

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

<i>In re:</i>	:	
JANE DOE, <i>et alii</i> ,	:	
Plaintiffs,	:	
versus	:	Civil Action No. 04-1361
YUSUF ABDI ALI,	:	
Defendant.	:	

***ANSWER TO COMPLAINT, DENYING ALLEGATIONS OF TORTURE;
ATTEMPTED EXTRAJUDICIAL KILLING; CRUEL, INHUMAN OR
DEGRADING TREATMENT OR PUNISHMENT; ARBITRARY
DETENTION; CRIMES AGAINST HUMANITY; AND WAR CRIMES
[JURY TRIAL DEMANDED]***

COMES NOW, before this Honorable Court, your defendant in respect of the above-encaptioned cause, *viz.*, YUSUF ABDI ALI, by and through his undersigned attorney and counsellor, *viz.*, Joseph Peter Drennan, and herewith answers the Complaint against him, alleging, *inter alia*; torture; attempted extra-judicial killing; cruel, inhuman or degrading treatment or punishment; arbitrary detention; crimes against humanity; and war crimes, completely and unequivocally, and further admits or denies the the discrete, specific allegations of the Complaint, and, further, states certain affirmative defenses, as follows, *viz.*:

1. Your defendant admits the allegations concerning the nature of the instant case, contained in Paragraph 1, but denies that there exists any factual basis for the accusations of wrongdoing against him, pleaded in

the Complaint;

2. To the extent that the multifarious allegations contained in paragraph 2 of the Complaint state legal conclusions, your defendant has no obligation to plead, yet denies same. The factual allegations contained in the Complaint are, likewise, denied;

3. The allegations contained in paragraph 3 of the Complaint are suffused with legal allegations to which your defendant need not plead, yet, in any event, your defendant denies such allegations;

4. The factual allegations contained in paragraph 4 of the Complaint are admitted, but the legal conclusion respecting same, which accompanies such allegation, is a matter to which your defendant need not plead, yet denies;

5. The allegations contained in paragraph 5 of the Complaint are admitted;

6. As for the allegations contained in paragraph 6 of the Complaint, your defendant admits that he served as the Commander of the Fifth Battalion of the Somali National Army, based in Gebiley, Somalia, from May of 1987 until July of 1988; all of the remaining factual allegations set forth in paragraph 6 are denied;

7. As for the allegations contained in paragraph 7 of the Complaint, your defendant admits that he entered Canada in December of 1990, having departed from Somalia; however, his departure from Somalia was

in August of 1990, not December of 1990, as was suggested in paragraph 7;

8. As for the allegations contained in paragraph 8 of the Complaint, your defendant admits that he was deported from Canada in 1992; however he denies that his deportation in Canada was for the reasons alleged in said paragraph 8; your defendant admits that deportation/removal proceedings were commenced against him in the United States, and that he was permitted to take voluntary departure from the United States in July of 1994, and that he reentered the United States, thereafter, in or about December of 1996;

9. The allegations contained in paragraph 9 of the Complaint are denied, *in toto*;

10. The allegations contained in paragraph 10 of the Complaint are denied, *in toto*;

11. The allegations contained in paragraph 11 of the Complaint are denied, *in toto*;

12. Your plaintiff admits that, in or about October of 1969, a Government was formed in Somalia by Major General Mohamed Siad Barre; the remaining allegations contained in paragraph 12 of the Complaint are denied, *in toto*;

13. The allegations contained in paragraph 13 of the Complaint are denied, *in toto*; although there was an opposition force known as the

“Somalia National Movement” (“SNM”) formed in or about 1981, contrary to what is pleaded in the Complaint, the SNM was Communist inspired, based in then Communist Ethiopia, and committed systemic human rights violations against Somalis and Ethiopian refugees;

14. The allegations contained in paragraph 14 of the Complaint are denied, *in toto*;

15. The allegations contained in paragraph 15 of the Complaint are denied, excepting that it is admitted that the area around Gebiley is open, grazing land inhabited by semi-nomadic peoples;

16. As for the allegations contained in paragraph 16, your defendant admits that he was the Commander of the Fifth Battalion, but only from May of 1987 until July of 1988; all of the other allegations contained in said paragraph are denied;

17. The allegations contained in paragraph 17 of the Complaint are denied, *in toto*;

18. The allegations contained in paragraph 18 of the Complaint are denied, *in toto*;

19. The allegations contained in paragraph 19 of the Complaint are denied, *in toto*;

20. The allegations contained in paragraph 20 of the Complaint are denied, *in toto*;

21. The allegations contained in paragraph 21 of the Complaint are denied, *in toto*;

22. The allegations contained in paragraph 22 of the Complaint are denied, *in toto*;

23. The allegations contained in paragraph 23 of the Complaint are denied, *in toto*;

24. The allegations contained in paragraph 24 of the Complaint are denied, *in toto*;

25. The allegations contained in paragraph 25 of the Complaint are denied, *in toto*;

26. The allegations contained in paragraph 26 of the Complaint are denied, *in toto*;

27. The allegations contained in paragraph 27 of the Complaint are denied, *in toto*;

28. The allegations contained in paragraph 28 of the Complaint are denied, *in toto*;

29. The allegations contained in paragraph 29 of the Complaint are denied, *in toto*;

30. The allegations contained in paragraph 30 of the Complaint are denied, *in toto*;

31. The allegations contained in paragraph 31 of the Complaint are denied, *in toto*;

32. The allegations contained in paragraph 32 of the Complaint are denied, *in toto*;

33. The allegations contained in paragraph 33 of the Complaint are denied, *in toto*;

34. The allegations contained in paragraph 34 of the Complaint are denied, *in toto*;

35. The allegations contained in paragraph 35 of the Complaint are denied, *in toto*;

36. The allegations contained in paragraph 36 of the Complaint are denied, *in toto*;

37. The allegations contained in paragraph 37 of the Complaint are denied, *in toto*;

38. The allegations contained in paragraph 38 of the Complaint are denied, *in toto*;

39. To the extent that the allegations contained in paragraph 39 of the Complaint contain putative legal conclusions, your defendant need not plead to same, yet denies same; all factual allegations contained in paragraph 39 of the Complaint are denied, *in toto*;

40. The allegations contained in paragraph 40 of the Complaint are denied, *in toto*;

41. The allegations contained in paragraph 41 of the Complaint are denied, *in toto*, excepting that, from May of 1987 until July of 1988, your

defendant was the Commander of the Fifth Battalion; your defendant emphatically denies that he was involved in any human rights abuses of any sort;

42. The allegations contained in paragraph 42 of the Complaint are denied, *in toto*, excepting that, from May of 1987 until July of 1988, your defendant was the Commander of the Fifth Battalion; your defendant emphatically denies that he was involved in any human rights abuses of any sort;

43. The factual allegations contained in paragraph 43 of the Complaint are denied, *in toto*, excepting that, from May of 1987 until July of 1988, your defendant was the Commander of the Fifth Battalion; your defendant emphatically denies that he was involved in any human rights abuses of any sort; the conclusions of law that are contained within paragraph 43 of the Complaint do not require a responsive pleading from your defendant;

44. The allegations contained in paragraph 44 of the Complaint are denied *in toto*;

45. The allegations contained in paragraph 45 of the Complaint are denied *in toto*;

46. The allegations contained in paragraph 46 of the Complaint contain legal conclusions to which your defendant is not required to plead, yet denies same;

47. The allegations contained in paragraph 47 of the Complaint contain legal conclusions to which your defendant is not required to plead, yet denies same; the putative factual averments contained in paragraph 47 are denied;

48. The allegations contained in paragraph 48 are admitted, excepting that, in Somaliland, there was relative tranquility in the 1990s;

49. The allegations contained in paragraph 49 of the Complaint are denied;

50. The allegations contained in paragraph 50 of the Complaint are denied;

51. Your plaintiff admits that the Issaq clan dominates the region of the former British protectorate of Somaliland, and that, since 1991, the Issaq have had a state there, known as Somaliland; the rest of allegations contained in paragraph 51 of the Complaint are denied;

52. The allegations contained in paragraph 52 of the Complaint are denied, excepting that, in Somaliland, there is, and has been a functional justice system, and such is a place in which there is relative civil order;

53. The allegations contained in paragraph 53 of the Complaint are denied;

54. As for the allegations referenced in paragraph 54 of the Complaint, your defendant would incorporate by reference, as if set out in full, his foregoing Answer to the discrete paragraphs of the Complaint

referenced therein;

55. The factual allegations referenced in paragraph 55 of the Complaint are denied; although your defendant need not plead to the legal conclusions contained therein, he denies same;

56. The allegations contained in paragraph 56 of the Complaint are denied;

57. The allegations contained or referenced in paragraph 57 of the Complaint are denied;

58. The allegations contained in paragraph 58 of the Complaint are denied;

59. The allegations contained in paragraph 59 of the Complaint are denied;

60. The allegations contained in paragraph 60 of the Complaint are denied;

61. The allegations contained in paragraph 61 of the Complaint are denied;

62. The allegations contained in paragraph 62 of the Complaint are denied;

63. As for the allegations referenced in paragraph 63 of the Complaint, your defendant would incorporate by reference, as if set out in full, his foregoing Answer to the discrete paragraphs of the Complaint referenced therein;

64. The factual allegations referenced in paragraph 64 of the Complaint are denied; although your defendant need not plead to the legal conclusions contained therein, he denies same;

65. The allegations contained in paragraph 65 of the Complaint are denied;

66. The allegations contained in paragraph 66 of the Complaint are denied;

67. The allegations contained in paragraph 67 of the Complaint are denied;

68. The allegations contained in paragraph 68 of the Complaint are denied;

69. The allegations contained in paragraph 69 of the Complaint are denied;

70. The allegations contained in paragraph 70 of the Complaint are denied;

71. The allegations contained in paragraph 71 of the Complaint are denied;

72. As for the allegations referenced in paragraph 72 of the Complaint, your defendant would incorporate by reference, as if set out in full, his foregoing Answer to the discrete paragraphs of the Complaint referenced therein;

73. The factual allegations referenced in paragraph 73 of the

Complaint are denied; although your defendant need not plead to the legal conclusions contained therein, he denies same;

74. The allegations contained in paragraph 74 of the Complaint are denied;

75. The allegations contained in paragraph 75 of the Complaint are denied;

76. The allegations contained in paragraph 76 of the Complaint are denied;

77. The allegations contained in paragraph 77 of the Complaint are denied;

78. The allegations contained in paragraph 78 of the Complaint are denied;

79. The allegations contained in paragraph 79 of the Complaint are denied;

80. As for the allegations referenced in paragraph 80 of the Complaint, your defendant would incorporate by reference, as if set out in full, his foregoing Answer to the discrete paragraphs of the Complaint referenced therein;

81. The factual allegations referenced in paragraph 81 of the Complaint are denied; although your defendant need not plead to the legal conclusions contained therein, he denies same;

82. The allegations contained in paragraph 82 of the Complaint are

denied;

83. The allegations contained in paragraph 83 of the Complaint are denied;

84. The allegations contained in paragraph 84 of the Complaint are denied;

85. The allegations contained in paragraph 85 of the Complaint are denied;

86. The allegations contained in paragraph 86 of the Complaint are denied;

87. The allegations contained in paragraph 87 of the Complaint are denied;

88. As for the allegations referenced in paragraph 88 of the Complaint, your defendant would incorporate by reference, as if set out in full, his foregoing Answer to the discrete paragraphs of the Complaint referenced therein;

89. The factual allegations referenced in paragraph 89 of the Complaint are denied; although your defendant need not plead to the legal conclusions contained therein, he denies same;

90. The allegations contained in paragraph 90 of the Complaint are denied;

91. The factual allegations referenced in paragraph 91 of the Complaint are denied; although your defendant need not plead to the

legal conclusions contained therein, he denies same;

92. The allegations contained in paragraph 92 of the Complaint are denied;

93. The allegations contained in paragraph 93 of the Complaint are denied;

94. The allegations contained in paragraph 94 of the Complaint are denied;

95. As for the allegations referenced in paragraph 95 of the Complaint, your defendant would incorporate by reference, as if set out in full, his foregoing Answer to the discrete paragraphs of the Complaint referenced therein;

96. The factual allegations referenced in paragraph 96 of the Complaint are denied; although your defendant need not plead to the legal conclusions contained therein, he denies same;

97. The allegations contained in paragraph 97 of the Complaint are denied;

98. The allegations contained in paragraph 98 of the Complaint are denied;

99. The allegations contained in paragraph 99 of the Complaint are denied;

100. The allegations contained in paragraph 100 of the Complaint are denied;

101. The allegations contained in paragraph 101 of the Complaint are denied;

102. As for the allegations referenced in paragraph 102 of the Complaint, your defendant would incorporate by reference, as if set out in full, his foregoing Answer to the discrete paragraphs of the Complaint referenced therein;

103. The factual allegations referenced in paragraph 103 of the Complaint are denied; although your defendant need not plead to the legal conclusions contained therein, he denies same;

104. The allegations contained in paragraph 104 of the Complaint are denied;

105. The allegations contained in paragraph 105 of the Complaint are denied;

106. The allegations contained in paragraph 106 of the Complaint are denied;

107. The allegations contained in paragraph 107 of the Complaint are denied;

108. The allegations contained in paragraph 108 of the Complaint are denied;

109. The allegations contained in paragraph 109 of the Complaint are denied;

110. The allegations contained in paragraph 110 of the Complaint

are denied;

111. As for the allegations referenced in paragraph 111 of the Complaint, your defendant would incorporate by reference, as if set out in full, his foregoing Answer to the discrete paragraphs of the Complaint referenced therein;

112. The factual allegations referenced in paragraph 112 of the Complaint are denied; although your defendant need not plead to the legal conclusions contained therein, he denies same;

113. The allegations contained in paragraph 113 of the Complaint are denied;

114. The allegations contained in paragraph 114 of the Complaint are denied;

115. The allegations contained in paragraph 115 of the Complaint are denied;

116. The allegations contained in paragraph 116 of the Complaint are denied;

117. The allegations contained in paragraph 117 of the Complaint are denied;

118. The allegations contained in paragraph 118 of the Complaint are denied;

119. The allegations contained in paragraph 119 of the Complaint are denied;

120. As for the allegations referenced in paragraph 120 of the Complaint, your defendant would incorporate by reference, as if set out in full, his foregoing Answer to the discrete paragraphs of the Complaint referenced therein;

121. The factual allegations referenced in paragraph 121 of the Complaint are denied; although your defendant need not plead to the legal conclusions contained therein, he denies same;

122. The allegations contained in paragraph 122 of the Complaint are denied;

123. The allegations contained in paragraph 123 of the Complaint are denied;

124. The allegations contained in paragraph 124 of the Complaint are denied;

125. The allegations contained in paragraph 125 of the Complaint are denied;

126. The allegations contained in paragraph 126 of the Complaint are denied;

127. The allegations contained in paragraph 127 of the Complaint are denied;

128. As for the allegations referenced in paragraph 128 of the Complaint, your defendant would incorporate by reference, as if set out in full, his foregoing Answer to the discrete paragraphs of the Complaint

referenced therein;

129. The factual allegations referenced in paragraph 129 of the Complaint are denied; although your defendant need not plead to the legal conclusions contained therein, he denies same;

130. The allegations contained in paragraph 130 of the Complaint are denied;

131. The allegations contained in paragraph 131 of the Complaint are denied;

132. The allegations contained in paragraph 132 of the Complaint are denied;

133. The allegations contained in paragraph 133 of the Complaint are denied;

134. The allegations contained in paragraph 134 of the Complaint are denied;

135. The allegations contained in paragraph 135 of the Complaint are denied;

136. As for the allegations referenced in paragraph 136 of the Complaint, your defendant would incorporate by reference, as if set out in full, his foregoing Answer to the discrete paragraphs of the Complaint referenced therein;

137. The factual allegations referenced in paragraph 137 of the Complaint are denied; although your defendant need not plead to the

legal conclusions contained therein, he denies same;

138. The allegations contained in paragraph 138 of the Complaint are denied;

139. The factual allegations referenced in paragraph 139 of the Complaint are denied; although your defendant need not plead to the legal conclusions contained therein, he denies same;

140. The allegations contained in paragraph 140 of the Complaint are denied;

141. The allegations contained in paragraph 141 of the Complaint are denied;

142. The allegations contained in paragraph 142 of the Complaint are denied;

143. That your defendant denies that your plaintiffs, either of them, is entitled to any relief, whatsoever, from this Honorable Court, let alone that prayed for at page 27 of the Complaint; and

144. That your defendant hereby and herewith denies each and every discrete allegation lain in the Complaint which is not specifically admitted herein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

145. The Complaint fails to state a cause of action upon which relief may be based;

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

146. In addition to the foregoing affirmative defense, the Complaint is barred, in whole or in part, because your defendant is personally immune from suit, as per, *inter alia*, Foreign Sovereign Immunities Act of 1976 (28 U.S.C., Secs. 1602-1611 (2004)), and the Law of Nations;

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

147. In addition to the foregoing affirmative defenses, the Complaint is barred, in whole or in part, because your defendant is personally immune from suit, as per the applicable Statute(s) of Limitations;

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

148. In addition to the foregoing affirmative defenses, the Complaint is barred, in whole or in part, because your defendant is personally immune from suit, as per the plaintiffs' manifest failure to exhaust the appropriate judicial remedies required by the Torture Victims Protection Act (28 U.S.C., Sec. 1350);

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

149. In addition to the foregoing affirmative defenses, the Complaint is barred, in whole or in part, because of the doctrine of issue preclusion;

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

150. In addition to the foregoing affirmative defenses, the Complaint is barred, in whole or in part, because of the doctrine of *res judica*;

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

151. In addition to the foregoing affirmative defenses, the Complaint is barred, in whole or in part, because of the non-justiciability of issues relating to the control and governance of Somalia, which matters are the sole domain of the Executive Branch, under the Constitution of the United States of America;

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

152. In addition to the foregoing affirmative defenses, the Complaint is barred, in whole or in part, because of the plaintiffs' unclean hands;

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

153. In addition to the foregoing affirmative defenses, the Complaint is barred, in whole or in part, because of the equitable doctrine of estoppel by conduct;

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

154. In addition to the foregoing affirmative defenses, the Complaint is barred, in whole or in part, because of the equitable doctrine of estoppel by representation;

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

155. In addition to the foregoing affirmative defenses, the Complaint is barred, in whole or in part, because of the equitable doctrine of estoppel by conduct;

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

156. In addition to the foregoing affirmative defenses, the Complaint is barred, in whole or in part, because of the equitable doctrine of estoppel by silence;

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

157. In addition to the foregoing affirmative defenses, the Complaint is barred, in whole or in part, because of the equitable doctrine of estoppel *in pais*, also known as quasi-estoppel;

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

158. In addition to the foregoing affirmative defenses, the Complaint is barred, in whole or in part, because of the equitable doctrine of waiver;

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

159. In addition to the foregoing affirmative defenses, the Complaint is barred, in whole or in part, because of the doctrine of *forum non conveniens*.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

160. In addition to the foregoing affirmative defenses, the Complaint is barred, in whole or in part, because of the ramified grounds set forth in your defendant's *Motion to Dismiss With Prejudice the Complaint*, and the *Memorandum of Points and Authorities in Support* whereof, filed herein on 10 January 2005.

WHEREFORE, having thus fully answered the Complaint, your defendant hereby and herewith demands that the Complaint be dismissed; that he recover his costs hereby expended; and that he be afforded such other and further relief as this Honorable Court may deem just and fitting.

Respectfully submitted,

/s/ Joseph Peter Drennan
JOSEPH PETER DRENNAN
218 North Lee Street
Third Floor
Alexandria, Virginia 22314
Telephone: (703) 519-3773
Telecopier: (703) 548-4399

Virginia State Bar No. 023894

ATTORNEY AND
COUNSELLOR
FOR YUSUF ABDI ALI

PRAECIPE AND DEMAND FOR TRIAL BY JURY

Dear Madam Clerk:

Your defendant in respect of the above-encaptioned action hereby and herewith demands a trial by a *petit* jury of six (6), as per, *inter alia*, the Constitution of the United States of America, Amendment VII.

Respectfully submitted,

/s/ Joseph Peter Drennan

CERTIFICATE OF SERVICE

I, Joseph Peter Drennan, undersigned, hereby and herewith certify that, on this 12th of January, 2005, a true xerographic facsimile of the foregoing was despatched by carriage of First Class Post, through the United States Postal Service, with adequate postage affixed thereto, enshrouded in a suitable wrapper, unto:

Robert R. Vieth, Esquire
Daniel J. Wadley, Esquire
Tara M. Lee, Esquire
Cooley Godward, L.L.P.
One Freedom Square
11951 Freedom Drive
Reston, Virginia 20190-5656; &

Matthew Eisenbrandt, Esquire
Helene Silverberg, Esquire
Center for Justice & Accountability
870 Market Street
Suite 684
San Francisco, California 94102.; and that, on even date, Robert R. Vieth,

Esquire, and Helene Silverberg, Esquire, were also served, electronically, with a true copy of the foregoing at the respective *e-mail* address of each, viz.: rvieth@cooley.com & hsilverberg@cja.org .

Respectfully submitted,

/s/ Joseph Peter Drennan
Joseph Peter Drennan