

No. 24-20485

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DARAIUS DUBASH; FARAZ HARSINI,

Plaintiffs-Appellants ,

v.

CITY OF HOUSTON; HOUSTON DOWNTOWN PARK
CORPORATION; ROBERT DOUGLAS; VERN WHITWORTH;
DISCOVERY GREEN CONSERVANCY, FORMERLY KNOWN AS
HOUSTON DOWNTOWN PARK CONSERVANCY; BARRY MANDEL,

Defendants-Appellees.

On Appeal from the United States District Court
For the Southern District of Texas

AMICUS CURIAE BRIEF OF
HINDU AMERICAN FOUNDATION
IN SUPPORT OF PLAINTIFFS-~~AOAIOIOo. (S)2.4(O5..286)o. (S)2.4~~

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel certifies that the following persons indicated have an interest in the outcome of this case. This certification is made in order that the Judges of this Court may evaluate possible disqualification or recusal:

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INTEREST OF AMICUS CURIAE

The Hindu American Foundation (“HAF”) was founded in 2003 to advance the understanding of Hinduism and Hindu Dharma traditions. It seeks to secure the rights and dignity of Hindu Americans now and in the future by providing accurate and engaging educational resources, impactful advocacy to protect and promote religious liberty, and programming that empowers Hindu Americans to sustain their culture and identity. HAF is a 501(c)(3) non-partisan, non-profit and tax-exempt public charity. HAF is a wholly independent, American organization. It has no affiliation with organizations or political parties in the U.S. or abroad.

HAF has an interest in the case because on four separate occasions, the Discovery Green Conservancy prevented Appellant Daraius Dubash from the free exercise of his Hindu faith by prohibiting his free speech in a public forum. The Conservancy ultimately had Dubash arrested for exercising his rights and speech in accordance with his faith. The undersigned counsel prepared the entirety of this brief and does so pro

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ARGUMENT

- I. Showing truthful depictions of factory farming practices that harm animals is a religious act consistent with the Hindu faith.
 - A. Dubash's declaration accurately describes his beliefs rooted in the Hindu concept of *ahimsa*.

Dubash explained his faith to the trial court in a sworn declaration that expounds on his practice of *ahimsa* *tytttoie s)(o)-9.,t()w-8.6(htoie)2.(a)47.4 14*

now requires veganism. (*Id.*) When these scriptures were formed “thousands of years ago, there was no cruel industrialized system of milk production like there is today.” (*Id.*) He went on, “So in today’s world, veganism is the culmination of the vegetarianism of yesteryears.” (*Id.*) Dubash said that with so many milk substitutes on the market, *ahimsa* requires him to avoid milk because factory farming uses “cruel practices such as forced ejaculation of a bull, artificial impregnation of a cow, slaughter of baby male calves, and the eventual slaughter of the cow.” (*Id.*)

Dubash said that the *Vedanta* teaches that “each person is compelled to spread the truth to others.” (ROA.379 ¶ 15.) “[T]o be silent, or to not make a choice, is itself a choice.” (*Id.*) And to *not* share a belief in nonviolence “can itself be violence.” (*Id.*) Dubash pointed to the

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consider them like one's own children, and not differentiate between one's children and these creatures."³ Causing unnecessary suffering or pain to another life form has "serious karmic repercussions."⁴

For many Hindus, what they consume is a direct reflection of these

“Those noble souls who practice meditation and other yogic ways, who are ever careful about all beings, who protect all animals, are the ones who are actually serious about spiritual practices.” — *Atharva Veda* 19.48.5.^[7]

But Hinduism is also known for its spectrum of religious practices, and this extends to dietary choices. Vegetarianism is not an absolute dictate for all people, and the majority of Hindus are not vegetarians.⁸ But many Hindus choose a vegetarian lifestyle as an expression of *ahimsa*.⁹ And some Hindus believe veganism is now necessary because the unethical treatment of animals that is endemic to modern day factory farming “violates *ahimsa*.”¹⁰

Hindus are encouraged to grapple with these concepts of *ahimsa* through spiritual learning. That requires direct study with spiritual teachers, self-reflection, discussion with peers, and maturation over

⁷ See Mat McDermott, *4 Things About Hinduism and Vegetarianism*, HINDU AM. FOUND

time.¹¹ In his declaration, Dubash explained that he found a spiritual teacher in Acharya Prashant. (ROA.377 ¶ 6.) Acharya Prashant is well-known for his veganism and has produced “160 books on philosophy, spirituality, and all aspects of life.”¹² PETA India named him “Most Influential Vegan” in 2022 and spotlighted his work “to spare the lives” of farm animals “exploited by the meat, egg, and dairy industries.”¹³

Dubash’s link to Acharya Prashant, as his spiritual teacher and guide, is something to be celebrated. Hindu scripture provides: “Know that by long prostration, by question, and service, the wise who have realised the Truth will instruct you in (that) Knowledge.”¹⁴ And Acharya Prashant’s views on the immorality of factory farming are echoed by other Hindus, including Dubash.

¹¹ “One gains ¼ of the knowledge from the Acharya (the teacher), ¼ from his own self-study and intellect, ¼ from his classmates and the remaining ¼ is gained as a person becomes matured as time passes.” Subhashitam – 3.

¹² PRASHANTADVAIT FOUNDATION, *Acharaya Prashant: To Demolish All That Is False*, <https://acharyaprashant.org/en/biography> [<https://perma.cc/U77H-943V>].

¹³ David James Olsen, *Who’s the Most Influential Vegan in India?* (Apr. 2, 2024), <https://www.peta.org/blog/peta-india-most-influential-vegan-video/> (last visited Feb. 27, 2025).

¹⁴ *Tad Viddhi Pranipatena* 4.34.

II. This Court should reverse the dismissal of Dubash's Free Exercise claim (Count 5).

Officers arrested Dubash and held him in jail for sixteen hours because they deemed it "offensive" that he exercised his religious convictions in Discovery Green by showing videos that truthfully depict factory farming. But the lower court never considered the merits of his Free Exercise claim. The Magistrate Judge's Memorandum and Recommendation—adopted by the district court in its entirety (ROA.1307–08)—recommended dismissal of the Free Exercise claim (Count 5) based on its conclusions concerning (1) whether Dubash's allegations sufficiently alleged that the Conservancy was acting under color of state law (ROA.1226 at n.13), and (2) whether Dubash's policy allegations plausibly supported liability under 42 U.S.C. § 1983 for the City of Houston and the Houston Downtown Park Corporation (ROA.1217–18; ROA.1240). Through the lower court's dismissal on those grounds, it evaded review of Dubash's meritorious Free Exercise claim.

HAF writes to elucidate the reasons why Dubash's Complaint alleges a plausible constitutional violation of his Free Exercise rights.

- A. The actions taken against Dubash—including his arrest and detention—substantially burden the exercise of his Hindu faith.

The actions taken by the Appellees have imposed a substantial burden on Dubash's exercise of his First Amendment Free Exercise Clause of the First Amendment. U.S. CONST. amend I. The repeated removal of Dubash from Discovery Green, his arrest detention and the ongoing prohibition on his method of proselytizing constitute a significant infringement on his religious practice.

A substantial burden on the Free Exercise Clause);

Moussazadeh v. Texas Dep't of Crim. Just., 703 F.3d 781, 793 (5th Cir. 2012) (holding First Amendment prevents prison from denying Jewish inmate non-kosher meals), *as corrected* (Feb. 20, 2013). As established in *United States v. Alvarez-Cruz*, 475 F.3d 1272, 1280 (9th Cir. 2007), even a nominal fine, such as a \$100 fine, can constitute a substantial burden if the fine is imposed on a person who is poor.

(1972) (holding First Amendment prevented government from fining Amish parents who did not send minor children to high school).

As detailed above, Dubash is a follower of the Vedantic stream of Hinduism, which espouses the principle of *ahimsa*, or nonviolence towards all living beings. (ROA.16–17 ¶¶ 22–26.) His religious beliefs compel him to spread this message of nonviolence, which he does through participation in Anonymous for the Voiceless and leading Cubes of Truth demonstrations. (*Id.*) These demonstrations involve displaying videos of animal mistreatment in factory farming and engaging with passers-by who approach them to discuss the content. (ROA.19–21 ¶¶ 32–44.)

By removing Dubash from Discovery Green on multiple occasions, arresting him, and banning his method of promoting *ahimsa*, Appellees have placed a substantial burden on his religious exercise. *See Moussazadeh*, 703 F.3d at 793. Dubash is forced to choose between

B. Discovery Green's rules lack general applicability.

Governmental restrictions burdening religious exercise are subject to strict scrutiny when they are not generally applicable to activities secular and non-secular alike. *Fulton v. City of Philadelphia*, 593 U.S. 522, 534–35, 537, 540 (2021) (holding non-discrimination requirement in city's foster care contract was not generally applicable where it allowed Commissioner or a designee to make an exception "in his/her sole discretion"). A rule is "not generally applicable if it 'invite[s]' the government to consider the particular reasons for a person's conduct by providing 'a mechanism for individualized exemptions.'" *Id.*

content of those demonstrations are deemed offensive by some. (ROA.25–26 ¶¶ 68–81); *see also* Opening Br. at 7 (explaining the park has hosted protests and events involving the NRA, the LGBTQ community, and the Black Lives Matter movement). When secular activities are allowed and religious activities are prohibited, a rule is no longer generally applicable and must be reviewed under the strict scrutiny standard. *Kennedy*, 597 U.S. at 526–27; *see also id.* at 526 (“Failing either the neutrality or general applicability test is sufficient to trigger strict scrutiny.” (citing

Coakley, 573 U.S. 464, 476 (2014); *see id.* at 469, 496–97 (overturning statute that banned standing on a public road or sidewalk within 35 feet of any place where abortions were performed). And that part of life in a free country includes tolerating “insulting, and even outrageous, speech” in public forums. *Boos v. Barry*, 485 U.S. 312, 322 (1988); *see id.* at 315, 334 (overturning statute that banned the display of signs within 500 feet of a foreign embassy if signs were critical of the foreign government). “[T]he fact that society may find speech offensive is not a sufficient reason for suppressing it.” *F.C.C. v. Pacifica Found.*, 438 U.S. 726, 745 (1978). “Indeed, if it is the speaker’s opinion that gives offense, that consequence is a reason for according it constitutional protection.” *Id.* “[I]t is a central tenet of the First Amendment that the government must remain neutral in the marketplace of ideas.” *Id.* at 745–46.

Appellees’ actions, based on “the content of the videos” Dubash displayed, and their perceived “offensive[ness]” or lack of “appropriate[ness],” do not serve a compelling governmental interest. ROA.30 ¶¶ 109–10, 114; ROA.31 ¶ 124. Even if the Defendants could articulate a compelling interest, their actions are not narrowly tailored

to achieve that interest. A complete ban on Dubash's method of advocacy is overly broad and fails to address the specific harms asserted.

CONCLUSION

The Court should accordingly reverse the dismissal of Dubash's Free Exercise claim.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32 and 29(b)(5), I hereby certify that this amicus brief contains 3255 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f). This is a computer-generated document created in Word 365, using 14-point typeface for all text, except for footnotes which are in 12-point typeface. In making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document.

Dated: February 28, 2025

/s/ Jennifer S. Freel
Jennifer S. Freel

CERTIFICATE OF SERVICE

I certify that on February 28, 2025, a true and correct copy of the foregoing Brief of Amicus Curiae was electronically filed with the United States Court of Appeals for the Fifth Circuit using the CM/ECF system, and that all parties required to be served have been served. Counsel further certifies that (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13 and (2) the electronic submission is an exact copy of the paper document in compliance with Fifth Circuit Rule 25.2.1.

Dated: February 28, 2025

/s/ Jennifer S. Freel