

IN THE
United States Court of Appeals
FOR THE FOURTH CIRCUIT

BASHE ABDI YOUSUF , *et al.*,
Plaintiffs-Appellees,

v.

MOHAMED ALI SAMANTAR,
Defendant-Appellant.

UNITED STATES OF AMERICA
Party-in-Interest.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION
Judge Leonie M. Brinkema

JOINT APPENDIX

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APPEAL, CLOSED, HYBRID, JURY

**U.S. District Court
Eastern District of Virginia - (Alexandria)
CIVIL DOCKET FOR CASE #: 1:04-cv-01360-LMB-JFA**

Yousuf, et al v. Samantar
Assigned to: District Judge Leonie M. Brinkema
Referred to: Magistrate Judge John F. Anderson
Demand: \$0
Case in other court: 4th Cir., 07-01893
4th Circuit, 11-01479
4th Circuit, 12-02178
Cause: 28:1350 Alien Tort Claims Act

Date Filed: 11/10/2004
Date Terminated: 08/28/2012
Jury Demand: Plaintiff
Nature of Suit: 890 Other Statutory
Actions
Jurisdiction: Federal Question

Plaintiff**Bashe Abdi Yousuf**

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Plaintiff

John Doe 1
TERMINATED: 02/01/2012

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Plaintiff

Jane Doe 1
TERMINATED: 03/09/2007

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Plaintiff

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Plaintiff

John Doe 3
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Plaintiff

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Plaintiff

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in his capacity as the personal representative of the estates of Mohamed Deria Ali, Mustafa Mohamed Deria, Abdullahi Salah Mahamoud (the deceased brother of Buralle Salah Mohamoud), Cawil Salah Mahamoud (the deceased brother of Buralle Salah Mohamoud)

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Date Filed	#	Docket Text
11/10/2004	1	Under Seal COMPLAINT Filing Fee \$ 150.00 Receipt # 100 176402; jury demand (Complaint sealed per [31-1] Order) (otho) Modified on 01/31/2005

		(Entered: 11/12/2004)
11/10/2004		Jury Trial Flag (otho) (Entered: 11/12/2004)
11/10/2004		CASE REFERRED to Mag Judge Barry R. Poretz (otho) (Entered: 11/12/2004)
11/10/2004		SUMMONS(ES) issued and given to atty for service by SPS as to Mohamed Ali Samatar (otho) (Entered: 11/12/2004)
11/16/2004	2	SUMMONS Returned Executed as to Mohamed Ali Samatar 11/11/04 Answer due on 12/1/04 for Mohamed Ali Samatar (pmet) (Entered: 11/16/2004)
12/01/2004	3	MOTION by Mohamed Ali Samatar to Dismiss the Complaint for Lack of Personal Jurisdiction , and by Mohamed Ali Samatar to Dismiss the Complaint for Failure to State a Claim Upon Which Relief Can be Granted (stas) (Entered: 12/02/2004)
12/01/2004	4	MEMORANDUM of Law by Mohamed Ali Samatar in support of [3-1] motion by Mohamed Ali Samatar to Dismiss the Complaint for Lack of Personal Jurisdiction and [3-2] motion by Mohamed Ali Samatar to Dismiss the Complaint for Failure to State a Claim Upon Which Relief Can be Granted (stas) (Entered: 12/02/2004)
12/03/2004	5	ORDER, for Frederick Bert Goldberg to appear pro hac vice Filing Fee Paid \$ 50.00 Receipt # 100 176824 (signed by Judge Leonie M. Brinkema) Copies Mailed: y [EOD Date: 12/6/04] (pmet) (Entered: 12/06/2004)
12/03/2004	6	ORDER, for Julian Henry Spirer to appear pro hac vice Filing Fee Paid \$ 50.00 Receipt # 100 176823 (signed by Judge Leonie M. Brinkema) Copies Mailed: y [EOD Date: 12/6/04] (pmet) (Entered: 12/06/2004)
12/10/2004	7	ORDER setting Initial Pretrial Conference for 10:00 12/29/04 Discovery Deadline for 3/11/05 Final Pretrial Conference for 10:00 3/17/05 (see order for details) (signed by Judge Leonie M. Brinkema) Copies Mailed: y (pmet) (Entered: 12/10/2004)
12/10/2004		Initial pretrial conference set at 10:00 12/29/04 before Mag Judge Barry R. Poretz (pmet) (Entered: 12/10/2004)
12/13/2004	8	ORDER, resetting Initial Pretrial Conference for 10:00 1/12/05 before Mag Judge Barry R. Poretz (signed by Mag Judge Barry R. Poretz) Copies Mailed: y [EOD Date: 12/14/04] (pmet) (Entered: 12/14/2004)
12/15/2004	9	OPPOSITION by Bashe Abdi Yousuf, John Doe 1, Jane Doe 1, John Doe 2, John Doe 3, John Doe 4 to [3-1] motion by Mohamed Ali Samatar to Dismiss the Complaint for Lack of Personal Jurisdiction and for Failure to State a Claim Upon Which Relief Can be Granted (pmet) (Entered: 12/15/2004)
12/15/2004	10	NOTICE of Hearing: Motion Hearing Deadline before Judge Leonie M. Brinkema set for 10:00 12/30/04 for [3-1] motion by Mohamed Ali Samatar to Dismiss the Complaint for Lack of Personal Jurisdiction and to Dismiss the Complaint for Failure to State a Claim Upon Which Relief Can be Granted

		(pmet) (Entered: 12/15/2004)
12/20/2004	11	MOTION by Mohamed Ali Samatar to Dismiss claims of anonymous pltfs (kjon) (Entered: 12/21/2004)
12/20/2004	12	MEMORANDUM OF LAW by Mohamed Ali Samatar in support of [11-1] motion by Mohamed Ali Samatar to Dismiss claims of pltfs (kjon) (Entered: 12/21/2004)
12/21/2004	13	Amended NOTICE of Hearing: Motion Hearing Deadline before Judge Leonie M. Brinkema set for 10:00 1/7/05 for [3-1] motion by Mohamed Ali Samatar to Dismiss the Complaint for Lack of Personal Jurisdiction, set for 10:00 1/7/05 for [3-2] motion by Mohamed Ali Samatar to Dismiss the Complaint for Failure to State a Claim Upon Which Relief Can be Granted (clar) (Entered: 12/22/2004)
12/22/2004	14	Reply by Mohamed Ali Samatar in support to [3-1] motion by Mohamed Ali Samatar to Dismiss the Complaint for Lack of Personal Jurisdiction , [3-2] motion by Mohamed Ali Samatar to Dismiss the Complaint for Failure to State a Claim Upon Which Relief Can be Granted (mcke) (Entered: 12/23/2004)
12/27/2004	15	OBJECTION by Mohamed Ali Samatar to pltfs' interrogatories and requests for production of documents (pmet) (Entered: 12/27/2004)
12/29/2004	16	MOTION by John Doe 4, John Doe 3, John Doe 2, Jane Doe 1, John Doe 1 for Leave to Proceed Anonymously (stas) (Entered: 12/29/2004)
12/29/2004	17	MEMORANDUM of Law by John Doe 1, Jane Doe 1, John Doe 2, John Doe 3, John Doe 4 in support of [16-1] motion by John Doe 4, John Doe 3, John Doe 2, Jane Doe 1, John Doe 1 for Leave to Proceed Anonymously (together with one spiral bound volume of exhibits 1-11) (stas) (Entered: 12/29/2004)
12/29/2004	18	NOTICE of Hearing: Motion Hearing Deadline before Judge Leonie M. Brinkema set for 10:00 1/7/05 for [16-1] motion by John Doe 4, John Doe 3, John Doe 2, Jane Doe 1, John Doe 1 for Leave to Proceed Anonymously (stas) (Entered: 12/29/2004)
12/30/2004	19	Reply by Mohamed Ali Samatar to [3-1] motion by Mohamed Ali Samatar to Dismiss the Complaint for Lack of Personal Jurisdiction, [3-2] motion by Mohamed Ali Samatar to Dismiss the Complaint for Failure to State a Claim Upon Which Relief Can be Granted (corrected version) (jcup) (Entered: 01/03/2005)
01/05/2005	20	ORDER, for Deval Rajendra Zaveri to appear pro hac vice Filing Fee Paid \$ 50.00 Receipt # 100 177521 (signed by Judge Leonie M. Brinkema) Copies Mailed: Yes [EOD Date: 1/5/05] (kjon) (Entered: 01/05/2005)
01/05/2005	21	ORDER, for Welly Tantono to appear pro hac vice Filing Fee Paid \$ 50.00 Receipt # 100 177521 (signed by Judge Leonie M. Brinkema) Copies Mailed: Yes [EOD Date: 1/5/05] (kjon) (Entered: 01/05/2005)
01/05/2005	22	ORDER, for Helene Norma Silverberg to appear pro hac vice Filing Fee Paid \$ 50.00 Receipt # 100 177521 (signed by Judge Leonie M. Brinkema)

		Copies Mailed: Yes [EOD Date: 1/5/05] (kjon) (Entered: 01/05/2005)
01/05/2005	23	ORDER, for Tara Melissa Lee to appear pro hac vice Filing Fee Paid \$ 50.00 Receipt # 100 177521 (signed by Judge Leonie M. Brinkema) Copies Mailed: Yes [EOD Date: 1/5/05] (kjon) (Entered: 01/05/2005)
01/05/2005	24	RESPONSE by Mohamed Ali Samatar in opposition to [16-1] motion by John Doe 4, John Doe 3, John Doe 2, Jane Doe 1, John Doe 1 for Leave to Proceed Anonymously (clar) (Entered: 01/06/2005)
01/07/2005		Motion hearing held before Judge Brinkema; Reporter: Thomson; Appearances by counsel for parties re: [16-1] motion by John Doe 4, John Doe 3, John Doe 2, Jane Doe 1, John Doe 1 for Leave to Proceed Anonymously. Motion granted. Def't's Motion to Dismiss-deferred pending report from counsel regarding position of the Department of State. Discovery and Initial pretrial stayed until further Order of the Court. Order to follow. (rtra) (Entered: 01/10/2005)
01/07/2005	25	For the reasons stated in open court, ORDER granting [16-1] motion by John Doe 4, John Doe 3, John Doe 2, Jane Doe 1, John Doe 1 for Leave to Proceed Anonymously. ORDERED that plaintiffs may proceed in this action anonymously and are required to reveal their identity only to defense counsel and defendant, who may not reveal the anonymous plaintiffs' identity to anyone else unless granted permission in writing from the Court or from the prospective plaintiff; and it is further ORDERED that defendant report to the Court within thirty (30) days regarding his efforts to secure the position of the Department of State, after which time the Court will reschedule argument on defendant's Motions; and it is further ORDERED that all discovery, except for requests by both parties for information from government agencies, is STAYED until further Order of this Court; and it is further ORDERED that the initial pretrial conference, currently scheduled for January 12, 2005, is postponed and will be rescheduled after defendant's report to the Court. (signed by Judge Leonie M. Brinkema) Copies Mailed: 01/07/05 [EOD Date: 1/10/05] (rtra) (Entered: 01/10/2005)
01/14/2005	26	AFFIDAVIT of Cosimo Rucellai (not an original) (agil) (Entered: 01/14/2005)
01/19/2005	27	EMERGENCY MOTION by plaintiffs to Seal pursuant to local rule the original (previously-filed) [1-1] complaint (stas) (Entered: 01/19/2005)
01/19/2005	28	NON-CONFIDENTIAL MEMORANDUM by Bashe Abdi Yousuf, John Doe 1, Jane Doe 1, John Doe 2, John Doe 3, John Doe 4 in support of [27-1] emergency motion by plaintiffs to Seal pursuant to local rule the original (previously-filed) [1-1] complaint (stas) Modified on 01/19/2005 (Entered: 01/19/2005)
01/19/2005	29	NOTICE of Hearing: Motion Hearing Deadline before Mag Judge Barry R. Poretz set for 10:00 1/28/05 for [27-1] emergency motion by plaintiffs to Seal pursuant to local rule the original (previously-filed) [1-1] complaint (stas) (Entered: 01/19/2005)
01/26/2005		Deadline updated; Motion Hearing Deadline before Mag Judge Barry R.

		Poretz set for 9:00 1/28/05 for [27-1] motion by plaintiffs to Seal pursuant to local rule the original (previously-filed) [1-1] complaint (clar) (Entered: 01/26/2005)
01/27/2005	30	AMENDED COMPLAINT by Bashe Abdi Yousuf, John Doe 1, Jane Doe 1, John Doe 2, John Doe 3, John Doe 4, Aziz Deria ; amending [1-1] complaint; jury demand (pmet) Modified on 01/27/2005 (Entered: 01/27/2005)
01/28/2005		Minute entry: Magistrate Judge Poretz (FTR) Appearances: Counsel for Pltf. This matter came on Pltf's Motion to Seal pursuant to local rule the original (previously - filed) [1-1] complaint - Matter uncontested and and taken under advisement. Order to be issued. (jsch) Modified on 01/28/2005 (Entered: 01/28/2005)
01/28/2005	31	ORDER granting [27-1] motion by plaintiffs to Seal pursuant to local rule the original (previously-filed) [1-1] complaint. ORDERED that the Deft.'s motion to dismiss shall be deemed directed to the First Amended Complaint. (See Order for details)(signed by Mag Judge Barry R. Poretz) Copies Mailed: y [EOD Date: 1/31/05] (pmet) (Entered: 01/31/2005)
02/03/2005	32	REPORT by Mohamed Ali Samantar to the Court Regarding Position of the Department of State in Response to [25-1] Order (LARGE PLEADING) (pmet) Modified on 02/03/2005 (Entered: 02/03/2005)
02/03/2005	33	TRANSCRIPT for dates of 01-07-2005 (LMB) (pmet) (Entered: 02/04/2005)
02/07/2005	34	ORDERED that deft. report again to the Court regarding the Dept. of State's position on deft.'s immunity by 3/10/05 (signed by Judge Leonie M. Brinkema) Copies Mailed: y [EOD Date: 2/7/05] (pmet) (Entered: 02/07/2005)
02/08/2005	35	MOTION by Mohamed Ali Samantar to Dismiss for lack of personal jurisdiction, failure to state a claim upon which relief can be granted, and lack of subject matter jurisdiction (pmet) (Entered: 02/09/2005)
02/08/2005	36	MEMORANDUM by Mohamed Ali Samantar in support of [35-1] motion to Dismiss for lack of personal jurisdiction, failure to state a claim upon which relief can be granted, and lack of subject matter jurisdiction (pmet) (Entered: 02/09/2005)
02/22/2005	37	OPPOSITION by Bashe Abdi Yousuf, John Doe 1, Jane Doe 1, John Doe 2, John Doe 3, John Doe 4, Aziz Deria to [35-1] motion by Mohamed Ali Samantar to Dismiss for lack personal jurisdiction, failure to state a claim upon which relief can be granted, and lack of subject matter jurisdiction (pmet) (Entered: 02/22/2005)
02/28/2005	38	REPLY by Mohamed Ali Samantar to response to [35-1] motion by Mohamed Ali Samantar to Dismiss for lack of personal jurisdiction, failure to state a claim upon which relief can be granted, and lack of subject matter jurisdiction (clar) (Entered: 03/01/2005)
03/11/2005	39	MOTION by Mohamed Ali Samantar for Leave to File Additional Authority (pmet) Modified on 03/11/2005 (Entered: 03/11/2005)

03/11/2005	40	MEMORANDUM by Mohamed Ali Samantar in support of [39-1] motion by Mohamed Ali Samantar for Leave to File Additional Authority (pmet) (Entered: 03/11/2005)
03/15/2005	41	MOTION by Mohamed Ali Samantar for Enlargement of Time to File and Motion for continuance of the deadline for reporting the position of the Department of State (LARGE PLEADING) (pmet) Modified on 03/16/2005 (Entered: 03/16/2005)
03/16/2005	42	ORDER granting [41-1] motion by Mohamed Ali Samantar for Enlargement of Time to File and Motion for continuance of the deadline for reporting the position of the Department of State ORDERED that defense counsel file by 4/15/05 a report on the position of the State Department regarding whether the Court should grant deft. head-of-state immunity (signed by Judge Leonie M. Brinkema) Copies Mailed: y [EOD Date: 3/16/05] (pmet) (Entered: 03/16/2005)
03/16/2005		Motions No Longer Referred: 11 Motion to Dismiss, 35 Motion to Dismiss, 3 Motion to Dismiss/Lack of Jurisdiction Motion to Dismiss, 39 Motion for Leave to File (Itun,) (Entered: 05/10/2005)
03/28/2005	43	Response by Bashe Abdi Yousuf, John Doe 1, Jane Doe 1, John Doe 2, John Doe 3, John Doe 4, Aziz Deria to [39-1] motion by Mohamed Ali Samantar for Leave to File Additional Authority (pmet) (Entered: 03/28/2005)
04/04/2005	44	REPLY by Mohamed Ali Samantar to Plaintiff's response to [39-1] motion by Mohamed Ali Samantar for Leave to File Additional Authority (pmet) (Entered: 04/04/2005)
04/14/2005	45	MOTION by Mohamed Ali Samantar for Continuance of the deadline for reporting on the position of the Department of State (pmet) (Entered: 04/14/2005)
04/15/2005	46	ORDER granting [45-1] motion by Mohamed Ali Samantar for Continuance of the deadline for reporting on the position of the Department of State, ORDERED that deft. file within 30 days, 5/16/05, a report on the position of the Dept. of State (signed by Judge Leonie M. Brinkema) Copies Mailed: y [EOD Date: 4/18/05] (pmet) (Entered: 04/18/2005)
05/12/2005	47	MOTION for further continuance of the deadline for reporting on the position of the Department of State as to 42 Order, by Mohamed Ali Samantar. (pmet,) (Entered: 05/12/2005)
05/20/2005	48	ORDER granting 47 Motion for Extension of Time to File Report on the position of the State Department. Report due by 6/20/2005. Signed by Judge Leonie M. Brinkema on 05/20/05. c/s (pmet,) (Entered: 05/23/2005)
06/20/2005	49	MOTION for further continuance of the deadline for Reporting on the position of the Department of State, by Mohamed Ali Samantar. (pmet,) (Entered: 06/20/2005)
06/21/2005	50	ORDER granting 49 Motion for Extension of Time to File report on the position of the State Department. Report due by 7/22/2005. Signed by Judge Leonie M. Brinkema on 06/21/05. c/s (pmet,) (Entered: 06/21/2005)

07/21/2005	51	MOTION for further Continuance of the deadline for reporting on the position of the Department of State by Mohamed Ali Samantar. (nmck,) (Entered: 07/21/2005)
07/22/2005	52	ORDER that dft file within 30 days of this Order a report on the position of the State Department regarding whether the Court should grant dft head-of-state immunity (see order for details). Signed by Judge Leonie M. Brinkema on 7/22/05 (kjon) Copies mailed (Entered: 07/25/2005)
08/19/2005	53	MOTION for further continuance of the deadline for reporting on the position of the Department of State by Mohamed Ali Samantar (kjon) (Entered: 08/19/2005)
08/22/2005	54	ORDER that defendant file within 30 days of this order a report on the position of the State Department regarding whether the Court should grant the defendant head-of-state immunity. Signed by Judge Leonie M. Brinkema on 08/22/05. Copies mailed on 8/23/05.(kbar) (Entered: 08/23/2005)
08/30/2005	55	ORDER that all activity in this civil action has been stayed since 01/07/05, to allow the U.S. Dept. of of State to advise the court of its position as to whether the defendant is entitled to head of state immunity and that this action be and is stayed until further order of the court. Signed by Judge Leonie M. Brinkema on 08/30/05. (kbar,) (Entered: 08/31/2005)
09/21/2005	56	STATUS REPORT on Obtaining the Position of the Department of State by Mohamed Ali Samantar. (kbar,) (Entered: 09/21/2005)
10/21/2005	57	STATUS REPORT on obtaining the position of the department of state by Mohamed Ali Samantar. (kbar) (Entered: 10/21/2005)
11/21/2005	58	Status report on obtaining the position of the Department of State by Mohamed Ali Samantar. (kbar) (Entered: 11/21/2005)
12/22/2005	59	STATUS REPORT on obtaining the position of the department of state by Mohamed Ali Samantar. (kbar) (Entered: 12/23/2005)
01/20/2006	60	STATUS REPORT on Obtaining the Position of the Dept of State by Mohamed Ali Samantar. (pmil) (Entered: 01/23/2006)
02/21/2006	61	STATUS REPORT on obtaining the position of the Department of State by Mohamed Ali Samantar. (kbar) (Entered: 02/21/2006)
03/17/2006	62	STATUS REPORT on Obtaining the Position of the Department of State by Mohamed Ali Samantar. (pmil) (Entered: 03/20/2006)
04/18/2006	63	STATUS REPORT on obtaining the position of the Department of State by Mohamed Ali Samantar. (kbar) (Entered: 04/19/2006)
05/17/2006	64	STATUS REPORT on obtaining the position of the Department of State by Mohamed Ali Samantar. (kbar) (Entered: 05/17/2006)
06/15/2006	65	STATUS REPORT on obtaining the position of the Department of State by Mohamed Ali Samantar. (kbar) (Entered: 06/15/2006)
07/17/2006	66	STATUS REPORT on obtaining the position of the department of state by

		Mohamed Ali Samantar. (kbar) (Entered: 07/17/2006)
08/17/2006	67	STATUS REPORT on Obtaining the Position of the Department of State, filed by Mohamed Ali Samantar. (tbul,) (Entered: 08/22/2006)
09/15/2006	68	STATUS REPORT ON OBTAINING THE POSITION OF THE DEPARTMENT OF STATE by Mohamed Ali Samantar. (pmil) (Entered: 09/15/2006)
10/20/2006	69	STATUS REPORT on obtaining the position of the Department of State by Mohamed Ali Samantar. (kbar) (Entered: 10/20/2006)
11/20/2006	70	STATUS REPORT on obtaining the position of the Department of State by Mohamed Ali Samantar. (kbar,) (Entered: 11/20/2006)
12/18/2006	71	STATUS REPORT on obtaining the position of the Dept. of State by Mohamed Ali Samantar. (kbar,) (Entered: 12/18/2006)
01/19/2007	72	STATUS REPORT on obtaining the position of the Department of State by Mohamed Ali Samantar. (kbar,) (Entered: 01/19/2007)
01/22/2007	73	ORDERED that counsel meet and confer regarding a mutually convenient Friday docket to hold a status conference and send notice of that date to the court, and it is further Ordered that the Clerk reinstate the case to the Court's active docket. Signed by Judge Leonie M. Brinkema on 01/22/07. Copies mailed.(kbar,) (Entered: 01/22/2007)
02/08/2007	74	NOTICE of Hearing: Status Conference set for 2/23/2007 10:00 AM before District Judge Leonie M. Brinkema. (kbar) (Entered: 02/09/2007)
02/22/2007	75	NOTICE of Voluntary Dismissal by John Doe 3, John Doe 4. (kbar) (Entered: 02/23/2007)
02/22/2007	76	MOTION for Leave to File the second amended complaint by Bashe Abdi Yousuf, John Doe 1, Jane Doe 1, John Doe 2, Aziz Deria. (kbar,) (Entered: 02/23/2007)
02/22/2007	77	Memorandum in Support re 76 MOTION for Leave to File the second amended complaint by Bashe Abdi Yousuf, John Doe 1, Jane Doe 1, John Doe 2, Aziz Deria.(kbar,) (Entered: 02/23/2007)
02/22/2007	78	NOTICE of Hearing on Motion 76 MOTION for Leave to File : Motion Hearing set for 3/9/2007 10:00 AM before Magistrate Judge Barry R. Poretz. (kbar) (Entered: 02/23/2007)
02/22/2007		MOTIONS 76 MOTION for Leave to File Ameded Complaint REFERRED to Judge Barry R. Poretz. (kbar) (Entered: 02/23/2007)
02/23/2007		Minute Entry for proceedings held before Judge Leonie M. Brinkema : Status Conference held on 2/23/2007. Appearance of counsel. Court to issue new scheduling order. (Court Reporter Thomson.) (lhin,) (Entered: 02/23/2007)
02/26/2007	79	TRANSCRIPT of Proceedings held on 02/23/07 before Judge Leonie M. Brinkema. Court Reporter: Anneliese Thomson. (kbar) (Entered: 02/27/2007)

03/05/2007	80	RESPONSE in Opposition to Pltf's 76 MOTION for Leave to File Second Amended Complaint filed by Mohamed Ali Samantar. (agil) (Entered: 03/05/2007)
03/06/2007		Reset Deadlines as to 76 MOTION for Leave to File the second amended complaint Motion Hearing set for 3/9/2007 10:00 AM before District Judge Leonie M. Brinkema. (clar,) (Entered: 03/06/2007)
03/08/2007	81	REPLY in support of Plaintiff's Motion for Leave to File the Second Amended Complaint 76 filed by Bashe Abdi Yousuf. (lhin,) (Entered: 03/12/2007)
03/09/2007		Minute Entry for proceedings held before Judge Leonie M. Brinkema : Motion Hearing held on 3/9/2007. Appearance of counsel. 76 Plaintiff's MOTION for Leave to File 2nd amended complaint - GRANTED. Court to issue a Scheduling Order. (Court Reporter Thomson) (lhin,) (Entered: 03/09/2007)
03/09/2007	82	ORDER: For the reasons stated in open court, it is hereby ordered the the 76 Plaintiffs' Motion for Leave to File the Second Amended Complaint be and is GRANTED. Signed by Judge Leonie M. Brinkema on 3/9/2007. Copies sent. (lhin,) (Entered: 03/12/2007)
03/09/2007	83	SCHEDULING ORDER: Initial Pretrial Conference set for Wednesday 3/28/2007 10:00 AM before Magistrate Judge Barry R. Poretz . Final Pretrial Conference set for 8/16/2007 10:00 AM before District Judge Leonie M. Brinkema. Discovery due by 8/10/2007. Signed by Judge Leonie M. Brinkema on 3/9/2007. Any party required to file an answer must do so withint twenty (20) days. Copies sent.(lhin,) Modified on 3/27/2007 (lhin,). (Entered: 03/12/2007)
03/09/2007	303	SECOND AMENDED COMPLAINT with Jury Demand against Mohamed Ali Samantar, filed by Jane Doe , John Doe 1, John Doe 2, Bashe Abdi Yousuf, Aziz Mohamed Deria.(klau,) Modified text on 2/3/2012 (klau,). (Entered: 02/03/2012)
03/21/2007	84	JOINT Discovery Plan by Bashe Abdi Yousuf, John Doe 1, Jane Doe 1, John Doe 2, Mohamed Ali Samantar, Aziz Deria.(kbar) (Entered: 03/21/2007)
03/21/2007	85	CONSENT MOTION for enlargement of time to file updated motion to dismiss by Mohamed Ali Samantar. (kbar,) (Entered: 03/22/2007)
03/21/2007	86	Memorandum in Support re 85 CONSENT MOTION for enlargement of time to file updated motion to dismiss filed by Mohamed Ali Samantar. (kbar,) (Entered: 03/22/2007)
03/21/2007	87	AFFIDAVIT of Fred B. Goldberg by Mohamed Ali Samantar. (kbar,) (Entered: 03/22/2007)
03/23/2007	88	ORDER, that the 85 CONSENT MOTION for enlargement of time to file updated motion to dismiss by Mohamed Ali Samantar be and is granted, and defendant shall file said motion no later than 3/29/07. Signed by Judge Leonie M. Brinkema on 03/23/07. Copies mailed. (kbar,) (Entered: 03/23/2007)

03/27/2007		Initial Pretrial Conference set for 3/28/2007 10:00 AM before Magistrate Judge Barry R. Poretz. (lhin,) (Entered: 03/27/2007)
03/28/2007		INITIAL Pretrial Conference held before Magistratet Judge Barry R. Poretz on 3/28/2007. Counsel for Pltf & Deft. Joint Discovery Plan taken under advisement. Order to issue. (jshc) (Entered: 04/03/2007)
03/29/2007	89	MOTION to Dismiss Second Amended Complaint by Mohamed Ali Samantar. (kbar,) (Entered: 03/29/2007)
03/29/2007	90	Memorandum in Support re 89 MOTION to Dismiss Second Amended Complaint filed by Mohamed Ali Samantar. (kbar,) (Entered: 03/29/2007)
03/29/2007	91	NOTICE of Hearing on Motion 89 MOTION to Dismiss Second Amended Complaint : Motion Hearing set for 4/27/2007 10:00 AM before District Judge Leonie M. Brinkema. (kbar) (Entered: 03/29/2007)
03/30/2007	92	Order Rule 16(b) Scheduling Order - Pursuant to the Rule 16(b) Conference it is ordered that copies of all non-dispositive motions and all papers relating to such motions shall be delivered directly to the chambers of the undersigned magistrate judge when the originals are filed with the clerk. Signed by Judge Barry R. Poretz on 03/30/07. Copies mailed.(kbar) (Entered: 04/02/2007)
04/11/2007	93	CONSENT MOTION for Extension of time to file opposition to motion to dismiss by Bashe Abdi Yousuf, John Doe 1, Jane Doe 1, John Doe 2, Aziz Deria. (krob) (Entered: 04/12/2007)
04/11/2007	94	Memorandum in Support re 93 CONSENT MOTION for Extension of time to file opposition to motion to dismiss filed by Bashe Abdi Yousuf, John Doe 1, Jane Doe 1, John Doe 2, Aziz Deria. (krob,) (Entered: 04/12/2007)
04/12/2007	95	ORDER that the 93 CONSENT MOTION for Extension of time to file opposition to motion to dismiss by Bashe Abdi Yousuf, John Doe 1, Jane Doe 1, John Doe 2, Aziz Deria is GRANTED, and plaintiffs shall file said motion no later than 4/18/07. Signed by Judge Leonie M. Brinkema on 04/12/07. Copies mailed. (krob) (Entered: 04/13/2007)
04/18/2007	96	Opposition to 89 MOTION to Dismiss Second Amended Complaint filed by Bashe Abdi Yousuf, John Doe 1, Jane Doe 1, John Doe 2, Aziz Deria (large pleading) (clar,) (Entered: 04/19/2007)
04/20/2007	97	MOTION for entry of a Protective Order by Bashe Abdi Yousuf, John Doe 1, Jane Doe 1, John Doe 2, Aziz Deria. (clar,) (Entered: 04/23/2007)
04/20/2007	98	Memorandum in Support of 97 MOTION for entry of a Protective Order filed by Bashe Abdi Yousuf, John Doe 1, Jane Doe 1, John Doe 2, Aziz Deria. (clar,) (Entered: 04/23/2007)
04/20/2007	99	NOTICE of Hearing on Motion 97 MOTION for entry of a Protective Order: Motion Hearing set for 4/27/2007 10:00 AM before Magistrate Judge Barry R. Poretz. (clar,) (Entered: 04/23/2007)
04/20/2007		MOTIONS 97 MOTION for entry of a Protective Order REFERRED to Judge Poretz. (clar,) (Entered: 04/23/2007)

04/23/2007	100	REPLY to Response to Motion re 89 MOTION to Dismiss Second Amended Complaint filed by Mohamed Ali Samantar. (clar,) (Entered: 04/24/2007)
04/24/2007		Reset Deadlines as to 97 MOTION for entry of a Protective Order Motion Hearing set for 4/27/2007 09:00 AM before Magistrate Judge Barry R. Poretz. (clar,) (Entered: 04/24/2007)
04/25/2007	101	Memorandum of Points and Authorities by Mohamed Ali Samantar in Support of Defendant's Opposition to 97 MOTION by Bashe Abdi Yousuf, John Doe 1, Jane Doe 1, John Doe 2, Aziz Deria for entry of a Protective Order. (stas) (Entered: 04/25/2007)
04/26/2007		Reset Deadlines as to 89 MOTION to Dismiss Second Amended Complaint Motion Hearing set for 4/27/2007 10:30 AM before District Judge Leonie M. Brinkema. (clar,) (Entered: 04/26/2007)
04/27/2007		MOTION Hearing held before Magistrate Judge Barry R. Poretz on 4/27/2007. Appearances: Counsel for Pltf. & Deft. This matter came on for Pltf's. Motion for a Protective Order - Matter argued and Taken under advisement. (FTR)(jsch) (Entered: 04/27/2007)
04/27/2007		Minute Entry for proceedings held before Judge Leonie M. Brinkema. Motion Hearing held on 4/27/2007. Appearance of counsel. 89 MOTION to Dismiss filed by Mohamed Ali Samantar is Granted. Case dismissed. Opinion to follow. (Court Reporter Thomson.) (lhin,) (Entered: 04/27/2007)
04/27/2007	102	ORDER: For the reasons stated in open court, to be further expressed in a written opinion to be issued, the dft's 89 Motion to Dismiss Second Amended Complaint is Granted, and it is hereby ordered that the plaintiffs' complaint be and is dismissed with prejudice. The time period for bringing an appeal will not begin to run until the Court has issued its written opinion. (Note: Entry of judgment is delayed until the Court has issued its written opinion). Signed by Judge Leonie M. Brinkema on 4/27/2007. (copies sent) (lhin,) (Entered: 04/27/2007)
04/30/2007	103	ORDER denying 97 Motion for Protective Order. Signed by Judge Barry R. Poretz on 04/30/07. Copies mailed. (krob) (Entered: 05/01/2007)
05/07/2007	104	TRANSCRIPT of Proceedings held on 04/27/07 before Judge Leonie M. Brinkema. Court Reporter: Anneliese J. Thomson. (krob) (Entered: 05/07/2007)
06/27/2007	105	SUPPLEMENTAL filing relating to correspondence with the State Department by Bashe Abdi Yousuf, John Doe 1, Jane Doe 1, John Doe 2, Aziz Deria. (krob) (Entered: 06/27/2007)
08/01/2007	<u>106</u>	MEMORANDUM AND OPINION. Signed by Judge Leonie M. Brinkema on 8/1/2007. (lhin,) (Entered: 08/02/2007)
08/01/2007	<u>107</u>	ORDER : For the reasons stated in open court and in the accompanying Memorandum Opinion, the defendant's Motion to Dismiss Second Amended Complaint has been granted, and it is hereby ordered that the Clerk enter judgment in the defendant's favor pursuant to Fed. R. Civil P. 58. Signed by Judge Leonie M. Brinkema on 8/1/2007. (copies sent)(lhin,) (Entered: 08/02/2007)

		08/02/2007)
08/01/2007	108	CLERK'S JUDGMENT. Pursuant to the order of this Court entered on 8/1/2007 and in accordance with Federal Rules of Civil Procedure 58, JUDGMENT is hereby entered in favor of the Defendant Mohamed Ali Samantar against the Plaintiff, Bashe Abdi Yousuf, et al. Signed by Judge Leonie M. Brinkema on 8/1/2007. (copies sent)(lhin,) (Entered: 08/02/2007)
08/30/2007	109	NOTICE OF APPEAL as to 108 Clerk's Judgment dated 8/1/07, <u>107</u> Order dated 8/1/07 by Bashe Abdi Yousuf, John Doe 1, Jane Doe 1, John Doe 2, Aziz Deria. Filing fee \$ 455, receipt number 100003298. Copy sent to USCA and to parties. (nmck,) (Entered: 09/05/2007)
09/19/2007		USCA Case Number 07-1893 4th Cir., case manager Joy Hargett Moore for 109 Notice of Appeal, filed by Aziz Deria, Bashe Abdi Yousuf, John Doe 2, Jane Doe 1, John Doe 1. (nmck,) (Entered: 09/27/2007)
10/19/2007	110	Certificate of Completion re 109 Notice of Appeal, : (nmck,) (Entered: 10/19/2007)
01/08/2009	111	PUBLISHED Opinion of USCA decided 1/8/09 re 109 Notice of Appeal, Reversed and Remanded attached copy of judgment will not take effect until issuance of the mandate. (nmck,) (Entered: 01/09/2009)
01/09/2009		Case Reassigned to Magistrate Judge John F. Anderson. Magistrate Judge Barry R. Poretz no longer assigned. (rban,) (Entered: 01/09/2009)
01/23/2009	112	STAY of mandate under FRAP 41 (d) (1) from USCA re 109 Notice of Appeal, : (nmck,) (Entered: 01/26/2009)
02/02/2009	113	ORDER of USCA as to 109 Notice of Appeal, filed by Aziz Deria, Bashe Abdi Yousuf, John Doe 2, Jane Doe 1, John Doe 1, The court denies the petition for rehearing and rehearing en banc. (nmck,) (Entered: 02/03/2009)
02/10/2009	114	USCA JUDGMENT as to 109 Notice of Appeal, filed by Aziz Deria, Bashe Abdi Yousuf, John Doe 2, Jane Doe 1, John Doe 1, In accordance with the decision of this court, the judgment of the District Court is Reversed. This case is Remanded to the District Court for further proceedings consistent with the Court's decision. This judgment shall take effect upon issuance of this court's mandate in accordance with FRAP. 41. (mandate issued) (nmck,) (Entered: 02/10/2009)
12/28/2009	115	Letter to court from USCA, attached is a copy of the U.S. Supreme Court's letter requesting transmittal of the record on appeal. (nmck,) (Entered: 01/04/2010)
01/04/2010		Certified and Transmitted Record on Appeal to Supreme Court of the United States re 109 Notice of Appeal, in 12 volumes starting with Volume 2 (Volumes 2 through 9 are pleadings) (Volumes 10 through 13 are Transcripts) (Vol. 13 is Under Seal Doc. # 1) (sent in one box) (nmck,) (Entered: 01/04/2010)
05/12/2010	116	NOTICE of Appearance by Joseph William Whitehead on behalf of Aziz Deria, Jane Doe 1, John Doe 1, John Doe 2, John Doe 3, John Doe 4, Bashe

		Abdi Yousuf (Whitehead, Joseph) (Entered: 05/12/2010)
05/13/2010		Notice of Correction re 116 Notice of Appearance, The document was electronically filed in a paper case. The filing user was notified to file an original paper document with the clerks office, and the document has been removed from the docket sheet. (klau,) (Entered: 05/13/2010)
05/14/2010	117	NOTICE of Appearance by Joseph William Whitehead on behalf of Aziz Deria, Bashe Abdi Yousuf, Jane Doe 1, John Doe 1, Jone Doe 2. (klau,) Modified on 5/17/2010 (klau,). (Entered: 05/17/2010)
05/28/2010	119	Unopposed MOTION to Withdraw as Counsel for Plaintiffs by Aziz Deria, Jane Doe 1, John Doe 1, John Doe 2, John Doe 3, John Doe 4, Bashe Abdi Yousuf. (clar,) (Entered: 06/02/2010)
05/28/2010	120	Memorandum of Law in Support of 119 Unopposed MOTION to Withdraw as Counsel for Plaintiffs filed by Aziz Deria, Jane Doe 1, John Doe 1, John Doe 2, John Doe 3, John Doe 4, Bashe Abdi Yousuf. (clar,) (Entered: 06/02/2010)
05/28/2010	121	NOTICE of Hearing on Motion 119 Unopposed MOTION to Withdraw as Counsel for Plaintiffs: Motion Hearing set for 6/11/2010 at 10:00 AM before Magistrate Judge John F. Anderson. (clar,) (Entered: 06/02/2010)
06/01/2010	118	Opinion of Supreme Court of the United States re 109 Notice of Appeal, The Judgment of the court of Appeals is affirmed, and the case is remanded for further proceedings consistent with this opinion. (nmck,) (Entered: 06/01/2010)
06/02/2010		MOTIONS REFERRED to Magistrate Judge: Anderson. 119 Unopposed MOTION to Withdraw as Counsel for Plaintiffs (clar,) (Entered: 06/02/2010)
06/03/2010	122	ORDER granting 119 Motion to Withdraw as Attorney. ORDERED that Robert R. Vieth and the law firm Cooley Godward Kronish LLP be and are withdrawn as counsel for plaintiffs. The Clerk is directed to remove the hearing on the Motion 119 from the June 11, 2010 docket. Attorney Robert R. Vieth terminated. Signed by District Judge Leonie M. Brinkema on 6/3/10. (klau,) (Entered: 06/04/2010)
07/07/2010		Appeal Record Returned from the Supreme Court of the United States: 109 Notice of Appeal, (Volumes 2 through 13) (nmck,) (Entered: 07/08/2010)
07/29/2010	123	ORDER Granting Pro hac vice of Stephen Simpson; Filing fee \$ 50, receipt number 14683015113. Signed by District Judge Leonie M. Brinkema on 7/29/2010. (tche) (Entered: 07/29/2010)
07/29/2010	124	ORDER Granting Pro hac vice of Randolph Teslik; Filing fee \$ 50, receipt number 14683015115. Signed by District Judge Leonie M. Brinkema on 7/29/2010. (tche) (Entered: 07/29/2010)
07/29/2010	125	ORDER Granting Pro hac vice of Jonathan Robell; Filing fee \$ 50, receipt number 14683015114. Signed by District Judge Leonie M. Brinkema on 7/29/2010. (tche) (Entered: 07/29/2010)

07/29/2010	126	ORDER Granting Pro hac vice of Thomas McLish; Filing fee \$ 50, receipt number 14683015112. Signed by District Judge Leonie M. Brinkema on 7/29/2010. (tche) (Entered: 07/29/2010)
09/24/2010	127	ORDER of USCA as to 109 Notice of Appeal, filed by Aziz Deria, Bashe Abdi Yousuf, John Doe 2, Jane Doe 1, John Doe 1. The Supreme Court of the United States issued an opinion on June 1, 2010 remanding this case to this court for further proceedings. See Samantar v. Yousuf, 130 S. Ct. 2278 (2010). This court now remands this case to the district court for further proceedings consistent with the opinion of the Supreme Court of the United States. (nmck,) (Entered: 09/28/2010)
09/24/2010	128	USCA JUDGMENT as to 109 Notice of Appeal, filed by Aziz Deria, Bashe Abdi Yousuf, John Doe 2, Jane Doe 1, John Doe 1. The Supreme court of the United States has remanded this case to this Court for further action. In accordance with the decision of this court, this case is remanded to the District Court. This judgment shall take effect upon issuance of this court's mandate in accordance with FRAP. 41. (nmck,) (Entered: 09/28/2010)
10/15/2010	129	MOTION to Withdraw as Attorney by Mohamed Ali Samantar. (Attachments: # 1 Proposed Order)(Volzer, Harvey)(Document was erroneously electronically filed in a paper case. The electronic document has been removed. Document to be filed on paper by the filer. Modified on 10/18/2010 (tche) . (Entered: 10/15/2010)
10/15/2010	130	Memorandum in Support re 129 MOTION to Withdraw as Attorney filed by Mohamed Ali Samantar. (Volzer, Harvey))(Document was erroneously electronically filed in a paper case. The electronic document has been removed. Document to be filed on paper by the filer. Modified on 10/18/2010 (tche). (Entered: 10/15/2010)
10/15/2010	132	ORDER GRANTING 129 MOTION to Withdraw as Attorney. ORDERED that counsel be and are relieved from any further representation of the defendant, who is directed to advise the Court within 14 days as to whether he plans to represent himself pro se or retain new counsel. Signed by District Judge Leonie M. Brinkema on 10/15/2010. (Copies mailed- yes)(tche) (Entered: 10/18/2010)
10/18/2010	131	USCA Mandate re 109 Notice of Appeal, The judgment of this court, entered 9/24/10, takes effect today. This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the FRAP. (nmck,) (Entered: 10/18/2010)
10/18/2010		Notice of Correction re 130 Memorandum in Support, 129 MOTION to Withdraw as Attorney. -The documents were electronically filed in a paper case. The filing user was notified to file the original paper documents with the clerks office, and the documents has been removed from the docket sheet. (tche) (Entered: 10/18/2010)
10/20/2010	135	ORDER that judgment entered on August 1, 2007, be and is VACATED. ORDERED that counsel, and the defendant if he has not retained new counsel by then, appear before this Court on Friday, November 12, 2010 at 10:00 a.m. for a status conference. Signed by District Judge Leonie M. Brinkema on

		10/20/10. (klau,) (Entered: 10/21/2010)
10/20/2010		Set/Reset Hearings: Status Conference set for 11/12/2010 at 10:00 AM before District Judge Leonie M. Brinkema. (ygyu) (Entered: 10/26/2010)
10/21/2010	133	Unopposed Motion to Withdraw as Counsel for Defendant by Mohamed Ali Samantar. (tche) (Entered: 10/21/2010)
10/21/2010	134	Defendant's Memorandum of Law in Support of 133 Unopposed MOTION to Withdraw as Counsel for Defendant filed by Mohamed Ali Samantar. (tche) (Entered: 10/21/2010)
11/12/2010		Minute Entry for proceedings held before District Judge Leonie M. Brinkema: Status Conference held on 11/12/2010. Appearance of counsel. Deft shall file motion to dismiss within 15 days from today. Pltf has 15 days to respond, deft has 5 days to reply and argument heard on 1/14/11 @10am. Motion Hearing set for 1/14/2011 at 10:00 AM before District Judge Leonie M. Brinkema. (Order to follow)(Court Reporter Thomson.) (ygyu) (Entered: 11/12/2010)
11/12/2010	136	ORDER: For the reasons stated in open court, it is hereby ORDERED that defendant file his motion to dismiss within fifteen (15) days of this Order, and it is further ORDERED that plaintiffs file their response to defendant's motion within fifteen (15) days of the motion, and it is further ORDERED that defendant file his reply to plaintiffs' response within five (5) days of the response, and it is further ORDERED that oral argument on defendant's motion to dismiss be and is set for Friday, January 14, 2011 at 10:00 a.m. Signed by District Judge Leonie M. Brinkema on 11/12/10. (ygyu) (Entered: 11/12/2010)
11/12/2010	137	NOTICE of Appearance by Joseph Peter Drennan on behalf of Mohamed Ali Samantar (klau,) (Entered: 11/15/2010)
11/29/2010	138	MOTION to Dismiss by Mohamed Ali Samantar. (klau,) Modified on 12/1/2010 Called counsel to Notice (klau,). Modified on 12/6/2010 called counsel again to notice for Friday Docket (klau,). (Entered: 12/01/2010)
11/29/2010	139	Brief in Support re 138 MOTION to Dismiss filed by Mohamed Ali Samantar. (klau,) (Entered: 12/01/2010)
12/03/2010	140	Praecipe and NOTICE of filing of Table of Authorities in re 139 Brief in Support of Defendant Samantar's Motion to Dismiss by Mohamed Ali Samantar (klau,) (Entered: 12/03/2010)
12/03/2010	141	Praecipe and NOTICE of Errata in re 139 Brief in Support of Defendant Samantar's Motion to Dismiss by Mohamed Ali Samantar (klau,) (Entered: 12/03/2010)
12/10/2010	142	NOTICE of Hearing on Motion 138 MOTION to Dismiss : Motion Hearing set for 1/14/2011 at 10:00 AM before District Judge Leonie M. Brinkema. (klau,) (Entered: 12/10/2010)
12/14/2010	143	Opposition to Defendant's re 138 MOTION to Dismiss filed by Aziz Deria, Jane Doe 1, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Large Pleading)

		(klau,) (Entered: 12/15/2010)
12/22/2010	144	Reply in Support of re 138 MOTION to Dismiss filed by Mohamed Ali Samantar. (klau,) (Entered: 12/23/2010)
01/05/2011	145	NOTICE of Potential Participation by United States of America (klau,) (Entered: 01/05/2011)
01/06/2011	146	ORDER that the government file a written statement of its position in this civil action no later than Monday, February 14, 2011. The Court will then set a status conference to determine whether further briefing is necessary before ruling on any motions to dismiss. The Clerk is directed to remove the hearing on defendant's Motion to Dismiss [Dkt. 138] from this Court's January 14, 2011 docket. Signed by District Judge Leonie M. Brinkema on 1/6/2011. (klau,) (Entered: 01/06/2011)
02/14/2011	147	Statement of Interest by United States of America. (klau,) (Entered: 02/14/2011)
02/15/2011	148	ORDER the Government has determined that the deft does not have foreign official immunity. Accordingly, defendant's common law sovereign immunity defense is no longer before the Court, which will now proceed to consider the remaining issues in defendant's motion to dismiss. Accordingly, it is hereby ORDERED that the parties select a mutually agreeable Friday at 10:00 a.m. to argue the motion to dismiss and file a notice of that date by the close of business, Friday, February 18, 2011. The clerk is directed to forward copies of this order to counsel of record.. Signed by District Judge Leonie M. Brinkema on 2/15/11. Copies mailed.(nmck,) (Entered: 02/15/2011)
02/18/2011	149	NOTICE of Hearing on Motion 138 MOTION to Dismiss : Motion Hearing set for 4/1/2011 at 10:00 AM before District Judge Leonie M. Brinkema. (klau,) (Entered: 02/18/2011)
03/15/2011	150	MOTION to Reconsider by Mohamed Ali Samantar. (klau,) (Entered: 03/16/2011)
03/15/2011	151	Brief in Support re 150 MOTION to Reconsider filed by Mohamed Ali Samantar. (klau,) (Entered: 03/16/2011)
03/15/2011	152	NOTICE of Hearing on Motion 150 MOTION for Reconsideration : Motion Hearing set for 4/1/2011 at 10:00 AM before District Judge Leonie M. Brinkema. (klau,) (Entered: 03/16/2011)
03/18/2011	153	ORDER granting application for Natasha Elisa Fain to appear Pro hac vice Filing fee paid \$ 50, receipt number 14683020213. Signed by District Judge Leonie M. Brinkema on 3/18/2011. (klau,) (Entered: 03/18/2011)
03/18/2011	154	Praecipe And Notice Of Errata In Re 151 Brief In Support Of Defendant Samantar's Motion For Reconsideration by Mohamed Ali Samantar. (nhall) (Entered: 03/21/2011)
03/18/2011	155	Amended/Supplemental Certificate Of Service re 150 MOTION for Reconsideration, 151 Memorandum in Support, 152 Notice of Hearing on Motion, by Mohamed Ali Samantar (nhall) (Entered: 03/21/2011)

03/28/2011	156	Opposition to 150 MOTION for Reconsideration filed by Aziz Deria, Jane Doe 1, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (stas) (Entered: 03/29/2011)
03/31/2011	157	Reply in Support of defendant Samantar's 150 MOTION to Reconsider filed by Mohamed Ali Samantar. (clar,) (Entered: 03/31/2011)
04/01/2011		Minute Entry for proceedings held before District Judge Leonie M. Brinkema: Motion Hearing held on 4/1/2011. Appearance of counsel. Deft's 138 MOTION to Dismiss and 150 MOTION for Reconsideration was argued in open court and DENIED WITHOUT PREJUDICE. (Order to follow). (Court Reporter Thomson.) (yguy) (Entered: 04/01/2011)
04/01/2011	158	ORDER: For the reasons stated in open court, it is hereby ORDERED that defendant's Motion to Dismiss [Dkt. No. 138] and Motion to Reconsider [Dkt. No. 150] be and are DENIED WITHOUT PREJUDICE.Signed by District Judge Leonie M. Brinkema on 04/01/11. (yguy) (Entered: 04/01/2011)
04/27/2011	159	TRANSCRIPT of Proceedings held on 4/1/2011 before Judge Leonie M. Brinkema. Court Reporter/Transcriber Anneliese J. Thomson, Telephone number (703) 299-8595. The transcript is a paper document which may be viewed at the Clerk's Office. (klau,) (Entered: 04/27/2011)
04/29/2011	160	NOTICE OF APPEAL as to 158 Order on Motion to Dismiss, Order on Motion for Reconsideration, dated 4/1/11, 148 Order dated 2/15/11 by Mohamed Ali Samantar. Filing fee \$ 455, R# 14683021229. Copies mailed to USCA and to parties, case is paper. (nmck,) (Entered: 05/02/2011)
05/02/2011		Transmission of Notice of Appeal to US Court of Appeals re 160 Notice of Appeal, (All case opening forms, plus the transcript guidelines, may be obtained from the Fourth Circuit's website at www.ca4.uscourts.gov) (MAILED TO USCA, CASE IS PAPER) (nmck,) (Entered: 05/02/2011)
05/03/2011	161	SCHEDULING ORDER: Initial Pretrial Conference set for 5/25/2011 at 11:00 AM before Magistrate Judge John F. Anderson. Final Pretrial Conference set for 9/15/2011 at 10:00 AM before District Judge Leonie M. Brinkema. Discovery due by 9/9/2011(see order for details). Signed by District Judge Leonie M. Brinkema on 5/3/2011. Copies Mailed: yes(klau,) (Entered: 05/04/2011)
05/06/2011		USCA Case Number 11-1479 4th Circuit, case manager J. Neal for 160 Notice of Appeal, filed by Mohamed Ali Samantar. (nmck,) (Entered: 05/06/2011)
05/13/2011	162	MOTION to Stay by Mohamed Ali Samantar. (clar,) (Entered: 05/16/2011)
05/13/2011	163	Brief in Support of 162 MOTION to Stay Scheduling Order filed by Mohamed Ali Samantar. (clar,) (Entered: 05/16/2011)
05/13/2011	164	NOTICE of Hearing on Motion 162 MOTION to Stay : Motion Hearing set for 5/20/2011 at 10:00 AM in Alexandria Courtroom 600 before District Judge Leonie M. Brinkema. (clar,) (Entered: 05/16/2011)

05/18/2011	165	NOTICE of Appearance by Jonah Eric McCarthy on behalf of Bashe Abdi Yousuf (klau,) (Entered: 05/18/2011)
05/18/2011	166	Opposition to Defendant's 162 MOTION to Stay Scheduling Order filed by Bashe Abdi Yousuf, Aziz Deria, Jane Doe 1, John Doe 1, John Doe 2. (klau,) Modified text on 5/18/2011 (klau,). (Entered: 05/18/2011)
05/18/2011	167	Proposed Joint Discovery Plan by Jane Doe 1, John Doe 1, John Doe 2, Mohamed Ali Samantar, Bashe Abdi Yousuf, Aziz Deria.(klau,) Modified text on 5/18/2011 (klau,). (Entered: 05/18/2011)
05/18/2011	168	ORDER that defendant's 162 Motion to Stay be and is DENIED. The Clerk is directed to remove the hearing on this motion from the May 20, 2011 docket. Signed by District Judge Leonie M. Brinkema on 5/18/2011. (klau,) (Entered: 05/18/2011)
05/25/2011		Minute Entry for proceedings held before Magistrate Judge John F. Anderson: Initial Pretrial Conference held on 5/25/2011. Appearances; of counsel. Discovery Plan is approved in part. ORDER TO ISSUE. (nbla,) (Entered: 05/25/2011)
05/25/2011	169	Order Rule 16(b) Scheduling Order - Pursuant to the Rule 16(b) Conference it is ordered that 1. All discovery shall be concluded by September 9, 2011. 2. The Joint Discovery Plan filed by the parties is approved in part and shall control discovery to the extent of its application unless further modified by the court. SEE ORDER FOR MORE SPECIFIC DETAILS. Signed by Magistrate Judge John F. Anderson on 05/25/2011. (nbla,) Modified on 5/27/2011 (nbla,); to edit text. (Entered: 05/25/2011)
05/25/2011	170	NOTICE of Appearance by Joseph Leon Decker on behalf of Bashe Abdi Yousuf (nmck,) (Entered: 05/27/2011)
05/25/2011	171	ANSWER to Second Amended Complaint by Mohamed Ali Samantar. (nmck,) (Entered: 05/27/2011)
06/17/2011	172	CONSENT MOTION for Entry of a Protective Order by Mohamed Ali Samantar, Bashe Abdi Yousuf. (klau,) (Entered: 06/17/2011)
06/17/2011	173	Plaintiff's MOTION for Non-Party Depositions in Ethiopia, or in the Alternative, for Depositions by Videoconference by Aziz Deria, Bashe Abdi Yousuf. (tche) (Entered: 06/20/2011)
06/17/2011	174	Memorandum in Support of 173 Plaintiff's MOTION for Non-Party Depositions in Ethiopia, or in the Alternative, for Depositions by Videoconference filed by Aziz Deria, Bashe Abdi Yousuf. (tche) (Entered: 06/20/2011)
06/17/2011	175	NOTICE of Hearing for 6/24/11 as to 173 Plaintiff's MOTION for Non-Party Depositions in Ethiopia, or in the Alternative, for Depositions by Videoconference. (tche) (Entered: 06/20/2011)
06/20/2011		Set Deadline as to 173 MOTION to Take Deposition. - Motion Hearing set for 6/24/2011 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (Attorney was notified that

		the Court is not hearing motions on 6/24/11 and to please re-notice the motion - Deadline Terminated) (tche) (Entered: 06/20/2011)
06/20/2011		MOTION REFERRED to Magistrate Judge: John F. Anderson re 173 MOTION to Take Deposition. (tche) (Entered: 06/20/2011)
06/20/2011	176	STIPULATED PROTECTIVE Without Prospective Filing Under Seal Provision Re: Handling and labeling of confidential materials (see order for details). Signed by Magistrate Judge John F. Anderson on 6/20/2011. (klau,) (Entered: 06/21/2011)
06/24/2011	177	Consent MOTION to Commence Electronic Filing by Bashe Abdi Yousuf. (klau,) (Entered: 06/24/2011)
06/24/2011	178	NOTICE of Hearing on Motion 173 MOTION to Take Deposition : Motion Hearing set for 7/1/2011 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar,) (Entered: 06/27/2011)
06/24/2011	179	MOTION to Compel Production and for Costs incurred by Aziz Deria, Jane Doe 1, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (clar,) (Entered: 06/27/2011)
06/24/2011	180	Memorandum in Support of 179 MOTION to Compel Production and for Costs incurred filed by Aziz Deria, Jane Doe 1, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (clar,) (Entered: 06/27/2011)
06/24/2011	181	NOTICE of Hearing on Motion 179 MOTION to Compel Production and for Costs incurred: Motion Hearing set for 7/1/2011 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar,) (Entered: 06/27/2011)
06/27/2011	182	MOTION for Protective Order by Mohamed Ali Samantar. (clar,) (Entered: 06/27/2011)
06/27/2011	183	Brief in Support of 182 MOTION for Protective Order filed by Mohamed Ali Samantar. (clar,) (Entered: 06/27/2011)
06/27/2011	184	NOTICE of Hearing on Motion 182 MOTION for Protective Order : Motion Hearing set for 7/1/2011 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar,) (Entered: 06/27/2011)
06/27/2011		MOTIONS REFERRED to Magistrate Judge: Anderson. 179 MOTION to Compel, 182 MOTION for Protective Order (clar,) (Entered: 06/27/2011)
06/27/2011	<u>185</u>	ORDER that all documents filed to the Court in this action subsequent to the entry of this Order shall be submitted via the Court's Electronic Case Filing System in accordance with the Court's Electronic Case Filing Policy and Procedures Manual. SO ORDERED. Signed by District Judge Leonie M. Brinkema on 6/27/2011. (stas) (Entered: 06/27/2011)
06/28/2011	<u>186</u>	Memorandum in Opposition re 173 MOTION to Take Deposition <i>verified</i> filed by Mohamed Ali Samantar. (Drennan, Joseph) (Entered: 06/29/2011)
06/29/2011	<u>187</u>	NOTICE by Mohamed Ali Samantar re <u>186</u> Memorandum in Opposition (<i>First Praecepte and Notice of Filing</i>) (Attachments: # <u>1</u> Exhibit Exhibit "A",

		# <u>2</u> Exhibit Exhibit "B", # <u>3</u> Exhibit Exhibit "C", # <u>4</u> Exhibit Exhibit "D") (Drennan, Joseph) (Entered: 06/29/2011)
06/29/2011	<u>188</u>	NOTICE by Mohamed Ali Samantar <i>Second Praecipe and Notice of Filing</i> (Attachments: # <u>1</u> Exhibit Exhibit "E", # <u>2</u> Exhibit Exhibit "F", # <u>3</u> Exhibit Exhibit "G", # <u>4</u> Exhibit Exhibit "H")(Drennan, Joseph) (Entered: 06/29/2011)
06/29/2011	<u>189</u>	Memorandum in Opposition re 179 MOTION to Compel filed by Mohamed Ali Samantar. (Drennan, Joseph) (Entered: 06/29/2011)
06/29/2011	<u>190</u>	Memorandum in Opposition re 182 MOTION for Protective Order filed by Aziz Deria, Jane Doe 1, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9) (McCarthy, Jonah) (Entered: 06/29/2011)
06/30/2011	<u>191</u>	NOTICE of Appearance by Jonah Eric McCarthy on behalf of Aziz Deria, Jane Doe 1, John Doe 1, John Doe 2, John Doe 3, John Doe 4, Bashe Abdi Yousuf (McCarthy, Jonah) (Entered: 06/30/2011)
06/30/2011	<u>192</u>	REPLY Memorandum in Support of re 173 MOTION to Take Deposition of <i>Non-Party Witnesses in Ethiopia, or in the Alternative, for Depositions by Videoconference</i> filed by Aziz Deria, Jane Doe 1, John Doe 1, John Doe 2, John Doe 3, John Doe 4, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Exhibit A) (McCarthy, Jonah) Modified text on 7/1/2011 (klau,). (Entered: 06/30/2011)
06/30/2011	<u>193</u>	NOTICE by Mohamed Ali Samantar re 183 Brief in Support, 182 MOTION for Protective Order (Attachments: # <u>1</u> Affidavit Declaration of Abdul Wahab, M.D. (30 June 2011))(Drennan, Joseph) (Entered: 06/30/2011)
06/30/2011	<u>194</u>	ORDER granting application for Elizabeth Tobio to appear Pro hac vice Filing fee paid \$ 50, receipt number 14683022565. Signed by District Judge Leonie M. Brinkema on 6/30/2011. (Attachments: # <u>1</u> Receipt)(klau,) (Entered: 07/01/2011)
07/01/2011	<u>195</u>	Minute Entry for proceedings held before Magistrate Judge John F. Anderson: Appearances; of counsel. Motion Hearing held on 7/1/2011 re 179 MOTION to Compel filed by Aziz Deria, Bashe Abdi Yousuf, John Doe 2, Jane Doe 1, John Doe 1 -ARGUED and GRANTED IN PART- DENIED IN PART, 173 MOTION to Take Deposition filed by Aziz Deria, Bashe Abdi Yousuf -ARGUED and GRANTED, 182 MOTION for Protective Order filed by Mohamed Ali Samantar -ARGUED AND GRANTED IN PART - DENIED IN PART. ORDER TO FOLLOW. (Tape #fr.) (nbla,) (Entered: 07/01/2011)
07/01/2011	<u>196</u>	ORDER granting 173 Motion FOR Non-Party Depositions to be taken in Ethiopia. SEE ORDER FOR MORE SPECIFIC DETAILS. Signed by Magistrate Judge John F. Anderson on 07/01/2011. (nbla,) (Entered: 07/01/2011)
07/01/2011	<u>197</u>	ORDER granting in part and denying in part 179 Motion to Compel; granting in part and denying in part 182 Motion for Protective Order. SEE ORDER

		FOR MORE SPECIFIC DETAILS. Signed by Magistrate Judge John F. Anderson on 07/01/2011. (nbla,) (Entered: 07/01/2011)
07/08/2011	<u>198</u>	ORDER of USCA as to 160 Notice of Appeal, filed by Mohamed Ali Samantar, Upon consideration of submissions relative to the motion for a stay of proceedings in the district court pending appellate review, the court denies the motion (klau,) (Entered: 07/08/2011)
07/29/2011	<u>199</u>	Consent MOTION for Extension of Time to Complete Discovery by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf, Jane Doe 1. (Attachments: # <u>1</u> Proposed Order)(McCarthy, Jonah) Modified on 8/1/2011 to correct party filers (stas). (Entered: 07/29/2011)
07/29/2011	<u>200</u>	Memorandum in Support re <u>199</u> Consent MOTION for Extension of Time to Complete Discovery filed by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf, Jane Doe 1. (McCarthy, Jonah) Modified on 8/1/2011 to correct party filers (stas). (Entered: 07/29/2011)
07/29/2011	201	Notice of Hearing Date set for August 5, 2011 re <u>199</u> Consent MOTION for Extension of Time to Complete Discovery (McCarthy, Jonah) (Entered: 07/29/2011)
07/29/2011		Set Deadline as to <u>199</u> Consent MOTION for Extension of Time to Complete Discovery. Motion Hearing set for 8/5/2011 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (stas) (Entered: 08/01/2011)
08/01/2011		Notice of Correction re 199 Consent MOTION for Extension of Time to Complete Discovery by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf, and 200 Memorandum in Support re 199 Consent MOTION for Extension of Time to Complete Discovery filed by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. The text has been modified to reflect the correct parties/filers of the documents. (stas) (Entered: 08/01/2011)
08/01/2011		MOTION REFERRED to Magistrate Judge: John F. Anderson. <u>199</u> Consent MOTION for Extension of Time to Complete Discovery (stas) (Entered: 08/01/2011)
08/02/2011	<u>202</u>	ORDER granting <u>199</u> Motion for Extension of Time to Complete Discovery. ORDERED that the discovery period is enlarged to 10/11/11; that the final pretrial conference currently scheduled for 9/15/11 shall be continued to 10/20/2011; that reports of the parties' experts on Italian law or other statute of limitations issues shall be served by 9/16/11, all responsive reports shall be served by 9/26/11, and all expert depositions shall be completed by 10/7/11. Signed by Magistrate Judge John F. Anderson on 8/2/2011. (rban,) (Entered: 08/02/2011)
08/02/2011		Set/Reset Scheduling Order Deadlines: Final Pretrial Conference set for 10/20/2011 at 10:00 AM in Alexandria Courtroom 600 before District Judge Leonie M. Brinkema. Discovery due by 10/11/2011. (rban,) (Entered: 08/02/2011)
08/02/2011	<u>203</u>	NOTICE of Voluntary Dismissal of Plaintiff Jane Doe's Claims by Aziz

		Deria, Jane Doe 1, John Doe 1, John Doe 2, John Doe 3, John Doe 4, Mohamed Ali Samantar (Decker, Joseph) (Entered: 08/02/2011)
08/03/2011	<u>204</u>	So Ordered re <u>203</u> Notice of Voluntary Dismissal of Plaintiff Jane Doe's Claims filed by Mohamed Ali Samantar, Aziz Deria, John Doe 4, John Doe 2, John Doe 3, Jane Doe 1, John Doe 1. Signed by District Judge Leonie M. Brinkema on 8/3/2011. (klau,) (Entered: 08/03/2011)
08/19/2011	<u>205</u>	MOTION for Discovery - <i>Leave to Take three Additional Non-Party Depositions</i> by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Supplement Memorandum in Support of Motion to Take Additional NonParty Depositions, # <u>2</u> Supplement Notice of Hearing) (Decker, Joseph) (Entered: 08/19/2011)
08/22/2011		Notice of Correction re: <u>205</u> MOTION for Discovery - Leave to Take Three Additional Non-Party Depositions by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. The filing user has been notified for future filings to submit a memorandum in support of a motion and a notice of hearing for a motion as separate document entries and not as attachments to the motion. (stas) (Entered: 08/22/2011)
08/22/2011		MOTION REFERRED to Magistrate Judge: John F. Anderson. <u>205</u> MOTION for Discovery - <i>Leave to Take three Additional Non-Party Depositions</i> (stas) (Entered: 08/22/2011)
08/22/2011		Set Deadline as to <u>205</u> MOTION for Discovery - <i>Leave to Take three Additional Non-Party Depositions</i> . Motion Hearing set for 8/26/2011 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (stas) (Entered: 08/22/2011)
08/25/2011	<u>206</u>	Opposition to <u>205</u> MOTION for Discovery - <i>Leave to Take three Additional Non-Party Depositions</i> filed by Mohamed Ali Samantar. (Drennan, Joseph) (Entered: 08/25/2011)
08/25/2011	<u>207</u>	NOTICE by Mohamed Ali Samantar re <u>206</u> Opposition (<i>Praecipe and Notice of Erratum</i>) (Drennan, Joseph) (Entered: 08/25/2011)
08/25/2011	<u>208</u>	NOTICE by Mohamed Ali Samantar re <u>206</u> Opposition, <u>207</u> NOTICE (<i>Second Notice of Erratum</i>) (Drennan, Joseph) (Entered: 08/25/2011)
08/26/2011	<u>209</u>	Consent MOTION for Discovery <i>Issuance of a Commission</i> by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Proposed Order Granting Commission)(Decker, Joseph) (Entered: 08/26/2011)
08/26/2011	<u>210</u>	Minute Entry for proceedings held before Magistrate Judge John F. Anderson: Appearances; of counsel.Motion Hearing held on 8/26/2011 re <u>205</u> MOTION for Discovery - <i>Leave to Take three Additional Non-Party Depositions</i> filed by Aziz Deria, Bashe Abdi Yousuf, John Doe 2, John Doe 1. The motion is ARGUED and GRANTED. ORDER TO FOLLOW. (Tape #ftr.) (nbla,) (Entered: 08/26/2011)
08/26/2011	<u>211</u>	ORDER granting <u>205</u> Motion for Discovery-to take additional Non-Pary Depositions. Signed by Magistrate Judge John F. Anderson on 08/26/2011. (nbla,) (Entered: 08/29/2011)

08/30/2011	<u>212</u>	ORDER granting <u>209</u> Motion for Issuance of a Commission. ORDERED that commissions issue in this cause out of this Court to the stenographer and videographer provided by Alderson Court Reporting, authorizing them to administer the oath and take the testimony of Plaintiffs' non-party witnesses at the Djibouti Palace Kempinski Hotel in Djibouti during the week of September 11, 2011, as prayed for in the motion. FURTHER ORDERED that due notice of the exact date, time and place of each examination be given to counsel for both parties. Signed by Magistrate Judge John F. Anderson on 8/30/2011. (klau,) (Entered: 08/30/2011)
09/01/2011	<u>213</u>	STIPULATION for <i>Conducting Depositions in Djibouti</i> by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Decker, Joseph) (Entered: 09/01/2011)
09/29/2011	<u>215</u>	ORDER for Pro hac vice of Andrea Cole Evans Filing fee \$ 50, receipt number 14683024518. Signed by District Judge Leonie M. Brinkema on 9/29/2011. (Attachments: # <u>1</u> Receipt)(rban,) (Entered: 09/30/2011)
09/29/2011	<u>216</u>	ORDER for Pro hac vice of Laura Kathleen Roberts Filing fee \$ 50, receipt number 14683024518. Signed by District Judge Leonie M. Brinkema on 9/29/2011. (Attachments: # <u>1</u> Receipt)(rban,) (Entered: 09/30/2011)
09/30/2011	<u>214</u>	ORDER of USCA as to 160 Notice of Appeal, filed by Mohamed Ali Samantar, The court grants the motion to withdraw from further representation on appeal. (klau,) (Entered: 09/30/2011)
09/30/2011	<u>217</u>	Joint MOTION for Discovery <i>Request for Commission</i> by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Decker, Joseph) (Entered: 09/30/2011)
09/30/2011	<u>218</u>	ORDER granting <u>217</u> Joint MOTION for Discovery Request for Commission. ORDERED that a commission issue in this cause out of this Court to the stenographer provided by Alderson Court Reporting, authorizing him or her to administer the oath and take the testimony of Defendant's expert witness Cosimo Rucellai in Milan Italy, on October 7, 2011, and Plaintiffs' expert witness, Paola Gaeta, also in Milan, Italy on October 8, 2011; that due notice of the exact date, time and place of each examination be given to counsel for both parties. Signed by Magistrate Judge John F. Anderson on 9/30/2011. (rban,) (Entered: 10/03/2011)
10/03/2011	<u>219</u>	ORDER granting application of David Roy Nelson to appear pro hac vice; Filing fee \$ 50.00, receipt number 14683024588. Signed by District Judge Leonie M. Brinkema on 10/3/2011. (Attachments: # <u>1</u> Receipt)(stas) (Entered: 10/03/2011)
10/07/2011	<u>220</u>	MOTION for Extension of Time to Complete Discovery <i>and to Compel Discovery</i> by Mohamed Ali Samantar. (Drennan, Joseph) (Entered: 10/07/2011)
10/07/2011	<u>221</u>	Notice of Hearing Date (<i>14 October 2011</i>) re <u>220</u> MOTION for Extension of Time to Complete Discovery <i>and to Compel Discovery</i> (Drennan, Joseph) (Entered: 10/07/2011)

10/07/2011	<u>222</u>	Respondent's BRIEF by Mohamed Ali Samantar <i>in Support of Motion to Extend Discovery and to Compel Discovery</i> . (Drennan, Joseph) (Entered: 10/07/2011)
10/11/2011		Set Deadlines as to <u>220</u> MOTION for Extension of Time to Complete <i>Discovery and to Compel Discovery</i> . Motion Hearing set for 10/14/2011 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar,) (Entered: 10/11/2011)
10/11/2011		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>220</u> MOTION for Extension of Time to Complete <i>Discovery and to Compel Discovery</i> (clar,) (Entered: 10/11/2011)
10/12/2011	<u>223</u>	Memorandum in Opposition re <u>220</u> MOTION for Extension of Time to Complete <i>Discovery and to Compel Discovery</i> filed by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7) (Decker, Joseph) (Entered: 10/12/2011)
10/13/2011	<u>224</u>	Mail Returned as Undeliverable. Mail sent to Scott A. Johnson (klau,) (Entered: 10/14/2011)
10/14/2011	<u>225</u>	Minute Entry for proceedings held before Magistrate Judge John F. Anderson: Appearances; of counsel.Motion Hearing held on 10/14/2011 re <u>220</u> MOTION for Extension of Time to Complete <i>Discovery and to Compel Discovery</i> filed by Mohamed Ali Samantar. The motion is ARGUED and GRANTED-IN-PART-DENIED-IN-PART. ORDER TO FOLLOW. (Tape #ftr.) (nbla,) (Entered: 10/17/2011)
10/14/2011	<u>226</u>	ORDER granting in part and denying in part <u>220</u> Motion for Extension of Time to Complete <i>Discovery</i> . Signed by Magistrate Judge John F. Anderson on 10/14/2011. (nbla,) (Entered: 10/17/2011)
10/18/2011	<u>227</u>	Consent MOTION to Continue <i>Final Pretrial Conference</i> by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Proposed Order)(Decker, Joseph) (Entered: 10/18/2011)
10/20/2011	<u>228</u>	Joint Stipulation of Uncontested Facts by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf, Mohamed Ali Samantar. (Decker, Joseph) Modified text on 10/21/2011 (klau,). (Entered: 10/20/2011)
10/20/2011	<u>229</u>	DOCUMENT REMOVED PER ORDER OF 10/24/11. (Entered: 10/20/2011)
10/20/2011	<u>230</u>	Exhibit List by Mohamed Ali Samantar.. (Drennan, Joseph) (Entered: 10/20/2011)
10/20/2011	<u>231</u>	Witness List/Roster by Mohamed Ali Samantar. (Drennan, Joseph) Modified text on 10/21/2011 (klau,). (Entered: 10/20/2011)
10/20/2011	<u>232</u>	NOTICE of filing by Mohamed Ali Samantar <i>re: 20 October 2011 Letter from TFG to Judge Brinkema</i> (Drennan, Joseph) Modified text on 10/21/2011 (klau,). (Entered: 10/20/2011)
10/20/2011	<u>233</u>	Minute Entry for proceedings held before District Judge Leonie M.

		Brinkema: Final Pretrial Conference held on 10/20/2011. Appearance of counsel. Witness/Exhibit lists have been filed & exchanged. Motions shall be filed by 11/14/11, responses filed by 12/5/11, reply by 12/14/11, argument on 12/22/11. Motion Hearing set for 12/22/2011 at 10:00 AM in Alexandria Courtroom 600 before District Judge Leonie M. Brinkema. Jury Trial set for 2/21/2012 at 10:00 AM in Alexandria Courtroom 600 before District Judge Leonie M. Brinkema. (Court Reporter Thomson.) (yguy) (Entered: 10/20/2011)
10/20/2011	234	DOCUMENT REMOVED PER ORDER OF 11/02/2011. Modified on 11/3/2011 (klau,). (Entered: 10/20/2011)
10/20/2011	<u>235</u>	ORDER: Finding no good cause to delay the final pretrial conference, it is hereby ORDERED that the parties Consent Motion for Continuance of Final Pretrial Conference [Dkt. No. 227] be and is DENIED.Signed by District Judge Leonie M. Brinkema on 10/20/11. (yguy) (Entered: 10/20/2011)
10/20/2011	236	Consent MOTION to Strike 229 Rule 26 Disclosure (<i>Dkt No. 229</i>) by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Decker, Joseph) (Entered: 10/20/2011)
10/21/2011		Notice of Correction re <u>228</u> Statement of Undisputed Facts,The filing user selected the wrong event. Statement of Undisputed Facts was selected, and Stipulation should have been selected. The docket has been corrected. For <u>234</u> Rule 26 Disclosure, The filing user selected the wrong event. Rule 26 Disclosure was selected, and Pretrial Statement should have been selected. The docket has been corrected. For <u>236</u> Consent MOTION to Strike, The filing user has been notified that the attachment (proposed order) was erroneously combined with the main document. (klau,) (Entered: 10/21/2011)
10/24/2011	<u>237</u>	ORDER granting <u>236</u> Motion to Strike <u>236</u> Consent MOTION to Strike 229 Rule 26 Disclosure (<i>Dkt No. 229</i>). Signed by District Judge Leonie M. Brinkema on 10/24/2011. (rban,) (Entered: 10/24/2011)
10/31/2011	<u>238</u>	Objection to <u>230</u> Exhibit List (<i>Dkt. No. 230</i>) filed by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Decker, Joseph) (Entered: 10/31/2011)
10/31/2011	<u>239</u>	Objection to <u>234</u> <i>Plaintiffs' Trial Exhibits [Document 234-1]</i> filed by Mohamed Ali Samantar. (Drennan, Joseph) Modified on 11/1/2011 to link document to docket no. 234 (klau,). (Entered: 10/31/2011)
11/01/2011	<u>240</u>	Pretrial Statement (Exhibits and Witness Lists)/Amended Pretrial Disclosures by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf.. (Decker, Joseph) Modified text on 11/2/2011 (klau,). (Entered: 11/01/2011)
11/01/2011	<u>241</u>	Consent MOTION to Strike <u>234</u> Rule 26 Disclosure by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Proposed Order) (Decker, Joseph) (Entered: 11/01/2011)
11/02/2011		Notice of Correction re <u>240</u> Exhibit List, The filing user selected the wrong event. Exhibit List was selected, and Pretrial Statment should have been selected. The docket has been corrected (klau,) (Entered: 11/02/2011)

11/02/2011	<u>244</u>	ORDER granting Plaintiffs' <u>241</u> Consent Motion to Strike Filing, ORDERED that Docket Number 234 in the above case shall be removed from the docket, as prayed for in the motion. Signed by District Judge Leonie M. Brinkema on 11/2/2011. (klau,) (Entered: 11/03/2011)
11/03/2011	<u>242</u>	MOTION to Withdraw as Attorney <i>as to Jonathan P. Robell, Stephen Simpson, and Scott A. Johnson</i> by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Proposed Order)(Decker, Joseph) (Entered: 11/03/2011)
11/03/2011	<u>243</u>	Notice of Hearing Date set for 11/10/2011 re <u>242</u> MOTION to Withdraw as Attorney <i>as to Jonathan P. Robell, Stephen Simpson, and Scott A. Johnson</i> (Decker, Joseph) (Entered: 11/03/2011)
11/03/2011	<u>245</u>	ORDER granting <u>242</u> Motion to Withdraw as Attorney. ORDERED that, pursuant to Local Civil Rule 83.1(G), Jonathan P. Robell, Stephen Simpson, and Scott A. Johnson are hereby given leave to withdraw as counsel for Plaintiffs Bashe Abdi Yousuf, Aziz Mohamed Deria, John Doe 1, and John Doe II. Attorney Scott A. Johnson terminated. Signed by District Judge Leonie M. Brinkema on 11/3/2011. (klau,) (Entered: 11/03/2011)
11/10/2011	<u>246</u>	MOTION to Amend/Correct 240 Exhibit List by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Proposed Order)(Decker, Joseph) (Entered: 11/10/2011)
11/10/2011	<u>247</u>	Memorandum in Support re <u>246</u> MOTION to Amend/Correct <u>240</u> Exhibit List filed by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Exhibit)(Decker, Joseph) (Entered: 11/10/2011)
11/10/2011	<u>248</u>	Notice of Hearing Date re <u>246</u> MOTION to Amend/Correct <u>240</u> Exhibit List (Decker, Joseph) (Entered: 11/10/2011)
11/11/2011	<u>249</u>	MOTION for Extension of <i>Time to File Motions (Unopposed)</i> by Mohamed Ali Samantar. (Drennan, Joseph) (Entered: 11/11/2011)
11/11/2011	<u>250</u>	Memorandum in Support re <u>249</u> MOTION for Extension of <i>Time to File Motions (Unopposed)</i> filed by Mohamed Ali Samantar. (Drennan, Joseph) (Entered: 11/11/2011)
11/11/2011	<u>251</u>	Notice of Hearing Date re <u>249</u> MOTION for Extension of <i>Time to File Motions (Unopposed)</i> (Drennan, Joseph) (Entered: 11/11/2011)
11/14/2011		Set Deadlines as to <u>246</u> MOTION to Amend/Correct <u>240</u> Exhibit List, <u>249</u> MOTION for Extension of <i>Time to File Motions (Unopposed)</i> . Motion Hearing set for 11/18/2011 at 10:00 AM in Alexandria Courtroom 600 before District Judge Leonie M. Brinkema. (clar,) (Entered: 11/14/2011)
11/14/2011	<u>252</u>	ORDER granting in part and denying in part <u>249</u> Motion for Extension of Time to File, ORDERED that the motions deadline be and is extended to Monday, November 21, 2011; the deadline for any responses is extended to close of business Friday, December 9, 2011, and reply briefs are due by close of business Friday, December 16, 2011. The plaintiff's <u>246</u> Motion for Leave to Supplement Plaintiffs' Amended Exhibit List is GRANTED. ORDERED that the plaintiffs file as a separate document their Supplemental Amended

		Exhibit List, containing the 21 exhibits referenced in their motion and memorandum. The Clerk is directed to remove argument of these motions from the November 18, 2011 docket (see order for details). Signed by District Judge Leonie M. Brinkema on 11/14/2011. (klau,) Modified text on 11/14/2011 (klau,). (Entered: 11/14/2011)
11/14/2011	<u>253</u>	<i>Supplemental Amended Exhibit List</i> by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf.. (Decker, Joseph) (Entered: 11/14/2011)
11/14/2011	<u>254</u>	Objection to Plaintiffs' Proffered Trial Exhibits included in Plaintiffs' <u>240 Amended Pretrial Disclosures</u> ' filed by Mohamed Ali Samantar. (Drennan, Joseph) Modified text on 11/15/2011 (klau,). (Entered: 11/14/2011)
11/21/2011	<u>255</u>	MOTION in Limine <i>to Exclude Non-Disclosed Witnesses</i> by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Proposed Order) (Decker, Joseph) (Entered: 11/21/2011)
11/21/2011	<u>256</u>	Memorandum in Support re <u>255</u> MOTION in Limine <i>to Exclude Non-Disclosed Witnesses</i> filed by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5)(Decker, Joseph) (Entered: 11/21/2011)
11/21/2011	<u>257</u>	MOTION in Limine <i>to Exclude Short and Rawson</i> by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Proposed Order) (Decker, Joseph) (Entered: 11/21/2011)
11/21/2011	<u>258</u>	Memorandum in Support re <u>257</u> MOTION in Limine <i>to Exclude Short and Rawson</i> filed by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4) (Decker, Joseph) (Entered: 11/21/2011)
11/21/2011	<u>259</u>	MOTION in Limine <i>to exclude Rucellai</i> by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Proposed Order)(Decker, Joseph) (Entered: 11/21/2011)
11/21/2011	<u>260</u>	Memorandum in Support re <u>259</u> MOTION in Limine <i>to exclude Rucellai</i> filed by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4)(Decker, Joseph) (Entered: 11/21/2011)
11/21/2011	<u>261</u>	MOTION in Limine <i>to exclude Samad & Weinstein Declarations</i> by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Proposed Order)(Decker, Joseph) (Entered: 11/21/2011)
11/21/2011	<u>262</u>	Memorandum in Support re <u>261</u> MOTION in Limine <i>to exclude Samad & Weinstein Declarations</i> filed by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Decker, Joseph) (Entered: 11/21/2011)
11/21/2011	<u>263</u>	MOTION in Limine <i>to exclude Evidence re Dirie conviction</i> by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Proposed Order)(Decker, Joseph) (Entered: 11/21/2011)
11/21/2011	<u>264</u>	Memorandum in Support re <u>263</u> MOTION in Limine <i>to exclude Evidence re</i>

		<i>Dirie conviction</i> filed by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Decker, Joseph) (Entered: 11/21/2011)
11/21/2011	<u>265</u>	MOTION in Limine <i>to exclude evidence or argument re Doe Plaintiffs' passports or entry into US</i> by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Proposed Order)(Decker, Joseph) (Entered: 11/21/2011)
11/21/2011	<u>266</u>	Memorandum in Support re <u>265</u> MOTION in Limine <i>to exclude evidence or argument re Doe Plaintiffs' passports or entry into US</i> filed by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Decker, Joseph) (Entered: 11/21/2011)
11/21/2011	<u>267</u>	MOTION in Limine <i>to preclude evidence or testimony re the political situation in Somalia or alleged impact of this litigation</i> by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Proposed Order) (Decker, Joseph) (Entered: 11/21/2011)
11/21/2011	<u>268</u>	Memorandum in Support re <u>267</u> MOTION in Limine <i>to preclude evidence or testimony re the political situation in Somalia or alleged impact of this litigation</i> filed by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Decker, Joseph) (Entered: 11/21/2011)
11/21/2011	<u>269</u>	OMNIBUS MOTION in Limine (<i>limiting evidence, testimony and argument on assorted matters</i>) by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Proposed Order)(Decker, Joseph) Modified text on 11/22/2011 (klau,). (Entered: 11/21/2011)
11/22/2011	<u>270</u>	MOTION for Summary Judgment by Mohamed Ali Samantar. (Drennan, Joseph) (Entered: 11/22/2011)
11/22/2011	<u>271</u>	Memorandum in Support re 270 MOTION for Summary Judgment, Brief in Support filed by Mohamed Ali Samantar. (Drennan, Joseph) (Entered: 11/22/2011)
11/22/2011	<u>272</u>	NOTICE/Statement of Material Facts as to Which There is no Genuine Issue by Mohamed Ali Samantar re <u>270</u> MOTION for Summary Judgment (Drennan, Joseph) Modified text on 11/23/2011 (klau,). (Entered: 11/22/2011)
11/22/2011		Notice of Correction re <u>267</u> MOTION in Limine <i>to preclude evidence or testimony re the political situation in Somalia or alleged impact of this litigation</i> , <u>263</u> MOTION in Limine <i>to exclude Evidence re Dirie conviction</i> , <u>259</u> MOTION in Limine <i>to exclude Rucellai</i> , <u>257</u> MOTION in Limine <i>to Exclude Short and Rawson</i> , <u>269</u> MOTION in Limine <i>limiting evidence, testimony and argument on assorted matters</i> , <u>255</u> MOTION in Limine <i>to Exclude Non-Disclosed Witnesses</i> , <u>261</u> MOTION in Limine <i>to exclude Samad & Weinstein Declarations</i> , <u>265</u> MOTION in Limine <i>to exclude evidence or argument re Doe Plaintiffs' passports or entry into US</i> , The filing user has been notified to file a Notice of Hearing Date or a Notice of Waiver of Oral Argument. (klau,) (Entered: 11/22/2011)
11/22/2011	<u>273</u>	MOTION for Extension of Time to File <i>Moitons</i> by Mohamed Ali Samantar.

		(Attachments: # 1 Proposed Order)(Drennan, Joseph) (Entered: 11/22/2011)
11/22/2011	<u>274</u>	Memorandum in Support re <u>273</u> MOTION for Extension of <i>Time to File Moitons</i> filed by Mohamed Ali Samantar. (Drennan, Joseph) (Entered: 11/22/2011)
11/22/2011	<u>275</u>	Notice of Hearing Date set for 12/02/2011 re <u>273</u> MOTION for Extension of <i>Time to File Moitons</i> (Drennan, Joseph) (Entered: 11/22/2011)
11/23/2011		Set Deadlines as to <u>273</u> MOTION for Extension of <i>Time to File Moitons</i> . Motion Hearing set for 12/2/2011 at 10:00 AM in Alexandria Courtroom 600 before District Judge Leonie M. Brinkema. (clar,) (Entered: 11/23/2011)
11/23/2011	<u>276</u>	Notice of Hearing Date set for 12/22/2011 re <u>267</u> MOTION in Limine to preclude evidence or testimony re the political situation in Somalia or alleged impact of this litigation, <u>263</u> MOTION in Limine to exclude Evidence re Dirie conviction, <u>259</u> MOTION in Limine to exclude Rucellai, <u>257</u> MOTION in Limine to Exclude Short and Rawson, <u>269</u> MOTION in Limine limiting evidence, testimony and argument on assorted matters, <u>255</u> MOTION in Limine to Exclude Non-Disclosed Witnesses, <u>261</u> MOTION in Limine to exclude Samad & Weinstein Declarations, <u>265</u> MOTION in Limine to exclude evidence or argument re Doe Plaintiffs' passports or entry into US (Decker, Joseph) (Entered: 11/23/2011)
11/23/2011		Set Deadlines as to <u>255</u> MOTION in Limine to Exclude Non-Disclosed Witnesses, <u>267</u> MOTION in Limine to preclude evidence or testimony re the political situation in Somalia or alleged impact of this litigation, <u>265</u> MOTION in Limine to exclude evidence or argument re Doe Plaintiffs' passports or entry into US, <u>259</u> MOTION in Limine to exclude Rucellai, <u>263</u> MOTION in Limine to exclude Evidence re Dirie conviction, <u>261</u> MOTION in Limine to exclude Samad & Weinstein Declarations, <u>269</u> MOTION in Limine limiting evidence, testimony and argument on assorted matters, <u>257</u> MOTION in Limine to Exclude Short and Rawson. Motion Hearing set for 12/22/2011 at 10:00 AM in Alexandria Courtroom 600 before District Judge Leonie M. Brinkema. (clar,) (Entered: 11/23/2011)
11/23/2011		Notice of Correction re <u>270</u> MOTION for Summary Judgment, The filing user has been notified to file a Notice of Hearing Date or a Notice of Waiver of Oral Argument (klau,) (Entered: 11/23/2011)
11/23/2011		Notice of Correction re <u>270</u> MOTION for Summary Judgment, <u>271</u> Memorandum in Support, Brief in Support, <u>272</u> NOTICE, The filing user has been notified to file a separate Certificate of Service. (klau,) (Entered: 11/23/2011)
11/23/2011	<u>277</u>	ORDER granting <u>273</u> Motion for Leave to File Motions. Signed by District Judge Leonie M. Brinkema on 11/23/11. (klau,) (Entered: 11/23/2011)
11/25/2011	<u>278</u>	Objection to <u>253</u> Exhibit List " <i>Plaintiffs' Supplemental Amended Exhibit List</i> " filed by Mohamed Ali Samantar. (Drennan, Joseph) (Entered: 11/25/2011)
11/26/2011	<u>279</u>	CERTIFICATE of Service re <u>270</u> MOTION for Summary Judgment, <u>271</u> Memorandum in Support, Brief in Support, <u>272</u> NOTICE by Joseph Peter

		Drennan on behalf of Mohamed Ali Samantar (Drennan, Joseph) (Entered: 11/26/2011)
11/26/2011	280	Notice of Hearing Date set for 12/22/2011 re <u>270</u> MOTION for Summary Judgment (Drennan, Joseph) (Entered: 11/26/2011)
11/28/2011		Set Deadlines as to <u>270</u> MOTION for Summary Judgment. Motion Hearing set for 12/22/2011 at 10:00 AM in Alexandria Courtroom 600 before District Judge Leonie M. Brinkema. (clar,) (Entered: 11/28/2011)
12/09/2011	<u>281</u>	MOTION for Extension of Time to File Oppositions to PLaintiffs' Motions and for Continuance of Motions Hearing, et alia by Mohamed Ali Samantar. (Attachments: # <u>1</u> Exhibit "A" (Alderson Reporting Company Statement of Account))(Drennan, Joseph) (Entered: 12/09/2011)
12/09/2011	<u>282</u>	Notice of Hearing Date re <u>281</u> MOTION for Extension of Time to File Oppositions to PLaintiffs' Motions and for Continuance of Motions Hearing, et alia (Drennan, Joseph) (Entered: 12/09/2011)
12/09/2011	<u>283</u>	Memorandum in Opposition re <u>270</u> MOTION for Summary Judgment filed by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P, # <u>17</u> Exhibit Q, # <u>18</u> Exhibit R, # <u>19</u> Exhibit S)(Decker, Joseph) (Entered: 12/09/2011)
12/09/2011	<u>284</u>	NOTICE by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf re <u>283</u> Memorandum in Opposition, additional exhibits (Attachments: # <u>1</u> Exhibit T, # <u>2</u> Exhibit U, # <u>3</u> Exhibit V, # <u>4</u> Exhibit W, # <u>5</u> Exhibit X)(Decker, Joseph) (Entered: 12/09/2011)
12/09/2011	<u>285</u>	Memorandum in Support re <u>281</u> MOTION for Extension of Time to File Oppositions to PLaintiffs' Motions and for Continuance of Motions Hearing, et alia filed by Mohamed Ali Samantar. (Drennan, Joseph) (Entered: 12/09/2011)
12/12/2011		Set Deadlines as to <u>281</u> MOTION for Extension of Time to File Oppositions to PLaintiffs' Motions and for Continuance of Motions Hearing, et alia. Motion Hearing set for 12/16/2011 at 10:00 AM in Alexandria Courtroom 600 before District Judge Leonie M. Brinkema. (clar,) (Entered: 12/12/2011)
12/12/2011	<u>286</u>	Memorandum in Opposition re <u>281</u> MOTION for Extension of Time to File Oppositions to PLaintiffs' Motions and for Continuance of Motions Hearing, et alia filed by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F)(Decker, Joseph) (Entered: 12/12/2011)
12/13/2011		Per LMB Chambers an order is to enter as to the motion set for 12/16/2011. (stas) (Entered: 12/13/2011)
12/13/2011	<u>287</u>	ORDER the <u>281</u> Motion for Extension of Time is GRANTED to the extent that it is hereby ORDERED that defendant file any opposition to the motions in limine and supply deposition designations/counter-designations no later

		<p>than Thursday, December 29, 2011, and that plaintiffs file any reply in support of their motions in limine no later than Monday, January 9, 2012. In light of his request for additional time, defense counsel requested a continuance of the hearing presently scheduled for Thursday, December 22, 2011. This request is GRANTED to the extent that the hearing on the motions in limine will be continued to Friday, January 13, 2012 ---- The Clerk is directed to add to the docket for January 13, 2012 a hearing on the motions in limine (see order for details).. Signed by District Judge Leonie M. Brinkema on 12/13/2011. (klau,) (Entered: 12/13/2011)</p>
12/13/2011		<p>Reset Deadlines as to <u>255</u> MOTION in Limine to Exclude Non-Disclosed Witnesses, <u>267</u> MOTION in Limine to preclude evidence or testimony re the political situation in Somalia or alleged impact of this litigation, <u>265</u> MOTION in Limine to exclude evidence or argument re Doe Plaintiffs' passports or entry into US, <u>259</u> MOTION in Limine to exclude Rucellai, <u>263</u> MOTION in Limine to exclude Evidence re Dirie conviction, <u>261</u> MOTION in Limine to exclude Samad & Weinstein Declarations, <u>269</u> MOTION in Limine limiting evidence, testimony and argument on assorted matters, <u>257</u> MOTION in Limine to Exclude Short and Rawson. Motion Hearing set for 1/13/2012 at 10:00 AM in Alexandria Courtroom 600 before District Judge Leonie M. Brinkema. (klau,) (Entered: 12/13/2011)</p>
12/16/2011	<u>288</u>	<p>Reply to Plaintiffs' Opposition to re 270 MOTION for Summary Judgment filed by Mohamed Ali Samantar. (Drennan, Joseph) Modified text on 12/19/2011 (klau,). (Entered: 12/16/2011)</p>
12/22/2011	<u>289</u>	<p>Minute Entry for proceedings held before District Judge Leonie M. Brinkema: Motion Hearing held on 12/22/2011. Appearance of counsel. Defts' <u>270</u> MOTION for Summary Judgment was argued and DENIED. Pltfs' motions in limine were argued & GRANTED and GRANTED IN PART and DENIED IN PART. (Order to follow) (Court Reporter Thomson.) (yguy) (Entered: 12/22/2011)</p>
12/22/2011	<u>290</u>	<p>ORDER: For the reasons stated in open court, the defendant's Motion for Summary Judgment [Dkt. No. 270] is DENIED, and the Court declines to issue judgment in favor of the plaintiffs on equitable tolling pursuant to Fed. R. Civ. P. 56(f). The plaintiff's Motions in Limine to Exclude... Expert Testimony of Cosimo Rucellai [Dkt. No. 259], Preclude Evidence or Argument Regarding the Criminal Convictions of Mohammed Ali Dirie [Dkt. No. 263], and Preclude Evidence or Argument Regarding the Passports of the John Doe Plaintiffs or Plaintiffs' Entry into the United States... [Dkt. No. 265] are GRANTED. The plaintiff's Motion in Limine to Preclude any Documents or Testimony Regarding the Political Situation in Somalia or the Alleged Political Impact of This Litigation [Dkt. No. 267] is GRANTED IN PART AND DENIED IN PART. The plaintiff's Motions in Limine to Exclude Undisclosed Witnesses [Dkt. No. 255], Exclude the Opinions and Testimony of... David P. Rawson & Albert Short [Dkt. No. 257] are DENIED while the plaintiff's Omnibus Motion in Limine [Dkt. No. 269] and Motion in Limine to Exclude Weinstein and Samad Declarations [Dkt. No. 261] are DENIED AS MOOT. In preparation for trial, it is hereby ORDERED that the parties must meet in person or by telephone to confer and submit a set of joint</p>

		jury instructions along with any set of disputed jury instructions in Microsoft Word by Thursday, February 16, 2011. The parties must similarly meet and confer before filing any other pre-trial motions in limine. All future motions in limine and jury instructions submissions must contain certification that this meet and confer requirement has been satisfied. Signed by District Judge Leonie M. Brinkema on 12/22/11. (yguy) (Entered: 12/22/2011)
01/03/2012	<u>291</u>	Second MOTION for Extension of Time to Make Deposition Designations/Counter-Designations by Mohamed Ali Samantar. (Attachments: # <u>1</u> Proposed Order)(Drennan, Joseph) (Entered: 01/03/2012)
01/03/2012	<u>292</u>	Memorandum in Support re <u>291</u> Second MOTION for Extension of Time to Make Deposition Designations/Counter-Designations filed by Mohamed Ali Samantar. (Drennan, Joseph) (Entered: 01/03/2012)
01/04/2012		Notice of Correction re <u>291</u> Second MOTION for Extension of Time to Make Deposition Designations/Counter-Designations, The filing user has been notified to file a Notice of Hearing Date or a Notice of Waiver of Oral Argument (klau,) (Entered: 01/04/2012)
01/04/2012	<u>293</u>	Response Consenting to <u>291</u> Second MOTION for Extension of Time to Make Deposition Designations/Counter-Designations filed by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Whitehead, Joseph) Modified text on 1/5/2012 (klau,). (Entered: 01/04/2012)
01/04/2012	<u>294</u>	ORDER granting <u>291</u> Motion for Extension of Time to Make Deposition Designations/Counter-Designations. No further extension will be permitted. Signed by District Judge Leonie M. Brinkema on 1/4/2012. (klau,) (Entered: 01/04/2012)
01/06/2012	<u>295</u>	NOTICE/Defendant Samantar's Designation of Deposition Excerpts to be Read or Played (on Video) at Trial by Mohamed Ali Samantar (Drennan, Joseph) Modified text on 1/9/2012 (klau,). (Entered: 01/06/2012)
01/10/2012		Per LMB chambers motions set for 1/13/12 resolved per order dated 12/22/12 (document # <u>290</u>) (clar,) Modified txe on 1/12/2012 (clar,). (Entered: 01/10/2012)
01/12/2012	<u>296</u>	MOTION Leave to Take Deposition to Preserve Trial Testimony by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Whitehead, Joseph) (Entered: 01/12/2012)
01/12/2012	<u>297</u>	Memorandum in Support re <u>296</u> MOTION Leave to Take Deposition to Preserve Trial Testimony filed by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Proposed Order)(Whitehead, Joseph) (Entered: 01/12/2012)
01/12/2012	<u>298</u>	Notice of Hearing Date set for February 3, 2012 re <u>296</u> MOTION Leave to Take Deposition to Preserve Trial Testimony (Whitehead, Joseph) (Entered: 01/12/2012)
01/13/2012		Set Deadlines as to <u>296</u> MOTION Leave to Take Deposition to Preserve Trial Testimony. Motion Hearing set for 2/3/2012 at 10:00 AM in Alexandria Courtroom 600 before District Judge Leonie M. Brinkema. (clar,) (Entered: 01/13/2012)

		01/13/2012)
01/13/2012	<u>299</u>	So Ordered re <u>296</u> Consent MOTION Leave to Depose Witness for the Purpose of Preserving Trial Testimony filed by Aziz Deria, Bashe Abdi Yousuf, John Doe 2, John Doe 1. Signed by District Judge Leonie M. Brinkema on 1/13/2012. (klau,) (Entered: 01/13/2012)
01/17/2012	<u>300</u>	Supplemental Pre-Trial Disclosure by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Whitehead, Joseph) Modified text on 1/18/2012 (klau,). (Entered: 01/17/2012)
01/25/2012	<u>301</u>	TRANSCRIPT of proceedings for date of 12/22/2011, before Judge Brinkema, Court Reporter Anneliese Thomson, Telephone number 703-299-8595. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have thirty(30) 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 will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 2/24/2012. Redacted Transcript Deadline set for 3/26/2012. Release of Transcript Restriction set for 4/24/2012.(thomson, anneliese) (Entered: 01/25/2012)
01/31/2012	<u>302</u>	Consent MOTION to Amend/Correct <i>Case Caption</i> by Aziz Deria, John Doe 1, John Doe 2, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Proposed Order)(Whitehead, Joseph) (Entered: 01/31/2012)
02/01/2012	<u>304</u>	ORDER that Plaintiffs' <u>302</u> Consent Motion to Amend Case Caption be and is GRANTED. Signed by District Judge Leonie M. Brinkema on 2/1/2012. (see also Dkt.#303 Second Amended Complaint dated 3/9/2007) (klau,) (Entered: 02/03/2012)
02/04/2012	<u>305</u>	TRANSCRIPT of proceedings for date of 10/14/2011, before Judge Anderson, Transcriber Anneliese Thomson, Telephone number 703-299-8595. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have thirty(30) 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 will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 3/5/2012. Redacted Transcript Deadline set for 4/5/2012. Release of Transcript Restriction set for 5/4/2012.(thomson, anneliese) (Entered: 02/04/2012)
02/04/2012	<u>306</u>	TRANSCRIPT of proceedings for date of 10/20/2011, before Judge Brinkema, Court Reporter Anneliese Thomson, Telephone number 703-299-8595. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have thirty(30) 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 will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 3/5/2012. Redacted Transcript Deadline set for 4/5/2012. Release of Transcript Restriction set for 5/4/2012.(thomson, anneliese) (Entered: 02/04/2012)
02/08/2012	307	Emergency MOTION to Take Deposition from Elizabeth Ohene <i>for the Purpose of Preserving Trial Testimony</i> by Aziz Deria, Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Proposed Order Proposed Order)(Whitehead, Joseph) (Entered: 02/08/2012)
02/08/2012	308	Memorandum in Support re <u>307</u> Emergency MOTION to Take Deposition from Elizabeth Ohene <i>for the Purpose of Preserving Trial Testimony</i> filed by Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Exhibit Exhibit 1)(Whitehead, Joseph) (Entered: 02/08/2012)
02/08/2012	<u>309</u>	Notice of Hearing Date set for February 10, 2012 re <u>307</u> Emergency MOTION to Take Deposition from Elizabeth Ohene <i>for the Purpose of Preserving Trial Testimony</i> (Whitehead, Joseph) (Entered: 02/08/2012)
02/09/2012	<u>310</u>	Motion to appear Pro Hac Vice by Debra A. Drake and Certification of Local Counsel Joseph W. Whitehead Filing fee \$ 75, receipt number 0422-2900595. Filed by Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf. (Whitehead, Joseph) Modified on 2/10/2012 to correct party filer (klau,). (Entered: 02/09/2012)
02/09/2012		Set Deadlines as to <u>307</u> Emergency MOTION to Take Deposition from Elizabeth Ohene <i>for the Purpose of Preserving Trial Testimony</i> . Motion Hearing set for 2/10/2012 at 10:00 AM in Alexandria Courtroom 600 before District Judge Leonie M. Brinkema. (clar,) (Entered: 02/09/2012)
02/09/2012	<u>311</u>	MOTION to Stay by Mohamed Ali Samantar. (Drennan, Joseph) (Entered: 02/09/2012)
02/09/2012	312	Memorandum in Support re <u>311</u> MOTION to Stay filed by Mohamed Ali Samantar. (Attachments: # <u>1</u> Exhibit B)(Drennan, Joseph) (Entered: 02/09/2012)
02/09/2012	<u>313</u>	NOTICE of Filing of Exhibit by Mohamed Ali Samantar re 312 Memorandum in Support (Attachments: # <u>1</u> Exhibit A)(Drennan, Joseph) Modified text on 2/10/2012 (klau,). (Entered: 02/09/2012)
02/09/2012	<u>314</u>	ORDER that the plaintiffs' <u>307</u> Emergency Motion to Take Deposition from Elizabeth Ohene for the Purpose of Preserving Trial Testimony is GRANTED. ORDERED that the parties coordinate a mutually convenient date and time to take the witness' desposition. ORDERED that the defendant's Renewed Motion to Stay [Dkt. No. 311] will be heard by the Court on

		Tuesday, February 14, 2012 at 10 a.m. ---- The Clerk is directed to remove from the docket the hearing on plaintiffs' motion [Dkt. No. 307] currently scheduled for Friday, February 10, 2012, and to add to the docket a hearing on defendant's Renewed Motion to Stay [Dkt. No. 311] on Tuesday, February 14, 2012 (see order for details). Signed by District Judge Leonie M. Brinkema on 2/9/2012. (klau,) (Entered: 02/09/2012)
02/09/2012		Set/Reset Deadlines as to <u>311</u> MOTION to Stay. Motion Hearing set for 2/14/2012 at 10:00 AM before District Judge Leonie M. Brinkema. (klau,) (Entered: 02/09/2012)
02/10/2012		Notice of Correction re <u>310</u> Motion to appear Pro Hac Vice by Debra A. Drake, The text has been modified to reflect the correct party/filer of the document. (klau,) (Entered: 02/10/2012)
02/10/2012	<u>315</u>	ORDER granting <u>310</u> Motion for Pro hac vice. Signed by District Judge Leonie M. Brinkema on 2/10/2012. (klau,) (Entered: 02/10/2012)
02/10/2012	<u>316</u>	MOTION for sanctions <i>re Terminating Sanctions</i> by Mohamed Ali Samantar. (Drennan, Joseph) Modified text on 2/13/2012 (clar,). (Entered: 02/10/2012)
02/10/2012	<u>317</u>	Memorandum in Support re <u>316</u> MOTION to Dismiss <i>re Terminating Sanctions</i> filed by Mohamed Ali Samantar. (Attachments: # <u>1</u> Exhibit "A") (Drennan, Joseph) (Entered: 02/10/2012)
02/10/2012	<u>318</u>	Notice of Hearing Date set for 02/17/2012 re <u>316</u> MOTION to Dismiss <i>re Terminating Sanctions</i> (Drennan, Joseph) (Entered: 02/10/2012)
02/11/2012	<u>319</u>	NOTICE of Errata by Mohamed Ali Samantar re <u>311</u> MOTION to Stay, <u>317</u> Memorandum in Support, <u>312</u> Memorandum in Support, <u>318</u> Notice of Hearing Date (Drennan, Joseph) Modified text on 2/13/2012 (klau,). (Entered: 02/11/2012)
02/11/2012	<u>320</u>	Amended Pretrial Disclosures (Exhibits and Witness Lists) (by Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf. (Whitehead, Joseph) Modified text on 2/13/2012 (klau,). (Entered: 02/11/2012)
02/13/2012		Notice of Correction re <u>316</u> MOTION to Dismiss <i>re Terminating Sanctions</i> . The filing user selected the wrong event. (Motion to Dismiss) was selected, and (Motion for Sanctions) should have been selected. The docket has been corrected. (clar,) (Entered: 02/13/2012)
02/13/2012		Set Deadlines as to <u>316</u> MOTION for Sanctions. Motion Hearing set for 2/17/2012 at 10:00 AM in Alexandria Courtroom 600 before District Judge Leonie M. Brinkema. (clar,) (Entered: 02/13/2012)
02/13/2012		Notice of Correction re <u>320</u> Rule 26 Disclosure, The filing user selected the wrong event. Rule 26 Disclosure was selected, and Pretrial Statement should have been selected. The docket has been corrected. (klau,) (Entered: 02/13/2012)
02/13/2012	<u>321</u>	Memorandum in Support of Plaintiffs' Opposition to <i>Defendant's Renewed Motion to Stay</i> filed by Aziz Deria, Aziz Mohamed Deria, Ahmed Jama

		Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Exhibit A)(Whitehead, Joseph) Modified text on 2/14/2012 (klau,). (Entered: 02/13/2012)
02/14/2012	<u>322</u>	MOTION in Limine to Preclude Admission of Defendant's Trial Exhibits M, Y and U, V and W by Aziz Deria, Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Proposed Order)(Whitehead, Joseph) Modified text on 2/15/2012 (klau,). (Entered: 02/14/2012)
02/14/2012	<u>323</u>	Memorandum in Support re <u>322</u> MOTION in Limine to Preclude Admission of Defendant's Trial Exhibits filed by Aziz Deria, Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Whitehead, Joseph) (Entered: 02/14/2012)
02/14/2012	<u>324</u>	UNOPPOSED MOTION to Exclude Certain of Defendant's Trial Exhibits by Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Proposed Order)(Whitehead, Joseph) Modified text on 2/15/2012 (klau,). (Entered: 02/14/2012)
02/14/2012	<u>325</u>	Minute Entry for proceedings held before District Judge Leonie M. Brinkema: Motion Hearing held on 2/14/2012. Appearance of counsel. Deft's <u>311</u> MOTION to Stay was argued and DENIED. (Order to follow) (Court Reporter Thomson.) (yguy) (Entered: 02/14/2012)
02/14/2012	<u>326</u>	For the reasons stated in open court, it is hereby ORDERED that the defendant's Renewed Motion to Stay [Dkt. No. 311] be and is DENIED, and the jury trial will begin, as scheduled, with voir dire starting Tuesday, February 21, 2012 at 10:00 a.m.Signed by District Judge Leonie M. Brinkema on 2/14/12. (yguy) (Entered: 02/14/2012)
02/14/2012	<u>327</u>	STIPULATION Regarding Deposition of Elizabeth Ohene by Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf. (Whitehead, Joseph) (Entered: 02/14/2012)
02/14/2012	<u>328</u>	CERTIFICATE of Service of Plaintiffs' Subpoenas by Joseph William Whitehead on behalf of Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf (Attachments: # <u>1</u> Affidavit) (Whitehead, Joseph) (Entered: 02/14/2012)
02/15/2012	<u>329</u>	TRANSCRIPT of proceedings for date of 2/14/2012, before Judge Brinkema, Court Reporter Anneliese Thomson, Telephone number 703-299-8595. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have thirty (30) 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 will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 3/16/2012. Redacted Transcript Deadline set for 4/16/2012. Release of Transcript Restriction set for

		5/15/2012.(thomson, anneliese) (Entered: 02/15/2012)
02/15/2012		Notice of Correction re <u>322</u> MOTION in Limine to <i>Preclude Admission of Defendant's Trial Exhibits</i> , The filing user has been notified to file a Notice of Hearing Date or a Notice of Waiver of Oral Argument. (klau,) (Entered: 02/15/2012)
02/15/2012	<u>330</u>	Opposition to <i>Defendant's 316 Motion for Terminating Sanctions</i> filed by Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Whitehead, Joseph) Modified on 2/16/2012 to link document to motion (klau,). (Entered: 02/15/2012)
02/15/2012	<u>331</u>	JOINT STIPULATION of <i>Authenticity of Documents</i> by Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf, Mohamed Ali Smantar. (Whitehead, Joseph) Modified on 2/16/2012 to all relevant party filer (klau,). (Entered: 02/15/2012)
02/16/2012	<u>332</u>	NOTICE by Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf re <u>330</u> Opposition, <i>Correction</i> (Whitehead, Joseph) (Entered: 02/16/2012)
02/16/2012	<u>333</u>	Request for Hearing by Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf re <u>322</u> MOTION in Limine to <i>Preclude Admission of Defendant's Trial Exhibits</i> (Whitehead, Joseph) (Entered: 02/16/2012)
02/16/2012		Notice of Correction re <u>331</u> Stipulation, The text has been modified to reflect all relevant party/filer of the document. (klau,) (Entered: 02/16/2012)
02/16/2012	<u>334</u>	MOTION to Bring Laptop Computer to Courtroom for Exhibit Presentation by Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Proposed Order)(Whitehead, Joseph) (Entered: 02/16/2012)
02/16/2012	<u>335</u>	<i>Agreed Upon Jury Instructions</i> by Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf. (Whitehead, Joseph) Modified text on 2/17/2012 (klau,). (Entered: 02/16/2012)
02/16/2012	<u>336</u>	<i>Disputed Jury Instructions</i> by Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf. (Whitehead, Joseph) Modified text on 2/17/2012 (klau,). (Entered: 02/16/2012)
02/16/2012	<u>337</u>	Notice/Proposed Verdict Form by Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf. (Whitehead, Joseph) Modified text on 2/17/2012 (klau,). (Entered: 02/16/2012)
02/16/2012	<u>338</u>	Proposed Voir Dire by Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf. (Whitehead, Joseph) (Entered: 02/16/2012)
02/17/2012	<u>339</u>	NOTICE by Mohamed Ali Samantar (<i>Defendant's Revised Deposition Designations</i>) (Drennan, Joseph) (Entered: 02/17/2012)

02/17/2012		Notice of Correction re <u>337</u> Proposed Findings of Fact, The filing user selected the wrong event. Proposed Findings of Fact was selected, and Notice (other) should have been selected. The docket has been corrected. (klau,) (Entered: 02/17/2012)
02/17/2012	<u>340</u>	Minute Entry for proceedings held before District Judge Leonie M. Brinkema: Motion Hearing held on 2/17/2012. Appearance of counsel. Deft's <u>316</u> MOTION for Sanctions is argued and DENIED. (Order to follow) (Court Reporter Thomson.) (yguy) (Entered: 02/17/2012)
02/17/2012	<u>341</u>	ORDER: Upon due consideration of Plaintiffs' Unopposed Motion to Exclude Certain of Defendant's Trial Exhibits, it is hereby ORDERED that: Defendant is precluded from offering Exhibits D, E, L, EE, FF, GG, HH, II, JJ, KK, LL and MM at trial in this matter. Defendant may use these documents for impeachment purposes only; and Defendant's Exhibits B, F, G, H, I, J, K, N, O, Q, R, T and Z are excluded from trial. IT IS SO ORDERED. Signed by District Judge Leonie M. Brinkema on 2/17/12. (yguy) (Entered: 02/17/2012)
02/17/2012	<u>342</u>	ORDER: Upon due consideration of Plaintiffs' To Motion Bring Laptop Computer To Courtroom For Exhibit Presentation, it is hereby ORDERED that Joseph W. Whitehead or James Moore may bring one laptop computer and one small table into the courtroom to display trial exhibits for the duration of trial, which will begin February 21, 2012. Signed by District Judge Leonie M. Brinkema on 2/17/12. (yguy) (Entered: 02/17/2012)
02/17/2012	<u>343</u>	ORDER re <u>322</u> MOTION in Limine to Preclude Admission of Defendant's Trial Exhibits M, Y and U, V and W filed by Aziz Deria, Bashe Abdi Yousuf, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Aziz Mohamed Deria, ORDERED that Exhibit Y is inadmissible, and Defendant is precluded from offering if for admission at trail; and it is further ORDERED that Exhibits U, V and Y are inadmissible, and Defendant is precluded from offering them for admission at trial. Signed by District Judge Leonie M. Brinkema on 2/17/12. (klau,) (Entered: 02/17/2012)
02/17/2012		Trial Exhibits received (1 original and 2 copies in 6 black binders) by Plaintiffs. (klau,) (Entered: 02/17/2012)
02/17/2012	<u>344</u>	ORDER: For the reasons stated in open court, it is hereby ORDERED that the defendant's Motion for Terminating Sanctions [Dkt. No. 316] be and is DENIED. Signed by District Judge Leonie M. Brinkema on 2/17/12. (yguy) (Entered: 02/17/2012)
02/17/2012	<u>345</u>	ORDER of USCA as to 160 Notice of Appeal, filed by Mohamed Ali Samantar. Upon review of submissions relative to the motion for stay pending appeal, the court denies the motion. (rban,) (Entered: 02/17/2012)
02/19/2012	<u>346</u>	Rule 26 Disclosure/ Supplemental Pretrial Disclosures by Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf. (Whitehead, Joseph) Modified text on 2/21/2012 (klau,). (Entered: 02/19/2012)
02/19/2012	<u>347</u>	SUGGESTION OF BANKRUPTCY Upon the Record by Mohamed Ali Samantar. (Drennan, Joseph) (Entered: 02/19/2012)

02/21/2012		Notice of Correction re 347 Suggestion of Bankruptcy, The signature block on the document does not match the filing users login. The filing user has been notified and has been asked to either refile the document or to have the attorney whose signature block appears on the document file a Notice of Appearance. (klau,) (Entered: 02/21/2012)
02/21/2012	<u>348</u>	Minute Entry for proceedings held before District Judge Leonie M. Brinkema: Docket Call held on 2/21/2012. Matter came on the docket for a trial by jury. Appearance of counsel. Court informs counsel that case is stayed pending the outcome of the bankruptcy hearing scheduled to be heard later today. (Order to follow) (Court Reporter Thomson.) (yguy) (Entered: 02/21/2012)
02/21/2012	<u>349</u>	ORDER: It appearing that the defendant has filed for bankruptcy protection under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Virginia, case number 12-11085 (BFK), it is hereby ORDERED that the jury trial scheduled to begin today be andis stayed until further order of the Court. Should the plaintiffs' Emergency Motion for Relief from the Automatic Stay be granted, the trial will be rescheduled to start as soon as possible. Signed by District Judge Leonie M. Brinkema on 2/21/12. (yguy) Modified on 2/21/2012 VACATED per Order dated 2/21/12 (klau,). (Entered: 02/21/2012)
02/21/2012	<u>350</u>	TRANSCRIPT of proceedings for date of 2/21/2012, before Judge Brinkema, Court Reporter Anneliese Thomson, Telephone number 703-299-8595. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have thirty (30) 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 will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 3/22/2012. Redacted Transcript Deadline set for 4/23/2012. Release of Transcript Restriction set for 5/21/2012. (thomson, anneliese) (Entered: 02/21/2012)
02/21/2012	<u>351</u>	ORDER that the Order of February 21, 2012, which stayed this civil action, be and is VACATED, and it is further ORDERED that the jury trial will begin on Thursday, February 23, 2012 at 10:00 a.m.. Signed by District Judge Leonie M. Brinkema on 2/21/12. (klau,) (Entered: 02/21/2012)
02/21/2012		Reset Hearings: Jury Trial set for 2/23/2012 at 10:00 AM in Alexandria Courtroom 500 before District Judge Leonie M. Brinkema. (klau,) (Entered: 02/21/2012)
02/22/2012	<u>352</u>	TRANSCRIPT of proceedings for date of 2/17/2012, before Judge Brinkema, Court Reporter Anneliese Thomson, Telephone number 703-299-8595. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have thirty (30) 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 will be made remotely electronically available to the public without redaction

		<p>after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 3/23/2012. Redacted Transcript Deadline set for 4/23/2012. Release of Transcript Restriction set for 5/22/2012.(thomson, anneliese) (Entered: 02/22/2012)</p>
02/23/2012	<u>353</u>	<p>Minute Entry for proceedings held before District Judge Leonie M. Brinkema: Docket Call held on 2/23/2012. This matter came on for Trial by Jury. Appearances of counsel & parties. Jurors appeared as summoned. Out of the presence of the jurors, deft informed the court he does not contest the lawsuit & will accept a default judgment. He does not contest liability or damages. Deft is affirmed. Somali intp: Abdurahman Khasse is affirmed. Court questions deft & accepts deft's decision. Court finds deft liable. Jury trial is cancelled & jurors excused. Pltf's request for jury trial regarding damages is Denied. Court will not impose jury costs to deft. Evidentiary Hearing scheduled for 2/23/2012 at 12:00 PM in Alexandria Courtroom 600 before District Judge Leonie M. Brinkema. (Court Reporter Thomson.) (yguy) (Entered: 02/24/2012)</p>
02/23/2012	<u>354</u>	<p>Minute Entry for proceedings held before District Judge Leonie M. Brinkema: Evidentiary Hearing held on 2/23/2012. Appearance of pltf counsel & parties. Pltf adduced evidence. Matter continued to 2/24/12 at 11:30am. Evidentiary Hearing (Day 2)set for 2/24/2012 at 11:30 AM in Alexandria Courtroom 600 before District Judge Leonie M. Brinkema. (Court Reporter Thomson.) (yguy) (Entered: 02/24/2012)</p>
02/24/2012	<u>355</u>	<p>TRANSCRIPT of proceedings for date of 2/23/2012, before Judge Brinkema, Court Reporter Anneliese Thomson, Telephone number 703-299-8595. NOTICE RE REDACTION OF TRANCRIPTS: The parties have thirty (30) 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 will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 3/26/2012. Redacted Transcript Deadline set for 4/25/2012. Release of Transcript Restriction set for 5/24/2012.(thomson, anneliese) (Entered: 02/24/2012)</p>
02/24/2012	<u>356</u>	<p>Minute Entry for proceedings held before District Judge Leonie M. Brinkema: Evidentiary Hearing held on 2/24/2012. Appearances as previous. Pltf continued to adduce evidence & rests. Closing argument. Hearing is TAKEN UNDER ADVISEMENT. (Court Reporter Thomson.) (Attachments: # <u>1</u> Certificate of Review, # <u>2</u> Pltf Exhibit List, # <u>3</u> Pltf Witness List) (yguy) (Entered: 02/27/2012)</p>
02/27/2012		<p>Exhibits in custody of the Records Clerk/Clerk's Office: Pltf's exhibits: 2 Large Black Binders. (yguy) (Entered: 02/27/2012)</p>

03/07/2012	<u>357</u>	TRANSCRIPT (Vol. 1) of proceedings for date of 2/23/2012, before Judge Brinkema, Court Reporter Anneliese Thomson, Telephone number 703-299-8595. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have thirty(30) 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 will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 4/6/2012. Redacted Transcript Deadline set for 5/7/2012. Release of Transcript Restriction set for 6/5/2012. (thomson, anneliese) (Entered: 03/07/2012)
03/07/2012	<u>358</u>	TRANSCRIPT (Vol. 2) of proceedings for date of 2/24/2012, before Judge Brinkema, Court Reporter Anneliese Thomson, Telephone number 703-299-8595. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have thirty(30) 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 will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 4/6/2012. Redacted Transcript Deadline set for 5/7/2012. Release of Transcript Restriction set for 6/5/2012. (thomson, anneliese) (Entered: 03/07/2012)
04/09/2012	<u>359</u>	MOTION for Sanctions by Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf. (Whitehead, Joseph) (Entered: 04/09/2012)
04/09/2012	<u>360</u>	Memorandum in Support re <u>359</u> MOTION for Sanctions filed by Aziz Mohamed Deria, Ahmed Jama Gulaid, Buralle Salah Mohamoud, Bashe Abdi Yousuf. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Proposed Order)(Whitehead, Joseph) (Entered: 04/09/2012)
04/09/2012	<u>361</u>	Notice of Hearing Date <i>re Motion for Sanctions</i> set for April 20, 2012 re <u>359</u> MOTION for Sanctions (Whitehead, Joseph) (Entered: 04/09/2012)
04/10/2012		Set Deadlines as to <u>359</u> MOTION for Sanctions. Motion Hearing set for 4/20/2012 at 10:00 AM in Alexandria Courtroom 600 before District Judge Leonie M. Brinkema. (clar,) (Entered: 04/10/2012)
04/18/2012	<u>362</u>	Opposition to <u>359</u> MOTION for Sanctions filed by Mohamed Ali Samantar. (Attachments: # <u>1</u> Exhibit Bankruptcy court order, # <u>2</u> Exhibit Debtors Sanctions Motion)(Moffitt, Christopher) (Entered: 04/18/2012)
04/19/2012		Notice of Correction re <u>362</u> Opposition, The signature block on the document does not match the counsel of record. The filing user has been notified to file a Notice of Appearance on behalf of the defendant. (klau,) (Entered: 04/19/2012)

		04/19/2012)
04/20/2012	<u>363</u>	Verified Opposition to <u>359</u> MOTION for Sanctions filed by Mohamed Ali Samantar. (Attachments: # <u>1</u> Exhibit "1" Declaration of Trusten Frank Crigler, # <u>2</u> Exhibit "2" Declaration of Osob Samantar, # <u>3</u> Exhibit "3" Declaration of Ayanle Samantar, # <u>4</u> Exhibit "4" Declaration of Ahmed Mohamed Ahmed, # <u>5</u> Exhibit "5" Declaration of Anab Ganad, # <u>6</u> Exhibit "6" Declaration of Warsan Halene, # <u>7</u> Exhibit "7" Declaration of Barre Hussen)(Drennan, Joseph) Modified text on 4/23/2012 (klau,). (Entered: 04/20/2012)
04/20/2012	<u>364</u>	Minute Entry for proceedings held before District Judge Leonie M. Brinkema: Motion Hearing held on 4/20/2012. Appearance of counsel. Pltfs' <u>359</u> MOTION for Sanctions was argued and DENIED. (Order to follow) (Court Reporter Thomson.) (yguy) (Entered: 04/20/2012)
04/20/2012	<u>365</u>	ORDER: For the reasons stated in open court, it is hereby ORDERED that plaintiffs' Motion for Sanctions [Dkt. No. 359] be and is DENIED.Signed by District Judge Leonie M. Brinkema on 04/20/12. (yguy) (Entered: 04/20/2012)
08/28/2012	<u>366</u>	MEMORANDUM OPINION: For the above-stated reasons, a total judgment of \$21 million, consisting of \$1 million in compensatory damages and \$2 million in punitive damages for the three individual plaintiffs and four represented estates, will be entered against defendant. The execution of the judgment will be stayed pending resolution of defendant's bankruptcy proceedings; however, the time for appeal of the Court's decision runs from the entry of the Order accompanying this Memorandum Opinion.Signed by District Judge Leonie M. Brinkema on 8/28/12. (yguy) (Entered: 08/28/2012)
08/28/2012	<u>367</u>	ORDER: For the reasons stated in the accompanying Memorandum Opinion, it is hereby ORDERED that a judgment of \$21 million, consisting of \$1 million in compensatory damages and \$2 million in punitive damages to individual plaintiffs Bashe Abdi Yousuf, Buralle Salah Mohamoud, and Ahmed Jama Gulaid, and to the estates of Mohamed Deria Ali, Mustafa Mohamed Deria, Abdullah Salah Mahamoud, and Cawil Salah Mahamoud, be and is awarded to the plaintiffs against the defendant, Mohamed Ali Samantar; and it is further ORDERED that execution of this judgment be and is STAYED until the defendant's bankruptcy proceedings are resolved and the stay, issued as a result of the defendant's Chapter 7 petition, has been lifted. Signed by District Judge Leonie M. Brinkema on 8/28/12. (yguy) (Entered: 08/28/2012)
08/28/2012	<u>368</u>	DEFAULT JUDGMENT against Mohamed Ali Samantar.Signed by District Judge Leonie M. Brinkema on 8/28/12. (yguy) (Entered: 08/28/2012)
08/30/2012		Pltf's Exhibits in custody of the Records Clerk - 2 large black binders & 1 green accordian file folder. (yguy) (Entered: 08/30/2012)
09/24/2012	<u>369</u>	NOTICE OF APPEAL as to <u>367</u> Order,,, <u>368</u> Default Judgment by Mohamed Ali Samantar. Filing fee \$ 455, receipt number 0422-3216543. (Attachments: # <u>1</u> Exhibit "A" (File-stamped copy of 28 August 2012 Order (Doc. 367)), # <u>2</u> Exhibit "B" (File-stamped copy of 28 August 2012 Default Judgment Order

		(Doc. 368)))(Drennan, Joseph) (Entered: 09/24/2012)
09/26/2012	370	Transmission of Notice of Appeal to US Court of Appeals re 369 Notice of Appeal, (All case opening forms, plus the transcript guidelines, may be obtained from the Fourth Circuit's website at www.ca4.uscourts.gov) (Paper & Electronic case) (klau,) (Entered: 09/26/2012)
09/27/2012	371	USCA Case Number 12-2178 4th Circui, Case Manager J. Neal for 369 Notice of Appeal, filed by Mohamed Ali Samantar. (gwal,) (Entered: 09/28/2012)
11/02/2012	372	PUBLISHED Opinion of USCA decided 11/2/2012 re 160 Notice of Appeal, Affirmed (klau,) (Entered: 11/05/2012)
11/02/2012	373	USCA JUDGMENT as to 160 Notice of Appeal, filed by Mohamed Ali Samantar, In accordance with the decision of this court, the judgment of the district court is affirmed. This judgment shall take effect upon issuance of this court's mandate in accordance with FRAP 41. (klau,) (Entered: 11/05/2012)
11/26/2012	374	USCA Mandate re 160 Notice of Appeal. The judgment of this court, entered 11/2/2012, takes effect today. This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of FRAP. (rban,) (Entered: 11/26/2012)

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IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

BASHE ABDI YOUSUF,)
) Civil Action No. 1:04 CV 1360 (LMB/BRP)
AZIZ MOHAMED DERIA,)
in his capacity as the personal) **SECOND AMENDED COMPLAINT**
representative of the estate of) **FOR TORTURE; EXTRAJUDICIAL**
Mohamed Deria Ali,) **KILLING; ATTEMPTED**
) **EXTRAJUDICIAL KILLING; CRUEL,**
AZIZ MOHAMED DERIA, in his capacity) **INHUMAN OR DEGRADING**
as the personal representative of the estate) **TREATMENT OR PUNISHMENT;**
of Mustafa Mohamed Deria,) **ARBITRARY DETENTION; CRIMES**
) **AGAINST HUMANITY; AND WAR**
JOHN DOE I,) **CRIMES**
)
AZIZ MOHAMED DERIA, in his capacity) **JURY TRIAL DEMANDED**
as the personal representative of the estate)
of James Doe I (the deceased brother of)
John Doe I),)
)
AZIZ MOHAMED DERIA, in his capacity)
as the personal representative of the estate)
of James Doe II (the deceased brother of)
John Doe I),)
)
JANE DOE,)
)
and JOHN DOE II,)
)
)
Plaintiffs,)
)
v.)
)
MOHAMED ALI SAMANTAR,)
)
)
Defendant.)

For their complaint against the Defendant Mohamed Ali Samantar, Plaintiffs allege as follows:

PRELIMINARY STATEMENT

1. This is a civil action for compensatory and punitive damages for torts in violation of international and domestic law. Plaintiffs institute this action against Defendant Mohamed Ali Samantar (“Samantar”) for his responsibility for the torture of Plaintiff Bashe Abdi Yousuf; for the extrajudicial killing of Decedents Mohamed Deria Ali and Mustafa Mohamed Deria; for the torture, arbitrary detention and cruel, inhuman or degrading treatment of Plaintiff John Doe I; for the extrajudicial killing of Decedents James Doe I and James Doe II, the brothers of Plaintiff John Doe I; for the torture, rape, arbitrary detention and cruel, inhuman or degrading treatment or punishment of Plaintiff Jane Doe; and for the attempted extrajudicial killing, torture, arbitrary detention and cruel, inhuman or degrading treatment or punishment of Plaintiff John Doe II. Plaintiffs also bring claims for crimes against humanity and war crimes based upon those wrongful acts.

2. Plaintiffs allege that Defendant Samantar exercised command responsibility over, conspired with, or aided and abetted members of the Armed Forces of Somalia, or persons or groups acting in coordination with the Armed Forces or under their control, to commit acts of extrajudicial killing, attempted extrajudicial killing, torture, crimes against humanity, war crimes, arbitrary detention, and cruel, inhuman, or degrading treatment or punishment and to cover up those abuses. Accordingly, Plaintiffs assert that Defendant Samantar is liable under domestic and international law for their injuries, pain and suffering.

JURISDICTION AND VENUE

3. Plaintiffs allege that Defendant Samantar is liable for acts of torture, extrajudicial killing and attempted extrajudicial killing as defined by customary international law and the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350, note). Alien plaintiffs further allege that Defendant Samantar is liable for torture,

extrajudicial killing, attempted extrajudicial killing, crimes against humanity, war crimes, cruel, inhuman and degrading treatment or punishment, and arbitrary detention under the Alien Tort Statute, 28 U.S.C. §1350, in that they were in violation of customary international law.

Accordingly, this Court has jurisdiction over this action based on 28 U.S.C. § 1350 (Alien Tort Statute) and 28 U.S.C. § 1331.

4. On information and belief, Defendant Samantar is a citizen of Somalia and resides in Fairfax, Virginia. Therefore venue is proper in the United States District Court for the Eastern District of Virginia pursuant to 28 U.S.C. §§ 1391(b) or (d).

PARTIES
Defendant

5. On information and belief, Defendant Mohamed Ali Samantar is a native and citizen of Somalia and currently resides in Fairfax, Virginia.

6. From about January 1980 to December 1986, Defendant Samantar served as First Vice President and Minister of Defense of the Democratic Republic of Somalia ("Somalia").

7. In or about January 1987, Defendant Samantar was appointed Prime Minister of Somalia, a position he held until approximately September 1990.

Plaintiffs

8. Bashe Abdi Yousuf is a native of Somalia and a naturalized U.S. citizen. He is a member of the Isaaq clan. He brings this action for the torture he suffered at the hands of the Somali Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control.

9. Aziz Mohamed Deria is a native of Somalia and a naturalized U.S. citizen. He is a member of the Isaaq clan. He brings this action in his capacity as personal representative of decedents' estates for the extrajudicial killing of Mohamed Deria Ali (his father) and Mustafa

Mohamed Deria (his brother), during the indiscriminate attack on the city of Hargeisa by the Somali Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control, in or about mid-June 1988. Mohamed Deria Ali and Mustafa Mohamed Deria were citizens and residents of Somalia at the time of their death. Aziz Mohamed Deria also brings this action in his capacity as personal representative of decedents' estates for the extrajudicial killing of James Doe I and James Doe II (the brothers of plaintiff John Doe I), at the hands of the Somali Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control.

10. John Doe I is a native, citizen and resident of Somalia. He is a member of the Isaaq clan. He brings this action for the torture, arbitrary detention and cruel, inhuman, or degrading treatment or punishment he suffered at the hands of the Somali Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control. Plaintiff John Doe I seeks to proceed under a pseudonym because he fears reprisals against himself or his family as a result of his participation in this lawsuit.

11. Jane Doe is a native and citizen of Somalia. She currently resides in the United Kingdom. She is a member of the Isaaq clan. She brings this action for the torture, rape, arbitrary detention and cruel, inhuman or degrading treatment or punishment she suffered at the hands of the Somali Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control. Plaintiff Jane Doe seeks to proceed under a pseudonym because she fears reprisals against herself or her family as a result of her participation in this lawsuit.

12. John Doe II is a native, citizen and resident of Somalia. He is a member of the Isaaq clan. He brings this action for the attempted extrajudicial killing, torture, cruel, inhuman or degrading treatment or punishment, and arbitrary detention that he suffered at the hands of the

Somali Armed Forces, or persons or groups acting in coordination with or under their control, when he survived a mass execution of Isaaq officers and soldiers in the Somali Armed Forces in or about June 1988. Plaintiff John Doe II seeks to proceed under a pseudonym because he fears reprisals against himself or his family as a result of his participation in this lawsuit.

STATEMENT OF FACTS

13. Throughout the 1980s, the Somali Armed Forces committed gross human rights abuses against the civilian population of Somalia, including the widespread and systematic use of torture, rape, arbitrary detention, and mass executions. This deliberate reign of state terror occurred during the period Defendant Samantar served first as Minister of Defense, from about January 1980 to December 1986, and then as Prime Minister, from about January 1987 to about September 1990. These human rights abuses were the hallmark of the military government that came to power in 1969 and brutally ruled Somalia until the government was toppled in 1991.

14. In October 1969, a coup led by Major General Mohamed Siad Barre overthrew the first and only democratic government of the new nation of Somalia. Power was assumed by the Supreme Revolutionary Council (SRC), which consisted primarily of the Army officers who had supported and participated in the coup, including Defendant Samantar. The SRC suspended the existing Constitution, closed the National Assembly, abolished the Supreme Court and declared all political parties illegal. To further strengthen its grip on power, the SRC declared all groups not sponsored by the government, including civic or religious groups, to be illegal.

15. To further strengthen its grip on power, the military leadership systematically favored its own clans and oppressed other clans. Even before Somalia became an independent nation, the clan system served as the fundamental building block of Somali society. Clan affiliation had long attracted great emotional allegiance and had often been the sole avenue to jobs and other scarce resources.

16. The military leadership built upon and exploited the clan system. It appointed members of favored clans to top positions in the Armed Forces, the bureaucracy, and Somali state industries, while it ruthlessly oppressed and targeted other clans, including in particular the Isaaq clan in the Northern regions. The military leadership systematically excluded disfavored clans from positions of power within the government and military and pursued draconian policies intended to weaken them politically and harm them economically. This oppression led some disfavored clans to oppose the military government.

17. Somalia's defeat in the Ogaden War with Ethiopia from 1977 to 1978 significantly weakened support for the military government. As a result, the government took increasingly fierce measures against perceived opponents, including civilians from disfavored clans. Beginning in the early 1980s and escalating over the course of the decade, the Armed Forces committed numerous atrocities against ordinary citizens including businessmen, teachers, high school students, and nomads simply tending their herds. These measures were intended to terrorize the civilian population and to deter it from supporting the growing opposition movements.

18. The National Security Service ("NSS"), the Red Berets and the military police known as Hangash were the government's principal intelligence gathering agencies. These security forces frequently acted in coordination with or under the control of the Armed Forces, often conducted joint operations with members of the Armed Forces, and operated with the tacit approval and permission of the Armed Forces and their commander, Defendant Samantar. Security forces acting in coordination with or under the control of the Armed Forces were together responsible for the widespread and systematic use of torture, arbitrary detention and extrajudicial killing against the civilian population of Somalia.

19. The Isaaq clan, located primarily in the northwestern region of Somalia, was a special target of the government. The Isaaq were among the best educated and most prosperous Somalis and were therefore perceived from the outset as potential opponents. In the 1970s, the military government relied primarily upon discriminatory economic measures to weaken the Isaaq clan: it limited economic development in the north and restricted the clan's lucrative livestock trade. When the Ogaden War ended in 1978 and Ethiopian refugees flooded northern Somalia, the Somali government even implemented economic policies favoring those refugees over the Isaaq. During the 1980s, when Defendant Samantar was Minister of Defense and then Prime Minister, the government changed its approach and unleashed the Armed Forces in a violent campaign to eliminate Isaaq clan opposition.

20. The government's extreme oppression led some members of the Isaaq clan to establish the Somali National Movement ("SNM") in 1981. The SNM articulated Isaaq grievances ranging from inadequate political representation and economic neglect of the north to the torture and detention of Isaaq citizens. In 1983 and 1984, some members of the SNM began a campaign of violent resistance and, operating from bases in Ethiopia, SNM commandos attacked military posts near the northern cities of Hargeisa, Burao, and Berbera.

21. In response, human rights abuses and war crimes by the Somali Armed Forces dramatically increased. The Somali National Army initiated a brutal counterinsurgency campaign that intentionally disregarded the distinction between civilians and SNM fighters. It killed and looted livestock, blew up water reservoirs, destroyed homes, tortured and detained alleged SNM supporters, and indiscriminately killed civilians as collective punishment for SNM activities. Such acts were intended to, and did, spread terror among the Isaaq clan in order to deter them from assisting the SNM.

22. This violent confrontation between the SNM and the Armed Forces of Somalia from 1983 to 1990 constituted an armed conflict not of an international character.

23. This pattern of crimes against humanity, including war crimes, committed against the Issaq clan continued in 1988 during the period Defendant Samantar served as Prime Minister. In June and July 1988, following SNM attacks on military targets, the Somali Armed Forces launched an indiscriminate aerial and ground attack on cities and towns in northwest Somalia, including Hargeisa, the second largest city in the country. A 1989 U.S. General Accounting Office study, conducted at the request of Congress, found that the attack destroyed most of Hargeisa, with the most extensive damage in the residential areas, the marketplace and in public buildings in the downtown areas. A State Department report found that the Somali Armed Forces engaged in systematic assaults on unarmed civilians, killing more than 5,000 people. As a result of the fighting, approximately 400,000 Somalis fled to Ethiopia, a country itself racked by drought and internal conflict, where they remained in refugee camps for many years. More than a million people were displaced internally.

24. Throughout 1989 and 1990 the crimes of oppression and armed resistance continued, gradually leading to the reduced effective territorial control of the Barre regime and withdrawal of American and international support. By the end of 1990, the Barre regime was in the final stages of complete state collapse. In early December 1990, President Barre declared a state of emergency, and in January 1991, armed opposition factions finally drove Barre out of power, resulting in the complete collapse of the central government. When Barre and his supporters were ousted from power, they fled the country. Defendant Samantar fled first to Italy, then, in 1997, arrived in the United States.

Plaintiff Bashe Abdi Yousuf

25. At the time of the events at issue, Plaintiff Bashe Abdi Yousuf was a young businessman in Hargeisa, the main city in the northwest region of Somalia. He operated a wholesale business selling goods imported from London and Saudi Arabia.

26. In early 1981, he joined with some friends to form a volunteer group to improve living conditions in Hargeisa, especially the local public schools and hospital. The group took the name of UFFO, which referred to the refreshing whirlwind that precedes the desert rains. UFFO's first project was to clean the sewage system of the Hargeisa General Hospital and to raise money for the purchase of badly-needed items such as bandages and medicine.

27. On or about November 19, 1981, in the late morning, Bashe Abdi Yousuf was working in the warehouse of his business. Three NSS agents entered the warehouse, forced him into a Land Cruiser and took him to the building that had housed the Somali immigration services, but was now reserved for the detention and interrogation of members of UFFO. He was searched, put in a room and left there for two days without food or water.

28. One night in early December 1981, two military policemen and an NSS officer came to Bashe Abdi Yousuf's cell. He was blindfolded, handcuffed, and forced into the back of a Land Cruiser. One of the interrogators put his boot on Bashe Abdi Yousuf's neck, forcing him to lean forward and keep his head down.

29. When the Land Cruiser stopped, Bashe Abdi Yousuf was pushed out of the car and forced face down on the ground. The interrogators tightly tied his hands and feet together behind his back so that his body was arched backward in a slightly-tilted U shape, with his arms and legs high in the air. Bashe Abdi Yousuf's interrogators slowly placed a heavy rock on his back, causing him excruciating pain. This form of torture was called the "Mig," because it placed the prisoner's body in a shape that resembled the Somali Air Force's MIG aircraft, with

its swept-back wings. They also tightened the ropes causing deep cuts to his arms and legs. They then turned him over and put the rock on his back again. They questioned him about the members and activities of UFFO and told him they would stop the torture if he confessed to anti-government crimes.

30. The interrogators also subjected him to torture by water. They held his nose closed, forced his mouth open and poured water into it, making him feel like he was suffocating. They repeated this several times until he lost consciousness.

31. Bashe Abdi Yousuf was tortured in this manner-eight times in the three months after he was arrested. He also twice endured electric shocks to his armpits.

32. On or about February 19, 1982, Bashe Abdi Yousuf was served with official indictment papers. He was charged with high treason, a crime that carried a mandatory death sentence by hanging. He also met with his court-appointed attorney that day. The meeting lasted five to ten minutes. Bashe Abdi Yousuf's attorney admitted there was no redress available to him.

33. In the early morning of February 28, 1982, Bashe Abdi Yousuf and the twenty-seven other detained members of UFFO were taken before the National Security Court, a special military court with jurisdiction over civilians accused of national security crimes, including political offenses. The courthouse was entirely surrounded by Army tanks and soldiers with machine guns.

34. The trial, which considered evidence against all twenty-eight men, lasted only two days. Neither Bashe Abdi Yousuf, nor any other UFFO member, was allowed to speak other than to answer preliminary questions such as "How do you plead?" He pleaded not guilty.

35. On or about March 3, 1982, Bashe Abdi Yousuf was again taken before the National Security Court. He was sentenced to twenty years in prison. He and the other twenty-seven members of UFFO were immediately taken to Hargeisa Central Prison. They were all placed together in a small cell. Bashe Abdi Yousuf remained in Hargeisa Central Prison for eight months.

36. On or about October 24, 1982, Bashe Abdi Yousuf was transferred to Labaatan Jirow prison, a notorious maximum security prison for political prisoners. He was placed in a small, windowless cell approximately 6 feet by 6 feet. The cell had an outer door that, when closed, put the cell in total darkness. The outer door was closed every day at 4 p.m. and not opened again until 7 a.m. He was fed millet gruel twice a day. He remained there in solitary confinement for approximately six and a half years.

37. Bashe Abdi Yousuf was released from prison in or about May 1989 and fled Somalia. He arrived in the United States in 1991.

*Plaintiff Aziz Mohamed Deria, in his capacity
as personal representative of the estates
of Mohamed Deria Ali and
Mustafa Mohamed Deria*

38. In 1988, Aziz Mohamed Deria was living in California. Five years earlier he had fled Somalia where he had been persecuted because of his political activities on behalf of the Isaaq clan. His family, including his father, Mohamed Deria Ali, and his younger brother, Mustafa Mohamed Deria, remained in Somalia. Mohamed Deria Ali was a highly successful businessman who operated a large import-export business in Hargeisa. Like his father, Mustafa Mohamed Deria, then approximately 22 years old, was also in the import-export business.

39. In or about June of 1988, the Somali Armed Forces launched an indiscriminate aerial and ground attack on Hargeisa. The Somali Armed Forces dropped bombs on downtown

Hargeisa as well as the surrounding residential areas and shelled Hargeisa with heavy artillery from the hills surrounding the city. The Somali tanks and other armored vehicles also entered the city. Groups of soldiers shot, tortured, and detained civilians throughout Hargeisa.

40. In or about June of 1988, Aziz Mohamed Deria's family members were trapped in their home by the Armed Forces' attack on the city. From the window of their home, the family could see the bombs dropping on the city and Army vehicles taking civilians away to be executed. Several buildings owned by the family were completely destroyed during the bombing.

41. On a morning in mid-June 1988, during the indiscriminate bombing of the city, a group of approximately twenty members of the Somali Armed Forces came to the family's home. They kicked down the door and entered the house. They asked the family about the clan to which they belonged. The soldiers replied that they were going to kill all the members of the Isaaq clan that day. The soldiers then grabbed Mohamed Deria Ali and dragged him out of the house. The family never saw him again.

42. Later that afternoon, the same group of soldiers returned to the family's home. The soldiers told the family that their father, Mohamed Deria Ali, had been killed. They then grabbed Mustafa Mohamed Deria and dragged him out of the house. The family never saw Mustafa Mohamed Deria again.

***Plaintiffs John Doe I and Aziz Mohamed Deria,
in his capacity as personal representative
of the estates of James Doe I and James Doe II***

43. In or about December 1984, John Doe I, along with two of his brothers, Decedents James Doe I and James Doe II, and a young nephew were tending the family's camels in the rural areas around Burao, a small city in the north of Somalia. A large group of soldiers from the Somali Armed Forces, followed by military vehicles, approached them. The soldiers

interrogated them about SNM activity in the area the previous evening. When they denied having any knowledge of SNM activities, they were forced into one of the military truck and taken to the military installation in the village of Magaaloyar.

44. That night, John Doe I and his brothers, James Doe I and James Doe II, were ordered into a small hut made of thorns in the middle of the military base. He and his brothers were ordered to lie down on their chests. They were then tied into the "Mig" position, their bodies arched backward in a slightly-tilted U shape, causing them excruciating pain. The soldiers also beat them with guns and kicked them. When the soldiers were tired, the soldiers threw John Doe I and his brothers, still tied in the "Mig" position, into the back of an army truck. They were transported to the military base in the city of Burao.

45. At Burao, the soldiers untied John Doe I and his brothers, James Doe I and James Doe II, and ordered them out of the truck. They were directed to enter an office, one by one, where they were questioned by military officers. John Doe I was asked his name, age, and place of arrest. He was also interrogated at length about SNM activities in the Burao area. His answers were recorded in a register. He was then ordered to wait outside the office. His two brothers were similarly interrogated.

46. There were taken to a very small cell that already contained eleven prisoners. John Doe I was handcuffed to one prisoner already in the cell, and his two brothers, James Doe I and James Doe II, were handcuffed together. The cell had no windows or toilet, and the men were forced to urinate and defecate on the floor where they slept. They received one small meal of cooked rice in mid-afternoon.

47. The next day, John Doe I, his brothers, James Doe I and James Doe II, and ten other prisoners were ordered out of the cell, loaded onto a military truck and taken, with armored

vehicles as escorts, to the military court in Burao. Two of the soldiers who had detained John Doe I and his brothers testified that the brothers had hidden SNM fighters and probably were themselves members of the SNM. The brothers' attorney, whom they had met for the first time only at the start of the trial, argued that the brothers were innocent. The presiding judge closed the hearing, and the thirteen men, including John Doe I and his brothers were returned to their small cell in the military base.

48. Four days later, all the prisoners detained at the military base, approximately eighty men, including John Doe I and his brothers, James Doe I and James Doe II, were ordered out of their cells and taken to the courthouse. The road to the courthouse was heavily guarded by military vehicles. The presiding judge called the names of the first forty-five prisoners, including John Doe I and his brothers, and sentenced each to death, with the sentence to be executed immediately.

49. The prisoners to be executed were then directed out of the courthouse into army trucks waiting at the courthouse. A commander was standing at the truck, monitoring the count of prisoners. As John Doe I and his brothers James Doe I and James Doe II entered the truck, the commander asked John Doe I whether the three men were brothers. When John Doe I answered yes, the commander untied John Doe I from his brothers, led him to the front of the gate around the courthouse, and ordered the guard at the gate to let him escape.

50. As John Doe I ran down the road away from the courthouse, he was passed by the truck carrying the condemned prisoners, including his two brothers. The truck was heading for the road to the Burao airport, a well-known execution site. As he reached his brother's house, he heard the sound of gunshots and saw many people running toward the airport. His two brothers, James Doe I and James Doe II, were among the men executed.

51. Later that night, John Doe I was told that the paramilitary forces were searching for him because he had been illegally released. He therefore fled Burao on foot to the remote village of Shanshacade, and then headed to the rural settlement area of Urruraha where his extended family, including the families of his two dead brothers, lived. He subsequently moved the extended family for safety to a refugee camp in Ethiopia. John Doe I remained in northern Somalia.

Plaintiff Jane Doe

52. One night in or around July 1985, Jane Doe, a student at Farah Omar Secondary School, was at home with her family in Hargeisa. Several NSS agents arrived at her house, banged on the door and then kicked in the door. She and other members of her family were taken to NSS headquarters. They were detained there for one week. She was accused of being a “subversive leader” for her alleged support of the Somali National Movement.

53. A few days later, Jane Doe was taken to the headquarters of the 26th Military Sector, the headquarters for all military and security forces in the northern region of Somali. She was held in a very small cell with one other woman. Her arms were tied behind her back with wire and then chained to the wall. Her left leg was chained to the floor. She was given food only once a day at 7:00 p.m. The cell was always completely dark. She was detained at the 26th Military Sector headquarters in this manner for three months.

54. Jane Doe was regularly interrogated during her detention at the Military Sector headquarters. Each time, she was taken to a small room not far from her cell. She was subjected to continuing torture as the soldiers attached very tight clips to her nipples.

55. During her detention at the 26th Military Sector headquarters, Jane Doe was also raped at least fifteen times. On each occasion, she was taken from her cell and locked in a room. Although the room was dark, she could see that her rapist was wearing a camouflage uniform.

Like other girls in Somalia, Jane Doe had been subject to the practice of infibulation, a procedure whereby her vagina had been sewn closed except for a very tiny hole through which urine and menstrual blood could flow. Her rapist opened her vagina by cutting through her skin with the part of a fingernail clipper used for cleaning under the fingernails. Throughout this period, and after, Jane Doe suffered constant and severe physical pain. She never received medical attention for her injuries.

56. Months later, Jane Doe, along with the six other high school students who had been detained at the same time, was taken from her cell, loaded into an open Army truck with a net across the top and taken to the National Security Court. The courthouse was entirely surrounded by Army tanks and soldiers with machine guns.

57. At her trial, Jane Doe was not permitted defense counsel nor was evidence presented against her. The following day, the National Security Court sentenced her to life in prison. She was immediately taken by Army soldiers to a truck waiting outside the courthouse, where the soldiers severely beat her. Because of this beating, she could not stand or walk for months.

58. She was then taken to Hargeisa Central prison. She was held alone in a very small cell measuring approximately 3½ feet by 5½ feet. Her hands were tied together in front of her at all times. She remained in solitary confinement for the next three and a half years.

59. In November 1989, Jane Doe and three other women prisoners were taken to Mogadishu in an Army airplane. On the sixth night after their arrival, they were taken by Army soldiers to the presidential villa to see Major General Siad Barre. Barre asked Jane Doe why she supported the SNM. Barre then told Jane Doe to stay away from the SNM and released her from prison, but he ordered her not to leave the country.

60. After her release, Jane Doe fled Somalia. She remained with her family in a refugee camp in Ethiopia for two years. She returned to Somalia in 1991, and later immigrated to the United Kingdom.

Plaintiff John Doe II

61. During the Spring of 1988, John Doe II, a non-commissioned Isaaq officer in the Somali National Army, was assigned to the Hargeisa Department of Public Works to help with the repair of the Hargeisa airport.

62. In or around June 1988, John Doe II was arrested by an Army officer and three Red Berets while working near a small town about 50 kilometers from Hargeisa. He was immediately taken to the headquarters of the 26th Military Sector. There, he saw many other Isaaq Army officers with whom he had served in the nearby towns of Gebiley and Dararweine. He realized that they were being detained by the Somali Army for fear that they would desert and join the opposition Somali National Movement.

63. The next day, around 4:00 p.m., Army soldiers began taking prisoners in groups of four from the 26th Military Sector headquarters. They were taken and executed near the banks of the river that runs through the center of Hargeisa, just a mile away from the military headquarters. This well-known execution site was known as Malko Dur-Duro.

64. Around 6:30 p.m., Army soldiers took John Doe II and three other Isaaq officers from their cell and drove them to Malko Dur-Duro. A group of Army officers, Army soldiers and Red Berets were waiting at the execution site. John Doe II and the other Isaaq officers were told to stand between two poles located at the edge of the river. An Army officer ordered the Red Beret soldiers to shoot the prisoners. The Red Berets shot at the men and they all fell backward into the riverbed. John Doe II received only flesh wounds and briefly fell unconscious. When he awoke, he found himself lying among the dead bodies. He remained

there, covered by dead bodies, until the mass execution was completed and the soldiers had left the area. He subsequently fled Hargeisa and did not return until 1991.

GENERAL ALLEGATIONS

Theories of Liability

65. The acts described herein were carried out under actual or apparent authority or color of law of the government of Somalia. The acts of torture, extrajudicial killings, attempted extrajudicial killings, rape, arbitrary detention, and cruel, inhuman or degrading punishment or treatment inflicted upon Plaintiffs and Decedents were part of a pattern and practice of widespread or systematic human rights violations committed against the civilian population in Somalia from 1980 to 1990, and contrary to customary international law and the laws and customs of war, for which Defendant Samantar, acting as Minister of Defense, and later as Prime Minister, bears responsibility.

66. At all relevant times between 1980 and 1987, Defendant Samantar, as Minister of Defense, possessed and exercised command and effective control over the Armed Forces of Somalia. He also acquiesced in and permitted persons or groups acting in coordination with the Armed Forces, or under their control, to commit human rights abuses. Defendant Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit extrajudicial killings, attempted extrajudicial killings, torture, crimes against humanity, war crimes, cruel, inhuman, or degrading treatment, or arbitrary detentions.

67. At all relevant times between 1980 and 1987, Defendant Samantar, as Minister of Defense, had the legal authority and practical ability to exert control over subordinates in the Armed Forces, or persons or groups acting in coordination with the Armed Forces, or under their control, who participated in the extrajudicial killings of Decedents James Doe I and James Doe II, and the abuses against Plaintiffs Bashe Abdi Yousuf, John Doe I, and Jane Doe. Defendant

Samantar's command over such forces included the authority and responsibility to give orders to, set policy for, and manage the affairs of, the forces under his control, and to appoint, remove and discipline personnel of such forces. Furthermore, Defendant Samantar had the actual authority and practical ability to investigate abuses, prevent their commission, and punish those responsible.

68. At all relevant times between 1980 and 1987, as Minister of Defense, Defendant Samantar had a duty under customary international law and multilateral treaties to ensure the protection of civilians, to prevent violations of international law by the Armed Forces, and to ensure that all persons under his command were trained in, and complied with, the laws of warfare and international law, including the prohibitions against torture, extrajudicial killing, rape, arbitrary detention, cruel, inhuman or degrading treatment or punishment, war crimes and crimes against humanity. Furthermore, Defendant Samantar was under a duty to investigate, prevent and punish violations of international law committed by the members of the Armed Forces under his command.

69. At all relevant times between 1980 and 1987, Defendant Samantar failed or refused to take all necessary measures to investigate and prevent these abuses, or to punish personnel under his command for committing such abuses.

70. At all relevant times between 1980 and 1987, Defendant Samantar failed or refused to take all necessary measures to investigate and prevent these abuses, or to punish personnel under his command for committing such abuses. Defendant Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit extrajudicial killings, attempted extrajudicial killings, torture, crimes against humanity, war crimes, cruel, inhuman, or degrading treatment, or arbitrary detentions.

71. At certain relevant times between 1987 and 1990, Defendant Samantar, as Prime Minister, possessed and exercised command and effective control over the Armed Forces of Somalia. At times he also acquiesced in and permitted persons or groups acting in coordination with the Armed Forces, or under their control, to commit human rights abuses. In particular, he was in Hargeisa in May and June of 1988 and had command of the Somali Armed Forces that were engaged in the indiscriminate attack upon the civilian population of the city of Hargeisa. Defendant Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit extrajudicial killings, attempted extrajudicial killings, torture, crimes against humanity, war crimes, cruel, inhuman, or degrading treatment, or arbitrary detentions.

72. At certain relevant times between 1987 and 1990, Defendant Samantar, as Prime Minister of Somalia, had the legal authority and practical ability to exert control over subordinates in the Armed Forces, or person or groups acting in coordination with the Armed Forces or under their control, who participated in the extrajudicial killings of Decedents Mohamed Deria Ali and Mustafa Deria and the abuses against Plaintiffs Bashe Abdi Yousuf, John Doe I, Jane Doe, and John Doe II. In particular, he was in Hargeisa in May and June of 1988 and had command of the Somali Armed Forces that were engaged in the indiscriminate attack upon the civilian population of the city of Hargeisa. Furthermore, Defendant Samantar had the actual authority and practical ability to investigate abuses, prevent their commission, and punish those responsible.

73. At all relevant times between 1987 and 1990, as Prime Minister of Somalia, Defendant Samantar had a duty under customary international law and multilateral treaties to ensure the protection of civilians, to prevent violations of international law by the Armed Forces,

and to ensure that all persons under his command were trained in, and complied with, the laws of warfare and international law, including the prohibitions against torture, extrajudicial killing, attempted extrajudicial killing, arbitrary detention, cruel, inhuman or degrading treatment or punishment, war crimes and crimes against humanity. Furthermore, Defendant Samantar was under a duty to investigate, prevent and punish violations of international law committed by the members of the Armed Forces under his authority.

74. At all relevant times between 1987 and 1990, Defendant Samantar failed or refused to take all necessary measures to investigate and prevent these abuses, or to punish personnel under his command for committing such abuses.

75. The acts of torture, extrajudicial killing, attempted extrajudicial killing, rape, arbitrary detention, and cruel, inhuman or degrading treatment or punishment inflicted upon Plaintiffs and Decedents between 1980 and 1990 were part of a pattern and practice of widespread or systematic human rights violations against the civilian population of Somalia and contrary to the law and customs of war. At all relevant times, the persons who carried out these acts knew or reasonably should have known that the acts were part of a widespread or systematic attack against a civilian population. At all relevant times, Defendant Samantar knew or reasonably should have known of the pattern or practice of gross human rights abuses perpetrated against the civilian population by subordinates under his command.

76. Defendant Samantar failed or refused to take all necessary measures to investigate and prevent these abuses, or to punish personnel under his command for committing such abuses.

77. Defendant Samantar, both as Minister of Defense and as Prime Minister, conspired with, or aided and abetted members of the Armed Forces or persons or groups acting

in coordination with the Armed Forces or under their control to commit acts of torture, extrajudicial killing, attempted extrajudicial killing, rape, arbitrary detention, cruel, inhuman or degrading treatment or punishment, war crimes and crimes against humanity, and to cover up these abuses.

78. The attempted acts of torture, extrajudicial killing, attempted extrajudicial killing, rape, arbitrary detention, cruel, inhuman or degrading treatment or punishment, war crimes and crimes against humanity described herein were a part of an organized system of repression and ill-treatment against members of the Isaaq clan.

79. Defendant Samantar had knowledge of and was an active participant in the enforcement of this system of repression and ill-treatment against members of the Isaaq clan.

80. Moreover, it was the intent of Defendant Samantar while he was the Minister of Defense and while he was the Prime Minister to further this system of repression and ill-treatment.

81. Additionally, the acts of torture, extrajudicial killing, attempted extrajudicial killing, rape, arbitrary detention, cruel, inhuman or degrading treatment or punishment, war crimes and crimes against humanity described herein were natural and foreseeable consequences of a common, shared design on the part of the leaders of the Barre regime and the Armed Forces of Somalia to rid the northern region of Somalia of members of the Isaaq clan, and to engage in a systematic attack against civilian populations.

82. The civilian populations targeted by this joint criminal enterprise included, but were not limited to, members of the Isaaq clan.

83. Defendant Samantar intended to participate in this common design and was reckless or indifferent to the risk that acts of torture, extrajudicial killing, attempted extrajudicial

killing, rape, arbitrary detention, cruel, inhuman or degrading treatment or punishment, war crimes and crimes against humanity would occur during the effecting of that common purpose.

Equitable Tolling of the Statute of Limitations

84. Defendant Samantar has resided in the United States only since 1997. Before that time, neither this court, nor any other United States court, could exercise jurisdiction over Samantar for claims relating to the actions described herein. For this reason, the statute of limitations for these claims was tolled until 1997.

85. Also, prior to 1997, Isaaq victims of human rights abuses committed in the 1980s by the Somali Armed Forces, or persons or groups acting in coordination with the Somali Armed Forces or under their control, could not have been expected to pursue a cause of action in the United States. Until approximately 1997, victims' reasonable fear of reprisals against themselves or members of their families still residing in Somalia served as an insurmountable deterrent to such action. Also, until approximately 1997, it would not have been possible to conduct safely investigation and discovery in Somalia in support of such a case.

86. Throughout the 1990s, Somalia fell into increasing chaos. Following the violent defeat of the military government in 1991, Somalia's central government collapsed. Fighting among rival clan leaders resulted in the killing, displacement, and mass starvation of tens of thousands of Somali citizens. The ensuing chaos led the United Nations to intervene militarily in 1992, though it proved incapable of restoring even a minimum level of order. Somalia's clan-based civil war and anarchic violence proved to be so brutal that it drove the United Nations from the country in 1994. Rival clan militias continued to commit gross and systematic human rights abuses in the years after the United Nations' departure, including the deliberate killing and kidnapping of civilians because of their clan membership.

87. During these years, conditions in Somalia precluded human rights cases against former commanders of the Somali Armed Forces from being brought either in Somalia or the United States or elsewhere. Throughout the time period alleged in the complaint, and up to the present, each of the Plaintiffs either lived in Somalia or had immediate family still residing there. No national government existed in Somalia to protect them from the continuing clan-based violence. Gross and systematic human rights violations openly committed by rival clans had a further chilling effect. Pursuit of human rights claims, even in the United States, would have exposed victims and their families to acts of retribution that discouraged them from pursuing such a course. Witnesses also reasonably feared acts of reprisal for assisting in such cases.

88. The return of stability sufficient to permit victims of Barre-era human rights abuses to come forward has been a slow and uneven process. Stable conditions still do not exist in most regions of the country. It took until approximately 1997 for even one region to establish the conditions that permitted victims to consider bringing their claims.

89. This region, the former British protectorate of Somaliland, is dominated by the Isaaq clan. In 1991, it declared its independence, reclaimed its previous name, and seceded from Somalia. A rudimentary civil administration was established there in 1993, but major armed conflicts in 1994 and 1996 plunged the region back into turmoil. Since about 1997, Somaliland's government has exercised a modicum of authority over its territory. Nonetheless, conditions remain dangerous and unstable throughout the country. Clan allegiances are still very strong, violence is still a daily possibility, and fear of clan-based repercussions is still of paramount concern to the anonymous plaintiffs of this case.

Absence of Remedies in Somalia

90. Somalia remains without a functioning national government and national judicial system in which victims of Barre-era human rights abuses could bring their claims. Shari'a

courts operate in some regions of the country, filling the vacuum created by the absence of governmental authority, but such courts impose religious and local customary law often in conflict with universal human rights conventions. Somalia still does not have a functioning national government with a court system capable of reviewing human rights abuses committed by the military government in the 1980s. The country remains under the de facto control of competing clan leaders, warlords and criminal gangs, many of whom commit or countenance the commission of serious human rights abuses.

91. Somaliland does not offer a forum in which victims of human rights abuses can bring their claims. Although civil order has prevailed there since 1997, it remains impossible to seek judicial remedies in its courts for such claims. The Somaliland government's human rights record is weak, and human rights activists are frequently arrested and detained. The judicial system remains very tied to religious and political elites and lacks properly trained judges and other legal personnel. Furthermore, no former members of the Barre government reside within Isaaq-dominated Somaliland. Thus the people who should be held accountable reside beyond the jurisdictional reach of the Somaliland courts. Accordingly, there were and are no adequate and available remedies for Plaintiffs to exhaust in Somalia.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

**(Extrajudicial Killing - Plaintiff Aziz Deria, in his capacity
as the personal representative of the estates of the decedents)**

92. Plaintiff Aziz Deria realleges and incorporates by reference the allegations set forth in paragraphs 1 through 91 as if fully set forth herein.

93. The extrajudicial killings of Decedents Mohamed Deria Ali and Mustafa Mohamed Deria (father and brother of Plaintiff Aziz Mohamed Deria) and of Decedents James Doe I and James Doe II (brothers of Plaintiff John Doe I) constitute extrajudicial killings as

defined by the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 Note). Additionally, the extrajudicial killing of Decedents Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I, and James Doe II constitute “tort[s] ... committed in violation of the law of nations or a treaty of the United States” under the Alien Tort Statute, 28 U.S.C. § 1350, in that they were in violation of customary international law prohibiting extrajudicial killing as reflected, expressed, defined, and codified in multilateral treaties and other international instruments, international and domestic judicial decisions and other authorities.

94. The extrajudicial killings of Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I and James Doe II were not authorized by a judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

95. Defendant Samantar exercised command responsibility over, conspired with, or aided and abetted members of the Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control, to murder Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I and James Doe II. Furthermore, Defendant Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit human rights abuses, and he failed to prevent the abuses or to punish those responsible.

96. Moreover, defendant Samantar was an active participant in the joint criminal enterprise that resulted in the murders of Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I and James Doe II.

97. Defendant Samantar's acts or omissions described above and the acts committed by his subordinates, caused the extrajudicial killings of Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I and James Doe II, and caused family members of the decedents to suffer.

98. Defendant Samantar's acts or omission described above and the acts committed by his subordinates against Decedents Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I and James Doe II were committed under actual or apparent authority, or color of law, of the government of Somalia.

99. As a result of the extrajudicial killings of Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I and James Doe II, Plaintiff Aziz Mohamed Deria, in his capacity as personal representatives of the estates of the decedents, is entitled to damages in an amount to be determined at trial.

100. Defendant Samantar's acts were deliberate, willful, intentional, wanton, malicious, and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF
(Attempted Extrajudicial Killing — Plaintiff
John Doe II)

101. Plaintiff John Doe II realleges and incorporates by reference the allegations set forth in paragraphs 1 through 100 as if fully set forth herein.

102. The attempted extrajudicial killing of Plaintiff John Doe II constitutes an attempt to commit an extrajudicial killing as defined by the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 Note). Additionally, the attempted extrajudicial killing of Plaintiff John Doe II constitutes a "tort ... committed in violation of the law of nations or a treaty of the United States" under the Alien Tort Statute, 28 U.S.C. § 1350, in that it was in violation of customary international law prohibiting extrajudicial killings as

reflected, expressed, defined, and codified in multilateral treaties and other international instruments, international and domestic judicial decisions and other authorities.

103. The attempted extrajudicial killing of John Doe II was not authorized by a judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

104. Defendant Samantar exercised command responsibility over, conspired with, or aided and abetted members of the Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control, in their attempts to extrajudicially kill John Doe II. Furthermore, Defendant Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit human rights abuses, and he failed to prevent the abuses or to punish those responsible.

105. Moreover, defendant Samantar was an active participant in the joint criminal enterprise that resulted in the attempted extrajudicial killing of Plaintiff John Doe II.

106. Defendant Samantar's acts or omissions described above and the acts committed by his subordinates against Plaintiff John Doe II were committed under actual or apparent authority, or color of law, of the government of Somalia.

107. Defendant Samantar's acts or omissions described above and the acts committed by his subordinates, caused the attempted extrajudicial killing of John Doe II, and caused him to suffer.

108. As a result of these attempts to kill him extrajudicially, John Doe II is entitled to damages in an amount to be determined at trial.

109. Defendant Samantar's acts were deliberate, willful, intentional, wanton, malicious, and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

THIRD CLAIM FOR RELIEF
(Torture – Plaintiffs Bashe Abdi Yousuf, John Doe I,
Jane Doe and John Doe II)

110. Bashe Abdi Yousuf, John Doe I, Jane Doe and John Doe II reallege and incorporate by reference the allegations set forth in paragraphs 1 through 109 as if fully set forth herein.

111. The acts described herein constitute torture as defined by the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 Note). Additionally, these acts constitute “tort[s] ... committed in violation of the law of nations or a treaty of the United States” under the Alien Tort Statute, 28 U.S.C. § 1350, in that they were in violation of customary international law prohibiting torture as reflected, expressed, defined, and codified in multilateral treaties and other international instruments, international and domestic judicial decisions and other authorities.

112. The acts described herein were inflicted deliberately and intentionally upon Bashe Abdi Yousuf, John Doe I, Jane Doe and John Doe II for purposes that include, among others, intimidating or coercing them, discriminating against them for their presumed political beliefs, or discriminating against them for their membership in a specific ethnic group.

113. The torture of Bashe Abdi Yousuf, John Doe I, Jane Doe and John Doe II did not arise from, and was not inherent in or incidental to, lawful sanctions.

114. Defendant Samantar exercised command responsibility over, conspired with, or aided and abetted members of the Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control, to torture Bashe Abdi Yousuf, John Doe I, Jane

Doe and John Doe II. Furthermore, Defendant Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit human rights abuses, and he failed to prevent the abuses or to punish those responsible.

115. Moreover, defendant Samantar was an active participant in the joint criminal enterprise that resulted in the torture of Bashe Abdi Yousuf, John Doe I, Jane Doe and John Doe II.

116. Defendant Samantar's acts or omissions described above and the acts committed by his subordinates against Bashe Abdi Yousuf, John Doe I, Jane Doe and John Doe II were committed under actual or apparent authority, or color of law, of the government of Somalia.

117. Defendant Samantar's acts or omissions described above and the acts committed by his subordinates, caused the torture of Bashe Abdi Yousuf, John Doe I, Jane Doe and John Doe II and caused them to suffer severe physical and mental pain and suffering.

118. As a result of their torture, Bashe Abdi Yousuf, John Doe I, Jane Doe and John Doe II are entitled to damages in an amount to be determined at trial.

119. Defendant Samantar's acts were deliberate, willful, intentional, wanton, malicious, and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

FOURTH CLAIM FOR RELIEF
(Cruel, Inhuman or Degrading Treatment or Punishment – Plaintiffs John Doe I, Jane Doe and John Doe II)

120. John Doe I, Jane Doe and John Doe II reallege and incorporate by reference the allegations set forth in paragraphs 1 through 119 as if fully set forth herein.

121. The acts described herein constitute "tort[s] ... committed in violation of the law of nations or a treaty of the United States" under the Alien Tort Statute, 28 U.S.C. § 1350, in that they were in violation of customary international law prohibiting cruel, inhuman or degrading

punishment or treatment as reflected, expressed, defined, and codified in multilateral treaties and other international instruments, international and domestic judicial decisions and other authorities.

122. The acts of cruel, inhuman or degrading treatment or punishment described herein had the intent and effect of inflicting severe or serious physical or mental pain or suffering upon John Doe I, Jane Doe and John Doe II. As an intended result of these acts, John Doe I, Jane Doe and John Doe II suffered severe or serious physical or mental pain or suffering.

123. The cruel, inhuman, or degrading treatment or punishment of John Doe I, Jane Doe and John Doe II did not arise from, and was not inherent in or incidental to, lawful sanctions.

124. Defendant Samantar exercised command responsibility over, conspired with, or aided and abetted subordinates in the Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control, to inflict cruel, inhuman or degrading treatment or punishment upon John Doe I, Jane Doe and John Doe II. Furthermore, Defendant Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit human rights abuses, and he failed to prevent the abuses or to punish those responsible.

125. Moreover, defendant Samantar was an active participant in the joint criminal enterprise that resulted in the cruel, inhuman or degrading treatment or punishment of John Doe I, Jane Doe and John Doe II.

126. Defendant Samantar's acts or omissions described above and the acts committed by his subordinates against John Doe I, Jane Doe and John Doe II, were committed under actual or apparent authority, or color of law, of the government of Somalia.

127. Defendant Samantar's acts or omissions described above and the acts committed by his subordinates, caused the cruel, inhuman or degrading treatment or punishment of John Doe I, Jane Doe and John Doe II and caused them to suffer severe or serious physical or mental pain or suffering.

128. As a result of the cruel, inhuman or degrading treatment or punishment described above, John Doe I, Jane Doe and John Doe II are entitled to damages in an amount to be determined at trial.

129. Defendant Samantar's acts were deliberate, willful, intentional, wanton, malicious, and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

FIFTH CLAIM FOR RELIEF
(Arbitrary Detention – Plaintiffs John Doe I, Jane Doe and John Doe II)

130. Plaintiffs John Doe I, Jane Doe and John Doe II reallege and incorporate by reference the allegations set forth in paragraphs 1 through 129 as if fully set forth herein.

131. The arbitrary detentions of Plaintiffs John Doe I, Jane Doe and John Doe II described herein constitute "tort[s] ... committed in violation of the law of nations or a treaty of the United States" under the Alien Tort Statute, 28 U.S.C. §1350, in that they were in violation of customary international law prohibiting arbitrary detention as reflected, expressed, defined, and codified in multilateral treaties and other international instruments, international and domestic judicial decisions and other authorities.

132. John Doe II was detained without warrant, probable cause, or articulable suspicion and was never provided due process protections.

133. John Doe I and Jane Doe were detained without warrant, probable cause, or articulable suspicion and were sentenced by courts that failed to accord them due process protections.

134. Defendant Samantar exercised command responsibility over, conspired with, or aided and abetted members of the Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control, to arbitrarily detain John Doe I, Jane Doe and John Doe II. Furthermore, Defendant Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit human rights abuses, and he failed to prevent the abuses or to punish those responsible.

135. Moreover, defendant Samantar was an active participant in the joint criminal enterprise that resulted in the arbitrary detentions of John Doe I, Jane Doe and John Doe II.

136. Defendant Samantar's acts or omissions described above and the acts committed by his subordinates against John Doe I, Jane Doe and John Doe II were committed under actual or apparent authority, or color of law, of the government of Somalia.

137. As a result of their arbitrary detention as described above, John Doe I, Jane Doe and John Doe II are entitled to damages in an amount to be determined at trial.

138. Defendant Samantar's acts were deliberate, willful, intentional, wanton, malicious, and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

SIXTH CLAIM FOR RELIEF
(Crimes Against Humanity – Plaintiffs Aziz Mohamed Deria,
(in his capacity as personal representative of the estates
of the decedents) John Doe I, Jane Doe and John Doe II)

139. Plaintiffs Aziz Mohamed Deria, in his capacity as personal representative of the decedents, John Doe I, Jane Doe and John Doe II reallege and incorporate by reference the allegations set forth in paragraphs 1 through 138 as if fully set forth herein.

140. The extrajudicial killings of Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I and James Doe II, the torture of John Doe I, Jane Doe and John Doe II, the rape of Jane Doe, the cruel, inhuman, or degrading treatment or punishment of John Doe I, Jane Doe and John Doe II, and the arbitrary detentions of John Doe I, Jane Doe and John Doe II described herein constitute “tort[s] ... committed in violation of the law of nations or a treaty of the United States” under the Alien Tort Statute, 28 U.S.C. §1350, in that they were in violation of customary international law prohibiting crimes against humanity as reflected, expressed, defined, and codified in multilateral treaties and other international instruments, international and domestic judicial decisions and other authorities.

141. These acts were committed as part of a widespread or systematic attack against a civilian population.

142. These acts were committed by members of the Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control. The persons who carried out these acts knew or reasonably should have known that the acts were part of a widespread or systematic attack against a civilian population. Defendant Samantar knew or reasonably should have known of the pattern or practice of gross human rights abuses perpetrated against the civilian population by the subordinates under his command.

143. Defendant Samantar exercised command responsibility over, conspired with, or aided and abetted members of the Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control, to commit crimes against humanity, including the extrajudicial killings of Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I and James Doe II, the torture of John Doe I, Jane Doe and John Doe II, the attempted extrajudicial killings of John Doe II, the rape of Jane Doe, the cruel, inhuman, or degrading treatment or punishment of John Doe I, Jane Doe and John Doe II, and the arbitrary detentions of John Doe I, Jane Doe and John Doe II. Furthermore, Defendant Samantar knew or should have known that his subordinates had committed, were committing, or were about to commit human rights abuses and that they were being committed as part of a widespread or systematic attack on civilians, and he failed to prevent the abuses or to punish those responsible.

144. Moreover, defendant Samantar was an active participant in the joint criminal enterprise that resulted in the crimes against humanity described herein.

145. Defendant Samantar's acts or omissions described above, and the acts committed by his subordinates, were committed under actual or apparent authority, or color of law, of the government of Somalia.

146. As a result, Plaintiffs Aziz Mohamed Deria (in his capacity as the personal representative of the estates of the decedents), John Doe I, Jane Doe and John Doe II are entitled to damages in an amount to be determined at trial.

147. Defendant Samantar's acts were deliberate, willful, intentional, wanton, malicious, and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

SEVENTH CLAIM FOR RELIEF
(War Crimes – Plaintiffs Aziz Mohamed Deria (in his capacity as
personal representative of the estates of the decedents),
John Doe I, Jane Doe and John Doe II)

148. Plaintiffs Aziz Mohamed Deria, (in his capacity as personal representative of the estates of the decedents), John Doe I, Jane Doe, and John Doe II reallege and incorporate by reference the allegations set forth in paragraphs 1 through 147 as if fully set forth herein.

149. The attempted extrajudicial killing, extrajudicial killings, torture, rape, cruel, inhuman, or degrading treatments or punishments, and arbitrary detentions described herein constitute “tort[s] ... committed in violation of the law of nations or a treaty of the United States” under the Alien Tort Statute, 28 U.S.C. §1350, in that they were in violation of customary international law prohibiting war crimes as reflected, expressed, defined, and codified in multilateral treaties and other international instruments, international and domestic judicial decisions and other authorities.

150. These acts were committed during the armed conflict between the SNM and the Armed Forces of Somalia.


151. This armed conflict bound Defendant Samantar to follow the obligations of Common Article 3 of Geneva Conventions of 1949 and the customary norms of internal armed conflict.

152. Defendant Samantar exercised command responsibility over, conspired with, or aided and abetted members of the Armed Forces, or persons or groups acting in coordination with the Armed Forces or under their control, to commit war crimes, including the attempted extrajudicial killings, extrajudicial killings, torture, rape, cruel, inhuman or degrading treatments or punishments, and arbitrary detention, suffered by Plaintiffs and decedents during the armed conflict in northern Somalia. Furthermore, Defendant Samantar knew or should have known that

Dated: February 22, 2007

BASHE ABDI YOUSUF,
AZIZ MOHAMED DERIA,
in his capacity as the personal representatives of the
estate of Mohamed Deria Ali,
AZIZ MOHAMED DERIA, in his capacity as the
personal representative of the estate of Mustafa
Mohamed Deria,
JOHN DOE I,
AZIZ MOHAMED DERIA, in his capacity as the
personal representative of the estate of James Doe I
(the deceased brother of John Doe I),
AZIZ MOHAMED DERIA, in his capacity as the
personal representative of the estate of James Doe
II (the deceased brother of John Doe I),
JANE DOE,
and JOHN DOE II,

By Counsel

By: 
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Tara M. Lee (VSB #71594)
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One Freedom Square
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Matthew Eisenbrandt
Maira Feeney
Center for Justice & Accountability
870 Market Street, Suite 684
San Francisco, California 94102
(415) 544-0444

CERTIFICATE OF SERVICE

I hereby certify, this 22nd day of February, 2007, that a true copy of the foregoing was sent by electronic mail and overnight delivery to the following counsel of record:

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216 South Patrick Street
Alexandria, VA 22314

Julian Henry Spirer, Esq.
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7101 Wisconsin Avenue, Suite 1201
Bethesda, MD 20814



244496 v6/RE

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

2014 FEB 14 11 38 AM

CLERK OF COURT
U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

BASHE ABDI YOUSUF, *et al.*,)
)
Plaintiffs,)
)
v.)
)
MOHAMED ALI SAMANTAR,)
)
Defendant.)

Civil Action No. 1:04 CV 1360 (LMB)

**STATEMENT OF INTEREST
OF THE UNITED STATES OF AMERICA**

Pursuant to 28 U.S.C. § 517, the United States respectfully submits this Statement of Interest to convey to the Court the Department of State’s determination that Defendant Mohamed Ali Samantar is not immune from this suit. The various principles that underlie the foreign official immunity doctrine and the determination in this case are set forth below.¹

Procedural Background

1. Defendant Samantar, a U.S. resident, served in various high-ranking positions within the Somali government between 1980 and 1990, including as Minister of Defense and as Prime Minister. *See* Second Am. Compl., ¶¶ 6-7. Plaintiffs, who include U.S. citizens, allege that Samantar, while in office, exercised “command responsibility over, conspired with, or aided and abetted members of the Armed Forces of Somalia” and related entities in committing acts of

¹ The United States expresses no view on the merits of Plaintiffs’ claims and takes no position on the other issues raised in Defendant’s renewed motion to dismiss.

extrajudicial killings, torture, crimes against humanity, war crimes, arbitrary detention, and cruel, inhuman, or degrading treatment. *Id.* ¶ 2. The complaint further asserts that Samantar “had knowledge of and was an active participant in the enforcement of [the] system of repression and ill-treatment against members of the Isaaq clan.” *Id.* ¶ 79. Plaintiffs brought this suit under the Torture Victim Protection Act of 1991, Pub. L. No. 102-256, 106 Stat. 73 (codified at 28 U.S.C. § 1350 note), and the Alien Tort Statute, 28 U.S.C. § 1350.

2. This Court dismissed Plaintiffs’ Second Amended Complaint on the ground that Samantar was immune from suit under the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. §§ 1330, 1602-1611. *See* Mem. & Op., Doc. #106 (Aug. 1, 2007). Plaintiffs appealed, the Fourth Circuit reversed, and the Supreme Court affirmed the reversal and remanded the case for further proceedings. *Samantar v. Yousuf*, 130 S. Ct. 2278 (2010). Defendant filed a renewed motion to dismiss in which he argues, among other things, that Samantar is entitled to foreign official immunity. *See* Def.’s Mem., at 7-13, Doc. #139 (Nov. 29, 2010). The motion has now been fully briefed and awaits this Court’s adjudication. Pls.’ Opp’n, at 2-11, Doc. #143 (Dec. 14, 2010); Def.’s Reply, at 6-11, Doc. #144 (Dec. 22, 2010).

Foreign Official Immunity Doctrine

3. The Executive Branch’s authority to determine the immunity of foreign officials from suit in United States courts is rooted in the general doctrine of foreign sovereign immunity, first enunciated in American jurisprudence in *The Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116 (1812). There, the Supreme Court held that, under the law and practice of nations, a foreign sovereign is generally immune from suits in the territory of another sovereign. *Id.* at 145-

46; see *Republic of Austria v. Altmann*, 541 U.S. 677, 688 (2004). To determine whether a foreign sovereign is immune from suit in any particular case, “Chief Justice Marshall introduced the practice since followed in the federal courts” of deferring to Executive Branch suggestions of immunity. *Republic of Mexico v. Hoffman*, 324 U.S. 30, 34 (1945); see *Schooner Exchange*, 11 U.S. at 134. Thus, until the enactment of the FSIA in 1976, courts routinely “surrendered” jurisdiction over suits against foreign sovereigns “on recognition, allowance and certification of the asserted immunity by the political branch of the government charged with the conduct of foreign affairs when its certificate to that effect is presented to the court by the Attorney General.” *Hoffman*, 324 U.S. at 34; see *Samantar*, 130 S. Ct. at 2284; *Ex parte Peru*, 318 U.S. 578, 587-89 (1943). The Supreme Court made clear that “[i]t is . . . not for the courts to deny an immunity which our government has seen fit to allow, or to allow an immunity on new grounds which the government has not seen fit to recognize.” *Hoffman*, 324 U.S. at 35.

4. This deferential judicial posture was not merely discretionary, but was rooted in the separation of powers. Under the Constitution, the Executive is “the guiding organ in the conduct of our foreign affairs.” *Ludecke v. Watkins*, 335 U.S. 160, 173 (1948). Given the Executive’s leading foreign-policy role, it was “an accepted rule of substantive law governing the exercise of the jurisdiction of the courts that they accept and follow the executive determination” on questions of foreign sovereign immunity. *Hoffman*, 324 U.S. at 36; see also *Spacil v. Crowe*, 489 F.2d 614, 618 (5th Cir. 1974) (“[W]e are analyzing here the proper allocation of functions of the branches of government in the constitutional scheme of the United States. We are not analyzing the proper scope of sovereign immunity under international law.”).

5. The immunity of a foreign state was, early on, generally understood to extend not only to the state, heads of state, and diplomatic officials, but also to other officials acting in an official capacity. For example, in *Underhill v. Hernandez*, 168 U.S. 250 (1897), the Supreme Court rejected a suit against a Venezuelan general for actions taken in his official capacity, holding that the defendant was protected by “[t]he immunity of individuals from suits brought in foreign tribunals for acts done within their own states, in the exercise of governmental authority, whether as civil officers or as military commanders.” *Id.* at 252.

6. In earlier proceedings in this case, the Supreme Court addressed whether the FSIA codifies the law of foreign official immunity, or instead whether it leaves the law of individual official immunity in the hands of the Executive Branch, as it was before the FSIA was passed. *Samantar*, 130 S. Ct. at 2291. The United States filed an amicus brief taking the position that the FSIA should not govern the immunity of individual foreign officials. The United States argued that the text, history, and purpose of the FSIA make clear that the Act relates principally to state, not individual, immunity. U.S. Br. at 13-24, *available at* 2010 WL 342031. And the government further argued that the conclusion that the FSIA does not govern the immunity of individual officials is reinforced by the “number of complexities that could attend the immunity determination,” and the number of considerations that the Executive “might find it appropriate to take into account,” *id.* at 24-25—“complexities that could not be accommodated under the rigid and ill-fitting statutory regime of the FSIA.” *Id.* at 24.²

² The relevant paragraph stated in full:

The conclusion that the FSIA does not govern foreign official immunity is reinforced by the number of complexities that could attend the immunity determination in this and other
(continued...)

7. The Supreme Court ultimately agreed with the government’s proffered reading of the FSIA. The Court explained that, “[a]lthough Congress clearly intended to supersede the common-law regime for claims against foreign states, we find nothing in the statute’s origin or aims to indicate that Congress similarly wanted to codify the law of foreign official immunity.” *Samantar*, 130 S. Ct. at 2291. In so concluding, the Court found “no reason to believe that Congress saw as a problem, or wanted to eliminate, the State Department’s role in determinations regarding individual official immunity.” *Id.* Thus, the Executive Branch continues to play the primary role in determining the immunity of foreign officials as an aspect of the President’s

²(...continued)

cases—complexities that could not be accommodated under the rigid and ill-fitting statutory regime of the FSIA. Even in an ordinary case, in considering whether to recognize immunity of a foreign official under the generally applicable principles of immunity discussed above, the Executive might find it appropriate to take into account issues of reciprocity, customary international law and state practice, the immunity of the state itself, and, when appropriate, domestic precedents. But in this case, the Executive may also find the nature of the acts alleged—and whether they should properly be regarded as actions in an official capacity—to be relevant to the immunity determination. Respondents have not only relied on the ATS to assert a federal common law cause of action, but have also invoked the statutory right of action in the TVPA for damages based on torture and extrajudicial killing. And respondents, some of whom are United States citizens, have brought that action against a former Somali official who now lives in the United States, not Somalia.

U.S. Br. at 24-25. The government also noted the potential relevance of “the foreign state’s position on whether the alleged conduct was in an official capacity” and whether “a foreign state [has sought] to waive the immunity of a current or former official, because immunity is accorded to foreign officials not for their personal benefit, but for the benefit of the foreign state.” *Id.* at 25-26. The identification of certain considerations that the Executive could or might find it appropriate to take into account served to underscore the range of discretion properly residing in the Executive under the Constitution to make immunity determinations in particular cases. It did not reflect a judgment by the Executive that the considerations mentioned were exhaustive or would necessarily be relevant to any particular immunity determination if, as the United States argued to the Supreme Court, the responsibility for doing so was vested in the Executive and not governed by the FSIA. The present filing reflects the basis for the Executive’s immunity determination in this case.

responsibility for the conduct of foreign relations and recognition of foreign governments.

Accordingly, courts today must continue to defer to Executive determinations of foreign official immunity, just as they deferred to determinations of foreign state immunity before the enactment of the FSIA.

8. In *Samantar*, the Supreme Court explained that if the Department of State recognized and accepted the foreign government's request for a suggestion of immunity, "the district court surrendered its jurisdiction." 130 S. Ct. at 2284. The Executive's role traditionally has encompassed acknowledging that certain foreign government officials enjoy immunity because of their particular status as well as acknowledging whether the officials should be immune from suit for the conduct at issue. See, e.g., *Isbrandtsen Tankers, Inc. v. President of India*, 446 F.2d 1198, 1200 (2d Cir. 1971) (deferring to State Department's determination that alleged conduct was "of a public, as opposed to a private/commercial nature"). Taking into account the relevant principles of customary international law, the Department of State has made the attached determination on immunity in this case, and we explain below certain critical factors underlying the Executive's determination here. Because the Executive Branch is taking an express position in this case, the Court should accept and defer to the determination that Defendant is not immune from suit. See *Samantar*, 130 S. Ct. at 2284; *Isbrandtsen Tankers*, 446 F.2d at 1201 ("[O]nce the State Department has ruled in a matter of this nature, the judiciary will not interfere.").

Grounds for Determination in this Case

9. Upon consideration of the facts and circumstances in this case, as well as the applicable principles of customary international law, the Department of State has determined that Defendant enjoys no claim of official immunity from this civil suit. *See* State Dep't Letter, attached as Ex. 1. Particularly significant among the circumstances of this case and critical to the present Statement of Interest are (1) that Samantar is a former official of a state with no currently recognized government to request immunity on his behalf, including by expressing a position on whether the acts in question were taken in an official capacity, and (2) the Executive's assessment that it is appropriate in the circumstances here to give effect to the proposition that U.S. residents like Samantar who enjoy the protections of U.S. law ordinarily should be subject to the jurisdiction of our courts, particularly when sued by U.S. residents.

10. The immunity protecting foreign officials for their official acts ultimately belongs to the sovereign rather than the official. *See, e.g., Arrest Warrant of 11 Apr. 2000 (Dem. Rep. Congo v. Belgium)*, 2002 I.C.J. 3, ¶ 61 (Feb. 14) (Merits) (a foreign official "will cease to enjoy immunity from foreign jurisdiction if the State which they represent or have represented decides to waive that immunity"). Former officials generally enjoy residual immunity for acts taken in an official capacity while in office. *Id.* Because the immunity is ultimately the state's, a foreign state may waive the immunity of a current or former official, even for acts taken in an official capacity. *See In re Doe*, 860 F.2d 40, 45 (2d Cir. 1988) ("Because it is the state that gives the power to lead and the ensuing trappings of power—including immunity—the state may therefore take back that which it bestowed upon its erstwhile leaders.").

11. The typical practice is for a foreign state to request a suggestion of immunity from the Department of State on behalf of its officials. See *Samantar*, 130 S. Ct. at 2284 (citing *Hoffman*, 324 U.S. at 34-36); *Ex parte Peru*, 318 U.S. 578; *Compania Espanola De Navegacion Maritima, S.A. v. The Navemar*, 303 U.S. 68 (1938). Because the immunity belongs to the state, and not the individual, and because only actions by former officials taken in an official capacity are entitled to immunity under customary international law, the Executive Branch takes into account whether the foreign state understood its official to have acted in an official capacity in determining a former official's immunity or non-immunity.

12. This case presents a highly unusual situation because the Executive Branch does not currently recognize any government of Somalia. See *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 410 (1964) ("Political recognition [of a foreign sovereign] is exclusively a function of the Executive."). Two competing putative governmental entities have sought to opine regarding the application of immunity to *Samantar*: the Transitional Federal Government ("TFG"), which has sought to assert residual immunity on behalf of *Samantar*; and the government of the "Republic of Somaliland," which has sought to waive any possible residual immunity. See Ex. 1. However, the United States does not currently recognize the TFG or any other entity as the government of Somalia. Absent a decision by the Executive Branch formally to recognize either entity as the government of Somalia or otherwise to recognize either of those competing assertions, neither entity is capable of waiving or asserting a claim of immunity on behalf of a former Somali official or of taking a position on whether Defendant's alleged acts were taken in an official capacity.

13. As noted, a former official's residual immunity is not a personal right. It is for the benefit of the official's state. In the absence of a recognized government authorized either to assert or waive Defendant's immunity or to opine on whether Defendant's alleged actions were taken in an official capacity, the Department of State has determined that such immunity should not be recognized here. That determination has taken into account the potential impact of such a decision on the foreign relations interests of the United States. *See* Ex. 1. In future cases presenting different circumstances, the Department could determine either that a former official of a state without a recognized government is immune from civil suit for acts taken in an official capacity, or that a former official of a state with a recognized government is not immune from civil suit for acts that were not taken in an official capacity.

14. The Executive's conclusion that Defendant is not immune is further supported by the fact that Defendant has been a resident of the United States since June 1997. *See* Br. in Support of Def.'s Mot. to Dismiss, Doc. #139, at 1 (Nov. 29, 2010). A foreign official's immunity is for the protection of the foreign state. Thus, a former foreign official's decision to permanently reside in the United States is not, in itself, determinative of the former official's immunity from suit for acts taken while in office. Basic principles of sovereignty, nonetheless, provide that a state generally has a right to exercise jurisdiction over its residents. *See, e.g., Schooner Exchange*, 11 U.S. at 136. In the absence of a recognized government that could properly ask the Executive Branch to suggest the immunity of its former official, the Executive has determined in this case that the interest in permitting U.S. courts to adjudicate claims by and against U.S. residents warrants a denial of immunity.

Conclusion

For the foregoing reasons, the United States has determined that Defendant Samantar is not entitled to official immunity in the circumstances of this case.

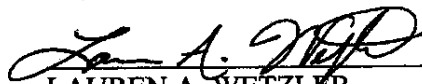
Dated: February 14, 2011

Respectfully submitted,

TONY WEST
Assistant Attorney General

NEIL H. MACBRIDE
United States Attorney

VINCENT M. GARVEY
Deputy Branch Director



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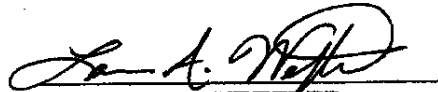
Counsel for the United States

CERTIFICATE OF SERVICE

I hereby certify, this 14th day of February, 2011, that a true copy of the foregoing was sent via U.S. Mail and electronic mail to the following counsel of record in this matter:

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EXHIBIT 1

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

February 11, 2011

The Honorable Tony West, Esq.
Assistant Attorney General
Civil Division
United States Department of Justice
950 Pennsylvania Ave. N.W.
Washington D.C. 20530

Re: Yousuf v. Samantar, Civil Action No 01-13760 (E.D. Va.)

Dear Assistant Attorney General West:

I write to request that the Department of Justice convey to the U.S. District Court for the Eastern District of Virginia in the above-referenced case the determination of the Department of State that Defendant Mohamed Ali Samantar does not enjoy immunity from the jurisdiction of U.S. courts with respect to this action.

The Department of State has reviewed this matter carefully and has concluded that Defendant Mohamed Ali Samantar is not immune from the Court's jurisdiction in the circumstances of this case. Defendant Samantar, a U.S. resident, is being sued by U.S. citizen and Somali plaintiffs in the United States District Court for the Eastern District of Virginia under the Torture Victim Protection Act (TVPA) and the Alien Tort Claims Act (ATCA) for alleged responsibility for torture, extrajudicial killings, and other atrocities. Samantar is a former official of a state with no current government formally recognized by the United States, who generally would enjoy only residual immunity, unless waived, and even then only for actions taken in an official capacity.

Defendant Samantar served as First Vice President, Minister of Defense, and later as Prime Minister for the now-defunct Somali government of Mohamed Siad Barre during the 1980s. In January 1991, armed opposition factions drove the Barre regime from power, resulting in the complete collapse of Somalia's central government. Thereafter, Samantar fled Somalia, and according to plaintiffs, has been living in Virginia since 1997. Following the collapse of the Barre regime, reconciliation conferences among warring Somali factions have resulted in the creation of a transitional Somali government, the Transitional Federal Government (TFG). Although the United States recognized the Barre regime, since the fall of that government, the United States has not recognized any entity as the government of Somalia. The United States continues to recognize the State of Somalia, and supports the efforts of the TFG to establish a viable central government, but does not recognize the TFG or any other entity as the government of Somalia. The TFG has sought to assert immunity for Samantar, while a competing entity, the putative government of the "Republic of Somaliland," has sought to waive any possible

immunity. No recognized foreign government is thus available either to assert or waive any immunity Samantar might enjoy.

In light of these circumstances, taking into account the relevant principles of customary international law, and considering the overall impact of this matter on the foreign policy of the United States, the Department of State has determined that Defendant Samantar does not enjoy immunity from the jurisdiction of U.S. courts with respect to this action. Accordingly, the Department of State requests that the Department of Justice submit to the district court an appropriate filing setting forth this immunity determination.

Sincerely,

A handwritten signature in black ink, appearing to read 'Harold H. Koh', written in a cursive style.

Harold Hongju Koh
The Legal Adviser

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

BASHE ABDI YOUSUF, et al.,

Plaintiffs,

v.

MOHAMED ALI SAMANTAR,

Defendant.

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1:04cv1360 (LMB/JFA)

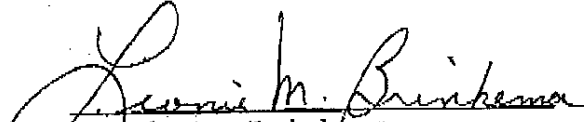
ORDER

The government has determined that the defendant does not have foreign official immunity. Accordingly, defendant's common law sovereign immunity defense is no longer before the Court, which will now proceed to consider the remaining issues in defendant's Motion to Dismiss. Accordingly, it is hereby

ORDERED that the parties select a mutually agreeable Friday at 10:00 a.m. to argue the Motion to Dismiss and file a notice of that date by the close of business, Friday, February 18, 2011.

The Clerk is directed to forward copies of this Order to counsel of record.

Entered this 15th day of February, 2011.


Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

BASHE ABDI YOUSUF, et al., . Civil Action No. 1:04cv1360
Plaintiffs, .
vs. . Alexandria, Virginia
April 1, 2011
MOHAMED ALI SAMANTAR, . 10:40 a.m.
Defendant. .
.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: NATASHA ELISA FAIN, ESQ.
Center for Justice and
Accountability
870 Market Street, Suite 680
San Francisco, CA 94102

FOR THE DEFENDANT: JOSEPH PETER DRENNAN, ESQ.
218 North Lee Street, Third Floor
Alexandria, VA 22314

ALSO PRESENT: AZIZ DERIA

OFFICIAL COURT REPORTER: ANNELIESE J. THOMSON, RDR, CRR
U.S. District Court, Fifth Floor
401 Courthouse Square
Alexandria, VA 22314
(703)299-8595

(Pages 1 - 15)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

P R O C E E D I N G S

1
2 THE CLERK: Civil Action 04-1360, Bashe Abdi Yousuf, et
3 al. v. Mohamed Ali Samantar. Would counsel please note their
4 appearances for the record.

5 THE COURT: All right, counsel, please identify
6 yourselves.

7 MR. DRENNAN: Yes, Your Honor. Good morning. Joseph
8 Peter Drennan on behalf of defendant Mohamed Ali Samantar.

9 THE COURT: All right.

10 MS. FAIN: Good morning, Your Honor. Natasha Fain from
11 the Center for Justice and Accountability, on behalf of the
12 plaintiffs. Plaintiff Aziz Deria is here with us today.

13 THE COURT: All right. We have before us the
14 defendant's motion to dismiss and the defendant's motion for
15 reconsideration. I want to address the last motion first.

16 Mr. Drennan, again, as you know, courts seldom reverse
17 themselves. I'm not -- I've certainly reversed myself in the
18 past, but it's not a common practice, and I have considered with
19 care your motion for reconsideration, but I'm satisfied that it
20 ought not to be granted. The Executive Branch has spoken on this
21 issue and that they are entitled to a great deal of deference.
22 They don't control but they are entitled to deference in this
23 case.

24 The rationale for finding -- for the government's
25 position on sovereign immunity, I think, is sound. As you know,

1 they looked upon among other things the status of the government
2 of Somalia at this point, and unless anything's changed in the
3 last couple of weeks, I don't think there's any new situation
4 going on there.

5 Has the government changed in any respect in the last
6 two or three weeks?

7 MS. FAIN: No, Your Honor.

8 THE COURT: No. And the residency of the defendant has
9 also been taken properly into consideration. In the past, at
10 least the Second Circuit has found that the lack of a recognized
11 government is a factor in the sovereignty determination, and I'm
12 going to go with that, so we're not going to hear any argument on
13 that. All right?

14 MR. DRENNAN: We, we understand the Court's ruling, but
15 we would respectfully note our exception.

16 THE COURT: All right, that's fine.

17 So then we move on to the other issues that have been
18 raised. The statute of limitations issue is a very interesting
19 one, but, Mr. Drennan -- I think I'll keep you on your feet since
20 it's your motion. You do have circuit law -- there are certainly
21 certain circuits that have clearly found that equitable tolling is
22 available under these statutes, correct?

23 MR. DRENNAN: Yes, Your Honor, but there, there's some
24 disagreement about that, and, and there's the --

25 THE COURT: Yes, but here's the point: The Fourth

1 Circuit is silent.

2 MR. DRENNAN: Correct.

3 THE COURT: All right. Some circuits have found that,
4 in fact, equitable tolling is appropriate, and this is before the
5 Court on a motion to dismiss, not a motion for summary judgment,
6 correct?

7 MR. DRENNAN: That is correct.

8 THE COURT: All right. Equitable tolling to a certain
9 degree is somewhat fact specific; would you not agree?

10 MR. DRENNAN: I would, I would -- if equitable tolling
11 were to be deemed to apply, I would agree that it is inexorably
12 fact specific.

13 THE COURT: And therefore, the matter can be
14 reconsidered when the full record of this case is developed,
15 because again, previously we granted an early motion to dismiss,
16 and discovery, as I recall, had not been going on in this case or
17 at least had not gone on too extensively. There was another case
18 also pending at that time, and there was huge discovery problems,
19 or were there discovery problems in this case as well?

20 MR. DRENNAN: Well, Your Honor, in this case, I'm
21 relatively new to this case, and I do not believe that any
22 discovery has taken place in this case. Your Honor is obviously
23 adverting to the other case involving Colonel Ali in which I've
24 been involved since the outset.

25 THE COURT: Right. In that case, there were significant

1 discovery problems, but there's been no discovery done in this
2 case, and so the issue as to whether or not there would be facts
3 that would support equitable tolling or not we don't know yet. So
4 I'm going to deny the motion to dismiss on statute of limitations
5 grounds without prejudice, and the issue can be raised once there
6 is a fuller development of the evidentiary record.

7 MR. DRENNAN: Your Honor, I understand the Court's
8 position with regard to equitable tolling, but I would, I would
9 query the Court regarding the determination of the applicable
10 limitations period, because the, the action brought by the
11 plaintiffs is essentially brought under the Alien Tort Statute as
12 well as what I call for shorthand reference the Torture Statute.

13 THE COURT: Right.

14 MR. DRENNAN: The Torture Statute was not enacted until,
15 if I'm not mistaken, 1992, and that was after any alleged relevant
16 conduct took place. At the time of the enactment of the, the
17 Torture Statute, the applicable limitations period for claims
18 brought under the, the Alien Tort Claims Act was the most
19 analogous state limitations period, and as pointed out in our
20 briefing papers, that would be two years.

21 It was not until the Torture Statute was enacted that a
22 ten-year period was prescribed for that statute, and then there's
23 been some, some stare decisis ensuing from that that allows
24 borrowing to the Alien Tort Claims Act claim that would give under
25 contemporary jurisprudence a ten-year limitations period for the

1 alien claim.

2 The question here presented is what limitations period
3 applies to the claims brought under the second amended complaint
4 as it's before the Court, and respectfully, we are of the view
5 that that would be a two-year limitations period and that
6 accordingly, there could be no gainsaying that this action is, is
7 untimely.

8 THE COURT: All right, let me have the plaintiff
9 respond.

10 MS. FAIN: Your Honor, that's just not supported by the
11 decisions. Courts applying equitable tolling under the Torture
12 Victim Protection Act and the ATS have consistently tolled for the
13 full ten-year period. After the defendant entered the United
14 States, there's just -- there's no authority to support
15 defendant's proposition that those ten years should not be applied
16 in this case.

17 THE COURT: It is an interesting issue as to whether or
18 not the ten years is going to apply. Again, I'm going to punt on
19 that issue right now and let this case go forward and be fully
20 developed. This is an affirmative defense that has been properly
21 raised by the defendant and can be raised again after we see the
22 full record, but I'm not going to grant the motion to dismiss on
23 these grounds at this point.

24 MR. DRENNAN: I understand, Your Honor, and again, not
25 to, not to belabor the point, but, you know, we did make the

1 argument that, that my client was living openly in Italy from 1991
2 through '97, before he came to the United States, and that --

3 THE COURT: We'll see how openly he truly was living.
4 Again, that's a factual issue, all right? And again, equitable
5 tolling requires the Court to use, you know, its sound discretion
6 in determining what would be basically fair or unfair to the
7 plaintiffs.

8 If it was absolutely clearly obvious that he was there,
9 if there's evidence that some of the plaintiffs knew or should
10 have known that he was there, that may be another issue, but I
11 don't have that before me right now in the context of a motion to
12 dismiss, and so I'm denying the motion, all right?

13 MR. DRENNAN: I understand. Your Honor -- and again, I
14 do understand the Court's ruling, but because of the, the
15 importance of that issue, what we respectfully believe are very
16 stale claims, if the Court -- and we'll move on to address the
17 other issues raised in our motion to dismiss, but if the Court
18 were to be inclined to permit some discovery, shouldn't that
19 discovery be essentially delimited to addressing the, the issues
20 raised very, I think, importantly --

21 THE COURT: We're not going to do bifurcated discovery
22 in this case. This case has already been around all the way up
23 the line one time. We're going to get the case fully litigated.
24 When I say fully litigated, I mean discovered, and discovery could
25 be the killer in this case. It was last time in a companion case.

1 It was just an unmanageable situation.

2 And it is the plaintiffs who chose to bring the case,
3 and discovery has to be able to be achieved, and so down the road
4 again, Mr. Drennan, the Court will review the record when it's
5 been fully developed, if it can be fully developed, all right?
6 And if it can't be, then the ramifications of that are what they
7 are, but at this point, I'm not going to bifurcate discovery. The
8 case is going to go forward, all right?

9 MR. DRENNAN: I understand, but, Your Honor, may -- I
10 understand the Court has, has essentially ruled thus far on our
11 motion with regard to the reconsideration.

12 THE COURT: Yes. I've denied your motion to reconsider.

13 MR. DRENNAN: Yes.

14 THE COURT: I've found that equitable tolling does apply
15 to these statutes but that the evidence developed during the
16 record -- during, during discovery may result in a finding that
17 the case is time-barred, all right? I can't make that decision at
18 this point. The facts are not before the Court.

19 MR. DRENNAN: All right.

20 THE COURT: And then the next round of arguments, which
21 we have not addressed, is the failure to state a claim.

22 MR. DRENNAN: Correct. And that's what I was just about
23 to do.

24 THE COURT: All right.

25 MR. DRENNAN: Your Honor, in, in essence, the claims are

1 that my client as the, the head of state --

2 THE COURT: The Minister of Defense.

3 MR. DRENNAN: Ministry of Defense or subsequently as
4 prime minister, somehow bears responsibility for alleged
5 atrocities that took place in certain regions of Somalia during
6 the 1980s, and if I could summarize those alleged atrocities, they
7 essentially boil down to extrajudicial killings and torture and, I
8 believe, unlawful detention, and --

9 THE COURT: Well, I mean, to be specific, I think we've
10 counted seven claims under the ATS: acts of torture;
11 extrajudicial killing; attempted extrajudicial killing; crimes
12 against humanity; war crimes; cruel, inhuman, and degrading
13 treatment or punishment; and arbitrary detention.

14 MR. DRENNAN: Yeah, that's correct. And, Your Honor,
15 with regard to each, each of those, the *Sosa* case, the 2004 *Sosa*
16 case --

17 THE COURT: They have to -- those causes of action have
18 to, have to have attained the status of binding customary
19 international law to be cognizable.

20 MR. DRENNAN: Correct. And our, and our -- that is
21 indeed correct, and our position is that they, they had not, and
22 that was the reason that the Torture Statute was enacted. When
23 the Congress enacted the Torture Statute, it specifically stated
24 in the committee report that it was creating a new cause of
25 action, and if these were recognized norms of being actionable,

1 then the Torture Statute wouldn't have been necessary, and it's
2 our position that the animating purpose of the Torture Statute was
3 to address a situation in which there was no universal consensus
4 that extrajudicial killing in a foreign land by a foreign
5 government or an official of a foreign government to his own
6 people was actionable.

7 And, in fact, the only -- in our estimation, retroactive
8 application of an action for extrajudicial killing is the, the
9 *Flatow* amendment to the -- or the state terror exemption to the
10 Foreign Sovereign Immunities Act that allows, for instance, suits
11 against Iran for the Beirut Barracks Bombing in 1983, let's say,
12 but other than that, there was no positive law, no positive law in
13 the United States during the 1980s, when these acts -- and we're
14 not conceding that any of them were committed, by the way -- but
15 during the time in which the alleged conduct -- or activities took
16 place, there was no consensus in the United States that any of
17 those discrete claims were actionable.

18 They only would have become actionable upon the
19 enactment of the Torture Statute in 1992, which raises another
20 issue with regard to retroactive application, and we respectfully
21 submit that, that there is, is no compelling legal authority that
22 makes the proscribed conduct under the Torture Statute retroactive
23 to actions that antedated the, the Torture Statute. If there had
24 been, there certainly would have been an explicit proviso in the
25 statute, just as there was in the Foreign Sovereign Immunities

1 Act, but there was not.

2 THE COURT: All right.

3 MR. DRENNAN: So our position is that none of these
4 counts alleging liability under any of the discrete causes of
5 action made represent proper statements of a cause of action,
6 because at the time they took place, there was no universal
7 consensus that they were actionable. That only came upon the
8 enactment of the Torture Statute in 1992.

9 THE COURT: Let me hear from plaintiff on that.

10 MR. DRENNAN: All right.

11 MS. FAIN: Your Honor, defendant's statement of the law
12 can't be further from the truth. That is absolutely not the case.
13 Every court that has considered this issue has squarely held that
14 the TVPA can be applied to violations committed before it was
15 enacted in March of 1992. That's because the TVPA does not impair
16 rights, increase liability, or impose new duties. Rather, it
17 recodifies a claim previously maintained by aliens under the Alien
18 Tort Statute and by U.S. citizens under 28 U.S.C., section 1331
19 rising under jurisdictions or in state courts.

20 The Eleventh Circuit rejected a similar challenge to
21 this in the *Cabello* case: ". . . this Court could have exercised
22 extraterritorial jurisdiction to reach wrongful death actions
23 involving defendants and locations outside the forum jurisdiction"
24 before the enactment of the TVPA.

25 Further, these violations defendant mentioned,

1 especially extrajudicial killing, have long been a part of United
2 States and international law, long before the alleged actions in
3 this case, and as we submitted in our papers, this was not only a
4 violation of U.S. law and international law; it was a violation of
5 Somalia law.

6 He can't tell me that when he lined up one of our
7 plaintiffs along the other Isaaq army officers and shot and shot
8 and shot and shot, he thought that that was not going to be
9 something that was actionable, that he thought that that was
10 lawful.

11 THE COURT: All right. And are you alleging that the
12 defendant himself actually pulled the trigger? You're not, just
13 to be accurate about this.

14 MS. FAIN: Thank you, Your Honor, for clarifying. No,
15 as you're, as you're making clear, defendant in his role as
16 general who is on the ground and overseeing the forces
17 systematically attacking unarmed civilians was not himself pulling
18 the trigger. In fact, he was devising the plans and overseeing
19 the death of countless victims.

20 THE COURT: All right.

21 MR. DRENNAN: Your Honor, this case has been extensively
22 briefed, but very briefly by rejoinder to what's just been said,
23 this allusion that, well, somehow my client violated Somali law,
24 we would invite the Court's attention to the cases cited in our
25 moving papers involving civil litigation arising over China's

1 repression of the Falun Gong movement in which the plaintiffs in
2 that case made essentially the same argument: Chinese officials
3 are violating Chinese law in repressing the Falun Gong, a
4 religious dissenting movement.

5 The court in that case, to be sure, it was a Northern
6 District of California case, but that, that court said
7 notwithstanding that, it's quite clear that the officials that
8 were carrying out these alleged actions or atrocities were
9 carrying out or furthering Chinese government policy, and nowhere
10 in any of the plaintiffs' moving papers do they somehow state that
11 my client, General Samantar, or Mohamed Ali Samantar, was somehow
12 running some kind of rogue operation that was contrary to the
13 intent, purpose, and policy of the Somali government, and
14 therefore, that argument is unavailing.

15 THE COURT: Well, again, I think that's again too
16 wrapped up in fact. I am not an expert on Somali history or
17 Somali law. I have at this point I don't feel a sufficient record
18 as to what was or was not within the context of Somali law at that
19 time. There's even a question in my mind as to the relationship
20 of the United States government to that government at that time,
21 all right?

22 Those are fact issues that may ultimately resolve the
23 case at summary judgment but not at this early stage. So the
24 motion is going to be denied, again without prejudice to the same
25 issues being raised in a context where there's more meat on the

1 bones, so to speak.

2 MR. DRENNAN: I understand. And again, we will
3 respectfully note our objection. Thank you, Your Honor.

4 THE COURT: I mean, there's also an issue about, you
5 know, vicarious --

6 MR. DRENNAN: Exception.

7 THE COURT: -- vicarious litigation.

8 I mean, you know, again, the United States under section
9 1983, for example, we have a body of case law in this country that
10 the head of an agency -- of a government agency is not normally
11 personally liable for the actions of the underlings. That's a
12 factual issue. A similar kind of analysis would have to be done
13 here as well.

14 And on the political question doctrine, again, I'm not
15 going to grant a motion to dismiss at this point. All of these
16 issues, while they are legally intensive issues, also have to be
17 resolved in my view in the context of a better factual record than
18 what we have at this point.

19 So the bottom line is the motion to dismiss is denied
20 without prejudice, and if we haven't already issued a scheduling
21 order -- have we issued one yet?

22 MR. DRENNAN: No.

23 THE COURT: One will be issued this week, and you're off
24 and running in that respect. Thank you.

25 MR. DRENNAN: Thank you.

1 MS. FAIN: Thank you, Your Honor.

2 (Which were all the proceedings
3 had at this time.)
4

5 CERTIFICATE OF THE REPORTER

6 I certify that the foregoing is a correct transcript of the
7 record of proceedings in the above-entitled matter.
8

9
10 _____ /s/
11 Anneliese J. Thomson
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IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA

(Alexandria Division)

BASHE ABDI YOUSUF, *et alii*.

Plaintiffs,

versus

MOHAMED ALI SAMANTAR,

Defendant.

*
*
*
*
*
*
*
*
*

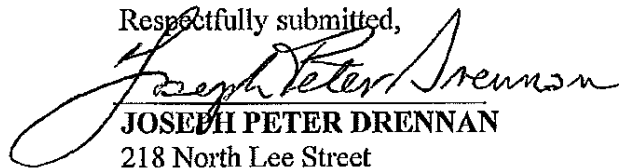
Civil Action No. 04-1360 (LMB/JFA)

NOTICE OF APPEAL

KINDLY TAKE NOTICE that your defendant in respect of the above-encaptioned cause, viz., MOHAMED ALI SAMANTAR, hereby and herewith appeals to the United States Court of Appeals for the Fourth Circuit, from the Order of this Honorable Court entered in the instant action on 15 February 2011, denying your defendant's claim of immunity from suit under common law [Document # 148], as well as from the Order of this Honorable Court entered in the instant action on 1 April 2011, denying your defendant's motion to reconsider said 15 February 2011 Order [Document #158]. Copies of each of the said Orders from which your defendant now appeals are attached hereto as "Exhibit 'A'" and "Exhibit 'B'", respectively.

Dated: 29 April 2011

Respectfully submitted,



JOSEPH PETER DRENNAN

218 North Lee Street

Third Floor

Alexandria, Virginia 22314

Telephone: (703) 519-3773

Telecopier: (703) 548-4399

E-Mail: joseph@josephpeterdrennan.com

Virginia State Bar No. 023894

ATTORNEY AND COUNSELLOR,

IN PRAESENTI, FOR DEFENDANT

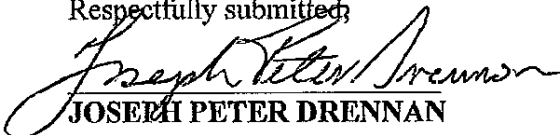
CERTIFICATE OF SERVICE

I, Joseph Peter Drennan, undersigned, hereby and herewith certify that, on this twenty-ninth day of the month of April, 2011, a true, cyclostyled facsimile of the foregoing was despatched by carriage of First Class Post, through the United State Postal Service, with adequate postage prepaid thereon, enshrouded in a suitable wrapper, unto:

Joseph W. Whitehead, Esquire
Thomas P. McLish, Esquire
W. Randolph Teslik, Esquire
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036-1564, and that, on even date, an electronic copy of the foregoing was

sent, by *e-mail*, unto the said Messrs. Whitehead, McLish & Teslik, at the respective *e-mail* addresses of each, *viz.*: jwhitehead@akingump.com , tmclish@akingump.com , & rteslik@akingump.com .

Respectfully submitted,



JOSEPH PETER DRENNAN

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Telecopier: (703) 548-4399

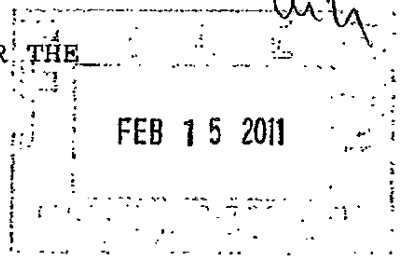
E-mail: joseph@josephpeterdrennan.com

Virginia State Bar No. 023894

ATTORNEY AND COUNSELLOR,
IN PRAESENTI, FOR
MOHAMED ALI SAMANTAR

Exhibit "A"

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



BASHE ABDI YOUSUF, et al.,)
)
Plaintiffs,)
)
v.)
)
MOHAMED ALI SAMANTAR,)
)
)
Defendant.)

1:04cv1360 (LMB/JFA)

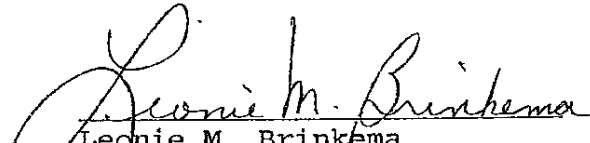
ORDER

The government has determined that the defendant does not have foreign official immunity. Accordingly, defendant's common law sovereign immunity defense is no longer before the Court, which will now proceed to consider the remaining issues in defendant's Motion to Dismiss. Accordingly, it is hereby

ORDERED that the parties select a mutually agreeable Friday at 10:00 a.m. to argue the Motion to Dismiss and file a notice of that date by the close of business, Friday, February 18, 2011.

The Clerk is directed to forward copies of this Order to counsel of record.

Entered this 15th day of February, 2011.

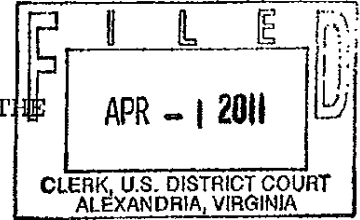

Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

08

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Exhibit "B"



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

BASHE ABDI YOUSUF, et al.,)
)
Plaintiffs,)
)
v.)
)
MOHAMED ALI SAMANTAR,)
)
)
Defendant.)

1:04cv1360 (LMB/JFA)

ORDER

For the reasons stated in open court, it is hereby
ORDERED that defendant's Motion to Dismiss [Dkt. No. 138]
and Motion to Reconsider [Dkt. No. 150] be and are DENIED WITHOUT
PREJUDICE.

The Clerk is directed to forward copies of this Order to
counsel of record.

Entered this 1st day of April, 2011.

Leonie M. Brinkema
United States District Judge

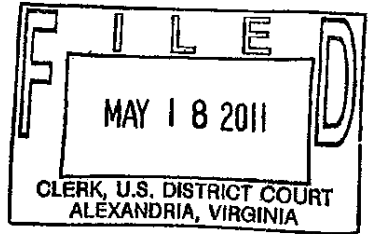
Alexandria, Virginia

158

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

BASHE ABDI YOUSUF, et al.,)
)
)
Plaintiffs,)
)
v.)
)
MOHAMED ALI SAMANTAR,)
)
)
Defendant.)

1:04cv1360 (LMB/JFA)



ORDER

Before the Court is defendant's Mohamed Ali Samantar's ("Samantar") Motion to Stay [Dkt. No. 162]. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before us and argument would not aid the decisional process. For the reasons stated below, the motion will be denied.

On November 29, 2010, Samantar filed a Motion to Dismiss this civil action claiming, inter alia, that he is entitled to common law sovereign immunity. On February 14, 2011, the Executive Branch informed the Court that Samantar does not have foreign official immunity. Accordingly, on February 15, 2011, the Court denied Samantar's common law immunity claim. On March 15, 2011, Samantar filed a Motion to Reconsider the denial of common law immunity. On April 1, 2011, the Court denied both the remainder of Samantar's motion to dismiss and Samantar's motion

to reconsider. On April 29, 2011, Samantar filed a Notice of Appeal of the denial of the claim of common law immunity and the denial of the motion for reconsideration.

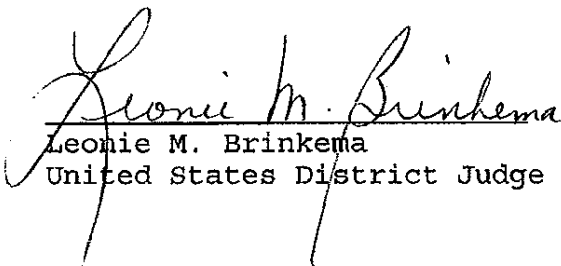
On May 13, 2011, Samantar filed a Motion to Stay the scheduling order in this case pending resolution of the interlocutory appeal. Samantar argues that the appeal divests this court of jurisdiction; however, Samantar concedes that divestiture does not apply if the district court certifies the interlocutory as frivolous. Samantar argues that "the denial of immunity to Samantar raises important issues of the separation of powers and of the scope of the right to common law immunity in the absence of any assertion by the Executive Branch of any harm to United States foreign policy interests from a recognition of that immunity." Mot. to Stay at 4.

Plaintiffs correctly argue that Samantar's appeal is frivolous. Only the Executive Branch can determine whether a former foreign government official is entitled to common law immunity. See Samantar v. Yousuf, 130 S. Ct. 2278, 2284 (2010). In this case, the State Department determined that Samantar is not entitled to common law immunity. Samantar has not cited any statute or binding precedent that would allow this Court to ignore the State Department's finding. Therefore, the Court certifies this appeal as frivolous, and it is hereby

ORDERED that defendant's Motion to Stay [Dkt. No. 162] be and is DENIED.

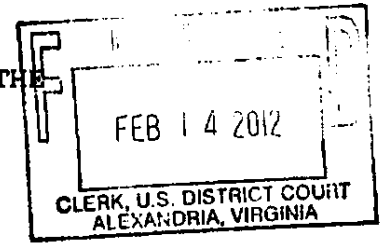
The Clerk is directed to remove the hearing on this motion from the May 20, 2011 docket and forward copies of this Order to counsel of record.

Entered this th 18 day of May, 2011.


Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

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



BASHE ABDI YOUSUF, et al.,)
)
Plaintiffs)
)
v.)
)
MOHAMED ALI SAMANTAR,)
)
Defendant.)

1:04cv1360 (LMB/JFA)


ORDER

For the reasons stated in open court, it is hereby
ORDERED that the defendant's Renewed Motion to Stay [Dkt.
No. 311] be and is DENIED, and the jury trial will begin, as
scheduled, with voir dire starting Tuesday, February 21, 2012 at
10:00 a.m.

The Clerk is directed to forward copies of this Order to
counsel of record.

Entered this 14th day of February, 2012.

Alexandria, Virginia

lsl 

Leonie M. Brinkema
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

BASHE ABDI YOUSUF, et al.,	.	Civil Action No. 1:04cv1360
	.	
Plaintiffs,	.	
	.	
vs.	.	Alexandria, Virginia
	.	February 14, 2012
MOHAMED ALI SAMANTAR,	.	10:00 a.m.
	.	
Defendant.	.	
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.	.	
.	.	
.	.	

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:	THOMAS P. McLISH, ESQ. DEBRA A. DRAKE, ESQ. JOSEPH W. WHITEHEAD, ESQ. Akin Gump Strauss Hauer & Feld LLP 1333 New Hampshire Avenue, N.W. Washington, D.C. 20036
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FOR THE DEFENDANT:	JOSEPH PETER DRENNAN, ESQ. 218 North Lee Street, Third Floor Alexandria, VA 22314
--------------------	---

OFFICIAL COURT REPORTER:	ANNELIESE J. THOMSON, RDR, CRR U.S. District Court, Fifth Floor 401 Courthouse Square Alexandria, VA 22314 (703)299-8595
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(Pages 1 - 32)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 P R O C E E D I N G S

2 THE CLERK: Civil Action 04-1360, Yousuf, et al. v.
3 Mohamed Ali Samantar. Would counsel please note their
4 appearances for the record.

5 MR. WHITEHEAD: Your Honor, Joseph Whitehead from
6 Akin Gump Strauss Hauer & Feld, along with my colleagues,
7 Thomas McLish and Debra Drake.

8 THE COURT: Good morning.

9 MR. McLISH: Good morning.

10 MR. DRENNAN: Good morning, Your Honor. Joseph Peter
11 Drennan on behalf of Mohamed Ali Samantar.

12 THE COURT: All right, there are several
13 housekeeping -- several more housekeeping matters I want to
14 address this morning while you're all here, and then we will
15 also address Mr. Drennan's renewed motion to stay.

16 We received yesterday and I assume, Mr. Drennan, you
17 got a copy of the letter signed by Mr. Whitehead concerning
18 some of the technical issues in this case, and I just want to
19 put on the record that we have advised the plaintiffs that
20 their tech person may only bring one laptop computer, is not
21 permitted to bring a monitor, it's not necessary, and a small
22 equipment table, and again, the only space you've got is what's
23 behind you, so there can't be a whole lot of stuff being
24 brought into the well of the court.

25 And your tech person, I understand, is going to be

1 meeting with our tech people Thursday morning just to make sure
2 that the equipment works with what we have here.

3 Now, the one thing I want to make sure is how much
4 evidence do you have in this electronic format, Mr. Whitehead,
5 or who's going to respond to that? Ms. Drake?

6 MS. DRAKE: Your Honor, after plaintiffs had filed
7 their amended pretrial disclosures, we have 80 exhibits out of
8 now reduced from 348 that are in play. We expect to offer
9 maybe about 30 of them, and our electronic display will be
10 merely to show the Court and the jury and the witness the
11 exhibit on the screen. So that's what we intend to use our
12 electronic thing for.

13 THE COURT: All right. Now, again, you need to for
14 the record of the court and for the purposes of the jury having
15 easy access, to have a hard copy. Do you understand that?

16 MS. DRAKE: We intend to do that as well, Your Honor.

17 THE COURT: All right, that's fine. I just wanted to
18 make sure.

19 And again, in order to keep an even playing field,
20 you have all agreed, and I think this came through our phone
21 conference, that your tech person will assist Mr. Drennan to
22 the extent that he has any evidence -- first of all, if he's
23 going to use any of your evidence in cross-examination or in
24 direct examination, and -- but that does mean, Mr. Drennan, you
25 have got to communicate with that tech person, all right?

1 MR. DRENNAN: (Nodding head.)

2 THE COURT: All right, that's fine.

3 Now, in terms of the translators, this is still an
4 issue that I don't quite understand why it's an issue, because
5 we have tried multi-defendant criminal cases, usually in
6 Spanish, with simultaneous translation and no problem working
7 with the system we have here, which is a headset wireless
8 system.

9 The proposal in Mr. Whitehead's letter for some kind
10 of a contraption that required a six-foot table and all sorts
11 of gizmos is not going to work. You can see the well is not
12 that big, and when we put all the people in here that we're
13 going to need to put in and have to have access for witnesses
14 to come and go and my court security officer people to be here,
15 it's not feasible, and I don't think it's necessary at all.

16 So I expect that this case should be able to be
17 handled the way we do any other case with multiple parties who
18 need translation.

19 And we have four plaintiffs, but I understand only
20 two are going to need the translation services. Is that
21 correct?

22 MS. DRAKE: That is correct.

23 THE COURT: All right. And I understand the
24 defendant, Mr. Samantar, is going to need translation services.
25 Is that correct, Mr. Drennan, or not?

1 MR. DRENNAN: Yes, Your Honor, as I mentioned.

2 THE COURT: But he won't be here every day. Those
3 days when he is here, he will need a headset.

4 MR. DRENNAN: Yes.

5 THE COURT: So, I mean, at the most, as I understand
6 it, we're going to need three headsets. If we have a nonparty
7 witness who does not speak English -- do we have any of those,
8 any nonparty?

9 MS. DRAKE: No.

10 THE COURT: Neither a plaintiff nor a defendant?

11 MS. DRAKE: Not to my knowledge, Your Honor.

12 THE COURT: Well, that's going to make it very easy.

13 So basically, we simply need the translators to enable three
14 parties to be able to understand the proceedings, and if any of
15 those three testify, they would be testifying in Somali. Then
16 we would need the interpreter to be translating into English
17 what those people have to say, correct?

18 MS. DRAKE: Yes.

19 THE COURT: There shouldn't be any problem using the
20 court system at all, all right?

21 MS. DRAKE: My, my tech guru behind me seems to
22 concur with that.

23 THE COURT: Fine. But just to make sure now, you're
24 going to bring your translator person to the courthouse
25 Thursday morning with your other tech folks.

1 MS. DRAKE: Yes.

2 THE COURT: And Mr. Bachman is going to show them the
3 system, and there shouldn't be any problem, and I don't think
4 my court reporter should have any problem then, because it
5 should be done just the way we do Spanish.

6 The important thing to remember, though, is that the
7 translator cannot be speaking so loudly that it starts to
8 interfere with everybody else's hearing, all right?

9 MS. DRAKE: (Nodding head.)

10 THE COURT: But we should be able to work that out.

11 Now, the other sort of logistical thing is -- and I
12 think, Ms. Drake, you or Mr. Whitehead or cocounsel should have
13 some sense of this -- my recollection from the past was that
14 frequently when we had motions in this case, we had a courtroom
15 full of spectators. Do you anticipate we are going to have
16 that many visitors to this trial?

17 MS. DRAKE: I will cede the floor to defendant,
18 because the spectators to date have been in support of the
19 defendant.

20 THE COURT: All the -- oh, really? I had always
21 thought they were from the plaintiffs' side.

22 MR. DRENNAN: Well, Your Honor, I'm not prepared to
23 say that.

24 THE COURT: But regardless --

25 MR. DRENNAN: And I would point out that it's

1 recently been brought to my attention that the Center for
2 Justice & Accountability has sent a mass e-mail all over the
3 world inviting people to come to this trial.

4 THE COURT: Well, you need to understand a couple of
5 logistical realities. This courtroom holds at best 90 people,
6 all right? Beyond 90, because we don't allow people to stand
7 in the courtroom, beyond 90, they will not be permitted to be
8 in the courtroom.

9 And on Tuesday, which is our opening day, we're going
10 to have a jury pool in here of approximately 40 people, which
11 means that the amount of the public that will be permitted has
12 to by the nature of that situation be extremely limited, and so
13 it's going to be a first-come, first-served basis in terms of
14 spectators. However, I want to make sure that the plaintiffs
15 and the defendant don't have difficulty getting, you know, in.

16 Now, we only have one defendant, so it's going to be
17 easy for him to sit at counsel table with his counsel. We have
18 four plaintiffs, but we have so many lawyers on the case plus
19 the tech person, I don't think there's any way we can
20 reasonably get all the plaintiffs inside the well of the court,
21 so we had decided -- and, Mr. Wood, this is partly for the
22 court security officers to know, too -- I would like to be able
23 to put the four plaintiffs in the front center row so that they
24 are right behind where their counsel would be, and have the
25 interpreter probably sitting basically sort of behind where you

1 are, and that way, the interpreter will be quite close to
2 Mr. Samantar as well when he is here, and then -- so if --
3 counsel, if you can make sure that your clients know where they
4 should be sitting, then the only day we will need to make an
5 exception for that is the first day, because I want the jury
6 right in front of me, and I'll ask that we put the plaintiffs
7 in the first row on the far side.

8 Do you expect your client, Mr. Drennan, he will be
9 here Tuesday?

10 MR. DRENNAN: I expect him to be, yes, Your Honor.

11 THE COURT: All right. Then he will be able to sit
12 on the first row of the far -- my far right, your far left. So
13 that way, we'll have all the parties in here for the jury
14 selection, but the jury pool itself probably can fill the
15 middle section and maybe the last couple of rows on the sides,
16 all right? And I'll have some extra court security people to
17 help with the traffic flow, but I want to make sure -- the
18 other thing is because obviously there could still be some
19 strong emotional feelings about this case, does either side
20 anticipate any problems with people from these different clans
21 being in the courtroom hearing the information that they're
22 going to be hearing? In other words, do I need to have extra
23 court security people here to keep everybody under control?

24 MR. DRENNAN: Speaking for the defense, I envisage no
25 problems at all in that regard.

1 THE COURT: All right.

2 MS. DRAKE: Speaking for the plaintiffs, we hope
3 that's not to be the case. We have had reports just recently
4 that some of our plaintiffs prior to coming for trial and then
5 even since they've been in the United States, back in Somalia,
6 hear there's been some intimidating phone calls from supporters
7 as well as visits to their home to try to dissuade them from
8 bringing this suit, and although, obviously, we can't pinpoint
9 anyone, we expect that there could be some sort of skirmishes,
10 and perhaps extra security, you know, as they head to the court
11 may be warranted due to what we've had with these harassing
12 phone calls and visits the last few months.

13 THE COURT: All right.

14 MR. DRENNAN: Just one further point on the
15 housekeeping issue, Your Honor?

16 THE COURT: Yeah.

17 MR. DRENNAN: As the Court will recall during the
18 telephone conference --

19 THE COURT: Can you get to the lectern, please? I
20 want all speaking from the mic, yeah.

21 MR. DRENNAN: Yes, I'm sorry. As the Court will
22 recall during the telephone conference, I requested permission
23 to have a certified translator sit at counsel table to assist
24 me in communicating with Mr. Samantar during the course of the
25 trial, so there would be a second person besides myself and,

1 and Mr. Samantar.

2 THE COURT: Now, that's fine, but I don't think we
3 can have two parallel wireless systems going so --

4 MR. DRENNAN: There's no need for a wireless system
5 for the translator. I mean, the translator can hear -- he'll
6 be able to hear the --

7 THE COURT: And whoever your translator is when
8 communicating to the defendant or with you has to be extremely
9 soft, because if I start to hear a lot of (whispering) going,
10 that's going to have to stop, all right?

11 MR. DRENNAN: Understood.

12 THE COURT: Okay. All right. I want to make sure so
13 that things go quickly in terms of selecting the jury that both
14 sides are totally familiar with how we select juries in this
15 court. There's no back-striking, and if you're not familiar
16 with what that means, then you need to speak with my law clerk
17 after the session today, and she'll go through it with you-all,
18 but I don't expect there to be any problems with that Tuesday
19 morning.

20 When we have bench conferences during the trial, the
21 procedure is that my court reporter, Ms. Thomson, comes up
22 first, and she stands right in front of me. The plaintiffs
23 come around behind her. When I say "plaintiffs," I mean
24 counsel.

25 I assume that we are not going to have the parties at

1 bench conferences. Is there any objection to that?

2 MS. DRAKE: No objection.

3 THE COURT: Mr. Drennan?

4 MR. DRENNAN: No objection.

5 THE COURT: All right, that's fine.

6 And then, Mr. Drennan, you come around on my right,
7 all right? So that that way, everybody comes up at one time,
8 all right?

9 Okay. In terms of opening statements, I want to get
10 on the record right now how much time each of you was
11 requesting. It doesn't mean you're going to get it, but I'd
12 like to hear what you were thinking about in terms of the
13 opening statement.

14 MS. DRAKE: Plaintiffs are anticipating 30 minutes,
15 Your Honor.

16 THE COURT: That's too long in this court. Cut it to
17 20.

18 MS. DRAKE: Twenty?

19 THE COURT: That's your max.

20 Mr. Drennan, 20 minutes.

21 MR. DRENNAN: Understood, Your Honor.

22 THE COURT: All right, that's fine.

23 All right, are there any other -- now, in terms of
24 other housekeeping matters, did the plaintiffs receive all of
25 Mr. Drennan's exhibits, as we ordered last week?

1 MS. DRAKE: No, Your Honor, but there will be an
2 unopposed motion to exclude those this morning that we'll be
3 filing. I spoke with Mr. Drennan yesterday, and he agreed not
4 to, not to object to our motion to exclude all the ones he
5 didn't provide to us.

6 He provided a few to us, but there was a large chunk
7 that he did not send over in CD, and he acknowledged that they
8 could not be admitted for -- admitted at trial. We did agree,
9 of course, that he could use any of those for impeachment
10 purposes.

11 THE COURT: All right. Mr. Drennan, is that correct?

12 MR. DRENNAN: I beg to differ on which is the large
13 group and which is the small group, but we did agree that there
14 were certain exhibits that were not produced during discovery
15 that we will not oppose a motion to strike those exhibits.

16 THE COURT: Whoa, whoa, whoa, whoa.

17 MR. DRENNAN: We have an agreement, Your Honor, on
18 this.

19 THE COURT: All right. Well, get it to us in writing
20 so we have a clear picture of what we're talking about, okay?
21 And that's fine.

22 MR. DRENNAN: Understood.

23 THE COURT: All right. Anything else before I --
24 well, is there going to be -- other than this Rule 37 motion
25 concerning Mr. Deria, is there any other issue that either side

1 thinks we're going to need to address on Friday?

2 MS. DRAKE: Yes, Your Honor. So there'll be this
3 unopposed motion for the agreement we came to to exclude
4 certain exhibits. There were a few other exhibits that we did
5 not come to resolution on that the plaintiffs will be filing a
6 motion this morning to exclude a few of these exhibits as
7 inadmissible, and we anticipate filing before noon this
8 morning, Your Honor.

9 THE COURT: All right. But that's all you're
10 anticipating?

11 MS. DRAKE: That is all I, I can foresee at this
12 moment.

13 THE COURT: All right. Mr. Drennan, what about you?

14 MR. DRENNAN: No motions other than the stay motion
15 and the sanctions motion.

16 THE COURT: Well, we're taking care of the stay
17 motion today.

18 MR. DRENNAN: Understood.

19 THE COURT: And then the sanction motion is on for
20 Friday.

21 MR. DRENNAN: Correct.

22 THE COURT: All right, all right.

23 MS. DRAKE: Your Honor?

24 THE COURT: Yes, ma'am.

25 MS. DRAKE: My apologies. My colleague has just

1 reminded me that we may have a question on Friday and it could
2 be addressed today perhaps as well about how the Court wanted
3 to handle the remaining statute of limitations issues that are
4 at play in this trial.

5 THE COURT: You're going to put on your evidence as
6 to who was where when and who did what when. As I recall, that
7 was part of the issue as to the degree to which Mr. Samantar
8 was living open and notoriously in Italy, etc., and we'll
9 address that issue in posttrial motions, but I think I -- I
10 don't know whether you-all have -- where you are with your jury
11 instructions. The jury can certainly make factual findings as
12 to the statute of limitations as well.

13 Was either side proposing to put that to the jury? I
14 mean, it's a -- at this point, it's a mixed question of fact
15 and law, but the facts do have to be found, and as I recall, we
16 don't have the full factual record yet. We will after the
17 trial.

18 MS. DRAKE: Okay. Your Honor, as they stand now,
19 there is a jury instruction -- an opening instruction to the
20 jury letting them know that statute of limitations is an issue
21 of law and should be, you know, for the Court to decide, and
22 that's as far as our current instructions go on the issue.

23 THE COURT: Well, but I think we can probably put to
24 the jury in the, in the verdict form a question as to their
25 findings on some of the key issues that have to be found before

1 we can apply the law. I don't think the law is complicated.
2 It's the question that -- as I recall this record, we don't
3 have a clear picture of the facts.

4 Remember, there was this issue about Mr. Samantar was
5 living in government-provided housing in Italy. We have no --
6 at least I don't have any details as to how he was actually
7 living, you know, was his name in the phone book or was he
8 living under an alias, that sort of thing.

9 Clearly, if he was living in a relatively open
10 environment in which anybody using any reasonable forms of
11 investigation could have found him within the time period, then
12 the case may be time-barred.

13 MS. DRAKE: Understood. And, Your Honor, plaintiffs
14 agree that there are two different issues. There's the factual
15 issues and then the legal issues.

16 Our question perhaps and using Italy as an example,
17 there's the issue of whether he was living openly and so
18 whether the plaintiffs could have known he was there, but
19 there's the other issue of whether a claim could have been
20 brought under Italian law at that time, and with the exclusion
21 of the defendant's expert who was going to speak about Italian
22 law, there is no evidence left in this case or no witness who
23 could rebut plaintiffs' expert report that says that a claim
24 could have not been brought in Italy.

25 So absent any remaining legal question that has to be

1 resolved, the plaintiffs just question whether we had to get
2 into the factual issues, because even if by chance there was
3 some surprise evidence that they did know he was living in
4 Italy, it still as a matter of law in plaintiffs' opinion is
5 irrelevant, because no claim could have been brought in Italy
6 at that time, and so that's what we're asking for the Court's
7 clarification on.

8 Absent the inability to prove that a claim could have
9 been brought, then would asking witnesses about whether he was
10 living in Italy and whether they knew he was in Italy, could
11 that be confusing for the jury? It raises a specter of this
12 Italy thing that will never be resolved, because there will be
13 no evidence about the legal claims.

14 THE COURT: Well, I'm letting it go in. I want to
15 see a full record in this case, and I think the issue about how
16 the defendant was living in Italy and the length of time he was
17 there and the length of time that has gone on here is not an
18 irrelevant fact, either, for the jury since you're asking for
19 damages in this case, and the jury can certainly take that into
20 consideration.

21 So I'm not giving you any final answer on the statute
22 of limitations issue at this point, but in terms of how the
23 case is to be tried, you need to put on whatever evidence you
24 feel you need to have a complete record.

25 MS. DRAKE: Okay. And I'm sorry, Your Honor, so one

1 point of clarification: We will amend the jury instructions
2 and the verdict form to reflect these factual findings, but am
3 I correct in assuming that the Italian legal issue is not one
4 that we have to prove at trial given that there is no evidence
5 or witness that can be provided on the other side?

6 THE COURT: Let me hear from Mr. Drennan on that.

7 MR. DRENNAN: Your Honor, counsel stated that a claim
8 could not have been brought in Italy. Counsel's own expert,
9 Professor Paula Gaeta, whom I deposed in Milan back in October,
10 conceded that a claim could have been brought, but it was her
11 opinion that it would not have been successful because the
12 evolution of the law in Europe at that time had not reached a
13 point that she believed that the courts would be receptive to
14 it.

15 But as to the question of whether a claim could have
16 been filed in Italy at that time, she conceded that, that a
17 person from that part of the world could have come to Italy,
18 engaged in a lawyer at a studio and filed a claim, and she just
19 offers an opinion as to whether or not that claim would have
20 been successful at that time, and I respectfully submit that,
21 that that -- it's somewhat inaccurate to state that a claim
22 could not have been filed, because their own expert said a
23 claim could have been filed but it wouldn't have been
24 successful.

25 THE COURT: Ms. Drake, do you think that's an

1 accurate description of what the expert says?

2 MS. DRAKE: No. From my read of the report -- and if
3 Your Honor will indulge me, I've been brought on to this case
4 just in the last two months, so I wasn't here for
5 Ms. Gaeta's -- Professor Gaeta's deposition, but my
6 understanding is, is, you know, that a claim, even if she may
7 have conceded that it wasn't impossible to bring a claim but it
8 wasn't -- they could have brought it, because it wasn't going
9 to go anywhere, because there was no basis under Italian law to
10 bring these claims at that time.

11 To the Court's point, I guess I just want to clarify
12 that, you know, Italian law and what was available at that time
13 and whatnot will not be an issue that will be decided upon by
14 this jury, and I say that because the only evidence in the
15 record that still exists at this point is Professor Gaeta's
16 expert report, which comes to her expert conclusion that under
17 Italian law, a claim could not have been brought even if, you
18 know, assuming the plaintiffs knew that General Samantar was
19 there at the time.

20 THE COURT: I'll let you know Friday what we're going
21 to do with that. I don't want to unnecessarily burden the jury
22 with that issue, and if it's an uncontested expert report, I
23 don't know why the Court can't simply consider that on its own
24 without having to take the time of the jury to hear anything
25 about Italian law.

1 Mr. Drennan, what's your view on that?

2 MR. DRENNAN: I think what we're talking about now is
3 a pure legal question.

4 THE COURT: Yeah, I do, too. I do, too. So we'll
5 take -- we'll that into consideration, all right?

6 MS. DRAKE: Thank you, Your Honor.

7 THE COURT: You don't need to put evidence on of
8 that, but again, the length of time he was living in Italy, I
9 still think those facts are important, all right?

10 MS. DRAKE: Yes.

11 THE COURT: All right. Anything else?

12 MS. DRAKE: I do. And, Your Honor, thank you for
13 these housekeeping items. Some of them were on our list of
14 things as well. I have one remaining one on this list, and I'm
15 sure we could find out, but for you, Your Honor, you expect a
16 jury to sit from nine to five each day?

17 THE COURT: No, 9:30 to 5:30.

18 MS. DRAKE: 9:30 to 5:30.

19 THE COURT: Tuesday they come in at ten, and then
20 after that, we start at 9:30. We go to about 5:30. Now, 5:30
21 could be 5:40 or 5:20, but that's the ballpark ending time,
22 yes.

23 MS. DRAKE: I appreciate the clarification. Thank
24 you, Your Honor.

25 THE COURT: All right, fine. Now, the substantive

1 motion -- unless you have any housekeeping issues, Mr. Drennan.

2 MR. DRENNAN: I do not at this time.

3 THE COURT: All right, the substantive motion is not
4 a difficult one. You've renewed your motion to stay, and the
5 basic argument you've made is that the Fourth Circuit appears
6 to be sufficiently interested in this case that they are
7 preliminarily querying counsel about availability for oral
8 argument. I don't think it's actually yet been scheduled for
9 oral argument, but obviously, it seems to be going in that
10 direction.

11 MR. DRENNAN: Your Honor, I've practiced before that
12 Court for decades, and that, that preliminary notification
13 presages setting of oral argument.

14 THE COURT: Right.

15 MR. DRENNAN: The reason for that is to -- is for
16 counsel to advise the Court of avoid dates during, during the
17 time frame for oral argument.

18 THE COURT: Correct, but the reality of this case is
19 that you have previously, as I understand it, requested a stay
20 from the Fourth Circuit.

21 MR. DRENNAN: I did, Your Honor.

22 THE COURT: And it was denied.

23 MR. DRENNAN: Your Honor, in the opposition to the
24 motion that -- to my motion, the plaintiffs state that -- the
25 first paragraph under "Introduction," "Defendant brought a

1 motion to stay pending appeal just nine months ago. This Court
2 denied that motion because his grounds for appeal are
3 frivolous, and the United States Court of Appeals for the
4 Fourth Circuit reached the exact same conclusion."

5 Your Honor, it's -- that is not what the Court said.
6 The Court denied my motion for a stay in one sentence, on
7 July 8, 2011: "Upon consideration of submissions relative
8 to" -- submissions, plural -- "relative to the motion for a
9 stay of proceedings in the district court pending appellate
10 review, the Court denies the motion."

11 In support of their opposition to my motion, there
12 was a declaration filed by Mr. Robell, who's no longer with
13 Akin Gump but who was counsel at that time, and in addition to
14 making his legal contention embracing Your Honor's opinion that
15 the appeal was frivolous, Mr. Robell went on to, to emphasize
16 how the defendant had, quote-unquote, refused to appear for a
17 deposition and was sort of insinuating that the defendant was
18 feigning illness, and as the Court may know, there was motions
19 practice before Judge Anderson on this point.

20 Accommodations were worked out. Mr. Samantar
21 ultimately gave his deposition in late July and early August
22 from his home, and who's to say that the motion was denied
23 because of the specter of the plaintiffs losing an opportunity
24 to depose this person?

25 The government of the United States ultimately

1 intervened in the appeal, Your Honor, and filed an amicus
2 brief, and when we were last before -- when we were before Your
3 Honor on the 20th of October, I raised the issue of a stay
4 again, and opposing counsel came to the lectern and said, "Your
5 Honor has already ruled that the appeal is frivolous," and Your
6 Honor stated on the record that, well, the government's
7 intervened. I'm not so sure if the appeal is frivolous, and
8 following that, a brief was filed by the United States and --

9 THE COURT: But doesn't the brief support the
10 plaintiffs' argument that you have no case?

11 MR. DRENNAN: It does. It, it supports the
12 plaintiffs' ultimate contention that Samantar should not have
13 immunity, but, Your Honor, under, under Fourth Circuit
14 practice, there's a local rule, 27(F), that provides for
15 motions for summary disposition, and those motions are to be
16 filed after the case is fully briefed.

17 This case was fully briefed by the end of October.
18 Tellingly, the plaintiffs have not filed a motion for summary
19 disposition, and this case is ripe for decision on the merits,
20 and we have an indication from the Court that the case is about
21 to be heard in oral argument in the, in the second week of May
22 of this year, just beyond the trial date.

23 My client would suffer irreparable harm if this case
24 went forward to go to trial. The plaintiffs have waged a
25 publicity campaign for years against my client. They've

1 accused him of being a war criminal. They're inviting the
2 world community to come to this court to watch this trial, and
3 how can my client ever recover from that? How could he achieve
4 justice if he goes before the Court?

5 And I have a brief before this Court, Your Honor, and
6 I signed that brief under Rule 38 of the Federal Rules of
7 Appellate Procedure, which is the analog to Rule 11, in the
8 face of Your Honor's admonition that the appeal was frivolous.
9 I put my professional judgment on the line that that is an
10 appeal that is deserving to be heard and that there are
11 meritorious arguments to be made and it is not a frivolous
12 appeal.

13 THE COURT: All right.

14 MR. DRENNAN: And that is the standard, Your Honor.

15 THE COURT: All right. Mr. Drennan, it's more
16 complicated than that. If this were the first time in which
17 immunity was being considered in this case, I would be inclined
18 to grant you the stay, but as you know, the issue about
19 immunity, at least a significant aspect of the immunity claim,
20 has already been fully briefed, addressed by the Fourth Circuit
21 and the United States Supreme Court.

22 And so this is a second -- now, I realize this has to
23 do with common law immunity; however, the dicta at least in the
24 Supreme Court decision strongly suggests that the executive
25 branch's position on that is going to have a huge amount of

1 weight in the final outcome, and this executive branch has
2 entered as an amicus in this proceeding to advise the Court of
3 its position on this issue, and based upon the procedural
4 posture of the case, because of this unique situation, it's the
5 second time in which the immunity issue is being addressed,
6 that's why I feel quite confident that maybe the word
7 "frivolous" is too strong a word, but the likelihood of
8 success, let's put it that way, the likelihood of your
9 succeeding on this appeal is extremely in my view slight, and
10 when you weigh that against the other factors, and we're now
11 using really a sort of a *Winter* -- a post-*Blackwelder*
12 *Winter*-type of analysis as to whether a stay ought to be
13 granted, so there's in my view a very slight likelihood of
14 success on the merits, the -- there is potential harm to both
15 sides if this case -- for both sides.

16 The plaintiffs have been forced to reveal their
17 identity, and they point that out as an issue, that they need
18 to get this case therefore resolved. Your argument about your
19 client, I mean, to the extent that he's been suffering with
20 these, these allegations all these years, you know, it's to his
21 benefit in some respects to get them resolved one way or the
22 other. A trial will do that.

23 While it's unusual for an immunity issue to still be
24 under consideration with the trial going forward, because, as I
25 said before, immunity has already been addressed once, the

1 difference between common law immunity that's at issue in this
2 particular appeal and the other immunity that we addressed in
3 my view is not that legally significant, and again, the
4 executive branch's position, I think, will carry great weight
5 with the Fourth Circuit, I'm denying the motion to stay this
6 case.

7 This case has been around for a long time. One way
8 or the other, it needs to be resolved. It's going to go to
9 trial on Tuesday unless the Fourth Circuit -- and you can
10 certainly go back to them now with this ruling today -- in
11 their wisdom decides that the case should be stayed.

12 I'm also concerned, frankly, about your client's
13 health. You've advised us before that he's in very fragile
14 health.

15 MR. DRENNAN: He is.

16 THE COURT: If this case is delayed, there may never
17 be a proper resolution of the issues with all parties present,
18 and I think that's another factor that has to be taken into
19 consideration. So he might suffer if this case were continued
20 six or eight or ten months, he might not be as able to testify
21 and represent his position.

22 We're going forward on Tuesday unless the Fourth
23 Circuit stays the case.

24 MR. DRENNAN: I understand, Your Honor, but -- and I
25 understand the Court's ruling, and I will not speak anymore to

1 the immunity issue. However, there is a concomitant issue.
2 Your Honor in the course of the telephone conference on
3 Thursday sort of severed out the sanctions motion and said that
4 needs to be heard by Judge Anderson.

5 Your Honor --

6 THE COURT: I think I'm going to hear it, because
7 what you seem to be asking for having looked at it is you want
8 the Court to dismiss this plaintiff from the case.

9 MR. DRENNAN: I want more than that, Your Honor. I
10 want the Court based on -- especially based on the calumnious
11 declaration that was filed with this Court yesterday, and I'll
12 speak to that -- I want this Court to stay this case unless
13 there's full compliance with the order of that court, and the
14 Court has the power to do that under Rule 37(b)(2)(A)(iv), and
15 I'll be very brief in this presentation, Your Honor, if the
16 Court would indulge me.

17 THE COURT: Go ahead.

18 MR. DRENNAN: In the course of a deposition that was
19 taken on the 29th of September of this year, even though
20 plaintiff Deria had resisted providing documents concerning his
21 immigration status and he's touted in counsel's declaration
22 that was filed yesterday as a U.S. citizen, I took that
23 deposition because of the fast track of discovery that we were
24 dealing with.

25 During the course of that deposition, that plaintiff

1 made serial declarations against penal interest tantamount to a
2 concession that he committed naturalization fraud, which would
3 have been more than ten years ago and beyond Title 18, but he
4 also stated during the course of that deposition, Your Honor,
5 when queried, "Did you answer all the questions on your
6 naturalization application correctly, the N-400?" he
7 said, "Yes. To the best of my knowledge, yes."

8 With that, Your Honor, we moved to compel, and Judge
9 Anderson was persuaded that these were important documents that
10 needed to be produced. He ordered them to be produced on the
11 14th of October.

12 When we appeared before Your Honor the following
13 Thursday, the 20th of October, I mentioned that on the record.
14 When we came back before Your Honor on December 22, the Court
15 will recall the Court held a hearing on my motion for summary
16 judgment whereupon the Court heard the, the motions, the
17 various large number of motions in limine, and at the
18 conclusion of the hearing on those motions in limine, the Court
19 basically queried me as to whether there were any other
20 outstanding issues, and I raised this issue of awaiting
21 compliance with that order.

22 At that point, Your Honor indicated -- and I've had
23 Ms. Thomson prepare a transcript of that hearing, the 14th of
24 October hearing, the 20th of October hearing, all three of
25 these hearings. At that hearing, the Court called Ms. Roberts,

1 who's here in the courtroom in the front row, who's one of the
2 counsel in the case, to the lectern and said, "Can you speak to
3 that" essentially, and she, and she mentioned about a FOIA
4 request, and Your Honor said, "That's not the way to do it,"
5 and she said -- she basically stated -- and I put this in my
6 moving papers -- she stated that Judge Anderson told her to
7 file the FOIA request.

8 I went back and got the transcript from Judge
9 Anderson. He didn't tell her to do that.

10 More significantly, Your Honor, she said the FOIA
11 request is, quote-unquote, pending. Do you know, Your Honor,
12 that I found out on the 30th of January of this year, patiently
13 awaiting those documents, I queried again as to the status of
14 the compliance, and she said, "The FOIA request is still
15 pending"?

16 And I said, "Do you remember what the judge said back
17 in December?" And then, Your Honor, I pressed all counsel:
18 "When was that FOIA request made? I want to see it."

19 I discovered that Friday, Your Honor, a fortnight
20 ago, that that FOIA request was not even submitted to the
21 government until the 15th of December, i.e., over two months
22 after Judge Anderson ordered those documents to be produced,
23 over two months after.

24 And how was the request submitted? A single sheet.
25 No mention of the trial date, no request for expedition, no

1 copy of the court order attached.

2 Your Honor, counsel had a duty, counsel had a duty to
3 tell Your Honor when we were here on December 22 that they had
4 just lodged that request, and I respectfully submit, Your
5 Honor, that that request was not submitted right away because
6 they knew what that request would reveal.

7 They knew that that request would reveal, among other
8 things, the N-400, with all of the false statements that this
9 plaintiff who's going to come before the Court and call himself
10 a United States citizen made to the jury, and it's not enough,
11 Your Honor, in that type -- given that type of misconduct, it
12 is not enough simply to sanction that one plaintiff. It is not
13 enough.

14 I've been led on a wild goose chase, and I'm being
15 held to task for being late in responding to this and that.
16 Your Honor, that plaintiff, represented by a lawyer,
17 represented by a small army of lawyers, had all the resources
18 at his disposal to effect prompt, efficient compliance with
19 that order. He did not do so, and that was essentially
20 concealed from this Court on December 22.

21 And when I queried them further and said, "Why did
22 you wait so long?" they said, "Well, we had to go and
23 engage" -- one of the attorneys from Akin Gump said, "Well, we
24 had to go and engage counsel for Mr. Deria to counsel him about
25 this, a separate counsel."

1 They're his counsel. What is that, criminal defense
2 counsel? Probably.

3 THE COURT: All right.

4 MR. DRENNAN: Your Honor, it's a fraud on the Court,
5 and I think it's an absolute outrage. And one last thing, Your
6 Honor: That attorney, that very attorney who misled this
7 Court, she misled the Court, she filed a declaration with this
8 Court yesterday insinuating that I leaked the names of the
9 anonymous plaintiffs back in October, because she says, oh,
10 they got threats back in October, and she put -- she's very
11 careful in those -- in paragraphs of that declaration to point
12 out that the only people who knew about the identity of those
13 plaintiffs were counsel to the case.

14 The clear insinuation is that I leaked those names,
15 and there's been an allusion to that at the podium today, about
16 threats being made and so forth. Your Honor, this is an
17 absolute outrage and a fraud on the Court, and the Court should
18 not tolerate it, and the Court should stay this case.

19 THE COURT: All right. Well, I'm not staying the
20 case for that reason, either, Mr. Drennan. It's going forward
21 on Tuesday.

22 And this motion was set for Friday. I don't need to
23 hear a repeat of that, but I will say to plaintiffs' counsel
24 that I don't find right now that there was the proper approach
25 to the discovery obligations and to Judge Anderson's order, and

1 there will be sanctions as to Mr. Deria's case. Whether he'll
2 be stricken as a plaintiff or whether I will advise the jury
3 that he failed to properly respond to a request for information
4 about his immigration status and that the jury should therefore
5 draw from that an inference against him I haven't decided yet,
6 but if I determine that the plaintiffs' counsel did not act in
7 a proper and reasonable approach -- and I clearly remember
8 being surprised that a FOIA request was the vehicle that
9 you-all were going to use to get that -- and if Mr. Drennan's
10 representations as to the timing of things is accurate and
11 borne up by the record, then there will be some sanctions
12 imposed on Friday, but I'm not staying the case, nor would it
13 be proper even if I were to strike Deria as a plaintiff in this
14 case to hold that against the other three plaintiffs.

15 So I'm not going to address anything further on that
16 issue, but obviously, this is a preview for what Friday may
17 look like, all right?

18 Are there any other matters before we recess for
19 today? Ms. Drake?

20 MR. DRENNAN: Not at this time, Your Honor.

21 MR. McLISH: Your Honor, might I briefly respond to
22 some of the accusations that have been made here?

23 THE COURT: We'll hear you on Friday.

24 MR. McLISH: All right. We're going to file an
25 opposition, Your Honor, and just so you know, our latest

1 information from the government is that we'll be receiving the
2 documents that Mr. Drennan, you know, is so concerned about
3 shortly, hopefully tomorrow, and I think you should understand
4 that the reason you're hearing all of this today rather than on
5 Friday is he wants to make these accusations and make as much
6 of this side issue as he can before he's in a position to say,
7 "Oh, I actually have the documents, so it's moot."

8 THE COURT: That may very well be, but we'll see it
9 on Friday.

10 All right, we'll recess court for the day.

11 (Which were all the proceedings
12 had at this time.)

13

14 CERTIFICATE OF THE REPORTER

15 I certify that the foregoing is a correct transcript of
16 the record of proceedings in the above-entitled matter.

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/s/

Anneliese J. Thomson

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

BASHE ABDI YOUSUF;	.	Civil Action No. 1:04cv1360
AZIZ MOHAMED DERIA, in his	.	
capacity as the personal	.	
representative of the estate	.	
of Mohamed Deria Ali;	.	
AZIZ MOHAMED DERIA, in his	.	
capacity as the personal	.	
representative of the estate	.	
of Mustafa Mohamed Deria;	.	
BURALLE SALAH MOHAMOUD;	.	
AZIZ MOHAMED DERIA, in his	.	
capacity as the personal	.	
representative of the estate	.	
of Abdullahi Salah Mahamoud	.	
(the deceased brother of	.	
Buralle Salah Mohamoud);	.	
AZIZ MOHAMED DERIA, in his	.	
capacity as the personal	.	
representative of the estate	.	
of Cawil Salah Mahamoud	.	
(the deceased brother of	.	
Buralle Salah Mohamoud); and	.	
AHMED JAMA GULAID,	.	
	.	
	.	
Plaintiffs,	.	
	.	
vs.	.	Alexandria, Virginia
	.	February 23, 2012
MOHAMED ALI SAMANTAR,	.	10:06 a.m.
	.	
	.	
Defendant.	.	
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TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

(Pages 1 - 18)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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APPEARANCES:

FOR THE PLAINTIFFS:

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FOR THE DEFENDANT:

JOSEPH PETER DRENNAN, ESQ.
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SOMALI INTERPRETER:

ABDURAHMAN KHASSE

ALSO PRESENT:

MOHAMED ALI SAMANTAR

OFFICIAL COURT REPORTER:

ANNELIESE J. THOMSON, RDR, CRR
U.S. District Court
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P R O C E E D I N G S

THE CLERK: Civil Action 04-1360, Bashe Abdi Yousuf et al. v. Mohamed Ali Samantar. Would counsel please note their appearances for the record.

MR. McLISH: Good morning, Your Honor. Tom McLish for the plaintiffs. With me are Debra Drake, Kathy Roberts, and Joseph Whitehead.

THE COURT: Good morning.

MR. McLISH: Good morning, Your Honor.

MS. ROBERTS: Good morning.

MR. DRENNAN: Good morning, Your Honor. Joseph Peter Drennan on behalf of the defendant, Mohamed Ali Samantar, who is seated next to me at counsel table.

THE COURT: All right. Now, again, Mr. Drennan, you were late this morning. You need to be on time for court proceedings.

MR. DRENNAN: I apologize, Your Honor. We had delay in security and also with me getting Mr. Samantar here, we walked -- we parked about a block away, and he walks very slowly, and I apologize to the Court.

THE COURT: Well, but you need to leave enough time, understanding that those things can happen. In any case --

MR. DRENNAN: I do understand, Your Honor.

THE COURT: All right. Now, what concerns the Court -- and we need to address this issue quickly, because

1 I've got approximately 50 civilians downstairs in the jury
2 assembly room who were called to be here today, because this
3 case, as you know, was delayed two days because of the
4 bankruptcy filing. The bankruptcy stay has been lifted to let
5 this matter go forward.

6 We received a call this morning from your office
7 indicating that Mr. Samantar is not planning to contest this
8 case. Is that correct?

9 MR. DRENNAN: That, that is indeed correct, Your
10 Honor. I have just been apprised of that. I've been preparing
11 for trial, and Mr. Samantar has reached the conclusion that,
12 that his circumstances basically make it impossible for him to
13 proceed, and he has elected to, to take a default at this point
14 and not to contest.

15 THE COURT: Now, is that both liability and damages?

16 MR. DRENNAN: Yes.

17 THE COURT: All right, I'm going to need to get on
18 the record from Mr. Samantar himself --

19 MR. DRENNAN: I understand, Your Honor.

20 THE COURT: All right. Mr. Samantar, come up to the
21 lectern.

22 MR. DRENNAN: Can we have an interpreter, Your Honor?
23 Is the interpreter here?

24 THE INTERPRETER: Yeah.

25 THE COURT: All right, we'll have the interpreter

1 come up, please. I need Mr. Samantar right by the -- will the
2 interpreter please state your name and slowly spell it for us.

3 THE INTERPRETER: Your Honor, I am a Somali
4 interpreter. Last name is Khasse, last name, K-h-a-s-s-e,
5 first name Abdurahman, A-b-d-u-r-a-h-m-a-n.

6 THE COURT: All right. And what is your professional
7 background such that we can accept you as an interpreter in
8 this case?

9 THE INTERPRETER: Well, Your Honor, I came from
10 Minnesota, and we take a test. I'm on the roster in Minnesota
11 Supreme Court, and we do different federal, state, and civil
12 cases.

13 THE COURT: So you've appeared as a Somali translator
14 in federal court?

15 THE INTERPRETER: Yes, Your Honor.

16 THE COURT: All right. Then I'll have our clerk
17 administer an affirmation to you at this time, and unless
18 there's an objection from the plaintiffs, we'll accept this
19 gentleman as a proper interpreter.

20 MR. McLISH: No objection, Your Honor.

21 THE COURT: All right, that's fine. We'll administer
22 the affirmation.

23 (ABDURAHMAN KHASSE affirmed to translate Somali into English.)

24 THE COURT: Now, Mr. Samantar, I'm going to place you
25 under an affirmation. That means a promise to tell the truth

1 in answering the Court's questions. Do you understand that?

2 MR. SAMANTAR: Yes.

3 THE COURT: All right. Please raise your right hand.

4 MOHAMED ALI SAMANTAR, DEFENDANT, AFFIRMED

5 THE COURT: All right. Now, will you please for the
6 record state your full name.

7 MR. SAMANTAR: Mohamed Ali Samantar.

8 THE COURT: All right. And, Mr. Samantar, do you
9 understand that all of your answers to the Court's questions
10 must be completely truthful and that if you were to lie in
11 answering any question, you would be subject to possible
12 prosecution, criminal prosecution for perjury? Do you
13 understand that?

14 MR. SAMANTAR: Yes.

15 THE COURT: All right. Do you understand that your
16 lawyer has told the Court this morning that you no longer want
17 to contest this lawsuit?

18 MR. SAMANTAR: Right.

19 THE COURT: Now, have you had enough time to talk
20 with Mr. Drennan about this decision not to further contest or
21 debate or rebut the claims in this lawsuit?

22 MR. SAMANTAR: Yes.

23 THE COURT: Is it your decision today that you don't
24 want to contest this lawsuit?

25 MR. SAMANTAR: Yes.

1 THE COURT: Now, do you understand if the Court
2 accepts your position, that means I am going to find that you
3 are liable for all the actions that are described in the
4 plaintiffs' complaint?

5 MR. SAMANTAR: Yes.

6 THE COURT: That means among other things you will be
7 found liable for causing the deaths that are at issue in this
8 case, for being responsible for the extrajudicial killings, the
9 attempted extrajudicial killings, the rape, the torture, and
10 the other very serious allegations in this complaint. Do you
11 understand that?

12 MR. DRENNAN: Your Honor, if I might, the rape cause
13 of action was nonsuited by -- dismissed by the, by the
14 plaintiffs earlier. That action is no longer a part of the
15 case.

16 THE COURT: I'm sorry. That's correct, correct?

17 MR. McLISH: That's right.

18 THE COURT: All right. Omitting the rape, the other
19 serious allegations in the complaint, you would be admitting to
20 being liable for them. Do you understand that?

21 MR. SAMANTAR: I understand, but, but I want to say
22 something here to clarify. I want to stop this litigation.
23 The reason is I don't have any economical, you know --

24 THE COURT: Wait, I'm sorry, I'm not getting -- we
25 need to stop, because I can't get the interpreter's English.

1 Yeah. Could you repeat that, please?

2 MR. SAMANTAR: What I say is I want this case -- this
3 court to be stopped. The reason is to continue this
4 proceeding, it needs to have some money, and I don't have any
5 money. Because of that, I request to accept default, but that
6 doesn't mean that, you know, I'm guilty or I commit any crime.

7 THE COURT: Well, you can't have it both ways. This
8 is not a criminal case, so we're not talking guilt, but we are
9 a civil case, so we are talking about liability.

10 MR. SAMANTAR: Yes.

11 THE COURT: If you default, if you choose not to
12 fight this case, then the way the law is structured, the Court
13 will accept all of the well-pleaded allegations in the amended,
14 second amended complaint that have not been nonsuited, and the
15 only issue that will be left -- there still is going to be,
16 have to be a trial on the issue of damages. Whether you can
17 pay the damages if damages are ultimately awarded or not is a
18 completely separate issue, but I want to make sure you
19 understand that just taking a default and walking away doesn't
20 stop the litigation.

21 Do you understand that?

22 MR. SAMANTAR: Yes.

23 THE COURT: And has -- Mr. Drennan, had you basically
24 discussed what I've just been trying to explain to your client
25 with him so he understands that with a default, that doesn't

1 stop the litigation in the sense that it doesn't prevent a
2 judgment from issuing?

3 MR. DRENNAN: I have indeed discussed that with, with
4 my client, Your Honor. He understands fully that his electing
5 to take a default will give rise to liability, as Your Honor
6 just indicated, on all the well-pleaded causes of action in
7 respect to the case. He also understands further that this
8 decision will invariably give rise to the Court assessing
9 damages against him, both compensatory and possibly, in the
10 Court's discretion, punitive as well.

11 THE COURT: All right. Mr. Samantar, you heard what
12 Mr. Drennan just explained to the Court, did you?

13 MR. SAMANTAR: Yes.

14 THE COURT: And is that an accurate description of
15 the conversation he had with you about the default?

16 MR. SAMANTAR: Yes.

17 THE COURT: All right. Has anybody -- other than
18 your financial situation, has anybody put any force or pressure
19 on you to make the decision to default?

20 MR. SAMANTAR: No.

21 THE COURT: Has your medical condition in any respect
22 and the medications you may be taking made it difficult for you
23 to understand your conversations with Mr. Drennan?

24 MR. SAMANTAR: No, I understand them well.

25 THE COURT: All right. And, Mr. Drennan, for the

1 record, do you use an interpreter when you're communicating
2 with your client, or does he have moderately decent English
3 capability?

4 MR. DRENNAN: Your Honor, Mr. Samantar's present
5 English capability is exceedingly modest, and my communications
6 with him are through his siblings, the older of which are
7 fluent in Somali and English, primarily Yusuf Samantar, who is
8 here in court, and Ayanle Samantar --

9 THE COURT: All right.

10 MR. DRENNAN: -- his brother.

11 THE COURT: All right. I think on this record, there
12 is no question that the defendant has made the decision to
13 default on the issue of liability and damages with the full
14 advice of counsel, that he's made this decision in a knowing
15 and voluntary fashion, and nothing has been brought to the
16 Court's attention to in any respect have concerns about the
17 legitimacy of the default.

18 Is there anything further the plaintiffs want the
19 Court to establish on this issue?

20 MR. McLISH: I don't think so, Your Honor.

21 THE COURT: All right. I'm accepting then this
22 position that the defendant is defaulting, and that means
23 therefore the Court is going to go ahead and find, because I
24 reread the amended complaint this morning, that the allegations
25 are adequately well-pleaded, they are consistent with the

1 statutory requirements, and that liability is established as to
2 all of the claims still at issue in the second amended
3 complaint, and that leaves for us then the determination of
4 damages.

5 Now, we have a jury downstairs, but I've researched
6 this issue this morning, and I'm satisfied that this issue of
7 the damages should be tried to the Bench, and unless the
8 plaintiffs have any objection, I want to excuse the jury at
9 this point.

10 MR. McLISH: Your Honor --

11 THE COURT: Mr. Samantar, you may now sit next to
12 your counsel.

13 And the interpreter can stay at table so Mr. Samantar
14 can understand the proceedings.

15 Yes, sir.

16 MR. McLISH: Your Honor, we just found out about the
17 defendant's intention this morning, also, so we've had a
18 limited opportunity to research the issue. We believe that
19 Your Honor does have the discretion to order a jury trial on
20 the damages in this situation, so the plaintiffs would ask that
21 you, that you do that, that they be allowed to present their
22 damages evidence to a jury, and then we proceed in that
23 fashion.

24 THE COURT: Well, I'm going to exercise my discretion
25 and deny that request. I think the time that juries spend is

1 very precious time. We have almost 50 people downstairs
2 waiting to come in, but a jury trial will greatly extend the
3 length of these proceedings, which in my view is not necessary.

4 For the amount of time to voir dire the jury, to get
5 them in place, the need to at the end of the proceedings give
6 them instructions, the very extensive verdict form, which I
7 agree would be shorter but still it would definitely be adding
8 many, many additional hours to the trial, plus the wear and
9 tear on members of our community, which in my view is
10 unnecessary, the law does not -- and I've looked at the case
11 law carefully on this. I think the opinion that is most
12 instructive is the *Mwani* -- that's M-w-a-n-i -- *et al. v. Bin*
13 *Laden and al Qaeda*, it's a 2007 decision out of the District of
14 Columbia by Judge Kollar-Kotelly. It's a very, very articulate
15 description of the issues, and although I don't believe the
16 Fourth Circuit has addressed this issue, I'm satisfied that
17 there's not a Seventh Amendment right, absolute right to a
18 trial by jury on damages in a default case, and the defendant
19 has defaulted not only on liability but on damages. He's not
20 contesting or planning to be here to fight the damage issue.

21 Your clients want their day in court, they're here,
22 and we're ready to start within the next two or three minutes
23 the damage portion of the case. Do you need a few minutes
24 to -- because again, I'm not going to take a significant amount
25 of time. It's not going to be necessary to establish the facts

1 in the second amended complaint. They're deemed admitted, and
2 the issue will then be what evidence you have as to what the
3 appropriate damages should be.

4 MR. McLISH: Your Honor, I think we do need a short
5 amount of time to, to figure out exactly how we would like to
6 do that and to work out a way to do it as efficiently as
7 possible. We came here prepared to put on our full case. It
8 sounds very much to me like Your Honor does not think we should
9 do that, so --

10 THE COURT: No. Again, your clients will have their
11 day in court, but the parameters of that day in court or two
12 days in court is what is a reasonable presentation of the
13 appropriate evidence that is now needed to decide the issues
14 that are before us.

15 What I want to do is this: I'm going to excuse the
16 jury. I had given serious thought to imposing the costs of a
17 second jury on the defendant, but I realize that the issue
18 about whether or not there would still be a trial by jury even
19 in an ex parte situation is an open question.

20 I mean, I'm satisfied the courts that have looked at
21 it have all gone in this direction, and I'm going to go in this
22 direction as well, conducting it as a bench trial, but giving
23 the defendant the benefit of the doubt on that, I will not
24 impose the costs, but I came close to doing it.

25 So how much time do you need to get yourselves

1 organized?

2 MR. McLISH: Bear with me one moment, Your Honor?

3 Your Honor, in the interests of efficiency, I think
4 if we could have an hour, maybe two hours to cull down our case
5 to efficiently address what, you know, the current posture of
6 the case? We didn't know what was going to be left after this
7 morning's proceeding, so if we could have a recess of maybe two
8 hours and come back and get started?

9 THE COURT: All right, I'll give you until 12:00.
10 It's an hour and a half, all right? So we can get some of this
11 started before the lunch break.

12 Now, as I recall, Mr. Deria is the plaintiff who
13 traveled across country to be here? Isn't he the person with
14 the large family, or is it one of the other plaintiffs?

15 MR. McLISH: All of the plaintiffs have various
16 travel issues, Your Honor.

17 THE COURT: All right.

18 MR. McLISH: And we need to take that into
19 consideration in deciding who's going to testify when. We do
20 have several people who need to testify and be on their way as
21 soon as possible.

22 THE COURT: That's fine. All right, so 12:00 noon I
23 want to get this started.

24 The -- if we don't finish the evidentiary hearing
25 today, we will go into tomorrow, probably not starting until

1 eleven, and I would think we would conclude the evidence in two
2 days if we don't finish it today, I mean, because again, a
3 significant number of the issues are already resolved through
4 the default, all right?

5 MR. McLISH: Understood, Your Honor.

6 THE COURT: Anything else?

7 MR. McLISH: One other thing. Rule 55 of Federal
8 Rules of Civil Procedure does provide for a seven-day notice to
9 the defaulting party before there'd be a hearing on the default
10 judgment, and I just want to establish clearly on the record
11 that that seven-day period is being waived.

12 THE COURT: Mr. Drennan?

13 MR. DRENNAN: Your Honor, I would waive the seven-day
14 notice period in Rule 55, and I would state to the Court that I
15 know that the Court has expressed when we were here on Tuesday
16 some concerns about the timing of the bankruptcy filing on
17 Sunday evening. Mr. Samantar has defaulted -- or elected to
18 take his default as to liability and damages this morning.

19 Your Honor, this is a most extraordinary case, and
20 one factor that Mr. Samantar did not mention to the Court is
21 that today, there is an extraordinarily historic conference
22 presently underway in London convened at the behest of Prime
23 Minister David Cameron. There are leaders of 45 countries
24 there to discuss the future of Somalia. Secretary of State
25 Hillary Clinton is there. French Foreign Minister Alain Juppe

1 is there. Leaders of all of the countries that surround
2 Somalia are there.

3 Mr. Cameron said as he convened the hearing early
4 this morning that the world will pay a high price if the
5 problems of Somalia are not addressed. Secretary Clinton gave
6 her remarks, and just one sentence or two here, she stated:
7 "For decades, the world has focused on what we could prevent
8 from happening in Somalia, be it conflict, famine, or other
9 disasters. Now we are focused on what we can build. The
10 opportunity is real."

11 My client concurs with that sentiment, Your Honor,
12 and although perhaps not articulated at the podium, that, too,
13 is a factor in his decision. He believes that it would be
14 destructive to the very, very fragile peace process underway
15 for a two-week trial on liability and damages, with daily press
16 reports, with the plaintiffs' counsel promising the world to
17 provide daily feeds on Twitter and Facebook.

18 Counsel represented to the bankruptcy court
19 yesterday -- or Tuesday rather, that tens of thousands of
20 dollars have been expended to bring this case forward. Counsel
21 represented among other things having rented office space
22 across the court -- across from the court here, referring to
23 that office space as a war room.

24 Your Honor, one last point on this: Clausewitz said
25 that war is politics by another means. Litigation should not

1 be an atavistic prolongation of clan conflict by other means.

2 Mr. Samantar and his family have suffered greatly
3 over the last seven years, and I know that the plaintiffs claim
4 to have suffered. I won't speak to that. We've defaulted.
5 But what I can speak to is the sentiment that Somalia needs
6 better than this. Somalia does not need more clan conflict.
7 Somalia needs peace and reconciliation, Your Honor.

8 THE COURT: Well, Mr. Drennan, I think that argument,
9 which you made in a somewhat different context two or three
10 years ago, we gave the United States executive branch, the
11 State Department over two years to put their -- make a
12 position -- take a position in this case. They chose not to.

13 As you know, more recently in the matter that's
14 pending before the Fourth Circuit and it was before us as well
15 on the issue of common law immunity, the United States
16 government did not come in on your side.

17 I mean, the government -- the executive branch could
18 have stopped this litigation if they felt that it was going to
19 have the kind of negative impact that you discuss on the
20 delicate efforts to heal the problems in Somalia. That's an
21 area of expertise beyond this Court 's area, but I think it's
22 fair to say so the record is clear that whatever dire impact
23 you feel this case might have on that process is not shared by
24 our State Department or any other executive branch officials,
25 and that's reflected in the position that's been taken in this

1 case.

2 So we're going to go ahead and treat this just like
3 any other, because that's what it is, this is a civil case in
4 which the plaintiffs are seeking compensatory and punitive
5 damages, and it will be treated like any other case in that
6 posture.

7 So we'll recess until noon, at which time I expect
8 the plaintiffs to be ready to go forward. Thank you.

9 MR. McLISH: Thank you, Your Honor.

10 (Which were all the proceedings
11 had at this time.)

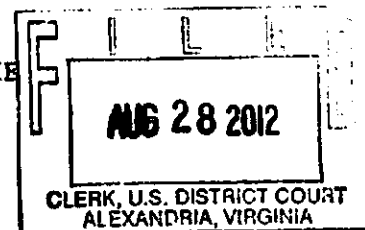
12
13 CERTIFICATE OF THE REPORTER

14 I certify that the foregoing is a correct transcript of
15 the record of proceedings in the above-entitled matter.

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_____/s/_____
 Anneliese J. Thomson

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



BASHE ABDI YOUSUF, et al.,)
)
 Plaintiffs)
)
 v.)
)
 MOHAMED ALI SAMANTAR,)
)
 Defendant.)

1:04cv1360 (LMB/JFA)

MEMORANDUM OPINION

This matter came before the Court on a bench trial for damages following defendant's decision to accept a default judgment as to liability and not contest damages.

I. BACKGROUND

A. Procedural Background

The plaintiffs in this litigation, all natives of Somalia, are Bashe Abdi Yousuf ("Yousuf"), Buralle Salah Mohamoud ("Buralle"), Ahmed Jama Gulaid ("Gulaid"), and Aziz Mohamed Deria ("Aziz"). Aziz proceeds solely in his capacity as personal representative of the estates of his father Mohamed Deria Ali ("Mohamed"), his brother Mustafa Mohamed Deria ("Mustafa"), and the brothers of plaintiff Buralle, Abdullahi Salah Mahamoud ("Abdullahi") and Cawil Salah Mahamoud ("Cawil"). See Second Am.

Compl. ¶¶ 8-10, 12; Dkt. No. 304.¹

The second amended complaint raises claims under the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350, which gives the district courts "original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."² The second amended complaint also alleges violations of the Alien Torture Victim Protection Act ("TVPA"), Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note), which provides:

An individual who, under actual or apparent authority, or color of law, of any foreign nation--

(1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or

(2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death.

§ 1350 note sec. 2(a).³

¹ Aziz was originally named as an individual plaintiff. Then, in 2007, the Virginia Circuit Court for the City of Alexandria appointed Aziz administrator of the estates of the four decedents, Mohamed, Mustafa, Abdullahi, and Cawil. See Dkt. No. 77 at 2. In the second amended complaint, the caption was changed to reflect Aziz's status as personal representative of these four estates, rather than as a plaintiff pursuing claims in his individual capacity. Id.; see also Dkt. No. 81 at 2 n.2.

² Codified as part of the Judiciary Act of 1789, the ATS is also commonly called the Alien Tort Claims Act ("ATCA").

³ Unlike the ATS, the TVPA is not itself a jurisdictional statute; rather, 28 U.S.C. § 1331 provides its jurisdictional basis. Yousuf v. Samantar, 552 F.3d 371, 375 (4th Cir. 2009).

Plaintiffs allege that defendant is liable for extrajudicial killing; attempted extrajudicial killing; torture; cruel, inhuman, and degrading treatment or punishment; arbitrary detention; crimes against humanity; and war crimes committed during his tenure as First Vice President and Minister of Defense of Somalia's central government from January 1980 to December 1986 and as Prime Minister from January 1987 to September 1990.

On January 1, 2005, plaintiffs were granted permission to proceed anonymously.⁴ On August 30, 2005, the action was stayed to allow the United States Department of State ("State Department") to submit its position as to whether defendant was entitled to head of state immunity. After nearly a year and a half, during which time the State Department never responded, the case was returned to the active docket on January 22, 2007. Plaintiffs thereafter filed a second amended complaint, and on April 27, 2007, the defendant's first motion to dismiss was granted on the basis that Samantar was immune from suit under the Foreign Sovereign Immunities Act ("FSIA"). That decision was reversed and remanded. Yousuf v. Samantar, 552 F.3d 371 (4th Cir. 2009), aff'd Samantar v. Yousuf, 130 S. Ct. 2278 (2010).

Following remand, defendant filed a second motion to

⁴ On February 1, 2012, a consent motion to amend the case caption was granted, after which the plaintiffs who had proceeded under pseudonyms were named.

dismiss in which he argued, among other things, that defendant was entitled to common law immunity even if the FSIA did not bar plaintiffs' claims. The United States then filed a Statement of Interest asserting that defendant was not immune from suit for the acts alleged, a view that was based on an opinion submitted by the State Department's Office of the Legal Adviser. See Dkt. No. 147. Defendant's motion to dismiss was thereafter denied, as were his subsequent motions for reconsideration and for a stay pending appeal. See Dkt. No. 158; Dkt. No. 168.⁵

Defendant thereafter moved for summary judgment on the grounds that the second amended complaint failed to state a claim and failed to allege a basis for secondary liability, that the TVPA did not apply to claims arising before 1991, and that plaintiffs' claims were untimely and nonjusticiable. The Court denied defendant's motion from the bench on December 22, 2011, rejecting defendant's legal arguments that plaintiffs could not prevail under the ATS, the TVPA, or on a theory of secondary liability, and finding that equitable tolling applied to the statutes. A jury trial was then scheduled to start on Tuesday,

⁵ Defendant later filed a renewed motion for a stay, which was denied on February 14, 2012. He also filed a motion to stay with the Court of Appeals, in which he requested a stay pending that court's ruling on his appeal of the denial of common law immunity; however, that motion was denied on February 17, 2012. On May 16, 2012, the Court of Appeals heard oral argument on defendant's appeal of the denial of common law immunity. See Yousuf v. Samantar, No. 11-1479, Dkt. No. 78 (4th Cir. filed May 6, 2011). No opinion has yet issued.

February 21, 2012.

On Sunday, February 19, 2012, defense counsel filed a Suggestion of Bankruptcy informing the Court that defendant had filed a petition for relief under Chapter 7 of Title 11 of the United States Code. The case was stayed pursuant to the automatic stay provision of 11 U.S.C. § 362. See Hearing Tr. at 3:11-4:14 (Feb. 21, 2012, Dkt. No. 350). Plaintiffs immediately sought relief from the bankruptcy court, which lifted the automatic stay with respect to this litigation; accordingly, this Court vacated its Order imposing the stay. See Dkt. No. 351. The jury trial was rescheduled to begin on Thursday, February 23, 2012. Id.

On the morning of February 23, 2012, defense counsel informed the Court that defendant intended to take a default rather than contest liability and damages. See Colloquy Tr. at 4:6-19 (Feb. 23, 2012, Dkt. No. 355). During a subsequent colloquy with Samantar, the Court explained the consequences of default, which Samantar stated had also been explained to him by counsel. Id. at 6:15-9:24. Based on defense counsel's representations and defendant's answers during the colloquy, the Court found that defendant had knowingly and voluntarily conceded liability. Id. at 10:11-11:4; see Dkt. No. 353 (minute entry). Plaintiffs' request for a jury trial as to damages was denied, and the case proceeded to a bench trial on that issue.

See, e.g., Mwani v. Bin Ladin, 244 F.R.D. 20, 23-24 (D.D.C. 2007) (denying request for jury trial after entry of default in ATS case because no right to jury trial on damages exists).

B. Factual Background

Because defendant has agreed to a default, plaintiffs' uncontested factual allegations in the second amended complaint, as well as uncontroverted and credible testimony produced during the bench trial, are accepted as true. See, e.g., DIRECTV, Inc. v. Rawlins, 523 F.3d 318, 322 n.2 (4th Cir. 2008) (citation omitted); Licea v. Curacao Drydock Co., 584 F. Supp. 2d 1355, 1358 (S.D. Fla. 2008) (citing Nishimatsu Constr. Co. v. Houston Nat'l Bank, 515 F.2d 1200, 1206 (5th Cir. 1975)). Plaintiffs allege that defendant is liable under the ATS and TVPA for the extrajudicial killing of Mohamed, Mustafa, Abdullahi, and Cawil; the attempted extrajudicial killing of Gulaid; the torture of Yousuf, Gulaid, and Buralle; the cruel, inhuman, or degrading treatment of Gulaid and Buralle; and the arbitrary detention of Gulaid and Buralle. See Second Am. Compl. ¶¶ 92-138. In addition, Gulaid, Buralle, and Aziz, in his capacity as personal representative of the estates of the decedents, allege that defendant perpetrated crimes against humanity and war crimes. See id. ¶¶ 139-56.

Based on the allegations in the second amended complaint and the evidence presented at trial, the Court finds that in

October 1969, Major General Mohamed Siad Barre ("Barre") overthrew Somalia's democratically elected government and installed a military regime that targeted certain Somali clans, particularly the Isaaq clan, to which all of the plaintiffs and decedents belong. Id. ¶¶ 14-16, 19-20. The Barre regime maintained its control over the population through its security and intelligence forces, including the Somali Armed Forces, of which defendant Mohamed Ali Samantar was commander during the relevant period. Id. ¶¶ 17-18. Samantar, a Somali citizen who now resides in Fairfax, Virginia, served in the Barre government as First Vice President and Minister of Defense from January 1980 through December 1986, and as Prime Minister from January 1987 through September 1990. Id. ¶¶ 6-7.

In response to the brutality of the Barre regime, some members of the Isaaq clan formed a resistance organization called the Somali National Movement ("SNM"). Id. ¶ 20. The Barre regime tried to suppress the SNM through a violent military campaign, which included indiscriminate attacks on areas populated by Isaaq clan members, and it "intentionally disregarded the distinction between civilians and SNM fighters." Id. ¶ 21. The violence between the SNM and the Barre regime continued from 1983 through 1990.

A State Department report found that the systematic assaults on unarmed civilians by the Somali Armed Forces

resulted in more than 5,000 deaths and the internal displacement of more than one million Somalis. See Pls.' Ex. 112 at 60-61 (State Department-commissioned report on effect of conflict in Northern Somalia); Pls.' Ex. 20 at 6, 9-11 (Ambassador James Keough Bishop's expert report on human rights in Somalia).⁶ Another 400,000 people fled to Ethiopia as refugees. Pls.' Ex. 129 at 351 (State Department Report to United States Senate Committee on Foreign Relations). Hargeisa, Somalia's second largest city and where many plaintiffs lived, experienced particularly heavy fighting. Second Am. Compl. ¶ 23.

In January 1991, armed opposition factions succeeding in ousting Barre from power, and his government collapsed. Id. ¶ 24. Members of that government, including Samantar, fled Somalia. Samantar settled first in Italy and then relocated to the United States in 1997. Id.

II. DISCUSSION

A. Statutes of Limitations and Equitable Tolling

At summary judgment, defendant unsuccessfully argued that plaintiffs' causes of action are barred by the applicable

⁶ As the Court observed at trial, some of plaintiffs' exhibits also reference battle tactics and human rights violations, smaller in scope, by the SNM. See Pls.' Ex. 112 at 42 (describing SNM fighters' tactic of hiding among civilians in Hargeisa), 64 (same), 62 (giving accounts of SNM combatants killing unarmed civilians).

statutes of limitations.⁷ Although Samantar subsequently waived this defense by defaulting and thereby failing to contest the issue at trial, this issue will be addressed below in the interest of creating a complete record. See Xuncax v. Gramajo, 886 F. Supp. 162, 192 (D. Mass. 1995) (defaulting defendant waived statute of limitations defense); cf. Bradford-White Corp. v. Ernst & Whinney, 872 F.2d 1153, 1160-61 (3d Cir. 1989) (holding that defendant waived statute of limitations defense when it raised issue in the answer but failed to further press the defense), cert. denied, 493 U.S. 993 (1989).

Statutes of limitations are designed to assure fairness to a defendant and to relieve courts of the burden of evaluating stale claims brought by a plaintiff who failed to exercise due diligence in asserting his or her rights. See, e.g., Burnett v. N.Y. Cent. R.R. Co., 380 U.S. 424, 428 (1965). The TVPA prescribes a limitations period of ten years from the date the cause of action arose. 28 U.S.C. § 1350 note sec. 2(c). Although the ATS does not include a statute of limitations, the TVPA's ten-year limitations period is widely applied to the ATS. E.g., Chavez v. Carranza, 559 F.3d 486, 491-92 (6th Cir. 2009) ("Like all courts that have decided this issue . . . we conclude that the ten-year limitations period applicable to claims under the

⁷ Summary judgment as to the statutes of limitation was orally denied, and resolution of the issue was continued to the trial for development of the full factual record. See Dkt. No. 290.

TVPA likewise applies to claims made under the ATS."); Doe v. Islamic Salvation Front, 257 F. Supp. 2d 115, 119 (D.D.C. 2003) (following "federal courts [that] found the TVPA to be closely analogous to the [ATS] and borrowed its ten-year statute of limitations for the [ATS]"). In this case, the alleged violations occurred between 1981 and 1989, yet this civil action was not filed until 2004, well outside the ten-year window.

In civil suits between private litigants, however, limitations periods "are customarily subject to equitable tolling." Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 95 (1990) (quoting Hallstrom v. Tillamook Cnty., 493 U.S. 20, 27 (1989)) (internal quotation marks omitted). "Equitable tolling is a discretionary doctrine that turns on the facts and circumstances of a particular case." Crabill v. Charlotte Mecklenburg Bd. of Educ., 423 F. App'x 314, 321 (4th Cir. 2011) (internal quotation marks omitted). Application of the doctrine to permit an otherwise time-barred case to proceed is appropriate when "extraordinary circumstances beyond [a plaintiff's] control prevented him from complying with the statutory time limit." Spencer v. Sutton, 239 F.3d 626, 630 (4th Cir. 2001) (quoting Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir. 2000)) (internal quotation marks omitted).

Courts evaluating the ATS and TVPA have consistently held that equitable tolling applies to these statutes. See, e.g.,

Arce v. Garcia, 400 F.3d 1340, 1346 (11th Cir. 2005), rev'd on other grounds (applying "general rule . . . that statutes of limitations are subject to equitable tolling" because "nothing in the text, structure, or legislative history of the TVPA . . . changes this general rule"); Hilao v. Estate of Marcos, 103 F.3d 767, 773 (9th Cir. 1996) (applying equitable tolling to find plaintiff's suit under the ATS and TVPA timely).

There are several recognized bases for tolling the limitations period under the ATS and TVPA. For example, courts have held that either a defendant's absence from the United States or a plaintiff's lack of access to a judicial remedy in his native country due to extreme unrest and legitimate fear of retaliation can serve as grounds to toll a statute of limitations. See, e.g., Chavez, 559 F.3d at 493-94 (listing fear of reprisal and lack of system for administering justice as two grounds for tolling); Arce v. Garcia, 434 F.3d 1254, 1262-63 (11th Cir. 2006) (same); Jean v. Dorelien, 431 F.3d 776, 779-80 (11th Cir. 2005) (tolling statute of limitations until the defendant arrived in the United States after his government had lost power).

As previously discussed, the military government that defendant served between January 1980 and September 1990 was violently overthrown in 1991, and Somalia's central government collapsed. See Second Am. Compl. ¶¶ 5-6, 86. Plaintiffs allege

that after this collapse, the country "fell into increasing chaos" as the 1990s progressed, resulting in the killing, displacement, and mass starvation of tens of thousands of Somali citizens. Id. at 86. The United Nations, which had attempted to bring stability through a military intervention in 1992, was driven from the country in 1994. Id. Plaintiffs allege that deliberate killing and kidnapping of Somalis as a result of their clan membership was systematic in the ensuing years. Id.

For these reasons, "[c]onditions in Somalia precluded human rights cases against former commanders of the Somali Armed Forces," such as the defendant, "from being brought either in Somalia or the United States or elsewhere." Id. ¶ 87. To this day, Somalia "remains without a functioning national government and national judicial system" that could hear and adjudicate claims for human rights abuses during the Barre administration. Id. ¶¶ 87-91. Plaintiffs' allegation that it was impossible to file suit while they and their relatives continued to reside inside a destabilized and violent Somalia is unrefuted.

In addition to the turmoil within Somali, defendant's absence-and plaintiffs' lack of knowledge about his whereabouts in the years following his departure from Somalia-prevented the commencement of this lawsuit. It is undisputed that Samantar did not relocate to the United States until 1997. Id. ¶ 84. From 1991 to 1997, he resided within Italy. At summary judgment,

Samantar cited to the TVPA's legislative history, which states that the limitations period "should be tolled during the time the defendant was absent from" the United States or any other similar jurisdiction permitting this kind of cause of action and affording a remedy that "is adequate and available." S. Rep. No. 102-249, 102d Cong. (1991), available at 1991 WL 258662, at *11. Based on this passage, Samantar argued that the statute of limitations should not be tolled during those six years because plaintiffs should have located him and filed their claims in Italy, which would have afforded them an adequate remedy.

Samantar's only evidence that Italian law provided an adequate and available remedy was the affidavit of an Italian corporate law attorney, Cosimo Rucellai, who was deemed by this Court not to be an expert and whose testimony was stricken. Meanwhile, plaintiffs' expert, the director of the Geneva Academy of International Humanitarian Law and Human Rights, stated during her deposition that it would have been impossible for plaintiffs to have obtained relief in Italy because no cause of action similar to the ATS or TVPA existed under Italian law. It would therefore have been uncontested at trial that Italy did

not afford plaintiffs an adequate or available remedy.⁸

The violations alleged took place between 1981 and 1989 and was part of ongoing conduct before the fall of the Barre regime in 1991. For the reasons discussed above, the statutes of limitations on plaintiffs' claims were tolled between 1991 and 1997 when defendant resided in Italy and did not start running on these claims until Samantar's 1997 arrival in the United States. Plaintiffs filed this civil action in 2004, which was within seven years of defendant's arrival in the United States and was, therefore, not time-barred. See Doe v. Saravia, 348 F. Supp. 2d 1112, 1146-48 (E.D. Cal. 2004); cf. United States v. Buchanan, 638 F.3d 448, 457 (4th Cir. 2011) (holding that time remaining on a statute of limitations "clock" is calculated by subtracting the duration of the pause for equitable tolling from the total time on the clock) (citing United States v. Ibarra, 502 U.S. 1, 4 n.2 (1991)).

B. Factual Findings

1. Bashe Abdi Yousuf

Plaintiff Yousuf, now a United States citizen who has

⁸ Even had an adequate remedy been available in Italy, evidence at summary judgment showed that Samantar did not work, contribute taxes, or pay rent on his apartment, which was provided by the Italian government, while in that country. He also did not know whether his name was listed in the Rome telephone directory. Defendant's own affidavit was the only evidence that he had lived openly in Italy, such that plaintiffs could have found him.

resided in this country since 1991, was born in Hargeisa, Somalia in 1953. He ran a successful family business in Hargeisa until 1981, when he was arrested for his participation in a charitable group called UFFO, which he described as being dedicated to improving education and healthcare in the city. See Trial Tr. Vol. 1 at 8:2-10:12 (Feb. 23, 2012, Dkt. No. 357); Second Am. Compl. ¶¶ 25-27. In particular, UFFO cleaned the sewage system of the Hargeisa General Hospital and raised money to procure medical supplies. See Trial Tr. Vol. 1 at 9:15-10:1; Second Am. Compl. ¶ 26.

On November 19, 1981, while conducting business at his warehouse, Yousuf was arrested by National Security Services agents who took him to a government building being used for interrogations of Isaaq UFFO members. Trial Tr. Vol. 1 at 11:1-23; Second Am. Compl. ¶ 27. He was thereafter locked in a room for two days and deprived of food and water. Id. On the third day, an armed member of the Somali Armed Forces, as well as several plain-clothed individuals, removed Yousuf from the room and questioned him about his association with UFFO.

Yousuf was returned to that room and detained for three weeks before his interrogators returned. They questioned him about whether he had ever thrown a bomb; upon denying that he had ever "once even seen a bomb, let alone throwing [sic] it," he was returned to his room. See Trial Tr. Vol. 1 at 13:17-

14:13. At midnight, the men returned again and forced a blindfolded Yousuf into a Land Cruiser, after which he was driven outside the city through a military checkpoint. Id. at 14:14-15:12. Once outside the city, Yousuf was forced to lie face-down on the ground with his hands and feet tightly bound together in what is known as the "Mig" position. See Trial Tr. Vol. 1 at 15:14-16:7; Second Am. Compl. ¶¶ 28-29. Pressure was placed on his back through a rock or a foot, causing him significant pain. Id. Interrogators then turned Yousuf onto his back and continued the torture by forcing water into his mouth while cutting off air passageways until he lost consciousness. See Trial Tr. Vol. 1 at 15:20-24; Second Am. Compl. ¶ 30. Yousuf sustained injuries that night, including cuts, and was unable to walk for several days. See Trial Tr. Vol. 1 at 16:8-15.

Yousuf was tortured in the same manner "at least four or five times" during his detention. Id. at 17:2. Interrogators also once applied electric shocks through Yousuf's armpits. Id. at 17:3-4.⁹ Around February 19, 1982, after approximately three months in detention, Yousuf was charged with high treason. See Second Am. Compl. ¶ 32. He was able to meet for only five to ten

⁹ There are discrepancies between allegations in the second amended complaint and the testimony as to the number of times that Yousuf was tortured. For example, the complaint alleges that Yousuf was tortured eight times, not four or five as he stated on the stand, and that electric shock was used twice, not once. These are relatively minor discrepancies that do not impeach Yousuf's overall credibility.

minutes with a court-appointed defense attorney who "admitted there was no redress available." Id. On February 28, 1982, Yousuf and over two dozen other members of UFFO were tried over the course of two days in the National Security Court, a "military court with jurisdiction over civilians accused of national security crimes." Id. ¶ 33. Two judges, a military officer and a police captain, presided, and only government witnesses testified; Yousuf and the other defendants were not permitted to speak. Id. ¶ 34; Trial Tr. Vol. 1 at 18:19-19:25. On March 3, 1982, Yousuf and 20 of the other defendants were convicted, and Yousuf was sentenced to twenty years in prison. Trial Tr. Vol. 1 at 21:7-21; Second Am. Compl. ¶ 35. After eight months in the Hargeisa jail, which was infested and had no bathroom, Yousuf "was transferred to Labaatan Jirow prison, a notorious maximum security prison for political prisoners" where he was housed in a small, windowless cell infested with rodents and insects. See Trial Tr. Vol. 1 at 22:5-10, 24:13-25:12, 28:22-29:9; Second Am. Compl. ¶ 36. In that cell, which was entirely dark when the door was closed, he remained primarily in solitary confinement for seven years. See Trial Tr. Vol. 1 at 26:1-4, 27:18-22, 29:18-31:19; Second Am. Compl. ¶ 36. As Yousuf testified, "I did not speak with anybody. . . . I was sometimes wondering if I still remember my, even my native language. . . . The worst torture you can go through is isolation. You turn into

an animal." Trial Tr. Vol. 1 at 26:2-4, 31:7-8.

In 1989, Yousuf was blindfolded and placed in a Land Cruiser with other prisoners. He was released, without explanation, near the city of Biadaba. After traveling first to Saudi Arabia, Yousuf applied for political asylum in the United States and relocated to this country in 1991.

2. Buralle Salah Mohamoud

Plaintiff Buralle, who testified through the assistance of an interpreter, was born in 1962 and lives in the Burao region of Somalia in a village that, during the relevant period, was an hour away from the closest town. Plaintiff tended goats and camels, a life-long occupation. In 1984, plaintiff's family was engaged in a religious ceremony when the colonel from a nearby military base and 60-70 members of the Somali Armed Forces arrived at his home and encircled plaintiff's family. See Trial Tr. Vol. 1 at 42:3-43:24; Second Am. Compl. ¶ 43. After shooting into the air and stating that they were looking for SNM members, the soldiers seized plaintiff and his two brothers, decedents Abdullahi and Cawil. See Trial Tr. Vol. 1 at 44:1-43:24.¹⁰

Plaintiff and his brothers were kept overnight by the military. In the morning, they were driven to another town,

¹⁰ Although the estates of Cawil and Abdullahi are represented in this litigation by plaintiff Aziz, the allegations supporting the claims of their estates will be addressed in this section for purposes of clarity.

where they were beaten and tied into the Mig position. Id. at 45:9-46:8. Plaintiff and his brothers were loaded into a truck and taken to military headquarters in Burao where they were untied and, unable to move after having been tightly restrained for over an hour, were beaten again. Id. at 48:1-16. Soldiers asked plaintiff and his brothers whether they had hidden SNM members. They denied having any information about SNM but were nevertheless put inside a crowded, filthy, windowless jail with other Isaaq men. Id. at 48:23-51:6.

After four nights, the men were taken to a military court located only 15 minutes from the jail. Eighty prisoners in total were brought to the court, which was surrounded by Somali government soldiers. Id. at 51:8-22. A military lawyer was appointed, although plaintiff asserts that "he didn't do anything for us." Id. at 52:2-5. The men were not permitted to speak on their own behalf. Id. at 52:20-53:3. The only evidence presented against Buralle and his brothers was the large meal the family had been cooking, which military prosecutors had argued proved that they were aiding the SNM; plaintiff, however, testified in this case that the family meal was part of a religious ceremony. Id. at 52:13-19.

Following the proceeding, plaintiff and his brothers were returned to jail, and during the next eight days, their handcuffs were never removed. Id. at 55:1-12. They were then

brought back to court where they were convicted and sentenced to death along with 40 other prisoners. Id. at 56:17-57:11. Because the sentence was to be executed immediately, the military began loading the prisoners into trucks. While plaintiff was queued behind his brothers, a man began calling the names of the convicted. Id. at 57:18-58:2.

Q. And what happened when the man who was calling the names called out the names of each of your brothers and then you?

A. First they call my brothers. Then they call me.

Q. And then what?

A. Then he ask me, "Where are you?" when he call my name. Then I said, "I'm here." Then he did cry a little bit. So then he have a pen, so he bite his pen.

Q. And then after he bit his pen?

A. So he called the person who was having the key, that we being handcuffed together, so he called the person who had the handcuff key. Then he say, you know, "Handcuff him and just keep him here."

Q. Then what happened next?

A. So they separate me from the rest -- they put me on side in front of the court -- inside the court. So the rest of the group, 40 or more, so they took to the truck.

Id. at 58:25-59:16.

The truck drove away, and sometime later, plaintiff heard the sound of gun shots. Id. at 59:1-23. Thirty minutes after the truck had left, it returned carrying none of the prisoners, but the soldiers held numerous empty handcuffs. Id. Plaintiff never saw his brothers, or any of the men sentenced that day, again. Id. After watching soldiers load the truck with another group of convicted prisoners and convincing a guard that he was one of

the few released prisoners, plaintiff slipped away. Id. at 60:4-11. Feeling ill and having been told that soldiers were looking for him, plaintiff hid at the homes of his uncles for two days and then left the city by foot. Id. at 60:21-61:9.

3. Ahmed Jama Gulaid

Plaintiff Gulaid, who testified through the assistance of an interpreter, was born in Hargeisa in 1950. From 1968 to 1988, he served in the Somali National Army. See Trial Tr. Vol. 1 at 134:25-135:6; Second Am. Compl. ¶ 61. On June 4, 1988, Gulaid, a member of the Isaaq clan, was stationed at the Hargeisa General Hospital when he was arrested by an Army captain and four military policeman, whose uniforms included red berets. See Trial Tr. Vol. 1 at 136:4-138:13, 144:6-14. He was taken to a military base where, by his estimate, there were 1,500 Army soldiers in camouflage carrying guns. Id. at 138:1-11. Army officers were being instructed to clean and hand over their weapons until they had all been disarmed. Id. at 139:11-20, 141:4-6.

The captain who had detained Gulaid removed a list from his pocket and began calling names. The first name belonged to plaintiff, who was instructed to stand inside a circle of military police who were wearing red berets. Id. at 140:20-141:13. Sixty-three names of Isaaq officers were called. As these 63 officers stood in the circle of red berets, weapons

were returned to the non-Isaaq military police. Id. at 141:7-12, 142:2-13. The 63 unarmed Isaaq officers were loaded into a truck and driven to a military police base, where they were divided into two cells. Id. at 143:1-145:21. In the distance, Gulaid could hear the bombardment of Hargeisa. Id. 153:11-20.

Soon after arriving at the base, the military police began pulling men out of the cells, tying groups of four men together with rope, and loading them into a truck. Id. at 145:22-146:17. After the truck departed, Gulaid could hear gunshots in the distance and was confident the men were being killed. Id. at 147:4-17. When his group of four prisoners was loaded into a truck, they were driven to a nearby site called Malko Dur-Duro. They were then forced to stand between two poles where six groups, each group consisting of four men tied together, had already been made to stand before officers with guns. Id. at 147:22-148:8, 149:21-150:15. Other officers were nearby to move dead bodies as they fell. Id. When the order was given to shoot Gulaid's group, the man to his right and two men to his left fell, pulling Gulaid down as well. Id. at 151:2-11. The commanding officer checked the fallen men, and announcing "[t]hey're still alive," ordered his policemen to "shoot them. Give them five bullets each." Id. at 151:12-15. At this point, Gulaid lost consciousness. Id. at 151:16-23. When he awoke, he was covered by the bodies of his now-deceased colleagues. He

climbed up and out of the pile of the dead, retrieved his shoes, which were still near the poles where he had been tied and shot, and made his way home. Id. at 152:4-153:20.

4. Aziz Mohamed Deria

Plaintiff Aziz, currently residing in Seattle, Washington testified that he was one of 11 children born in 1964 to a happy family in Hargeisa, Somalia. See Trial Tr. Vol. 1 at 65:25, 76:13-23; Second Am. Compl. ¶¶ 38-42. His father, decedent Mohamed, was a businessman and head of the Pepsi-Cola Bottling Company in Hargeisa. In 1981, Aziz was a student financially supported by his family. Trial Tr. Vol. 1 at 78:5-10.

That year, General Gaani of the Somali Armed Forces was placed in charge of the military sector that included Hargeisa. He began to impose his authority on the locals, including Aziz's teachers, many of whom were arrested without cause. Id. at 78:17-79:12. Aziz protested these arrests, and he witnessed the arrests of many fellow students and the harassment of their parents. Id. Aziz testified that he was "shocked" by the force used by the government because "[w]e were innocent students who had no weapons . . . yet we were crushed so badly by the military forces led by General Gaani and Samantar." Id. at 80:9-12. Fearing for his life, Aziz fled Somalia. After years of living abroad, he was in the United States when he learned that his father and brother had been killed.

In June 1988, the Somalia Armed Forces "launched an indiscriminate . . . aerial and ground attack on Hargeisa." Second Am. Compl. ¶ 39. Aziz's sister, Nimo Mohamed Dirie ("Nimo"), who now resides in Kuwait with her family, testified that before the attacks in 1988, Mohamed and Mustafa were successful businessmen who owned storage facilities, a hotel, and many houses. See Trial Tr. Vol. 1 at 64:22-65:1. She stated that although her family is Isaaq, they did not support either side of the conflict and that neither Mohamed nor Mustafa was an SNM or UFFO member. Id. at 66:11-16, 67:11-12. Nimo testified that when the war came to Hargeisa, the family was forced to remain indoors "all the time." Id. at 67:4-67:18. She heard shooting, rockets, and bombs and could frequently see armed Somali government soldiers outside the windows. Id.

On June 1, 1988, nine or ten soldiers came inside the house, pointing guns and searching the home. Id. at 68:4-69:9. Fewer than two weeks later, 12 government soldiers returned and forcibly took Mohamed, who was around 49 years old. Id. at 69:10-70:17. Later in the day, soldiers returned and took Mustafa, who was 22, and their cousin. Id. at 70:23-71:11. The soldiers came back a third time that day, taking Nimo, her eight remaining siblings, and her mother outside to a neighbor's fence, where they were questioned about their clan and threatened with execution. Id. at 71:12-73:17. At some point,

the family was loaded into a truck; they were later released without explanation. Id. Nimo never again saw Mohamed or Mustafa. Id. at 73:22-74:11. The family left Hargeisa in July 1988, two months after fighting there had started, for a refugee camp in Ethiopia where they lived for a year. Id. at 75:1-13. Nimo testified that when they left Hargeisa, she saw blood covering the ground and 50-60 dead bodies, and she smelled a pervasive bad odor. Id. at 74:3-24.

C. Secondary Liability

The seven claims for relief in the second amended complaint allege that defendant is liable for the harms suffered by plaintiffs under three theories of secondary liability: command responsibility, aiding and abetting liability, and joint criminal enterprise liability. The Supreme Court recently affirmed that "the TVPA contemplates liability against officers who do not personally execute the torture or extrajudicial killing." Mohamad v. Palestinian Auth., 132 S. Ct. 1702, 1709 (2012) (citation omitted). Even before Mohamad, "virtually every court to address the issue" has "recogniz[ed] secondary liability for violations of international law since the founding of the Republic." Aziz v. Alcolac, Inc., 658 F.3d 388, 396 (4th Cir. 2011) (internal quotation marks and alterations omitted); accord Doe VIII v. Exxon Mobil Corp., 654 F.3d 11, 19 (D.C. Cir. 2011) (citing The Presbyterian Church of Sudan v. Talisman, 582

F.3d 244, 258-59 (2d Cir. 2009); Khulumani v. Barclay Nat'l Bank, 504 F.3d 254, 260 (2d Cir. 2007) (per curiam); Sinaltrainal v. Coca-Cola Co., 578 F.3d 1252, 1258 n.5 (11th Cir. 2009), abrogated on other grounds, Mohamad, 132 S. Ct. at 1706 & n.2).

For command responsibility to apply, three elements must be established:

(1) [A] superior-subordinate relationship between the defendant/military commander and the person or persons who committed human rights abuses; (2) the defendant/military commander knew, or should have known, in light of the circumstances at the time, that subordinates had committed, were committing, or were about to commit human rights abuses; and (3) the defendant/military commander failed to take all necessary and reasonable measures to prevent human rights abuses and punish human rights abusers.

Chavez, 559 F.3d at 499 (holding that "command responsibility does not require proof that a commander's behavior proximately caused the victim's injuries") (citing Ford v. Garcia, 289 F.3d 1283, 1288 (11th Cir. 2002)); see also Hilao, 103 F.3d at 776-79 (same); see generally Doe v. Qi, 349 F. Supp. 2d 1258, 1329 (N.D. Cal. 2004) ("The principle of command responsibility that holds a superior responsible for the actions of subordinates appears to be well accepted in U.S. and international law in connection with acts committed in wartime") (citing In re Yamashita, 327 U.S. 1, 14-16 (1946)).

The Chavez test accords with the legislative history of the TVPA, which explains that a "higher official need not have

personally . . . ordered the abuses in order to be held liable." S. Rep. No. 102-249, at 9 (1991). Rather, "[u]nder international law, responsibility for torture, summary execution, or disappearances extends beyond the person or persons who actually committed those acts -- anyone with higher authority who authorized, tolerated or knowingly ignored those acts is liable for them." Id.

Plaintiffs also allege that defendant aided and abetted his officers in carrying out violations of international law. See Second Am. Compl. ¶¶ 95, 104, 114, 124, 134, 143, 152. "[A]iding and abetting liability is well established under the ATS." Aziz, 658 F.3d at 396. In this circuit, "for liability to attach under the ATS for aiding and abetting a violation of international law, a defendant must provide substantial assistance with the purpose of facilitating the alleged violation." Id. at 401. Put another way, "the ATS imposes liability for aiding and abetting violations of international law, but only if the attendant conduct is purposeful." Id. at 390.

Plaintiffs' final basis for secondary liability is the less developed doctrine of joint criminal enterprise, which is the "[international law] analog to a conspiracy as a completed offense." Presbyterian Church of Sudan, 582 F.3d at 260 (citing Hamdan v. Rumsfeld, 548 U.S. 557, 611 n.40 (2006)). An "essential element of a joint criminal enterprise is 'a criminal

intention to participate in a common criminal design.'" Id.
(assuming without deciding that plaintiffs could assert such a
theory in an ATS action) (quoting Prosecutor v. Tadic, Case No.
IT-94-1-A, Appeal Judgment, ¶ 206 (July 15, 1999)). Providing "a
theory of liability for proving a specific crime," the doctrine
"considers each member of an organized criminal group
individually responsible for crimes committed by the group
within the common plan or purpose, and it requires an overt act
in support of the offense." United States v. Hamdan, 801 F.
Supp. 2d 1247, 1285-86 (U.S.C.M.C.R. 2011) (explaining that joint
criminal enterprise is "not a stand-alone substantive offense").

The uncontested evidence supports imposing secondary
liability. As First Vice President and Minister of Defense from
January 1980 through December 1986, Samantar was the leader of
the Somali Armed Forces and was the primary military figure in
Barre's military regime. Having participated in the 1969 coup,
he remained the leader of Somalia's military apparatus and a
close confidante of Barre until 1991.

As Prime Minister, Samantar was in command during the
Hargeisa bombing of 1988 and admitted he was himself in Hargeisa
in June of 1988 when the major crimes against the civilian
population occurred. Pls.' Ex. 5. In 1989, as Prime Minister of
Somalia, Samantar traveled to London to meet Prime Minister
Margaret Thatcher and the British foreign affairs secretary.

During that diplomatic trip, BBC reporter Elizabeth Ohene conducted an in-person interview with Samantar at his London hotel and recorded that interview, which was conducted in English. Trial Tr. Vol. 1 at 88:13-90:16 (Ohene bene esse deposition authenticating recording of Samantar interview).

During the interview, Samantar acknowledged his leadership role in the attacks on Hargeisa:

Ohene: Prime Minister, yesterday we had a call to our office from people that you might call dissidents and they say that last year's total mayhem, chaos, at Hargeisa airport was a result of operations ordered by you personally.

Samantar: I was there at that time, but I was not the commander of the unit. I was the higher ranking person in Hargeisa; therefore, it was necessary those commanders to [sic] consult with me and to have [sic] directions from myself. As you know, the top person in the area of conflict should give the last okay. Yes, I give this okay. How to use tactically, how to employ the units; it was my task to give them directions and directives.

Pls.' Ex. 5 (transcript of Pls.' Ex. 2A, audio recording of Ohene-Samantar interview).

Samantar's admission during that interview accords with the expert opinion of Colonel Kenneth Culwell, a former Defense Intelligence Agency attaché reporting to the United States Ambassador in Somalia, who testified to the command structure of the Barre regime and the mass destruction he observed in 1990, the year he spent in Somalia:

Q: What role would the highest-ranking military officer in Somalia play in the shelling of a major city within Somalia?

A: He would most likely approve it or authorize it. Given, however, the scarce resources in Somalia, he would have to allocate resources to it

Trial Tr. Vol. 1 at 106:18-22.

There was also evidence from Colonel Yousuf Sharmarke ("Sharmarke") who in May 1988 overheard President Barre communicating through the Somali Armed Forces' radio system with "General [] Samantar [who] was - military-wise . . . of higher rank than the President" Trial Tr. Vol. 2 (Feb. 24, 2012, Dkt. No. 358) at 164:5-165:25 (reading of Sharmarke's deposition testimony). Sharmarke testified that Barre and Samantar were discussing the fighting between SNM and the Somali Armed Forces in the town of Burao, which was still filled with civilians:

A: General Mohamed Ali Samantar received the communication that the SNM was fighting from within the people, the position - the decision reached by Mohamed Ali Samantar was to use heavy - artillery to drive the SNM out of town. I heard [Barre] . . . saying Samantar, Samantar, Samantar," concern with that -- that might not be in order. . . . Samantar, don't be quick in bombarding the town, and Samantar said, Samantar saying it was -- it is must that we do that.

Id. at 166:5-24. This testimony demonstrates the authority that Samantar exerted with respect to military strategy and command over the Armed Forces. Sharmarke also overheard Samantar himself

order Colonel Kahiye of the Somali Armed Forces to carry out the heavy artillery attack. Id. at 178:9-179:6.

During Sharmarke's deposition, defense counsel pointed out that Samantar was not the defense minister in May 1988, but Sharmarke testified that Samantar remained the functional head of Somalia's military:

A: He was transferred from that post there afterwards, but Samantar had many other roles to play. He was the deputy of the National Security Committee, which was the biggest post. He was the prime minister, second decision-maker, and he was the expert in the act of war, the only one in Somalia. Whenever there was equipment, he was the one who used to take over that, and most of the time he was successful.

Q: Isn't it true that under the Somali Constitution, it is the President who is the commander-in-chief of the Armed Forces, not the prime minister?

A: He was initially, but when he was - but when he was elected, the chairman of the Socialist Party of Somalia, he gave -- he gave that role -- he passed that to Samantar. He left -- he no longer used the uniform of the army -- the army uniform. He put aside the army uniform, and from there Samantar took over. And when the war and the conflicts, that was the duty of Samantar.

Trial Tr. Vol. 2 at 174:9-175:1.

In light of Samantar's own words, Culwell's testimony, and Sharmarke's deposition testimony, the three elements of the command responsibility test outlined in Chavez -- a superior/subordinate relationship, the superior's knowledge of the subordinate's abuses, and failure by the superior to take reasonable measures -- are clearly met. Samantar's subordinates in the Somali Armed Forces and affiliated intelligence and

security agencies were committing human rights abuses; Samantar not only knew about this conduct and failed to take necessary and reasonable measures to prevent it, but he in fact ordered and affirmatively permitted such violations. The well-pleaded allegations and uncontested evidence submitted at trial also sufficiently establish that Samantar "substantial[ly] assist[ed]" his subordinates with "the purpose of facilitating" the acts alleged in the second amended complaint. See Aziz, 658 F.3d at 401. Accordingly, plaintiffs have established secondary liability with respect to the claims alleged by plaintiffs.¹¹

D. Damages

Credible, unrebutted testimony introduced at trial demonstrates that plaintiffs have suffered the harms alleged and are entitled to recover damages under the ATS and TVPA. See, e.g., 28 U.S.C. § 1350 note sec. 1(a); Ditullio v. Boehm, 662 F.3d 1091, 1096-98 (9th Cir. 2011) (holding that because the TVPA "creates a cause of action that sounds in tort" and explicitly allows a victim to "recover damages," both compensatory and punitive damages are available); Arce, 434 F.3d at 1256 (upholding jury verdicts for plaintiffs who sued defense ministers and military general on a command responsibility theory for their abductions and torture by soldiers).

¹¹ Because command responsibility and aiding and abetting are well-established, liability predicated on joint criminal enterprise need not be addressed.

It is hornbook law that uncertain, contingent, or speculative damages may not be recovered. It is equally true that "[a]n injured party is not barred from a reasonable recovery merely because he is unable to prove his damages with absolute certainty." Thompson v. Bhd. of Sleeping Car Porters, 367 F.2d 489, 493 (4th Cir. 1966). Surveying the cases calculating compensatory and punitive damages under the ATS and/or TVPA, one district court found six factors that weighed heavily in decisions across the circuits: the brutality of the act; the egregiousness of defendant's conduct; unavailability of a criminal remedy; international condemnation of the act; general deterrence; and interest in providing redress to plaintiff, his country and the world. Saravia, 348 F. Supp. 2d at 1158-59 (collecting cases and awarding \$5 million in compensatory and \$5 million in punitive damages for claims of extrajudicial killing and crimes against humanity). Damages in cases under the relevant statutes vary widely. See, e.g., Abebe-Jira v. Negewo, 72 F.3d 844, 846 (11th Cir. 1996) (upholding award to three plaintiffs for \$200,000 each in compensatory damages and \$300,000 each in punitive damages for torture and cruel, inhuman, and degrading treatment by former Ethiopian government official); Licea, 584 F. Supp. 2d at 1363-66 (awarding over \$20 million to each plaintiff for human trafficking and forced labor conspiracy).

1. Compensatory Damages

Compensatory damages are recoverable for physical and psychological injuries. See, e.g., Mehinovic v. Vuckovic, 198 F. Supp. 2d 1322, 1358-59 (N.D. Ga. 2002) (awarding damages based on testimony by plaintiffs about the abuses and isolation they suffered and their continued "nightmares, difficulty sleeping, flashbacks, anxiety, difficulty relating to others, and feeling abnormal"); Licea, 584 F. Supp. 2d at 1364-65 (awarding damages based on testimony by plaintiffs as to physical injuries, lack of medical care, and psychological trauma suffered).

Plaintiffs in this case did not produce evidence of special damages, such as bills for medical or therapeutic treatment or any costs directly associated with the deaths of relatives, but they provided credible and compelling testimony of cognizable injuries stemming from the alleged violations. See Hilao, 103 F.3d at 793 (holding that plaintiff who had waived any claim to special damages could have his claim for pain and suffering, based only on his own testimony, submitted to the jury). Specifically, Yousuf testified that he endured torture and seven years of imprisonment, largely in solitary confinement. See Tr. Vol. 1 at 37:7-38:14; see also Second Am. Compl. ¶¶ 29-31, 36, 110-119 (Claim III). He testified that the imprisonment and torture has had long-lasting effects on his memory and emotional health. He suffers from depression and nightmares and still re-

lives the feeling of pacing the five-step length of his cell.

See Tr. Vol. 1 at 37:7-38:14.

Baralle was tortured and, for unknown reasons, barely escaped the execution that in all likelihood befell his two brothers, decedents Abdullahi and Cawil. See Trial Tr. Vol. 1 at 61:13-61:21; see also Second Am. Compl. ¶¶ 110, 120, 133, 139-47, 148-55 (Claims III, IV, V, VI, VII). Baralle testified that he continues to suffer effects of the Somali Armed Forces' acts. He experiences pain and an occasional shaking on the left side of his body as well as flashbacks. Trial Tr. Vol. 1 at 61:13-61:21. Following the extrajudicial killings of his two brothers, he and his family took responsibility for raising the brothers' children. Id. at 61:22-62:7.

Targeted by a military police firing squad, plaintiff Gulaid lacked even the perfunctory process that was afforded to Yousuf and Baralle in their trials; ultimately, he escaped death thanks to what appears to be the executioner's error. See Second Am. Compl. ¶¶ 110, 120, 130, 139, 148 (Claims III, IV, V, VI, VII). Gulaid testified that he continues to suffer the emotional effects of his near-death experience. He has nightmares, flashbacks, and anxiety. Trial Tr. Vol. 1 at 153:22-154:5. He also suffers from memory loss, high blood pressure, and poor vision, which he attributes to the experience. Id. at 154:6-154:10. Finally, the testimony of plaintiff Aziz and his sister

Nimo presents compelling circumstantial evidence of the extrajudicial executions of their father Mohamed, the family's breadwinner and a successful businessman, and their brother Mustafa.

Calculating the appropriate amount of damages in cases such as this one is indisputably a difficult task. See Mushikiwabo v. Barayagwiza, No. 94cv3627, 1996 WL 164496, at *2 (S.D.N.Y. Apr. 9, 1996). In light of the testimony and evidence submitted as well as the range of awards to plaintiffs who have suffered similar harms, each plaintiff suing in his individual capacity will be awarded a sum of \$1 million for pain and suffering while the estates of each of the four decedents will be awarded a sum of \$1 million for each decedent.

2. Punitive Damages

Plaintiffs also entered evidence to show that "defendant's conduct was intentional, malicious, wanton, and reckless," justifying punitive damages. Trial Tr. Vol. 2 at 190:1-190:5. Although punitive damages are typically governed by state law, to comply with due process, the Fourth Circuit requires courts to consider four factors when assessing any such award:

- Proportionality, meaning that "any penalty imposed should bear a relationship to the nature and extent of the conduct and the harm caused" in light of "the reprehensibility of the conduct, the harm caused, the defendant's awareness of the conduct's wrongfulness, the duration of the conduct, [] any concealment," and the amount of the compensatory damage award;

- Penalties already imposed, such as other criminal or civil sanctions or any other punitive damages award arising out of the same conduct, which should be mitigating factors in the punitive damages calculation;
- Improper profits and the plaintiff's costs, to deprive the defendant of profits improperly derived and to ease the burden on the plaintiff of prosecuting the claim; and
- Limitations on a defendant's ability to pay, given that punitive damages are intended to punish but "not effect economic bankruptcy."

Mattison v. Dallas Carrier Corp., 947 F.2d 95, 110 (4th Cir.

1991). Punitive damages are commonly awarded in cases under the ATS and TVPA. See, e.g., Paul v. Avril, 901 F. Supp. 330, 336 (S.D. Fla. 1994) (awarding \$4 million in punitive damages per plaintiff because "the acts committed by the defendant were malicious, wanton, and oppressive" and the award "must reflect the egregiousness of the defendant's conduct, the central role he played in the abuses, and the international condemnation with which these abuses are viewed").

Keeping in mind these factors, an award of \$2 million in punitive damages to each individual plaintiff and the four estates is appropriate. This amount is intended to reflect the seriousness of Samantar's uncontested conduct and to ease any burden on plaintiffs in having to bring this case, while also recognizing the substantial compensatory damages awarded and the lack of evidence that Samantar possesses profits from his wrongful conduct that should be disgorged. The sum also takes into consideration Samantar's financial condition, specifically

his ongoing Chapter 7 bankruptcy proceeding.

III. CONCLUSION

For the above-stated reasons, a total judgment of \$21 million, consisting of \$1 million in compensatory damages and \$2 million in punitive damages for the three individual plaintiffs and four represented estates, will be entered against defendant. The execution of the judgment will be stayed pending resolution of defendant's bankruptcy proceedings; however, the time for appeal of the Court's decision runs from the entry of the Order accompanying this Memorandum Opinion.

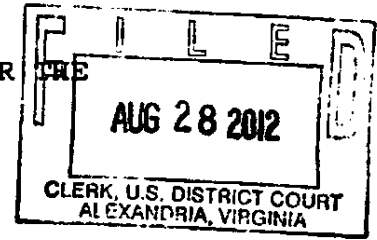
Entered this 28th day of August, 2012.

Alexandria, Virginia

ls/ 

Leonie M. Brinkema
United States District Judge

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



BASHE ABDI YOUSUF, et al.,)
)
Plaintiffs)
)
v.)
)
MOHAMED ALI SAMANTAR,)
)
Defendant.)

1:04cv1360 (LMB/JFA)

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED that a judgment of \$21 million, consisting of \$1 million in compensatory damages and \$2 million in punitive damages to individual plaintiffs Bashe Abdi Yousuf, Buralle Salah Mohamoud, and Ahmed Jama Gulaid, and to the estates of Mohamed Deria Ali, Mustafa Mohamed Deria, Abdullahi Salah Mahamoud, and Cawil Salah Mahamoud, be and is awarded to the plaintiffs against the defendant, Mohamed Ali Samantar; and it is further

ORDERED that execution of this judgment be and is STAYED until the defendant's bankruptcy proceedings are resolved and the stay, issued as a result of the defendant's Chapter 7 petition, has been lifted.

The Clerk is directed to enter judgment pursuant to Fed. R.

Civ. P. 55(b) in favor of plaintiffs and forward this Order and accompanying Memorandum Opinion to counsel of record.

Entered this 28th day of August, 2012.

Alexandria, Virginia

ls/ LMB

Leonie M. Brinkema
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

BASHE ABDI YOUSUF, et al.,)	
)	
Plaintiffs)	
)	
v.)	Civil Action No. 1:10cv1360 (LMB/JFA)
)	
MOHAMED ALI SAMANTAR,)	
)	
Defendant.)	

DEFAULT JUDGMENT

A default having been entered against the defendant Mohamed Ali Samantar and counsel for the plaintiffs Bashe Abdi Yousuf, et al. having requested judgment against the defaulted defendant Mohamed Ali Samantar and having filed a proper declaration, all in accordance with Rule 55 of the Federal Rules of Civil Procedure; it is

ORDERED and ADJUDGED that the plaintiff(s) Bashe Abdi Yousuf, et al recover of the defendant Mohamed Ali Samantar the sum of \$21 million, consisting of \$1 million in compensatory damages and \$2 million in punitive damages to individual plaintiffs Bashe Abdi Yousuf, Buralle Salah Mohamoud, and Ahmed Jama Gulaid, and to the estates of Mohamed Deria Ali, Mustafa Mohamed Deria, Abdullahi Salah Mahamoud, and Cawil Salah Mahamoud be and is awarded to the plaintiffs against the defendant, Mohamed Ali Samantar; and it is further

ORDERED that execution of this judgment be and is STAYED until the defendant's bankruptcy proceedings are resolved and the stay, issued as a result of the defendant's Chapter 7 petition, has been lifted.

Dated at Alexandria, Virginia, this 28th day of August, 2012.

FERNANDO GALINDO
CLERK OF COURT

BY: _____ /s/
Yolanda Guyton
Deputy Clerk

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

BASHE ABDI YOUSUF, et alii.

Plaintiffs,

versus

MOHAMED ALI SAMANTAR,

Defendant.

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*
*
*

Civil Action No. 04-1360 (LMB/JFA)

NOTICE OF APPEAL

Dear Mr. Clerk:

KINDLY TAKE NOTICE that your defendant in respect of the above-encaptioned cause, viz., MOHAMED ALI SAMANTAR, hereby and herewith appeals to the United States Court of Appeals for the Fourth Circuit, from the Order of this Honorable Court entered in the instant action on 28 August 2012, entering judgment in favor of your plaintiffs and against your defendant [Document # 367], as well as the coeval Order of this Honorable Court also entered in the instant action on 28 August 2012, entering default judgment in favor of your plaintiffs and against your defendant [Document # 368]. Copies of each of the said Orders from which your defendant now appeals are attached hereto as “Exhibit 'A'” and “Exhibit 'B'”, respectively.

Dated: 24 September 2012

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
E-Mail: joseph@josephpeterdrennan.com
Virginia State Bar No. 023894
ATTORNEY AND COUNSELLOR,
IN PRAESENTI, FOR DEFENDANT

CERTIFICATE OF SERVICE

I, Joseph Peter Drennan, undersigned, hereby and herewith certify that, on this twenty-fourth day of the month of September, 2012, a true, cyclostyled facsimile of the foregoing was despatched by carriage of First Class Post, through the United State Postal Service, with adequate postage prepaid thereon, enshrouded in a suitable wrapper, unto:

Joseph W. Whitehead, Esquire
Thomas P. McLish, Esquire
W. Randolph Teslik, Esquire
Patricia Ann Millett, Esquire
Elizabeth Tobio, Esquire
James Edward Tysse, Esquire
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1333 New Hampshire Avenue, N.W.

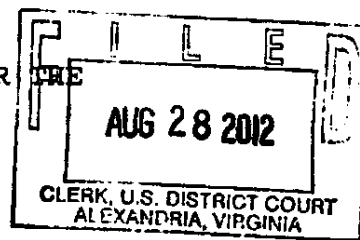
Washington, D.C. 20036-1564, and that, on even date, an electronic copy of the foregoing was sent, by *e-mail*, unto the said Attorneys Whitehead, McLish, Teslik, Millett, Tobio & Tysse, at the respective *e-mail* addresses of each, viz.: jwhitehead@akingump.com ,
tmclish@akingump.com , rteslik@akingump.com , pmillett@akingump.com ,
etobio@akingump.com & jtysse@akingump.com .

Respectfully submitted,

/s/ Joseph Peter Drennan
JOSEPH PETER DRENNAN
218 North Lee Street
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ATTORNEY AND COUNSELLOR,
IN PRAESENTI, FOR
MOHAMED ALI SAMANTAR

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



BASHE ABDI YOUSUF, et al.,)
)
Plaintiffs)
)
v.)
)
MOHAMED ALI SAMANTAR,)
)
Defendant.)

1:04cv1360 (LMB/JFA)

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED that a judgment of \$21 million, consisting of \$1 million in compensatory damages and \$2 million in punitive damages to individual plaintiffs Bashe Abdi Yousuf, Buralle Salah Mohamoud, and Ahmed Jama Gulaid, and to the estates of Mohamed Deria Ali, Mustafa Mohamed Deria, Abdullahi Salah Mahamoud, and Cawil Salah Mahamoud, be and is awarded to the plaintiffs against the defendant, Mohamed Ali Samantar; and it is further


ORDERED that execution of this judgment be and is STAYED until the defendant's bankruptcy proceedings are resolved and the stay, issued as a result of the defendant's Chapter 7 petition, has been lifted.

The Clerk is directed to enter judgment pursuant to Fed. R.

Civ. P. 55(b) in favor of plaintiffs and forward this Order and accompanying Memorandum Opinion to counsel of record.

Entered this 28th day of August, 2012.

Alexandria, Virginia

lsl 

Leonie M. Brinkema
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

BASHE ABDI YOUSUF, et al.,)
)
Plaintiffs)
)
v.) Civil Action No. 1:10cv1360 (LMB/JFA)
)
MOHAMED ALI SAMANTAR,)
)
Defendant.)

DEFAULT JUDGMENT

A default having been entered against the defendant Mohamed Ali Samantar and counsel for the plaintiffs Bashe Abdi Yousuf, et al. having requested judgment against the defaulted defendant Mohamed Ali Samantar and having filed a proper declaration, all in accordance with Rule 55 of the Federal Rules of Civil Procedure; it is

ORDERED and ADJUDGED that the plaintiff(s) Bashe Abdi Yousuf, et al recover of the defendant Mohamed Ali Samantar the sum of \$21 million, consisting of \$1 million in compensatory damages and \$2 million in punitive damages to individual plaintiffs Bashe Abdi Yousuf, Buralle Salah Mohamoud, and Ahmed Jama Gulaid, and to the estates of Mohamed Deria Ali, Mustafa Mohamed Deria, Abdullahi Salah Mahamoud, and Cawil Salah Mahamoud be and is awarded to the plaintiffs against the defendant, Mohamed Ali Samantar; and it is further

ORDERED that execution of this judgment be and is STAYED until the defendant's bankruptcy proceedings are resolved and the stay, issued as a result of the defendant's Chapter 7 petition, has been lifted.

Dated at Alexandria, Virginia, this 28th day of August, 2012.

FERNANDO GALINDO
CLERK OF COURT

BY: _____/s/_____
Yolanda Guyton
Deputy Clerk

FILED: July 8, 2011

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-1479
(1:04-cv-01360-LMB-JFA)

BASHE ABDI YOUSUF; JOHN DOE 1; JANE DOE 1; JOHN DOE 2; AZIZ
DERIA,

Plaintiffs – Appellees,

and

JOHN DOE 3; JOHN DOE 4,

Plaintiffs,

v.

MOHAMED ALI SAMANTAR,

Defendant – Appellant.

ORDER

Upon consideration of submissions relative to the motion for a stay of proceedings in the district court pending appellate review, the court denies the motion.

Entered at the direction of Chief Judge Traxler with the concurrence of
Judge King and Judge Duncan.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: February 17, 2012

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-1479
(1:04-cv-01360-LMB-JFA)

BASHE ABDI YOUSUF; JOHN DOE 1; JOHN DOE 2; AZIZ DERIA

Plaintiffs - Appellees

and

JOHN DOE 3; JOHN DOE 4; JANE DOE 1

Plaintiffs

v.

MOHAMED ALI SAMANTAR

Defendant - Appellant

UNITED STATES OF AMERICA

Amicus Supporting Appellee

ORDER

Upon review of submissions relative to the motion for stay pending appeal,

the court denies the motion.

Entered at the direction of the panel: Chief Judge Traxler, Judge Niemeyer,
and Judge Duncan.

For the Court

/s/ Patricia S. Connor, Clerk

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BASHE ABDI YOUSUF; JOHN DOE 1;
JOHN DOE 2; AZIZ DERIA,

Plaintiffs-Appellees,

and

JOHN DOE 3; JOHN DOE 4; JANE
DOE 1,

Plaintiffs,

No. 11-1479

v.

MOHAMED ALI SAMANTAR,

Defendant-Appellant.

UNITED STATES OF AMERICA,

Amicus Supporting Appellees.

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.

Leonie M. Brinkema, District Judge.

(1:04-cv-01360-LMB-JFA)

Argued: May 16, 2012

Decided: November 2, 2012

Before TRAXLER, Chief Judge, and KING and DUNCAN,
Circuit Judges.

Affirmed by published opinion. Chief Judge Traxler wrote the opinion, in which Judge King and Judge Duncan joined.

COUNSEL

ARGUED: Joseph Peter Drennan, Alexandria, Virginia, for Appellant. James Edward Tysse, AKIN, GUMP, STRAUSS, HAUER & FELD, LLP, Washington, D.C., for Appellees. Lewis Yelin, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Amicus Supporting Appellees. **ON BRIEF:** Natasha E. Fain, CENTER FOR JUSTICE & ACCOUNTABILITY, San Francisco, California; Patricia A. Millett, Steven H. Schulman, AKIN, GUMP, STRAUSS, HAUER & FELD, LLP, Washington, D.C., for Appellees. Harold Hongju Koh, Legal Adviser, DEPARTMENT OF STATE, Washington, D.C.; Tony West, Assistant Attorney General, Douglas N. Letter, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Neil H. MacBride, United States Attorney, Alexandria, Virginia, for Amicus Supporting Appellees.

OPINION

TRAXLER, Chief Judge:

For the second time in this case, we are presented with the question of whether Appellant Mohamed Ali Samantar enjoys immunity from suit under the Torture Victim Protection Act of 1991 ("TVPA"), *see* Pub. L. 102-256, 106 Stat. 73 (1992), 28 U.S.C. § 1350 note, and the Alien Tort Statute ("ATS"), *see* 28 U.S.C. § 1350. In the previous appeal, we rejected Samantar's claim to statutory immunity under the Foreign Sovereign Immunities Act ("FSIA"), *see* 28 U.S.C. §§ 1602-1611, but held open the possibility that Samantar could "successfully invoke an immunity doctrine arising under pre-FSIA

common law." *Yousuf v. Samantar*, 552 F.3d 371, 383-84 (4th Cir. 2009). The Supreme Court affirmed our reading of the FSIA and likewise suggested Samantar would have the opportunity to assert common law immunity on remand. *See Samantar v. Yousuf*, 130 S. Ct. 2278, 2293 (2010) (noting that the viability of a common law immunity defense was a "matter[] to be addressed in the first instance by the District Court").

On remand to the district court, Samantar sought dismissal of the claims against him based on common law immunities afforded to heads of state and also to other foreign officials for acts performed in their official capacity. The district court rejected his claims for immunity and denied the motion to dismiss. *See Yousuf v. Samantar*, 2011 WL 7445583 (E.D. Va. Feb. 15, 2011). For the reasons that follow, we agree with the district court and affirm its decision.

I.

Because our previous opinion recounted the underlying facts at length, *see Samantar*, 552 F.3d at 373-74, we will provide only a brief summary here. Samantar was a high-ranking government official in Somalia while the military regime of General Mohamed Barre held power from about 1969 to 1991. Plaintiffs are natives of Somalia and members of the "prosperous and well-educated Isaaq clan, which the [Barre] government viewed as a threat." *Id.* at 373. Plaintiffs allege that they, or members of their families, were subjected to "torture, arbitrary detention and extrajudicial killing" by government agents under the command and control of Samantar, who served as "Minister of Defense from January 1980 to December 1986, and as Prime Minister from January 1987 to September 1990." *Id.* at 374 (internal quotation marks omitted). Following the collapse of the Barre regime in January 1991, Samantar fled Somalia for the United States. He now resides in Virginia as a permanent legal resident. Two of the

plaintiffs also reside in the United States, having become naturalized citizens.

Plaintiffs brought a civil action against Samantar under the TVPA and the ATS. *See* 28 U.S.C. § 1350 and note. Samantar moved to dismiss plaintiffs' claims on the ground that he was immune from suit under the FSIA, and the district court dismissed the case. This court reversed, however, concluding that the FSIA applies to sovereign *states* but not "to individual foreign government agents." *Samantar*, 552 F.3d at 381. We remanded the case for the district court to consider whether Samantar could "successfully invoke an immunity doctrine arising under pre-FSIA common law." *Id.* at 383-84.

The Supreme Court granted Samantar's petition for certiorari and affirmed our decision, holding that the FSIA—based on its text, purpose and history—governs only foreign state sovereign immunity, not the immunity of individual officials. *See Samantar*, 130 S. Ct. at 2289 ("Reading the FSIA as a whole, there is nothing to suggest we should read 'foreign state' in § 1603(a) to include an official acting on behalf of the foreign state, and much to indicate that this meaning was not what Congress enacted."). It is now clear after *Samantar* that the common law, not the FSIA, governs the claims to immunity of individual foreign officials. *See id.* at 2292 ("[W]e think this case, in which respondents have sued [Samantar] in his personal capacity and seek damages from his own pockets, is properly governed by the common law because it is not a claim against a foreign state as the [FSIA] defines that term.").

On remand, Samantar renewed his motion to dismiss based on two common law immunity doctrines. First, Samantar alleged he was entitled to head-of-state immunity because at least some of the alleged wrongdoing occurred while Samantar was Prime Minister. Second, Samantar sought foreign official immunity on the basis that any actions for which the

plaintiffs sought to hold him responsible were taken in the course and scope of his official duties.

The district court renewed its request to the State Department for a response to Samantar's immunity claims. Despite having remained silent during Samantar's first appeal, the State Department here took a position expressly opposing immunity for Samantar. The United States submitted to the district court a Statement of Interest (SOI) announcing that the Department of State, having considered "the potential impact of such a[n] [immunity] decision on the foreign relations interests of the United States," J.A. 73, had determined that Samantar was not entitled to immunity from plaintiffs' lawsuit. The SOI indicated that two factors were particularly important to the State Department's determination that Samantar should not enjoy immunity. First, the State Department concluded that Samantar's claim for immunity was undermined by the fact that he "is a former official of a state with no currently recognized government to request immunity on his behalf," or to take a position as to "whether the acts in question were taken in an official capacity." J.A. 71. Noting that "[t]he immunity protecting foreign officials for their official acts ultimately belongs to the sovereign rather than the official," J.A. 71, the government reasoned that Samantar should not be afforded immunity "[i]n the absence of a recognized government . . . to assert or waive [Samantar's] immunity," J.A. 73. Second, Samantar's status as a permanent legal resident was particularly relevant to the State Department's immunity determination. According to the SOI, "U.S. residents like Samantar who enjoy the protections of U.S. law ordinarily should be subject to the jurisdiction of our courts, particularly when sued by U.S. residents" or naturalized citizens such as two of the plaintiffs. J.A. 71.

The district court denied Samantar's motion to dismiss, apparently viewing the Department of State's position as controlling and surrendering jurisdiction over the issue to the State Department: "The government has determined that the

defendant does not have foreign official immunity. Accordingly, defendant's common law sovereign immunity defense is no longer before the Court, which will now proceed to consider the remaining issues in defendant's Motion to Dismiss." *Samantar*, 2011 WL 7445583, at *1. But, in denying Samantar's subsequent motion to reconsider, the district court implied that it performed its own analysis and merely took the State Department's view into account: "The Executive Branch has spoken on this issue and . . . [is] entitled to a great deal of deference. *They don't control but they are entitled to deference in this case.*" J.A. 81 (emphasis added). The district court noted that both "the residency of the defendant" and "the lack of a recognized government" were factors properly considered in the immunity calculus. J.A. 82.

Samantar immediately appealed the district court's denial of common law immunity.¹ Samantar advances a two-fold argument. First, he contends that the order denying him immunity cannot stand because the district court improperly deferred to the Department of State and abdicated its duty to independently assess his immunity claim. In contrast to the view offered by the United States in its amicus brief that the State Department is owed absolute deference from the courts on any question of foreign sovereign immunity, Samantar claims that deference to the Executive's immunity determination is appropriate only when the State Department recommends that immunity be *granted*. Second, Samantar argues that under the common law, he is entitled to immunity for all actions taken within the scope of his duties and in his capacity as a foreign government official, and that he is immune to any

¹A pretrial order denying sovereign immunity is immediately appealable under the collateral-order exception to the final judgment rule. *See Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949). This court has previously determined that an order denying a claim of sovereign immunity under the FSIA is immediately appealable. *See Rux v. Republic of Sudan*, 461 F.3d 461, 467 n.1 (4th Cir. 2006). We see no reason to draw a distinction in this regard for orders denying claims of sovereign immunity under the common law.

claims alleging wrongdoing while he was the Somali Prime Minister. We address these arguments below.

II.

Before proceeding further, we must decide the appropriate level of deference courts should give the Executive Branch's view on case-specific questions of individual foreign sovereign immunity. The FSIA displaced the common law regime for resolving questions of foreign *state* immunity and shifted the Executive's role as primary decision maker to the courts. *See Samantar*, 130 S. Ct. at 2285. After *Samantar*, it is clear that the FSIA did no such thing with respect to the immunity of *individual* foreign officials; the common law, not the FSIA, continues to govern foreign official immunity. *See id.* at 2292. And, in light of the continued viability of the common law for such claims, the Court saw "no reason to believe that Congress saw as a problem, or wanted to eliminate, the State Department's role in determinations regarding individual official immunity" under the common law. *Id.* at 2291. The extent of the State Department's role, however, depends in large part on what kind of immunity has been asserted.

A.

In this case, Samantar claims two forms of immunity: (1) head-of-state immunity and (2) "foreign official" or "official acts" immunity. "Head-of-state immunity is a doctrine of customary international law" pursuant to which an incumbent "head of state is immune from the jurisdiction of a foreign state's courts." *In re Grand Jury Proceedings*, 817 F.2d 1108, 1110 (4th Cir. 1987). "Like the related doctrine of sovereign [state] immunity, the rationale of head-of-state immunity is to promote comity among nations by ensuring that leaders can perform their duties without being subject to detention, arrest or embarrassment in a foreign country's legal system." *Id.*

"A head-of-state recognized by the United States government is absolutely immune from personal jurisdiction in United States courts unless that immunity has been waived by statute or by the foreign government recognized by the United States." *Lafontant v. Aristide*, 844 F. Supp. 128, 131-32 (E.D.N.Y. 1994). Although all forms of individual immunity derive from the State, head-of-state immunity is tied closely to the sovereign immunity of foreign states. *See Restatement (Second) of Foreign Relations Law* § 66(b) ("The immunity of a foreign state . . . extends to . . . its head of state"). Indeed, head-of-state immunity "is premised on the concept that a state and its ruler are one for purposes of immunity." *Lafontant*, 844 F. Supp. at 132.²

Samantar also seeks immunity on the separate ground that all of the actions for which plaintiffs seek to hold him liable occurred during the course of his official duties within the Somali government. *See Restatement (Second) of Foreign Relations Law* § 66(f) (stating that "[t]he immunity of a foreign state . . . extends to . . . any . . . public minister, official, or agent of the state with respect to acts performed in his official capacity if the effect of exercising jurisdiction would be to enforce a rule of law against the state"); *Matar v. Dichter*, 563 F.3d 9, 14 (2d Cir. 2009) ("At the time the FSIA was enacted, the common law of foreign sovereign immunity recognized an individual official's entitlement to immunity for acts performed in his official capacity.") (internal quotation marks omitted); *Samantar*, 130 S. Ct. at 2290-91 ("[W]e do not doubt that in some circumstances the immunity of the foreign state extends to an individual for acts taken in his official capacity."). This is a conduct-based immunity that applies to

²Under customary international law, head of state immunity encompasses the immunity of not only the heads of state but also of other 'holders of high-ranking office in a State' such as 'the Head of Government and Minister of Foreign Affairs.'" Lewis S. Yelin, *Head of State Immunity As Sole Executive Lawmaking*, 44 Vand. J. Transnat'l L. 911, 921 n.42 (2011).

current and former foreign officials. *See Matar*, 563 F.3d at 14 ("An immunity based on acts—rather than status—does not depend on tenure in office.").

B.

The United States, participating as *amicus curiae*, takes the position that federal courts owe absolute deference to the State Department's view of whether a foreign official is entitled to sovereign immunity on either ground. According to the government, under long-established Supreme Court precedent, the State Department's opinion on any foreign immunity issue is binding upon the courts. The State Department's position allows for the federal courts to function as independent decision makers on foreign sovereign immunity questions in only one instance: when the State Department remains silent on a particular case.³ Thus, the United States contends that the State Department resolved the issues once it presented the district court with its view that Samantar was not entitled to immunity.

Samantar, by contrast, advocates the view that deference to the Executive's immunity determination is required *only when the State Department explicitly recommends that immunity be granted*. Samantar argues that when the State Department concludes, as it did in this case, that a foreign official is *not* entitled to immunity or remains silent on the issue, courts can and must decide independently whether to grant immunity. And, the plaintiffs offer yet a third view, suggesting that the State Department's position on foreign sovereign immunity does not completely control, but that courts must defer "to the reasonable views of the Executive Branch" regardless of whether the State Department suggests that immunity be

³Even then, however, the State Department insists that the courts must fashion a decision based on principles that it has articulated. *See Samantar*, 130 S. Ct. at 2284. In making this argument, the government fails to distinguish between status-based and conduct-based immunity.

granted or denied. Appellees' Response Brief at 20. In this case, plaintiffs contend the State Department's rationale for urging denial of immunity, as set forth in its SOI, was reasonable and that the district court properly deferred to it.

I. Executive's Pre-FSIA Role in Foreign State Immunity

We begin by observing that, although the doctrine of foreign sovereign immunity has well-established roots in American jurisprudence, the Executive Branch's assumption of the role of primary decision-maker on various foreign sovereign immunity matters is of a more recent vintage. Foreign sovereign immunity, insofar as American courts are concerned, has its doctrinal roots in *The Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116 (1812), which ushered in nearly a century of "absolute" or "classical" immunity, "under which a sovereign [could not], without his consent, be made a respondent in the courts of another sovereign." *Permanent Mission of India to the United Nations v. City of New York*, 551 U.S. 193, 199 (2007) (internal quotation marks omitted); see *Samantar*, 130 S. Ct. at 2284 (explaining *The Schooner Exchange* "was interpreted as extending virtually absolute immunity to foreign sovereigns as a matter of grace and comity") (internal quotation marks omitted).⁴ "Absolute" immunity for the foreign sovereign, however, is not to be confused with absolute judicial deference to the Executive Branch. In fact, during the lengthy period of absolute immunity, courts did not necessarily consider themselves obliged to follow executive pronouncements regarding immunity. In *The Schooner Exchange* itself, for example, the Court received and considered the view of the Executive Branch on the immunity claim but conducted its own independent review of

⁴For nearly a century, "foreign sovereigns in national courts enjoyed a high level of immunity and exceptions, if any, were not widely recognized." Wuerth, Ingrid, *Foreign Official Immunity Determinations in U.S. Courts: The Case Against the State Dep't*, 51 Va. J. Int'l Law 915, 925 (2011).

the relevant international law doctrines. *See* 11 U.S. (7 Cranch) at 132-35; 136-47. As late as the 1920s, the Court still did not necessarily view questions of foreign sovereign immunity as matters solely for the Executive Branch. For example, the Court in *Berizzi Bros. Co. v. Steamship Pesaro*, 271 U.S. 562, 576 (1926), concluded that a steamship owned by a foreign sovereign was entitled to immunity despite the fact that the Secretary of State had expressed the opposite view earlier in the litigation. *See The Pesaro*, 277 F. 473, 479 n.3 (S.D.N.Y. 1921).

It was not until the late 1930s—in the context of in rem actions against foreign ships—that judicial deference to executive foreign immunity determinations emerged as standard practice. *See Compania Espanola de Navegacion Maritima, S.A. v. The Navemar*, 303 U.S. 68, 74 (1938) ("If the claim is recognized and allowed by the executive branch of the government, it is then the duty of the courts to release the vessel upon appropriate suggestion by the Attorney General of the United States, or other officer acting under his direction."); *Ex parte Republic of Peru*, 318 U.S. 578, 587-89 (1943); *Republic of Mexico v. Hoffman*, 324 U.S. 30, 34-36 (1945). Citing a line of cases involving ships owned by foreign sovereigns, *Samantar* explained that

a two-step procedure developed for resolving a foreign state's claim of sovereign immunity, typically asserted on behalf of seized vessels. *See, e.g., Republic of Mexico v. Hoffman*, 324 U.S. 30, 34-36 (1945); *Ex parte Peru*, 318 U.S. 578, 587-589 (1943); *Compania Espanola de Navegacion Maritima, S.A. v. The Navemar*, 303 U.S. 68, 74-75 (1938). Under that procedure, the diplomatic representative of the sovereign could request a "suggestion of immunity" from the State Department. *Ex parte Peru*, 318 U.S. at 581. If the request was granted, the district court surrendered its jurisdiction. *Id.* at 588; *see also Hoffman*, 324 U.S. at 34. But "in

the absence of recognition of the immunity by the Department of State," a district court "had authority to decide for itself whether all the requisites for such immunity existed." *Ex parte Peru*, 318 U.S. at 587; *see also Compania Espanola*, 303 U.S. at 75 (approving judicial inquiry into sovereign immunity when the "Department of State . . . declined to act"); *Heaney v. Government of Spain*, 445 F.2d 501, 503, and n.2 (2d Cir. 1971) (evaluating sovereign immunity when the State Department had not responded to a request for its views). In making that decision, a district court inquired "whether the ground of immunity is one which it is the established policy of the [State Department] to recognize." *Hoffman*, 324 U.S. at 36.

Samantar, 130 S. Ct. at 2284 (citations omitted; alteration in original). Subsequently, there was a shift in State Department policy from a theory of absolute immunity to restrictive immunity, but this shift "had little, if any, impact on federal courts' approach to immunity analyses . . . and courts continued to abide by that Department's suggestions of immunity." *Republic of Austria v. Altmann*, 541 U.S. 677, 690 (2004) (internal quotation marks and alteration omitted).⁵ Thus, at the time that Congress enacted the FSIA, the clearly established

⁵Interestingly, even at this point the State Department expressed uncertainty about the relationship between the executive and judicial branches on questions of foreign sovereign immunity. The State Department announced its change in policy through a 1952 letter to the Attorney General from Jack B. Tate, Legal Adviser to the State Department. The "Tate Letter," as it has come to be known, stated that "[i]t is realized that a shift in policy by the executive cannot control the courts but it is felt that the courts are less likely to allow a plea of sovereign immunity where the executive has declined to do so." *See* Letter from Jack B. Tate, Acting Legal Adviser, Dep't of State, to Philip B. Perlman, Acting Att'y Gen. (May 19, 1952), 26 Dep't St. Bull. 984-85 (1952), *reprinted in Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682, 714 app. 2 (1976).

practice of judicial deference to executive immunity determinations had been expressed largely in admiralty cases.

In this pre-FSIA era, decisions involving claims of *individual* foreign sovereign immunity were scarce. *See Samantar*, 130 S. Ct. at 2291 (noting that "questions of official immunity . . . in the pre-FSIA period . . . were few and far between"). But, to the extent such individual claims arose, they generally involved status-based immunities such as head-of-state immunity, *see, e.g., Ye v. Zemin*, 383 F.3d 620, 624-25 (7th Cir. 2004), or diplomatic immunity arising under international treaties, *see* Vienna Convention on Consular Relations art. 43, Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261; Vienna Convention on Diplomatic Relations art. 31, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95. The rare cases involving immunity asserted by lower-level foreign officials provided inconsistent results. *See generally* Chimene I. Keitner, *The Common Law of Foreign Official Immunity*, 14 *Green Bag* 2d 61 (2010) [hereinafter Keitner].

2. Executive Power

The Constitution assigns the power to "receive Ambassadors and other public Ministers" to the Executive Branch, U.S. Const. art. II, § 3, which includes, by implication, the power to accredit diplomats and recognize foreign heads of state. Courts have generally treated executive "suggestions of immunity" for heads of state as a function of the Executive's constitutional power and, therefore, as controlling on the judiciary. *See, e.g., Ye*, 383 F.3d at 626 ("[A] determination by the Executive Branch that a foreign head of state is immune from suit is conclusive and a court must accept such a determination without reference to the underlying claims of a plaintiff."); *Doe v. State of Israel*, 400 F. Supp. 2d 86, 111 (D.D.C. 2005) ("When, as here, the Executive has filed a Suggestion of Immunity as to a recognized head of a foreign state, the jurisdiction of the Judicial Branch immediately ceases."); *United States v. Noriega*, 117 F.3d 1206, 1212 (11th Cir.

1997) (deferring to the Executive Branch where it "manifested its clear sentiment that Noriega should be denied head-of-state immunity"); *see generally* Keitner, 14 *Green Bag* 2d at 71 (reasoning that "[c]ourts should treat Executive representations about status-based immunity as conclusive because they are a function of the Executive's power under Article II, section 3 of the Constitution"). Like diplomatic immunity, head-of-state immunity involves "a formal act of recognition," that is "a quintessentially executive function" for which absolute deference is proper. Peter B. Rutledge, *Samantar, Official Immunity & Federal Common Law*, 15 *Lewis & Clark L. Rev.* 589, 606 (2011).

Accordingly, consistent with the Executive's constitutionally delegated powers and the historical practice of the courts, we conclude that the State Department's pronouncement as to head-of-state immunity is entitled to absolute deference. The State Department has never recognized Samantar as the head of state for Somalia; indeed, the State Department does not recognize the Transitional Federal Government or any other entity as the official government of Somalia, from which immunity would derive in the first place. The district court properly deferred to the State Department's position that Samantar be denied head-of-state immunity.

Unlike head-of-state immunity and other status-based immunities, there is no equivalent constitutional basis suggesting that the views of the Executive Branch control questions of foreign official immunity. Such cases do not involve any act of recognition for which the Executive Branch is constitutionally empowered; rather, they simply involve matters about the scope of defendant's official duties.

This is not to say, however, that the Executive Branch has no role to play in such suits. These immunity decisions turn upon principles of customary international law and foreign policy, areas in which the courts respect, but do not automatically follow, the views of the Executive Branch. *See Sosa v.*

Alvarez-Machain, 542 U.S. 692, 733 n.21 (2004) (noting that "there is a strong argument that federal courts should give serious weight to the Executive Branch's view of [a] case's impact on foreign policy"); *Altmann*, 541 U.S. at 702 (suggesting that with respect to foreign sovereign immunity, "should the State Department choose to express its opinion on the implications of exercising jurisdiction over *particular* petitioners in connection with *their* alleged conduct, that opinion might well be entitled to deference as the considered judgment of the Executive on a particular question of foreign policy") (footnote omitted). With respect to foreign official immunity, the Executive Branch still informs the court about the diplomatic effect of the court's exercising jurisdiction over claims against an official of a foreign state, and the Executive Branch may urge the court to grant or deny official-act immunity based on such considerations. "That function, however, concerns the general assessment of a case's impact on the foreign relations of the United States," Rutledge, 15 Lewis & Clark L. Rev. at 606, rather than a controlling determination of whether an individual is entitled to conduct-based immunity.

In sum, we give absolute deference to the State Department's position on status-based immunity doctrines such as head-of-state immunity. The State Department's determination regarding conduct-based immunity, by contrast, is not controlling, but it carries substantial weight in our analysis of the issue.

III.

A.

We turn to the remaining question of whether Samantar is entitled to foreign official immunity under the common law. In considering the contours of foreign official immunity, we must draw from the relevant principles found in both international and domestic immunity law, as well as the experience

and judgment of the State Department, to which we give considerable, but not controlling, weight.

From the earliest Supreme Court decisions, international law has shaped the development of the common law of foreign sovereign immunity. See *The Schooner Exchange*, 11 U.S. (7 Cranch) at 136, 145-46 (noting that "a principle of public law" derived from "common usage" and "common opinion" that "national ships of war, entering the port of a friendly power open for their reception, are to be considered as exempted by the consent of that power from its jurisdiction"); *Restatement (Third) of the Foreign Relations Law* part IV, ch. 5, subch. A intro. note ("The immunity of a state from the jurisdiction of the courts of another state is an undisputed principle of customary international law."). Indeed, an important purpose of the FSIA was the "codification of international law at the time of the FSIA's enactment." *Samantar*, 130 S. Ct. at 2289 (internal quotation marks omitted); see *id.* ("[O]ne of the primary purposes of the FSIA was to codify the restrictive theory of sovereign immunity, which Congress recognized as consistent with extant international law."). Even after the FSIA was enacted, international law continued to be relevant to questions of foreign sovereign immunity as the Court interpreted the FSIA in light of international law. See *Permanent Mission of India*, 551 U.S. at 200-01.

As previously noted, customary international law has long distinguished between status-based immunity afforded to sitting heads-of-state and conduct-based immunity available to other foreign officials, including former heads-of-state. With respect to conduct-based immunity, foreign officials are immune from "claims arising out of their official acts while in office." *Restatement (Third) of Foreign Relations Law* § 464, reprinted note 14; *Matar*, 563 F.3d at 14 ("An immunity based on acts—rather than status—does not depend on tenure in office."). This type of immunity stands on the foreign official's actions, not his or her status, and therefore applies whether the individual is currently a government official or

not. See Chimene I. Keitner, *Officially Immune? A Response to Bradley and Goldsmith*, 36 Yale J. Int'l L. Online 1, *9 (2010) ("Conduct-based immunity is both narrower and broader than status-based immunity: it is narrower, because it only provides immunity for specific acts . . . but it is also broader, because it endures even after an individual has left office."). This conduct-based immunity for a foreign official derives from the immunity of the State: "The doctrine of the imputability of the acts of the individual to the State . . . in classical law . . . imputes the act solely to the state, who alone is responsible for its consequence. In consequence any act performed by the individual as an act of the State enjoys the immunity which the State enjoys." Hazel Fox, *The Law of State Immunity* at 455 (2d ed. 2008).

At least as early as its decision in *Underhill v. Hernandez*, 168 U.S. 250, 252 (1897), the Supreme Court embraced the international law principle that sovereign immunity, which belongs to a foreign *state*, extends to an individual *official* acting on behalf of that foreign state. By the time the FSIA was enacted, numerous domestic courts had embraced the notion, stemming from international law, that "[t]he immunity of a foreign state . . . extends to . . . any . . . public minister, official, or agent of the state with respect to acts performed in his official capacity if the effect of exercising jurisdiction would be to enforce a rule of law against the state." *Restatement (Second) of Foreign Relations Law* § 66(f). Although the context for these cases was different—almost all involved the erroneous (pre-*Samantar*) application of the FSIA to individual foreign officials claiming immunity—these decisions are instructive for post-*Samantar* questions of common law immunity. See, e.g., *Belhas v. Ya'alon*, 515 F.3d 1279, 1285 (D.C. Cir. 2008) (observing that the FSIA had incorporated the well-settled principle of international law that former officials could still claim immunity for acts performed on behalf of the government); *Chuidian v. Philippine Nat'l Bank*, 912 F.2d 1095, 1106 (9th Cir. 1990) (recognizing that an individual is not "entitled to sovereign immunity for acts not com-

mitted in his official capacity" and explaining that where "the officer purports to act as an individual and not as an official, a suit directed against that action is not a suit against the sovereign") (internal quotation marks omitted); *Hilao v. Estate of Marcos (In re Estate of Ferdinand Marcos, Human Rights Litigation)*, 25 F.3d 1467, 1472 (9th Cir. 1994) (stating that "[i]mmunity is extended to an individual only when acting *on behalf* of the state because actions against those individuals are the practical equivalent of a suit against the sovereign directly" and that "[a] lawsuit against a foreign official acting outside the scope of his authority does not implicate any of the foreign diplomatic concerns involved in bringing suit against another government in United States courts") (internal quotation marks omitted); *Matar*, 563 F.3d at 14 (concluding that even if Dichter was not entitled to statutory immunity under the FSIA, he was "nevertheless immune from suit under common-law principles [*i.e.*, conduct-based foreign official immunity] that pre-date, and survive, the enactment of that statute").

These cases sketch out the general contours of official-act immunity: a foreign official may assert immunity for official acts performed within the scope of his duty, but not for private acts where "the officer purports to act as an individual and not as an official, [such that] a suit directed against that action is not a suit against the sovereign." *Chuidian*, 912 F.2d at 1106 (internal quotation marks omitted). A foreign official or former head-of-state will therefore not be able to assert this immunity for private acts that are not arguably attributable to the state, such as drug possession or fraud. *See, e.g., In re Doe*, 860 F.2d 40, 45 (2d Cir. 1988) ("[W]ere we to reach the merits of the issue, we believe there is respectable authority for denying head-of-state immunity to a former head-of-state for private or criminal acts in violation of American law.").

B.

In response, plaintiffs contend that Samantar cannot raise this immunity as a shield against atrocities such as torture, genocide, indiscriminate executions and prolonged arbitrary imprisonment or any other act that would violate a *jus cogens* norm of international law. A *jus cogens* norm, also known as a "peremptory norm of general international law," can be defined as "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." *Vienna Convention on the Law of Treaties* art. 53, May 23, 1969, 1155 U.N.T.S. 331; see *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 714 (9th Cir. 1992) (adopting same definition). Prohibitions against the acts involved in this case—torture, summary execution and prolonged arbitrary imprisonment—are among these universally agreed-upon norms. See, e.g., Evan J. Criddle & Evan Fox-Decent, *A Fiduciary Theory of Jus Cogens*, 34 *Yale J. Int'l L.* 331, 331 (2009) (explaining that "jus cogens . . . include[s], at a minimum, the prohibitions against genocide; slavery or slave trade; murder or disappearance of individuals; torture or other cruel, inhuman, or degrading treatment or punishment; prolonged arbitrary detention"); *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 791 n.20 (D.C. Cir. 1984) (Edwards, J., concurring) ("On the basis of international covenants, agreements and declarations, commentators have identified at least four acts that are now subject to unequivocal international condemnation: torture, summary execution, genocide and slavery."); *Restatement (Third) of Foreign Relations Law* § 702 and cmt. n (identifying murder, torture and "prolonged arbitrary detention" as *jus cogens* violations). Unlike private acts that do not come within the scope of foreign official immunity, *jus cogens* violations may well be committed under color of law and, in that sense, constitute acts performed in the course of the foreign official's employment by the Sovereign. However, as a matter of international and domestic law, *jus cogens* violations are, by definition, acts that are not officially authorized by the Sovereign. See, e.g., *Siderman de*

Blake, 965 F.2d at 718 ("International law does not recognize an act that violates *jus cogens* as a sovereign act."); *Paul v. Avril*, 812 F. Supp. 207, 212 (S.D. Fla. 1993) ("[A]cts . . . [of torture, cruel, inhuman and degrading treatment, and arbitrary detention in violation of customary international law] hardly qualify as official public acts.").⁶

There has been an increasing trend in international law to abrogate foreign official immunity for individuals who commit acts, otherwise attributable to the State, that violate *jus cogens* norms—*i.e.*, they commit international crimes or human rights violations:

Over the last decade . . . a growing number of domestic and international judicial decisions have considered whether a foreign official acts as an arm of the state, and thus is entitled to conduct immunity, when that official allegedly violates a *jus cogens* norm of international law or commits an international crime.

Curtis A. Bradley & Laurence R. Helfer, *International Law and the U.S. Common Law of Foreign Official Immunity*, 2010 Sup. Ct. Rev. 213, 236-37 (2011). A number of decisions from foreign national courts have reflected a willingness to deny official-act immunity in the criminal context for alleged *jus cogens* violations, most notably the British House of Lords' *Pinochet* decision denying official-acts immunity to a former Chilean head of state accused of directing widespread torture. *See Regina v. Bartle, ex parte Pinochet*, 38 I.L.M. 581, 593-95 (H.L. 1999) (concluding that official-acts

⁶In spite of this, allegations of *jus cogens* violations do not overcome head-of-state or any other status-based immunity. *See, e.g., Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium)* (2002) ICJ 3 (concluding that the sitting foreign minister of the Democratic Republic of Congo was entitled to status-based immunity against alleged *jus cogens* violations).

immunity is unavailable to shield foreign officials from prosecution for international crimes because acts of torture do not constitute officially-approved acts). "In the decade following *Pinochet*, courts and prosecutors across Europe and elsewhere . . . commenced criminal proceedings against former officials of other nations for torture and other violations of *jus cogens*." Bradley & Helfer, 2010 Sup. Ct. Rev. at 239. Some foreign national courts have pierced the veil of official-acts immunity to hear civil claims alleging *jus cogens* violations, but the *jus cogens* exception appears to be less settled in the civil context. Compare *Ferrini v. Germany*, Oxford Rep Int'l in Dom Cts 19 (Italian Ct. of Cassation 2004) (denying "the functional immunity of foreign state organs" for *jus cogens* violations in criminal context), with *Jones v. Saudi Arabia*, 129 I.L.R. 713, at ¶ 24 (H.L. 2006) (rejecting *jus cogens* exception to foreign official immunity in civil context).

American courts have generally followed the foregoing trend, concluding that *jus cogens* violations are not legitimate official acts and therefore do not merit foreign official immunity but still recognizing that head-of-state immunity, based on status, is of an absolute nature and applies even against *jus cogens* claims. Compare *Sarei v. Rio Tinto, PLC*, 487 F.3d 1193, 1209 (9th Cir. 2007) (recognizing that acts in "violation[] of *jus cogens* norms . . . cannot constitute official sovereign acts"); *Siderman de Blake*, 965 F.2d at 718 ("International law does not recognize an act that violates *jus cogens* as a sovereign act."); *Enahoro v. Abubakar*, 408 F.3d 877, 893 (7th Cir. 2005) (Cudahy, J., dissenting) ("[O]fficials receive no immunity for acts that violate international *jus cogens* human rights norms (which by definition are not legally authorized acts)."), with *Ye*, 383 F.3d at 626-27 (deferring to Executive's suggestion that head-of-state immunity be allowed for individual accused of international crimes); *Devi v. Rajapaksa*, No. 11 Civ. 6634, 2012 WL 3866495, at *3 (S.D.N.Y. Sept. 4, 2012) (holding that a sitting head of state is entitled to immunity, even in the context of alleged *jus cogens* violations). We conclude that, under international and

domestic law, officials from other countries are not entitled to foreign official immunity for *jus cogens* violations, even if the acts were performed in the defendant's official capacity.

Moreover, we find Congress's enactment of the TVPA, and the policies it reflects, to be both instructive and consistent with our view of the common law regarding these aspects of *jus cogens*. Plaintiffs asserted claims against Samantar under the TVPA which authorizes a civil cause of action against "[a]n individual who, under actual or apparent authority, or color of law, of any foreign nation . . . subjects an individual to torture" or "extrajudicial killing." Pub. L. 102-256, § 2(a), 28 U.S.C. 1350 note. "The TVPA thus recognizes explicitly what was perhaps implicit in the Act of 1789—that the law of nations is incorporated into the law of the United States and that a violation of the international law of human rights is (at least with regard to torture) *ipso facto* a violation of U.S. domestic law." *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 105 (2d Cir. 2000). Thus, in enacting the TVPA, Congress essentially created an express private right of action for individuals victimized by torture and extrajudicial killing that constitute violations of *jus cogens* norms. See S. Rep. No. 102-249, at 8 (1991) ("[B]ecause no state officially condones torture or extrajudicial killings, few such acts, if any, would fall under the rubric of 'official actions' taken in the course of an official's duties.").

C. SOI from the State Department

In its SOI, the State Department submitted a suggestion of non-immunity. The SOI highlighted the fact that Samantar "is a former official of a state with no currently recognized government to request immunity on his behalf" or to take a position as to "whether the acts in question were taken in an official capacity." J.A. 71. Noting that "[t]he immunity protecting foreign officials for their official acts ultimately belongs to the sovereign rather than the official," J.A. 71, the government reasoned that Samantar should not be afforded

immunity "[i]n the absence of a recognized government . . . to assert or waive [Samantar's] immunity," J.A. 73. The second major basis for the State Department's view that Samantar was not entitled to immunity was Samantar's status as a permanent legal resident. According to the SOI, "U.S. residents like Samantar who enjoy the protections of U.S. law ordinarily should be subject to the jurisdiction of the courts, particularly when sued by U.S. residents" or naturalized citizens such as two of the plaintiffs. J.A. 71.

Both of these factors add substantial weight in favor of denying immunity. Because the State Department has not officially recognized a Somali government, the court does not face the usual risk of offending a foreign nation by exercising jurisdiction over the plaintiffs' claims. Likewise, as a permanent legal resident, Samantar has a binding tie to the United States and its court system.

Because this case involves acts that violated *jus cogens norms*, including torture, extrajudicial killings and prolonged arbitrary imprisonment of politically and ethnically disfavored groups, we conclude that Samantar is not entitled to conduct-based official immunity under the common law, which in this area incorporates international law. Moreover, the SOI has supplied us with additional reasons to support this conclusion. Thus, we affirm the district court's denial of Samantar's motion to dismiss based on foreign official immunity.

IV.

For the foregoing reasons, we affirm the district court's denial of both head-of-state and foreign official immunity to Samantar.

AFFIRMED

FILED: November 2, 2012

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-1479
(1:04-cv-01360-LMB-JFA)

BASHE ABDI YOUSUF; JOHN DOE 1; JOHN DOE 2; AZIZ DERIA

Plaintiffs - Appellees

and

JOHN DOE 3; JOHN DOE 4; JANE DOE 1

Plaintiffs

v.

MOHAMED ALI SAMANTAR

Defendant - Appellant

UNITED STATES OF AMERICA

Amicus Supporting Appellee

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK