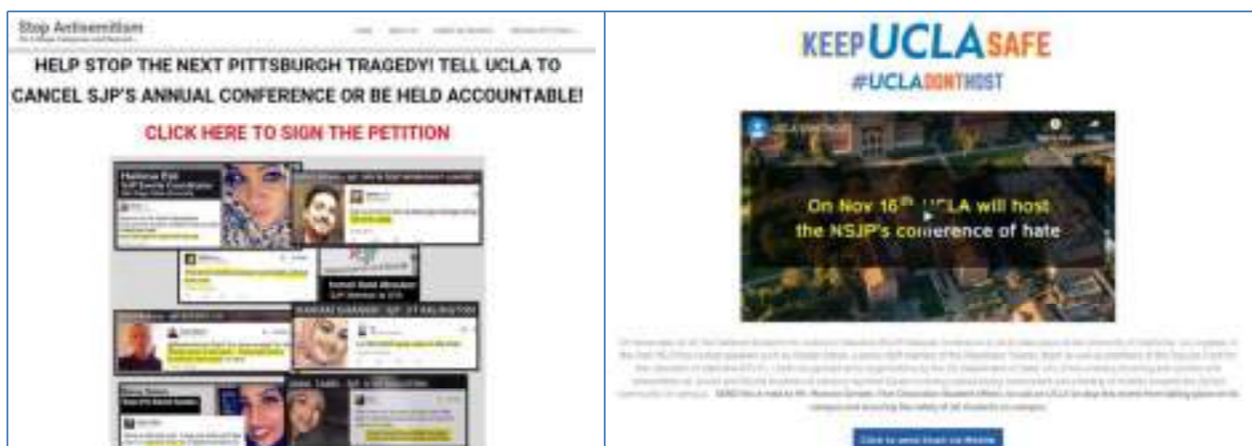
TMU also contacted past host campuses including the University of Houston (2017) and San Diego State University (2015). Both campus Police Departments stated there were no disruptions or protests during the events. CSU San Diego PD also stated they contacted Tufts University (2014 host) and there were no disruptions during that event.

TMU also contacted the Federal Bureau of Investigation (FBI), the Joint Regional Intelligence Center (JRIC) and the Orange County Intelligence Assessment Center (OCIAC) for possible intelligence on the event and groups involved. TMU also requested intelligence on the speakers of the conference.

TMU also entered the event into [redacted] to receive alerts of postings regarding the event.

Due to current and historical tensions in the Middle East between Palestinians and Israelis, this NJSP event is politically charged and controversial. There is a large Jewish community on and around campus that is angered over the event. The event is garnering nationwide attention over the internet. Many pro-Israeli and Jewish groups are calling on people to put pressure on the University to cancel the event. They are encouraging people to sign petitions, call administrators, and email the Chancellor, all of which has begun occurring. Most of the groups however, are only calling for this kind of action and are not calling for protests or acts of violence. Many of the groups are not affiliated with the University or any student groups.

Examples of online reactions to the event



A couple of groups have indicated that they will show up to campus and physically protest the event.

- Reservists on Duty
- Yad Yamin (Right Hand)

Reservists on Duty describe themselves as a non-profit organization established in 2015 by Israeli reserve combat soldiers who felt they had a duty to expose and counter the BDS movement and new forms of anti-Semitism erupting on college campuses across America. They have contacted the University and expressed their intent to conduct a peaceful silent protest during the event. They are currently going through the proper channels and there is no indication they will protest violently.

Yad Yamin describes themselves as a community organization. They are students and community members united to take the fight to those who intimidate, harass and use violence against Jews and pro-Israel advocates. Their mission is to stand up for the vulnerable Jews and pro-Israel advocates who have been the victims of repeated intimidation, hatred and violence and ensure them a safe space to express their opinions. They post violent images on their Facebook and encourage violence to stand up and protect Jewish groups.

They have posted a plan to protest on campus at the Faculty Center on 11/6/18 at 1100 hours. They are in the process of creating an event page but as 11/2/18, it was not posted so TMU is unable to confirm how many people may show up. The event was reported to the University by a student group that does not want to be affiliated with Yad Yamin. The JRIC had no intelligence on the group and there are no reports of them committing acts of violence locally. The group appears to be based out of Belgium.

<u>Posts from Yad Yamin</u>

For Law Enforcement Only **Updated November 2, 2018**

Created by Sgt. Ruiz #317

At this time, based on all intelligence, the potential for demonstrations and even possible disruptions is likely to occur during the conference. Although there is a large online reaction to the event, TMU has not received intelligence regarding mass or violent protests. The peaceful protest planned on the day of the event only has about 20 people confirmed to attend. The likelihood for violence at this time is low.

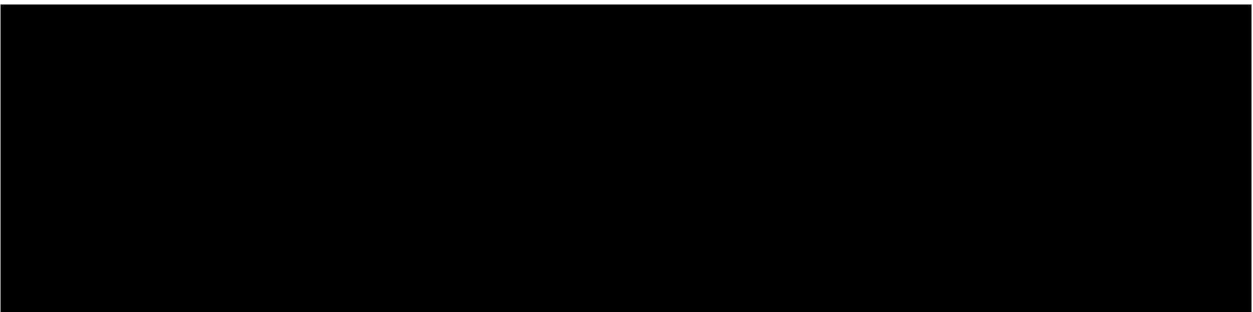
The protest planned for 11/6/18 at the faculty center does not have a confirmed number of people attending. There is nothing indicating that SJP members will be there and the potential for counter protestors and confrontations is low. Also, the group is not affiliated with any student groups on campus and it does not appear that any student groups will be joining them.

SJP groups have, recently engaged in disruptive tactics including disrupting an event on campus in May 2018. At this time there are no calls for retaliation from pro-Israeli groups. If Jewish protestors show up, SJP members are likely to engage.

As the event draws closer, other groups may join the Reservists on Duty protest at the conference. Also, Yad Yamin may call for people to show up at the actual conference and protest (including calling for violent actions). Having larger numbers of people protesting will increase the likelihood of confrontations between the groups which could potentially lead to violence.

The recent shooting at the Pittsburgh Synagogue and vandalism at an Orange County Synagogue have also increased the tension surrounding this event and extra patrols of local Jewish houses of worship should be conducted during the operational period of this event.

Potential Speakers (Unconfirmed)



The FBI was provided with the list of possible speakers due to allegations of their ties to terrorism and terrorist organizations. Several of the speakers have been investigated by the FBI in the past due to their high profile activism and ties to Palestinian groups, but no charges were filed and there are no active investigations.

TMU will continue to monitor the event and will update this report prior the conference or as new relevant intelligence becomes available.

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SJP groups have been accused by Jewish and pro-Israeli groups of spreading Anti-Semitic messages and even promoting or being affiliated with international terrorism.

Groups Involved

- Students for Justice in Palestine UCLA
- National Students for Justice in Palestine

Threat Assessment

Open source checks were completed on the following organizations' websites and social media accounts;

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- National Students for Justice in Palestine Twitter - https://twitter.com/nationalsjp?lang=en
- Students for Justice in Palestine UCLA Website - http://www.sjpbruins.com/
- Students for Justice in Palestine UCLA Twitter - https://twitter.com/SJPatUCLA
- Students for Justice in Palestine UCLA Facebook - https://www.facebook.com/SJPatUCLA
- Students Supporting Israel (SSI) at UCLA Facebook - https://www.facebook.com/SSIUCLA/
- SSI National Website - http://www.ssimovement.org/
- Bruins for Israel Facebook - https://www.facebook.com/bruinsforisrael/
- Canary Mission - https://canarymission.org/
- Change.org - https://www.change.org
- Yad Yamin Facebook - https://www.facebook.com/TheYadYamin/
- Stop Antisemitism on college campuses and beyond- https://www.stopantisemitism.org/
- #UCLA Don't Host - https://mailchi.mp/e9b5df69d56f/ucla_dont_host_nsjp
- Camera on Campus - https://cameraoncampus.org/blog/anti-semitic-groups-should-not-be-given-a-platform-on-college-campuses/
- Reservists on Duty - http://onduty.org.il/about-us/

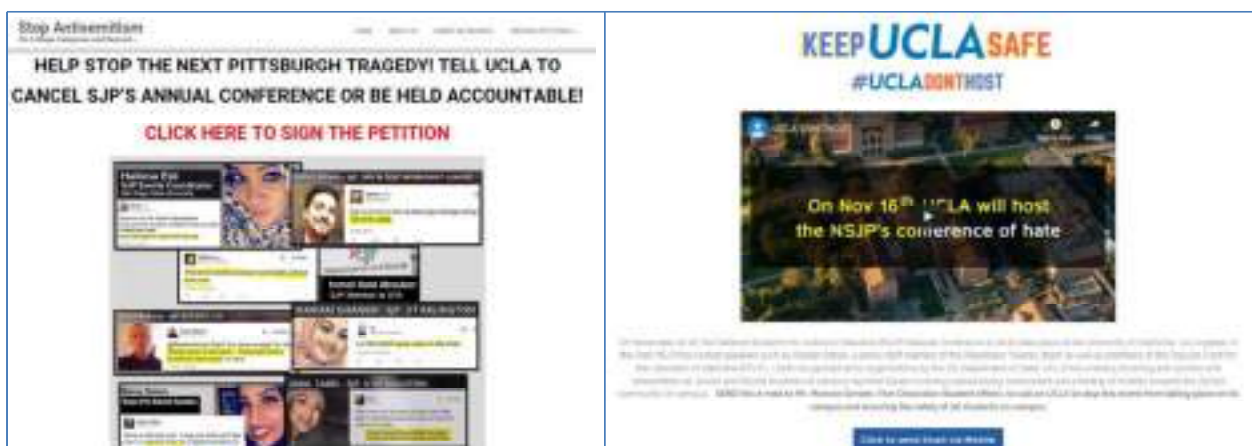
TMU also contacted past host campuses including the University of Houston (2017) and San Diego State University (2015). Both campus Police Departments stated there were no disruptions or protests during the events. CSU San Diego PD also stated they contacted Tufts University (2014 host) and there were no disruptions during that event.

TMU also contacted the Federal Bureau of Investigation (FBI), the Joint Regional Intelligence Center (JRIC) and the Orange County Intelligence Assessment Center (OCIAC) for possible intelligence on the event and groups involved. TMU also requested intelligence on the speakers of the conference.

TMU also entered the event into [redacted] to receive alerts of postings regarding the event.

Due to current and historical tensions in the Middle East between Palestinians and Israelis, this NJSP event is politically charged and controversial. There is a large Jewish community on and around campus that is angered over the event. The event is garnering nationwide attention over the internet. Many pro-Israeli and Jewish groups are calling on people to put pressure on the University to cancel the event. They are encouraging people to sign petitions, call administrators, and email the Chancellor, all of which has begun occurring. Most of the groups however, are only calling for this kind of action and are not calling for protests or acts of violence. Many of the groups are not affiliated with the University or any student groups.

Examples of online reactions to the event



A couple of groups have indicated that they will show up to campus and physically protest the event.

- Reservists on Duty
- Yad Yamin (Right Hand)

Reservists on Duty describe themselves as a non-profit organization established in 2015 by Israeli reserve combat soldiers who felt they had a duty to expose and counter the BDS movement and new forms of anti-Semitism erupting on college campuses across America. They have contacted the University and expressed their intent to conduct a peaceful silent protest during the event. They are currently going through the proper channels and there is no indication they will protest violently.

Yad Yamin describes themselves as a community organization. They are students and community members united to take the fight to those who intimidate, harass and use violence against Jews and pro-Israel advocates. Their mission is to stand up for the vulnerable Jews and pro-Israel advocates who have been the victims of repeated intimidation, hatred and violence and ensure them a safe space to express their opinions. They post violent images on their Facebook and encourage violence to stand up and protect Jewish groups.

On 11/6/18, Yad Yamin protested on campus at the Faculty Center. There were about 30 people involved. The protest started peacefully, but once the group began marching around campus, they encountered pro-Palestinian subjects. Two females engaged the group, yelling and cursing at them. Allegations of assault were made by both sides. UCPD was present and did not see witness any acts of violence and prevented further confrontations by separating the groups.

Yad Yamin has not posted anything online regarding a protest during the conference, but organizers from the 11/6/18 protest stated that was just a small turnout compared to how many will be on campus to protest during the conference.

<u>Posts from Yad Yamin</u>

For Law Enforcement Only
Created by Sgt. Ruiz #317

Updated November 13, 2018

At this time, based on all intelligence, the potential for demonstrations and disruptions is likely to occur during the conference. Although there is a large online reaction to the event, TMU has not received any intelligence regarding mass or violent protests. The “peaceful” protest planned on the day of the event only has about 20 people confirmed to attend, however, as the event draws closer, other groups may join the Reservists on Duty to protest at the conference. Also, Yad Yamin may show up again to protest during the conference. Having a larger number of protesters on campus will increase the likelihood of encounters between the groups. If the groups do come into contact with each other, they will engage each other, increasing the likelihood of confrontations which could potentially lead to violence.

The controversy surrounding this event is continuing to grow as the event nears. Also, recent events in the Middle East are increasing tensions between pro-Palestinian and pro-Israeli/Jewish groups.

National Conference Logo

The logo for the conference is a bear flying a kite. This logo has angered many Jewish groups as it represents to them, the support of Palestinians using kites to attack Israel. The bear also represented the UCLA Bruin Bear mascot and it appeared that UCLA was supporting the conference and even sponsoring the event. This again gained nationwide attention and garnered a large online reaction.

UCLA sent a cease and desist letter to the NJSP to stop using the bear mascot on their logo. NJSP responded with a legal response stating they would not stop using the bear in their logo.

Military Actions in the Middle East

Middle East on BRINK: Israel and Palestine violence flares as raid sparks rocket attacks

VIOLENCE has erupted in Gaza after a botched cross-border commando raid by Israeli forces sparked the most intensive Palestinian shelling of Israel in years.

By SIMON OSBORNE

PUBLISHED: [illegible] | UPDATED: [illegible]

Over this past weekend, news came out that Israeli Special Forces killed 6 Palestinian militants during a botched incursion into Gaza.

As a result, Palestinians retaliated by launching hundreds (possibly thousands) of rockets into Israel along with kites loaded with explosives. The Israelis countered with air strikes on Gaza. It was the heaviest round of fighting since the last conflict in 2014, pushing both sides to the brink of war. A cease fire appears to have been brokered by Egypt, however tensions still remain high.

UCLA POLICE DEPARTMENT
Chief Tony Lee - 601 Westwood Plaza, Los Angeles, CA (310) 825-1491 - www.ucpd.ucla.edu
INTELLIGENCE REPORT

Chancellor Block's response

Los Angeles Times

The controversial Students for Justice in Palestine conference will go on at UCLA. Here's why

On 11/12/18, Chancellor Gene Block, wrote an opinion editorial published in the Los Angeles Times stating the NJSP conference will not be cancelled.

He acknowledged the event is controversial and that he does not agree with SJP, but the University will honor the group's first Amendment Rights.

LA City Council Resolution

JEWISH JOURNAL

L.A. City Council Approves Resolution Calling on UCLA to Cancel SJP Event

On 11/6/18, The Los Angeles City Council voted unanimously to call on UCLA to cancel the Conference.

The council vote for the resolution and the call to cancel the event have received a lot of media attention leading up to the conference.

Palestinian Consulate/U.S. Embassy

The Guardian

US downgrades consulate for Palestinians into Israel embassy unit

Consulate general and embassy will merge, Mike Pompeo said, but it 'does not signal a change of US policy'

On 10/18/18, The United States government announced they would be closing the consulate in East Jerusalem and merging it with the Embassy that was recently relocated to Jerusalem. Both of these actions were considered controversial among Palestinian supporters. Violent protests erupted in May of this year when the Embassy moved from Tel-Aviv to Jerusalem, which led to death of dozens of Palestinians.

The Consulate in East Jerusalem served Palestinians and was the "de facto" Embassy to Palestinians where the Consul General was open to receiving Palestinians and hearing their concerns. With the merger, Palestinians are now left with the U.S. Embassy in Jerusalem. Palestinians are concerned that signifies a policy change for the U.S. in and de-legitimizes Palestinian sovereignty.

The recent shooting at the Pittsburgh Synagogue and vandalism at an Orange County Synagogue have also increased the tension surrounding this event and extra patrols of local Jewish houses of worship should be conducted during the operational period of this event.

See separate TMU intelligence report for information regarding speakers, panelists and work shop leaders.

LAW ENFORCEMENT SENSITIVE

SJP Event Speakers, Panelists and Workshop Leaders

The UCPD Threat Management Unit consulted with the Federal Bureau of Investigation (FBI), the Joint Regional Intelligence Center (JRIC) and the Orange County Intelligence Assessment Center (OCIAC) regarding threats related to this event and the potential links between the participants and terrorism. TMU also conducted open source checks on the speakers, panelists and workshop leaders.

TMU checked the United Nations Security Council Sanctions list to see if any speakers, panelists or workshop leaders were listed.

TMU also checked to see if any speakers, panelists or workshop leaders were listed on the U.S. Treasury Department's Specially Designated Nationals and Blocked Persons list.

TMU also checked The State Department's designated Foreign Terrorist Organizations list to determine if SJP or any of the groups associated with the speakers, panelists and workshop leaders are designated as terrorist groups.

Students for Justice in Palestine, (SJP), Arab American Action Network (AAAN), Arab and Muslim Diasporas Studies (AMED), Al-Awda, Palestinian Youth Movement (PYM), Palestinian Solidarity Committee (PSC), Palestinian Solidarity Alliance (PSA), Palestinians and Jew Decolonize (PJD), Students United for Palestinian Equal Rights (SUPER) and Muslim Student Alliance (MSA) are *not* designated as terrorist organizations by the State Department.

There is no intelligence indicating any of the speakers are engaging in terrorist activities or providing direct support to known terrorists. There are no open investigations regarding SJP, the speakers, panelists and workshop leaders.

Keynote Speakers:

- [REDACTED], no open FBI investigations, *not* on Specially Designated Nationals (SDN) and Blocked Persons list, *not* on United Nations Security Council Sanctions list.
- [REDACTED]. Investigated by FBI (no charges, no active invest), *not* on SDN list, *not* on United Nations Security Council Sanctions list.

Panelists:

- , no ties to terrorist organizations, *not* on SDN list, *not* on United Nations Security Council Sanctions list.
- *not* on SDN list, *not* on United Nations Security Council Sanctions list.
- , *not* on SDN list, *not* on United Nations Security Council Sanctions list.
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Workshop leaders:

- , *not* on SDN list, *not* on United Nations Security Council Sanctions list.
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UCLA Police Department

Chief Tony Lee - 601 Westwood Plaza, Los Angeles, CA (310) 825-1491 - www.ucpd.ucla.edu

INTELLIGENCE REPORT

- [redacted] *not* on SDN list, *not* on United Nations Security Council Sanctions list.
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- [redacted] *Not* on SDN list, *not* on United Nations Security Council Sanctions list.
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- [redacted] *not* on SDN list, *not* on United Nations Security Council Sanctions list.
- [redacted] *not* on SDN list, *not* on United Nations Security Council Sanctions list.

Exhibit 10B

EXHIBIT 10B

In The Matter Of:

ABRAMS v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA

MICK DELUCA

November 12, 2020

L.J. HART & ASSOCIATES, INC. / BARRON & RICH

1900 Point West Way, Suite 277

Sacramento, CA 95815

(916) 922-9001

production@ljhart.com

Original File Mick Deluca.txt

Min-U-Script® with Word Index

1 required that we plan and meet with our University of
2 California PD, UCPD, and those were initiated.
3 Additionally, when students host an event,
4 they must secure venues on campus, so the coordinators
5 that handles different venues on campus and our
6 centralized events office at the University. So this
7 was all the preliminary kind of planning information,
8 whether students are hosting the conferences, the
9 speakers --
10 (Reporter Clarification)
11 THE WITNESS: I'm on my university computer.
12 I guess if need be, I could try logging on on a
13 different laptop.
14 Are you hearing me now? Mr. Abrams, can you
15 hear me okay?
16 MR. ABRAMS: Yeah. You were -- you were
17 starting to fade a little bit there.
18 THE WITNESS: I'll try to speak clearly into
19 this. So I think just to wrap up on your question, with
20 central in pulling together the entities on campus to
21 meet.
22 And then I end up playing the unique role what
23 I call the "shuttle diplomacy" role. And I met with
24 students both for the Students for Justice in Palestine
25 student organization and their advisor. And I met with

1 our key student leaders of the Jewish student
2 organizations on campus and their advisors.
3 MR. ABRAMS Q: I see. So when you say
4 "advisor," you mean a faculty advisor?
5 A No. It's a staff administrative advisor
6 through our student organization office. To be a
7 registered campus organization at UCLA, you're assigned
8 an advisor through the student organization, student
9 activity office.
10 Q I see. So that person is an employee of UCLA;
11 is that correct?
12 A Correct.
13 Q Okay. And in this case, who was the -- that
14 employee?
15 MS. STEIN: Well, is that a -- I'm going to
16 object that it invades privacy. Just make sure if
17 you're not disclosing the names of any Palestinian type
18 advocate.
19 MR. ABRAMS: Well, you know -- well, let's see
20 how he answers.
21 THE WITNESS: The key staff member and
22 director over all the advisors, again, his name is Mike
23 Cohn. I believe the individual advisors of different
24 organizations were concerned to have their names
25 released. So I will indicate that the director's name

1 is Mike Cohn.
2 MR. ABRAMS Q: I see. So just so we're clear,
3 you're declining to tell me the name of the UCLA
4 employees who were involved in organizing the conference
5 or dealing with the organizers.
6 Is that what your testimony is, sir?
7 MS. STEIN: I'm going to object that it
8 invades their personal right to privacy.
9 Mick, if they indicated that they wanted their
10 names to be protected, then I would request that you not
11 respond to that question and provide the names.
12 MR. ABRAMS: I didn't ask anyone's names,
13 ma'am. All I ask is if you -- to be clear was that he
14 was declining to state the names.
15 Can you read back my last question, please?
16 (Whereupon the record was read.)
17 THE WITNESS: I'm declining to provide you the
18 name upon the request of the specific advisor of one of
19 the student organizations.
20 MR. ABRAMS Q: I see. Well, is that someone
21 you spoke to in preparation for today's deposition?
22 A No, it was not.
23 Q Okay. Well, let me ask you this, sir.
24 Did you yourself deal directly with any of the
25 individuals who organized the conference?

1 A Yes, I did.
2 Q Okay. And let me ask you this.
3 Did any of those people indicate to you that
4 their -- at that time a request for a preference that
5 their names be kept confidential?
6 A Yes. They absolutely all did and had done for
7 the past number of years related to this student
8 organization.
9 Q Okay. And did you give them assurances that
10 their names would, in fact, be kept confidential?
11 A Yes, I did.
12 Q I'm sorry?
13 A Yes, I did.
14 Q Okay. And what did you say to them in terms
15 of specifics, in terms of those assurances?
16 A Their concern was threats and harassments
17 against them. I understood that. And we've been
18 dealing with that for three years prior to the
19 conference.
20 I assured the students that as students of
21 UCLA their safety was our top priority and that in
22 working with them, in building a trust and confidence
23 with them, that it would be my role to try to represent
24 and protect their interests.
25 Q Okay. But what specifically, if anything, did

1 you say in terms of assuring confidentiality of their
2 identities?
3 A I mean, I don't have independent recollection
4 of my total conversation from 2018. But I would assume
5 it would be something that in building a trusting
6 relationship I understand the importance of their
7 request for confidence.
8 Q Okay. So are you able to tell me in substance
9 what you said to them in terms of confidentiality?
10 A I think I've described that to you.
11 MR. ABRAMS: Can you read back his last
12 answer?
13 (Whereupon the record was read.)
14 MR. ABRAMS Q: So -- and just so we're clear,
15 in substance what you said was you understood the
16 importance of the request for confidence; is that
17 correct?
18 A Yes.
19 Q Okay. And did you say anything else besides
20 that or did that pretty much sum it up?
21 MS. STEIN: Asked and answered.
22 You can answer if you have anything else to
23 add.
24 THE WITNESS: I don't have any additional
25 memory of the specific conversations.

1 MR. ABRAMS Q: All right. Was anything put in
2 writing?
3 A Not to my knowledge, no.
4 Q Okay. Let me ask you this. Let me turn to a
5 slightly different subject.
6 Do you know if the University gave any
7 financial support to the conference?
8 A Based on the nature of the conference, the
9 student organization itself, much like many student
10 organizations, had applied for a broad-based grant, not
11 specific to the conference, based on their work over the
12 course of the year.
13 And based on the nature and the intent of the
14 conference on campus, the students did not apply for any
15 of our other student funding sources on campus.
16 Q So I guess -- are you saying that the SJP
17 chapter at UCLA applied for general funding and that was
18 granted? Is that your testimony?
19 A My testimony is I'm aware that as one of our
20 1,400 student organizations, they had applied for a
21 grant through our Equity, Diversity and Inclusion office
22 for their work over the course of the 2018 and '19
23 school year.
24 Q Okay. And is it fair to say that part of that
25 grant application was for monies that were specifically

1 earmarked for the conference?
2 A I have no specific knowledge that it was
3 specifically for any conference at UCLA.
4 MR. ABRAMS: I see. All right. Just give me
5 a second. I'm going to show you -- I'm going to try to
6 send a document into the system here, so we'll see if
7 this works or not.
8 MR. KATON: Did you upload it to the chat, Mr.
9 Abrams?
10 MR. ABRAMS: Yeah.
11 So Court Reporter, Madam Court Reporter, if
12 you could mark the document. I guess we'll call it A-1.
13 (Whereupon Plaintiff's Exhibit A-1
14 was marked for identification.)
15 MR. ABRAMS Q: Mr. DeLuca, if you could just
16 look at a document we just uploaded to a chat, I would
17 appreciate it.
18 A Okay. Yes. I see that document.
19 Q Okay. So my question to you is, you see that
20 there's five pages?
21 A Yes.
22 Q Okay. And have you seen any of those five
23 pages before today?
24 A Yes. I have seen this document.
25 Q And when did you last see it?

1 A I reviewed this document yesterday.
2 Q Okay. Had you seen it before yesterday?
3 MS. STEIN: I'm having problems. Hang on.
4 THE WITNESS: Yes. I had seen this. This is
5 an event online document that comes from our university
6 events office in conjunction with scheduled events on
7 campus.
8 MR. ABRAMS Q: I see. And -- well, looking at
9 pages 3 to 5, do you see it says UCLA Registered Campus
10 Organization Event Summary?
11 Do you see that?
12 A Yes.
13 Q Okay. And is that a document that SJP chapter
14 would have submitted in connection with organizing the
15 conference?
16 A This is a document that is produced from
17 information that comes from a portal called Events
18 Online where the combination of the students and/or the
19 advisors submit information into the system.
20 MS. STEIN: Is everyone else able to get
21 David's document? Because I am not.
22 MR. KATON: I can. And I can e-mail it to you
23 if that would be helpful.
24 MS. STEIN: Sure. That would be great. Thank
25 you.

1 MR. ABRAMS: Do you want a few minutes?
2 MS. STEIN: Yes, please.
3 MR. ABRAMS: Okay.
4 MS. STEIN: When I click on "Download," it
5 takes me to a list of documents and then it doesn't
6 open. So I don't know -- I don't know what's going on.
7 Glenn, did you just e-mail it to me?
8 MR. KATON: I haven't clicked "Send" yet.
9 Give me one second. I'm having trouble downloading it
10 for some reason. I have it in my viewer. Oh, wait. I
11 apologize. I think I got it now.
12 MS. STEIN: I'll just -- I'll look over Mr.
13 DeLuca's shoulder, so that's fine.
14 MR. ABRAMS Q: Mr. DeLuca?
15 A Yes.
16 Q So what I'd like to know is, just so we're
17 clear, who would have prepared pages 3 through 5?
18 A The student organizers who have a role in
19 completing this. It's what's called the signatories.
20 When you're a registered campus organization at UCLA,
21 three students are designated as the signatories.
22 They're allowed to request things and request things and
23 schedule things and requests for funding and the like.
24 MR. STEIN: Court Reporter, did you get all
25 that? Because I didn't understand what he just said.

1 (Reporter Clarification)
2 MR. ABRAMS Q: Well, let me ask -- I apologize
3 if you already answered this question, sir. But I would
4 like to know who would have prepared pages 3 through 5.
5 A In our event and room request process, there's
6 a role for an organizer. In this case, it would have
7 been a registered campus organization. Registered
8 campus organizations are made up of three signatories.
9 Those three signatories then have access to
10 the online systems of rescheduling space, populating an
11 event request form, requesting funding.
12 Q And so these three individuals, they're
13 students?
14 A In the case of this organization, yes. Those
15 are students.
16 Q Okay. Fine. So turning to the first page.
17 And it says, "Have you been awarded funding?" And you
18 see someone checked off "Yes." And you see it says, "We
19 have outside fundraising and the BEST grant."
20 Do you see that?
21 A I do see that, yes.
22 Q Okay. So is that the -- the grant that you
23 were testifying about earlier, sir?
24 A Yes.
25 Q Okay. So is it fair to say that some of the

1 UCLA grant went to funding this conference?
2 A I don't have direct knowledge of exactly what
3 funds went to what.
4 Q Okay. Well, is it fair to say that to your
5 understanding as this document -- this document is
6 representing that?
7 MS. STEIN: Calls for speculation.
8 You can answer if you know.
9 MR. ABRAMS: All right. You know the
10 problem -- hold on a second. Because the thing is this.
11 That sort of objection is -- can easily be seen as an
12 attempt to coach the witness to try to get him to say
13 the testimony you want him to say.
14 So if you have an objection, you can certainly
15 make an objection and just say "Objection" if you want
16 to preserve it. But there's no need to make an
17 objection as to speculation or something like this at
18 this time. It really is going to look like you're
19 trying to coach the witness here.
20 MS. STEIN: Calls for speculation is an
21 appropriate objection. He didn't prepare the document
22 and doesn't know what the person who prepared the
23 document was thinking. So that's why I raised that
24 objection.
25 MR. ABRAMS: I understand that. But, you

1 know, it looks to me like you're trying to suggest an
2 answer to the question. So I'm asking you not to make
3 this kind of speaking objection.
4 MS. STEIN: I simply indicated calls for
5 speculation.
6 MR. ABRAMS: I understand that. I mean, I
7 guess, you know --
8 MS. STEIN: It's not speaking.
9 MR. ABRAMS: Here in New York, that kind of
10 objection is thought to be completely inappropriate.
11 Maybe it's okay in California. Ultimately the judge is
12 going to decide if you keep going down this road,
13 though.
14 Q Do you have an answer, sir?
15 A Can you repeat your question again?
16 Q Yes. The question is this, sir.
17 To your understanding of this document and how
18 it's used by UCLA, are the people who prepared the
19 document representing that University monies, this BEST
20 grant, were used towards the conference?
21 MS. STEIN: Same objection.
22 Go ahead.
23 THE WITNESS: In this category, knowing how
24 this form works, they're indicating to the events office
25 that they believe they have funding sources that would

Page 25

1 cover event costs.
2 MR. ABRAMS Q: Okay. And those funding
3 sources include the BEST grant; correct?
4 A That's what they have listed on this form.
5 Q And the BEST grant comes from the University;
6 is that right?
7 A The events -- the BEST grant is a
8 noncompulsory student fee set of funds that came from
9 the Equity, Diversity and Inclusion office.
10 Q Okay.
11 A It's a student initiated grant process.
12 Q When you say the Equity, Diversity and
13 Inclusion grant office, that's part of the University;
14 correct?
15 A Equity, Diversity and Inclusion. And yes.
16 That is an office of UCLA.
17 Q Okay. Fine. And turning to page 1, do you
18 recognize page 1?
19 A I do see that, yes.
20 Q Okay. And is that a record that's -- that
21 you're familiar with, sir?
22 A I have seen that document, yes.
23 Q Okay. And I guess what I'm asking you is
24 this. Is this a document that you -- a type of document
25 that you regularly see in the course of your work?

Page 26

1 A Not me specifically. It's a document
2 transmitted to that office, to student organization
3 office, when they make grants to student organizations.
4 Q I see. And so you see this is the -- purports
5 to be a grant for Students for Justice in Palestine
6 funding in the amount of $8,000.
7 Do you see that?
8 A Yes. I do see that.
9 Q Okay. And is that the grant you were
10 testifying about earlier?
11 A Yes, it is.
12 Q Okay. Now, in terms of the budgetary amounts,
13 the amounts there, where you see it says Advertising,
14 Facilities, Food, Honorarium, Conferences, Supplies and
15 Transportation, do you see all that?
16 A Yes, I do.
17 Q Okay. And so is it your testimony that you
18 don't know what those dollar amounts represent and what
19 those monies were used for?
20 A They're general categories that relate to
21 University cost centers. Do I know specifically what
22 amount went through during the 2018-19 year, no, I do
23 not.
24 Q Okay. Well, based on your general knowledge
25 from your position, is it fair to say that your

Page 27

1 understanding of "honorarium" would mean fees for
2 speakers?
3 A That is normally what I conclude when I see
4 that with regard in the funding request.
5 Q Okay. And similarly conferences -- based on
6 your general knowledge from your position, conferences
7 would include conferences such as the conference we're
8 talking about today; correct?
9 A Typically when I see that word, it's normally
10 related to registration fees for conferences.
11 Q Okay. Well, let me ask you this. You say
12 "Typically when I see that word."
13 Are you telling me -- are you testifying based
14 on your general knowledge or do you have any special
15 knowledge from your position about how those words are
16 used in this type of document?
17 A My office and I approve hundreds of student
18 funding requests over the years. So I'm testifying
19 based on when those come to me for my approval and I see
20 those general categories of words, that's what I believe
21 those relate to or stand for.
22 Q Let me ask you this, sir.
23 Are you aware of any other conferences put on
24 by Students for Justice in Palestine at UCLA for that
25 year other than the one we're testifying here -- we're

Page 28

1 talking about today?
2 A I'm not aware that they hosted any other
3 conference at UCLA in the 2018-19 school year.
4 Q Okay. And you're not aware of any conferences
5 they would have hosted anywhere during that year; is
6 that right?
7 A I don't have independent recollection of that,
8 no.
9 Q Okay. So that means yes; right?
10 A I'm not --
11 MS. STEIN: Can you repeat the question again?
12 Vague and ambiguous.
13 MR. ABRAMS: Can you read back my
14 last question? Not the last one, the one before,
15 please.
16 (Whereupon the record was read.)
17 MS. STEIN: At any location outside of UCLA?
18 Is that your question?
19 MR. ABRAMS: Yes.
20 Q Anywhere in the world, sir, are you aware of
21 any conferences at all?
22 MS. STEIN: Calls for speculation.
23 MR. ABRAMS: I'm just asking about his
24 knowledge, ma'am.
25 MS. STEIN: Okay.

Page 29

1 THE WITNESS: I don't have --
2 MR. ABRAMS: Okay. So --
3 THE WITNESS: -- independent knowledge of any
4 other conferences that they were involved in in that
5 year.
6 MR. ABRAMS Q: And similarly in -- you see
7 this line item, Honorarium.
8 Are you aware of any activities put on by SJP
9 at UCLA other than the conference we're talking about
10 that would have entailed Honorarium?
11 A Yes, I am.
12 Q And what's that?
13 A They have a number of programs over the course
14 of the year, and historically, they have had speakers on
15 campus.
16 Q Okay. Well, let me ask you this.
17 Turning back to the $1,600 figure for
18 conferences, based on your general understanding about
19 how these things work, is it fair to say that that
20 $1,600 would go back -- a lot of it would go back to
21 UCLA in terms of facilities fees?
22 A Not necessarily, no.
23 Q Okay. But based on your general experience,
24 what sort of things would that money be spent on?
25 A Well, as I said, typically -- and this does

Page 30

1 not -- this letter is awarding them a grant over the
2 course of the year for their broad-based program called
3 Palestine Awareness. So I don't know if the word
4 "conferences" as I previously testified was referencing
5 registration fees that something they might participate
6 in or to costs related to hosting something.
7 Q So I don't think you've answered my question,
8 sir. I'm trying to ask based on your experience what
9 sort of expenses would such monies be spent on.
10 A In a line item called Conferences?
11 Q Yes, sir.
12 A I guess it could relate to a direct cost
13 related to a conference.
14 Q Okay. And what sort of cost would that be?
15 A Might have to do, you know, with their event
16 preparation, could have to do with costs related to
17 logistics of an event, things of that nature.
18 Q What are some examples of monies that would be
19 spent on logistics? What sort of things are we talking
20 about here, sir?
21 A Could be the house staff of the venue, could
22 be setup and strike costs related to turnover of the
23 specific venue, things of that nature.
24 Q All right. So, like, it sounds like you,
25 based on your position, don't really -- aren't really

Page 31

1 able to say what those monies would have been spent on;
2 is that correct?
3 A I guess that -- my answer would be that is
4 correct. Because no. I do not have direct knowledge of
5 very specifically to that line item.
6 Q Well, let me ask you this.
7 Who would know how the money was spent?
8 A I'm guessing the student organizers of the
9 event.
10 Q Well, would any oversight be issued --
11 exercised by UCLA over how the money was spent?
12 A It would have gone through an account process.
13 And things would have submitted receipts or items to be
14 paid, you know, through that funding source.
15 Q I see. And UCLA saves those records; is that
16 right?
17 A Yes.
18 Q Okay. So those records in UCLA's files, that
19 would allow us to figure exactly where that $8,000 went.
20 Is that fair to say?
21 A I would say that would be accurate.
22 Q Let me ask you this, sir.
23 This A-1 exhibit, these are all documents that
24 were kept in the ordinary course of business by UCLA?
25 A Yes. I would say that is accurate.

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1 Q Okay. And is it fair to say that the -- the
2 first page was prepared by someone who was an employee
3 of UCLA; correct?
4 A Yes.
5 Q And the same for the remaining pages?
6 A It looks like the remaining pages would be
7 downloads from the online system. But to your question
8 prepared by or submitted by a University employee, yes.
9 Q Okay. And that would have been done in the
10 ordinary course of their job duties; correct?
11 A Correct.
12 Q Okay.
13 MS. STEIN: And you're talking about the first
14 two pages, not the -- not the application? Because that
15 was prepared by students.
16 MR. ABRAMS: The record is what it is. You'll
17 have a chance to question him at the end if you think
18 that something was unclear.
19 Q Let me ask you this, sir.
20 Did the people who organized the conference do
21 anything to set up their own security arrangements?
22 A Student organizations meet with the University
23 officials. I had indicated that in this case this was
24 dubbed as a major event under our interim major events
25 policy. That required a meeting with the UCPD.

1 DEPONENT'S CHANGES OR CORRECTIONS

2 DEPONENT: MICK DeLUCA
CASE: Abrams vs. Regents of the University of
3 California
Job No: 20-9446kg
4 Date of Deposition: November 12, 2020

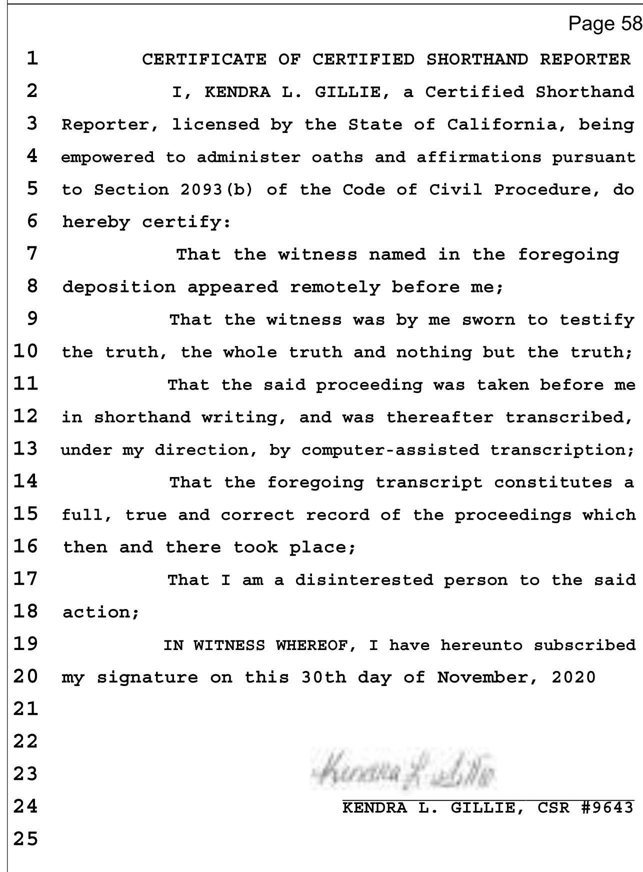
5 NOTE: If you are adding to your testimony, print the exact words you want to add. If you are deleting from
6 your testimony, print the exact words you want to delete. Specify with "add" or "delete" and sign this
7 form.

8 PAGE LINE CHANGE/ADD/DELETE

9 ____ ____ ___________________________________
10 ____ ____ ___________________________________
11 ____ ____ ___________________________________
12 ____ ____ ___________________________________
13 ____ ____ ___________________________________
14 ____ ____ ___________________________________
15 ____ ____ ___________________________________
16 ____ ____ ___________________________________
17 ____ ____ ___________________________________
18 ____ ____ ___________________________________
19 ____ ____ ___________________________________
20 ____ ____ ___________________________________
21 ____ ____ ___________________________________

22 I hereby certify that I have read my deposition transcript, made those changes and corrections that I
23 deem necessary, and approve the same as now true and correct.
24
25 Deponent's Signature:_____________________Date_______

1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER
2 I, KENDRA L. GILLIE, a Certified Shorthand
3 Reporter, licensed by the State of California, being
4 empowered to administer oaths and affirmations pursuant
5 to Section 2093(b) of the Code of Civil Procedure, do
6 hereby certify:
7 That the witness named in the foregoing
8 deposition appeared remotely before me;
9 That the witness was by me sworn to testify
10 the truth, the whole truth and nothing but the truth;
11 That the said proceeding was taken before me
12 in shorthand writing, and was thereafter transcribed,
13 under my direction, by computer-assisted transcription;
14 That the foregoing transcript constitutes a
15 full, true and correct record of the proceedings which
16 then and there took place;
17 That I am a disinterested person to the said
18 action;
19 IN WITNESS WHEREOF, I have hereunto subscribed
20 my signature on this 30th day of November, 2020
21
22
23



24 KENDRA L. GILLIE, CSR #9643
25

1 L.J. HART & ASSOCIATES, INC.
BARRON & RICH
2 Certified Shorthand Reporters
1900 Point West Way, Suite 277
3 Sacramento, California 95815
916.922.9001 fax: 916.922.3461
4
November 30, 2020 Job No. 20-9446kg
5

6 MICK DeLUCA
C/O SHIVA STEIN, Attorney at Law
7 1525 Faraday Avenue, Suite 300
Carlsbad, California 92008-7372
8 --o0o--
Re: Abrams vs. Regents of the University of California
9 Date taken: November 12, 2020
--o0o
10 Dear Mr. DeLuca:

11 Your deposition in the above matter is now available. You can read, correct and sign for 30
12 days from the date of this letter. You may wish to discuss with your attorney whether he/she requires that
13 it be read, corrected, if necessary, and signed.

14 If you do not desire to read your deposition and wish to waive signature, please sign your name and date below,
15 and return this letter to our office.
16
17
18 _________________________ _______________
SIGNATURE DATE
19
20 Sincerely,
21
22 L.J. HART & ASSOCIATES, INC.
BARRON & RICH
23 Certified Shorthand Reporters
24 cc: DAVID ABRAMS JAVERIA JAMIL
SHIVA STEIN ZOHA KHALILI-ARAGHI
25 GLENN MICHAEL KATON

1 L.J. HART & ASSOCIATES, INC.
BARRON & RICH
2 Certified Shorthand Reporters
1900 Point West Way, Suite 277
3 Sacramento, California 95815
916.922.9001 fax: 916.922.3461
4
Job No. 20-9446kg
5

6 DAVID ABRAMS, Attorney at Law
305 Broadway, Suite 601
7 New York, New York 10007
--o0o
8 Re: Abrams vs. Regents of the University of California
Deposition of: MICK DeLUCA
9 Date taken: November 12, 2020
--o0o
10 Dear Mr. Abrams:

11 We wish to inform you of the disposition of this original transcript. The following procedure is being
12 taken by our office.

13 _____The witness has read and signed the deposition. (See attached.)
14
_____ The witness has waived signature.
15
_____ The time for reading and signing has
16 expired.
17 _____ The sealed original deposition is being forwarded to your office.
18
_____ Other.
19
Sincerely,
20
21
L.J. HART & ASSOCIATES, INC.
22 BARRON & RICH
Certified Shorthand Reporters
23
cc: SHIVA STEIN
24 GLENN MICHAEL KATON
JAVERIA JAMIL
25 ZOHA KHALILI-ARAGHI

Exhibit 10C

EXHIBIT 10C

Certifications, Assurances, Representations, and Other Statements of the Recipient

A Mandatory Reference for ADS Chapter 303

Partial Revision Date: 05/18/2020
Responsible Office: M/OAA/P
File Name: 303mav_051820

Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement will be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure."

3. Prohibition on Assistance to Drug Traffickers for Covered Countries and Individuals (ADS 206)

USAID reserves the right to terminate this Agreement, to demand a refund or take other appropriate measures if the Grantee is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140. The undersigned must review USAID ADS 206 to determine if any certifications are required for Key Individuals or Covered Participants.

If there are COVERED PARTICIPANTS: USAID reserves the right to terminate assistance to or take other appropriate measures with respect to, any participant approved by USAID who is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140.

4. Certification Regarding Support to Terrorists

(1) The undersigned represents, to the best of its knowledge, that:

Except as otherwise disclosed to the Agreement Officer in writing and included with this application, the applicant did not, within the previous three years, knowingly engage in transactions with, or provide material support or resources to, any individual or entity who was, at the time, subject to sanctions administered by the Office of Foreign Assets Control (OFAC) within the U.S. Department of Treasury pursuant to the Global Terrorism Sanctions Regulations (31 CFR Part 594), and the Foreign Terrorist Organizations Sanctions Regulations (31 CFR Part 597), or sanctions established by the United Nations Security Council, collectively, "U.S. or U.N. sanctions." Note: USAID intends to retain the information disclosed to the Agreement Officer pursuant to this paragraph in any award file and use it in determining whether to provide the applicant with an assistance award. USAID will not make such information available publicly unless required by law.

(2) The representation in paragraph (1) does not apply to:

(a) Transactions entered into or material support and resources provided pursuant to an OFAC license;

(b) The furnishing of USAID funds, or USAID-financed commodities or other assistance, to the ultimate beneficiaries of USAID-funded humanitarian or development assistance, such as the recipients of food, non-food items, medical care, micro-enterprise loans or shelter, unless the applicant knew or had reason to believe that one or more of these beneficiaries was subject to U.S. or U.N. terrorism-related sanctions; or

(c) The procurement of goods and/or services by the Recipient acquired in the ordinary course of business through contract or purchase, such as utilities, rents, office supplies, or gasoline, unless the applicant knew, or had reason to believe, that a vendor or supplier of such goods and services was subject to U.S. or U.N. sanctions.

This certification includes express terms and conditions of the award, and any violation of it will be grounds for unilateral termination of the agreement by USAID. This certification does not preclude any other remedy available to USAID.

(3) For purpose of this certification:

(a) “Material support and resources” means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

(i) “Training" means instruction or teaching designed to impart a specific skill, as opposed to general knowledge.

(ii) “Expert advice or assistance" means advice or assistance derived from scientific, technical, or other specialized knowledge.

(b) “Entity” means a partnership, association, corporation, or other organization, group, or subgroup.

5. Certification Regarding Trafficking in Persons, Implementing Title XVII of the National Defense Authorization Act for Fiscal Year 2013

Note: This certification must be completed prior to receiving an award if the estimated value of services required to be performed under the award outside the United States exceeds $500,000. This certification must also be submitted annually to the Agreement Officer during the term of the award.

By signing below, the applicant or recipient, as applicable, through its duly designated representative, after having conducted due diligence, hereby certifies the following:

Exhibit 10D

UCLA OFFICE OF EQUITY, DIVERSITY AND INCLUSION

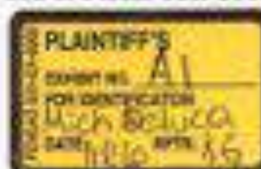
The Office of Equity, Diversity and Inclusion is pleased to provide the Students for Justice in Palestine funding in the amount of $8,000.00 for their project "Palestine Awareness" within the Bruin Excellence & Student Transformation (BEST) Grant Program, to be used this fiscal year (2018-2019) as follows:

Students for Justice in Palestine	
Category	**Amount**
Advertising	$170
Facilities	$0
Food	$250
Honorarium	$4,300
Conferences	$1,600
Supplies	$50
Transportation	$1,300
Other:	$330
TOTAL	**$8,000**

These funds will be administered on your behalf by Student Organizations, Leadership and Engagement (SOLE). To access them, please contact Juan Robles (jroblesvegas@saonet.ucla.edu) and or your SOLE Advisor, referencing award # TOF 032948. When submitting the request to access your funds, please be sure to include a copy of this award notification.

Please note that all payments will be made directly to vendors; students will be reimbursed on an exception-only basis and only if approval is granted by Janis Gutman in writing in advance of the expense being incurred.

The deadline to access funds is May 31, 2019. At the end of Fiscal Year 2018-2019, all unused funds will be returned to the funding pool.



UCLA Registered Campus Organization Event Summary

1 – Event Producer

Name of Registered [redacted] Students for Justice in Palestine

Event contact [redacted] [redacted]

Phone number: Email:

*If above contact name is not an RCO signatory, enter **name and email** of signatory that is responsible for event budget approval*

Signatory Name: Email:

Have you spoken with your SOLE advisor about this event? ☒ Yes ☐ No

If no, Please set up a meeting and discuss this proposed event with your advisor PRIOR to submitting form to the Events Office

Name of your RCO's designated SOLE advisor: [redacted]

2 – Event Information

You must schedule the location of the event PRIOR to making any event arrangements or speaking with an Events Office event manager

Have you scheduled the location? ☒ Yes ☐ No Date(s) of event: Nov 17-18 (Sat + Sun)

Name of event: Students for Justice in Palestine National Conference

Number of Attendees: 400-450

All location(s): Dodd hall; Haines hall; Dickson Court North

Set up time: from 7:00AM to 8:00AM

Event time: from 8:00AM to 4:00 PM

Strike time: from 4:00 to 5:00

3 – Event Costs and Funding

Please identify the funding sources you will be using to pay for event costs (student group check, CPC Funds, CAC Funds, BOD funds, etc.):

We have outside fundraising and the BEST grant. We will be applying to CPC and Campus Life.

Have you applied for these funds? ☐ Yes ☒ No ☐ Not Applicable

Have you been awarded funding? ☒ Yes ☐ No ☐ Not Applicable

4 – Room Openings and AV Services

If this event is on a weekend, there will be a charge to open the building, rooms and nearest restrooms for your event location. There is an additional charge to open additional rooms and buildings. Custodian services may be ordered to clean and maintain these restrooms depending on the size and day of your event.

Do you need a General Assignment Weekend Classroom Room opening for this event? ☐ Yes ☐ No

If "No", skip to section 5

Please list all building rooms you have scheduled and will use for this event:

Dodd: 78,154,161,162,167,170,178; Haines 118

If the opening and closing time is different from the event time entered above, please specify:

Room Opening Time: 9:00AM Room Closing Time: Sat: 4:30PM; Sun: 12:00 PM

Do you need data projector activation or microphones for any of the rooms? If yes, specify what services and the room number:

All 8 rooms listed will need a projector.

5 – Table, Chairs, Tents and Miscellaneous Rentals

All rental items must be arranged through the UCLA Events Office. If we do not have the equipment in our in-house inventory we will rent the equipment from a vendor of our choosing. The cost of all rentals will be the responsibility of the RCO.

Do you need any basic seating, tabling, tenting or other rentals for this event? ☐ Yes ☐ No If "No", skip to section 6

> ***SAFETY ALERT***
> *Tables, tents or chairs cannot impede access to emergency entrances, exits or fire lanes. All event equipment setups require the submission of an event setup diagram to Steve Jurado, Asst. Fire Marshal (sjurado@ehs.ucla.edu).*
> *Please print out an appropriate blank venue diagram available at http://map.ais.ucla.edu/go/1002580 and illustrate your desired event set up. An Events Office manager can review the diagram prior to submission to the Fire Marshal's office.*

Please indicate the quantities of non-technical (i.e., does not require electric power) equipment you need set up at this event. If you do not need an item, leave blank or write 0. You may be directed by an Event Manager to order your equipment directly from our website at uclaevents.com

\# Chairs: 450 # Banquet (rectangular) tables: 4 # Round tables: 58 # Umbrellas: ______

\# Table linens *(any tables used for food require linens or a table covering)*: 62 # 10' x 10' tents: ______

Other tents *(specify quantity and size)*: ______

Other types of non-technical equipment you would like to have: *(staging, porta potties, barricades, chain and stanchions, etc.)*
Trash cans, coolers for beverages

Is there any equipment you will be bringing to your event? If so, list.

______

Only RCO-owned or donated equipment may be used. All other equipment rentals must be processed through Events Office.

6 – Food

Any event that has food requires trash boxes, compost containers, or recycling clear streams to be ordered and provided by UCLA Facilities. The cost of this is the responsibility of the RCO.

Will there be food served at this event? ☒ Yes ☐ No If "No", skip to section 7

> ***SAFETY ALERT***
> *Serving food improperly poses a risk of food poisoning, and your group is solely liable. Please contact the Environmental Health and Safety Program Manager, Jennie Wong, at jwong@ehs.ucla.edu or (310) 206-4635 (office) regarding rules and regulations. You or your food provider may need a health permit to serve food.*

Will food be sold or provided for free to event guests? ☐ Sold ☒ Provided, free

Who is preparing and providing the food (name of caterer or restaurant)?
Zankou Chicken, Green Olive Mediterranean Cuisine, Cafe Dahab

What is being served? Shawarma, Kabobs, Falafel, Rice, Salad, Hummus, Garlic Sauce, Bread, Knafe, Coffee, Water, Soda

Will it be already prepared or cooked on site? Already prepared

When prepared, will any heat source be used to keep the food warm? Yes- Chafing Dishes

7 – Parking

Please estimate the total amount of personal vehicles that will be arriving on campus to park for this event (guests, staff, volunteers, etc.):
up to 20

If your RCO intends to pay for parking permits for any of the above vehicles, please indicate the number of permits and when the vehicles will arrive:
0

Does this event involve any bus drop off, pickup and staging? ☐ Yes ☐ No

If you answered yes to the above, you must make bus coordination arrangements with the UCLA Special Events Parking office at (310) 825-1266.

8 – Outdoor Sound or Performances

Any outdoor amplified sound must be approved by the Center for Student Programming.

Does this event require outdoor amplified sound of any type? ☐ Yes ☒ No If "No", skip to section 9

Has your SOLE advisor approved the amplified sound? ☐ Yes ☐ No

Please describe the amplified sound (e.g., speaking only, live musical performers, live DJ, pre-recorded music):

____

If there is live performed music intended at the event, please provide details (e.g., number of performers or bands, instruments, technical requirements):

____

Do you need Events Office to arrange for the rental of a sound system/PA? ☐ Yes ☒ No

If "No," please indicate where you are getting your sound system: ______________________________

If "Yes," please provide detail (e.g., number of microphones, speakers, and/or number of performers or bands and their technical requirements):

____

Only RCO-owned or donated equipment may be used. All other equipment rentals must be processed through Events Office.

9 – Power

Power must be provided by UCLA Facilities electricians and will cost a minimum of $100. Price depends on the degree of power need and the outlet availability at event location.

Will your event need any outdoor power supply? ☐ Yes ☒ No If "No", skip to section 10

If yes, please list types of equipment that require electrical power and the quantity of each:

____

10 – Vendors

ASUCLA has the exclusive right to sell food or merchandise on the UCLA campus. If you have any sales taking place at your event, it must be approved in advance by ASUCLA.

Do you plan to have vendors selling at your event (e.g., food, merchandise)? ☐ Yes ☒ No If "No", skip to section 11

If you would like to have vendors at your event, on a separate sheet please indicate the kind of vendors, what they will be selling, what equipment they will be bringing and what additional equipment (tents, tables) you might need to support their activities.

SAFETY ALERT

The UCLA Campus is not immune to crime. Cash handling at an event poses risks of theft or worse. If any money sales occur at your event, a UCPD officer or CSC security guard may be required to be on-site for your event. The cost of this is the responsibility of the RCO.

11 – Ticketing

Per UCLA Policy, the Central Ticket Office must handle all ticketing arrangements for any campus event regardless of location, size or scope.

Do you plan to sell or give away tickets to this event? ☐ Yes ☒ No

If you answered yes to the above, you must make any on campus ticketing arrangements with Raymond Mesa (rmesa@tickets.ucla.edu) at the UCLA Central Ticket Office.

Thank you for completing this event summary sheet for the UCLA Events Office. Please click the submit button below to submit your form. The Events Office will contact you regarding next steps.

[Submit by Email] [Reset Form]

Exhibit 10E

EXHIBIT 10E

Search

Retry Premium Free

Remote Tableau Course - Learn invaluable SQL and data visualization s

Message

David Abrams · 3rd

Executive Director at Zionist Advocacy Center

New York, New York, United States · 42 connections · Contact info

Zionist Advocacy Cen

Columbia Law Schoo

Activity

44 followers

Posts David created, shared, or commented on in the last 90 days are displayed here.

See all activity

Experience

Executive Director

Zionist Advocacy Center

Mar 2014 – Present · 7 yrs

New York, NY

Filed numerous False Claims Act cases against various NGOs alleging that the NGOs fraudulently accepted USAID funding after supporting terrorist entities such as Hamas, Hezbollah, the PFLP and the Islamic Republic of Iran. A large number of the cases remain under seal however one was settled for $2 million and another was settled for $700,000. The $2 million settlement occurred in the matter of United States ex rel. Zionist Advocacy Center v. Norwegian People's Aid.

Filed numerous anti-boycott cases alleging unlawfu

Messaging

Search

Owner
David Abrams, Attorney at Law
2002 – Present · 19 yrs
305 Broadway Suite 601, New York, NY 10007

Bar Admissions

New York

Education

Columbia Law School
Doctor of Law (JD)
1994 – 1997

JD 1997

Stanford University
Bachelor of Science (BS), Applied Mathematics
1988 – 1992

BS Applied Mathematics

Interests

Stanford University
851,138 followers

Columbia Law School
17,255 followers

Messaging

Exhibit 10F

Received By NSD/FARA Registration Unit 12/13/2019 7:36:00 AM

EXHIBIT 10F

OMB No. 1124-0006; Expires May 31, 2020

U.S. Department of Justice

Washington, DC 20530

Exhibit A to Registration Statement Pursuant to the Foreign Agents Registration Act of 1938, as amended

INSTRUCTIONS. Furnish this exhibit for EACH foreign principal listed in an initial statement and for EACH additional foreign principal acquired subsequently. The filing of this document requires the payment of a filing fee as set forth in Rule (d)(1), 28 C.F.R. § 5.5(d)(1). Compliance is accomplished by filing an electronic Exhibit A form at https://www.fara.gov.

Privacy Act Statement. The filing of this document is required by the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide this information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the Registration Unit in Washington, DC. Statements are also available online at the Registration Unit's webpage: https://www.fara.gov. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: https://www.fara.gov.

Public Reporting Burden. Public reporting burden for this collection of information is estimated to average .49 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Registration Unit, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Name and Address of Registrant	2. Registration No.
Zionist Advocacy Center, 305 Broadway Suite 601 New York NY 10007	6676

3. Name of Foreign Principal	4. Principal Address of Foreign Principal
International Legal Forum	ben Yehuda Street 34 Jerusalem Israel

5. Indicate whether your foreign principal is one of the following:

- ☐ Government of a foreign country [1]
- ☐ Foreign political party
- ☒ Foreign or domestic organization: If either, check one of the following:
  - ☐ Partnership
  - ☒ Corporation
  - ☐ Association
  - ☐ Committee
  - ☐ Voluntary group
  - ☐ Other (specify) ____________
- ☐ Individual-State nationality ____________

6. If the foreign principal is a foreign government, state:

a) Branch or agency represented by the registrant

b) Name and title of official with whom registrant deals

7. If the foreign principal is a foreign political party, state:

a) Principal address

b) Name and title of official with whom registrant deals

c) Principal aim

1 "Government of a foreign country," as defined in Section 1(e) of the Act, includes any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority w[illegible]

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8. If the foreign principal is not a foreign government or a foreign political party:

a) State the nature of the business or activity of this foreign principal.

Advocacy for justice, equality, and human rights in the Middle East

b) Is this foreign principal:

Supervised by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☒
Owned by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☒
Directed by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☒
Controlled by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☒
Financed by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☒
Subsidized in part by a foreign government, foreign political party, or other foreign principal	Yes ☒ No ☐

9. Explain fully all items answered "Yes" in Item 8(b). *(If additional space is needed, a full insert page must be used.)*

In the last 6 months, the International Legal Forum received a grant from the Government of Israel.

10. If the foreign principal is an organization and is not owned or controlled by a foreign government, foreign political party or other foreign principal, state who owns and controls it.

Yifa Segal (an Israeli citizen) is the principle officer.

EXECUTION

In accordance with 28 U.S.C. § 1746, the undersigned swears or affirms under penalty of perjury that he/she has read the information set forth in this Exhibit A to the registration statement and that he/she is familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her knowledge and belief.

Date of Exhibit A	Name and Title	Signature
November 10, 2019		/s/ David Abrams eSigned

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OMB No. 1124-0004; Expires May 31, 2020

U.S. Department of Justice
Washington, DC 20530

Exhibit B to Registration Statement Pursuant to the Foreign Agents Registration Act of 1938, as amended

INSTRUCTIONS. A registrant must furnish as an Exhibit B copies of each written agreement and the terms and conditions of each oral agreement with his foreign principal, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances by reason of which the registrant is acting as an agent of a foreign principal. Compliance is accomplished by filing an electronic Exhibit B form at https://www.fara.gov.

Privacy Act Statement. The filing of this document is required for the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide the information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the Registration Unit in Washington, DC. Statements are also available online at the Registration Unit's webpage: https://www.fara.gov. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: https://www.fara.gov.

Public Reporting Burden. Public reporting burden for this collection of information is estimated to average .33 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Registration Unit, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Name of Registrant	2. Registration No.
The Zionist Advocacy Center	6676

3. Name of Foreign Principal

International Legal Forum

Check Appropriate Box:

4. ☐ The agreement between the registrant and the above-named foreign principal is a formal written contract. If this box is checked, attach a copy of the contract to this exhibit.

5. ☐ There is no formal written contract between the registrant and the foreign principal. The agreement with the above-named foreign principal has resulted from an exchange of correspondence. If this box is checked, attach a copy of all pertinent correspondence, including a copy of any initial proposal which has been adopted by reference in such correspondence.

6. ☒ The agreement or understanding between the registrant and the foreign principal is the result of neither a formal written contract nor an exchange of correspondence between the parties. If this box is checked, give a complete description below of the terms and conditions of the oral agreement or understanding, its duration, the fees and expenses, if any, to be received.

7. Describe fully the nature and method of performance of the above indicated agreement or understanding.

Foreign organization requested assistance in submitting reports of terrorist connections to financial services firms and prosecuting authorities.

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8. Describe fully the activities the registrant engages in or proposes to engage in on behalf of the above foreign principal.

See item 7.

9. Will the activities on behalf of the above foreign principal include political activities as defined in Section 1(o) of the Act and in the footnote below? Yes ☒ No ☐

If yes, describe all such political activities indicating, among other things, the relations, interests or policies to be influenced together with the means to be employed to achieve this purpose.

submission of reports to prosecuting authorities.

EXECUTION

In accordance with 28 U.S.C. § 1746, the undersigned swears or affirms under penalty of perjury that he/she has read the information set forth in this Exhibit B to the registration statement and that he/she is familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her knowledge and belief.

Date of Exhibit B	Name and Title	Signature
November 10, 2019		/s/ David Abrams eSigned

Footnote: "Political activity," as defined in Section 1(o) of the Act, means any activity which the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

Exhibit 11

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Attorneys for Intervenors

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DAVID ABRAMS,

Petitioner,

vs.

REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Respondent,

DOE 1, DOE 2, DOE 3, DOE 4, DOE 5, DOE 6, DOE 7, DOE 8,

Intervenors,

vs.

DAVID ABRAMS,

Defendant in Intervention.

Case No.: 19STCP03648

DECLARATION OF MEGAN MARZEC IN SUPPORT OF INTERVENORS' OPPOSITION TO PETITION FOR WRIT OF MANDATE

Filed concurrently with Memorandum of Points and Authorities in Support of Intervenors' Opposition to Petition for Writ of Mandate

Judge: Hon. James C. Chalfant
Dept.: 85

Action Filed: Aug. 22, 2019

Trial Date: March 11, 2021
Time: 9:30 am

I, MEGAN MARZEC, declare as follows:

1. I am over 18 years old and fully competent to make this declaration.

2. I make this declaration based on my personal knowledge unless otherwise indicated.

3. I attended Ohio University (OU) from 2011 to 2015 and graduated with a bachelor's degree in fine arts.

4. In 2013-2014, I participated in a study group where we would watch films made by Palestinians and would discuss Palestinian human rights issues.

5. In spring 2014, I was elected as head of the Student Senate at OU.

6. That summer, the Ice Bucket Challenge went viral on the internet. The challenge involved people recording themselves pouring buckets of ice water on their heads and naming other individuals to do the same, in order to promote awareness of amyotrophic lateral sclerosis and raise money for research. OU's President participated in this challenge and called on me to participate as well.

7. That same summer, Israel carried out a weeks-long bombing campaign in Gaza that killed thousands of Palestinians. The Israeli military campaign and the resulting Palestinian deaths were widely covered in the news, but were not something I heard being discussed in my classes or elsewhere on campus. This issue felt important to me as an OU student and as a leader in student government because the university had a well-known study abroad program in Tel Aviv. Some of my peers and I discussed wanting to raise awareness of the university's connection with Israel. I saw the OU President's Ice Bucket Challenge as an opportunity to spark conversations about this issue.

8. On September 2, 2014, instead of performing an Ice Bucket Challenge, I posted a video of myself asking OU to divest and cut ties with Israeli academic institutions because of the Israeli government's violent actions in Gaza and its occupation of Palestine. In the video, I poured fake blood on myself and explained that my bucket of fake blood represented thousands of displaced and murdered Palestinians and that OU was complicit in that murder and displacement through its cultural and economic support for Israel. At the end of the video, I included my email address so that anyone could get in touch with me if they were interested in talking about these issues or in launching a boycott, divestment and sanctions campaign at OU to get the university to divest from Israeli institutions. I expected the message to spark a small conversation on campus.

9. Within twenty-four hours of posting the video, I started receiving calls from student journalists, local city journalists, and international media. I also received hundreds of hateful messages to my school inbox and on social media, including rape and death threats. These messages said things

like "You deserve to join ISIS, since you love them so much, and they will rape you" and "I am going to come kill you." One message included a digital collage of Israeli soldiers pointing guns at the camera, saying "I will shoot you." There were also many misogynistic remarks and racist remarks regarding Palestinians and Arabs.

10. Two days after I posted the video, I had a regularly scheduled meeting with the dean of students in his capacity as advisor to the Student Senate. Several other administrators and staff joined us along with campus police. The dean of students told me that the university president had received death threats and that the office of the president had essentially shut down for the day because of the volume of emails and phone calls they received about the video.

11. Because of the nature of the threats the campus was receiving, school officials at the meeting advised me to go into protective police housing and to travel with a police escort. A police officer told me that they had reached out to Ohio Homeland Security to monitor all mentions of my name. I was told that there were death and rape threats against me on Twitter, Reddit, Facebook and YouTube.

12. I continued to receive threats and hateful messages all year.

13. Before I posted the video, I had been active on Facebook, Instagram, and Twitter. I used social media both to communicate and to organize student campaigns. Because of the harassment and threats I received, I deactivated my accounts and can no longer use social media. I received about a thousand friend requests after I posted the video; many of them were from people who wished me harm.

14. One evening, when I was dining with a friend off-campus, an OU student came up to me and told me that he defends Israel and would gladly shoot me in the face and go to jail. I knew that he was a student because he told me that he was a member of one of the fraternities on campus.

15. In April 2015, when I was in the university's art studio at night, a group of about 30-50 students waiting nearby for a charter bus recognized me. They called me a "bitch," said they paid my tuition, and threatened to kill me. They flipped me off, threw things at the windows of the art studio, and banged on the windows. I could not call anyone for help because I did not have my phone with me that night. I was afraid that I would be killed by the angry mob. Thankfully, the charter bus arrived in time and the students left before they could get into the building.

16. Rather than defending my right to speak out on an important political issue and discouraging the threats I received, the university issued a series of statements distancing itself from me. I did, however, receive support from other members of the campus community, including an open letter from 48 faculty members who expressed support for my right to hold my own political views and express them as I did in the video.

17. Many people attended Student Senate meetings to speak in support of me or against me. Because of the threats I received and because the meetings were open to the public, police set up a checkpoint to make sure no one brought bombs or guns into the meetings.

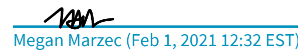
18. The threats and harassment that I experienced over the course of that year took a mental and physical toll on me. I had difficulty sleeping, and when I did sleep, I had horrible night terrors. I would sometimes wake up screaming or with my hands around the neck of the person sleeping with me.

19. I graduated from college in spring 2015. After graduating, I spent an entire year trying to recover from the stress of the response to the video I made. I have spent years working with doctors and therapists to try to repair the severe damage to my nervous system and heal my heightened fight or flight response.

20. After receiving such serious threats to my life and safety, I no longer feel safe being at the forefront of political movements because I know people can identify me based on my name and my face. My political work is limited to smaller, more anonymous spaces.

21. I write a column and write poetry, but I publish under a pen name because I no longer feel comfortable having my name publicized in any way.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 1, 2021.



Megan Marzec (Feb 1, 2021 12:32 EST)

Megan Marzec

Adobe Sign Transaction Number: CBJCHBCAABAAP3iu_fND8lkgHaNHm_RqSqMS3sDP3x8y

Exhibit 12

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DAVID ABRAMS,

Petitioner,

vs.

REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Respondent,

DOE 1, DOE 2, DOE 3, DOE 4, DOE 5, DOE 6, DOE 7, DOE 8,

Intervenors,

vs.

DAVID ABRAMS,

Defendant in Intervention.

Case No.: 19STCP03648

DECLARATION OF BILL MULLEN IN SUPPORT OF INTERVENORS' OPPOSITION TO PETITION FOR WRIT OF MANDATE

Filed Concurrently with Memorandum of Points and Authorities in Support of Intervenors' Opposition to Petition for Writ of Mandate

Judge: Hon. James C. Chalfant
Dept.: 85

Action Filed: Aug. 22, 2019

Trial Date: March 11, 2021
Time: 9:30 am

I, BILL MULLEN, declare as follows:

1. I am over 18 years old and fully competent to make this declaration.

2. I make this declaration based on my personal knowledge unless otherwise indicated.

Background

3. I am a professor emeritus of American Studies at Purdue University. I obtained my undergraduate degree in English from Occidental College in 1981. I obtained my master's degree from City University of New York Graduate Center in 1988. I then went on to obtain my Ph.D. in English from City University of New York Graduate School and University Center in 1990. I was a professor at Youngstown State University for 10 years, at University of Texas at San Antonio for five years, and at Purdue for a period of 15 years, until my retirement in 2020. I have also lectured at Wuhan University in the People's Republic of China. My specializations include American Literature and Studies, African American Studies, Cultural Studies, Working-Class Studies, Critical Race Theory and Marxist Theory.

4. As a professor, author, and activist, I have contributed to a wide array of social and economic justice and human rights movements as well as the intellectual discourse that frames these movements. I am the author of several books including: Un-American: W.E.B. Du Bois and the Century of World Revolution (Temple UP 2015); W.E.B. Du Bois: Revolutionary Across the Color Line (Pluto, 2016); Afro-Orientalism (Minnesota 2004), a study of interethnic anti-racist alliance between Asian and African-Americans; and Popular Fronts: Chicago and African-American Cultural Politics 1935-1946 (Univ. of Illinois 1999). I am the co-editor of Against Apartheid: The Case for Boycotting Israeli Universities (Haymarket Books 2015).

5. In my experience the targeting, harassment, and threats to advocates for Palestinian human rights is a serious problem that has harmed many people.

Research into Canary Mission

6. I have conducted significant research regarding the creation, operation, and purpose of the website Canary Mission (www.Canarymission.org). I have spoken to dozens of individuals targeted by Canary Mission and have reviewed the website and its affiliated accounts on Facebook, Instagram, Twitter, and YouTube.

7. Canary Mission currently contains dossiers on over 3,200 individuals, including their names, photos, educational affiliation, employment history, and links to their social media accounts. The dossiers, which are compiled without the activists' consent, label Palestinian rights advocates as racists,

anti-Semites, and supporters of terrorism. A review of the profiles on the site indicates that the site overwhelmingly targets Palestinian, Arab, Muslim and other students and faculty of color.

8. Canary Mission surveils social media sites for postings by or about targeted individuals to capture information they can portray in a negative light. This is often accomplished by misrepresenting support for Palestinians as support for terrorism, criticism of Israel as anti-Semitism, and protests as violence. Canary Mission also creates a system of guilt by association through tenuous links between individuals. For example, a profile about one individual may contain information about the alleged actions or statements of another individual who attended the same event or was associated with the same or similarly named campus organizations, even when there is no apparent connection between the individuals.

9. The site does include some genuine examples of anti-Jewish, racist, or anti-LGBT sentiment. Based on my conversations with individuals listed on Canary Mission, when such statements exist, they are often falsely attributed, misrepresented, or outdated views that individuals no longer hold.

10. Canary Mission is one of the most significant and effective of pro-Israel groups at intimidating activists. This is because it is omnipresent, on the web, 24/7, virile, and constantly promoting and updating its results. Canary Mission will often show up among the first results in Google searches for the individual's name, meaning that a profile portraying them in a false and/or negative light will be part of their digital first impression. The website makes clear that one of its goals is to sabotage the careers of its targets. A promotional video Canary Mission has posted on YouTube states that the purpose of the site is to make sure that "today's radicals don't become tomorrow's employees." This video is available at www.youtube.com/watch?v=LJgXa1Pf8p0.

11. Social media accounts affiliated with Canary Mission routinely tag universities, employers, and law enforcement demanding that individuals be expelled, fired, and punished. Targets of Canary Mission have been denied entry to Palestine and Israel, have been subjected to additional interrogation by airport and law enforcement personnel, have been fired from jobs, have suffered financially, suffered the loss of relationships, have been interrogated by employers and university administrators, and targeted with death threats and racial, homophobic misogynist harassment from

Canary Mission followers; the result of which has led activists to quiet their support of Palestinian rights and or cease their advocacy entirely.

12. Often, the Israeli government relies on information on websites like Canary Mission to determine who to ban or subject to increased screenings at the Israel/Palestine border. A news report on this practice is attached as exhibit .

13. The Israeli government has banned members of National Students for Justice in Palestine (NSJP) from entering the country to travel to Israel or occupied Palestinian territories. The Israeli government has relied on Canary Mission in enforcing this policy. A news report on this policy is attached as exhibit .

14. As a result of the harmful effects of stifling free speech and intimidating activists, including entire chapters of SJP groups, in 2018 I helped create and launch a website in opposition to Canary Mission, called "Against Canary Mission." Against Canary Mission is a website dedicated to representing in detail the lives of activists in support of Palestinian liberation. Unlike Canary Mission, those featured on Against Canary Mission have given permission to be included on the website.

15. If the names of the 2018 NSJP conference presenters are made public, the presenters are likely to be subjected to additional similar types of targeting, harassing and blacklisting, which will in turn curtail people’s speech, association, and advocacy work both for them and for future generations of students.

Personal Experiences

16. I have personally advocated for and long been affiliated with groups supporting Palestinian rights. I served as faculty adviser to Students for Justice in Palestine (SJP) at Purdue from 2010 to 2020. I am also a member/leading organizer for the United States Campaign for the Academic and Cultural Boycott of Israel.

17. As a result of my public association with Palestinian activist groups, I have been harassed, threatened, targeted, and featured/blacklisted on many websites for many years.

18. In 2013, I was involved in a successful campaign to lobby the American Studies Association, an academic association with over 5,000 members, to adopt a resolution endorsing a boycott of Israeli academic institutions in protest against the lack of academic freedom for Palestinian

students and scholars under conditions of Israeli occupation. This resolution attracted media attention and backlash from legislators who threatened to defund university departments over the boycott resolution. I received numerous emails calling me an anti-Semite and a bigot and threatening to get me fired from my university after the resolution was publicized.

19. In 2017, an unidentified person or persons drew a swastika on the bulletin board of the program at Purdue where I worked. Because of my criticism of the Israeli government, I was falsely accused of encouraging this attack.

20. That year an unidentified person also entered my office without authorization and left a note on my office desk that included a Star of David and the words, "the Nation of Israel LIVES."

21. Via a number of internet postings, I have been defamed and criticized for my political views critical of Israeli policies in an attempt to sully my personal and professional reputation and discredit my life's work. Profiles were created about me on the blacklisting site Canary Mission and a similar site called Professor Watchlist. I was also singled out, alongside several other individuals affiliated with SJP chapters, in a defamatory campaign of online postings as described below.

22. In 2016, two dozen websites emerged targeting myself and other organizers. Three websites were created in my name alone including: www.bill-mullen.org; www.billmullen.net; and www.bill-mullen.net. These websites have since been taken down. Publicly available information shows that these three websites were purchased through the same registrar and created through the same hosting provider within a 10-minute timeframe; thereby, supporting the conclusion that the same person or group created all three sites. The publicly available information on the person who registered these sites is the same, although, I understand the name to be fake. All three sites shared an IP address, and they all contained links to each other and to other pages demonizing me on the websites Tumblr, Weebly, Storify and LiveJournal. While the websites contained different content, they all referenced my support for Palestinian rights.

23. I believe that the objective of these websites was to tarnish my reputation as a professor and cause marital conflict due to my public support for Palestinian rights. As a tenured professor, I had a great deal of job security. One of these websites contained fabricated allegations that seem purposely designed to threaten that job security: accusing me of a pattern of sexual harassment. The website

contained a series of fictional accounts accusing me of harassing female students. The site also contained a message addressed to my wife at the time, warning her that she had a "right to know that quite a few girls at Purdue University have been the target of your husband's inappropriate solicitations."

24. The claims on the site are completely baseless. I notified the university about this website and the false accusations it contained. I understand and believe that I was the only person who asked the university to look into these claims. When I inquired about whether any similar complaints had been filed against me with the university, I was informed a single anonymous call was made that repeated the claims on the website and provided no details for the university to follow up on. No formal complaints were filed and no investigation conducted. Purdue University's procedures for resolving complaints of harassment and discrimination require that the university provide written notice of the investigation to the subject of such investigation. The relevant section of these procedures is attached as exhibit and can be found here: <https://www.purdue.edu/ethics/resources/resolving-complaints.php>. I was never notified of any kind of investigation. I was never found to have engaged in any wrongdoing. I continued to teach at Purdue until my retirement in 2020. Thereafter I was awarded emeritus status by my department.

25. Other pages in an interlinked network of Tumblr, Weebly, Storify and LiveJournal postings falsely accused me of defending and supporting terrorists such as Hamas, encouraging the use of violence to support the eradication of Israel, and spreading anti-Semitism and Israel-hating propaganda.

26. Shortly after the appearance of the newly created websites described above, another defamatory posting was made about me on Ratemyprofessor.com. One of the harassers posed as a former student in my American Studies 601 Class and wrote a false review on Ratemyprofessor.com. The false review read in part: "But there were moments when he made me feel uncomfortable, like standing too close or looking at me for too long. He gives off a weird vibe especially during one on one conversations. Honestly, I wouldn't want to be alone with him if I could avoid it."

27. The reviewer never had the above-described interaction with me. I know this individual did not take my 601 course. The 601 class the semester listed in the review had only five students. The five official reviews for the course, which were filed anonymously with the university to allow students

to be honest, all contained glowing reviews. Following a complaint by myself and my lawyer to the website administrator of Ratemyprofessor.com, the falsified review was removed.

28. As a result of the aforementioned defamatory postings, I have also suffered embarrassment and emotional harm. I am in constant fear that even if I am successful in removing one or more blacklisting posts, more damaging postings exist that I am unaware of, or will easily be created in the future. I have endured countless nights of lack of sleep, stress, and anxiety because of these attacks. I have been forced to hire attorneys. I have a defamation lawsuit pending in Marion Superior Court in the State of Indiana (Cause Number: 49D11 16 11 CT 040937). I have devoted hours of my time to organizing for the lawsuit against the attackers.

29. The targeted harassment and smear campaign against me due to my political beliefs and affiliations has caused significant harm to me personally and professionally. Besides negatively impacting my personal and professional relationships as discussed above, I have also suffered emotional and financial harm. I have spent many hours of my time in an attempt to identify the creators of the false posts and remove the defamatory, hurtful and harmful internet postings.

30. Because of the bogus smear websites created in my name, I spent more than $1,000 to create my own website to try to divert attention from them. I also subsequently purchased at a cost of more than $150 per year all of the domain sites in my name to make sure the attacks could not be repeated.

31. I spent much of 2016 and 2017 monitoring the bogus websites. I had to explain to family, friends and colleagues across the country that the sites were bogus and warn them about the attacks on me. This was both time consuming and demeaning. I have also had to explain to my daughter, who was eight when the attacks happened and is now 12, that I was attacked and the defamatory accusations made against me.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 30, 2021.

Bill V. Mullen
Bill V. Mullen (Jan 30, 2021 14:41 EST)

Bill Mullen

Adobe Sign Transaction Number: CBJCHBCAABAA7nmeSbZ_Sw4nyxQX60M_vU-YTlRIhSu

Exhibit 12A

EXHIBIT 12A

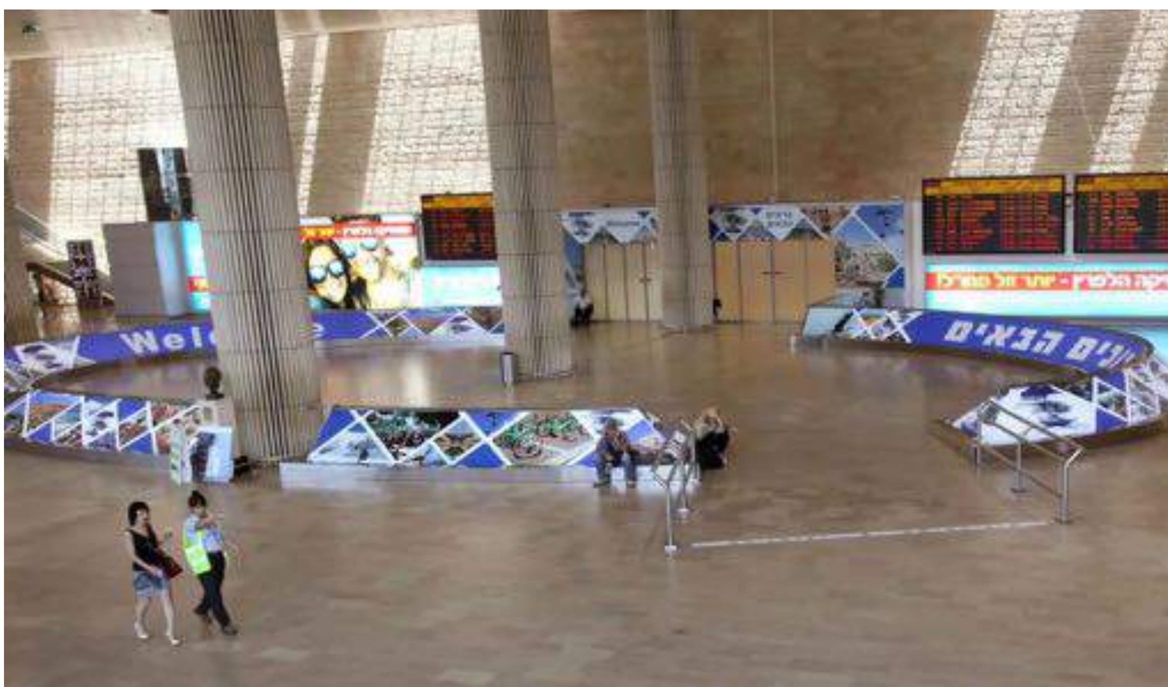
Official Documents Prove: Israel Bans Young Americans Based on Canary Mission Website

Noa Landau

Published on 04.10.2018

18.10.2018

Some Americans detained upon arrival in Israel reported being questioned about their political activity based on 'profiles' on the controversial website Canary Mission. Documents obtained by Haaretz now clearly show that is indeed a source of information for decisions to bar entry



The Strategic Affairs and Public Diplomacy Ministry is using simple Google searches, mainly the controversial American right-wing website Canary Mission, to bar political activists from entering Israel, according to documents obtained by Haaretz.

The internal documents, some of which were submitted to the appeals tribunal in the appeal against the deportation of American student Lara Alqasem, show that officials briefly interviewed Alqasem, 22, at Ben-Gurion International Airport on her arrival Tuesday night, then passed her name on for “continued handling” by the ministry because of “suspicion of boycott activity.” Israel recently passed a law banning the entry of foreign nationals who engage in such activity.

Links to Canary Mission and Facebook posts are seen on an official Ministry of Strategic Affairs document.

The ministry then sent the officials at the airport an official report classified “sensitive” about Alqasem’s supposed political activities, which included information from five links – four from Facebook and one, the main source, from the Canary Mission site, which follows pro-Palestinian activists on U.S. campuses.

A decision on Alqasem’s appeal against her deportation was expected Thursday afternoon.

Canary Mission, now the subject of major controversy in the American Jewish community, has been collecting information since 2015 about BDS activists at universities, and sends the information to potential employers. Pro-Israel students have also criticized their activities.

Lara Alqasem.

This week, the American Jewish news site The Forward reported that at least $100,000 of Canary Mission's budget had been contributed through the San Francisco Jewish Federation and the Helen Diller Family Foundation, which donates to Jewish education. The donation was handed to a group registered in Beit Shemesh called Megamot Shalom, specifically stating that it was for Canary Mission. A few hours after the report was published, the federation announced that it would no longer fund the group.

Over the past few months some of the Americans who have been detained for questioning upon arrival in Israel have reported that they were questioned about their political activity based on "profiles" about them published on Canary Mission. The documents obtained by Haaretz now show clearly that the site is indeed the No. 1 source of information for the decision to bar entry to Alqasem.

According to the links that were the basis for the decision to suspend the student visa that Alqasem had been granted by the Israeli Consulate in Miami, she was president of the Florida chapter of a group called Students for Justice in Palestine, information quoted directly from the Canary Mission. The national arm of that organization, National Students for Justice in Palestine, is indeed on the list of 20 groups that the Strategic Affairs Ministry compiled as criteria to invoke the anti-boycott law. However, Alqasem was not a member at the national level, but rather a local activist. She told the appeals tribunal that the local chapter had only a few members.

Canary Mission's profile of Lara Alqasem.

The ministry also cited as a reason for barring Alqasem's entry to Israel a Facebook post showing that "In April 2016 [her] chapter conducted an ongoing campaign calling for the boycott of Sabra hummus, the American version of Hummus Tzabar, because Strauss, which owns Tzabar, funds the Golani Brigade." Alqasem told the tribunal that she had not taken an active part in this campaign. Another link was about a writers' petition calling on a cultural center to refuse sponsorship by Israel for its activities. Yet another post, by the local Students for Justice in Palestine, praised the fact that an international security company had stopped operations in Israel. None of these links quoted Alqasem.

She told the tribunal that she is not currently a member of any pro-boycott group and would not come to study for her M.A. in Israel if she were.

The Strategic Affairs Ministry report on Alqasem is so meager that its writers mentioned it themselves: "It should be noted that in this case we rely on a relatively small number of sources found on the Internet." Over the past few months Haaretz has been following up reports of this nature that have been the basis for denying entry to activists, and found that in many other cases the material consisted of superficial

Google searches and that the ministry, by admission of its own senior officials, does not collect information from non-public sources.

The ministry's criteria for invoking the anti-boycott law state clearly that in order to bar entry to political activists, they must "hold senior or significant positions in the organizations," including "official senior roles in prominent groups (such as board members)."

But the report on Alqasem does not indicate that she met the criterion of "senior" official in the national movement, nor was this the case for other young people questioned recently at the airport. In some cases it was the Shin Bet security service that questioned people due to past participation in activities such as demonstrations in the territories, and not BDS activities.

"Key activists," according to the ministry's criteria, also means people who "consistently take part in promoting BDS in the framework of prominent delegitimization groups or independently, and not, for example, an activist who comes as part of a delegation." In Alqasem's case, however, her visa was issued after she was accepted for study at Hebrew University.

Exhibit 12B

EXHIBIT 12B

Israel Publishes BDS Blacklist: These Are the 20 Groups Whose Members Will Be Denied Entry

Noa Landau

Published on 07.01.2018

16.01.2018

Israel's Strategic Affairs Ministry had for months refused to divulge which organizations are on the list

A pro-Palestinian BDS protest in Paris, France August 13, 2015 Credit: AFP

Israel published on Sunday the full list of organizations whose activists will be barred from entering the country. The so-called BDS blacklist was released by the Strategic Affairs Ministry.

Members of the 20 organizations on the list will not be allowed to enter the country due to their support for the boycott, divestment and sanctions movement against Israel. The list primarily includes European and American organizations as well as groups from Latin America, a group from South Africa and an international umbrella organization.

The American Friends Service Committee, a Quaker organization honored with the 1947 Nobel Peace Prize for assisting and rescuing victims of the Nazis, is among the list of groups whose activists Israel has announced it will bar from entering the Jewish State. On Saturday it was revealed that the left-wing organization Jewish Voice for Peace was on the list.

Who's on Israel's BDS blacklist.

"We have shifted from defense to offense," Strategic Affairs Minister Gilad Erdan said. "The boycott organizations need to know that the State of Israel will act against them and not allow [them] to enter its territory to harm its citizens."

"No country would have allowed critics coming to harm the country to entry it," added Erdan.

>> Jewish Agency won't block BDS supporters from immigrating to Israel ■ The BDS blacklist: How Israel will discern who enters and who is barred

Interior Minister Arye Dery, whose ministry is responsible for implementing the list, said: "These people are trying to exploit the law and our hospitality to act against Israel and to defame the country. I will act against this by every means."

New Israel Fund CEO Daniel Sokatch said in response that "banning political opposition is the policy of autocracies, not democracies," adding that "our position is principled: We do not support the BDS movement. We oppose the government's travel ban and all its actions to punish those with whom it disagrees."

>> I'm a U.S. Jew on Israel's BDS blacklist. I have family in Israel. But I won't be silenced | Rebecca Vilkomerson, Jewish Voice for Peace ■ Jeremy Corbyn is patron of blacklisted pro-BDS group whose senior members will be barred from Israel

On instructions from Dery and Erdan, several individuals have already been denied entry into Israel over their support for BDS. Isabel Phiri, a citizen of Malawi living in Switzerland who is a senior official of the World Council of Churches, was put on a flight back after she arrived at Ben-Gurion Internationl Airport in December 2016. The Interior Ministry's Population and Immigration Authority said that this was "actually the first time that the State of Israel was clearly refusing entry to a tourist based on anti-Israel activity and promoting economic, cultural and academic boycotts against it."

For months the Strategic Affairs Ministry had refused to divulge which organizations are on the list. However, a joint team from the Strategic Affairs and Interior ministries had previously determined the parameters that serve as a basis for barring activists from coming into the country.

Those who hold senior or important positions in blacklisted organizations will be denied entry, as well as key activists, even if they hold no official position. Mayors and establishment figures who actively and continually promote boycotts will also be prevented from entering, as will activists who arrive to Israel on behalf of or as part of a delegation initiated by one of blacklisted groups.

The full list

European organizations:

- France-Palestine Solidarity Association
- BDS France
- BDS Italy
- The European Coordination of Committees and Associations for Palestine
- Friends of Al-Aqsa
- Ireland Palestine Solidarity Campaign
- The Palestine Committee of Norway
- Palestine Solidarity Association of Sweden
- Palestine Solidarity Campaign
- War on Want
- BDS Kampagne

American organizations:

- American Friends Service Committee
- American Muslims for Palestine
- Code Pink
- Jewish Voice for Peace
- National Students for Justice in Palestine
- US Campaign for Palestinian Rights

Other groups:

- BDS Chile
- BDS South Africa
- BDS National Committee

Exhibit 12C

EXHIBIT 12C

Procedures for Resolving Complaints of Discrimination and Harassment

Revised August 14, 2020

A. INTRODUCTION

Purdue University is committed to maintaining an environment that recognizes the inherent worth and dignity of every person; fosters tolerance, sensitivity, understanding and mutual respect; and encourages individuals to strive to reach their potential. Harassment in the workplace or the educational environment is unacceptable and will not be tolerated.

Any employee, student, campus visitor or person participating in a University activity, whether on or off campus, who has experienced or witnessed discrimination and/or harassment is encouraged to report the incident(s) promptly. Prompt reporting of complaints is vital to the University's ability to resolve the matter.

Once the University has received a report of harassment and/or discrimination, the University will take any and all necessary and immediate steps to protect the Complainant. Such actions may include taking interim steps before the determination of the final outcome of an investigation.

There are both informal and formal processes for resolving complaints of discrimination and harassment. A Complainant may elect to invoke either the Informal or Formal Resolution Process. If the Complainant finds that initial informal efforts are unsatisfactory, the Complainant may then seek formal resolution. A Complainant is not required to proceed with informal resolution before seeking formal resolution.

The University has an obligation to respond to information of which it becomes aware, whether received directly or indirectly. That is, the University’s obligation may be triggered by a direct disclosure by those who have experienced potential discrimination or harassment or by gaining indirect knowledge of such information. For this reason, the University may initiate an investigation of circumstances that involve potential discrimination and/or harassment even

Procedures
The procedures set forth in this document.

Regulations Governing Student Conduct
The rules and procedures that govern student conduct and disciplinary action as set forth by each campus.

Respondent(s)
The person or persons whose conduct is the subject of concern under these Procedures.

University
Any campus, unit, program, association or entity of Purdue University, including but not limited to Purdue University Fort Wayne, Purdue University Northwest, Purdue University West Lafayette, Purdue Cooperative Extension Service and Purdue Polytechnic Institute Statewide.

University-Initiated Investigation
An investigation initiated by the University in the absence of a Formal Complaint submitted by a Complainant. In a University-Initiated Investigation, a Respondent will be provided with written notice of the allegations forming the basis of the University-Initiated Investigation, and Section I of these Procedures will govern such investigations to the greatest extent practicable.

University Investigator
A person appointed by the Director, Chancellor or Dean of Students to investigate a Formal Complaint pursuant to Section I of these Procedures. Any individual designated to conduct an investigation must receive appropriate annual training and be approved to serve in this role by the Vice President for Ethics and Compliance. A University Investigator may be a University employee or an external professional.

E. GENERAL PROVISIONS

- ## Delegation

the number of witnesses and volume of information provided by the parties, or for other legitimate reasons. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness, due process and fairness with promptness.

Notwithstanding the foregoing, a complaint relating to alleged discrimination or harassment occurring during a Complainant's employment by the University must be properly filed within 10 days following termination of the Complainant's employment with the University.

- ## Expectations Regarding Participation by the Parties

All employees and students have an obligation to cooperate in the conduct of these Procedures. Failure to do so may result in disciplinary action. In the event that a Complainant chooses not to participate in an interview or declines to provide information requested by the University Investigator, the Chancellor, Dean of Students or Director may dismiss the complaint if there is no independent information upon which to proceed. The Chancellor, Dean of Students or Director shall provide written notice of such dismissal to the Complainant(s) and the Respondent(s). In the event that a Respondent chooses not to participate in an interview or declines to provide information requested by the University Investigator, the University Investigator may conclude that such information or interview, if provided or conducted, would be adverse to the Respondent. Where the complaint or the circumstances involve potential criminal conduct, however, a party may choose to remain silent during the process, and such silence will not be held as an admission or considered to be adverse to the party.

In the event that an impacted party chooses not to participate in an interview or declines to provide information requested by the University Investigator in connection with a University-Initiated Investigation, the Chancellor, Dean of Students or Director may dismiss the University-Initiated Investigation.

All University community members are expected to provide truthful information in any report or proceeding under these Procedures. Any person who knowingly makes a false statement in connection with the initiation or resolution of a complaint or University-Initiated Investigation under these Procedures may be subject to appropriate discipline. Making a good faith report of discrimination or harassment that is not later substantiated is not considered a false statement.

- ## Special Circumstances in the Event of Conflict of Interests or Bias

Exhibit 13

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Attorneys for Intervenors

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DAVID ABRAMS,

Petitioner,

vs.

REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Respondent,

DOE 1, DOE 2, DOE 3, DOE 4, DOE 5, DOE 6, DOE 7, DOE 8,

Intervenors,

vs.

DAVID ABRAMS,

Defendant in Intervention.

Case No.: 19STCP03648

DECLARATION OF NOAH HABEEB IN SUPPORT OF INTERVENORS' OPPOSITION TO PETITION FOR WRIT OF MANDATE

Filed Concurrently with Memorandum of Points and Authorities in Support of Intervenors' Opposition to Petition for Writ of Mandate

Judge: Hon. James C. Chalfant
Dept.: 85

Action Filed: Aug. 22, 2019

Trial Date: March 11, 2021
Time: 9:30 am

I, NOAH HABEEB, declare as follows:

1. I am over 18 years old and fully competent to make this declaration.

2. I make this declaration based on my personal knowledge unless otherwise indicated.

3. I am a Jewish male of Lebanese Arab descent.

4. I currently work as a coordinator for an immigration clinic for queer and transgender asylum seekers based out of a synagogue in Manhattan.

5. From 2012 to 2018, I attended Tufts University, earning both a bachelor's degree and a master's in Urban and Environmental Policy & Planning.

6. While I was at Tufts, I became active in organizing for Palestinian rights, first as part of my campus's Students for Justice in Palestine club and later as a founder of a campus chapter of Jewish Voice for Peace.

7. I continue to be involved in the movement as part of the coordinating committee for the New York City chapter of Jewish Voice for Peace and as a chapter leader for JVP Action, the political and advocacy arm of Jewish Voice for Peace.

8. In 2016, I discovered that there was a profile about me on the blacklisting website Canary Mission. The profile twisted my activism and falsely accused me of "whitewashing" terrorists and attacking Jews. For example, because I participated in an action calling on AirBnB not to list discriminatory rentals in Jewish-only settlements on Palestinian land in the West Bank, which are illegal under international law, Canary Mission claimed that I had "attacked" Jews living in the West Bank.

9. In July 2017, I participated in an interfaith delegation of human rights activists to Israel/Palestine. I was nervous because the Israeli government had recently passed a law banning people who support boycotts, divestments, and sanctions against Israel from entering the country, and I had taken part in a divestment campaign on my campus earlier that year. I was booked on a Lufthansa flight out of Dulles International Airport. The day of the flight, I tried to check in online, but I received an error message saying that because I was flying with a service animal, I could not check in online. I was not flying with a service animal.

10. At the Lufthansa check-in counter at the airport, another member of the delegation was ahead of me in line. I heard her express shock at something the Lufthansa agent said, and then she stepped aside to allow the line to keep moving. When it was my turn, I saw that the person at the counter had a list of names of individuals who were not allowed to board the flight. The list contained my name and the names of people affiliated with our delegation. The Lufthansa agent told me that the list came

from the Israeli government and not the Transportation Security Administration, and that we were not allowed to board the flight because of that list. We spent the next two hours trying to find answers and be allowed to board our flight, but we were unsuccessful.

11. Earlier in 2017, I was one of the core organizers at Tufts University campaigning for a student government resolution calling on the university to end its investments in companies that facilitate Israel's occupation of Palestinian territories and to enact a socially responsible investment policy for the university endowment.

12. To protect student safety and allow student senators to vote freely on that resolution, the student government prohibited recording during the meeting on the vote and prohibited naming individual senators and how they voted. After the resolution passed, student senators forwarded me emails they had received threatening to expose those senators who had voted on the resolution, unless they announced that they voted against or abstained from voting on the resolution. An entire website was set up calling for the Tufts student government to be disbanded because of the divestment vote. The site has since been taken down, but an archived version is still available at https://web.archive.org/web/20170420115940/http://www.rejectthehate.com/.

13. After the vote, I and other members of Students for Justice in Palestine received threatening messages on social media using racial slurs, blaming us for the Holocaust, calling us *kapos*—or Jews who acted as agents of Nazis in persecuting other Jews during the Holocaust—and calling for our extermination.

14. The harassment I experienced discouraged me from being active on social media. While I know that social media can help me gain a professional platform and make it easier to share the things I write, the potential benefits of having a platform are not enough to overcome the negatives of the deeply personal name calling and threats from online mobs incited by Canary Mission.

15. In 2017, a student on campus sent out a copy of the Canary Mission profile about me to the email list of a campus organization. Seeing the defamatory profile publicized in this way caused me concern about my job prospects and my financial security after college.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 1, 2021.

Noah Elias Habeeb
Noah Elias Habeeb (Feb 1, 2021 17:43 EST)

Noah Habeeb

Adobe Sign Transaction Number: CBJCHBCAABAAaaUi8NOf9dyYrW6Y3Tq0GPUJ2lOHXsan

Exhibit 14

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DAVID ABRAMS,

Petitioner,

vs.

REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Respondent,

DOE 1, DOE 2, DOE 3, DOE 4, DOE 5, DOE 6, DOE 7, DOE 8,

Intervenors,

vs.

DAVID ABRAMS,

Defendant in Intervention.

Case No.: 19STCP03648

DECLARATION OF MAYA JOHNSTON IN SUPPORT OF INTERVENORS' OPPOSITION TO PETITION FOR WRIT OF MANDATE

Filed Concurrently with Memorandum of Points and Authorities in Support of Intervenors' Opposition to Petition for Writ of Mandate

Judge: Hon. James C. Chalfant
Dept.: 85

Action Filed: Aug. 22, 2019

Trial Date: March 11, 2021
Time: 9:30 am

I, MAYA JOHNSTON, declare as follows:

1. I am over 18 years old and fully competent to make this declaration.

2. I read and write fluently in the Hebrew and English languages. I am a professional translator on behalf of 9782079 Canada Inc. I have 15 years of experience translating. I hold an M.A. in human rights from University College London.

3. I have accurately and to the best of my ability translated to English the document attached as Exhibit from its original Hebrew, which is attached as Exhibit .

4. Exhibit is a decision of the Supreme Court of Israel in Administrative Appeal 2966/19, *Human Rights Watch et al. v. Minister of Interior et al.*, (also available at https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts%5C19%5C660%5C029%5Cz16&fileName=19029660.Z16&type=4).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 30, 2021.

Maya Johnston (Jan 30, 2021 09:04 EST)

Maya Johnston

Adobe Sign Transaction Number: CBJCHBCAABAAc0jNqvv2yh6joQXv9Dc682hjaz9zjD0

Exhibit 14A

#

Judgment

Justice N. Hendel:

The appeal at bar focuses on the judgment of the Jerusalem District Court sitting as the Court for Administrative Affairs (AP 36759-05-18; Justice **T. Bazak-Rappaport**) dismissing the petition filed by the Appellants and upholding the decision made by Respondent 1 (hereinafter: the Minister of Interior) not to renew the employment permit issued to Appellant 1 for Appellant 2 (hereinafter: HRW and Shakir or the Appellant respectively), and to remove the latter from Israel. The decision was made on the grounds that he "had actively and persistently supported a strategy calling for boycott, divestment and sanctions against Israel".

Background and parties' arguments

1. In 2016, Human Rights Watch, a human rights organization which was awarded the Nobel Peace Prize in 1997 and describes itself as "one of the largest, oldest and most important human rights organizations currently active in the world", with operations in dozens of countries, chose Omar Shakir for the position of "Israel and Palestine researcher". Following this decision, made in light of his "extensive experience in fact-checking on the ground and in documentation", HRW applied to the Respondents for a permit to employ Shaker as an expert foreign worker. On February 20, 2017, the application was denied, "in view of the position of the Ministry of Foreign Affairs", which noted in a memo that HRW engaged "in politics in the service of Palestinian propaganda while falsely raising the banner of 'human rights'". However, shortly thereafter, the Ministry of Foreign Affairs changed its position for "reasons related to foreign relations". In light of the ministry's new position, the Respondents decided to grant Shakir a temporary residency and work permit in Israel valid until March 31, 2018. At that point, Karen Urbach and Shurat Hadin, who were subsequently named Amicus Curiae in the hearing of the petition, which is the subject of the appeal at bar, filed a petition against the decision (AP 47430-04-17, hereinafter: **the first petition**). This petition led to another development: The Ministry of Strategic Affairs recommended revoking Shakir's visa and denying him re-entry into the country. While the ministry admitted such a measure would attract criticism against Israel, it added: "it is untenable to allow a person who has been consistently involved in activities intended to harm the State of Israel over many years to work in the country as if nothing has happened". In this context, the ministry's report listed Shakir's "key activities" in the boycott field, including his involvement in attempts to influence FIFA to take steps against six Israeli soccer clubs. In light of this recommendation, the Minister of Interior decided to reconsider Shakir's status, and after a written hearing, reached the conclusion that "Mr. Shakir's employment in Israel and continued residency in the country should not be approved", despite the contrary position of the Ministry of Foreign Affairs (hereinafter: the minister's decision). In his letter to Appellants' counsel, the permit division director clarified that the decision was based on Shakir's personal actions in the boycott field and did not express a blanket refusal to allow HRW to employ a foreign expert. According to the director: "the fact that no information has surfaced regarding such activities from the time he joined [HRW] does not negate Mr. Shakir's activities prior to that time (this remains true even if the information on FIFA is disregarded). As such, Shakir must not be allowed to remain in Israel "under the guise of an organization representative".

2. Following the minister's decision, the first petition was withdrawn and the petition which is the subject of the appeal herein was filed. In that petition, the Appellants made several arguments addressing the constitutionality, lawfulness, proportionality and reasonableness of the decision. In its judgment, the Court for Administrative affairs undertook a lengthy review of the Appellant's involvement in the promotion of boycotts against the State of Israel, based on the opinion of the Ministry of Strategic Affairs and additional evidence presented by the Amicus Curiae. The review revealed this involvement was systemic and sustained, that it began back in 2006 and manifested, among other things, in the

founding of a student organization that calls for a boycott of Israel and a string of lectures and activities in which he promoted the notion of boycotts. These activities, it was held, continued after Mr. Shakir entered Israel and included, along with HRW, efforts "to have Israeli football clubs banned from FIFA"; tweets from May 2017 regarding reports and activities both by HRW and other parties in the boycott field; as well as "hundreds of quotes [...] indicative of clear and consistent engagement in boycott promoting activities recently as well".

In light of these findings the Court for Administrative Affairs dismissed the Appellants' petition, holding that the minister's decision falls within the scope of his powers pursuant to Section 2(d) of the Entry into Israel Law - 1952 (hereinafter: the Entry into Israel Law), meets the test of proportionality, and is even "self-evident".

The court addressed the roots of the arrangement set forth in Section 2(d) of the Entry into Israel Law and the substantive connection between it and the Law for the Prevention of Harm to the State of Israel through Boycott - 2011 (hereinafter: The Boycott Law). It noted that a petition challenging the constitutionality of the Boycott Law had been largely dismissed with a finding that the call for a boycott undermines the market of opinions such that the defensive democracy doctrine justifies measures against it. It was further noted that a petition challenging the constitutionality of Section 2(d) itself was still pending before the High Court of Justice (HCJ 5092/18 hereinafter: the constitutional petition).

Therefore, the hearing focused on the implementation of the general arrangement in the case at bar through the prism of the interpretation and general principles laid out in LAA 7216/18 **Alqasem v Ministry of Interior-Population and Immigration Authority** (October 18, 2018) (hereinafter: **Alqasem**), including the finding that the power to deny boycott activists entry into Israel was designed to prevent abuse of the visit rather than serve as a punitive measure. The Court for Administrative Affairs ruled there was no impediment to holding Appellant's actions and statements prior to entering Israel against him as he had failed to meet the burden and prove he had deceased from his systemic, ongoing activities to promote the boycott movement. Moreover, despite being given a chance to do so, Shakir chose to refrain from making a declaration that he was abandoning his calls for a boycott and undertaking not to promote the boycott movement during his stay in Israel. The evidence presented indicated that "concern over the exploitation of his presence in the country to encourage boycott activism has, in fact, materialized". The Appellants did argue that the activities attributed to Shakir do not constitute a call for a boycott as defined in the law since they focused on parties involved, as they allege, in concrete human rights violations rather than the State of Israel "in and of itself". Nevertheless, the court found that Shakir's posts, the positions he voiced in the past and the sweeping nature of the activities in which he engaged after receiving the visa indicate this was an "artificial" distinction and that the call was effectively a call for a boycott solely due to connections to areas under the control of the State of Israel. Therefore, even presuming that following his entry into Israel, the Appellant acted in his capacity as a representative of HRW, which is not defined as a boycott organization given the wide scope of his work, there was no flaw in the decision of the Minister of Interior to deny his entry into the country.

Appellants' arguments

3. This has led to the appeal herein which focuses, as the Appellants argue, on the "constitutionality and interpretation" of the Entry into Israel Law (Amendment No. 28) - 2017, Book of Laws 2610, 458 (hereinafter: Amendment 28), which restricts entry into Israel by individuals who engage in boycott activities against the State. On the **constitutional plain**, the Appellants contend that denying entry into Israel based on political views violates "the core of freedom of political speech", undermines the principle of equality and threatens the nucleus of the country's democratic nature. Therefore, Section 2(d) of the Entry into Israel Law does not predicate this sanction on the presence of damage as a result of the call to a boycott, meaning there is a disproportionate impingement on fundamental rights, both those

of the foreign nationals whose entry is denied and of Israeli citizens and Area residents who wish to interact with them. This is in keeping with the ruling in HCJ 5239/11 **Avneri v. Knesset** (April 15, 2015) (hereinafter: **Avneri**) with respect to Section 2(c) of the Boycott Law. The Appellants also challenge the minister's decision on the **interpretive plain**, arguing that the Appellant does not come under the terms of Section 2(d) of the Entry into Israel Law since his calls for a boycott were not "political" in nature and were not based on the ties to the State of Israel or an area under its control per se. The Appellants recall that Section 2(d) concerns individuals who call for a boycott "as defined in the Law for the Prevention of Harm to the State of Israel through Boycott" - in other words, according to Section 1 of the Boycott Law: "deliberately abstaining from financial, cultural or academic contact with an individual or another party solely because of their connection to the State of Israel, one of its institutions or an area under its control". According to the Appellants, the language of the definition, like the need to minimize the impingement on freedom of movement, lead to the conclusion that a boycott that is not undertaken solely because of a connection to the State of Israel, such as a selective boycott of entities that violate human rights, does not come under the terms of the definition, or, it follows, under the terms of Section 2(d) of the Entry into Israel Law. The Appellants find confirmation for this observation in **Avneri** and conclude that Shakir's actions as a private individual, and more so, as an HRW employee, do not amount to a boycott of Israel, as they are designed to protect human rights and directed against parties that had acted injuriously. In this sense, the Appellants believe it to be a widespread and legitimate practice in which human rights organizations engage and which conforms to the trend toward expanding the application of international law to business corporations.

The Appellants add that even if their interpretation of Section 2(d) of the Entry into Israel Law were dismissed, it would not rectify other flaws in the minister's decision. The Appellants recall that the affair began with the rejection of HRW's application to employ Shakir on the grounds that the organization engaged "in politics in the service of Palestinian propaganda while falsely raising the banner of 'human rights'" - a decision the Appellants claim the Respondents had to withdraw due to the backlash it generated. In these circumstances, the Appellants believe the minister's current decision, which relied on statements and actions from Shakir's distant past was no more than another attempt to silence HRW's criticism in a roundabout way - by disqualifying its representative. This impression grew stronger, the Appellants claim, over the course of the hearing, when the Respondents focused on the Appellant's conduct as HRW's representative in Israel, and in so doing, revealed that it was HRW's criticism, not necessarily Shakir's personal attributes, to which they took exception. As such, the minister's decision is tainted by bad faith, based on extraneous considerations of silencing criticism and cannot remain standing.

Moreover, the Appellants argue that the minister's decision fails to conform with the relevant criteria (Population and Immigration Authority, "Criteria for denying boycott activists entry into Israel" (July 24, 2017), hereinafter: the criteria), which stipulate, according to the Appellants, that entry into Israel by activists in organizations would be considered with respect to the organization's activities. According to the Appellants, Shakir's Twitter account, the arena where much of his alleged boycott activism took place, is a "work tool", and the tweets posted on it represent HRW's positions and are made on its behalf. At any rate, given that the State of Israel does not consider Human Rights Watch a boycott organization, and the judgment clarifies that a request by the organization to employ another representative would be considered on its merits, these posts cannot be seen as a call for a boycott. Had Shakir taken advantage of his position and personally acted to promote a boycott, the situation would have been different, but, in the current state of affairs, he cannot be removed from Israel over his activities within the organization. As for the "personal" statements referred to by the lower court- not only do some of them constitute analysis rather than a call for action, but all of these statements preceded the Appellant's entry into Israel in early 2017. Therefore, they do not attest to "consistent and continuous" boycott activism that meets the criteria for "independent" boycott activists.

Finally, the Appellants challenge the interior minister's use of discretion, arguing that the decision is disproportionate and may amount to a wrongful punitive measure (as opposed to the prevention of boycott activism). Either way, the Appellants maintain that Shakir's matter presents special reasons for granting a temporary residency visa under Section 2(e) of the Entry into Israel Law, since his removal would harm him, HRW, the population benefitting from their humanitarian services and the status of the State of Israel.

Petitioner's arguments

4. On the other hand, Respondents for the State affirm the ruling of the trial court and maintain that the appeal should be dismissed in the absence of cause for intervention in the factual findings with respect to the Appellant's consistent and continuous boycott activities, or in the discretion exercised by the Minister of Interior based on these factors.

The Respondents opened by noting that the constitutional petition regarding Amendment 28 to the Entry into Israel Law is still pending and argued that the Appellants' constitutional grievances with the minister's decision were raised in the administrative petition in "an incidental manner". The Respondents therefore maintain that the lower court was correct to focus on the administrative aspects of the decision and argue that the considerable weight the Appellants gave the constitutional aspect in the proceeding herein amounted to an "impermissible broadening of the scope". On the merits, the Respondents maintain the Appellants had entirely failed to substantiate a violation of constitutional rights: foreign nationals have no constitutional right to enter Israel, and it is highly doubtful that the Appellants have standing with respect to arguments around alleged harm to the local population. At any rate, the indirect harm to the Israeli public, which can engage in discourse with the relevant activist by other means, certainly does not lie at the core of the right to free speech. Moreover, even if we presume that the concrete arrangement set forth in Sections 2(d) and (e) is unconstitutional, the minister's decision remains intact pursuant to his general power to deny entry into Israel.

5. On the administrative aspect, the Respondents stress that Shakir had exhausted the validity of the temporary residency visa he had been given, such that the decision before us is not a visa revocation, but rather non-renewal. The Respondents recalled that Shakir's boycott activities subsequent to entering Israel were mentioned back in the updated recommendation of the Ministry of Strategic Affairs dated March 8, 2018, such that this argument did not constitute an "artificial" adjustment to the judgment in **Alqasem**, as argued by the Appellants. The Respondents briefly list the findings of the trial court with respect to the Appellant's systematic boycott activism, including following his entry into Israel, and note that the trial court followed the path laid down in **Alqasem** when it gave considerable weight to the fact that the concern over the exploitation of his presence in the country to encourage boycott activism has, in fact, materialized".

The Respondents maintain that the broad discretion the Minister of Interior has with respect to denying entry into Israel survives the enactment of the specific arrangements with respect to boycott activists (Amendment 28). Given the findings of the first instance, the minister's decision protects Israel's right to fight the boycott threat without violating a vested right or material interest of the Appellant's, and as such, it is "deeply entrenched in the very center of the range of reasonableness", and warrants no intervention. In other words, the general powers vested in the Minister of Interior suffice to legitimize his decision in Shakir's matter.

Nevertheless, the Respondents note that the Appellant's matter was examined through the prism of the specific arrangement in the Entry into Israel Law as well, and was found to come under the terms of Section 2(d) of the Law, since the actions in which the Appellant engaged prior to entering Israel, and thereafter, do consolidate into compelling cause not to renew his temporary residency visa. In this context, the Respondents point to the

scope and intensity of his earlier actions and recall that the Appellant founded and headed an organization that calls for a boycott of Israel, and later participated in a slew of forums in which he praised the BDS movement. When taken together with his refusal to declare before the trial court that he was forsaking the boycott path and his involvement, post-entry into Israel, in attempts to have FIFA withdraw sponsorship of soccer games in the Area, this does indicate that the Appellant's boycott activism never ceased. Therefore, and in keeping with the parameters established in **Alqasem**, the passage of time does not extricate Shakir from the terms of Section 2(d) of the Entry into Israel Law. At any rate, the Appellant's actions following his entry into Israel - beginning with soccer and ending with various statements and posts on his Twitter account - preserve the continuum and attest that he "continues to call for a boycott consistently".

According to the Respondents, the test of action and actor shows that the Appellant has called for a wholesale boycott of the State of Israel over the years, such that the attempt to present his activities as a call for selective boycott over human rights abuses lacks substance. Among other things, the Appellant signed a petition against contact with the State of Israel, alleging it committed war crimes; there are numerous statements attributed to him in which Israel's overall policies are described as "Apartheid"; he has called to remove all Israeli properties in the Area from commercial websites. In these circumstances, the Respondents maintain there is no doubt that the Appellant consistently works to promote a boycott of "businesses, companies and more, solely because of their connection to the State of Israel, one of its institutions, or an area under its control", and does come under the terms of Section 2(d) of the Entry into Israel Law.

According to the Respondents, the statements and posts on Shakir's Twitter account were made in his personal capacity, as ruled by the trial court, which suffices to pull the rug from under the argument that the Appellant does not meet the criteria. Moreover, given Shakir's prolonged independent activities in the boycott field, it is inconceivable that the criteria sought to grant him immunity simply because he now acts under the auspices of Human Rights Watch, which is not defined as a boycott organization. While it is true that since work on the Israeli-Palestinian issue forms a negligible part of HRW's work it will not necessarily be put on the list of boycott organizations, this proportionate policy, however, is not designed to give a free hand to promote a boycott of Israel contrary to the purpose of Section 2(d) of the Entry into Israel Law. Either way, even if the Appellant does not meet the criteria, the Respondents maintain that the Minister of Interior may remove him from Israel by virtue of his general powers.

The Respondents reject the allegation that they are motivated by extraneous considerations and stress that the minister's decision is directed solely at Shakir - as clarified in the judgment as well - and was not meant to undermine the work of HRW as a whole. In their view, the Appellants failed to prove that non-renewal of Shakir's visa would cause him or HRW any material damage and the latter does not meet the criteria for exclusion under Section 2(e) of the Entry into Israel Law: No personal humanitarian grounds have been presented to justify his entry and there is no cause for intervention in the position of the state, which is now shared by the Ministry of Foreign Affairs, that no state-interest exclusion is present either. As a result, the Respondents maintain the appeal should be dismissed.

The position of Amicus Curiae and parties' responses

6. Over the course of the hearing of the Appellants' petition, Karen Tzadok-Urbach and Shurat Hadin, the petitioners in the first petition, along with Legal Forum for the Land of Israel and NGO Monitor, joined the proceedings as Amicus Curiae. By my decision dated July 24, 2019, further Amicus Curiae were added, namely Amnesty International (hereinafter:

Amnesty) and three former senior foreign service officials, Ilan Baruch, Alon Liel and Eli Bar Navi.

In its brief, NGO Monitor endorsed the findings made in the judgment with respect to the nature of Shakir's boycott activities added to them. NGO Monitor also sought to prove that the human rights discourse touted by the Appellants is nothing but a fig leaf for their hostility towards the State of Israel. NGO Monitor believes Shakir's removal from Israel is necessary since "he exploits and distorts the field of human rights in order to promote boycott action against the State of Israel" systematically and deliberately, and there is no basis for the concern that it would impact other human rights organizations.

Karen Tzadok-Urbach and Shurat Hadin added that the root of the evil is not Shakir's personal statements, but rather his being a representative of Human Rights Watch who, they allege, undermines the State of Israel, calling, inter alia, for sanctions against IDF soldiers. In fact, these parties believe that in the absence of vested right to enter Israel, the Appellants have no standing.

7. On the other hand, the former senior foreign service officials claim that the minister's decision would cause "tremendous, long-term damage to Israel's foreign relations and to its image as an open, democratic country". The former officials say Shakir's removal from Israel over activities designed to divert investment away from the settlements would send a message of "intolerance and lack of respect" for a position that is prevalent in the West, stemming from the assessment that the settlements are unlawful - and create the impression that the state is willing to sacrifice fundamental democratic principles for the settlements. They, therefore, urge making a distinction between the promotion of a full boycott of the State of Israel, while casting doubt on its right to exist, and targeted actions focused on the Area and designed to persuade businesses not to take part in human rights violations.

Amnesty maintains that every commercial enterprise has a "responsibility to respect international humanitarian law and human rights wherever it operates". According to Amnesty, "The establishment of settlements in the Area violates international law and impinges on human rights - both by its own right and as a catalyst for other violations". In these circumstances, "any business activity" in settlements "patently and unavoidably" contributes to breaches of international law, such that "a reasonable interpretation of UN guiding principles means commercial companies must refrain from engaging in any activities in the settlements". Removing a "human rights defender" who has called on business enterprises to act accordingly - an accepted legitimate practice for civil society and human rights organizations - therefore, raises difficulty. Such removal would be incongruent with the obligation to allow human rights defenders to act freely and without fear of retribution (as per the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms); It may produce a wide chilling effect; and it unreasonably and disproportionately impinges on the rights to freedom of expression and freedom of association, which are recognized under international law and essential for the work of human rights defenders. Amnesty believes that calling on business enterprises to uphold international law does not constitute a call for a boycott, and in any event, "those who promote and support such calls must be allowed to express their opinions freely".

The Respondents for the State, however, maintain Amnesty's position "is made up entirely of general arguments divorced from the facts" on which the trial court relied. Thus, contrary to the description expressed in Amnesty's position, the lower court ruled that Shakir did not confine himself to a call to "abstain from business activities that contribute to human rights violations". In other words, Shakir is not a "human rights defender" who called for corporate responsibility, but an activist who promotes a boycott solely because of the connection to the State of Israel and an area under its control. This being the case, the general

arguments about the importance of protecting "human rights defenders" are irrelevant. The State reiterates, in this context, that the minister's decision is confined to Shakir's matter and that Human Rights Watch has not been classified as a boycott organization, meaning an application on its part to employ another representative would be considered on its merits. The Respondents also note that Amnesty's position completely ignores Israeli domestic law, including the relevant provisions of the Entry into Israel Law and the Boycott Law, and seeks to bring up issues that have been discussed and ruled by this court, in its different capacities, in **Avneri** and **Alqasem**. The Respondents, therefore, believe this position has no bearing on the action's outcomes and insist the appeal must be dismissed.

The Appellants responded to the supplementary brief submitted by the Respondents for the State, arguing it was based on "alternative facts" regarding the nature of Shakir's and HRW's activities. The Appellants stress that Human Rights Watch focuses on the incorporation of corporate responsibility into the field of human rights, but does not call for boycotts and is not a member of the BDS movement. The Appellant, they allege, is committed to this policy and has "followed it fully and without exception" since joining the organization. In other words, his activities as a representative of the organization are not carried out due to a connection to the State of Israel or an area under its control, as Respondents argue and as emerges from the judgment being appealed, but to prevent human rights violations. Moreover, they also maintain that even prior to joining HRW, Shakir did not call for a wholesale boycott of the State of Israel and stress that this was irrelevant either way given the passage of time.

The Appellants conclude their response by addressing the constitutional plain, insisting that the constitutional petition does not obviate deliberation on this issue as part of the proceedings herein. On the contrary, the appeal frames the deliberation in concrete facts, uncovers angles that are absent from the petition and cannot be ruled without addressing the constitutional aspect. It is noted that later in the hearing held before us, the State presented an additional argument for rejecting the constitutional arguments - the fact that the Knesset was not named party to the proceedings, contrary to the provision of Section 17(c1) of the Knesset Law - 1994. On the other hand, the Appellants maintained that the matter herein involved an indirect challenge as the remedy sought is confined to the revocation of the administrative decision with respect to the petitioner, such that the Knesset need not have been named respondent.

8. On the eve of the hearing of the appeal, my colleague, President **E. Hayut** dismissed a motion brought by the Appellants under Section 26(2) of the Courts Law [Incorporated Version] - 1984 (or Subsection (1) therein, which was relevant at the time), ruling that "at this time", there was no room to expand the panel hearing the appeal. This request was made again over the course of the hearing before us. However, given the specific nature of the issues requiring a ruling in the current proceeding - as clarified below - I have found no cause to depart from the decision of the president and vary from the rule whereby "The Supreme Court shall adjudicate by a bench of three" (Section 26 of the Courts Law). Therefore, I shall now present the normative basis required for a decision in the matter at hand, while developing and expanding the principles adopted in **Alqasem**, where this court first addressed the interpretation of Amendment 28.

Deliberation and decision

9. Prior to the enactment of Amendment 28, applications to enter Israel made by boycott activists were handled pursuant to the general powers vested in the Minister of Interior for granting temporary residency and entry visas under Section 2(a) of the Entry into Israel Law. The section provides no guidelines for the exercise of these powers and gives the minister wide, albeit not unlimited, latitude. First, the minister may take into account only considerations that fall in line with the purposes of the Entry into Israel Law: The sovereignty principle which gives a political entity the right to restrict entry into its territory in order to

protect its identity and culture, its residents' economic interests, public order, national security and the safety of its citizens, as well as the need to protect the rights of temporary residency visa holders (HCJ 7803/06 **Abu Arafa v. Minister of Interior**, paragraph 6 of my opinion (September 13, 2017)). The minister is also required to strike a proper balance among all, sometimes competing, considerations, as his decision, like other decisions made by administrative authorities, are subject to the test of reasonableness (HCJ 758/88 **Kendal v. Minister of Interior**, IsrSC, 46(4) 505, 527-528 (1992)).

However, given the increasing calls for a boycott of the State of Israel, the legislator has decided to expand the response provided by the Boycott Law internally, (**Alqasem**, paragraphs 12-14 of the opinion of Justice U. Vogelman), and incorporated the following provisions into Section 2 of the Entry into Israel Law:

> (d) No visa and temporary residency permit of any kind shall be granted to a person who is not a citizen of Israel or a person holding a permanent residency visa in the State of Israel if they or the body or organization on behalf of which they act had knowingly issued a public call to boycott the State of Israel as defined in the Law for the Prevention of Harm to the State of Israel - 2011, or has undertaken to participate in such a boycott.
> (e) Subsection (d) notwithstanding, the Minister of Interior may grant a visa and temporary residency permit as stated in said subsection for special reasons that will be recorded.

This arrangement, the concrete purpose of which is fighting the boycott movement against Israel, and the details of which I shall address shortly, limits the broad discretion held by the Minister of Interior pursuant to his general powers on two levels: **First**, it defines denying boycott activists entry into the country as default, and allows the minister to depart from this rule only "for special reasons that will be recorded". **Second**, even assuming Amendment 28 does not create a negative arrangement with respect to the application of general powers held by the Minister of Interior with respect to individuals involved in boycott activities, it is clear that the substantive criteria incorporated into this arrangement "project" on the manner in which the general powers are exercised and on the breadth of the minister's discretion within them (**Alqasem**), paragraph 13 of my opinion; see also paragraphs 16-17 of the opinion of Justice U. Vogelman). Therefore, the minister's decision must be put to the test of the concrete arrangement stipulated in the Entry into Israel Law.

The constitutional aspect

10. While the Appellants impugn Amendment 28 itself, arguing that it disproportionately impinges on the constitutional rights to equality and freedom of expression, and even undermines the fundamental principles of democracy, it is precisely because of the importance of these arguments that they belong in a direct challenge against Sections 2(d) and (e) of the Entry into Israel Law, in a suitable action, and need not be addressed in an indirect challenge ancillary to the specific application of the power in Shakir's matter.

While it is true that a judicial instance that hears a matter lawfully brought before it does have jurisdiction to deliberate on the constitutionality of the relevant norm within the framework of an indirect challenge, and make a ruling on this issue for purposes of that matter (see, e.g. HCJ 2311/11 **Sabah v. Knesset**, paragraphs 23 and 28 of the opinion of President A. Grunis (September 17, 2014) (hereinafter: **Sabah**); HCJ 9369/19 **Medical Intern Society v. Minister of Labor, Welfare and Social Services**, paragraph 10 (January 5, 2017); HCJ 6871/03 **State of Israel v. National Labor Court**, IsrSC 58(2) 943 (2003)). In fact, it may be argued that an indirect challenge presents certain advantages, such as its

inherent association with a specific set of facts, as opposed to the abstractness of a direct challenge, which may be premature (see and compare, **Sabah**, paragraphs 23 and 28 of the opinion of President A. Grunis; CrimApp 8823/07 **A. v. State of Israel**, IsrSC 63 (3) 500, paragraph 9 (2010); Yitzhak Zamir **Administrative Power: Judicial Review Procedures**, Volume 4, 2675 (2017) (hereinafter: **Zamir**)). The general recognition of jurisdiction to deliberate and rule on the constitutionality of a law as part of an indirect "offensive" challenge applies to the Court for Administrative Affairs as well (**Sabah**; see Yigal Marzel, "The hearing of petitions with regards to the validity of laws", **Eliahu Mazza Book**, 167, footnote 12, (Aharon Barak, Ayala Procacccia, Sharon Hanas and Raanan Giladi, Eds., 2015)) - As such, the trial court could have addressed the constitutional arguments presented by the Appellants, despite it lacking jurisdiction to deliberate on these arguments in a direct challenge to the constitutionality of Amendment 28 (for a general discussion of the "centralism" of judicial review over primary legislation, see Aharon Barak, "Judicial Review over Constitutionality of Law and the Status of the Knesset", **Hapraklit**, Vol. 47, 5, 6-7 (2005); Yigal Marzel, "The Status of the Knesset in Petitions Concerning Constitutionality of Law", **Mishpatim** 39, footnote 98 (2010) (hereinafter: **Marzel**); and Uri Aharonson, "The Democratic Argument for Decentralized Judicial Review", **Mishpat Umimshal**, 16 57-59 (2015) (hereinafter: **Aharonson**)). Moreover, since an indirect challenge is aimed at a general legislative norm, the premise is that, "it would not be fair to lay the burden of challenging it by way of a direct challenge on an individual", such that existing jurisdiction should be employed and the Appellants' constitutional arguments should be reviewed on their merits (CFH 1099/13 **State of Israel v. Abu Freih**, paragraph 9 of the opinion of President A. Grunis (April 12, 2015) (hereinafter: **Abu Freih**); this holds truer still when the case concerns foreign nationals who, it seems, should not be burdened with correcting local legislation).

11. Nevertheless, jurisdiction is one thing and discretion quite another. While jurisdiction to review the Appellants' argument in an indirect challenge does exist, a review of all relevant considerations leads to the conclusion that it should be avoided, and that the constitutional aspect of Amendment 28 should be left for review in a direct challenge (such as the constitutional petition pending before the High Court of Justice). As noted by the scholar Zamir, a direct challenge should be preferred:

> Inter alia, when an administrative decision arouses grave questions of legal, social or national policy; when it has a broad, significant impact making it important for the court to allow other parties with interests in the matter under review to present their arguments; when there is real concern over potential multiple contradicting rulings on the same matter by different courts, and hence concern for certainty and stability; when the substance of the matter under review is better suited for direct review; when there is another public interest for the specific circumstances to merit direct rather than indirect review" (**Zamir**, pp. 2687-2688; for other voices, in different directions, on the use of discretion with respect to indirect challenge, see the opinion of Vice President E. Rubinstein and Justice D. Barak-Erez in **Abu Freih**).

And so, it is precisely the weighty questions the Appellants raise on the constitutional plain that justify taking the path of a direct challenge, in other words, challenging Amendment 28 in a petition to the High Court of Justice, which is the competent judicial instance and possesses the expertise to review the constitutional aspects of the amendment and its alleged violation of fundamental principles of democratic rule.

This outcome is also warranted given the decisive weight the Appellants ascribed to the ostensible violation of the constitutional rights of **Israeli citizens and residents of the Area**, beyond the injury to Shakir and other foreign nationals who are denied entry into the country. If the Appellants purport to represent the public at large and defend rights and interests that go beyond Shakir's personal matter, they must do so in a direct challenge, rather than as a byproduct of a review of the specific decision made by the minister under review herein.

12. The conclusion whereby the constitutional arguments need not be addressed in the proceeding herein is reinforced given the fact that the Knesset was not named as respondent in this proceeding - neither in its original form, nor in the appeal herein. While no clear rules have been established on this issue to date, and scholars have pointed at a gap between the interpretive-theoretical level which, they believe, sides with naming the Knesset as respondent in actions directly challenging primary legislation, pursuant to Section 17(c1) of the Knesset Law and existing practice (see, e.g., **Aharonson**, pp. 61-63; **Marzel**, pp. 372-374). However, even if I presume that the Appellants were not required to name the Knesset as respondent in their petition, despite the fact that they are the ones who initiated the deliberation on constitutional issues, making "offensive" use thereof (compare, **Aharonson**, p. 62) - the importance of hearing its position, given the broad implications of a repeal (even if, formally, the ruling of the trial court would apply only to the relations between parties to the proceeding) cannot be ignored. This factor also justifies favoring the direct challenge, or, at least shows that it would be improper to address the constitutional aspect for the first time at the appeal stage (in which a ruling creates binding precedent), when the position of the legislator has not been heard.

Moreover, the significant room dedicated to the constitutional issue in the submissions in the current form of the proceeding, wherein the appeal was presented as concerning "the constitutionality and interpretation" of Amendment 28 (paragraph 2 of the Notice of Appeal), raises real doubt as to whether the question truly arose "incidentally" and comes under the incidental jurisdiction of the Court for Administrative Affairs. As noted by my colleague Justice N. Sohlberg in a different context:

> Consideration must also be given to how central the arguments made as part of the indirect challenge are in relation to the remaining arguments made in the same proceeding. Section 74 of the Courts Law instructs us that jurisdiction to review an incidental question arises where said question arises incidentally. In the matter at hand, questions around the legality and reasonableness of Rule 8(a) arose incidentally as defense arguments on behalf of the authorities. However, given their weight, these arguments have, effectively, "taken over" the proceeding, overshadowing the remaining arguments, and, have effectively attracted most of the court's attention in the judgment. In this context, it has recently been ruled that: "By way of generalization, it is possible to say that where the center of gravity of an action is a matter under the jurisdiction of a civil or criminal court and the indirect challenge addresses an ancillary question that arises as an incidental of the main issue, and requires a ruling in order to rule on the matter before the court, the tendency is to allow an indirect challenge in the absence of specific reasons to deny it. It should be noted that typically, an indirect challenge occurs when an argument against an administrative act is made as a defense argument. On the other hand, where the true essence of the proceeding, or its

> center of gravity, is a ruling on the validity or legality of an act of the authorities, especially when the target of the challenge is governmental discretion per se, or when the issue in question is a complex or sensitive governmental issue, or when it has broad implications, reviewing the matter by way of an indirect challenge should generally be avoided" (CA 4291/17 **Al-Freih v. City of Haifa**, paragraph 15 of the judgment of Justice M. Mazuz (March 6, 2019)). As stated, in our matter, the questions that arose through the indirect challenge are not incidental or secondary to the matter heard in the proceeding, and for this reason too, it would be ill-advised to allow an indirect challenge in the circumstances "LCA 2933/18 **City of Or Akiva v. Mekorot Water Corporation LTD** paragraph 24 (August 1, 2019)).

These statements are relevant, a fortiori, with respect to an indirect challenge against primary legislation, which requires particular caution. The Appellants brought up the constitutionality issue on their own initiative, used it "offensively" and gave it a central role in the proceeding herein - hence, it is rather difficult to classify it as a question that arose "incidentally" and comes under Section 76 of the Courts Law (I shall, however, comment that this argument is irrelevant according to the approach that an indirect challenge to a law is not carried out under the incidental jurisdiction of the relevant judicial instance, since "the validity of a law is not a question under the sole jurisdiction of the High Court of Justice" (**Aharonson**, pp.56-57)).

13. We conclude by stating that the review presented in the above paragraphs points to the singularity of the Israeli legal system with respect to constitutional judicial review. If we look to the world outside, we shall discover, on the one hand, the American approach according to which any judicial instance has jurisdiction to pronounce a certain legislative norm unconstitutional within the relationship between the parties to the action. Under this approach, constitutional review, as any other proceeding, begins in the lower instances and climbs up the stages of appeal until the final instance that delivers a precedent binding on all. Other countries belonging to the world of common law follow a similar approach. At the other end, we find the centralist approach which does not allow trial courts to address the constitutionality of a law and prescribes that such arguments may be raised exclusively before the final instance, whether it is a supreme court, or a designated constitutional tribunal such as the German Bundesverfassungsgericht. Judge Wald of the Court of Appeals for the District of Columbia described the difference between the two approaches as follows: "The Hungarian (or European) system of constitutional adjudication has been characterized as a 'Mt. Sinai'-like control by the constitutional court over all other courts whereas ours has been called a 'Judge and Company' approach involving close cooperation among all court levels in developing constitutional law" (Patricia M. Wald, *Upstairs/Downstairs at the Supreme Court: Implications of the 1991 Term for the Constitutional Work of the Lower Courts,* 61 U. CIN. L. REV. 771, 776 (1993)). In other words, the Mt. Sinai approach, which concentrates constitutional judicial reviews at the hands of a single instance that produces constitutional rules, as opposed to the Judge and Company approach which espouses giving judges jurisdiction according to subject-matter rather than judicial instance. The judge is seen as a partner in the review, whilst the supreme court stands atop the pyramid (For more on these approaches see, e.g.: ALLAN R. BREWER-CARIAS, JUDICIAL REVIEW IN COMPARATIVE LAW 127-55 (1989); Robert F. Utter and David C. Lundsgaard, *Judicial Review in the New Nations of Central and Eastern Europe: Some Thoughts from a Comparative Perspective*, 54 OHIO ST. L.J. 559, 583-585 (1993); Alec Stone Sweet, *Why Europe Rejected American Judicial Review and Why It May Not Matter*, 101 MICH. L. REV. 2744, 2770-2771 (2003); Aharon Bark, "Judicial Review over The Constitutionality of Law and the Status of the Knesset" **A**

Selection of Essays: The Court and its Judges 71 (Vol. D, 2017) (Hebrew); **Aharonson**, pp. 13-15).

Israeli law does not choose a side. It recognizes (certainly at the formal level) two tracks for constitutional judicial review. The direct challenge track allows a party to petition the High Court of Justice directly with respect to the constitutionality of primary legislation. In such a case, the review will focus on the constitutional aspect and its outcome will be binding on all. At the same time, the indirect challenge track allows lower courts to address constitutionality as part of the deliberation in matters within their jurisdiction and make a ruling for purposes of the matter before them with no effect on parties not involved in the proceedings. This track may bring the matter to the Supreme Court in an appeal, and, in such a case, the ruling of the Supreme Court would produce a binding precedent.

I do not mean to say that recognition of both tracks within our system comes with no preference. At any rate, the matter is complex. For instance, it is not always possible to choose between the two tracks. Prematurity may preclude a direct challenge and give preference to an indirect challenge to the law as it is implemented (**Sabah**, paragraphs 23 and 28 of the opinion of President A. Grunis). Another point that is highly significant to the matter at hand is that in indirect challenges, the Supreme Court addresses the issue within the confines of its status as an appellate instance that examines whether there is cause to intervene in the ruling of the trial court, as opposed to a deliberation de novo. This limitation justifies preferring the path of a direct challenge when matters of principle with cross-cutting implications are at stake, such as the matter at hand. Such matters should come under the more comprehensive and exhaustive review of the highest instance.

It appears that in terms of the sociology of law, there is value in exercising the power to disqualify unconstitutional laws carefully and centrally. The legal community, and the public at large, see this power as a new development, and here in the State of Israel, we are still in the midst of formulating it, which also reflects on the proper approach to the repeal of primary legislation by an instance other than the Supreme Court.

14. For these reasons, and since the Appellants were effectively able to petition against Amendment 28 directly, the constitutionality of the amendment need not be addressed herein. This issue is set to be reviewed as part of the constitutional petition, such that the review of the minister's decision shall proceed according to existing law.

The interpretive aspect

15. Section 2(d) of the Entry into Israel Law applies to two categories of foreign nationals involved in promoting a boycott, "as defined in the Law for the Prevention of Harm to the State of Israel through Boycott - 2011". The first category includes persons who knowingly issued a public call to boycott the State of Israel or undertaken to participate in such a boycott, such that their actions give rise to an inherent suspicion that the visit to Israel would be abused. The second category includes persons who are not known to have been personally involved in promoting a boycott, but whose activities within an organization or a body that espouses boycotts of the State of Israel "attests to the applicant's affiliation with and sympathy for the ideas of this organization", thereby establishing similar concerns over harm to the state (**Alqasem**), paragraph 15 of the opinion of Justice Vogelman and paragraphs 9-11 of my opinion). Indeed, the second category was designed to assist the State and allow it to protect itself from boycott organizations that wish to operate inside its territory under cover of their activists' anonymity -

> The basic intention is that if there's an organization that leads BDS, okay? An organization that's devoted to this now: to lead - - - to a boycott. The organization's

> representative doesn't come, as part of this. Now, he himself, I have no evidence at the moment, because he's a new representative. What's the expression? He's a newbie. He was hired by the organization yesterday. But that's his issue: he's here to promote this boycott. That's what we're actually talking about
>
> (Remarks of MK Bezalel Smotrich, Transcripts of Session No. 276 of the Knesset Internal Affairs and Environment Committee, 20th Knesset, 45-46 (7 November 2016) (hereinafter: **Internal Affairs Committee Protocol**).

Thus, the two categories (personal and organizational boycott activities) are meant to fulfil the same objectives - safeguarding the sovereignty and security of the State of Israel, alongside the concrete objective which is, "furthering the just battle the State of Israel is waging against the boycott movement, based on the defensive democracy doctrine and the right of the state to defend itself and its citizens from discrimination" (**Alqasem**, paragraph 10 of my opinion). Thus, both are subject to the general finding made in **Alqasem**, whereby the arrangement made in the Entry into Israel Law, as part of Amendment 28, is "preventative rather than punitive in nature." In other words, Sections 2(d) and (e) of the Law prevent entry into Israel by boycott activists who, it is feared, would exploit their stay in the country and harness it to the campaign to delegitimize Israel pushed by the boycott movement. Nevertheless, if a certain activist manages to convincingly show they are no longer engaging in promoting a boycott, shutting the door on them does not contribute to protecting the Israeli democracy and, in these circumstances, said activist should not be "punished" by being denied entry over wrongful acts undertaken in the past (**Ibid.,** paragraph 9 of my opinion). Naturally, the burden of proving boycott activism has been abandoned lies with the applicant, and changes according to the overall relevant circumstances such as the role they played in boycott organizations, the duration of their activism, etc.

> Separation between the activist and their organization, or a break in the activist's activities may serve to remove them from the terms of this arrangement. An examination of the actor and their actions may assist here. The act stains the actor and marks them as a target for Section 2(d). This, of course, does not mean there are hard and fast rules. There are different levels of seniority and action within an organization, and different factors relating to the actor. For instance, the matter of a person who has served in a senior position in a BDS organization for decades would be examined more cautiously than that of a person who, even if they do meet the terms of Section 2(d), was active for a relatively short period of time and held a relatively junior position. The former would bear a heavier onus of proving cessation of boycott activism than the latter. The examination would be individual, in keeping with the purpose of the law.
>
> (Ibid. paragraphs 11 and 13 of my opinion; see also paragraph 7 of the opinion of Justice Vogelman).

In cases where a person has met the burden of proof and has demonstrated they had desisted from boycott activism such that there is no fear their entry into the country would be used to harm the state and its institutions, said person does not come under the terms of Sections 2(d) and (e) of the Law. Note that some of the interpretive indications that led to this conclusion in **Alqasem** focus on the second category, including the present tense used in the law to describe

the ties between the applicant and their organization (**Ibid.**, paragraph 9 of my opinion, paragraph 4 of the opinion of Justice A. Baron and paragraphs 3-9 of the opinion of Justice U. Vogelman). However, the objective purpose of the statute indicates this is relevant for individuals who come under the first category as well.

16. Alongside the distinction between present and past boycott activists, the nature of present activities must also be taken into consideration. Clearly, an organization that devotes itself to BDS activism is not the same as an organization that addresses this issue in an isolated, random manner, nor is a prominent activist who disseminates boycott ideology publicly the same as a private individual acting within their family. Referring to the remarks made by the Chair of the Internal Affairs and Environment Committee at the time, MK David Amsalem, "**We're talking about the leaders, who are famous people, and everyone knows their opinions**. They, because of their fame, reach these podiums to drag our name through the mud on television. He's not badmouthing us and calling to boycott us in his home, with his children, wife and neighbors, after all. He goes on TV, usually, because he is an influential person, and calls on the public to boycott us. So, that's why we turn on the television, see him, see them. These are the people we're talking about" (Transcripts of Session No. 213 of the 20th Knesset, 228 (6.3.2017)); emphasis added (hereinafter: Plenum Transcripts) For similar reasons, according to the criteria approved by the Minister of Interior and the Minister for Strategic Affairs, the Law applies only to activists in an organization that has "actively, consistently and continuously" promoted a boycott of the State of Israel. Moreover, a clarification has been made that activists in these organizations, or "independent" boycott activists would be denied entry only if they meet one of the following criteria:

> **Individuals in senior or key positions in organizations** - persons in senior official positions in prominent organizations (such as board chair and members). The definition of these positions changes according to the features of each organization.
> **key activists-** Persons engaged in substantive, consistent and continuous action to promote boycotts as part of prominent de-legitimization organizations, or independently.
> **Institutional officials (such as mayors)** who actively and continuously **promote boycotts**.
> **"Agents"** - Activists who arrive in Israel as agents of a prominent de-legitimization organization. For instance, an activist arriving as part of a delegation sent on behalf of a prominent de-legitimization organization".
>
> (emphasis in original).

These distinctions are naturally warranted by the objective purpose of the Law, which seeks to protect the State of Israel from the threat of de-legitimization, rather than settle a score with individuals who pose no threat.

17. Given the aforesaid distinctions, consideration must be given to what precisely is the nature of a boycott, the promotion of which warrants denial of entry. Section 2(d) of the Entry into Israel Law applies to persons promoting a boycott "as defined in the Law for the Prevention of Harm to the State of Israel through Boycott - 2011". In other words -

> Deliberately abstaining from financial, cultural or academic contact with an individual or another party solely because of their connection to the State of Israel, one of its institutions or an area under its control in such a manner that may cause economic, cultural or academic harm.

(Section 1 of the Boycott Law).

The language used in the definition indicates it applies only to involvement in a boycott motivated by the connection the boycotted entity has to the State of Israel, its institutions or an area under its control. Conversely, participation in a boycott against a certain entity due to its flawed conduct, which is not necessarily related to its Israeli identity, does not come under the arrangement discussed herein and does not constitute cause to restrict entry into Israel. Indeed, in **Avneri**, as part of the review of the legality of the Boycott Law, the court clarified that calls to boycott a factory located in the Judea and Samaria Area over inappropriate conduct toward the local population, environmental damage or animal testing do not fall under the terms of the law, as they are not pursued "solely because of [a] connection" to the State of Israel or an area under its control (paragraph 10 of the opinion of Vice President E. Rubinstein, paragraph 48 of the opinion of Justice I. Amit). Similarly, President M. Naor has remarked that -

> If, for instance, a factory located in an area controlled by Israel practices discrimination between Jews and Arabs, and a call to boycott said factory is issued because of these practices, this would not activate the sanctions provided for in the law. The same holds true, in my view, if the factory is located in an unlawful outpost of the sort that has been or should be evacuated by judgment of this Court, as it was established on privately owned Palestinian land. In my view, calling for a boycott of said factory over the unlawful establishment of the community **does not** give rise to the sanctions stipulated in the law. This would not be a call for a boycott because of ties to the area, but because of illegal practices.
>
> (paragraph 4 of the President's opinion, emphasis in original). See also, paragraphs 24(c) and 33 of the opinion of Vice President H. Melcer and paragraph 45 of the opinion of Justice Y. Danziger).

It is, however, worth noting that the view that Section 1 of the Boycott Law applies only to boycotts which express criticism over the existence of the State of Israel per se, as opposed to boycotts originating in criticism of government policies, remained in the minority in **Avneri** (see, paragraphs 12-14 of the opinion of Justice Vogelman). Hence, boycotts based on opposition to the general policy practiced by the Government of Israel with respect to an area under its control, do come under the terms of the Boycott Law as they express de-legitimization of the State of Israel because of its actions, rather than specific conduct exhibited by the boycotted entity.

Since Amendment 28 adopts the definition of boycott provided in Section 1 of the Boycott Law, the interpretation of the latter in **Avneri** projects directly on the arrangement before us, clarifying that Section 2(d) of the Entry into Israel Law limits only the entry of activists who promote a boycott of Israeli entities due to their connection to the country, its institutions or an area under its control, rather than specific, localized conduct in which they engage.

From the general to the particular

18. The lower court presented its factual findings regarding Shakir's systematic, prolonged activism in the promotion of boycotts against the State of Israel and entities with

connections to it or an area under its control over more than ten pages. This activism began in 2006, when the Appellant founded, at Stanford University, a student organization (SCAI, and later SPER) that called for divestment in companies connected to the Area. It is noted that in the judgment, this organization was said to have called for divestment, "From companies profiting from Israel's occupation of the Palestinian territories." The Appellants, however, claim that the quote is taken from the SJP website, which SPER joined after Shakir terminated his activities in the organization, and that the SPER website contains entirely different statements. A clarification was made that the call was not a blanket call to refrain from investment in Israel, but rather, "Selective divestment from companies engaged in specific practices that violate human rights and support apartheid. We are not advocating the end of the state of Israel; rather, we are advocating an end to the state of apartheid that Israel enforces". At any rate, in the years that followed, the Appellant renewed his calls for BDS in different forums, presenting it as an accessible, effective and moral course of action toward shifting the balance of power between Israel and the Palestinians and promoting a just solution for the conflict. So, for instance, the Petitioner called for selective divestment from commercial companies to which he attributed human rights and international law violations, given their operations in Israel and in the Area. In 2015, he signed a petition containing, inter alia, a pledge "To engage with Palestinian struggle and to do so honoring the BDS call," and, in 2016, took part in various panels where he praised the boycott movement and spoke about the advantages of the BDS strategy. The Appellants claim the findings made by the court of first instance contains certain errors, partly because while the Appellant did, in fact, harshly criticized the policies of the Government of Israel and pointed to the efficacy of boycott, his remarks cannot be deemed "a call to boycott any entity." I am personally of the opinion that it takes a great deal of feigned innocence to present the remarks quoted in the judgment as a theoretic-academic analysis of boycott as a tool. As for the remaining objections, they do not alter the general impression.

At any rate, according to the findings of the judgment, the Appellant persisted in his activities after joining Human Rights Watch and entering Israel as its representative. In this context, the court noted his involvement "together with HRW" in the efforts to stop FIFA's sponsorship of soccer matches in settlements, as well as various Twitter posts on Shakir's account, referring to HRW's activities. So, for instance, in September 2017, the Appellant posted about the release of a publication which called, in effect, for divestment in Israeli banks. In March 2018, he posted about action HRW had taken vis-à-vis the UN Human Rights Council, in an attempt to promote the drafting of a "List of businesses operating in settlements, who contributes to serious abuses" [*sic*]. In November 2018, Shakir welcomed the decision made by Airbnb to delist properties located in the Area, called on other companies to follow suit, and noted HRW would be publishing a report on the matter shortly thereafter ("Bed and Breakfast on Stolen land"). The Appellant repeated these messages in interviews he gave in early 2019, and in "dozens more" posts on his Twitter account.

19. Does this factual groundwork legitimize the decision of the minister? I shall recall that the decision in question relates only to the employment of Shakir himself and that it is based on his systematic, prolonged, "exemplary" and expansive work to promote the boycott strategy. On the other hand, as clarified in the decision itself, in the judgment being appealed herein and in the submissions made by the State in the proceedings herein, Human Rights Watch is not classified as a boycott organization, and it may seek the employment of another representative who is not mired in BDS activity.

In fact, the aforesaid would have sufficed to dismiss the arguments made by the Appellants with respect to extraneous considerations underlying the decision of the minister and clarify that there is no concealed attempt to harm HRW. Beyond necessity, I shall note that the reassessment following which a decision was made not to renew Shakir's visa was not undertaken at the initiative of the Respondents on behalf of the State, but following the first petition filed by Respondents 3-4 herein. This fact further undermines the conspiracy allegations whereby the minister's decision, which was made after a thorough inquiry whilst

the Appellants were given the right to argue, was designed to reinstate his original decision while "getting around" the public pressure which prevented direct, open action against HRW. Moreover, the disparate approaches to the Appellant and to Human Rights Watch poses no difficulty - both because the Israeli-Palestinian arena is just one element in HRW's global work, such that it would not justify its classification as a boycott organization, and in light of Shakir's personal record in the BDS field prior to joining HRW. These two elements support the distinction drawn by the minister and affirm that the decision discussed herein is confined to the Appellant himself and would not apply to any Human Rights Watch representative.

20. On the merits, the Appellants argue that the criteria did not warrant addressing Shakir's independent boycott activism prior to joining HRW, as entry into Israel by activists in organizations is examined solely based on the work of the organization of which they are members. According to the Appellants, given that the Respondents for the State reiterated that Human Rights Watch was not considered a boycott organization, the actions Shakir took as a representative of HRW should not have been held against him, and, since everything he was alleged to have said following his entry into the country meets this definition, he should have been allowed to enter the country.

I have found no substance in this argument. As I have clarified above (paragraph 15), the organizational category incorporated by the legislator into Section 2(d) of the Entry into Israel Law, was meant to enable the State to defend itself against individuals who are not known to have been personally involved in promoting a boycott, meaning their entry into Israel could not have been denied if it were not for their organizational affiliation. However, when an individual is known to have actively encouraged a boycott of Israel, this is sufficient to attest to their identification with this idea and create concern that their visit to Israel would be exploited. Therefore, such a person falls under the first category enumerated in Section 2(d), whether the actions were undertaken as a concerned citizen of the world, or as part of some organizational framework. In other words, an organizational affiliation works to the detriment of persons in whose case such affiliation is the sole evidence of identification with the boycott movement. It does not, however, grant immunity to persons whose actions convey their world view, thereby creating an independent cause to deny their entry into the country.

Contrary to the Appellants' argument, the criteria are in line with this finding since the distinction drawn between "independent" activists and activists in organizations refers only to applicants who cannot be denied entry into the country based on their personal involvement in promoting boycotts against it. In such cases, the criteria follow Section 2(d) of the Entry into Israel Law, determining that an organizational affiliation suffices to deny the entry of such applicants if they hold "senior or key positions in organizations" or if they "arrive in Israel as agents of a prominent de-legitimization organization." On the other hand, when it comes to activists "engaged in substantive, consistent and continuous action to promote boycotts," the criteria make no distinction between activism undertaken "as part of prominent de-legitimization organizations, or independently," and consider the activism itself as automatic cause to deny entry. Thus, as the Appellant has engaged in activities that fall under the terms of Section 1 of the Boycott Law, there is no need to rely on his organizational affiliation, and the assessment of whether or not he meets the criteria must be based on his personal actions in different capacities over the years in their entirety. Note well, it may very well be that Shakir's actions as a representative of HRW do not warrant classifying HRW as a boycott organization, be it because, as stated, this is a negligible part of the organization's global work, or because of their substance. However, when these actions are added to his earlier actions as an individual, **the aggregate** does attest to Shakir's "substantive, consistent and continuous" involvement in promoting boycotts, bringing him, personally, under the terms of Section 2(d) of the Entry into Israel Law.

21. Therefore, the Appellants' alternative argument, that the specific actions that served as the basis for the minister's decision and the ruling of the lower court do not fall under the terms of Section 2(d) of the Entry into Israel Law, must be considered. The Appellants claim

that Shakir's actions, at least since joining HRW, were motivated by the goal of protecting human rights, such that the boycott he had encouraged do not stem from ties to the State of Israel or to an area under its control, as required in the definition appearing in Section 1 of the Boycott Law.

This argument must be dismissed. The language of Section 1 of the Boycott Law does clearly indicate that it does not address boycotts that are not motivated by the connection to the State of Israel, its institutions or an area under its control per se, but to flawed conduct by the boycotted entity. Accordingly, as stated, a clarification was made in **Avneri** that the sanctions imposed by the Boycott Law would not apply to a call to boycott a factory located in the Area over its wrongful actions - be it environmental harm or unlawful takeover of private land - as distinct from the fact that it operates in the Area in and of itself. Given that Section 2(d) is based on the definition of boycott as laid out in Section 1 of the Boycott Law, it too, does not apply in such cases, which ostensibly supports the Appellants' position.

However, a review of the relevant transcripts does indicate that the legislator was aware that the boycott movement does not rely only on "political" arguments in the narrow sense and sought to take action against boycott activists who use human rights and international law discourse as well. So, for instance, the discussion held by the Knesset Internal Affairs and Environment Committee in the process of preparing Amendment 28 for first reading clearly shows that both those who supported the amendment and those who opposed it assumed it was to apply to "human rights activists" who call for a boycott as well -

> Yousef Jabareen (Joint List):
> The truth is, I see this law as another chapter in a campaign of political persecution. This time, the persecution isn't directed only against human rights activists, by the way.
>
> Roy Folkman (Kulanu):
> It doesn't prohibit human rights activists from entering Israel.
>
> Yousef Jabareen (Joint List):
> Of course it does. Sure it does.
>
> Roy Folkman (Kulanu):
> Why? - - -
>
> Yousef Jabareen (Joint List):
> It's enough that they support a boycott. But, by the way, it's not just human rights activists. It's also - - - . Not just their organizations. And I won't surprise you if I tell you: When I'm abroad, and I meet the Palestinian community there, and the European community, etc., I read this and I'm shocked. What, all these people, they'll be persecuted now? They won't be allowed to enter Israel - - - their political views?
>
> Chair Bezalel Smotrich:
> Do they call for a boycott? I'm asking you: Do they call for a boycott? Not their political views. Do they call for a boycott of Israel? Do they take part in the de-legitimization of Israel?
>
> [...] Yousef Jabareen (Joint List):
> I'd like to tell you, and MK Roy Folkman didn't answer this question either. Widely accepted position. It is a widely

> accepted position in the world, that all the territories occupied in 1967, all settlements, are illegal under international law. And so this is a widely accepted position in the world, simply against the illegal settlements.
> This is why I ask: So tomorrow, anyone who says they want to boycott the settlements, only because he's against the State of Israel - - - against the occupation?
>
> Michal Rozin (Meretz):
> Yes, yes. Then they won't get in. Yes.
>
> (Internal Affairs Committee Protocol, pp. 34-35).

A similar picture emerges from the following dialogue, during which the chair of the Internal Affairs and Environment Committee at the time, MK David Amsalem, clarified that Amendment 28 applies to activists who call for a boycott of settlement products because of the human rights violation they believe such products entail:

> Tamar Zandberg (Meretz):
> When I go to the supermarket, I look at all sorts of things, what ingredients it's made of, that there are no animal products because I don't eat animal products. I check that it wasn't made in unfair labor conditions. I also check where, politically, the product was made, and when a product is made under occupation, in conditions of occupation, human rights violations and the worst injustices in the State of Israel - I don't buy it.
>
> Chair David Amsalem:
> I'm answering you. You spoke, but I'm interested in explaining our rationale for this to you. I have no problem - maybe you, when you go to the supermarket, and you see a product that was made in Judea and Samaria, you don't buy that either.
>
> Tamar Zandberg (Meretz):
> That's right.
>
> Chair David Amsalem:
> But we here, right now, in the coalition actually, are setting out to protect the State of Israel according to our worldview, not your worldview. And so we think that people who boycott products in the State of Israel and call for a boycott of the State of Israel, all of it, doesn't matter where, shouldn't be able to enter Israel.
>
> (Internal Affairs and Environment Committee Transcripts, Session 334, 20th Knesset, 14-15 (11 January 2017); See also, Knesset Plenum Transcripts, Session No. 164, 20th Knesset, 172-173 (14 November 2016); Plenum Transcripts pp. 163-164, 195 and 198).

It has been found that the explicit subjective purpose of Amendment 28 denies the Appellants' position and indicates that a call for a boycott of Israel **may** come under the terms of Section 2(d) of the Entry into Israel Law, even if it rests on arguments relating to the protection of human rights or the provisions of international law. As a matter of fact, it seems

that an ability to hide the shame of calling for a boycott underneath human rights rhetoric would drain Amendment 28 of meaning, and would also undermine its objective purpose - fighting the boycott movement. These objectives signify, therefore, that the phrase, "solely because of their connection to the State of Israel [...] or an area under its control" is not limited to boycotts founded on "political" opposition to this control, and may also include boycotts founded on identifying Israel's control of the Area as a violation of international law.

22. Naturally, there is a significant gray area between wholesale opposition to this control based on the view that it impinges on the rights of the locals and a boycott specifically against an entity that violates the rights of the Area's residents. On the one hand, a person calling to boycott an Israeli factory because it is implicated in forced child labor clearly does not come under the Boycott Law, or Amendment 28 (see, above, paragraph 17). On the other, a person who denies the legitimacy of the State of Israel or its control of the area and seeks to undermine it through boycott, does come under the terms of Section 1 of the Boycott Law, even if they use human rights protection or international law rhetoric to cloak their position. The test is a substantive one, and the words veiling the campaign of de-legitimization do not give those uttering them immunity. Complexity arises in cases in which real action is taken to protect human rights, but the alleged violation of these rights is inherently and directly connected to the very existence of the State of Israel or its control of the Area.

The extensive details provided in the judgment that is the subject of this appeal, the main points of which were briefly presented above, indicate that Shakir's activities are rooted in his **wholesale** opposition to Israel's control over the Area, and, therefore, meets the terms of Section 2(d) of the Entry into Israel Law. Thus, aside from his persistent support for the BDS movement prior to his employment with HRW, his conduct vis-à-vis FIFA, and his repeated calls to boycott Israeli properties in the Area are based on a sweeping rejection of the legitimacy of Israeli settlements. In the circumstances, there is no room to intervene in the finding made by the court of first instance to the effect that the boycott in question was undertaken simply due to the connection to the Area, as opposed to specific conduct by a specific entity, such that the decision does not exceed the minister's competency.

The severity of Shakir's actions may be illustrated through a comparison, in terms of act and actor, to the facts in **Alqasem**. That case centered on Lara Alqasem, a student who was "just starting out" and was not alleged to have been personally involved in calling for a boycott. Rather, she was denied entry into Israel simply because of her membership in a boycott organization. Moreover, said "organization" was a student group with very few members whose activities on the issue of the boycott were "limited and minor" and lasted a relatively short time. On the other hand, the time that had elapsed since Alqasem ended her relatively minor activities, her willingness to "engage in open, respectful dialogue - in stark contradiction to the notion of boycott", and her desire to study in an Israeli academic institution, also the anti-thesis of the BDS movement (**Ibid.**, paragraphs 14-16), stood in her favor. Moreover, Alqasem declared she no longer supported the boycott movement and undertook "not to call for a boycott of Israel during her stay in the country, or participate in BDS activities" (**Ibid.**, paragraph 2). This declaration was backed with evidence, including testimonies from academics who came in contact with Alqasem during her academic studies. The Appellant herein, Mr. Shakir, is somewhat of a mirror image of this description. He has, for years, maintained systematic, consistent, high-profile and highly visible involvement in promoting the movement or boycott and divestment against Israel. His reach spans from the halls of Stanford University to FIFA's offices in Bahrein. His approach to dialogue with Israel can be gleaned primarily from a petition he signed in 2015, criticizing a Muslim-Israeli dialogue initiative and pledging commitment to BDS. Shakir refused to make a declaration similar to Alqasem's, and given his current actions and conduct, it can be said that he continues to operate in the gray area of the boycott realm, in a manner that precludes ruling out concern over exploitation of his stay in Israel.

Therefore, and given the State's firm assertions that the minister's decision addresses Shakir only, while Human Rights Watch is neither defined nor thought of as being a boycott organization, I believe that the overall conduct of the Appellant throughout the years suffices to seal the fate of this appeal.

As an aside, I shall add that for the reasons presented by the Respondents on behalf of the State (see above, paragraph 5), I find no substance in the Appellants' arguments regarding the proportionality of the minister's decision, or the presence of any exceptions under Section 2(e) of the Entry into Israel Law, and they are dismissed.

Conclusion

23. We thus conclude at the same point at which we began: Before us is an appeal from the judgment of the Court for Administrative Affairs dismissing the petition filed by the Appellants against the decision of the Minister of Interior to refrain from renewing the Appellant's temporary residency and work visa. The court is not an administrative authority and must not profess to assume its role. Its work lies in the legal field. It must be recalled that:

> Judicial review is of a legal nature. The court does not transform itself into a super governmental authority. The court does not examine the effectiveness of the governmental decision. The judge does not ask himself whether he would have made the same decision were he a member of the deciding governmental authority. The only question the court asks itself is whether the governmental decision is lawful. Judicial review is a review of legality, not of wisdom. Therefore, if the governmental decision falls within the scope of reasonableness or legality, it will not be struck down. The function of judicial review is to safeguard against departures from the bounds of legality, the wisdom of the decision notwithstanding" (HCJ 1843/93 **Pinchasi v. Knesset**, IsrSC 49(1) 661, paragraph 37 of the opinion of President A. Barak (1995); cf. **Avneri**, paragraph 20 of the opinion of Vice President H. Melcer, and paragraph 14 of the opinion of Justice I. Amit).

Likewise, in the case at hand there is no need to point at or opine on the professional dispute that emerged in real time between the Minister of Interior, who is the competent authority, and the Ministry of Foreign Affairs. As a rule, the judicial focus is on the officeholder the legislator has selected as the deciding official. Either way, it appears that all would agree that the issues raised in this matter are complex. In any event, it emerges, as stated, that contrary to the concerns voiced by Amicus Curiae in the proceeding herein, the Minister of Interior has drawn a clear distinction between the work performed by Human Rights Watch in Israel and the Area and Mr. Shakir's personal matter. This distinction was predicated on the features of the actions carried out by the Appellants, and it indicates that the decision of the minister would not close Israel's gates to other representatives of HRW or similar organizations, certainly not under the current ruling. This suffices to blunt the concern voiced by Amicus Curiae regarding severe harm to the work of human rights organizations that criticize Israeli policy in the Territories. Indeed, when such work veers into calls for a boycott and de-legitimizes Israel and its policies, it may produce difficulties in terms of the Boycott Law and Amendment 28. However, in the case at hand, there is no need to draw the lines of Sections 2(d) and (e) of the Entry into Israel Law with accuracy and face the complex questions this would involve. The Minister of Interior took action against a person whose body of work does substantiate real concern over potential exploitation of his stay in Israel for the purpose of promoting the boycott movement against it, such that the decision that is the subject of the appeal herein does not project on other human rights organizations and activists. As such, the

decision lies within the bounds of competence, reasonableness and proportionality and there is no cause to intervene therein.

24. Hence, I propose to my colleagues to dismiss the appeal and rule that there is no flaw in the decision of the Minister of Interior not to renew Shakir's temporary residency visa in Israel. This, of course, without stating a position on the issues of constitutionality pending before the High Court of Justice in the constitutional petition.

The temporary relief granted to the Appellants on May 30, 2019 is, therefore, hereby revoked, and the Appellant must leave the State of Israel within 20 days of the date on which this judgment is delivered. The Appellants shall pay for the legal costs and expenses incurred by the Respondents for the State in the proceeding herein in the amount of 7,500 ILS.

J u s t i c e

Justice N. Sohlberg:

The opinion of my colleague Justice **N. Hendel** is persuasive and exhaustive. I share his opinion.

I shall add only this comment, in reference to statements made by my colleague in paragraph 11 of his opinion with respect to the decisive weight the Appellants ascribed in their arguments to the ostensible violation of the constitutional rights of **Israeli citizens and residents of the Area**, beyond the injury to Omar Shakir and other foreign nationals who are denied entry into the country. "**If the Appellants purport to represent the public at large and defend rights and interests that go beyond Shakir's personal matter, they must do so in a direct challenge**" (Ibid.).

My colleague's statements imply that the doors of this court are wide open to hearing Shakir's arguments, not just in his own name and for his own sake, but also for the sake of Israeli citizens and residents, to avert impingement on their **own** freedom of expression. I myself am in doubt as to whether this is the case. Citizens and residents of Israel are able and permitted to defend their rights and petition the court over a violation of free speech. Israelis are not helpless, and Omar Shakir need not speak for the citizens of Israel. Given that Shakir has no constitutional right to enter Israel, there is no justification to allowing him a bypass route into the country in order to avert an alleged curtailment of the free speech of Israeli citizens and residents, as "**beneficiaries**" (to quote the Appellants in paragraph 13 of their argument brief), of his entry into the country; or the impingement he alleges on their rights to have unmitigated contact with him, be exposed to what he says and hear it directly (Ibid.). I am, therefore, in doubt as to whether Shakir has **standing** to petition against a violation of the freedom of expression of Israeli citizens and residents.

My colleague focused on the administrative plain. I accept his approach and conclusion, and therefore, I, too, shall not elaborate on the constitutional aspects. Nevertheless, as my colleague has directed the Appellants' constitutional arguments, in their entirety, to a 'direct challenge' track, I do see fit to make a comment with respect to an ostensible impediment to accessing the court with respect to the standing foreign nationals such as Omar Shakir have to make constitutional arguments for the repeal of primary Knesset legislation based on an argument regarding curtailment of the free speech of Israeli citizens and residents.

Other than this reservation, I do, as stated, concur with the opinion of my colleague Justice **N. Hendel**, his conclusion and his reasoning.

Justice

Justice Y. Willner:

"Held 18 hrs, denied entry to Bahrain. Hoped to press FIFA on matches in illegal Israeli settlements" (May 10, 2017)

"Airbnb stops brokering rentals on West Bank land stolen from the Palestinians who are barred from staying there. @bookingcom, all eyes now on you-delisting only way to meet your human rights responsibilities under UN Guiding Principles" (November 2018)

"Spanish company rejects tender for Jerusalem light rail project, saying it 'refuses to build a section of the railway… [on] Palestinian land that will be confiscated' & 'must respect… human rights' & int'l law. Other companies should follow it's lead" (February 4, 2019)

The statements quoted above **patently** constitute calls for a boycott of parties operating in Israel and Judea and Samaria simply because of their connection to the State of Israel or an area under its control - each one separately, and all the more so all of them cumulatively. It seems there can be no real dispute over this.

These quotes from the Appellant's **personal** Twitter account, were mostly written **subsequent** to his entry into Israel and **not** in his capacity as a representative of Human Rights Watch (hereinafter: **HRW**), as ruled by the District Court (see paragraphs 59-61 of its judgment) - a ruling in which the appellate need not intervene.

I, therefore, concur with my colleague Justice **N. Hendel** that there is no room to intervene in the decision of the Minister of Interior not to renew the Appellant's temporary residency visa in Israel. In my view, this holds true even without addressing the independently complex question surrounding the identity of the party to which calls for a boycott should be ascribed when they are made by a person who acts on behalf of an organization that is not defined as a boycott organization. As stated, the above-quoted statements, and other statements are attributed to the Appellant when acting **personally** rather than as a representative of HRW (alongside other statements and posts made in his capacity as HRW's representative in Israel). This is added to the Appellant's prolific "record" which indicates he is deft at encouraging and promoting boycotts of Israeli entities and has never said he would desist from this activity while in Israel. All of the aforesaid produce, in my view, a critical mass attesting to the fact that the organizational affiliation the Appellant alleges is used, in some cases, merely as a cover for his widespread boycott activism, which he has advanced in the past and continues to advance as a private individual.

I, therefore, concur with the thorough judgment of my colleague, Justice **N. Hendel** and with his conclusion that no intervention is warranted in the decision made by the Minister of Interior not to renew the Appellant's temporary residency visa in Israel, pursuant to the provisions of Section 2(d) of the Entry into Israel Law - 1952. I also concur with the comment made by my colleague Justice **N. Sohlberg** regarding the difficulty that arises in recognizing a foreign national as having standing to make arguments about the violation of the rights of citizens of the State of Israel.

Justice

#   #

Therefore, the court rules as stated in the opinion of Justice **N. Hendel**.

Given today, November 5, 2019.

Justice	Justice	Justice

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[internal file no.]

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Exhibit 14B

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<u>בבית המשפט העליון בשבתו כבית משפט לערעורים בעניינים מינהליים</u>

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עע"ם 2966/19

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לפני:	כבוד השופט נ' הנדל כבוד השופט נ' סולברג כבוד השופטת י' וילנר
המערערים:	1. HUMAN RIGHTS WATCH 2. עומר שאקר
	נ ג ד
המשיבים:	1. שר הפנים 2. משרד הפנים – הממונה על מתן ההיתרים 3. קרן צדוק אורבך 4. שורת הדין 5. הפורום המשפטי למען ישראל 6. המכון לחקר ארגונים לא ממשלתיים
ידידי בית המשפט:	1. Amnesty International 2. אילן ברוך 3. אלון ליאל 4. אלי בר-נביא

ערעור על פסק דינו של בית המשפט המחוזי בירושלים בשבתו כבית משפט לעניינים מינהליים מיום 16.4.19 בעת"ם 36759-05-18 שניתן על ידי כב' השופטת ת' בזק רפפורט

תאריך הישיבה:	כ"ד באלול התשע"ט (24.9.19)
בשם המערערים:	עו"ד מיכאל ספרד, עו"ד אמילי שפר עומר-מן
בשם המשיבים 2-1:	עו"ד קובי עבדי; עו"ד רון רוזנברג
בשם המשיבים 4-3:	עו"ד אבי סגל; עו"ד אבי גז
בשם המשיב 5:	עו"ד הראל ארנון
בשם המשיב 6:	עו"ד מוריס הירש

בשם ידידת בית המשפט 1: עו"ד כרמל פומרנץ

בשם ידידי בית המשפט 4-2: מר אלון ליאל

פסק-דין

השופט נ' הנדל:

במוקד הערעור ניצב פסק הדין בו דחה בית המשפט המחוזי בירושלים, בשבתו כבית משפט לעניינים מינהליים (עת"ם 36759-05-18; השופטת ת' בזק-רפפורט), את עתירת המערערים – והותיר על כנה את החלטת משיב 1 (להלן: שר הפנים) שלא להאריך את היתר ההעסקה שניתן לעותר 1 עבור עותר 2 (להלן, בהתאמה: הארגון, ו-שאקר, או המערער), ולהרחיק את האחרון מישראל. זאת, בנימוק שמדובר "באדם התומך באופן אקטיבי ומתמשך באסטרטגיה הקוראת לחרם, משיכת השקעות והטלת סנקציות על ישראל".

רקע וטענות הצדדים

1. בשנת 2016 בחר ארגון זכויות האדם Human Rights Watch – אשר זכה בשנת 1997 בפרס נובל לשלום, פועל בעשרות מדינות ומתאר את עצמו כ"אחד מארגוני זכויות האדם הגדולים, הוותיקים והחשובים הפועלים כיום בעולם" – בעומר שאקר לתפקיד "חוקר הארגון בנושא ישראל ופלסטין". בעקבות החלטה זו, שהתקבלה נוכח "ניסיונו העשיר" של שאקר "בבדיקת עובדות בשטח ובתיעוד", פנה הארגון אל המשיבים בבקשה להתיר את העסקתו כעובד זר מומחה. ביום 20.2.2017 נדחתה הבקשה, "לאור עמדת משרד החוץ", שציין בחוות דעתו כי הארגון עוסק "בפוליטיקה בשירות התעמולה הפלסטינית, תוך הנפת דגל 'זכויות אדם' לשווא". אולם, זמן קצר לאחר מכן שינה משרד החוץ את טעמו, "משיקולים מדיניים", ובהתחשב בעמדתו העדכנית החליטו המשיבים להעניק לשאקר רישיון ישיבה ועבודה בישראל עד ליום 31.3.2018. או-אז עתרו קרן אורבך וארגון שורת הדין – שצורפו בהמשך כידידי בית המשפט לדיון בעתירה מושא הערעור הנוכחי – נגד ההחלטה (עת"ם 47430-04-17; להלן: העתירה הראשונה), והדבר הוביל לתפנית נוספת: המשרד לנושאים אסטרטגיים המליץ לשלול משאקר את רישיונו, ולמנוע ממנו לשוב לישראל.

צעד כזה, הודה המשרד, אמנם יוביל לביקורת נגד ישראל, אך "נראה לנו לא סביר לאפשר לאדם שפועל בעקביות במשך שנים רבות לפגוע במדינת ישראל להמשיך לעבוד במדינה כאילו דבר לא קרה". בהקשר זה, הוצגו בחוות הדעת "פעילויות בולטות" של שאקר בתחום החרם, לרבות מעורבות בניסיון להשפיע על התאחדות הכדורגל הבין-לאומית (להלן: FIFA) לנקוט צעדים נגד שישה מועדוני כדורגל ישראליים. על רקע המלצה זו, החליט שר הפנים לבחון מחדש את מעמדו של שאקר – ובתום שימוע שנערך לו בכתב הגיע למסקנה שלא ניתן "לאשר היתר להעסקתו והמשך שהייתו בישראל", למרות עמדתו המנוגדת של משרד החוץ (להלן: החלטת השר). במכתבו לב"כ המערערים הבהיר מנהל אגף ההיתרים כי ההחלטה מבוססת על פעילותו האישית של שאקר בתחום החרם, ואינה מבטאת סירוב גורף להעסקת מומחה זר מטעם הארגון. לדידו, "עצם העובדה שממועד הצטרפותו לא עלו נתונים אודות פעילות כאמור אינה מבטלת את כל פעילותו של הנדון לפני מועד זה (וזאת אף אם לא נתייחס למידע בנוגע לפיפ"א)", ומשכך אין לאפשר לשאקר לשהות בישראל "בכסות של נציג ארגון".

2. בעקבות החלטת השר נמחקה העתירה הראשונה, והוגשה העתירה מושא הערעור הנוכחי – שבה העלו המערערים שורת טענות כלפי חוקתיות, חוקיות, מידתיות וסבירות ההחלטה. בפסק דינו, סקר בית המשפט לעניינים מינהליים בהרחבה את מעורבות המערער בפעילות לקידום חרם על ישראל, בהתבסס על חוות הדעת של המשרד לנושאים אסטרטגיים, ועל ראיות נוספות שהציגו הגורמים שצורפו להליך כידידי בית המשפט. מן הסקירה עולה כי מדובר בפעילות שיטתית ומתמשכת שהחלה כבר בשנת 2006, והתבטאה, בין היתר, בהקמת ארגון סטודנטים הקורא לחרם על ישראל, ובשורת הרצאות ופעילויות שבהן קידם את רעיונות החרם. פעילות זו, כך נקבע, נמשכה גם לאחר שמר שאקר נכנס לישראל – וכללה מעורבות, "יחד עם הארגון", במאמצים "להחרמת מועדוני כדורגל מישראל" בחודש מאי 2017; התבטאויות בחשבון הטוויטר שלו בנוגע לדוחות ופעילויות של הארגון וגופים אחרים בתחום החרם; וכן "מאות ציטוטים [...] המלמדים על עידוד ברור ועקבי לחרם גם לאחרונה".

לאור ממצאים אלה, דחה בית המשפט לעניינים מינהליים את עתירת המערערים, וקבע כי החלטת השר באה בגדרי סמכותו לפי סעיף 2(ד) לחוק הכניסה לישראל, התשי"ב-1952 (להלן: חוק הכניסה), עומדת במבחן הסבירות – ולמעשה, אף "מתבקשת מאליה".

בית המשפט עמד על שורשי ההסדר שבסעיף 2(ד) לחוק הכניסה, ועל הקשר המהותי בינו ובין החוק למניעת פגיעה במדינת ישראל באמצעות חרם, התשע"א-2011 (להלן: חוק החרם). הוא הזכיר כי עתירה נגד חוקתיות חוק החרם נדחתה בעיקרה – תוך שנקבע כי הקריאה לחרם פוגעת בשוק הדעות, כך שדוקטרינת הדמוקרטיה המתגוננת מצדיקה נקיטת צעדים נגדה – וציין כי עתירה נגד חוקתיות סעיף 2(ד) עצמו תלויה ועומדת בפני בית המשפט הגבוה לצדק (בג"ץ 5092/18; להלן: העתירה החוקתית).

לפיכך, התמקד הדיון בשאלת יישומו של ההסדר הכללי במקרה שלפנינו, בראי הפרשנות והעקרונות הכלליים ששורטטו בבר"ם 7216/18 Alqasem נ' משרד הפנים – רשות האוכלוסין וההגירה (18.10.2018) (להלן: עניין Alqasem) – לרבות הקביעה כי הסמכות למנוע כניסת פעילי חרם לישראל נועדה למנוע ניצול לרעה של הביקור, ולא לשמש כאמצעי ענישה. בית המשפט לעניינים מינהליים פסק שאין מניעה לזקוף לחובת המערער את ההתבטאויות והמעשים שביצע לפני כניסתו לישראל, משום שהלה לא הרים את הנטל, ולא הוכיח שחדל מפעילותו השיטתית והמתמשכת לקידום תנועת החרם. יתר על כן, למרות שניתנה לו הזדמנות לעשות זאת, שאקר בחר להימנע מלהצהיר כי הוא זונח את קריאותיו לחרם, ומתחייב שלא לקדם את תנועת החרם במהלך שהותו בישראל – ומן הראיות שהוצגו עולה כי "החשש מניצול השהות בארץ לעידוד פעילות חרם התממש" בפועל. אמנם, המערערים טענו כי הפעילות המיוחסת לשאקר אינה מהווה קריאה לחרם כהגדרתו בחוק, הואיל והיא התמקדה בגופים המעורבים, לשיטתם, בהפרות קונקרטיות של זכויות אדם – ולא הופנתה כלפי מדינת ישראל "כשלעצמה". אולם, בית המשפט קמא קבע כי פרסומיו של שאקר, העמדות שהביע בעבר, והאופי הגורף של הפעולות שנקט לאחר קבלת הרישיון, מלמדים שמדובר בהבחנה "מלאכותית", וכי בפועל מדובר בקריאה לחרם רק מחמת זיקה לאזור שבשליטת מדינת ישראל. לפיכך, גם בהנחה שהמערער פעל לאחר כניסתו ארצה בכובעו כנציג הארגון, אשר אינו מוגדר כארגון חרם לאור הקשת הרחבה של תחומי העיסוק שלו, לא נפל פגם בהחלטת שר הפנים למנוע את כניסתו למדינה.

טענות המערערים

3. מכאן הערעור הנוכחי, המתמקד, לדברי המערערים, "בחוקתיותו ובפרשנותו" של חוק הכניסה לישראל (תיקון מס' 28), התשע"ז-2017, ס"ח 2610, 458 (להלן: תיקון 28) – המגביל כניסת בני אדם המעורבים בפעילות חרם נגד המדינה: במישור החוקתי, המערערים גורסים כי מניעת הכניסה לישראל על בסיס עמדה פוליטית פוגעת "בליבתו של חופש הביטוי הפוליטי", חותרת תחת עקרון השוויון – ומאיימת על גרעין האופי הדמוקרטי של המדינה. אף על פי כן, סעיף 2(ד) לחוק הכניסה אינו מתנה סנקציה זו בקיומו של נזק כתוצאה מן הקריאה לחרם, ומכאן שמדובר בפגיעה לא מידתית בזכויות היסוד – הן של הזרים שכניסתם נמנעת, והן של אזרחי ישראל ותושבי האזור המעוניינים באינטראקציה עמם. זאת, בהתאם לפסיקה בבג"ץ 5239/11 אבנרי נ' הכנסת (15.4.2015) (להלן: עניין אבנרי) ביחס לסעיף 2(ג) לחוק החרם. בד בבד, המערערים תוקפים את החלטת השר במישור הפרשני, וטוענים כי המערער כלל אינו בא בגדרי סעיף 2(ד) לחוק הכניסה, משום שקריאותיו לחרם לא נשאו אופי "פוליטי", ואינן מבוססות על עצם הזיקה למדינת ישראל או לאזור הנמצא בשליטתה. הם מזכירים כי סעיף 2(ד) עוסק באדם הקורא לחרם "כהגדרתו בחוק למניעת פגיעה במדינת ישראל באמצעות חרם" – דהיינו, לפי סעיף 1 לחוק החרם, "הימנעות במתכוון מקשר כלכלי, תרבותי או אקדמי עם אדם או עם גורם אחר, רק מחמת זיקתו למדינת ישראל, מוסד ממוסדותיה או אזור הנמצא בשליטתה". לשון ההגדרה, כמו גם הצורך למזער את הפגיעה בחופש הביטוי, מובילים, לדעת המערערים, למסקנה כי חרם שאינו מוטל רק מחמת הזיקה למדינת ישראל – דוגמת חרם סלקטיבי על גורמים הפוגעים בזכויות אדם – אינו בא בשעריה, וממילא גם לא בגדרי סעיף 2(ד) לחוק הכניסה. הם מוצאים להבחנה זו אישוש בעניין אבנרי, ומסכמים כי פעולותיו של שאקר – כאדם פרטי, ועל אחת כמה וכמה כעובד הארגון – אינן מהוות חרם על ישראל, משום שהן נועדו להגן על זכויות אדם, ומופנות כלפי גורמים שהתנהלו בצורה פוגענית. במובן זה, מדובר, לדעתם, בפרקטיקה נפוצה ולגיטימית של ארגוני זכויות, התואמת את מגמת ההרחבה של תחולת המשפט הבין-לאומי על תאגידים עסקיים.

המערערים מוסיפים כי גם אם תידחה פרשנותם לסעיף 2(ד) לחוק הכניסה, לא יהיה בכך כדי לרפא פגמים אחרים שנפלו בהחלטת השר. הם מזכירים כי ראשיתה של הפרשה בדחיית בקשת Human Rights Watch להעסיק את שאקר, בנימוק שהארגון עוסק "בפוליטיקה בשירות התעמולה הפלסטינית, תוך הנפת דגל 'זכויות אדם' לשווא" – החלטה שממנה נאלצו, לדעתם, המשיבים

לסגת עקב הסערה שחוללה. בנסיבות אלה, הם סבורים כי החלטת השר הנוכחית, שנתלתה בהתבטאויות ופעולות מעברו הרחוק של שאקר, אינה אלא ניסיון לשוב ולהשתיק את קולו הביקורתי של הארגון בדרך עוקפת – באמצעות פסילת נציגו. רושם זה התחזק, לדידם, במהלך הדיון בעתירה, כאשר המשיבים הציבו במוקד את התנהלות המערער כנציג הארגון בישראל, ובכך חשפו כי פעילותו הביקורתית של הארגון, ולאו דווקא מאפייניו האישיים של שאקר, הם שהיו לצנינים בעיניהם. הנה כי כן, החלטת השר נגועה בחוסר תום לב, מבוססת על שיקולים זרים של השתקת ביקורת, ואינה יכולה לעמוד.

זאת ועוד, המערערים טוענים כי החלטת השר אינה עולה בקנה אחד עם התבחינים הרלוונטיים (רשות האוכלוסין וההגירה "תבחינים למניעת כניסה לישראל של פעילי חרם" (24.7.2017); להלן: התבחינים) – הקובעים, על פי השקפתם, כי כניסת פעילי ארגונים ארצה תיבחן בראי פעילות ארגוניהם. לדברי המערערים, חשבון הטוויטר של שאקר – זירת ההתרחשות של חלק ניכר מפעילות החרם שיוחסה לו – מהווה "כלי עבודה", שהפרסומים בו מייצגים את עמדות הארגון ונעשים בשמו. ממילא, נוכח העובדה שמדינת ישראל אינה מגדירה את Human Rights Watch כארגון חרם – ובפסק הדין אף הובהר כי בקשה להעסקת נציג אחר תיבחן לגופה – לא ניתן לראות בפרסומים אלה משום קריאה לחרם. אכן, לו היה שאקר מנצל את מעמדו ונוקט פעולות אישיות לקידום חרם, התמונה הייתה שונה, אלא שבמצב הדברים הקיים לא ניתן להרחיקו מישראל בשל פעילותו הארגונית. אשר להתבטאויות ה"אישיות" שעליהן עמד בית המשפט קמא – לא זו בלבד שבחלק מהמקרים מדובר בניתוח ולא בקריאה לפעולה, אלא שכל ההתבטאויות קדמו לכניסת המערער ארצה בראשית שנת 2017. על כן, אין בהן כדי להעיד על פעילות חרם "עקבית ורציפה", העומדת בקריטריונים שנקבעו בתבחינים ביחס לפעילי חרם "עצמאיים".

לבסוף, המערערים תוקפים את שיקול הדעת של שר הפנים, וטוענים כי החלטתו אינה מידתית, ואולי אף עולה כדי ענישה פסולה (להבדיל ממניעה של פעילות חרם). כך או כך, בעניינו של שאקר מתקיימים, לשיטתם, טעמים מיוחדים למתן אשרה ורישיון ישיבה, לפי סעיף 2(ה) לחוק הכניסה – שכן הרחקתו תפגע בו, בארגון, באוכלוסייה הנהנית משירותיהם ההומניטריים, ובמעמדה של מדינת ישראל.

טענות המשיבים

4. מנגד, משיבי המדינה סומכים את ידם על הכרעת הערכאה הדיונית, וגורסים כי דין הערעור להידחות – בהעדר עילת התערבות בקביעות העובדתיות לגבי פעילות החרם העקבית והמתמשכת של המערער, או בשיקול הדעת שהפעיל שר הפנים על בסיס נתונים אלה.

בפתח דבריהם, הזכירו המשיבים כי העתירה החוקתית לגבי תיקון 28 לחוק הכניסה עודנה תלויה ועומדת – וטענו כי השגות המערערים על החלטת השר במישור החוקתי הועלו בעתירה המינהלית "רק באופן אגבי". אשר על כן, הם סבורים כי יפה עשה בית המשפט קמא כשהתמקד בהיבטיה המינהליים של ההחלטה, וטוענים כי המשקל הרב שהעניקו המערערים לפן החוקתי בהליך דנן מהווה "הרחבת חזית אסורה". לגופם של דברים, הם גורסים כי המערערים כלל לא הוכיחו פגיעה בזכויות חוקתיות: לזרים אין זכות חוקתית להיכנס לישראל, וספק רב האם קמה למערערים זכות עמידה בנוגע לטענות המבוססות על הפגיעה, כביכול, באוכלוסייה המקומית. בכל מקרה, הפגיעה העקיפה בציבור הישראלי – שיכול לנהל שיח עם הפעיל הרלוונטי באמצעים אחרים – בוודאי אינה מצויה בליבת הזכות לחופש הביטוי. זאת ועוד, אף אם נניח שההסדר הקונקרטי שבסעיפים 2(ד) ו-(ה) אינו חוקתי, החלטת השר תעמוד על כנה מכוח סמכותו הכללית למנוע כניסה לישראל.

5. אשר לפן המינהלי – המשיבים מדגישים כי שאקר מיצה את תקופת רישיון הישיבה שניתן לו, כך שאין לפנינו החלטה על ביטול הרישיון אלא רק על אי חידושו. הם מזכירים כי כבר בהמלצתו העדכנית של המשרד לנושאים אסטרטגיים, מיום 28.3.2018, הופיעה התייחסות לפעילות החרם שביצע שאקר לאחר כניסתו לישראל – ומכאן שנימוק זה אינו מהווה "התאמה" מלאכותית לפסק הדין בעניין Alqasem, כפי שטענו המערערים. המשיבים פורטים בקצרה את ממצאי הערכאה הדיונית לגבי פעילות החרם השיטתית שביצע המערער, אף לאחר כניסתו לישראל – ומציינים כי בית המשפט קמא פסע בתלם שנחרש בעניין Alqasem, כאשר ייחס משקל מכריע לכך שהחשש "מניצול השהות בארץ לעידוד פעילות חרם התממש הלכה למעשה".

על פי השקפת המשיבים, שיקול הדעת הרחב שבו מחזיק שר הפנים בנוגע למניעת הכניסה לישראל, עומד בעינו גם לאחר חקיקת ההסדר הקונקרטי לגבי פעילי חרם (תיקון 28). נוכח ממצאי הערכאה הראשונה, החלטת השר

מגנה על זכותה של ישראל להיאבק באיום החרם, מבלי לפגוע בזכות קנויה או באינטרס מהותי של המערער – ומכאן שהיא "נטועה עמוק-עמוק במרכזו של מתחם הסבירות", ואין מקום להתערב בה. במילים אחרות, די בסמכותו הכללית של שר הפנים כדי להכשיר את החלטתו בעניין שאקר.

לצד זאת, המשיבים מציינים כי עניינו של המערער נבחן גם בראי ההסדר הקונקרטי שבחוק הכניסה, ונמצא כי הוא בא בגדרי סעיף 2(ד) לחוק – משום שהפעולות שנקט עובר לכניסתו לישראל, ולאחר מכן, מתלכדות לכדי עילה רבת משקל לאי חידוש אשרת השהייה שלו. המשיבים מצביעים בהקשר זה על ההיקף והאינטנסיביות של הפעילות המוקדמת, ומזכירים כי המערער ייסד ועמד בראש ארגון הקורא לחרם על ישראל, ובהמשך נטל חלק בשורה ארוכה של פורומים שבהם הילל את תנועת ה-BDS. כאשר הדברים משתלבים בסירובו להצהיר בפני בית המשפט קמא על נטישת דרך החרם, ובמעורבותו – לאחר הכניסה לישראל – בניסיון להביא לשלילת החסות של ארגון FIFA למשחקי כדורגל באזור, הם מלמדים כי פעילות החרם של המערער מעולם לא פסקה. לפיכך, בהתאם לפרמטרים שנקבעו בעניין Alqasem אין בחלוף הזמן כדי להוציא את שאקר מגדרי סעיף 2(ד) לחוק הכניסה. מכל מקום, פעולות המערער לאחר כניסתו ארצה – החל בזירת הכדורגל, וכלה בהתבטאויות ובפרסומים השונים בחשבון הטוויטר שלו – ממשיכות את הרצף, ומעידות כי הוא עודנו "ממשיך לקרוא לחרם בעקביות".

לדברי המשיבים, מבחן העושה ומבחן המעשה מלמדים כי המערער קרא לאורך השנים לחרם גורף על מדינת ישראל – כך שאין ממש בניסיון להציג את פעילותו כקריאה לחרם סלקטיבי עקב פגיעה בזכויות אדם. בין היתר, המערער חתם על עצומה השוללת מגע עם מדינת ישראל, ומייחסת לה פשעי מלחמה; מיוחסות לו אמירות רבות שבהן תוארה מדיניותה הכללית של ישראל כמדיניות "אפרטהייד"; והוא קרא להסרה גורפת של נכסים ישראליים המצויים באזור מאתרי אינטרנט מסחריים. בנסיבות אלה, הם סבורים שאין ספק כי המערער פועל בהתמדה לקידום חרם על "עסקים, מפעלים, חברות ועוד, רק מחמת זיקתם למדינת ישראל, מוסד ממוסדותיה או אזור הנמצא בשליטתה" – ובא בגדרי סעיף 2(ד) לחוק הכניסה.

לשיטת המשיבים, הפרסומים וההתבטאויות בחשבון הטוויטר של שאקר נעשו בכובעו האישי, כפי שקבע בית המשפט קמא – ודי בכך כדי לשמוט את

הקרקע מתחת לטענה כי המערער אינו בא בגדרי התבחינים. זאת ועוד, נוכח פעילותו העצמאית הממושכת של שאקר בתחום החרם, אין זה מתקבל על הדעת כי התבחינים ביקשו להעניק לו חסינות אך משום שהוא מבצע כעת את מעשיו בחסות Human Rights Watch, שאינו מוגדר כארגון חרם. אכן, כאשר העיסוק בזירה הישראלית-פלסטינית מהווה מרכיב זניח בפעילותו של ארגון הוא לא ייכלל, בהכרח, ברשימת ארגוני החרם – אלא שמדיניות מידתית זו לא נועדה לתת לפעיליו יד חופשית לקידום חרם על ישראל, בניגוד לתכלית סעיף 2(ד) לחוק הכניסה. כך או כך, גם אם המערער אינו בא בגדרי התבחינים, המשיבים סבורים כי שר הפנים רשאי להרחיקו מישראל מכוח סמכותו הכללית.

המשיבים דוחים את הטענה כי הם מונעים משיקולים זרים, ומדגישים שהחלטת השר מופנית רק כלפי שאקר – כפי שגם הובהר בפסק הדין – ולא נועדה לפגוע בפעילות הארגון כולו. לשיטתם, המערערים לא הוכיחו שאי חידוש רישיונו של שאקר יסב לו, או לארגון, נזק ממשי, והלה אף אינו בא בגדרי החריגים שבסעיף 2(ה) לחוק הכניסה: לא הוצג כל טעם הומניטרי אישי המצדיק את כניסתו, ואין עילת התערבות בעמדת המדינה – שמשרד החוץ שותף לה כעת – בדבר אי קיום החריג המדיני. כפועל יוצא, הם גורסים שדין הערעור להידחות.

עמדת ידידי בית המשפט ותגובות הצדדים

6. במהלך הדיון בעתירת המערערים צורפו להליך קרן צדוק-אורבך וארגון שורת הדין – שהגישו את העתירה הראשונה – יחד עם הפורום המשפטי למען ארץ ישראל, והמכון לחקר ארגונים לא ממשלתיים, כידידי בית המשפט. בהחלטתי מיום 24.7.2019 צורפו להליך ידידים נוספים, בדמות ארגון Amnesty International (להלן: Amnesty) ושלושה בכירים לשעבר במערך שירות החוץ – אילן ברוך, אלון ליאל ואלי בר נביא.

בעיקרי הטיעון מטעמו, סמך המכון לחקר ארגונים לא ממשלתיים את ידיו על קביעות פסק הדין באשר לטיב פעילות החרם של שאקר – והוסיף עליהן. במקביל, הוא ביקש להוכיח כי שיח זכויות האדם שבו מנופפים המערערים אינו אלא עלה תאנה המכסה על עוינותם כלפי מדינת ישראל. לדעת המכון, הרחקת שאקר מישראל נחוצה משום "שהוא מנצל ומעוות את תחום

זכויות האדם על מנת לקדם פעילות חרם נגד מדינת ישראל" בצורה שיטתית ומתוכננת – ואין יסוד לחשש שהדבר יפגע בארגוני זכויות אחרים.

קרן צדוק-אורבך וארגון שורת הדין הוסיפו כי שורש הרע אינו בהתבטאויות האישיות של שאקר, אלא דווקא בהיותו נציג ארגון Human Rights Watch – החותר, לטעמם, תחת קיומה של מדינת ישראל, וקורא בין היתר לנקיטת סנקציות נגד חיילי צה"ל. למעשה, גורמים אלה סבורים כי בהעדר זכות קנויה להיכנס ארצה, למערערים כלל אין זכות עמידה.

7. לעומתם, בכירי העבר במערך שירות החוץ טוענים כי החלטת השר תגרום "נזק עצום ולטווח ארוך ליחסי החוץ של מדינת ישראל ולתדמיתה כמדינה דמוקרטית ופתוחה". לדבריהם, הרחקת שאקר מישראל בגין פעילות להסטת השקעות מההתנחלויות תשדר "חוסר סובלנות וכבוד" לעמדה רווחת במערב – היונקת מן התפיסה בדבר אי חוקיותן – ותיצור את הרושם שהמדינה מוכנה להקריב את ערכי היסוד הדמוקרטיים על מזבח ההתנחלויות. הם קוראים, אפוא, להבחין בין קידום חרם כללי על מדינת ישראל, תוך הטלת ספק בזכותה להתקיים – ובין פעולות ממוקדות הנוגעות לאזור, ומטרתן שכנוע עסקים שלא ליטול חלק בהפרת זכויות אדם.

ארגון Amnesty גורס כי לכל חברה עסקית "אחריות לכבד את המשפט הבינלאומי ההומניטרי ואת זכויות האדם בכל מקום שבו היא פועלת". לשיטתו, הקמת ההתנחלויות באזור מפרה את הדין הבין-לאומי, ופוגעת בזכויות אדם – הן כשלעצמה, והן כזרז לפגיעות נוספות. בנסיבות אלה, "כל פעילות עסקית" בהתנחלויות תורמת "באופן מובהק ובלתי נמנע" להפרות של המשפט הבין-לאומי – כך ש"פרשנות סבירה של העקרונות המנחים של האו"ם משמיעה שעל חברות עסקיות להימנע מלקיים פעילויות כלשהן בהתנחלויות אלו". הרחקת "מגן זכויות אדם" שקרא לגופים עסקיים לפעול בהתאם – פרקטיקה מקובלת ולגיטימית בקרב ארגוני חברה אזרחית וזכויות אדם – מעוררת, אפוא, קושי. היא אינה עולה בקנה אחד עם החובה לאפשר למגיני הזכויות לפעול בצורה חופשית, וללא חשש מנקמה (לפי הכרזת האו"ם בדבר זכותם ואחריותם של יחידים, קבוצות ואורגנים בחברה לקדם ולהגן על זכויות אדם וחירויות יסוד שזכו להכרה בין-לאומית); היא עלולה ליצור אפקט מצנן רחב; והיא פוגעת בצורה בלתי סבירה ובלתי מידתית בזכויות לחופש ביטוי והתאגדות, המוכרות בדין הבין-לאומי, וחיוניות לביצוע עבודתם של מגיני הזכויות. Amnesty סבור

כי קריאה לגופים עסקיים לכבד את הדין הבין-לאומי אינה בגדר קריאה לחרם, ובכל מקרה "יש להרשות לאלו המקדמים ותומכים בקריאות כאמור להביע את דעותיהם באופן חופשי".

מנגד, משיבי המדינה סבורים כי עמדת Amnesty "מורכבת כולה מטענות כלליות", המנותקות מן העובדות הקונקרטיות שעליהן התבססה הערכאה הראשונה. כך, בניגוד לתיאור המוצג בעמדת Amnesty, בית המשפט קמא קבע כי שאקר לא הסתפק בקריאה "להימנע מפעילות עסקית התורמת להפרת זכויות אדם". משמע, לא מדובר ב"מגן זכויות אדם" שקרא לנטילת אחריות תאגידית, אלא בפעיל המקדם חרם אך בשל הזיקה למדינת ישראל ולאזור הנמצא בשליטתה – ומכאן שהטענות התיאורטיות לגבי חשיבות ההגנה על "מגיני זכויות אדם" אינן רלוונטיות. המדינה שבה ומדגישה בהקשר זה כי החלטת השר מוגבלת לעניינו של שאקר, וכי ארגון Human Rights Watch לא הוגדר כארגון חרם – כך שבקשה להעסקת נציג אחר מטעמו תיבחן לגופה. בד בבד, המשיבים מציינים כי עמדת Amnesty מתעלמת לחלוטין מן הדין הישראלי הפנימי, לרבות ההוראות הרלוונטיות בחוק הכניסה ובחוק החרם – ומבקשת לעורר סוגיות שכבר הוכרעו בפסיקת בית משפט זה, בכובעיו השונים, בפרשות אבנרי ו-Alqasem. לפיכך, הם סבורים שאין בעמדה זו כדי להשפיע על תוצאת ההליך, ועומדים על כך שדין הערעור להידחות.

המערערים השיבו להשלמת הטיעון מטעם משיבי המדינה, וטענו כי היא מבוססת על "עובדות אלטרנטיביות" באשר לטיב הפעילות של שאקר והארגון. הם מדגישים כי ארגון Human Rights Watch מתמקד בהטמעת כללי אחריות תאגידית בתחום זכויות האדם, אך אינו קורא לחרמות, ואינו חבר בתנועת ה-BDS. המערער מחויב, לדבריהם, למדיניות זו, ומאז הצטרפותו לארגון הוא לא חרג ממנה "כמלוא הנימה"; משמע, פעילותו כנציג הארגון אינה נעשית מחמת הזיקה למדינת ישראל או לאזור שבשליטתה – כפי שטוענים משיבי המדינה, וכפי שעולה מפסק הדין מושא הערעור – אלא כדי למנוע הפרות של זכויות אדם. יתר על כן, הם סבורים כי גם עובר להצטרפותו לארגון שאקר לא קרא לחרם גורף על ישראל, ומדגישים כי בכל מקרה אין לדברים רלוונטיות נוכח הזמן שחלף.

המערערים חותמים את תגובתם בהתייחסות למישור החוקתי, ועומדים על כך שאין בעתירה החוקתית כדי לייתר את הדיון בעניין בהליך דנן. אדרבה,

הערעור מספק לדיון מסגרת קונקרטית, חושף זוויות שאינן קיימות בעתירה, ולא ניתן להכריע בו מבלי להידרש לפן החוקתי. יצוין כי בשלהי הדיון שהתקיים בפנינו הציגה המדינה נימוק נוסף לדחיית הטענות החוקתיות – אי צירוף כנסת ישראל להליך, בניגוד להוראת סעיף 17(ג1) לחוק הכנסת, התשנ"ד-1994. לעומתה, המערערים סברו כי ענייננו בתקיפה עקיפה, שהרי הסעד שביקשו מתמצה בביטול ההחלטה המינהלית לגבי העותר, ומכאן שלא היה צורך לצרף את הכנסת כמשיבה.

8. ערב הדיון בערעור דחתה חברתי, הנשיאה א' חיות, בקשה שהגישו המערערים לפי סעיף 26(2) לחוק בתי המשפט [נוסח משולב], התשמ"ד-1984 (חלף סעיף קטן (1) לו, שהיה רלוונטי באותה עת), וקבעה כי "בשלב זה" אין מקום להרחבת ההרכב הדן בערעור. הבקשה הועלתה, אפוא, בשנית במהלך הדיון בפנינו, אך לאור אופיין הנקודתי של הסוגיות המחייבות הכרעה בהליך הנוכחי – כפי שיובהר להלן – לא מצאתי עילה לסטות מהחלטת הנשיאה, ולחרוג מן הכלל לפיו "בית המשפט העליון ידון בשלושה" (סעיף 26 לחוק בתי המשפט). על כן, אפרוש כעת את התשתית הנורמטיבית הנחוצה להכרעה בענייננו, תוך פיתוח והרחבה של העקרונות שאומצו בעניין Alqasem – שם נדרש בית משפט זה לראשונה לפרשנות תיקון 28.

דיון והכרעה

9. עובר לחקיקת תיקון 28, הטיפול בבקשותיהם של פעילי חרם להיכנס למדינת ישראל נעשה במסגרת סמכותו הכללית של שר הפנים למתן אשרות ורישיונות ישיבה, לפי סעיף 2(א) לחוק הכניסה. סעיף זה אינו מכיל קווים מנחים להפעלת הסמכות, ומותיר לשר שיקול דעת רחב – אך לא בלתי מוגבל. ראשית, בידיו לשקול אך ורק שיקולים העולים בקנה אחד עם תכליות חוק הכניסה: עקרון ריבונות המדינה, המעניק ליחידה הפוליטית זכות להגביל את הכניסה לתחומיה, על מנת לשמור על הזהות, התרבות, האינטרסים הכלכליים של תושביה, והסדר הציבורי בה; הגנה על ביטחון המדינה ושלום אזרחיה; והצורך להגן על זכויות המחזיקים ברישיונות ישיבה (בג"ץ 7803/06 אבו ערפה נ' שר הפנים, פסקה 6 לחוות דעתי (13.9.2017)). בנוסף, השר נדרש לאזן כהלכה בין מכלול השיקולים הרלוונטיים, החותרים לעיתים לכיוונים מנוגדים, שכן החלטתו – כמו החלטות אחרות של רשויות המינהל – כפופה למבחן הסבירות (בג"ץ 758/88 קנדל נ' שר הפנים, פ"ד מו(4) 505, 527-528 (1992)).

אולם, על רקע התגברות הקריאות לחרם על מדינת ישראל, החליט המחוקק להרחיב את המענה שנתן חוק החרם במישור הפנים-ישראלי (עניין Alqasem, פסקאות 12-14 לחוות דעתו של השופט ע' פוגלמן), ועיגן בסעיף 2 לחוק הכניסה את ההוראות הבאות:

> "(ד) לא יינתנו אשרה ורישיון ישיבה מכל סוג שהוא, לאדם שאינו אזרח ישראלי או בעל רישיון לישיבת קבע במדינת ישראל, אם הוא, הארגון או הגוף שהוא פועל בעבורם, פרסם ביודעין קריאה פומבית להטלת חרם על מדינת ישראל, כהגדרתו בחוק למניעת פגיעה במדינת ישראל באמצעות חרם, התשע"א-2011, או התחייב להשתתף בחרם כאמור.
> (ה) על אף האמור בסעיף קטן (ד), שר הפנים רשאי לתת אשרה ורישיון ישיבה כאמור באותו סעיף קטן, מטעמים מיוחדים שיירשמו".

הסדר זה – שתכליתו הקונקרטית היא מאבק בתנועת החרם על ישראל, ועל פרטיו אעמוד בסמוך – מצמצם את שיקול הדעת הרחב שהיה בידי שר הפנים מכוח סמכותו הכללית, בשני מישורים: *ראשית*, הוא מגדיר את מניעת הכניסה של פעילי חרם הבאים בשעריו כברירת המחדל, ומתיר לשר לסטות מן הכלל רק "מטעמים מיוחדים שיירשמו". *שנית*, גם בהנחה שתיקון 28 אינו יוצר הסדר שלילי באשר לתחולת סמכותו הכללית של שר הפנים על בני אדם המעורבים בפעילות חרם, ברי כי אמות המידה המהותיות שנקלטו בהסדר זה "משליכות" על אופן הפעלת הסמכות הכללית, ומקרינות על היקף שיקול הדעת של השר במסגרתה (עניין Alqasem, פסקה 13 לחוות דעתי; ראו גם פסקאות 16-17 לחוות דעתו של השופט ע' פוגלמן). על כן, יש להעמיד את החלטת השר במבחן ההסדר הקונקרטי הקבוע בחוק הכניסה.

ההיבט החוקתי

10. אכן, המערערים תוקפים גם את תיקון 28 עצמו, וטוענים כי הוא פוגע בצורה לא מידתית בזכויות החוקתיות לשוויון ולחופש ביטוי, ואף חותר תחת עקרונות יסוד של המשטר הדמוקרטי. אולם, דווקא נוכח חשיבותן של טענות אלה, מקומן בתקיפה ישירה של סעיפים 2(ד) ו-(ה) לחוק הכניסה בהליך

המתאים – ואין להידרש להן בתקיפה עקיפה, אגב הפעלתה הקונקרטית של הסמכות בעניין שאקר.

אמת – מן הבחינה העקרונית, ערכאה שיפוטית הדנה בעניין שהובא לפניה כדין מוסמכת לדון בחוקתיות הנורמה הרלוונטית במתכונת של תקיפה עקיפה, ולהכריע בה לצורך אותו עניין (ראו, למשל, בג"ץ 2311/11 סבח נ' הכנסת, פסקאות 23 ו-28 לחוות דעתו של הנשיא א' גרוניס (17.9.2014) (להלן: עניין סבח); בג"ץ 9369/19 אה"ל ארגון המתמחים לרפואה נ' שר העבודה הרווחה והשירותים החברתיים, פסקה 10 (5.1.2017); בג"ץ 6871/03 מדינת ישראל נ' בית הדין הארצי לעבודה, פ"ד נח(2) 943 (2003)). למעשה, ניתן לטעון כי חלופת התקיפה העקיפה אף נהנית מיתרונות מסוימים – דוגמת כריכתה המובנית במסכת עובדתית קונקרטית, להבדיל מן האופי המופשט של תקיפה ישירה, העשויה ללקות בחוסר בשלות (ראו והשוו, עניין סבח, פסקאות 23 ו-28 לחוות דעתו של הנשיא א' גרוניס; בש"פ 8823/07 פלוני נ' מדינת ישראל, פ"ד סג(3) 500, פסקה 9 (2010); יצחק זמיר הסמכות המינהלית: סדרי הביקורת המשפטית כרך ד 2675 (2017) (להלן: זמיר)). ההכרה העקרונית בסמכות לדון ולהכריע בחוקתיות חוק במסגרת תקיפה עקיפה "התקפית" יפה גם לגבי בית המשפט לעניינים מינהליים (עניין סבח; ראו יגאל מרזל "הדיון בעתירות לעניין תוקף החוק" ספר אליהו מצא 167, ה"ש 12 (אהרן ברק, אילה פרוקצ'יה, שרון חנס ורענן גלעדי עורכים; 2015)) – ומשכך, היה בידי הערכאה הדיונית להידרש לטענותיהם החוקתיות של המערערים למרות שהיא נעדרת סמכות לדון בהן בתקיפה ישירה של חוקתיות תיקון 28 (לדיון כללי בסוגיית "ריכוזיות" הביקורת השיפוטית על חקיקה ראשית, ראו אהרן ברק "ביקורת שיפוטית על חוקתיות החוק ומעמד הכנסת" הפרקליט מז 5, 6-7 (2005); יגאל מרזל "מעמד הכנסת בעתירות בעניין חוקתיות החוק" משפטים לט 98 ה"ש 98 (2010) (להלן: מרזל); ואורי אהרונסון "הטיעון הדמוקרטי בזכות ביקורת שיפוטית ביזורית" משפט וממשל טז 57-59 (2015) (להלן: אהרונסון)). יתר על כן, מאחר שהתקיפה העקיפה מופנית כלפי נורמה חקיקתית כללית, הנחת המוצא היא כי "אין זה הוגן להטיל על הפרט את הנטל להשיג עליה דווקא בתקיפה ישירה" – כך שיש להפעיל את הסמכות הקיימת, ולדון לגופן בטענות המערערים במישור החוקתי (דנ"א 1099/13 מדינת ישראל נ' אבו פריח, פסקה 9 לחוות דעתו של הנשיא א' גרוניס (12.4.2015) (להלן: עניין אבו פריח); הדברים עשויים להיות נכונים ביתר שאת כשמדובר בגורמים זרים, שנראה כי אין להטיל עליהם את נטל תיקון החקיקה המקומית).

11. אף על פי כן, סמכות לחוד ושיקול דעת לחוד. הגם שקיימת סמכות לדון בטענות המערערים בתקיפה עקיפה, בחינת מכלול השיקולים הרלוונטיים מובילה למסקנה שיש להימנע מכך – ולהותיר את ההיבט החוקתי של תיקון 28 לבירור בהליך של תקיפה ישירה (בדמות העתירה החוקתית התלויה ועומדת לפני בית המשפט הגבוה לצדק). כפי שציין המלומד זמיר, מן הראוי לבכר את התקיפה הישירה –

> "בין השאר, כאשר ההחלטה המינהלית מעוררת שאלות נכבדות של מדיניות משפטית, חברתית או מדינית; כאשר יש לה השלכה רחבה וחשובה, ולכן חשוב שבית המשפט יאפשר לגורמים נוספים הקשורים לעניין הנדון להשמיע את טענותיהם; כאשר קיים חשש ממשי מפני ריבוי הכרעות סותרות באותו עניין על ידי בתי משפט שונים, ולכן גם חשש לפגיעה בוודאות וביציבות; כאשר מהות העניין הנדון הולמת יותר ביקורת ישירה; כאשר קיים אינטרס ציבורי אחר האומר כי בנסיבות המקרה ראוי לקיים ביקורת ישירה ולא ביקורת עקיפה" (זמיר, בעמ' 2687-2688; לקולות שונים, בכיוונים שונים, באשר לאופן הפעלת שיקול הדעת בנוגע לתקיפה עקיפה ראו חוות דעתם של המשנה לנשיאה א' רובינשטיין והשופטת ד' ברק-ארז בעניין אבו פריח).

הנה כי כן, דווקא השאלות הנכבדות שמעוררים המערערים במישור החוקתי מצדיקות פנייה למסלול התקיפה הישירה – קרי, תקיפת תיקון 28 באמצעות עתירה לבית המשפט הגבוה לצדק, שהוא הערכאה המוסמכת ובעלת המומחיות לדון בהיבטיו החוקתיים של התיקון, ובפגיעתו-לכאורה בעקרונות היסוד של המשטר הדמוקרטי.

תוצאה זו מתבקשת גם לאור המשקל המכריע שהעניקו המערערים לפגיעה, כביכול, בזכויותיהם החוקתיות של אזרחי ישראל ותושבי האזור – מעבר לפגיעה בשאקר ובזרים אחרים שכניסתם ארצה נמנעת. שעה שהמערערים מתיימרים לייצג את הציבור הרחב, ולהגן על אינטרסים וזכויות החורגים מעניינו האישי של שאקר, עליהם לעשות זאת בתקיפה ישירה – ולא אגב הדיון בהחלטת השר הספציפית שבמוקד ההליך דנן.

12. המסקנה כי אין להידרש בהליך דנן לטענות החוקתיות מתחזקת נוכח אי צירופה של כנסת ישראל כמשיבה להליך – הן בגלגולו המקורי, והן בערעור דנן. אכן, בסוגיה זו טרם נקבעו כללים ברורים, ומלומדים מצביעים על פער בין הרובד הפרשני-תיאורטי – המצדד, לשיטתם, בצירוף הכנסת כמשיבה להליכי תקיפה עקיפה של חקיקה ראשית, מכוח סעיף 17(ג1) לחוק הכנסת – לבין הפרקטיקה הקיימת (ראו, למשל, אהרונסון, בעמ' 61-63; מרזל, בעמ' 372-374). אולם, גם אם אניח שהמערערים לא נדרשו לצרף את כנסת ישראל כמשיבה לעתירתם – על אף שהם אלה שיזמו את הדיון בשאלה החוקתית, ועשו בה שימוש "התקפי" (והשוו, אהרונסון, בעמ' 62) – לא ניתן להתעלם מן החשיבות של שמיעת עמדתה, בהתחשב בהשלכות הרוחב של הכרזה על בטלות החוק (גם אם מבחינה פורמלית, קביעת הערכאה הדיונית בסוגיה תחול רק ביחסי הצדדים להליך). נתון זה מצדיק אף הוא את העדפת מסלול התקיפה הישירה – ולמצער, מלמד כי לא ראוי להידרש לראשונה לפן החוקתי בשלב הערעור (שההכרעה בו אף יוצרת תקדים מחייב), שעה שעמדת המחוקק כלל לא נשמעה.

זאת ועוד, המקום הנרחב שניתן לסוגיה החוקתית בכתבי הטענות בגלגולו הנוכחי של ההליך, בהם הוצג הערעור כמי שעניינו "בחוקתיותו ובפרשנותו" של תיקון 28 (פסקה 2 להודעת הערעור), מעורר ספק ממשי בשאלה האם מדובר בשאלה שהתעוררה "בדרך אגב", ובאה בגדרי סמכותו הנגררת של בית המשפט לעניינים מינהליים. כפי שציין חברי, השופט נ' סולברג, בהקשר אחר –

> "יש ליתן את הדעת אף על שאלת מרכזיותן של הטענות שנטענו בתקיפה עקיפה ביחס ליתר הטענות שנטענו במסגרת אותו הליך. סעיף 74 לחוק בתי המשפט משמיענו, כי הסמכות לדון בשאלה נגררת, קמה מקום שבו השאלה מתעוררת בדרך אגב. בענייננו, שאלות חוקיותו וסבירותו של כלל 8(א) התעוררו אמנם בדרך אגב, כטענות הגנה מטעמן של הרשויות; אולם הלכה למעשה מפאת משקלן, הן 'השתלטו' על ההליך, הותירו את יתר הטענות בצִלן, ואף תפסו בפועל את עיקר תשומת לבו של בית המשפט בפסק הדין. בהקשר זה נקבע אך לאחרונה: "בהכללה ניתן אפוא לומר, כי מקום בו מרכז הכובד של ההליך הוא ענין שבסמכות בית המשפט האזרחי או הפלילי, והתקיפה העקיפה מתייחסת לשאלה משנית העולה

> באופן אינצידנטלי לסוגיה העיקרית, ושההכרעה בה דרושה לצורך ההכרעה בענין הנדון בפני בית המשפט, הנטייה היא לאפשר תקיפה עקיפה, בהעדר סיבה מיוחדת לשלול. יצוין כי המצב האופייני לתקיפה עקיפה הוא העלאת הטענה נגד האקט המינהלי כטענת הגנה. לעומת זאת, מקום שמהותו האמיתית של ההליך או מרכז הכובד שלו הוא בהכרעה בשאלת תוקפו וחוקיותו של אקט שלטוני, ובמיוחד כאשר מושא התקיפה הוא שיקול הדעת השלטוני לגופו, או כאשר מדובר בסוגיה שלטונית מורכבת או רגישה או בעלת השלכה רחבה, יש להימנע בדרך כלל מבירור הענין במסגרת תקיפה עקיפה" (ע"א 4291/17 אלפריח נ' עיריית חיפה, פסקה 15 לפסק דינו של השופט מ' מזוז (6.3.2019)). כאמור, בענייננו השאלות שהתעוררו בתקיפה העקיפה אינן אגביות ומְשניות ביחס לעניין העיקרי שנדון בהליך, ואף מן הטעם הזה לא היה נכון לאפשר תקיפה עקיפה בנסיבות" (רע"א 2933/18 עיריית אור עקיבא נ' מקורות חברת מים בע"מ, פסקה 24 (1.8.2019)).

דברים אלה יפים בקל וחומר לתקיפה עקיפה של חקיקה ראשית, המחייבת זהירות מיוחדת. המערערים העלו מיוזמתם את השאלה החוקתית, עשו בה שימוש "התקפי", והעניקו לה מקום מרכזי בהליך דנן – ומכאן שיש קושי רב בסיווגה כשאלה שהתעוררה "דרך אגב", ובאה בגדרי סעיף 76 לחוק בתי המשפט (עם זאת, אעיר כי נימוק זה אינו רלוונטי על פי הגישה הגורסת שתקיפה עקיפה של חוק אינה מתבצעת מכוח הסמכות הנגררת של הערכאה הרלוונטית, שכן "שאלת תוקפו של חוק אינה מצויה בסמכותו הייחודית של בג"ץ" (אהרונסון, בעמ' 56-57)).

13. נסכם ונאמר כי הדיון שנערך בפסקאות הקודמות מצביע על הייחודיות של שיטת המשפט הישראלית בכל הקשור למנגנון הפעלת הביקורת השיפוטית החוקתית. אם נרים את מבטנו אל העולם הגדול, נגלה, מן הצד האחד, את הגישה האמריקאית המקנה לכל ערכאה שיפוטית את הסמכות להכריז – במסגרת מערכת היחסים שבין הצדדים להליך, ואף מעבר לכך – על אי החוקתיות של נורמה חקיקתית מסוימת. על פי גישה זו, הדיון החוקתי מתחיל, כמו כל הליך אחר, בערכאות הנמוכות, ומטפס אט אט בשלבי הליכי הערעור עד הערכאה העליונה, הקובעת תקדים מחייב כלפי כולי עלמא. תפיסה דומה קיימת במדינות נוספות

המשתייכות לעולם המשפט המקובל. מן הצד האחר, ניצבת גישה ריכוזית שאינה מאפשרת לערכאות הדיוניות להידרש לחוקתיות החוק, וקובעת כי טענות כאלה יועלו אך ורק על שולחן הערכאה העליונה – אם בדמותו של בית משפט עליון, ואם בדמות טריבונל חוקתי ייעודי, דוגמת ה- Bundesverfassungsgericht הגרמני. Judge Wald, שופטת בית המשפט לערעורים במחוז קולומביה, תיארה את ההבדל בין שתי הגישות בצורה הבאה:"The Hungarian (or European) system of constitutional adjudication has been characterized as a 'Mt. Sinai'-like control by the constitutional court over all other courts whereas ours has been called a 'Judge and Company' approach involving close cooperation among all court levels in developing constitutional law" (Patricia M. Wald, Upstairs/Downstairs at the Supreme Court: Implications of the 1991 Term for the Constitutional Work of the Lower Courts, 61 U. Cin. L. Rev. 771, 776 (1993)). דהיינו, גישת "הר סיני", המרכזת את הביקורת השיפוטית החוקתית בידי ערכאה אחת, ממנה תצא תורת החוקה, אל מול גישת "שופט ושות'" הדוגלת במתן הסמכות לשופט לפי העניין – ולא על סמך הערכאה בה הוא מכהן – כשותף במלאכת הביקורת, כאשר בית המשפט העליון עומד בראש הפירמידה (עוד בנוגע לגישות שהוצגו ראו, למשל, Allan R. Brewer-Carias, Judicial Review in Comparative Law 127-55 (1989); Robert F. Utter and David C. Lundsgaard, Judicial Review in the New Nations of Central and Eastern Europe: Some Thoughts from a Comparative Perspective, 54 Ohio St. L.J. 559, 583-585 (1993); Alec Stone Sweet, Why Europe Rejected American Judicial Review and Why It May Not Matter, 101 Mich. L. Rev. 2744, 2770-2771 (2003); אהרן ברק "ביקורת שיפוטית על חוקתיות החוק ומעמד הכנסת" מבחר כתבים: על בית המשפט ושופטיו 71 (כרך ד, 2017); אהרונסון, בעמ' 15-13).

המשפט הישראלי אינו אוחז בקצוות. הוא מכיר (בוודאי מן הבחינה הפורמלית) בשני מסלולים לביקורת שיפוטית חוקתית. מסלול התקיפה הישירה מאפשר לאדם לעתור במישרין לבית המשפט הגבוה לצדק כנגד חוקתיות חקיקה ראשית. במקרה זה, הדיון יתמקד בהיבט החוקתי, ותוצאתו תקפה כלפי כולי עלמא. בד בבד, מסלול התקיפה העקיפה מאפשר לערכאות הנמוכות להידרש לשאלת החוקתיות אגב דיון בסוגיות המצויות בסמכותן – ולהכריע בסוגיה לצורך העניין שבפניהן, מבלי שתהיה לכך השפעה על גורמים חיצוניים להליך. מסלול זה עשוי להביא את הסוגיה לפתחו של בית המשפט העליון במסגרת הליכי ערעור – ובמקרה כזה, פסיקתו של בית המשפט תיצור תקדים מחייב.

לא באתי לומר כי ההכרה בשני המסלולים בשיטתנו היא ללא העדפה. בכל מקרה, יש מורכבות בעניין. למשל, לא תמיד ניתן יהיה לבחור בין שני המסלולים; כך, העדר בשלות עשוי לחסום את מסלול התקיפה הישירה, ולהביא להעדפת תקיפה עקיפה של החוק בשלבי יישומו (עניין סבח, פסקאות 23 ו-28 לחוות דעתו של הנשיא א' גרוניס). נקודה נוספת, שיש לה חשיבות רבה בענייננו, היא כי בהליכי תקיפה עקיפה בית המשפט העליון יידרש לסוגיה במגבלות הנובעות ממעמדו כערכאת ערעור, הבוחנת האם קיימת עילת התערבות בהכרעת הערכאה הדיונית – להבדיל מדיון de novo. מגבלה זו מצדיקה את העדפת מסלול התקיפה הישירה כאשר ניצבות על הפרק סוגיות עקרוניות ובעלות השלכות רוחב, דוגמת זו שלפנינו, הראויות לבירור מקיף וממצה יותר של הערכאה העליונה.

נדמה כי מבחינת הסוציולוגיה של המשפט יש ערך לכך שהסמכות לבטל חוקים בלתי-חוקתיים תופעל בזהירות ובצורה ריכוזית. הקהילייה המשפטית, ואף הציבור הרחב, תופסים סמכות זו כחידוש, ובמדינת ישראל עודנו מצויים בשלבים הראשונים של גיבושה – מה שמקרין גם על היחס הראוי לביטול חקיקה ראשית על ידי ערכאה שאינה בית המשפט העליון.

14. מן הטעמים הללו, ומאחר שלמערערים הייתה אפשרות מעשית לעתור במישרין נגד תיקון 28, אין להידרש בהליך דנן לחוקתיות התיקון – העתידה להתברר בקרוב במסגרת העתירה החוקתית – כך שהביקורת על החלטת השר תתבצע בראי החקיקה הקיימת.

ההיבט הפרשני

15. סעיף 2(ד) לחוק הכניסה חל על שתי קטגוריות של זרים המעורבים בקידום חרם, "כהגדרתו בחוק למניעת פגיעה במדינת ישראל באמצעות חרם, התשע"א-2011". הראשונה – אדם שפרסם ביודעין קריאה פומבית להטלת חרם על מדינת ישראל, או התחייב להשתתף בו, כך שמעשיו מעוררים חשש מובנה מפני ניצול לרעה של הביקור בישראל. השנייה – אדם שלא ידוע על מעורבות אישית שלו בקידום החרם, אך פעילותו במסגרת ארגון או גוף הדוגלים בחרמות על מדינת ישראל, "מעידה על השתייכותו והזדהותו של המבקש עם רעיונות הארגון", ומבססת, אפוא, חשש דומה מפני פגיעה במדינה (עניין Alqasem, פסקה 15 לחוות דעתו של השופט ע' פוגלמן, ופסקאות 9-11 לחוות דעתי). אכן,

הקטגוריה השנייה נועדה להקל על המדינה, ולאפשר לה להתגונן מפני ארגוני חרם המבקשים לפעול בה בחסות האנונימיות של פעיליהם –

> "הכוונה הבסיסית היא שאם יש ארגון שהוא ארגון שמוביל BDS, בסדר? ארגון שזה עניינו עכשיו: להוביל - - - לחרם. הנציג של הארגון לא מגיע, כחלק מהעניין. עכשיו, הוא עצמו, אין לי כרגע ראיות, כי הוא נציג חדש. איך אומרים? הוא רק עכשיו. אתמול הוא התקבל לעבודה בארגון. אבל עניינו: הוא בא לפה בשביל לקדם את החרם הזה. הרי על זה אנחנו מדברים" (דברי ח"כ בצלאל סמוטריץ'; פרוטוקול ישיבה מס' 276 של ועדת הפנים והגנת הסביבה, הכנסת ה-20, 45-46 (7.11.2016) (להלן: פרוטוקול ועדת הפנים)).

הנה כי כן, שתי הקטגוריות (פעילות חרם אישית וארגונית) נועדו להגשים את אותן תכליות – שמירה על הריבונות של מדינת ישראל, ועל ביטחונה, לצד תכלית קונקרטית שעניינה "קידום המאבק הצודק שמנהלת מדינת ישראל בתנועת החרם – בהסתמך על דוקטרינת הדמוקרטיה המתגוננת, וזכות המדינה להתגונן, ולהגן על אזרחיה, מפני הפלייה לרעה" (עניין Alqasem, פסקה 10 לחוות דעתי). לפיכך, שתיהן כפופות לקביעה העקרונית בעניין Alqasem, לפיה ההסדר שעוגן בחוק הכניסה במסגרת תיקון 28, נושא "אופי מניעתי ולא עונשי". משמע – סעיפים 2(ד) ו-(ה) לחוק מונעים את כניסתם ארצה של פעילי חרם שיש חשש כי ינצלו לרעה את שהותם בישראל, וירתמו אותה לעגלת הדה-לגיטימציה שדוחפת תנועת החרם. אולם, אם עלה בידי פעיל כלשהו להוכיח בצורה משכנעת כי הוא אינו עוסק עוד בקידום מדיניות החרם, סגירת שערי המדינה בפניו אינה תורמת להגנה על הדמוקרטיה הישראלית – ובנסיבות אלה, אין "להעניש" אותו במניעת כניסה בגין מעשיו הפסולים בעבר (שם, פסקה 9 לחוות דעתי). כמובן, נטל הוכחת זניחת פעילות החרם מוטל על המבקש, והוא משתנה בהתאם למכלול הנסיבות הרלוונטיות, דוגמת התפקיד שמילא בארגוני חרם, משך הפעילות, וכיוצא באלה:

> "קיומו של נתק בין הפעיל לארגונו, או בין הפעיל לפעילותו, עשוי להוציא אותו מגדרי הסדר זה. הכלי של בחינת העושה והמעשה עשוי לסייע כאן. המעשה מכתים את העושה, וצובע אותו כיעד לתחולת סעיף 2(ד). כמובן, אין בכך לקבוע כללים

> נוקשים. יש רמות של בכירות ועשייה בארגון, ויש נתונים שונים של העושה. למשל, הבחינה של אדם הממלא תפקיד בכיר בארגון BDS במשך עשרות שנים תהיה זהירה יותר מהבחינה של אדם שאף אם הוא בא בגדרי סעיף 2(ד) פעל רק תקופה קצרה יחסית, ובדרג זוטר יחסית. הנטל המוטל על הראשון להוכחת ההתנתקות מפעילות החרם כבד יותר מזה שבו נושא השני. הבחינה תהיה אינדיבידואלית, בהתאם לתכלית החוק" (שם, פסקאות 11 ו-13 לחוות דעתי; ראו גם פסקה 7 לחוות דעתו של השופט ע' פוגלמן).

במקרים שבהם עלה בידי אדם להרים את הנטל ולהוכיח כי חדל מפעילות החרם, כך שאין חשש שכניסתו ארצה תנוצל לפגיעה במדינה ובמוסדותיה, הוא אינו בא בגדרי סעיפים 2(ד) ו-(ה) לחוק. ודוקו, מקצת האינדיקציות הפרשניות שהובילו למסקנה זו בעניין Alqasem מתמקדות בקטגוריה השנייה – לרבות לשון ההווה שנוקט החוק בתיאור הזיקה שבין המבקש לארגונו (שם, פסקה 9 לחוות דעתי, פסקה 4 לחוות דעתה של השופטת ע' ברון, ופסקאות 3-9 לחוות דעתו של השופט ע' פוגלמן) – אך התכלית האובייקטיבית של החקיקה מלמדת כי הדברים יפים גם ביחס לבני אדם הבאים בגדרי הקטגוריה הראשונה.

16. לצד ההבחנה בין פעילי חרם בהווה ובעבר, יש לתת את הדעת גם על טיב פעילות ההווה – שהרי אין דין ארגון המקדיש את עצמו לפעילות BDS כדין ארגון שנדרש לנושא באופן אקראי ונקודתי, ואין דין פעיל בולט המפיץ את משנת החרם בפומבי כדין אדם פרטי הפועל בחוג משפחתו. אם להידרש למילותיו של יו"ר ועדת הפנים והגנת הסביבה דאז, ח"כ דוד אמסלם, "אנחנו מדברים על המנהיגים שבהם, שהם אנשים מפורסמים וכולם יודעים את דעותיהם. **הם, בגלל הפרסום שלהם, גם מגיעים לבמות האלה כדי להכפיש אותנו בטלוויזיה. הרי הוא לא מכפיש אותנו וקורא לחרם עלינו אצלו בבית, עם ילדיו, אשתו ושכניו; הוא מגיע לטלוויזיה בדרך כלל, כי הוא איש בעל השפעה, והוא קורא שם לציבור שלהם להחרים אותנו**. אז לכן אנחנו מדליקים טלוויזיה, רואים אותו, רואים אותם. אז על האנשים האלה אנחנו מדברים" (פרוטוקול ישיבה מס' 213 של הכנסת ה-20, 228 (6.3.2017); ההדגשה אינה במקור (להלן: פרוטוקול המליאה)). מטעמים דומים, נקבע בתבחינים שאושרו על ידי שר הפנים והשר לנושאים אסטרטגיים כי רק פעילים של ארגון הפועל "באופן אקטיבי, רציף ומתמשך" לקידום חרמות על מדינת ישראל יבואו בגדרי החוק. יתר על כן, הובהר כי

כניסתם של פעילי ארגונים אלה – או של פעילי חרם "עצמאיים" – לישראל, תימנע רק אם הם עומדים באחד מן הקריטריונים הבאים:

> "נושאי תפקידים בכירים או משמעותיים בארגונים – ממלאי תפקידים רשמיים בכירים בארגונים הבולטים (כגון, יו"ר וחברי דירקטוריון). הגדרת התפקידים תשתנה בהתאם לאופיו של כל ארגון.
> פעילים מרכזיים – אנשים הנוקטים בפעילות ממשית, עקבית ורציפה לקידום חרמות במסגרת ארגוני הדה-לגיטימציה הבולטים או באופן עצמאי.
> גורמים ממסדיים (כגון ראשי ערים) המקדמים חרמות באופן אקטיבי ומתמשך.
> "גורמים מטעם" – פעילים שמגיעים לישראל מטעם אחד מארגוני הדה-לגיטימציה הבולטים. לדוגמה, פעיל המגיע כמשתתף במשלחת מטעם ארגון דה-לגיטימציה בולט" (ההדגשות במקור).

הבחנות אלה מתבקשות, כמובן, מתכליתו האובייקטיבית של החוק, המבקש להגן על מדינת ישראל מפני איום הדה-לגיטימציה, ולא לבוא חשבון עם בני אדם שלא נשקף מהם כל סיכון.

17. על רקע ההבחנות האמורות, יש לתת את הדעת על השאלה מהו, בדיוק, טיב החרם שקידומו מצדיק את סגירת שערי המדינה. ובכן, סעיף 2(ד) לחוק הכניסה חל על אדם המקדם חרם, "כהגדרתו בחוק למניעת פגיעה במדינת ישראל באמצעות חרם, התשע"א-2011". דהיינו –

> "הימנעות במתכוון מקשר כלכלי, תרבותי או אקדמי עם אדם או עם גורם אחר, רק מחמת זיקתו למדינת ישראל, מוסד ממוסדותיה או אזור הנמצא בשליטתה, שיש בה כדי לפגוע בו פגיעה כלכלית, תרבותית או אקדמית" (סעיף 1 לחוק החרם).

מלשון ההגדרה עולה כי היא מכילה רק מעורבות בחרם שהמניע לו הוא זיקת הגוף המוחרם למדינת ישראל, למוסדותיה או לאזור הנמצא בשליטתה. לעומת זאת, השתתפות בחרם על גוף מסוים בשל התנהלותו הפגומה – שאינה קשורה, בהכרח, בזהותו הישראלית – אינה באה בגדרי ההסדר שלפנינו, ואין בה כדי להגביל את הכניסה לישראל. אכן, במסגרת הדיון בחוקתיות חוק החרם, הובהר בעניין אבנרי כי קריאות להחרמת מפעל השוכן בשטחי יהודה והשומרון בשל

פעילות לא ראויה כלפי האוכלוסייה המקומית, פגיעתו באיכות הסביבה או עריכת ניסויים בבעלי החיים, כלל אינן באות בגדרי החוק – הואיל והן אינן נעשות "רק מחמת זיקתו" למדינת ישראל ולאזור שבשליטתה (פסקה י לחוות דעתו של המשנה לנשיאה א' רובינשטיין, ופסקה 48 לחוות דעתו של השופט י' עמית). באופן דומה, ציינה הנשיאה מ' נאור כי –

> אם, למשל, מפעל הנמצא באזור שבשליטת המדינה מפלה בין יהודים וערבים, ומטעם זה יש קריאה להחרימו, אין הדבר גורר הפעלת הסנקציות שבחוק. הוא הדין, לדעתי, אם המפעל נמצא במאחז בלתי חוקי מסוג המאחזים שפונו או שיש לפנות, על פי פסיקתו של בית משפט זה, בגין הקמתם על קרקע פרטית של תושבים פלסטינים. להשקפתי, קריאה לחרם על מפעל כזה בשל הקמתו הלא חוקית של היישוב *אינה* גוררת את הסנקציות שבחוק. אין המדובר בקריאה לחרם בשל זיקה לאזור אלא בשל פעילות לא חוקית (פסקה 4 לחוות דעתה; ההדגשה במקור. ראו גם פסקאות 24(ג) ו-33 לחוות דעתו של המשנה לנשיאה ח' מלצר, ופסקה 45 לחוות דעתו של השופט י' דנציגר).

עם זאת, ראוי לציין כי הפרשנות לפיה סעיף 1 לחוק החרם מכיל רק חרמות המבטאים ביקורת על עצם קיומה של מדינת ישראל, להבדיל מחרמות שמקורם בביקורת על מדיניות ממשלתה, נותרה במיעוט בעניין *אבנרי* (ראו פסקאות 12-14 לחוות דעתו של השופט ע' פוגלמן). לפיכך, חרם על רקע התנגדות למדיניות כללית של ממשלת ישראל, בנוגע לאזור שבשליטתה, בא בגדרי חוק החרם – משום שהוא מבטא את שלילת הלגיטימציה של המדינה נוכח פעילות, ואינו נובע מהתנהלות ספציפית של הגוף המוחרם.

שעה שתיקון 28 מאמץ את הגדרת החרם שבסעיף 1 לחוק החרם, הפרשנות שניתנה לאחרון בעניין *אבנרי* מקרינה במישרין על ההסדר שלפנינו – ומבהירה כי סעיף 2(ד) לחוק הכניסה מגביל אך ורק את כניסתם של פעילים המקדמים חרם על גופים ישראליים בשל זיקתם למדינה, למוסדותיה או לאזור שבשליטתה, ולא בגין התנהלות נקודתית פסולה שלהם.

18. על פני למעלה מעשרה עמודים פרש בית המשפט קמא את קביעותיו העובדתיות לגבי פעילותו האקטיבית, השיטתית והממושכת של שאקר לקידום חרמות על מדינת ישראל – וגופים בעלי זיקה כלפיה, או כלפי אזור שבשליטתה. ראשיתה של הפעילות בשנת 2006, אז ייסד המערער באוניברסיטת סטנפורד ארגון סטודנטים (SCAI, ולאחר מכן SPER) שפעל למניעת השקעות בחברות הקשורות לאזור. יצוין כי בפסק הדין יוחסה לארגון זה קריאה להסטת ההשקעות "From companies profiting from Israel's occupation of the Palestinian territories". ברם, המערערים טוענים כי הציטוט לקוח מאתר SJP, שאליו חבר SPER לאחר ששאקר סיים את פעילותו בו – וכי באתר SPER נאמרו דברים שונים לחלוטין: הובהר כי לא מדובר בקריאה גורפת לשלילת השקעות בישראל, אלא ב-"Selective divestment from companies engaged in specific practices that violate human rights and support apartheid. We are not advocating the end of the state of Israel; rather, we are advocating an end to the state of apartheid that Israel enforces". כך או כך, בשנים שלאחר מכן שב המערער וקרא, במסגרות שונות, לקידום ה-BDS, אותו הציג כדרך זמינה, אפקטיבית ומוסרית לשינוי מאזן הכוחות בין ישראל לפלסטינים, ולקידום פתרון צודק לסכסוך. כך, למשל, קרא העותר למניעה סלקטיבית של השקעות בחברות מסחריות שלהן ייחס הפרות של זכויות אדם והדין הבין-לאומי, על רקע פעילותן בישראל ובאזור; חתם, בשנת 2015, על עצומה המכילה, בין היתר, התחייבות "To engage with Palestinan struggle and to do so honoring the BDS call"; ונטל, בשנת 2016, חלק בפאנלים שונים שבהם דרש בשבח תנועת החרם, ועמד על יתרונות אסטרטגיית ה-BDS. לדברי המערערים, נפלו בקביעות הערכאה הראשונה בעניין שגיאות שונות – בין היתר, משום שהמערער אמנם ביקר בחריפות את מדיניותה של ממשלת ישראל, והצביע על אפקטיביות החרם, אלא שלא ניתן לראות בדבריו "קריאה לחרם של אף גורם". כשלעצמי, סבורני כי נדרשת מידה רבה של היתממות כדי להציג את הדברים שצוטטו בפסק הדין כניתוח אקדמי-תיאורטי של כלי החרם – ואילו ביתר ההשגות אין כדי לשנות את התמונה הכללית.

מכל מקום, על פי ממצאי פסק הדין, המערער המשיך בפעילותו גם לאחר הצטרפותו לשורות Human Rights Watch, וכניסתו לישראל כנציג הארגון. בהקשר זה, הוזכרו מעורבותו, "יחד עם הארגון", במאמצים לשלילת

חסותה של FIFA למשחקי כדורגל המתקיימים בהתנחלויות – לצד פרסומים שונים שבהם התייחס שאקר, בחשבון הטוויטר שלו, לפעילות הארגון. כך, למשל, עדכן המערער, בחודש ספטמבר 2017, על פרסום דוח הקורא, למעשה, למשיכת השקעות מבנקים ישראליים – ובחודש מרץ 2018 דיווח על פעילות הארגון מול מועצת זכויות האדם של האו"ם, בניסיון לקדם גיבוש "List of businesses operating in settlements, who contributes to serious abuses". בחודש נובמבר 2018, בירך שאקר על החלטת חברת Airbnb להסיר מאתר האינטרנט שלה נכסים המצויים באזור, קרא לחברות נוספות ללכת בעקבותיה – ומסר על פרסום קרוב של דוח שערך הארגון בעניין ("Bed and Breakfast on Stolen land"). המערער שב על מסרים אלה בראיונות שהעניק בראשית שנת 2019, וב"עשרות אמירות" נוספות בחשבון הטוויטר שלו.

19. האם יש בתשתית עובדתית זו כדי להכשיר את החלטת השר? אזכיר כי ההחלטה המדוברת נוגעת אך ורק להעסקתו של שאקר עצמו – והיא מבוססת על פעילותו השיטתית, הממושכת, ה"איכותית" ורבת ההיקף לקידום אסטרטגיית החרם. לעומת זאת, כפי שהובהר בהחלטה עצמה, בפסק הדין מושא הערעור, ובכתבי הטענות של המדינה בהליך דנן, Human Rights Watch אינו מסווג כארגון חרם – והוא יוכל לבקש העסקה של נציג אחר, שאינו מעורב עד צוואר בפעילות BDS.

למעשה, די באמור כדי לדחות את טענת המערערים לגבי השיקולים הזרים שביסוד החלטת השר, ולהבהיר כי לא מדובר בניסיון מוסווה לפגוע בארגון. למעלה מן הצורך, אציין כי הבדיקה המחודשת שבסיומה הוחלט שלא לחדש את רישיון הישיבה של שאקר לא נערכה ביוזמת משיבי המדינה, אלא בעקבות העתירה הראשונה שהגישו משיבים 3-4 בהליך הנוכחי. נתון זה מחליש עוד יותר את הטענה הקונספירטיבית לפיה החלטת השר, שהתקבלה לאחר בירור יסודי ומתן זכות טיעון למערערים, נועדה להשיב על כנה את החלטתו המקורית, תוך "עקיפת" הלחץ הציבורי שמנע פעולה ישירה וגלויה נגד הארגון. מעבר לכך, היחס השונה למערער ול- Human Rights Watch אינו מעורר כל קושי – הן משום שהעיסוק בזירה הישראלית-פלסטינית מהווה רק רכיב בודד בפעילותו הגלובלית של הארגון, כך שבכל מקרה אין בו כדי להצדיק את סיווגו כארגון חרם, והן לאור הרקורד האישי שצבר שאקר בתחום החרם עובר להצטרפותו לארגון. שני אלמנטים אלה מבססים את ההבחנה שערך השר, ומאשררים כי

לפנינו החלטה המוגבלת למערער עצמו – ואינה חלה על כל נציג של Human Rights Watch באשר הוא.

20. לגופם של דברים, המערערים טוענים כי בהתאם לתבחינים לא היה מקום להידרש לפעילות החרם העצמאית שביצע שאקר עובר להצטרפותו לארגון – שכן כניסתם של פעילי ארגונים לישראל נבחנת אך ורק על בסיס פעילות הארגון שבו הם חברים. לשיטתם, שעה שמשיבי המדינה חזרו והבהירו כי Human Rights Watch אינו מוגדר כארגון חרם, לא ניתן לזקוף לחובת שאקר את הפעולות שביצע כנציג הארגון – ומאחר שכל ההתבטאויות שיוחסו לו לאחר כניסתו ארצה עונות להגדרה זו, הרי שראוי היה לאפשר לו להיכנס ארצה.

לא מצאתי ממש בטענה זו. כפי שהבהרתי לעיל (פסקה 15), הקטגוריה הארגונית שהמחוקק כלל בסעיף 2(ד) לחוק הכניסה נועדה לאפשר למדינה להתגונן מפני בני אדם שלא קיים מידע לגבי מעורבותם האישית בקידום חרם – כך שאלמלא שיוכם הארגוני לא ניתן היה למנוע את כניסתם לישראל. אולם, כשידוע שפלוני נטל חלק פעיל בעידוד החרם על ישראל, די בכך כדי להעיד על הזדהותו עם רעיון זה, ולעורר חשש מפני ניצול לרעה של ביקורו בישראל. על כן, הוא בא בגדרי הקטגוריה הראשונה שמונה סעיף 2(ד), בין אם הפעילות בוצעה בכובעו כאזרח מודאג של העולם, ובין אם במסגרת ארגונית כלשהי. במילים אחרות, השיוך הארגוני מחמיר עם מבקשים שזוהי העדות היחידה להזדהותם עם תנועת החרם, אך אינו מעניק חסינות לאדם שמעשיו מעידים על תפיסת עולמו – ועל כן, יוצרים עילה עצמאית למניעת כניסתו לישראל.

בניגוד לטענת המערערים, התבחינים עולים בקנה אחד עם קביעה זו – שכן ההבחנה שהם עורכים בין פעילים "עצמאיים" לפעילי ארגונים מתייחסת אך ורק למבקשים שלא ניתן לסגור בפניהם את שערי המדינה על בסיס מעורבותם האישית בקידום חרמות כלפיה. במקרים אלה, התבחינים צועדים בעקבות סעיף 2(ד) לחוק הכניסה, וקובעים כי די בשיוך הארגוני כדי למנוע את כניסתם של מבקשים אלה, אם הם "נושאי תפקידים בכירים או משמעותיים בארגונים", או מגיעים ארצה "מטעם אחד מארגוני הדה-לגיטימציה הבולטים". לעומת זאת, כאשר מדובר על פעילים "הנוקטים בפעילות ממשית, עקבית ורציפה לקידום חרמות", התבחינים עושים דין אחד לפעילות שנעשתה במסגרת "ארגוני הדה-לגיטימציה הבולטים או באופן עצמאי", ורואים בה, כשלעצמה, עילה גורפת לסגירת השערים. הנה כי כן, שעה שהמערער שלח את ידו בפעילות

הבאה בגדרי סעיף 1 לחוק החרם, אין צורך להיתלות בשיוכו הארגוני – ויש לבחון את עמידתו בתבחינים על בסיס מכלול פעילותו האישית, בכובעיו השונים, לאורך השנים. ודוקו, יתכן בהחלט שאין במעשיו של שאקר כנציג הארגון כדי להביא לסיווג Human Rights Watch כארגון חרם – אם משום שמדובר, כאמור, במרכיב זניח בפעילותו הגלובלית של הארגון, ואם מחמת תוכנם. אולם, כאשר מעשים אלה מצטרפים לפעילותו האישית המוקדמת, די במכלול כדי להעיד על מעורבות "ממשית, עקבית ורציפה" של שאקר בקידום חרמות, ולהביא אותו, באופן אישי, בגדרי סעיף 2(ד) לחוק הכניסה.

21. לפיכך, יש לתת את הדעת על טענתם החלופית של המערערים – הסבורים כי הפעולות הקונקרטיות שעליהן התבססו החלטת השר והכרעת בית המשפט קמא כלל אינן באות בגדרי סעיף 2(ד) לחוק הכניסה. לדידם, ביסוד הפעילות של שאקר ניצבה, למצער מאז הצטרפותו לארגון, תכלית ההגנה על זכויות אדם – ומכאן שהחרמות שקידם אינם נובעים מן הזיקה מן הזיקה למדינת ישראל או לאזור הנמצא בשליטתה, כמתחייב מן ההגדרה שבסעיף 1 לחוק החרם.

דין טענה זו להידחות. אכן, לשונו של סעיף 1 לחוק החרם מעידה בבירור כי הוא אינו עוסק בחרם שהמניע להטלתו אינו עצם הזיקה למדינת ישראל, למוסדותיה או לאזור הנמצא בשליטתה – אלא התנהלות פגומה של הגוף המוחרם. בהתאם, הובהר, כאמור, בעניין אבנרי כי הסנקציות שמטיל חוק החרם לא יחולו על קריאות לחרם נגד מפעל השוכן באזור בגין התנהלותו הפסולה – תהיה זו פגיעה באיכות הסביבה, או השתלטות בלתי חוקית על קרקעות פרטיות – להבדיל מעצם פעילותו באזור. שעה שסעיף 2(ד) מתבסס על הגדרת החרם בסעיף 1 לחוק החרם, הרי שגם הוא אינו חל במקרים אלה, ובכך יש, לכאורה, כדי לתמוך בעמדת המערערים.

דא עקא, עיון בפרוטוקולים הרלוונטיים מלמד כי המחוקק היה מודע לכך שתנועת החרם אינה נשענת רק על נימוקים "פוליטיים" במובנם הצר – וביקש לפעול גם כנגד פעילי חרם העושים שימוש בשיח זכויות האדם ובמשפט הבין-לאומי. כך, למשל, מן הדיון שהתקיים בוועדת הפנים והגנת הסביבה של הכנסת במהלך הכנת תיקון 28 לקריאה ראשונה, עולה בבירור שהן תומכי התיקון והן מתנגדיו יצאו מנקודת הנחה שהוא עתיד לחול גם על "פעילי זכויות אדם" הקוראים לחרם –

"יוסף ג'בארין (הרשימה המשותפת):
האמת היא שאני רואה בחוק הזה כעוד פרק במסע של רדיפה פוליטית. והפעם הרדיפה הפוליטית מכוונת לא רק לפעילי זכויות אדם, אגב.

רועי פולקמן (כולנו):
זה לא אוסר על פעילי זכויות אדם להיכנס לישראל.

יוסף ג'בארין (הרשימה המשותפת):
בטח שהוא. בטח שזה.

רועי פולקמן (כולנו):
למה? - - -

יוסף ג'בארין (הרשימה המשותפת):

מספיק שהם בעד החרם. אבל אגב, זה לא רק פעילי זכויות אדם. זה גם - - -. לא רק הארגונים שלהם. ואני לא אפתיע אותך אם אני אומר לך: כשאני נמצא בחוץ לארץ ואני פוגש את הקהילה הפלסטינית שם והקהילה האירופית וכדומה, אני פשוט קורא את זה ונחרד. מה, כל אלה, עכשיו יתחילו לרדוף אותם? שלא יאפשרו להם להיכנס לישראל - - - הפוליטיות שלהם?

היו"ר בצלאל סמוטריץ':
הם קוראים לחרם? אני שואל אותך: הם קוראים לחרם? לא הדעות הפוליטיות. הם קוראים לחרם על ישראל? הם שותפים לדה-לגיטימציה נגד ישראל?

[...] יוסף ג'בארין (הרשימה המשותפת):
אני רוצה להגיד לכם, וגם חבר הכנסת רועי פולקמן לא השיב על השאלה הזו. עמדה מאוד מקובלת. עמדה מאוד מקובלת בעולם, שכל השטחים הכבושים מ-67', כל ההתנחלויות זה בכלל במעמד לא חוקי לפי הדין הבינלאומי. ולכן מעמדה מאוד מקובלת בעולם, פשוט נגד ההתנחלויות הלא חוקיות.
ולכן אני שואל: אז מחר, כל מי שיגיד שהוא רוצה להחרים את ההתנחלויות כי הוא רק כי הוא נגד

מדינת ישראל - - - נגד הכיבוש?

מיכל רוזין (מרצ):
כן, כן. אז הוא לא ייכנס. כן" (פרוטוקול ועדת הפנים, בעמ' 34-35).

תמונה דומה עולה גם מן הדיאלוג הבא, שבמהלכו הבהיר יו"ר ועדת הפנים והגנת הסביבה דאז, ח"כ דוד אמסלם, כי תיקון 28 חל גם על פעילים הקוראים להחרמת תוצרת ההתנחלויות בשל הפגיעה המגולמת בה, לשיטתם, בזכויות אדם –

"תמר זנדברג (מרצ):
כשאני באה לסופר, אני בודקת כל מיני דברים – מאילו מוצרים זה מיוצר, שזה לא מהחי, כי אני לא אוכלת מוצרים מהחי, אני בודקת שזה לא יוצר בתנאים של העסקה לא הוגנת, ואני בודקת מה המיקום הפוליטי שהמוצר הזה יוצר, ומוצרים שיוצרו תחת כיבוש ובמצב של כיבוש והפרת זכויות אדם והעוולות הקשות ביותר שיש במדינת ישראל, אני לא קונה.

היו"ר דוד אמסלם:
אני משיב לך. את דיברת, אבל מעניין אותי להבהיר לך את הרציונל שלנו בעניין. אין לי בעיה – יכול להיות שגם את, בסופר כשאת נכנסת, ואת רואה מוצר שיוצר ביהודה ושומרון, גם את לא קונה אותו.

תמר זנדברג (מרצ):
נכון.

היו"ר דוד אמסלם:
אבל אנחנו כאן כרגע, בעצם בקואליציה, באים לפי תפישתנו להגן על מדינת ישראל. לא לפי תפישתכם. לכן אנחנו חושבים שמי שמחרים מוצרים במדינת ישראל וקורא חרם על מדינת ישראל כולה – לא משנה איפה – לא צריך להיכנס למדינת ישראל" (פרוטוקול ישיבה מס' 334 של ועדת הפנים והגנת הסביבה, הכנסת ה-20, 14-15 (11.1.2017); ראו גם פרוטוקול ישיבה מס' 164 של הכנסת ה-20, 172-173 (14.11.2016),

ופרוטוקול המליאה, בעמ' 163-164, 195,
ו-198).

נמצא כי תכליתו הסובייקטיבית המפורשת של תיקון 28, שוללת את עמדת המערערים – ומלמדת כי קריאה לחרם על ישראל עשויה לבוא בגדרי סעיף 2(ד) לחוק הכניסה, גם אם היא נתלית בנימוקים של הגנה על זכויות אדם, או בהוראות המשפט הבין-לאומי. למעשה, נראה כי האפשרות לכסות את ערוות הקריאה לחרם באמצעות רטוריקת זכויות אדם תרוקן את תיקון 28 מתוכן, ותפגע גם בתכליתו האובייקטיבית – מאבק בתנועת החרם. תכליות אלה מלמדות, אפוא, כי המונח "רק מחמת זיקתו למדינת ישראל [...] או אזור הנמצא בשליטתה", אינו מוגבל לחרם שביסודו התנגדות "פוליטית" לשליטה זו – והוא עשוי להכיל גם חרמות המבוססים על זיהוי השליטה הישראלית באזור כהפרת המשפט הבין-לאומי.

22. מטבע הדברים, בתווך שבין התנגדות גורפת לשליטה זו בשל תפיסתה כפוגעת בזכויות המקומיים, ובין חרם נקודתי על גורם המפר את זכויות תושבי האזור, קיים מרחב אפור משמעותי. מן הצד האחד, ברור שאדם הקורא לחרם על מפעל ישראלי משום שהוא מעורב בהעסקה כפויה של ילדים, אינו בא בגדרי חוק החרם – או בגדרי תיקון 28 (וראו לעיל, פסקה 17). לעומת זאת, אין ספק כי אדם השולל את הלגיטימציה של מדינת ישראל או של שליטתה באזור, ומבקש לערער אותה באמצעות חרם, נכלל בהגדרת סעיף 1 לחוק החרם, גם אם הוא מסווה את עמדתו ברטוריקה של הגנה על זכויות אדם או על המשפט הבין-לאומי. המבחן הוא מבחן מהותי, והמילים שבהן עטוף מסע הדה-לגיטימציה אינן מעניקות לדובר חסינות. המורכבות מתעוררת במצבים שבהם קיימת פעילות ממשית להגנה על זכויות אדם, אלא שישנו קשר מובנה וישיר בין עצם קיומה של מדינת ישראל – או שליטתה באזור – לבין הפגיעה-לכאורה בזכויות.

מן הפירוט הנרחב בפסק הדין מושא הערעור – שעיקריו הובאו בקצרה לעיל – עולה כי פעילותו של שאקר נעוצה בהתנגדותו הגורפת לשליטה הישראלית באזור, ובאה, אפוא, בגדרי סעיף 2(ד) לחוק הכניסה. כך, מלבד התמיכה השיטתית בתנועת ה-BDS עובר לתחילת עבודתו בארגון, הרי שגם התנהלותו מול FIFA, וגם קריאותיו החוזרות ונשנות להחרמת נכסים ישראליים באזור, מבוססות על שלילה גורפת של לגיטימיות ההתיישבות הישראלית. בנסיבות אלה, אין מקום להתערב בקביעת הערכאה הראשונה לפיה מדובר בחרם

שהוטל רק מחמת הזיקה לאזור – להבדיל מהתנהלות קונקרטית של גוף כזה או אחר – כך שהחלטת השר אינה חורגת מגבולות סמכותו.

ניתן להמחיש את חומרת הפעילות של שאקר באמצעות השוואה, במישורי העושה והמעשה, לעובדות עניין Alqasem. במרכז אותה פרשה ניצבה Lara Alqasem, סטודנטית "בראשית דרכה", שלא יוחסו לה פעולות אישיות של קריאה לחרם, ומניעת כניסתה ארצה נבעה רק מהשתייכותה לארגון חרם. לא זו בלבד, אלא שה"ארגון" המדובר היה תא סטודנטים דל משתתפים, שפעילותו בתחום החרם נשאה "אופי מינורי ומצומצם", והתפרשה על פני תקופה קצרה יחסית. מן הצד השני, נזקפו לזכות Alqasem פרק הזמן שחלף מאז תום פעילותה המוגבלת, נכונותה "לנהל דיאלוג פתוח ומכבד – העומדת בניגוד מובהק לרעיון החרם", ורצונה לחבוש את ספסלי האקדמיה הישראלית, שאף הוא מהווה אנטי-תזה לתנועת ה-BDS (שם, פסקאות 14-16). זאת ועוד, Alqasem הצהירה כי אינה תומכת עוד בתנועת החרם, והתחייבה "כי בתקופת שהותה בישראל לא תקרא לחרם על ישראל או להשתתפות בפעילות BDS" (שם, פסקה 2). להצהרה זו צורפו ראיות נוספות, בין היתר, בדמות עדויות אנשי אקדמיה שנחשפו אליה במהלך לימודיה באוניברסיטה. המערער דנן, שאקר, מהווה מעין תמונת מראה של תיאור זה. הוא מעורב באופן שיטתי, עקבי, ארוך שנים ורב פרופיל וחשיפה בקידום תנועת החרם והסטת ההשקעות מישראל. מצודתו פרושה מאולמות אוניברסיטת סטנפורד ועד משרדי FIFA בבחריין, ועל יחסו לדיאלוג עם ישראל מלמדת בעיקר עצומה שאליה הצטרף בשנת 2015, ובה ביקורת על יוזמת הידברות מוסלמית-ישראלית, והבעת מחויבות ל-BDS. שאקר סירב לספק הצהרה דומה לזו של Alqasem, ולאור עיסוקו הנוכחי, ודרך התנהלותו, ניתן לומר כי הוא עודנו פועל במרחב האפור של מחוזות החרם – באופן שאינו מאפשר לשלול את החשש מניצול לרעה של שהותו בישראל.

אשר על כן, ובהתחשב בהבהרות הנחרצות של המדינה לפיה החלטת השר עוסקת אך ורק בעניינו של שאקר – בעוד Human Rights Watch אינו מוגדר ואינו נתפס כארגון חרם – סבורני כי די במכלול התנהלות המערער לאורך השנים כדי לחרוץ את גורל הערעור לשבט.

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בשולי הדברים, אוסיף כי מן הנימוקים עליהם עמדו משיבי המדינה (ראו לעיל, פסקה 5) איני מוצא ממש בטענות המערערים בנוגע למידתיות החלטת השר, או קיומם של חריגים לפי סעיף 2(ה) לחוק הכניסה – והן נדחות.

23. נסיים, אפוא, בנקודה שבה פתחנו: לפנינו ערעור על פסק דינו של בית המשפט לעניינים מינהליים, אשר דחה את עתירת המערערים על החלטת שר הפנים שלא לחדש את אשרות השהייה והעבודה של המערער. המסגרת מדברת ומחייבת. בית המשפט אינו רשות מינהלית, ואל לו להתיימר למלא את תפקידה. מלאכתו בשדה המשפט. יש לזכור כי –

> "הביקורת השיפוטית היא בעלת אופי משפטי. בית המשפט אינו עושה עצמו רשות שלטונית-על. בית המשפט אינו בוחן את יעילותה של ההחלטה השלטונית. השופט אינו שואל עצמו, אם הוא היה מקבל החלטה זו אילו הוא היה חבר ברשות השלטונית המחליטה. השאלה היחידה אשר בית המשפט שואל עצמו היא, אם ההחלטה השלטונית היא חוקית. הביקורת השיפוטית היא ביקורת החוקיות ולא ביקורת התבונה. על-כן, אם החלטת הרשות השלטונית היא במיתחם הסבירות או החוקיות, היא לא תיפסל. תפקידה של הביקורת השיפוטית הוא אך לשמור שלא תהא חריגה מגבול החוקיות, תהא תבונתה של ההחלטה אשר תהא" (בג"ץ 1843/93 פנחסי נ' כנסת ישראל, פ"ד מט(1) 661, פסקה 37 לחוות דעתו של הנשיא א' ברק (1995); השוו, עניין אבנרי, פסקה 20 לחוות דעתו של המשנה לנשיאה ח' מלצר ופסקה 14 לחוות דעת השופט י' עמית).

גם במקרה שלפנינו, אין להצביע או להביע עמדה בדבר המחלוקת העניינית שנפלה – בזמן אמת – בין שר הפנים, שהוא בעל הסמכות, ובין משרד החוץ. ככלל, המיקוד המשפטי הוא בממלא התפקיד שהמחוקק בחר בו כגורם המחליט. כך או כך, נדמה כי יסכימו כולי עלמא שהסוגיות המתעוררות בנידון מורכבות. בכל מקרה, עולה, כאמור, כי בניגוד לחששות שהביעו ידידי בית המשפט בהליך דנן, שר הפנים ערך הבחנה ברורה בין עצם פעילותו של Human Rights Watch בישראל ובאזור לבין עניינו האישי של מר שאקר. הבחנה זו נומקה במאפייני הפעילות של המערערים, ועולה ממנה כי לא יהיה בהחלטת השר – וממילא, בהכרעה הנוכחית – כדי לסגור את שערי המדינה בפני נציגים אחרים של הארגון, או ארגונים דומים אחרים. די בכך כדי להקהות את עוקץ החשש

שהביעו ידידי בית המשפט, מפני פגיעה קשה בפעילותם של ארגוני זכויות אדם המבקרים את המדיניות הישראלית בשטחים. אכן, כאשר ביקורת כזו גולשת לקריאות לחרם, ויוצרת דה-לגיטימציה לישראל ולמדיניותה, היא עלולה ליצור קושי במונחי חוק החרם ותיקון 28. אולם, במקרה שלפנינו אין צורך לשרטט בצורה מדויקת את גבולות סעיפים 2(ד) ו-(ה) לחוק הכניסה, ולהתמודד עם השאלות המורכבות הכרוכות בכך. שר הפנים פעל נגד אדם שמכלול פעילותו מבסס, כאמור, חשש ממשי מפני ניצול שהותו בישראל לרעה, לצורך קידום תנועת החרם נגדה, כך שאין בהחלטה מושא הערעור כדי להקרין על ארגוני ופעילי זכויות אדם אחרים. ככזו, היא מצויה במתחמי הסמכות, הסבירות והמידתיות, ואין עילה להתערב בה.

24. אשר על כן, אציע לחבריי לדחות את הערעור, ולקבוע כי לא נפל פגם בהחלטת שר הפנים שלא לחדש את רישיון הישיבה של שאקר בישראל. זאת, כמובן, מבלי להביע עמדה בשאלות החוקתיות התלויות ועומדות בפני בית המשפט הגבוה לצדק במסגרת העתירה החוקתית.

הסעד הזמני שניתן למערערים ביום 30.5.2019 בטל, אפוא – ועל המערער לעזוב את מדינת ישראל בתוך 20 יום ממועד מתן פסק דין זה. המערערים יישאו בשכר טרחת ב"כ משיבי המדינה ובהוצאותיהם בהליך דנן בסך 7,500 ₪.

ש ו פ ט

השופט נ' סולברג:

חוות דעתו של חברי, השופט נ' הנדל, ממצה ומשכנעת; דעתי כדעתו.

אעיר אך זאת, בהתייחס לדברי חברי בפסקה 11 לחוות דעתו, בדבּרו על המשקל המכריע שהעניקו המערערים בטיעוניהם, לפגיעה, כביכול, בזכויותיהם החוקתיות של אזרחי ישראל ותושבי האזור, מעבר לפגיעה בעומר שאקר ובזרים אחרים שכניסתם לארץ נמנעת. "שעה שהמערערים מתיימרים לייצג את הציבור הרחב, ולהגן

על אינטרסים וזכויות החורגים מעניינו האישי של שאקר, עליהם לעשות זאת בתקיפה ישירה" (שם).

משתמע מדברי חברי, כי דלתות בית משפט זה פתוחות לרווחה לשמוע את טענותיו של שאקר, לא רק בשמו ולמענו, אלא למען אזרחי ישראל ותושביה, על מנת למנוע פגיעה בחופש הביטוי שלהם. כשלעצמי, מסופקני אם אכן כך הוא. אזרחי ישראל ותושביה מסוגלים ורשאים לעמוד על משמר זכויותיהם, ולעתור לבית המשפט בגין פגיעה בחופש הביטוי. לא אלמן ישראל, ולא עומר שאקר צריך להיות לאזרחי ישראל לפה. באין לשאקר זכות חוקתית להיכנס לישראל, אין הצדקה לאפשר לו מעקף, כניסה ארצה לשם מניעת פגיעה נטענת בחופש הביטוי של אזרחי ישראל ותושביה, בהיותם ה"מוטבים" (כלשון המערערים בפסקה 13 לעיקרי הטיעון) של כניסתו ארצה; ומחמת הפגיעה, לטענתו, בזכותם-שלהם למגע ישיר עמו, להחשף למוצא-פיו, כדי לשמוע את דבריו במישרין (שם). מסופקני אפוא אם יש לו, לשאקר, זכות עמידה, לעתור נגד פגיעה בחופש הביטוי של אזרחי ישראל ותושביה.

חברי התמקד במישור המינהלי, גישתו ומסקנתו מקובלים עלי, ולכן גם אני לא אכביר במילים לגבי ההיבט החוקתי. ברם, משהיפנה חברי את הטיעון החוקתי של המערערים, כולו, למסלול של 'תקיפה ישירה', ראיתי להעיר את אשר הערתי על מחסום, לכאורה, בשערי בית המשפט, במה שנוגע לזכות העמידה של זרים, דוגמת עומר שאקר, לטעון טענות חוקתיות לביטול חקיקה ראשית של הכנסת על סמך טענה לפגיעה בחופש הביטוי של אזרחי ישראל ותושביה.

לבד מהסתייגות זו, אני מסכים, כאמור, לחוות דעתו של חברי, השופט נ' הנדל, למסקנתו ולנימוקיו.

ש ו פ

ט

השופטת י' וילנר:

"Held 18 hrs, denied entry to Baharain. Hoped to press FIFA on matches in illegal Israeli settlements"(10.5.2017)

"Airbnb stops brokering rentals on West Bank land stolen from the Palestinians who are barred from staying there. @bookingcom, all eyes now on you-delisting only way to meet your human rights responsibilities under UN Guiding Principles" (נובמבר 2018)

"Spanish company rejects tender for Jerusalem light rail project, saying it 'refuses to build a section of the railway… [on] Palestinian land that will be confiscated' & 'must respect… human rights' & int'l law. Other companies should follow it's lead" (4.2.2019)

האמירות שלעיל מהוות באופן מובהק קריאות להטלת חרם על גורמים הפועלים בישראל ובאיו"ש, אך מחמת זיקתם למדינת ישראל או לאזור הנמצא בשליטתה – כל אחת מהן בנפרד, ועל אחת כמה וכמה כולן במצטבר. נדמה כי לא יכולה להיות מחלוקת של ממש על כך.

ציטוטים אלה מובאים מתוך חשבון הטוויטר האישי של המערער, נכתבו בעיקרם לאחר כניסתו לישראל, ושלא כנציג Human Rights Watch (להלן: הארגון), זאת כפי שקבע בית המשפט המחוזי (ראו פסקאות 59-61 לפסק דינו), קביעה שאין מקום להתערבות ערכאת הערעור בה.

לפיכך, אני מסכימה עם חברי, השופט נ' הנדל, כי אין להתערב בהחלטת שר הפנים שלא לחדש את רישיון הישיבה של המערער בישראל, וזאת, לדידי, גם אלמלא היינו נדרשים לשאלה, המורכבת כשלעצמה, בדבר זהות הגורם לו יש לייחס קריאות לחרם מצד אדם הפועל בשם ארגון אשר אינו מוגדר כארגון חרם. כאמור, האמירות המצוטטות לעיל ואמירות אחרות נוספות, מיוחסות למערער כמי שפעל באופן אישי ולא כמייצג של הארגון (וזאת, לצד התבטאויות ופרסומים אחרים שנעשו על-ידו בכובעו כנציג הארגון בישראל). לכך מצטרף "עברו" העשיר של המערער המלמד כי ידיו רב לו בקידום ובעידוד חרמות על גורמים ישראליים, והלה אף לא טען כי בכוונתו לחדול מפעילות זו במהלך שהייתו

בישראל. כל אלה יוצרים, בעיני, מסה קריטית המעידה על כך שההשתייכות הארגונית לה טוען המערער משמשת, במקרים מסוימים, אך כסות לפעילות החרם הענפה אותה הוא קידם זה מכבר ועודו מקדם – כאדם פרטי.

אני מסכימה, אפוא, לפסק דינו המקיף של חברי, השופט נ' הנדל, ולמסקנתו כי אין להתערב בהחלטת שר הפנים שלא לחדש את רישיון הישיבה של המערער בישראל, על-פי הוראת סעיף 2(ד) לחוק הכניסה לישראל, התשי"ב-1952. כמו כן, אני מסכימה להערתו של חברי, השופט נ' סולברג, לגבי הקושי שמתעורר ביחס להכרה בזכות עמידה של תושב חוץ לטעון לפגיעה בזכויות אזרחי מדינת ישראל.

ש ו פ ט ת

אשר על כן, הוחלט כאמור בפסק דינו של השופט נ' הנדל.

ניתן היום, ז' בחשון התש"ף (5.11.2019).

ש ו פ ט ש ו פ ט

ש ו פ ט ת

Exhibit 15

Exhibit 15A

EXHIBIT 15A

WORLD

Israel Interrogates, Deports U.S. Citizens: Pro-Palestinian Group

Four of the five were "people of color and Muslim" and the fifth had a long beard, according to the U.S. Campaign to End the Israeli Occupation.

Workers make final preparations before an official welcoming ceremony for President Obama on his trip to Ben Gurion Airport, on March, 20, 2013 near Tel Aviv, Israel. Uriel Sinai / Getty Images

Aug. 4, 2016, 3:14 AM PDT / Updated Aug. 4, 2016, 8:21 AM PDT

By F. Brinley Bruton

Israeli officials detained, interrogated and deported five American campaigners trying to enter the country to "observe the conditions under which Palestinians live," according to a U.S. rights group.

The activists were trying to "gain a better understanding of the situation on the ground," according to the U.S. Campaign to End the Israeli Occupation, which describes itself as a national coalition working for Palestinian rights.

"Upon their arrival [on July 17], a U.S. campaign staffer and four other members of the group – all carrying U.S. passports – were interrogated by Israeli border police about their backgrounds and political involvement," a statement issued by the organization Tuesday said.

"The woman interrogating me called me a terrorist"

Four of the five were "people of color and Muslim" and the fifth had a long beard, the group added. Americans do not need visas to enter Israel.

A spokesman for Israel's Interior Ministry said three of the five campaigners were denied entry for "security reasons" but did not elaborate on what those reasons were. The U.S. Campaign to End the Israeli Occupation did not provide the names of two of the activists so Israeli officials could not provide

information on their attempts to enter.

The delegates, who included Bina Ahmad, a New York City public defender, were denied entry into Israel and then put into a “filthy” cell, according to the group. After up to 18 hours they were deported back to the U.S.

“The woman interrogating me called me a terrorist in the main waiting area ... where there were plenty of people around, accusing me of coming to do bombings and threatening to tell the U.S. government this,” Ramah Kudaimi, the group's director of grassroots organizing, was quoted as saying in the statement.

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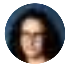
Calls to the U.S. Consulate “resulted in no assistance for the delegates,” according to the organization.

American officials were aware of reports on the incident but could not get into details because of “privacy considerations,” State Department spokesman Mark Toner told journalists Tuesday.

“The U.S. government remains concerned about unequal treatment that some Arab-Americans – receive at Israel's borders and checkpoints,” he added. “And we regularly raise with Israeli authorities our concerns about the issue of equal treatment for all U.S. citizens in ports of entry.”



F. Brinley Bruton

F. Brinley Bruton is senior editor in charge of NBC News Digital’s London bureau.

Paul Goldman and Abigail Williams contributed.

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Exhibit 16

EXHIBIT 16

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United States District Court
District of Columbia

United States of America ex rel. TZAC, Inc., Qui Tam Relator Address: 305 Broadway Suite 601 New York, NY 10007 Plaintiff-Relator, - against - The Carter Center, Inc. 453 Freedom Parkway NE Atlanta, GA 30307 Defendant.	)	Case: 1:15-cv-02001 Assigned To : Contreras, Rudolph Assign. Date : 11/16/2015 Description: False Claims Act (E Deck) **COMPLAINT** SEALED

Plaintiff-Relator, complaining of the Defendant by its attorney, David Abrams, Attorney at Law, respectfully sets forth and alleges as follows:

I. Nature of the Case

1. This is a false claims act claim. The Qui Tam Plaintiff and Relator, TZAC, Inc. ("The Zionist Advocacy Center" or "Relator"), alleges that the Defendant obtained funding from the United States Agency for International Development ("USAID ") by means of fraudulent certifications that it does not support terrorism.

II. Parties

2. The Defendant The Carter Center, Inc. ("The Carter Center") is an American-based non-governmental organization ("NGO") based in Atlanta, Georgia. As set forth in

more detail below, The Carter Center has regularly transacted business in Washington DC over the years by qualifying for; applying for; and receiving USAID dollars ;by partnering with the DC-based National Democractic Institute ("NDI"); and by regularly conducting programming activities in the District of Columbia (the "District.").

3. The Carter Center was founded by former President James Earl "Jimmy" Carter ("Carter"). At all times relevant to this Complaint, Carter served as a principal of the Carter Center and referred to himself as the "head" of the Carter Center.

4. The Defendant is very much anti-Israel. For example, the Carter Center web site contains a "trip report" by Carter describing his trip to Cairo in 2008. During that trip, Carter gave a presentation at the American University of Cairo where he stated that Palestinian Arabs in Gaza were being "starved to death" and received fewer calories per day than people in the poorest parts of Africa. (This, despite the fact that Gaza has one of the highest obesity rates in the world and receives far more humanitarian aid per capita than any other country or region -- more than 20 times that of Angola, Ethiopia, or Uganda.) Indeed, in 2007, there was a mass resignation from the Carter Center's advisory board over the Carter Center's "malicious advocacy" against Israel.

5. It is well known that Carter and/or the Carter Center have accepted substantial donations from persons and organizations with extreme anti-Israel and anti-Semitic views.

6. Of course the Carter Center and Carter himself have the constitutional right to slander Israel; to accept large donations from anti-Israel organizations in the Arab World; and to generally promote policies with the goal of weakening Israel.

7. However, as set forth in more detail below, the Carter Center has gone well beyond this and provided support and technical assistance to designated terrorist organizations such as Hamas and the Popular Front for the Liberation of Palestine.

8. Relator TZAC, Inc. ("The Zionist Advocacy Center" or "Relator" or "Plaintiff") is a subsidiary of the World Jewish Life Fund, Inc., a New York not-for-profit corporation. Its principle office is the State of New York, County of New York.

III. Compliance With Requirements of Suit

9. This matter has been or will be filed under seal pursuant to 31 U.S.C. Section 3730(b); at or about the same time, a copy of the Complaint, Sealing Order, and Relator's disclosure of evidence were or will be served on the Department of Justice and the United States Attorney for the Southern District of New York.

10. Relator will not serve the Complaint or any other papers in this matter until and unless it becomes unsealed. Thus, if the Complaint is served on the Defendant, it means that the matter has been duly unsealed.

IV. Jurisdiction and Venue

11. This Court has jurisdiction pursuant to 31 U.S.C. Section 3732(a) which provides that this type of action may be brought in any district where the Defendant resides or transacts business. In this case, the Defendant has transacted business in the District as follows:

12. First, in order to become eligible for the USAID funding which is the subject of this action, The Carter Center was required to register as a Private Voluntary Organization and submit application materials to USAID headquarters at 1300 Pennsylvania Ave. NW, Washington DC 20523.

13. Indeed, upon information and belief, all of the fraudulent certifications which are the subject of this lawsuit were submitted to USAID in the District.

14. Second, the Carter Center works closely with the National Democratic Institute in Washington DC.

15. Third, the Carter Center regularly has programming in the District. For example, it regularly hosts a "Human Rights Defenders" conference in which the participants are taken to the District as a part of the conference.

V. A Brief Statement of the Fraudulent Scheme

16. The Carter Center has received substantial USAID funding in recent years. In order to be eligible for funding, The Carter Center had to execute certifications indicating that it has not provided material support or resources to terrorist persons or entities in the last 10 years. ("Anti-Terrorism Certifications" or "ATC's") As set forth below, these certifications were false when made.

17. Although in the past, The Carter Center made no secret of the fact that its representatives regularly met with representatives of designated terrorist organizations, the Carter Center has not publicized the fact that its activities went well beyond simple meetings.

18. Further, if there was any doubt as to the meaning of the phrase "material support or resources," those doubts were resolved by the June 2010 United States Supreme Court decision of *Holder v. Humanitarian Law Project*, 130 S.Ct. 2705 (2010) in which the Supreme Court was called upon to interpret the phrase "material support or resources" and took a very hard line position.

19. Nevertheless, The Carter Center quietly continued to cross that line, clearly rendering itself ineligible for USAID funding. At the same time, the Carter Center continued to apply for and receive USAID funding for which it was not eligible.

VI. The Specific Fraudulent Statements of the Defendant

20. In order to obtain USAID dollars, The Carter Center had to execute ATC's in connection with the following grants:

ID Number	Dollar Amount	Date
AID482G1500001	$499,832	06/04/2015

AID695A1500002	$599,212	04/28/2015
7-330-0213210	$1,138,406	11/12/2014
7-330-0213210	$166,009	11/12/2014
7-330-0213210	$519,259	11/20/2013
7-330-0213210	$373,915	12/31/2013
7-330-0213210	$89,340	12/31/2013
7-330-0213210	$484,437	04/19/2013
7-330-0213210	$519,655	04/26/2013
7-330-0213210	$759,965	08/26/2013
7-330-0213210	$978,175	04/26/2013
7-330-0213210	$30,568	04/26/2013
7-330-0213210	$295,471	04/19/2013
AID367A0900002	$1,599,921	10/09/2012
AID623A1300006	$1,462,628	02/25/2013
AID636G1300001	$1,223,000	10/16/2012
AID669A001000045	$1,000,000	09/23/2013
AID669A001000045	$1,000,000	12/21/2012
AID367A0900002	$250,000	10/25/2011
AID669G1100001	$300,000	11/01/2011
AIDOAAG1200020	$6,000,000	09/28/2012
7-330-0213210	$580,887	09/30/2012
AID669A001000045	$670,376	09/26/2012
AID675A001000018	$300,000	11/02/2010
AID675A001000016	$300,000	11/02/2010
AID623A1100021	$1,800,000	03/28/2011
AID669A001000045	$2,000,000	09/30/2011
AID524G1100004	$100,000	04/07/2011
AID669G1100001	$800,000	08/01/2011
AID669A001000045	$1,500,000	12/30/2010
AID623A1100021	$2,200,000	04/04/2011
AID367A0900002	$250,000	02/11/2011
AID675A001000016	$135,000	09/08/2010
AID675A001000016	$646,793	05/27/2010
Total:	$30,572,849	

21. Among other things, the ATC form contained certifications as to support of terrorism. The terrorism certification states as follows:

> The Recipient to the best of its current knowledge, did not provide within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts . . . .

The document in turn defines "material support or resources" as follows:

currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses false documentation or Identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials."

22. As set forth in more detail below, these certificiations were false when made. More specifically the Carter Center has provided material support or resources to Hamas and the Popular Front for the Liberation of Palestine, both of which are designated terrorist organizations.

23. The Carter Center has repeatedly hosted terrorist representatives at its facility in Ramallah. Even after the 2010 *Holder* decision, on or about May 2, 2015, the Carter Center hosted a meeting in Ramallah which included senior officials from various Palestinian political parties and Comrade Omer Shehada of the Popular Front for the Liberation of Palestine:

24. Mr. Shehada is the individual two seats from Carter's left.

25. The Popular Front for the Liberation of Palestine ("PFLP") has been a State Department Designated Foreign Terrorist Organization since 1997. Its history is replete with murders, kidnappings, hijackings, all aimed at innocent civilians.

26. Most recently, the PFLP claimed responsibility for the 2014 Jerusalem Synagogue Massacre in which 4 Jewish worshippers were brutally slaughtered with axes and knives.

27. Hosting a meeting such as this one with a PFLP representative constitutes material support or resources in several ways:

28. First, in a literal sense in that the PFLP representative was supplied with the physical assets of fruits, cookies, bottled water, and presumably other foods and drinks.

29. Second, in that the Carter Center provided the PFLP representative with a physical facility in which to participate in a meeting. This is not a trivial thing -- under Israeli law, it is illegal to belong to the PFLP and the Israeli authorities regularly enter cities such as Ramallah and arrest such individuals. Thus, the Carter Center was literally harboring a terrorist criminal and providing him with a safehouse or at least "facilities."

30. Finally, meetings such as the one pictured above, held in a welcoming and hospitable place, give terrorists the opportunity to network and connect with prominent individuals from various factions. The Carter Center may (and does) believe that this kind of assistance by provision of facilities is good policy, but under *Holder*, it is not a policy which an NGO can support and still receive USAID funding.

31. In any event, it should be noted that this was not the first time that the Carter Center has hosted terrorists. For example, in early 2006, the Carter Center (in Ramallah) hosted a meeting between Carter and Mahmoud Ramahi, a Hamas official.

33. In addition to meetings such as that described above, the Carter Center has sponsored a formal program (both pre and post-*Holder*) consisting of meetings, workshops, round-table discussions, and private consultations to promote dialogue and

discussion among Palestinian factions (including terrorist organizations) with the aim of promoting electoral consensus and general reconcilliation.

34. Again, although the Carter Center may feel that this sort of technical assistance is good policy, it is simply not consistent with *Holder*.

35. These meetings, workshops, and consultations have primarily been conducted through the Carter Center's partner organization, the Arab Thought Forum. The Arab Thought Forum is an NGO based in Jerusalem which describes itself as an "impartial" organization dedicated to "Palestinian independence." Neverthleless, the Arab Thought Forum is very much anti-Israel in its views. For example, on its web site it claims that the well-documented Arab attempt to wipe out Israel in 1948 was actually just an effort to secure the lands which had been designated for the Arabs under the UN Partition Plan. Of course it is well known that the Arabs categorically rejected the UN Partition Plan.

36. Of course just like the Carter Center, the Arab Thought Forum has the right to lie about history in order to further its anti-Israel agenda. But it cannot, consistent with USAID funding, partner with the Carter Center to provide workshops, round table discussions, and private consultations for the benefit of designated terrorist organizations.

37. For example, on or about May 26, 2011, the Carter Center and the Arab Thought Forum organized a meeting in Ramallah to assist various Palestinian factions in developing a new electoral code. The meeting was attended by representatives of the Popular Front for the Liberation of Palestine and Hamas.

38. The Popular Front for the Liberation of Palestine is discussed above. As for Hamas, it hardly needs stating that Hamas has long been a designated terrorist organization. It would be an understatement to say that this designation, which has been in place since 1997, is well earned.

39. The history of Hamas is replete with examples of murders, kidnappings, and other violence aimed at innocent civilians. Indeed, to this day Hamas continues to launch rocket attacks from Gaza at Israeli towns and villages nearby.

40. Hamas is also well known for its intense anti-Semitism. For example, in 2012, a Hamas leader stated the following:

> The Jews are behind each and every catastrophe on the face of the Earth. This is not open to debate. This is not a temporal thing, but goes back to the days of yore. They concocted so many conspiracies and betrayed rules and nations so many times that the people harbor hatred towards them. . . . .Throughout history - from Nebuchadnezzar until modern times . . . They slayed the prophets, and so on . . . Any catastrophe on the face of this Earth -- the Jews must be behind it.

41. Of course the Carter Center has the right to provide technical assistance to organizations which hold these sorts of beliefs. But the Carter Center cannot -- consistent with receiving USAID dollars, provide any kind of assistance to organizations such as Hamas which engage in terrorism.

42. In any event, the Carter Center, throught he Arab Thought Forum, held a series of meetings in or about May of 2011in Ramallah, Jenin, Tubas, Nablus, Hebron, and Gaza. The meetings were attended by representatives of various Palestinian political factions including Hamas and PFLP. The stated purpose of the meetings was to promote reconcilliation among these various factions.

43. The foregoing constitutes material support for terrorism in several ways. At a mundane level, the Carter Center was helping to provide a facility in which Hamas and PFLP could take part in a meeting. More fundamentally, if Hamas and PFLP are able to resolve their differences with each other and with other factions, it will free up more resources to engage in terrorism against Israelis. Carter may believe in good faith that promoting such reconcilliation is ultimately good policy, but it is simply not reconcilable with *Holder*.

44. Moreover, these were not the first such meetings. For example, on or about June 13, 2009, Carter himself participated in such a meeting which included representatives of Hamas and PFLP.

45. Another such meeting, referred to as a "workshop of the Electoral Reform Project", held in May of 2010 was attended by Khalida Jarrar of the PFLP and Mahmoud Ramahi of Hamas.

46. In connection with promoting and hosting meetings, the Carter Center has also supported terrorist organizations by acting as a mediator.

47. For example, in or about December of 2008, Carter Center representatives met with Khaled Mishal, the head of Hamas and then delivered a message from Mishal to Mahmoud Abbas, the head of the PLO. The message was presented in person on December 20, 2008 by, among other people, Hrair Balian (the Carter Center's director of Peace and Dispute Resolution Programs) to Rafiq Husseini, a confidant of Mahmoud Abbas. Mr. Balian then carred the PLO's response back to Hamas.

48. Moreover, in connection with conveying these messages, the Carter Center representatives acted more than just as messengers. They used their skills as mediators to help the parties formulate messages intended to promote a resolution of the dispute. In other words, the Carter Center provided expert advice or assistance.

49. Accordingly, it is clear that the Carter Center has provided and continues to provide material support and/or resources to terrorist organizations in violation of its USAID certifications.

VII. (Count I) Violation of the False Claims Act

50. The False Claims Act imposes liability on a person or entity who " knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim" 31 U.S.C. Section 3729(a)(1)(B)

51. The Courts have held that this can include false statements regarding eligibility to participate in a program. See *United States ex rel. Kirk v. Schindler Elevator Corp.*, 601 F.3d 94, 116 (2d Cir. 2010), rev'd on other grounds, 131 S.Ct. 1885 (2011) ("[C]laims may be false even though the services are provided as claimed if, for example, the claimant is ineligible to participate in the program.")

52. Thus, the Carter Center's certifications regarding support of terrorism violated the False Claims Act because they were false and required for eligibility for USAID dollars.

[continued on next page]

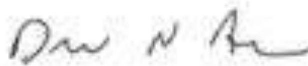
VIII. Relief Sought

53. On behalf of the government, Relator is seeking judgment for the triple damages and civil penalties set forth in 31 U.S.C. Section 3729.

54. According to the government spending web site, the Carter Center received at least approximately $30,572,000 in USAID grant funds over the last 6 years. These funds would have been received as a result of fraudulent certifications including those referred to above.

55. Accordingly, Relator seeks judgment in the amount of $91,716,000 against the Carter Center and in favor of the United States, together with costs, interest, civil penalties, an appropriate qui tam award, and such other and further relief as the Court deems just.

Respectfully submitted,



David Abrams, Attorney at Law
Attorney for Relator
The Zionist Advocacy Center

P.O. Box 3353 Church Street Station
New York, NY 10008
Tel. 212-897-5821
Fax 212-897-5811

Dated: New York, NY
November 15, 2015

Exhibit 17

EXHIBIT 17

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA *ex rel.* TZAC, INC., Plaintiff, v. THE CARTER CENTER, INC., Defendant.	)	Civil Action No. 15-2001 (RC)

~~[PROPOSED]~~ ORDER

UPON CONSIDERATION of the United States' motion to dismiss (ECF No. 14) and notice concerning that motion (ECF No. 22), and the entire record herein, it is hereby:

ORDERED that this action is DISMISSED with prejudice as to Relator TZAC, Inc. and DISMISSED without prejudice as to the United States; and it is further

ORDERED that this Order constitutes a final appealable order, and the Clerk of the Court is directed to mark this case as CLOSED.

SO ORDERED:

5/31/2018
Date

RUDOLPH CONTRERAS
United States District Judge

Exhibit 18

EXHIBIT 18

David Abrams, Attorney at Law
P.O. Box 3353 Church Street Station
New York, New York 10008
Tel. 212-897-5821 dnabrams@gmail.com

United States District Court
Southern District of New York

United States of America ex rel. TZAC, Inc.,	)	
Plaintiff-Relator,	)	
- against -	)	Index No.:
Oxfam a/k/a Oxfam GB,	)	**COMPLAINT**
Defendant.	)	

Plaintiff-Relator, complaining of the Defendant by its attorney, David Abrams, Attorney at Law, respectfully sets forth and alleges as follows:

I. Nature of the Case

1. This is a false claims act claim. The Qui Tam Plaintiff and Relator, TZAC, Inc. ("The Zionist Advocacy Center" or "Relator"), alleges that the Defendant obtained USAID funding by means of fraudulent certifications that it does not support terrorism.

II. Parties

2. The Defendant Oxfam a/k/a Oxfam GB ("Oxfam") is a British non-governmental organization based in London. Although it is located overseas, it regularly transacts business in the United States and in the Southern District of New York.

3. Oxfam is structured as a confederation of approximately 20 entities, each located in a different country with a central governing structure. These different entities act in concert, sharing personnel, facilities, and other resources. Indeed, Oxfam has adopted a "Single Management Structure" policy to ensure that in each location it operates, so that all affiliates operate jointly as "One Oxfam."

4. Oxfam is very much anti-Israel. For example, as stated by the research organization NGO Monitor:

> Oxfam consistently paints a highly misleading picture of the Arab-Israeli conflict, departing from its humanitarian mission focused on poverty. Most Oxfam statements erase all complexity and blame Israel exclusively for the situation, and these distortions and their impacts contribute significantly to the conflict.

5. Relator TZAC, Inc. ("The Zionist Advocacy Center" or "Relator" or "Plaintiff") is a New York corporation with its principle place of business in the State of New York, County of New York. The Zionist Advocacy Center advocates on behalf of Israel.

III. Compliance With Requirements of Suit

6. This matter has been or will be filed under seal pursuant to 31 U.S.C. Section 3730(b); at or about the same time, a copy of the Complaint, Sealing Order, and Relator's disclosure of evidence were or will be served on the Department of Justice and the United States Attorney for the Southern District of New York.

7. Relator will not serve the Complaint or any other papers in this matter until and unless it becomes unsealed. Thus, if the Complaint is served on the Defendant, it means that the matter has been duly unsealed.

IV. Jurisdiction and Venue

8. This Court has jurisdiction pursuant to 31 U.S.C. Section 3732(a) which provides that this type of action may be brought in any district where the Defendant resides or transacts business. In this case, Oxfam regularly transacts business in the Southern District of New York. More specifically, Oxfam maintains offices at 205 E 42nd St, New York, NY 10017.

V. A Brief Statement of the Fraudulent Scheme

9. Oxfam has received substantial USAID funding in recent years. In order to be eligible for funding, Oxfam had to execute certifications indicating that it has not provided material support or resources to terrorist persons or entities in the last 10 years.

("Anti-Terrorism Certifications" or "ATC's") As set forth below, these certifications were false when made.

VI. The Specific Fraudulent Statements of the Defendant

10. In order to obtain USAID dollars, Oxfam had to execute ATC's in connection with the following:

Grant ID	Amount	Date
33098S003	$1,947,232	9/21/2017
AIDOFDAG1700061	$4,999,356	5/1/2017
AIDOFDAG1700217	$1,140,620	7/18/2017
AIDOFDAG1700131	$3,500,000	7/10/2017
AIDOFDAG1700271	$1,000,000	8/12/2017
AIDOFDAG1600185	$2,900,000	5/9/2017
AID-OFDA-G-16-00223-OXFAM	$109,844	12/7/2016
AIDOFDAG1600241	$749,963	9/27/2016
AIDOFDAG1600120	$1,188,000	8/26/2016
AIDOFDAG1600057	$3,450,000	6/3/2016
AIDOFDAG1600185	$2,277,762	9/21/2016
AIDOFDAG1500192	$125,000	6/24/2016
AIDOFDAG1600185	$1,000,000	2/18/2017
AIDOFDAG1400117	$1,682,381	6/24/2014
AIDOFDAG1400102	$1,992,295	5/29/2014
AIDOFDAG1400116	$2,986,516	6/10/2014
32332S004	$282,755	10/22/2013
AIDOFDAG1400006	$188,382	12/20/2013
AIDOFDAA1400005	$4,033,598	3/1/2014
AIDOFDAG1400006	$2,499,645	11/22/2013

AIDOFDAG1500172	$1,227,341	7/8/2015
AIDOFDAG1500137	$4,000,000	4/17/2015
AIDOFDAG1500221	$1,700,000	7/17/2015
AIDOFDAG1500199	$995,513	8/12/2015
AIDOFDAG1500054	$690,646	2/5/2015
AIDOFDAG1500262	$872,727	7/30/2015
AIDOFDAG1500192	$625,000	8/6/2015
AIDOFDAG1500105	$3,000,000	5/4/2015
AIDOFDAA1500038	$1,599,814	8/10/2015
AIDOFDAG1500105	$635,214	9/22/2015
Total:	$53,399,604.00	

11. Among other things, the ATC form contained certifications as to support of terrorism. The terrorism certification states as follows:

> The Recipient to the best of its current knowledge, did not provide within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts . . . .

The document in turn defines "material support or resources" as follows:

> currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses false documentation or Identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials."

12. As set forth in more detail below, Oxfam has provided material support or resources to Hamas, the de facto government in the Gaza Strip and/or to the Palestinian Authority.

13. More specifically, from approximately 2013 to 2017, Oxfam sponsored a project in the Gaza Strip to promote agriculture in urban and suburban areas. The project came

to be known as "GUPAP," which stands for "Gaza Urban and Peri-Urban Agricultural Platform."

14. Among other things, the GUPAP project provided support and assistance to the Ministry of Agriculture and Ministry of National Economy in Gaza.

15. Since Hamas controls the government in the Gaza Strip, the substantial effect of such assistance is to aid Hamas, which has been a Designated Foreign Terrorist Organization by the U.S. State Department since 1997.

16. However, even if this were not the case, the Ministry of Agriculture and the Ministry of National Economy are nominally subdivisions of the Palestinian Authority ("PA").

17. For at least 20 years, the PA has operated the Palestinian Authority Martyrs Fund, commonly known as the "Pay-to-Slay" Fund. The Pay-to-Slay Fund is set up to encourage terrorist acts against Jewish Israelis by providing financial rewards to the families of such terrorists. The more serious the act of terrorism, the greater the amount of financial compensation.

18. Thus, the Palestinian Authority is an "entity" that "facilitates" terrorist acts in that it takes steps to ensure that potential terrorists know that if they are killed or incarcerated as a result of their terrorism, their families will be provided for. The Pay-to-Slay Fund has been a matter of public knowledge for many years.

19. Accordingly, it is clear that Oxfam has provided material support to an entity or entities which engage in and/or facilitate terrorism.

VII. (Count I) Violation of the False Claims Act

20. The False Claims Act imposes liability on a person or entity who " knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim" 31 U.S.C. Section 3729(a)(1)(B)

21. The Courts have held that this can include false statements regarding eligibility to participate in a program. See *United States ex rel. Kirk v. Schindler Elevator Corp.,* 601 F.3d 94, 116 (2d Cir. 2010), rev'd on other grounds, 131 S.Ct. 1885 (2011) ("[C]laims may be false even though the services are provided as claimed if, for example, the claimant is ineligible to participate in the program.")

22. Thus, Oxfam's certifications regarding support of terrorism violated the False Claims Act because they were false and required for eligibility for USAID dollars.

VIII. Relief Sought

23. On behalf of the government, Relator is seeking judgment for the triple damages and civil penalties set forth in 31 U.S.C. Section 3729.

24. According to the government spending web site, Oxfam has received approximately $53,399,604.00 in USAID grant funds in recent years. These funds would have been received as a result of fraudulent certifications including those referred to above.

[continued on next page]

25. Accordingly, Relator seeks judgment in the amount of $160,198,812.00 against Oxfam and in favor of the United States, together with costs, interest, civil penalties, an appropriate qui tam award, and such other and further relief as the Court deems just.

Respectfully submitted,

David Abrams, Attorney at Law
Attorney for Relator
The Zionist Advocacy Center

P.O. Box 3353 Church Street Station
New York, NY 10008
Tel. 212-897-5821
Fax 212-897-5811

Dated: New York, NY
February 19, 2018

Exhibit 19

EXHIBIT 19

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

United States ex rel. TZAC, Inc. ,
Plaintiff(s)

v.

Oxfam a/k/a Oxfam GB ,
Defendant(s)

NOTICE OF VOLUNTARY DISMISSAL PURSUANT TO F.R.C.P. 41(a)(1)(A)(i)

Case No.: 18 cv 1500 (VEC)

NOTICE OF VOLUNTARY DISMISSAL PURSUANT TO F.R.C.P. 41(a)(1)(A)(i)

Pursuant to F.R.C.P. 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, the plaintiff(s) Relator TZAC Inc. and or their counsel(s), hereby give notice that the above-captioned action is voluntarily dismissed, without prejudice against the defendant(s) Oxfam a/k/a Oxfam GB without costs.

Date: 12/18/2019

Signature of plaintiffs or plaintiff's counsel

305 Broadway Suite 601
Address

New York, NY 10007
City, State & Zip Code

212-897-5821
Telephone Number

Exhibit 20

EXHIBIT 20

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON, Justice — PART IAS MOTION 37EFM

INDEX NO. 651938/2018
MOTION DATE 07/30/2018
MOTION SEQ. NO. 001

THE INTERNATIONAL LEGAL FORUM,
Plaintiff,

- v -

THE AMERICAN STUDIES ASSOCIATION,
Defendant.

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion for DISMISSAL

Upon the foregoing documents, it is hereby ordered that defendant's motion for dismissal is granted.

Plaintiff, the International Legal Forum ("ILF"), commenced this lawsuit against defendant, the American Studies Association ("ASA"), alleging violations of New York City and New York State Human Rights Laws. ASA now moves, pursuant to CPLR 3211, to dismiss plaintiff's complaint.

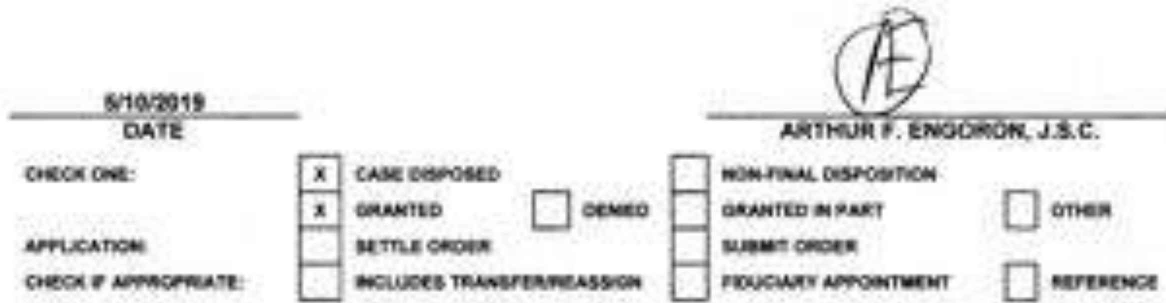
ASA is non-profit membership organization comprised of scholars, teachers, writers, administrators and activists from around the world with a stated purpose of promoting the study of American Culture through the encouragement of research, teaching, publication, and strengthening relationships among persons and institutions in this country and abroad. ILF is an Israeli organization, founded in 2016, with the stated purpose of fostering educational activity to promote human rights internationally.

ILF alleges that ASA "publicized a boycott of Israeli persons and made statements on its web site which clearly indicate that Israeli persons are not welcome at its events." (NYSCEF doc. no. 17.) ILF alleges that ASA violated various human rights law by not permitting ILF, an Israeli organization, to join ASA. However, ILF has not taken the significant step of actually attempting to join ASA. Consequently, it does not have a claim that is justiciable. A justiciable controversy requires the plaintiff "have an interest sufficient to constitute standing to maintain the action but also that the controversy involve present, rather than hypothetical, contingent or remote, prejudice to plaintiffs." Am. Ins. Ass'n v Chu, 64 NY2d 379, 379 (1985).

Here, ILF's allegations of damages are speculative and there is no injury that has yet occurred. Consequently, ILF's claims are not ripe for adjudication, and ASA is entitled to dismissal of plaintiff's complaint.

Moreover, even if ILF's claims were ripe, this Court strains to see how ASA's actions, as alleged by ILF, would not be protected under ASA's right to freedom of association. However, the Court need not decide that issue at this time as ASA has otherwise demonstrated its entitlement to dismissal of the complaint.

For the reasons set forth herein, defendant's motion is granted, and the Clerk is hereby directed to enter judgment dismissing the complaint.



5/10/2019
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	X CASE DISPOSED		NON-FINAL DISPOSITION		
	X GRANTED	DENIED	GRANTED IN PART		OTHER
APPLICATION:	SETTLE ORDER		SUBMIT ORDER		
CHECK IF APPROPRIATE:	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT		REFERENCE

Exhibit 21

EXHIBIT 21

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:20-cv-02955-GHW

State Of New York et al v. New Israel Fund
Assigned to: Judge Gregory H. Woods
Demand: $9,999,000
Case in other court: State Court - Supreme, 101260-2019
Cause: 28:1441nr Notice of Removal

Date Filed: 04/10/2020
Jury Demand: Plaintiff
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Plaintiff

State Of New York *ex rel.*	represented by	**Sujata Menjoge Tanikella** New York State Office of The Attorney General 28 Liberty Street New York, NY 10005 212-416-6012 Fax: (212) 416-6087 Email: sujata.tanikella@ag.ny.gov *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Bryan Paul Kessler** Office of The Attorney General(NYS) 28 Liberty Street, 21st Floor New York, NY 10005 (212)-416-6012 Fax: (212)-416-6087 Email: bryan.kessler@ag.ny.gov *ATTORNEY TO BE NOTICED*

Plaintiff

TZAC, Inc.	represented by	**David Abrams** David Abrams, Attorney at Law 305 Broadway, Suite 601 New York, NY 10007 (212) 897-5821 Fax: (212) 897-5811 Email: dnabrams@gmail.com *ATTORNEY TO BE NOTICED*

V.

Defendant

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ATTORNEY TO BE NOTICED

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ATTORNEY TO BE NOTICED

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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/10/2020	1	NOTICE OF REMOVAL from Supreme Court of the State of New York, County of New York. Case Number: 101260/2019. (Filing Fee $ 400.00, Receipt Number ANYSDC-19405805).Document filed by New Israel Fund. (Attachments: # 1 Exhibit A - Summons, # 2 Exhibit B - Complaint, # 3 Exhibit C - County Clerk Minutes, # 4 Exhibit D - OrderSigned 12/9/20, # 5 Exhibit E - Notice of Entry of Order).(Murphy, John) (Entered: 04/10/2020)
04/10/2020	2	CIVIL COVER SHEET filed..(Murphy, John) (Entered: 04/10/2020)
04/10/2020	3	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by New Israel Fund..(Murphy, John) (Entered: 04/10/2020)
04/13/2020	4	NOTICE OF APPEARANCE by David Abrams on behalf of TZAC, Inc...(Abrams, David) (Entered: 04/13/2020)
04/13/2020		*****NOTICE TO ATTORNEY REGARDING CIVIL CASE OPENING STATISTICAL ERROR CORRECTION: Notice to attorney John Emmett Murphy. The following case opening statistical information was erroneously selected/entered: Dollar Demand $110000000;. The following correction(s) have been made to your case entry: the Dollar Demand has been modified to $9999000;. (jgo)** (Entered: 04/13/2020)
04/13/2020		*****NOTICE TO ATTORNEY REGARDING PARTY MODIFICATION. Notice to attorney John Emmett Murphy. The party information for the following party/parties has been modified: State Of New York; ex rel TZAC, Inc.. The information for the party/parties has been modified for the following reason/reasons: party name contained a typographical error; party text was omitted;. (jgo)** (Entered: 04/13/2020)
04/13/2020		CASE OPENING INITIAL ASSIGNMENT NOTICE: The above-entitled action is assigned to Judge Gregory H. Woods. Please download and review the Individual Practices of the assigned District Judge, located at https://nysd.uscourts.gov/judges/district-judges. Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF

		Rules and Instructions, located at https://nysd.uscourts.gov/rules/ecf-related-instructions..(jgo) (Entered: 04/13/2020)
04/13/2020		Magistrate Judge Gabriel W. Gorenstein is so designated. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf. (jgo) (Entered: 04/13/2020)
04/13/2020		Case Designated ECF. (jgo) (Entered: 04/13/2020)
04/14/2020	5	ORDER: This action was removed from the Supreme Court of the State of New York, County of New York, on April 10, 2020. Dkt. No. 1. Pursuant to Fed. R. Civ. P. 81(c)(3), if any party wishes to demand a jury trial in this matter, the demand must be served and filed no later than April 24, 2020. Additionally, counsel for Plaintiff is directed to promptly file a notice of appearance in this case. Counsel for Defendant is directed to serve a copy of this order on Plaintiff, and to retain proof of service. (Signed by Judge Gregory H. Woods on 4/14/2020) (mro) (Entered: 04/14/2020)
04/14/2020	6	ORDER: Initial Conference set for 6/4/2020 at 12:00 PM in Courtroom 12C of the United States District Court for the Southern District of New York, Daniel Patrick Moynihan U.S. Courthouse at 500 Pearl Street, New York, NY 10007 before Judge Gregory H. Woods. (Signed by Judge Gregory H. Woods on 4/14/2020) (mro) (Entered: 04/14/2020)
04/15/2020	7	CONSENT LETTER MOTION for Extension of Time to File Answer , *move or otherwise respond to the complaint until June 16, 2020* addressed to Judge Gregory H. Woods from J. Emmett Murphy dated 4/15/2020. Document filed by New Israel Fund..(Murphy, John) (Entered: 04/15/2020)
04/15/2020	8	NOTICE OF APPEARANCE by Sujata Menjoge Tanikella on behalf of State Of New York..(Tanikella, Sujata) (Entered: 04/15/2020)
04/17/2020	9	ORDER granting 7 Letter Motion for Extension of Time to Answer. Application granted. The time for Defendant to answer or otherwise respond to the complaint is extended to June 16, 2020. (HEREBY ORDERED by Judge Gregory H. Woods)(Text Only Order) (Woods, Gregory) (Entered: 04/17/2020)
04/17/2020	10	DEMAND for Trial by Jury. Document filed by TZAC, Inc..(Abrams, David) (Entered: 04/17/2020)

05/26/2020	11	LETTER MOTION to Adjourn Conference *scheduled for June 4, 2020 and extend deadline to submit joint letter and proposed case management plan* addressed to Judge Gregory H. Woods from J. Emmett Murphy dated 5/26/2020. Document filed by New Israel Fund..(Murphy, John) (Entered: 05/26/2020)
05/27/2020	12	ORDER denying 11 Letter Motion to Adjourn Conference. Application denied. Defendant's request essentially asks this Court to stay the case pending its anticipated motion to dismiss. Under Federal Rule of Civil Procedure 26(c), a district court may stay discovery for good cause. Fed. R. Civ. P. 26(c). When a motion to dismiss is pending, courts typically consider several factors in determining whether to stay discovery; including: (1) whether a defendant has made a strong showing that the plaintiff's claim is unmeritorious, (2) the breadth of discovery and the burden of responding to it, and (3) the risk of unfair prejudice to the party opposing the stay. Negrete v. Citibank, N.A., No. 15cv7250 (RWS), 2015 WL 8207466 (S.D.N.Y. Dec. 7, 2015). Defendant has provided the Court with no information with respect to any of these factors, including any information about the anticipated motion to dismiss. Thus, Defendant's application is denied. (HEREBY ORDERED by Judge Gregory H. Woods)(Text Only Order) (Woods, Gregory) (Entered: 05/27/2020)
05/28/2020	13	LETTER MOTION to Adjourn Conference *scheduled for June 4, 2020 and extend deadline to submit joint letter and proposed case management plan* addressed to Judge Gregory H. Woods from J. Emmett Murphy dated May 28, 2020. Document filed by New Israel Fund..(Murphy, John) (Entered: 05/28/2020)
06/01/2020	14	ORDER granting 13 Letter Motion to Adjourn Conference. So Ordered. Initial Conference set for 6/30/2020 at 11:00 AM before Judge Gregory H. Woods. (Signed by Judge Gregory H. Woods on 5/31/2020) (js) (Entered: 06/01/2020)
06/12/2020	15	LETTER MOTION for Conference *specifically a pre-motion conference concerning Defendant's anticipated motion to dismiss this action* addressed to Judge Gregory H. Woods from J. Emmett Murphy dated 6/12/2020. Document filed by New Israel Fund..(Murphy, John) (Entered: 06/12/2020)
06/12/2020	16	LETTER MOTION to Stay *discovery pending resolution of Defendant's motion to dismiss* addressed to Judge Gregory H. Woods from J. Emmett Murphy dated 6/12/2020. Document filed by New Israel Fund..(Murphy, John) (Entered: 06/12/2020)
06/15/2020	17	ORDER granting 15 Motion for Conference. Defendant's request for a pre-motion conference is granted. The Court will hold a teleconference

		to discuss Defendant's anticipated motion to dismiss on June 18, 2020 at 4:00 p.m. The parties are directed to use the conference call dial-in information and access code noted in the Court's Emergency Rules in Light of COVID-19, available on the Court's website, and are specifically directed to comply with Emergency Rule 2(C). (HEREBY ORDERED by Judge Gregory H. Woods)(Text Only Order) (Woods, Gregory) (Entered: 06/15/2020)
06/15/2020	18	MOTION for Jeffrey S. Bucholtz to Appear Pro Hac Vice . Filing fee $ 200.00, receipt number ANYSDC-20265766. **Motion and supporting papers to be reviewed by Clerk's Office staff.** Document filed by New Israel Fund. (Attachments: # 1 Affidavit, # 2 Exhibit Certificate of Good Standing, # 3 Text of Proposed Order).(Bucholtz, Jeffrey) (Entered: 06/15/2020)
06/16/2020		**>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 18 MOTION for Jeffrey S. Bucholtz to Appear Pro Hac Vice . Filing fee $ 200.00, receipt number ANYSDC-20265766. Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (ad)** (Entered: 06/16/2020)
06/17/2020	19	LETTER RESPONSE to Motion addressed to Judge Gregory H. Woods from David Abrams dated 06/17/2020 re: 16 LETTER MOTION to Stay *discovery pending resolution of Defendant's motion to dismiss* addressed to Judge Gregory H. Woods from J. Emmett Murphy dated 6/12/2020., 15 LETTER MOTION for Conference *specifically a pre-motion conference concerning Defendant's anticipated motion to dismiss this action* addressed to Judge Gregory H. Woods from J. Emmett Murphy dated 6/12/2020. . Document filed by TZAC, Inc...(Abrams, David) (Entered: 06/17/2020)
06/17/2020	20	LETTER addressed to Judge Gregory H. Woods from Sujata M. Tanikella dated June 17, 2020 re: Defendant's anticipated motion to dismiss. Document filed by State Of New York..(Tanikella, Sujata) (Entered: 06/17/2020)
06/18/2020	21	ORDER granting 18 Motion for Jeffrey S. Bucholtz to Appear Pro Hac Vice. (HEREBY ORDERED by Judge Gregory H. Woods)(Text Only Order) (Daniels, Anthony) (Entered: 06/18/2020)
06/18/2020	22	ORDER. For the reasons stated on the record during the June 18, 2020 conference, the anticipated motion to dismiss is due no later than June 26, 2020; any opposition is due no later than three weeks following service of Defendant's motion; any reply is due no later than one week following service of the latest-filed opposition brief. Furthermore, the Court has found good cause to stay discovery pending the resolution of

		the motion to dismiss. The initial conference scheduled for June 30, 2020 is adjourned sine die, pending the Court's resolution of the anticipated motion. If necessary, the Court will promptly reschedule the initial pretrial conference upon resolving the motion. (HEREBY ORDERED by Judge Gregory H. Woods) (Text Only Order) (Woods, Gregory) (Entered: 06/18/2020)
06/18/2020		Minute Entry for proceedings held before Judge Gregory H. Woods: Telephone Conference held on 6/18/2020. (Daniels, Anthony) (Entered: 07/03/2020)
06/22/2020	23	MOTION for Gabriel Krimm to Appear Pro Hac Vice . Filing fee $ 200.00, receipt number BNYSDC-20366760. **Motion and supporting papers to be reviewed by Clerk's Office staff.** Document filed by New Israel Fund. (Attachments: # 1 Affidavit in Support, # 2 Exhibit 1 - DC Certificate of Good Standing, # 3 Exhibit 2 - TN Certificate of Good Standing, # 4 Proposed Order).(Krimm, Gabriel) (Entered: 06/22/2020)
06/22/2020		**>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 23 MOTION for Gabriel Krimm to Appear Pro Hac Vice . Filing fee $ 200.00, receipt number BNYSDC-20366760. Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (ad)** (Entered: 06/23/2020)
06/25/2020	24	ORDER granting 23 Motion for Gabriel Krimm to Appear Pro Hac Vice. (HEREBY ORDERED by Judge Gregory H. Woods)(Text Only Order) (Daniels, Anthony) (Entered: 06/25/2020)
06/26/2020	25	NOTICE OF APPEARANCE by Brian Matthew Hauss on behalf of New Israel Fund..(Hauss, Brian) (Entered: 06/26/2020)
06/26/2020	26	NOTICE OF APPEARANCE by Arianna Marie Demas on behalf of New Israel Fund..(Demas, Arianna) (Entered: 06/26/2020)
06/26/2020	27	MOTION to Dismiss . Document filed by New Israel Fund. Responses due by 7/17/2020.(Bucholtz, Jeffrey) (Entered: 06/26/2020)
06/26/2020	28	MEMORANDUM OF LAW in Support re: 27 MOTION to Dismiss . . Document filed by New Israel Fund..(Bucholtz, Jeffrey) (Entered: 06/26/2020)
06/27/2020	29	DECLARATION of J. Emmett Murphy in Support re: 27 MOTION to Dismiss .. Document filed by New Israel Fund. (Attachments: # 1 Exhibit A1, # 2 Exhibit A2, # 3 Exhibit A3, # 4 Exhibit A4, # 5 Exhibit A5, # 6 Exhibit A6, # 7 Exhibit A7, # 8 Exhibit A8, # 9 Exhibit A9, # 10 Exhibit A10, # 11 Exhibit A11, # 12 Exhibit A12,

		# 13 Exhibit A13, # 14 Exhibit B1, # 15 Exhibit B2, # 16 Exhibit B3, # 17 Exhibit C, # 18 Exhibit D1, # 19 Exhibit D2, # 20 Exhibit D3, # 21 Exhibit D4, # 22 Exhibit D5, # 23 Exhibit D6, # 24 Exhibit D7, # 25 Exhibit D8, # 26 Exhibit D9, # 27 Exhibit D10, # 28 Exhibit D11, # 29 Exhibit E1, # 30 Exhibit E2, # 31 Exhibit E3, # 32 Exhibit E4, # 33 Exhibit E5, # 34 Exhibit E6, # 35 Exhibit E7, # 36 Exhibit E8, # 37 Exhibit E9, # 38 Exhibit E10, # 39 Exhibit E11, # 40 Exhibit E12, # 41 Exhibit F, # 42 Exhibit G1, # 43 Exhibit G2, # 44 Exhibit G3, # 45 Exhibit H, # 46 Exhibit I1, # 47 Exhibit I2, # 48 Exhibit I3, # 49 Exhibit I4, # 50 Exhibit I5, # 51 Exhibit J1, # 52 Exhibit J2, # 53 Exhibit J3, # 54 Exhibit J4, # 55 Exhibit K1).(Murphy, John) (Entered: 06/27/2020)
07/17/2020	30	AMENDED COMPLAINT against New Israel Fund, State Of New York .Document filed by TZAC, Inc...(Abrams, David) Modified on 7/20/2020 (pc). (Entered: 07/17/2020)
07/17/2020	31	MEMORANDUM OF LAW in Opposition re: 27 MOTION to Dismiss . . Document filed by TZAC, Inc...(Abrams, David) (Entered: 07/17/2020)
07/17/2020	32	MEMORANDUM OF LAW in Opposition re: 27 MOTION to Dismiss . . Document filed by State Of New York..(Tanikella, Sujata) (Entered: 07/17/2020)
07/20/2020	33	ORDER denying as moot 27 Motion to Dismiss. Because Plaintiffs have amended their complaint, see Dkt. NO. 30, in response to Defendant's motion to dismiss, the motion is denied as moot. (HEREBY ORDERED by Judge Gregory H. Woods)(Text Only Order) (Daniels, Anthony) (Entered: 07/20/2020)
08/07/2020	34	LETTER MOTION for Conference *specifically a pre-motion conference concerning NIF's forthcoming motion to dismiss the amended complaint* addressed to Judge Gregory H. Woods from J. Emmett Murphy dated 08/07/2020. Document filed by New Israel Fund..(Murphy, John) (Entered: 08/07/2020)
08/11/2020	35	ORDER denying 34 Letter Motion for Conference. The Court does not believe that a pre-motion conference is necessary. Therefore, Defendant's request for a pre-motion conference, Dkt. No. 34, is denied. The briefing schedule for Defendant's anticipated motion to dismiss is as follows: Defendant's motion is due no later than August 25, 2020; any opposition is due no later than three weeks following service of Defendant's motion; and any reply is due no later than one week following service of the latest-filed opposition brief. (HEREBY ORDERED by Judge Gregory H. Woods)(Text Only Order) (Daniels, Anthony) (Entered: 08/11/2020)

08/25/2020	36	MOTION to Dismiss *Amended Complaint*. Document filed by New Israel Fund. Responses due by 9/15/2020.(Bucholtz, Jeffrey) (Entered: 08/25/2020)
08/25/2020	37	MEMORANDUM OF LAW in Support re: 36 MOTION to Dismiss *Amended Complaint*. . Document filed by New Israel Fund..(Bucholtz, Jeffrey) (Entered: 08/25/2020)
08/25/2020	38	DECLARATION of J. Emmett Murphy in Support re: 36 MOTION to Dismiss *Amended Complaint*.. Document filed by New Israel Fund. (Attachments: # 1 Exhibit A1, # 2 Exhibit A2, # 3 Exhibit A3, # 4 Exhibit A4, # 5 Exhibit A5, # 6 Exhibit A6, # 7 Exhibit A7, # 8 Exhibit A8, # 9 Exhibit A9, # 10 Exhibit A10, # 11 Exhibit A11, # 12 Exhibit A12, # 13 Exhibit B1, # 14 Exhibit B2, # 15 Exhibit B3, # 16 Exhibit C, # 17 Exhibit D1, # 18 Exhibit D2, # 19 Exhibit D3, # 20 Exhibit D4, # 21 Exhibit D5, # 22 Exhibit D6, # 23 Exhibit D7, # 24 Exhibit D8, # 25 Exhibit D9, # 26 Exhibit D10, # 27 Exhibit D11, # 28 Exhibit E1, # 29 Exhibit E2, # 30 Exhibit E3, # 31 Exhibit E4, # 32 Exhibit E5, # 33 Exhibit E6, # 34 Exhibit E7, # 35 Exhibit E8, # 36 Exhibit E9, # 37 Exhibit E10, # 38 Exhibit E11, # 39 Exhibit E12, # 40 Exhibit F1, # 41 Exhibit F2, # 42 Exhibit F3, # 43 Exhibit F4, # 44 Exhibit F5, # 45 Exhibit F6, # 46 Exhibit F7, # 47 Exhibit F8, # 48 Exhibit F9, # 49 Exhibit F10, # 50 Exhibit F11, # 51 Exhibit F12, # 52 Exhibit G1, # 53 Exhibit G2, # 54 Exhibit G3, # 55 Exhibit G4).(Murphy, John) (Entered: 08/25/2020)
09/14/2020	39	MEMORANDUM OF LAW in Opposition re: 36 MOTION to Dismiss *Amended Complaint*. . Document filed by TZAC, Inc...(Abrams, David) (Entered: 09/14/2020)
09/21/2020	40	REPLY MEMORANDUM OF LAW in Support re: 36 MOTION to Dismiss *Amended Complaint*. . Document filed by New Israel Fund..(Bucholtz, Jeffrey) (Entered: 09/21/2020)
10/26/2020	41	TRANSCRIPT of Proceedings re: CONFERENCE held on 6/18/2020 before Judge Gregory H. Woods. Court Reporter/Transcriber: Alena Lynch, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/16/2020. Redacted Transcript Deadline set for 11/27/2020. Release of Transcript Restriction set for 1/24/2021..(McGuirk, Kelly) (Entered: 10/26/2020)
10/26/2020	42	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a CONFERENCE proceeding held on 6/18/20 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with

		the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days....(McGuirk, Kelly) (Entered: 10/26/2020)
12/28/2020	43	REQUEST FOR BRIEFING FROM THE STATE OF NEW YORK: Plaintiff commenced this qui tam action in New York Supreme Court on August 15, 2019, alleging that Defendant violated the New York State False Claims Act (the "NYFCA"). Dkt. No. 1-2. On August 25, 2020, Defendant moved to dismiss Plaintiff's amended complaint. Dkt. No. 36. In Defendant's motion papers, it argues, inter alia, that Plaintiff's claim is prohibited under the NYFCA's public disclosure bar because the allegations in the amended complaint were disclosed on various websites. Dkt. No. 37 at 79. Plaintiff opposed the motion on September 14, 2020, and Defendant replied on September 21, 2020. Dkt. Nos. 3940; as further set forth herein. The Court's adoption of either party's position would have a notable impact on the ability of relators to bring claims under the NYFCA, and there is limited guidance on which party has a correct understanding of the state legislature's intent as to the "news media" provision of the public disclosure bar. The Court expects that the State of New York has an interest in this particular issue. Therefore, the Court requests that the Office of the Attorney General provide the Court with the State of New York's position on the impact of the textual difference between the state and federal statutes, by no later than January 11, 2021. That information will be useful for the Court in evaluating Defendant's motion to dismiss. (Signed by Judge Gregory H. Woods on 12/28/2020) (mro) (Entered: 12/28/2020)
01/11/2021	44	NOTICE OF APPEARANCE by Bryan Paul Kessler on behalf of State Of New York..(Kessler, Bryan) (Entered: 01/11/2021)
01/11/2021	45	BRIEF *in response to the Court's order dated December 28, 2020*. Document filed by State Of New York..(Kessler, Bryan) (Entered: 01/11/2021)
01/19/2021	46	LETTER MOTION for Leave to File Response to the State of New Yorks Statement of Interest *by Defendant New Israel Fund. Counsel for TZAC stated that TZAC takes no position on Defendant's request for leave to respond to the State of New York's Statement of Interest* addressed to Judge Gregory H. Woods from J. Emmett Murphy, Esq. dated 1/19/2021. Document filed by New Israel Fund. (Attachments: # 1 Response to the State of New Yorks Statement of Interest).(Murphy, John) (Entered: 01/19/2021)
01/20/2021	47	ORDER granting 46 Letter Motion for Leave to File Document. Defendant's request for leave to file a response to the State of New

		York's Statement of Interest, Dkt. No. 45, is granted. The Court accepts Defendant's response as filed at Dkt. No. 46-1. (HEREBY ORDERED by Judge Gregory H. Woods)(Text Only Order) (wv) (Entered: 01/20/2021)

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02/02/2021 01:38:44			
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Description:	Docket Report	**Search Criteria:**	1:20-cv-02955-GHW
Billable Pages:	7	**Cost:**	0.70

Exhibit 22

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EXHIBIT 22

United States District Court
Southern District of New York

State of New York ex rel.
TZAC, Inc.

Plaintiff-Relator,

- against -

New Israel Fund,

Defendant.

No.: 1:20-cv-02955-GHW

Amended Complaint

Plaintiff-Relator, complaining of the Defendant by its attorney, David Abrams, Attorney at Law, respectfully sets forth and alleges as follows:

I. Nature of the Case

1. This is a false claims act claim. The Qui Tam Plaintiff and Relator, The Zionist Advocacy Center ("TZAC" or "Plaintiff" or "Relator") alleges that the Defendant fraudulently obtained and maintains its status of being substantially exempt from taxes by repeatedly and fraudulently certifying that it refrains from electioneering activities. As set forth in more detail below, NIF regularly and systmatically supports unlawful electioneering in violation of the strict requirements for tax exempt organizations.

II. Parties

2. Defendant New Israel Fund ("NIF") is a District of Columbia non-profit corporation with its principle place of business in the State of New York, County of New York. Although the stated purpose of NIF is to help strengthen Israel's democracy, NIF consistently opposes Israeli security by supporting organizations which seek to undermine Israel.

3. As part of its agenda NIF meddles in Israeli elections by financially supporting organizations which constantly and systematically oppose some candidates running for office while supporting others. On its website NIF even discusses "our concerted campaign to equip Israel's pro-democracy and progressive forces with the tools to fight Israel's regressive right-and win." This shows that NIF know clearly that it is involving itself in campaigning for officials and cannot claim that it didn't know about these activities.

4. NIF is registered under Section 501(c)(3) of the Internal Revenue Code and therefore the income it receives from its donations and investments is tax exempt under Federal, State, and local law. Its headquarters are located at 6 East 39th Street New York, NY 10016. Its annual revenue is approximately $25 to $30 million, all of which would be subject to state and local taxation if NIF were not tax exempt.

5. Plaintiff-Relator the Zionist Advocacy Center ("Plaintiff") is a New York corporation which advocates on behalf of the Jewish State. Plaintiff's principle place of business is in the State of New York, County of New York.

III. Compliance With Requirements of Suit

6. This matter will be filed under seal as required by law; shortly thereafter, a copy of the Complaint, Sealing Order, and Relator's disclosure of evidence will be served on the office of the New York Attorney General.

7. Relator will not serve the Complaint or Amended Complaint or any other papers in this matter until and unless it becomes unsealed. Thus, if the Complaint or Amended Complaint is served on the Defendant, it means that the matter has been duly unsealed.

IV. A Brief Statement of the Fraudulent Scheme

8. As set forth in more detail below, the Defendant falsely certified to the Internal Revenue Service that it did not make any payments or incur any amounts to influence the results of any election. These certifications were false in that Defendant has

systematically and regularly supported organizations engaged in such electioneering. As a result of the false statements, Defendant enjoyed and continues to enjoy minimal taxation status on the millions of dollars of annual revenue from its donations and investments.

V. The Specific Fraudulent Statements of the Defendant

9. In its 2017 IRS Form 990 (Part IV Line 3), the Defendant certified that it had not "engage[d] in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office." This tracks the language of Internal Revenue Code Section 501(c)(3) which forbids such organizations from engaging in activities to "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

10. The 2017 Form 990 was executed by Jennifer Spitzer Gorovitz (VP Finance) on or about November 8, 2018 and submitted to Federal and State authorities at or about the same time.

11. Similarly, in its 2016 IRS Form 990 the Defendant made substantially similar certifications; the form was executed by Jennifer Spitzer Gorovitz on or about November 14, 2017 and submitted to Federal and State authorities at or about the same time.

12. Similarly, in its 2015 IRS Form 990 the Defendant made substantially similar certifications; the form was executed by Anthony Fullington (CFO) on or about October 03, 2016 and submitted to Federal and State authorities at or about the same time.

13. Similarly, in its 2014 IRS Form 990 the Defendant made substantially similar certifications; the form was executed by Anthony Fullington on or about October 06, 2015 and submitted to Federal and State authorities at or about the same time.

14. Similarly, in its 2013 IRS Form 990 the Defendant made substantially similar certifications; the form was executed by Anthony Fullington on or about October 07, 2014 and submitted to Federal and State authorities at or about the same time.

15. Similarly, in its 2012 IRS Form 990 the Defendant made substantially similar certifications; the form was executed by Anthony Fullington on or about October 03, 2013 and submitted to Federal and State authorities at or about the same time.

16. Similarly, in its 2011 IRS Form 990 the Defendant made substantially similar certifications; the form was executed by Anthony Fullington on or about October 18, 2012 and submitted to Federal and State authorities at or about the same time.

17. Similarly, in its 2010 IRS Form 990 the Defendant made substantially similar certifications; the form was executed by Daniel Sokatch around November 28, 2011 and submitted to Federal and State authorities at or about the same time.

18. Similarly, in its 2009 IRS Form 990 the Defendant made substantially similar certifications; the form was executed by Anthony Fullington on or about November 12, 2010 and submitted to Federal and State authorities at or about the same time.

19. Similarly, in its 2008 IRS Form 990 the Defendant made substantially similar certifications; the form was executed by Nimalka Wijesooriya, on or about November 16, 2009 and submitted to Federal and State authorities at or about the same time.

20. The form 990 was prepared by outside accountants; however, the finance and executive committee of the NIF reviewed it to ensure accuracy before it was filed with the IRS.

21. As set forth in more detail below the Defendant engaged in electioneering activities contrary to its certifications. If the Defendant had disclosed its activities to the IRS then it would not have been eligible for 501(c)(3) tax exemption.

22. As a result of NIF's federal tax exemption, it receives exemption from taxation in the State and City of New York based on rule 20 N.Y.C.R.R. 1-3.4(b)(6)(i), (ii).

VI. The Specific Activities of the Defendant

23. For at least the past 10 years and continuing through the present NIF has consistently electioneered in Israel by giving grants to organizations which oppose and support candidates for public office in Israel.

24. In 2019 NIF got involved in electioneering directly. During the 2019 Israeli election season NIF helped to gather names for a petition to disqualify Otzma Yehudit candidate from running for Knesset. NIF sent out the petition and asked for people to sign. After the candidate—Michael Ben-Ari – was banned by the Supreme Court NIF called it a victory for democracy. This is clearly electioneering by opposing candidates for public office.

25. Israel Religious Action Center ("IRAC") received grants from NIF in 2014, 2015, 2016, 2017, 2018 and as also set forth in more detail below, electioneered in the 2015 and 2019 election in Israel. In 2019 IRAC published a video about the danger of the Otzma Yehudit Party. The video targeted Bentzi Gopstein, Itamar Ben Gvir, Michael Ben-Ari and Baruch Marzel.

26. While opposing one candidate is enough to be violating NIF's Internal Revenue Status, the fact that IRAC was constantly opposing more than one candidate with NIF's knowledge makes NIF's conduct all the more egregious.

27. This is not the first time that IRAC electioneered; IRAC electioneered in the previous election in Israel, in 2015. An IRAC attorney argued before the Israel Supreme Court against the appeal of Baruch Marzel who had been disqualified from running for Knesset by the Israel Central Election Committee. IRAC proudly posted that fact with a picture on their Facebook account.

28. Another organization, Adalah, received general grants from NIF in 2012, 2013, 2014, 2015, 2016, 2017 and 2018. In 2015 Adalah admitted to calling on the Central Election Commission to reject disqualification motions against MK Haneen Zoabi.

29. NIF gave grants to Mossawa in 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017 and 2018. In 2018 Mossawa attacked a sign from Jewish Home Campaign as racist, clearly insinuating that it does not approve of Jewish Home and its candidates and that no one should vote for them. Mossawa also attacked the Likud Campaign and said that Likud wants the Israeli's to decide between a fascist society and a pluralistic society that respects human dignity and diversity. This is a clear attack on the Likud campaign and is clearly opposing Likud candidates running for public office.

30. Adam Teva received grants from NIF in 2014, 2016 and 2017. In 2018 Adam Teva posted a list of candidates who undertook a pledge to follow a certain protocol to preserve trees. This protocol was on the pledge which Adam Teva posted on their website. Adam Teva said that the list of candidates will be kept on their website until the next election date. This is clear electioneering because the list was put up specifically for the election.

31. NIF gave and continues to give general grants on a constant basis to organizations that are involved in electioneering which it knows about. NIF pays lip service to its own requirement listed on its web site that grantees shouldn't electioneer. Instead, NIF has knowingly or recklessly allowed grantees to electioneer.

32. NIF knows that these grantees are electioneering because these grantees proudly post on their websites what they have been doing and NIF says that it monitors actions of its grantees to make sure they aren't violating any rules. As noted above, on its website NIF even writes that "New Initiatives for Democracy (NIFD) is our concerted campaign to equip Israel's pro-democracy and progressive forces with the tools to fight Israel's regressive right-and win." This shows that NIF know clearly that it is involving itself in

campaigning for officials and cannot claim that it didn't know about these activities. NIF also alleges that grantees make a point of sharing newspapers and free media coverage with NIF. This shows that NIF know the activities of its grantees and does not stop giving grants to these organizations that are electioneering with its knowledge, on the contrary NIF promotes the electioneering activities.

33. Furthermore, NIF has a webpage dedicated to explaining its strategies for its NIFD. One section explains that NIF can move from military to political solutions by "reclaiming national security to include progressive ideals." NIF goes on to explain:

> Through our partnership with the Council for Peace and Security (CPS)…, we intend to redefine the security discourse. By amplifying CPS' resources and outreach, we can expand the current narrative, which exploits security issues for the purposes of defending the occupation. With our assistance increasing organizational resources, CPS will focus on articulating new and compelling ideas on the immediate and long-term security challenges facing the country and on redefining the security paradigm in ways consistent with progressive values…

34. CPS received grants from NIF beginning at least as early as 2014. One of CPS' "new and compelling idea on the… security challenges" was to tell Israelis before the 2015 elections to vote Benjamin Netanyahu out of office. CPS made a large campaign which explained, in the Hebrew language, that with Benjamin Netanyahu in office, the situation with the Palestinians will not change; however, the voters have a chance to make a change by voting in the election. They campaigned in the street in Israel, as well as on their YouTube and Facebook pages. This is very clearly electioneering by convincing voters to vote against Benjamin Netanyahu in order to make change.

VII. (Count I) Violation of the False Claims Act

35. The False Claims Act imposes liability on a person or entity who "knowingly makes, uses, or causes to be made or used, a false record or statement material to an

obligation to pay or transmit money or property to the state or a local government" New York State Finance Law Section 189(g).

36. NIF states that they monitor their grantees activities carefully to ensure that the organizations are not doing anything problematic. Even though NIF knows that these organizations are electioneering, NIF has taken no actions to stop them, stop funding them and even goes so far as to promote these activities.

37. Thus, the Defendant violated the False Claims Act by preparing fraudulent tax returns as signed by different representatives as set forth above and electioneering in campaigns in Israel.

VIII. Relief Sought

38. On behalf of the government, Relator is seeking judgment for the triple damages and civil penalties set forth in New York State Finance Law Section 189(h).

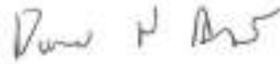
39. The fraudulent conduct described above resulted in avoided taxes on at least approximately 250 million dollars in income.

40. Assuming a combined state and local tax rate of approximately 15%, this resulted in approximately $37,500,000 in avoided taxes. Multiplying this by 3 gives a total of approximately $110 million dollars.

[continued on next page]

41. Accordingly, Relator seeks judgment in the amount of $110 million dollars against Defendant and in favor of the State of New York, together with costs, interest, civil penalties, an appropriate qui tam award, and such other and further relief as the Court deems just.

Respectfully submitted,



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Dated: July 16, 2020
New York, NY

Exhibit 23

EXHIBIT 23

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK *ex rel.* TZAC, INC., Plaintiff, v. NEW ISRAEL FUND, Defendant.	No. 1:20-cv-2955-GHW

STATE OF NEW YORK'S STATEMENT OF INTEREST

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The State of New York respectfully submits this statement of interest in response to the Court's December 28th request for briefing (Dkt. 43).

Unlike the federal False Claims Act, the New York False Claims Act ("NYFCA") has placed an express limit on what counts as "news media" for purposes of the public disclosure bar: an allegation or transaction is not publicly disclosed in the news media "merely because information of allegations or transactions have been posted on the internet or on a computer network." N.Y. State Finance Law § 190(9)(b)(iii). This limit not only forecloses any argument that would result in all publicly available online information being deemed to have been publicly disclosed "in the news media", but it also highlights that the "news media" is a distinct source that is not intended to cover any and all public dissemination of information. Thus, in determining whether an allegation or transaction was disclosed in the "news media" for purposes of the NYFCA's public disclosure bar, the Court should focus on whether the source of the disclosure is "news media" within the plain meaning of that term, and should look for guidance to the federal cases that most faithfully attempt to determine and apply the plain meaning of "news media."

The State expresses no view on how this legal standard should be applied to the facts alleged in this case, or on any of the other issues raised in the motion to dismiss briefing.

Background on the 2010 Amendment to the NYFCA

Since 1986, the federal False Claims Act has contained provisions requiring the dismissal of *qui tam* actions based on allegations or transactions that have already been publicly disclosed in certain specified sources, unless the relator is an original source of the information or (in recent years) unless the Attorney General objects to the dismissal. *See* 31 U.S.C. § 3730(e)(4).

Although these provisions are widely-referred to as the "public disclosure bar," not every public disclosure can bar a *qui tam* action. "By its plain terms, the public disclosure bar applies to some methods of public disclosure and not to others," *Schindler Elevator Corp. v. U.S. ex rel. Kirk*, 563 U.S. 401, 414 (2011), and public disclosures that are not through the sources specified in the statute are of no consequence. One of the sources specified in the federal False Claims Act is the "news media," although that term is not defined.

When New York enacted NYFCA in 2007, it followed the federal model and included substantially identical public disclosure bar provisions. In so doing, New York intended that the federal caselaw interpreting the federal False Claims Act would provide guidance in interpreting the NYFCA. As a New York State Senate sponsor's memorandum supporting enactment of the NYFCA stated, the "large body of case law interpreting the federal law provisions…is intended to be used for guidance in interpreting similar provisions under New York State law." Senate Introducer Mem. in Support, 2007 S.B. 3895. *See also State ex rel. Seiden v. Utica First Ins. Co.*, 943 N.Y.S.2d 36, 39 (1st Dept. 2012) (to the extent the NYFCA follows the federal FCA, "it is appropriate to look toward federal law when interpreting the New York act").

In the years immediately following the enactment of the NYFCA, defendants in federal False Claims Act cases argued that allegations or transactions that had been disclosed on the internet were public disclosures in the "news media" that could bar a *qui tam* action, with varying results. In *U.S. ex rel. Unite Here v. Cintas Corp.*, No. C 06-2413 PJH, 2007 WL 4557788, at *12 (N.D. Cal. Dec. 21, 2007), the defendant argued that the transactions at issue had been publicly disclosed in the news media because "the fact that it enters into contracts with various

agencies of the United States government and the type and amount of those contracts are matters known…to any number of interested members of the public with access to the Internet." And the court agreed, holding that "[t]he 'fact' of the contracts between Cintas and the federal government was publicly disclosed in the news media, as that information was available on the Internet." *Id*. at *14. Shortly thereafter, another court, citing *Cintas* for the proposition that the "internet can qualify as 'news media,'" *U.S. ex rel. Brown v. Walt Disney World Co.*, No. 606-CV1943-ORL-22KRS, 2008 WL 2561975, at *4 n.7 (M.D. Fla. June 24, 2008) (citation omitted), held that information disclosed on the Wikipedia website had been publicly disclosed in the news media. And in a third case, a drug manufacturer argued that a *qui tam* action against it should be dismissed because the package insert for the drug at issue "is available on Purdue's publicly-accessible web site," and "publication on the Internet constitutes a public disclosure" in the news media. *U.S. ex rel. Radcliffe v. Purdue Pharma, L.P.*, 582 F. Supp. 2d 766, 771 (W.D. Va. 2008). Although the *Radcliffe* court was "not ready to conclude that anything posted online would automatically constitute a public disclosure," it nevertheless held that the package insert had been publicly disclosed in the news media because it was "posted on a web page entitled 'News & What's New' and because other items on the page resemble press releases." *Id*.

In addition to the uncertainty about whether federal courts would deem information that was publicly disseminated on the internet to have been publicly disclosed in the news media, in April 2010 a New York state court broadly—and in the State's view, erroneously—interpreted the NYFCA's public disclosure bar as requiring the dismissal of any *qui tam* action "based upon information that is in the public domain…that would have been equally available

to strangers to the alleged fraud transactions had they chosen to look for it as it was to the relators." *State v. Unitedhealth Grp., Inc.*, No. 102740/2008, 2010 WL 11432977, at *5 (N.Y. Sup. Ct. Apr. 07, 2010) (citation and quotations omitted), *aff'd sub nom. State ex rel. Jamaica Hosp. Med. Ctr., Inc. v. UnitedHealth Grp., Inc.*, 922 N.Y.S.2d 342 (1st Dep't 2011).[1] *Unitedhealth* ignored the NYFCA's express language that only public disclosures through specified sources could bar a *qui tam* action, and its holding that "publicly available information set forth [on] an internet website" counted as a public disclosure sufficient to bar a *qui tam* action threatened to greatly expand the NYFCA's public disclosure bar. *Id*. at *4.

So later in 2010, in order to "address[] several issues that have arisen in the courts since the enactment of" the NYFCA, including to make clear that "mere posting on the internet of information concerning allegations or transactions does not constitute such 'public disclosure,'" Sponsors Mem., 2010 A.B. 11568, New York amended N.Y. State Finance Law § 190(9)(b)(iii) to its current language: a court shall dismiss a *qui tam* action "if substantially the same allegations or transactions as alleged in the action were publicly disclosed…in the news media, provided that such allegations or transactions are not 'publicly disclosed' in the 'news media' merely because information of allegations or transactions have been posted on the internet or on a computer network."

This amendment forecloses any argument—such as those adopted in *Cintas*, *Walt Disney World*, and *Unitedhealth*—that would result in all publicly available online information being deemed to have been publicly disclosed "in the news media." And because many federal courts

[1] The First Department's seven-sentence-long opinion contains essentially no analysis of these issues.

since 2010 have followed the path blazed by *Cintas* and *Walt Disney World*,[2] this amendment makes clear that the federal precedents that have adopted those arguments are not persuasive authority regarding the meaning of the NYFCA.

The 2010 amendment also emphasizes—contra *Unitedhealth*—that the "news media" is a discrete source that is not intended to cover all public dissemination of information. This emphasis is hardly redundant. Although the Supreme Court has plainly stated that "the public disclosure bar applies to some methods of public disclosure and not to others," *Schindler Elevator*, at 414, many of the federal courts that have held that "news media" broadly extends to information from online sources have interpreted "news media" to "encompass information from a broad swath of online sources without pausing to consider whether those sources could reasonably be defined as 'news media' within any ordinary meaning of the term." *U.S. ex rel. Integra Med Analytics LLC v. Providence Health & Servs.*, No. CV 17-1694 PSG, 2019 WL 3282619, at *13 (C.D. Cal. July 16, 2019), *motion to certify appeal granted*, 2019 WL 6973547 (C.D. Cal. Oct. 8, 2019) (citations and quotations omitted) ("*Integra*").[3] But since 2010, the NYFCA has been explicit that public dissemination of information—without more—is not sufficient to count as a public disclosure.

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[2] *See, e.g.*, *U.S. ex rel. Osheroff v. Humana Inc.*, 776 F.3d 805, 813 (11th Cir. 2015) (holding that "the clinics' publicly available websites, which are intended to disseminate information about the clinics' programs, qualify as news media for purposes of the public disclosure provision"); *U.S. ex rel. Hong v. Newport Sensors, Inc.*, No. SACV-13-1164-JLS, 2016 WL 8929246, at *5 (C.D. Cal. May 19, 2016) ("Information publicly available on the Internet generally qualifies as 'news media.'"); *U.S. v. Honeywell Int'l, Inc.*, No. LA-CV-12-02214-JAK, 2013 WL 12122693, at *9 (C.D. Cal. Nov. 8, 2013) ("Documents that are publicly available on the internet generally qualify as 'publicly disclosed' documents under 31 U.S.C. § 3730(e)(4).").

[3] The question certified for appeal is "Whether all online information is disclosed from the "news media" such that it would fall under the public disclosure bar of the False Claims Act?" The answer under the NYFCA is clearly no; thus, the pending appeal in *Integra* does little to detract from its persuasive value as guidance for interpreting the NYFCA.

Scope of the NYFCA's News Media Provision

In determining whether an allegation or transaction was disclosed in the "news media" for purposes of the NYFCA's public disclosure bar, the Court should focus on whether the source of the disclosure is "news media" within the plain meaning of that term, and should rely on the federal cases that most faithfully attempt to determine and apply the plain meaning of "news media."

Under New York law, "the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof." *Nat'l Fuel Gas Supply Corp. v. Schueckler*, 35 N.Y.3d 297, 307 (N.Y. 2020) (citations and quotations omitted). Therefore, the most persuasive federal cases interpreting the federal False Claims Act are those that focus on giving effect to the plain meaning of the term "news media." *Integra* is such a case.[4] There, following supplemental briefing on this specific issue, the court engaged in a detailed and thoughtful analysis of the ordinary meaning of the term "news media." *Integra*, at *9-16. The court acknowledged that because "the line between what is and is not considered news media has become increasingly blurred, attempting to set forth a single conclusive definition of the term may be an impossible task," but it nevertheless identified five factors that provide "useful guideposts in determining whether information from an online source has been disclosed 'from the news media.'" *Integra*, at *14-15. Those five factors are: (1) "the extent to which the information typically conveyed by a source would be considered newsworthy"; (2) the extent to which there is "editorial independence, or at least some separation, between the original source

[4] *See also Silbersher v. Allergan Inc.*, No. 18-CV-03018 JCS, 2020 WL 7319407, at *24 (N.D. Cal. Dec. 11, 2020) (stating its "agree[ment] with the approach set forth in *Integra*").

of information and the medium that conveys it"; (3) the extent to which the source intends "to disseminate information widely, as opposed to only to a few individuals"; (4) the extent to which "an online source functions like one of the[] traditional outlets" [i.e., a newspaper, radio, or television station]; and (5) the extent to which the source "could reasonably be described as 'news media' as at least some people would that term in everyday speech." *Id.* A framework like that set forth in *Integra* provides sufficient flexibility to capture the wide variety of news media sources available online, while still remaining tethered to the text of the NYFCA.[5]

By contrast, the standards advanced by Defendant and Relator are not persuasive because they are largely untethered from the statutory text. Defendant's standard—that a public website that "inform[s] the public on recent events and previously unknown facts," Dkt. 37 at 8, and is "intended to give the public an accurate account," Dkt. 40 at 2, should be deemed "news media"—is much broader than the plain meaning of "news media". In its reply, Dkt. 40 at 2, Defendant derives its standard in large part from *U.S. ex rel. Oliver v. Philip Morris USA, Inc.*, 101 F. Supp. 3d 111 (D.D.C. 2015) ("*Oliver*"), where the court (citing to *Walt Disney World*, among other cases) held that a page on the website of the Army and Air Force Exchange Service titled "Terms & Conditions (for Expense, Supplies and Equipment Purchased by AAFES)" was "news

[5] Although the NYFCA does not define "news media," that term is defined in other New York statutes. While definitions tailored to other contexts provide only limited interpretative guidance here, the State notes that the multi-factor framework set forth in *Integra* is generally consistent with those definitions. For example, New York Judiciary Law § 218, which governs audio-visual coverage of court proceedings, defines "news media" as

> "any news reporting or news gathering agency and any employee or agent associated with such agency, including television, radio, radio and television networks, news services, newspapers, magazines, trade papers, in-house publications, professional journals or any other news reporting or news gathering agency, the function of which is to inform the public, or some segment thereof."

N.Y. Judiciary Law § 218(2)(c). Similarly, New York's reporter's privilege statute, N.Y. Civil Rights Law § 79-h, refers to newspapers, magazines, news agencies, press associations, wires services, professional journalists, and newscasters as news media.

media" because the purpose of the page "was clearly to give the public an accurate account of [the relevant] contracting requirements." *Id*. at 125. But this conclusion is at odds with the plain meaning of "news media." As *Integra* pointed out in rejecting the *Oliver* approach, "[a] person might go to a restaurant's website to look at its menu. Or the Dodgers' website to find out the ticket prices for the upcoming series." *Integra*, at *11. Or, as in *Oliver*, a person might go to the Terms and Conditions page on the AAFES website to learn about the relevant contracting requirements. But even though the information conveyed on those websites meets Defendant's proposed standard because it is publicly available, intended to be accurate, and informs the public of previously unknown facts, "[i]n none of these circumstances would it be natural, or really conceivable, to say that the information had been learned by consulting the news media." *Id*.

Nor can Defendant's standard be squared with the 2010 amendment to the NYFCA. If the Terms and Conditions for a retailer's website were only available in hard copy at a brick-and-mortar check-out counter, no one would consider that information to have been disclosed in the "news media." But in *Oliver*, the primary case cited in Defendant's reply brief, that exact same information was held to have been disclosed in the "news media" solely because it was available on the internet. Defendant's standard would thus effectively nullify the NYFCA's prohibition on finding that information has been publicly disclosed in the news media "merely because…[it was] posted on the internet or on a computer network."

Relator's standard—that a "company's website is not news media, except when the company is itself a news organization," Dkt. 39 at 5—is also unpersuasive, since it is either circular (if "news organization"="news media") or at odds with the statutory language (if

"news organization"≠"news media"), and because the narrow focus on "news organization[s]" forecloses non-traditional sources, like blogs, from being deemed "news media," even though that may be appropriate in certain circumstances. And Relator's focus on whether a source has "claimed to be a news organization," *id*., places unwarranted emphasis on an online source's subjective self-description.

CONCLUSION

The additional language in the NYFCA's public disclosure bar forecloses any argument that would result in all publicly available online information being deemed to have been publicly disclosed "in the news media", and highlights that the "news media" is a distinct source that is not intended to cover any and all public dissemination of information. Thus, in determining whether an allegation or transaction was disclosed in the "news media", the Court should focus on whether the source of the disclosure is "news media" within the plain meaning of that term, and the Court should look for guidance to the federal precedent—like *Integra*—that gives effect to the plain meaning of "news media."

Dated: New York, New York
January 11, 2021

Respectfully submitted,

LETITIA JAMES
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By: /s/ Bryan P. Kessler
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DAVID ABRAMS,

Petitioner,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Respondent.

DOE 1, DOE 2, DOE 3, DOE 4, DOE 5, DOE 6, DOE 7, DOE 8,

Intervenors,

v.

DAVID ABRAMS,

Defendant in Intervention.

Case No.: 19STCP03648

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF INTERVENORS' OPPOSITION TO PETITION FOR WRIT OF MANDATE

Judge: Hon. James C. Chalfant
Dept.: 85

Action Filed: Aug. 22, 2019

Trial Date: March 11, 2021
Time: 9:30 am

Intervenors, under the provisions of Evidence Code Sections 452 and 453, and California Rule of Court 3.1113(l), request that the Court take judicial notice of:

1. **Exhibit 16** is the Complaint filed by TZAC, Inc. against The Carter Center, Inc. in Case No. 1:15-cv-2001-RC in the United States District Court for the District of Colombia. **Exhibit 17** is the Order of dismissal with prejudice of TZAC Inc.'s Complaint in that case.

2. **Exhibit 18** is the Complaint filed by TZAC, Inc. against Oxfam in Case No. 1:18-cv-01500-VEC in the United States District Court for the Southern District of New York. **Exhibit 19** is the TZAC Inc.'s Notice of Voluntary Dismissal in that case.

3. **Exhibit 20** is the Decision and Order of Dismissal in *International Legal Forum v. The American Studied Association*, Index No. 651938/2018, in the Supreme Court of the State of New York, New York County, entered May 13, 2019.

4. **Exhibit 21** is the Docket Sheet in the case of *TZAC, Inc. v. New Israel Fund*, Case No. 1:20-cv-02955-GHW, pending in the United States District Court for the Southern District of New York. **Exhibit 22** is TZAC's Amended Complaint in that case and **Exhibit 23** is the State of New York's Statement of Interest in which it provides its position that the correct interpretation of the law at issue in TZAC's complaint, the New York False Claims Act, bars the asserted claim. New Israel Fund moved to dismiss TZAC's Amended Complaint, which is currently pending.

Dated: February 5, 2021

Respectfully Submitted,

/s/ Javeria Jamil

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DOE 1, DOE 2, DOE 3, DOE 4, DOE 5, DOE 6, DOE 7, DOE 8,

Intervenors,

v.

DAVID ABRAMS,

Defendant in Intervention.

Case No.: 19STCP03648

INTERVENORS' OBJECTIONS TO PETITIONER'S EVIDENCE, IN SUPPORT OF OPPOSITION TO PETITION FOR WRIT OF MANDATE

Judge: Hon. James C. Chalfant
Dept.: 85

Action Filed: Aug. 22, 2019

Trial Date: March 11, 2021
Time: 9:30 am

Intervenors object to the evidence offered by Petitioner Abrams in support of his Petition for Writ of Mandate, based upon the following:

Evidence	Objection (Evid. Code)	Sustained	Overruled
Abrams Decl. ¶ 5 (all)	Lack of foundation, no personal knowledge (§ 702)		
	Exhibit does not support assertion that conference was funded in part by grant		
Abrams Decl. ¶ 7 (all)	Lack of foundation, no personal knowledge (§ 702); Hearsay (§ 1200)		
Abrams Decl. ¶ 11	Argument not evidence re "found no evidence"		
	Irrelevant (§ 350) "illegal conduct on the part of Canary Mission"		
Abrams Decl. ¶ 13	Vague and ambiguous re "same page as the very first page"		
	Abrams' statement of what the University purportedly put in a subsequent interrogatory response is Hearsay (§ 1200)		
	Irrelevant (§ 350) re no evidence of criminal activity		
Abrams Decl. ¶ 14	Irrelevant argument (§ 350) re what the declarant believes is "Evidently," asserted to be true		
	Irrelevant (§ 350) and Hearsay (§ 1200) what the declarant purportedly did not find in his research, which is not evidence of anything		
Abrams Decl. ¶ 15 (all)	Irrelevant (§ 350)		
Abrams Decl. ¶ 16 (all)	Irrelevant (§ 350) and Hearsay (§ 1200) what the declarant purportedly did or did not find in his research		
Abrams Decl. ¶ 17 (all)	Irrelevant (§ 350), Lack of foundation, no personal knowledge (§ 702), and Hearsay (§ 1200)		
Abrams Decl. ¶ 18 (all)	Irrelevant (§ 350), Lack of foundation, no personal knowledge (§ 702), and Hearsay (§ 1200)		
Abrams Decl. ¶ 19 (all)	Irrelevant (§ 350), Lack of foundation, no personal knowledge (§ 702), and Hearsay (§ 1200)		
Abrams Decl. ¶ 20 (all)	Irrelevant (§ 350), Lack of foundation, no personal knowledge (§ 702), and Hearsay (§ 1200)		
Abrams Decl. ¶ 21 (all)	Irrelevant (§ 350), Lack of foundation, no personal knowledge (§ 702), and Hearsay (§ 1200)		
Abrams Decl. ¶ 22 (all)	Irrelevant (§ 350), Lack of foundation, no personal knowledge (§ 702), and Hearsay (§ 1200)		

Abrams Decl. ¶ 23 (all)	Irrelevant (§ 350)		
Exhibit A-1 to Abrams Decl.	Hearsay (§ 1200)		
Exhibit B to Abrams Decl.	Hearsay (§ 1200)		
Exhibit E to Abrams Decl.	Irrelevant (§ 350)		
Exhibit F to Abrams Decl.	Irrelevant (§ 350), Lack of foundation, no personal knowledge (§ 702)		
Exhibit G to Abrams Decl.	Irrelevant (§ 350), Lack of foundation, no personal knowledge (§ 702)		

Dated: February 5, 2021

Respectfully Submitted,

/s/ Javeria Jamil

Javeria Jamil
Counsel for Intervenors