

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

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In re:	:
	:
	: Chapter 7
MOHAMED ALI SAMANTAR,	:
	:
	: Case No. 12-11085 (BFK)
Debtor.	:
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BASHE ABDI YOUSUF, et al.	:
	:
Plaintiffs,	:
	:
v.	: Adv. Pro. 12-01356 (BFK)
	:
MOHAMED ALI SAMANTAR	:
	:
Debtor.	:
	:
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**TORT CLAIMANTS’ MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT AGAINST MOHAMED ALI SAMANTAR**

Come now Bashe Abdi Yousuf, Buralle Salah Mohamoud, Ahmed Jama Gulaid and Aziz Mohamed Deria, in his capacity as the personal representative of the estates of Mohamed Deria Ali, Mustafa Mohamed Deria, Abdullahi Salah Mohamoud, the deceased brother of Buralle Salah Mohamoud, and Cawil Salah Mohamoud, the deceased brother of Buralle Salah Mohamoud (collectively, the “Tort Claimants”), by and through their undersigned counsel, and in support of their Motion for Summary Judgment (the “Motion”) against Defendant Mohamed Ali Samantar (the “Debtor”), submit this Memorandum of Law pursuant to Federal Rule of Civil Procedure 56, Federal Rule of Bankruptcy Procedure 7056, and Local Bankruptcy Rule 7056-1, and respectfully state as follows:

NATURE OF THE PROCEEDING

1. In 2004, the Tort Claimants commenced a civil action (the “Tort Action”)¹ against Defendant Mohamed Ali Samantar in the United States District Court for the Eastern District of Virginia (the “District Court”), asserting claims (the “Tort Claims”) pursuant to the Torture Victim Protection Act and the Alien Tort Statute, each codified at 28 U.S.C. § 1350. Specifically, in the Second Amended Complaint (the “District Court Complaint”)² the Tort Claimants alleged that the Debtor was liable for violating the Tort Claimants’ human rights as part of a decade-long pattern and practice of extrajudicial killing, torture, attempted extrajudicial killing, arbitrary detention, war crimes, and cruel, inhuman, or degrading treatment or punishment (collectively, “Human Rights Abuses”).

2. On February 23, 2012, after nearly seven years of litigation, including extensive adversarial discovery spanning three continents, the Debtor — in open court, under oath, on advice of counsel, and on the record — admitted to liability and defaulted in connection with all of the Tort Claims.³ The District Court accepted the Debtor’s admission of liability as to all of the Tort Claims, and accepted all of the Tort Claimants’ allegations against the Debtor as well pleaded and true.

3. On August 28, 2012, the District Court issued: (a) a 38-page memorandum opinion (the “District Court Opinion”)⁴ finding the Debtor liable, as a matter of fact and law, for the Human Rights Abuses and the Tort Claims; and (b) an order (the “District Court Order” and,

¹ The Tort Action is captioned *Bashe Abdi Yousuf, et al. v. Mohamed Ali Samantar*, No. 1:04cv1360 (LMB/JFA) (E.D. Va. 2004).

² A true and correct copy of the District Court Complaint filed in the Tort Action is appended to the Motion as Exhibit A.

³ A true and correct copy of the transcript of the February 23, 2012 hearing before the District Court (the “District Court Transcript”) is appended to the Motion as Exhibit B.

⁴ A true and correct copy of the District Court Opinion is appended to the Motion as Exhibit C.

together with the District Court Opinion, the “District Court Judgment”⁵ granting a judgment of \$21 million to the Tort Claimants.

4. The Tort Claimants are listed on Schedule F of the Debtors’ schedules and statement of financial affairs (the “Schedules & Statements”)⁶ as holding unsecured nonpriority claims (the “Bankruptcy Claims”) against the Debtor on account of his liability on the Tort Claims. However, pursuant to section 523(a)(6) of title 11 of the United States Code (the “Bankruptcy Code”), the Debtor is not entitled to discharge the Bankruptcy Claims under Bankruptcy Code section 727 because the Debtor’s liability on the Tort Claims, which gave rise to the Bankruptcy Claims, constitutes a debt for willful and malicious injury by the Debtor.

5. As discussed herein, the requirements for excepting the Bankruptcy Claims from discharge pursuant to Bankruptcy Code section 523(a)(6) have been conclusively established by the District Court Judgment. The District Court’s findings of fact with respect to Debtor’s actions are binding upon the Debtor under the doctrines of *res judicata* and collateral estoppel. Accordingly, there is no reason to revisit any facts in this Court, and the Tort Claimants are thus entitled to summary judgment.

STATEMENT OF FACTS

6. The Debtor served as Minister of Defense of Somalia from 1980 to 1986, and then as Prime Minister of Somalia from 1987 to 1990. *See* District Court Opinion at 7.

7. While the Debtor served as Minister of Defense of Somalia and as Prime Minister of Somalia, members of the Armed Forces of Somalia, or persons or groups acting in

⁵ A true and correct copy of the District Court Order is appended to the Motion as Exhibit D.

⁶ A true and correct copy of the Schedules & Statements is appended to the Motion as Exhibit E.

coordination with or under the control of the Armed Forces of Somalia, violated the Tort Claimants' human rights by committing the Human Rights Abuses. *See id.* at 14–25, 31–32.

8. In 2004, the Tort Claimants commenced the Tort Action against the Debtor in the District Court. *See id.* at 14. The Tort Action sought compensatory and punitive damages from the Debtor on account of the Tort Claims, and alleged that the Debtor was liable for violating the Tort Claimants' human rights in connection with the decade-long pattern and practice of Human Rights Abuses. *See id.* at 34–38.

9. In 2007, the Debtor moved to dismiss the Tort Action on the ground that he was statutorily immune from suit pursuant to the Foreign Sovereign Immunities Act (the "FSIA"), 28 U.S.C. §§ 1330, 1602, *et seq.* *See id.* at 3. Although the District Court granted the Debtor's motion, the United States Court of Appeals for the Fourth Circuit (the "Fourth Circuit") issued an order and opinion (the "Fourth Circuit FSIA Opinion")⁷ reversing the District Court's ruling and reinstating the Tort Action. *See id.* The Debtor appealed the Fourth Circuit's ruling to the United States Supreme Court, which issued an opinion (the "Supreme Court Opinion")⁸ unanimously affirming the Fourth Circuit's ruling on June 1, 2010, and remanded the Tort Action for the District Court to consider whether the Debtor was entitled to any of the common law immunities afforded to a foreign official for acts performed in an official capacity. *See id.*

10. On remand, the Debtor renewed his motion to dismiss based upon several common law immunity doctrines. *See id.* at 3–4. In April 2011, however, the District Court rejected the Debtor's claims for common law immunity and denied the Debtor's motion (the

⁷ A true and correct copy of the Fourth Circuit FSIA Opinion is appended to the Motion as Exhibit F.

⁸ A true and correct copy of the Supreme Court Opinion is appended to the Motion as Exhibit G.

“Motion to Dismiss Order”). *See id.* at 4. The Debtor appealed the Motion to Dismiss Order to the Fourth Circuit. *See id.*

11. The Debtor moved the District Court for a stay pending appeal of the Motion to Dismiss Order. *See id.* The District Court denied the Debtor’s request for a stay, and certified the Debtor’s appeal of the Motion to Dismiss Order as “frivolous.” *See Order Denying Motion to Stay, Tort Action (E.D. Va. May 18, 2011), ECF No. 168.* Nevertheless, one month later the Debtor moved the Fourth Circuit for a stay pending appeal of the Motion to Dismiss Order; the Fourth Circuit summarily denied his request. *See Order, Bashe Abdi Yousuf, et al. v. Mohamed Ali Samantar, No. 11-1479 (4th Cir. July 8, 2011), ECF No. 23.*

12. On October 20, 2011, with the Debtor’s appeal still pending, the District Court scheduled the trial in the Tort Action to commence on February 21, 2012. *See District Court Opinion at 4–5.*

13. By this point, discovery in the Tort Action had been completed. The parties had jointly negotiated a discovery plan, made expert disclosures, pursued written discovery, sought declarations, and taken numerous depositions of the Debtor, Tort Claimants, key witnesses and experts across three continents (the United States, Africa, and Europe). *See, e.g., Proposed Joint Discovery Plan, No 1:04 CV 1360 (LMB/BRP) (E.D. Va. May 18, 2011); Declaration of Elizabeth Tobio In Support Of Emergency Motion of Bashe Abdi Yousuf, Et Al. For (a) Relief From The Automatic Stay And (b) The Scheduling Of An Expedited Hearing, No. 12-11085-BFK (Bankr. E.D. Va. Feb. 21, 2012), ECF No. 4-1 (“Tobio Decl.”) ¶ 5–11.* Furthermore, as specifically described in the Tobio Decl., the Tort Claimants, their witnesses and the Tort Claimants’ counsel expended significant time, energy and financial resources in planning and carrying out the complicated logistics of preparing and presenting the necessary evidence to

prosecute the Tort Action. *See generally* Tobio Decl. (describing the international travel and specific costs required and difficulties faced by the Tort Claimants and their counsel in connection with the Tort Action).

14. On February 9, 2012—less than two weeks before the trial in the Tort Action was scheduled to begin—the Debtor yet again moved the District Court for a stay of the proceedings pending appeal. *See id.* at 4 n.5. And yet again, the District Court rejected the Debtor’s request. *See id.*

15. Finally, on the eve of trial, the Debtor yet again moved the Fourth Circuit to stay the trial in the Tort Action the very next day. *See id.* And yet again, the Fourth Circuit promptly rejected the Debtor’s request. *See id.*

16. Having now repeatedly failed to obtain a stay, on February 19, 2012, the Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code in this Court. *See* Petition, *In re Samantar*, No. 12-11085-BFK (Bankr. E.D. Va. Feb. 19, 2012), ECF No. 1. That same night, the Debtor filed a Suggestion of Bankruptcy in the District Court, *see* District Court Opinion at 5, and advised counsel for the Tort Claimants that he had thus obtained his stay.

17. The Tort Claimants are listed in Schedule F of the Schedules and Statements as holding the Bankruptcy Claims against the Debtor on account of his liability on the Tort Claims. See Schedules & Statements.

18. Because the trial in the Tort Action – which had been in the making for more than seven years – was scheduled to begin just two days later, the Tort Claimants moved this Court on February 21, 2012, for relief from the automatic stay to permit the trial in the Tort Action to proceed. *See* Motion For Relief From Stay Re: District Court Action, *In re Samantar*, No. 12-11085-BFK (Bankr. E.D. Va. Feb. 21, 2012), ECF No. 4. This Court granted the Tort

Claimants' request the very same day, and permitted the trial in the Tort Action to proceed to trial. *See* Order Granting Motion For Relief From Stay Re: District Court Action, *In re Samantar*, No. 12-11085-BFK (Bankr. E.D. Va. Feb. 21, 2012), ECF No. 12.

19. On February 23, 2012, the trial in the Tort Action commenced. *See* District Court Opinion at 5. The very same day, however, the Debtor took the stand, judicially admitted to liability, and defaulted in connection with all of the Tort Claims:

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

MR. SAMANTAR: Yes.

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

MR. SAMANTAR: Yes.

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

MR. SAMANTAR: I understand

THE COURT: If you default, if you choose not to fight this case, then the way the law is structured, the Court will accept all of the well-pleaded allegations in the . . . second amended complaint that have not been nonsuited. . . . Do you understand that?

MR. SAMANTAR: Yes. . . .

District Court Transcript at 6:23–8:22; *accord* District Court Opinion at 5 (“[D]efense counsel informed the Court that defendant intended to take a default rather than contest liability and damages.”).

20. The District Court accepted the Debtor's judicial admission of liability as to all of the Tort Claims and, thereby, accepted as true all of the allegations asserted by Tort Claimants:

THE COURT: All right. I think on this record, there is no question that the defendant has made the decision to default on the issue of liability and damages with the full advice of counsel, that he's made this decision in a knowing and voluntary fashion, and nothing has been brought to the Court's attention to in any respect have concerns about the legitimacy of the default. . . . I'm accepting then this position that the defendant is defaulting, and that means therefore the Court is going to go ahead and find, because I reread the amended complaint this morning, that the allegations are adequately well-pleaded, they are consistent with the statutory requirements, and that liability is established as to all of the claims still at issue in the second amended complaint, and that leaves for us then the determination of damages.

District Court Transcript at 10:11–11:4; *accord* District Court Opinion at 5 (“[T]he Court explained the consequences of default, which [Debtor] stated had also been explained to him by counsel. Based on defense counsel’s representations and defendant’s answers during the colloquy, the Court found that [Debtor] had knowingly and voluntarily conceded liability.”).

21. The District Court then conducted an *ex parte* damages hearing over two days and took the case of damages under advisement. *See* Transcript of Bench Trial dated Feb. 23, 2012, Vol. I (“Trial Trx. Vol. I”); Transcript of Bench Trial dated Feb. 24, 2012, Vol. II (“Trial Trx. Vol. II”).⁹ At the damages hearing, the Tort Claimants presented substantial evidence supporting their underlying claims, adduced testimony from nine witnesses, introduced over 50 exhibits, and presented closing argument. At the conclusion of the hearing, the District Court noted that it “ha[d] more than enough evidence with which to work at this point.” *See* Trial Trx. Vol. II at 201:5–6.

22. Based on the record before it, the District Court found the Debtor liable, as a matter of fact and law, “for causing the deaths that are at issue in th[e Tort Action], for being responsible for the extrajudicial killings, the attempted extrajudicial killings, . . . the torture, and

⁹ True and correct copies of Trial Trx. Vol. I and Trial Trx. Vol. II are appended to the Motion as Exhibits H and I, respectively.

the other very serious allegations” that are the factual predicates of the Tort Claims and, in turn, the Bankruptcy Claims. District Court Transcript at 7:6–11; *accord* District Court Opinion at 31–32.

23. Moreover, “[b]ecause [the Debtor] ha[d] agreed to a default, [Tort Claimants’] uncontested factual allegations in the [District Court Complaint], as well as uncontroverted and credible testimony produced during the bench trial, [we]re accepted as true.” District Court Opinion at 6. Therefore, “based on the allegations in the [District Court Complaint] and the evidence presented at trial,” the District Court made the following findings of fact:

- The District Court found that the Debtor, as Minister of Defense of Somalia and/or as Prime Minister of Somalia, “bears responsibility” for violating the Tort Claimants’ human rights as part of a decade-long pattern and practice of Human Rights Abuses. District Court Complaint ¶ 67; *accord* District Court Opinion at 25–32.
- The District Court found that the Debtor, as Minister of Defense of Somalia and/or as Prime Minister of Somalia, “acquiesced in and permitted” members of the Armed Forces of Somalia, or persons or groups acting in coordination with or under the control of the Armed Forces of Somalia, to commit Human Rights Abuses against the Tort Claimants. District Court Complaint ¶¶ 68, 73; *accord* District Court Opinion at 25–32.
- The District Court found that the Debtor, as Minister of Defense of Somalia and/or as Prime Minister of Somalia, “knew or should have known” that members of the Armed Forces of Somalia, or persons or groups acting in coordination with or under the control of the Armed Forces of Somalia, were committing, or were about to commit Human Rights Abuses against the Tort Claimants. District Court Complaint ¶¶ 68, 72, 73, 77, 81; *accord* District Court Opinion at 25–32.
- The District Court found that the Debtor, as Minister of Defense of Somalia and/or as Prime Minister of Somalia, possessed the “actual authority and practical ability” to prevent members of the Armed Forces of Somalia, or persons or groups acting in coordination with or under the control of the Armed Forces of Somalia, from committing Human Rights Abuses against the Tort Claimants. District Court Complaint ¶¶ 69, 74; *accord* District Court Opinion at 25–32.
- The District Court found that the Debtor, as Minister of Defense of Somalia and/or as Prime Minister of Somalia, “failed or refused to take all necessary measures” to prevent members of the Armed Forces of Somalia, or persons or groups acting in

coordination with or under the control of the Armed Forces of Somalia, from committing Human Rights Abuses against the Tort Claimants. District Court Complaint ¶¶ 71, 72, 76, 78; *accord* District Court Opinion at 25–32.

- The District Court found that the Debtor, as Minister of Defense of Somalia and/or as Prime Minister of Somalia, “conspired with or aided and abetted” members of the Armed Forces of Somalia, or persons or groups acting in coordination with or under the control of the Armed Forces of Somalia, to commit Human Rights Abuses against the Tort Claimants. District Court Complaint ¶ 79; *accord* District Court Opinion at 25–32.
- The District Court found that the Human Rights Abuses against the Tort Claimants “were natural and foreseeable consequences” of the decade-long pattern and practice of Human Rights Abuses against the citizens of Somalia. District Court Complaint ¶ 83; *accord* District Court Opinion at 25–32.
- The District Court found that “it was [the Debtor’s] intent,” while Minister of Defense of Somalia and/or as Prime Minister of Somalia, to further the decade-long pattern and practice of Human Rights Abuses against the citizens of Somalia, including the Tort Claimants. District Court Complaint ¶¶ 82, 85; *accord* District Court Opinion at 25–32.
- The District Court found that the Debtor “was in command” of members of the Armed Forces of Somalia, or persons or groups acting in coordination with or under the control of the Armed Forces of Somalia, which launched an indiscriminate aerial and ground attack on the city of Hargeisa that resulted in Human Rights Abuses against thousands of citizens of Somalia, including the Tort Claimants. District Court Complaint ¶¶ 11, 25, 40–44, 63–66, 73–74; *accord* District Court Opinion at 28.
- The District Court found that the Debtor “acknowledged his leadership role in the attacks on Hargeisa,” admitted that “it was [his] task to give [the armed forces in Hargeisa] directions and the directives” regarding the attack on Hargeisa, and that he “g[a]ve this okay . . . [h]ow to use tactically, how to employ the units” during the attack. District Court Opinion at 29.
- The District Court found that the Debtor’s actions and inactions relating to the Human Rights Abuses “were deliberate, willful, intentional, wanton, malicious, and oppressive” District Court Complaint ¶¶ 102, 111, 121, 131, 140, 149, 157; *accord* District Court Opinion at 25–32.

24. At bottom, the District Court summarized its findings of fact and conclusions of

law succinctly as follows:

[Debtor's] subordinates in the Somali Armed Forces and affiliated intelligence and security agencies were committing human rights abuses; [Debtor] 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 [Debtor] substantially assisted his subordinates with the purpose of facilitating the acts alleged in the second amended complaint. Accordingly, [the Tort Claimants] have established secondary liability with respect to the claims alleged by [the Tort Claimants].

District Court Opinion at 31–32.

25. On August 28, 2012, the District Court issued the District Court Opinion and entered the District Court Order granting a judgment of \$21 million to the Tort Claimants

26. On September 24, 2012, the Debtor filed a notice of appeal (the “Notice of Appeal”)¹⁰ of the District Court Order to the Fourth Circuit.

27. On November 2, 2012, the Fourth Circuit issued a 23-page memorandum opinion (the “Fourth Circuit Common Law Immunity Opinion”)¹¹ affirming the District Court’s rejection of the Debtor’s claims for common law immunity from the Tort Action.

28. On March 3, 2013, the Debtor appealed the Fourth Circuit Common Law Immunity Opinion to the United States Supreme Court, which denied the Debtor’s petition for writ of certiorari on January 13, 2014.

29. On February 3, 2014, the Fourth Circuit dismissed the Debtor’s pending appeal of the District Court Order (the “Order Dismissing Final Appeal”).¹²

30. On May 5, 2014, the Debtor appealed the Fourth Circuit Order Dismissing Final Appeal to the United States Supreme Court, which denied the Debtor’s petition for writ of

¹⁰ A true and correct copy of the Notice to Appeal is appended to the Motion as Exhibit J.

¹¹ A true and correct copy of the Fourth Circuit Common Law Immunity Opinion is appended to the Motion as Exhibit K.

¹² A true and correct copy of the Order Dismissing Final Appeal is appended to the Motion as Exhibit L.

certiorari on March 9, 2015.

SUMMARY JUDGMENT STANDARD

31. Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c), as incorporated by Fed. R. Bankr. P. 7056.

32. The moving party has the initial burden of showing that there are no material facts in dispute, and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). When the moving party has met its initial burden, the burden then shifts to the nonmoving party to present specific facts demonstrating that there is a genuine issue for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986).

33. The Supreme Court has held that only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Factual disputes that are irrelevant or unnecessary do not prevent a court from granting summary judgment. *Id.*

34. Summary judgment “is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed ‘to secure the just, speedy and inexpensive determination of every action.’” *Celotex*, 477 U.S. at 327; *accord Meiburger v. Hilburn (In re Ponsen)*, No. 11-17823-BFK, Adv. Pro. 13-01003, 2013 WL 5746118 (Bankr. E.D. Va. Oct. 22, 2013) (Kenney, J.).

ARGUMENT

I. The Debtor Is Not Entitled to Discharge the Bankruptcy Claims Under Bankruptcy Code Section 523(a)(6)

35. The Tort Claimants are entitled to summary judgment in this Proceeding because the District Court Judgment establishes that the Bankruptcy Claims (which are based on the Tort Claims) are debts arising from willful and malicious injuries caused by the Debtor to the Tort Claimants. Bankruptcy Code section 523(a)(6) excepts from discharge any debt “for willful and malicious injury by the debtor to another entity” 11 U.S.C. § 523(a)(6). To establish that a debt is not dischargeable under Bankruptcy Code section 523(a)(6), a creditor must establish that the following elements are satisfied: (i) the debtor caused an injury; (ii) the debtor’s actions were willful; and (iii) the debtor’s actions were malicious. *Ocean Equity Grp., Inc. v. Wooten (In re Wooten)*, 423 B.R. 108, 128 (Bankr. E.D. Va. 2010).¹³ As discussed below, each of these elements is satisfied.

A. The District Court Judgment Establishes that the Debtor Caused Injuries to the Tort Claimants

36. Based on the District Court Judgment, there are no issues of material fact regarding the question of whether the Debtor caused injuries to the Tort Claimants. The District Court Opinion contains extensive factual findings detailing the severe Human Rights Abuses committed against the Tort Claimants, including (i) extrajudicial killing, (ii) attempted extrajudicial killing, (iii) torture, (iv) cruel, inhuman or degrading treatment or punishment, (v) arbitrary detention, (vi) crimes against humanity and (vii) war crimes. *See* District Court Opinion at 14–18 (describing Human Rights Abuses committed against Bashe Abdi Yousuf); *Id.*

¹³ To establish that a debt is not subject to discharge under Bankruptcy Code section 523(a)(6), the creditor must prove all three elements by a preponderance of the evidence. *See In re Bundick*, 303 B.R. 90, 104 (Bankr. E.D. Va. 2003).

at 18–21 (describing Human Rights Abuses committed against Buralle Salah Mohamoud, Abdullahi Salah Mohamoud, and Cawil Salah Mohamoud); *Id.* at 21–23 (describing Human Rights Abuses committed against Ahmed Jama Gulaid); *Id.* at 23–25 (describing Human Rights Abuses committed against Aziz Mohamed Deria, Mohamed Deria Ali, and Mustafa Mohamed Deria).

37. In addition, in awarding compensatory and punitive damages to the Tort Claimants, the District Court found that the Tort Claimants established that they suffered injuries as a result of the Human Rights Abuses, specifically noting that the Tort Claimants “provided credible and compelling testimony of cognizable injures stemming from the [Human Rights Abuses].” *See id.* at pp. 34–38.

38. Finally, the District Court Opinion establishes that the Debtor caused, and is liable for, the injuries suffered by the Tort Claimants. In particular, the District Court ruled that the Debtor is liable to the Tort Claimants on the Tort Claims under theories of command responsibility and aiding and abetting liability based on his awareness and approval of, and assistance in, the commission of the Human Rights Abuses by the Somali Armed Forces and affiliated intelligence and security agencies. *See id.* at 25-32.

39. Based on the foregoing, there are no material issues of fact on the question of whether the Debtor caused injuries to the Tort Claimants. Accordingly, the first element of Bankruptcy Code section 523(a)(6) is satisfied.

B. The District Court Judgment Establishes that the Debtor’s Actions Were Willful

40. The District Court Judgment also establishes that the Debtor’s actions were willful for purposes of Bankruptcy Code section 523(a)(6). In applying Bankruptcy Code section 523(a)(6), courts have held that the term “willful” means that the debtor acted with the actual intent to cause injury. *See In re Wooten*, 423 B.R. at 128-29 (citing *Kawaauhau v. Geiger*,

523 U.S. 57, 61 (1998)). To determine whether this standard is met, courts in this jurisdiction adhere to the “objective substantial certainty” or “subjective motive” test. *See Reed v. Owens (In re Owens)*, 449 B.R. 239, 254-55 (Bankr. E.D. Va. 2011). Under this test, courts must determine “whether the debtor acted with ‘substantial certainty [that] harm [would result] or a subjective motive to cause harm.’” *Parsons v. Parks (In re Parks)*, 91 Fed. Appx. 817, 819 (4th Cir. 2003) (citing *Miller v. J.D. Abrams Inc. (In re Miller)*, 156 F.3d 598, 603 (5th Cir. 1998)).

41. Based on the District Court Opinion, this standard has been satisfied here. First, in finding the Debtor liable for the Human Rights Abuses on the basis of command responsibility and aiding and abetting liability, the District Court concluded that the Debtor not only knew about the Human Rights Abuses being committed by the Somali Armed Forces and affiliated intelligence and security agencies, “but he in fact ordered and affirmatively permitted such violations.” *See* District Court Opinion at 32. In that regard, the District Court found that the Debtor “acknowledged his leadership role in the attacks on Hargeisa,” that indiscriminately targeted civilians, including the Tort Claimants. *Id.* at 29. The Debtor admitted that “it was [his] task to give [the armed forces] directions and the directives” regarding these attacks, and that he “g[a]ve this okay . . . [h]ow to use tactically, how to employ the units” during the attack. *Id.* Furthermore, the District Court found that “[the Debtor] ‘substantially assist[ed]’ his subordinates with ‘the purpose of facilitating’” the commission of the Human Rights Abuses. *See id.* at 32. Accordingly, the District Court’s ruling regarding the Debtor’s liability resolves the question of whether the Debtor acted with substantial certainty that harm would result or with the subjective motive to cause harm.

42. In addition, the District Court’s decision to award punitive damages to the Tort Claimants further establishes that the “willfulness” requirement is satisfied. In particular, based

on the evidence presented by the Tort Claimants at the Damages Hearing, the District Court specifically found that the Debtor's "conduct was intentional, malicious, wanton, and oppressive" in awarding punitive damages. *See* District Court Opinion at 36.¹⁴ Thus, the District Court's award of punitive damages to the Tort Claimants is premised on a finding that the Debtor intended to cause the Human Rights Abuses and the injuries suffered by the Tort Claimants.

43. Finally, as set forth in detail in paragraph 23 above, the District Court made numerous other findings based on the evidence presented by the Tort Claimants and the allegations in the District Court Complaint (which were accepted as true) that demonstrate that the Debtor's actions with respect to the Human Rights Abuses were willful, including, among other things, that (i) the Debtor "acquiesced in and permitted" members of the Somali Armed Forces to commit Human Rights Abuses against the Tort Claimants and (ii) "it was [the Debtor's] intent" to further the decade-long pattern and practice of Human Rights Abuses against the citizens of Somalia, including the Tort Claimants.

44. Based on the foregoing, the District Court Opinion establishes that (i) the Debtor had the subjective motive to cause the injuries suffered by the Tort Claimants and/or (ii) it was objectively and substantially certain that such injuries would occur based on the actions of the Debtor. Accordingly, there are no material issues of fact as to whether the second requirement for a determination of non-dischargeability under Bankruptcy Code section 523(a)(6) has been satisfied.

¹⁴ In addition, the District Court accepted as true the Tort Claimants' allegations that the Debtor's actions in connection with the Human Rights Abuses were "deliberate, willful, intentional, wanton, malicious, and oppressive." *See* District Court Opinion at 6; District Court Complaint ¶¶ 102, 111, 121, 131, 140, 149, 157.

C. The District Court Judgment Establishes that the Debtor's Actions Were Malicious

45. The District Court Opinion also establishes that there are no material issues of fact as to whether the Debtor acted maliciously in connection with the Human Rights Abuses. For purposes of Bankruptcy Code section 523(a)(6), courts in this jurisdiction have defined “malice” as “an act causing injury without just cause or excuse.” *Johnson v. Davis (In re Davis)*, 262 B.R. 663, 670 (Bankr. E.D. Va. 2001). A debtor may act with malice without having any subjective ill will toward, or intent to injure, a creditor. *In re Owens*, 449 B.R. at 255.

46. To establish that a debtor acted maliciously, a creditor must show that “the debtor’s injurious act was done deliberately, intentionally and with knowing disregard for [the creditor’s] rights.” *In re Davis*, 262 B.R. at 671. The debtor’s subjective state of mind is “central to the inquiry of whether the debtor acted deliberately in knowing disregard of a creditor’s rights” *Id.* A creditor may “establish malice on an implied basis from a showing of the debtor’s behavior, as well as a presentation of the surrounding circumstances.” *Id.*; see also *St. Paul Fire & Marine Ins. Co. v. Vaughn*, 779 F.2d 1003, 1010 (4th Cir. 1985) (“Implied malice, which may be shown by the acts and conduct of the debtor in the context of their surrounding circumstances, is sufficient under . . . § 523(a)(6).”).

47. Here, the District Court Opinion establishes that the Debtor acted deliberately, intentionally and with knowing disregard for the Tort Claimants’ rights. In ruling that the Debtor is liable to the Tort Claimants, the District Court found that the Debtor exerted significant authority with respect to military strategy and the command over the Somali Armed Forces and affiliated intelligence and security agencies. See District Court Opinion at 28-31. In addition, based on the evidence presented by the Tort Claimants, the District Court concluded that during his command the Debtor was fully aware that the Somali Armed Forces and affiliated

intelligence and security agencies were committing human rights violations, and that the Debtor ordered, affirmatively permitted and substantially assisted in such violations. *See id.* at 32.

Finally, by their nature, the Human Rights Abuses committed against the Tort Claimants by the Debtor and subordinates acting under the Debtor's control are inherently unjustified under international law and, thus, could only have been committed in knowing disregard for the Tort Claimants' rights.¹⁵ Indeed, the Human Rights Abuses committed against the Tort Claimants were part of widespread, systematic attack on the civilian population, which, according to the State Department, resulted in more than 5,000 deaths and the displacement of more than one million Somalis. *See id.* at 7-8, 14-25.

48. Furthermore, the Debtor's evident disregard for the Tort Claimants' rights served as the basis for the District Court to award punitive damages to the Tort Claimants, which was premised on the District Court's conclusion that the Debtor's actions were "intentional, malicious, wanton and reckless." *Id.* at 36.

49. Based on the foregoing, the District Court Opinion establishes that the Debtor acted with malice, and thus, there are no material issues of fact as to whether the requirements for a determination of non-dischargeability under Bankruptcy Code section 523(a)(6) are satisfied.

¹⁵ The Fourth Circuit recognized the fundamentally unjustifiable nature of the Human Rights Abuses in the Fourth Circuit Common Law Immunity Opinion when it determined that the Debtor was not entitled to immunity because his actions violated *jus cogens* norms. *See Yousuf v. Samantar*, 699 F.3d 763, 775-78 (4th Cir. 2012) (finding that "this case involves acts that violated *jus cogens* norms, including torture, extrajudicial killings and prolonged arbitrary imprisonment of politically and ethnically disfavored groups"). As explained by the Fourth Circuit, a *jus cogens* norm is "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." *Id.* at 775.

II. There is No Reason to Relitigate the Material Facts or Issues in this Court

50. Summary judgment is appropriate here, as there is no reason to waste this Court's resources by relitigating the facts established and issues resolved in the Tort Action before the District Court. Indeed, when this Court lifted the automatic stay, it noted that this Court was not the proper venue to resolve the dispute between the Debtor and the Tort Claimants with respect to the Human Rights Abuses. *See* Transcript of Hearing on Stay Relief Motion dated Feb. 21, 2012 at 22:8-24. Accordingly, the parties proceeded to the District Court to litigate those issues. The fact that the Debtor elected to concede liability for the Human Rights Abuses and default on the morning of trial in no way absolves him from the application of the facts established and issues resolved in the District Court to these proceedings. The doctrines of *res judicata* and collateral estoppel confirm this common-sense result.

A. The Doctrine of Res Judicata Bars Relitigation of the District Court Judgment

51. As set forth above, the District Court Judgment was entered after the Tort Claimants obtained relief from the automatic stay to continue the Tort Action in the District Court, and after Debtor admitted liability to those claims in open court. Accordingly, the District Court Judgment is entitled to *res judicata* effect, and Debtor is barred from invoking new or previously asserted defenses to the Tort Claims or otherwise denying that the Tort Claims involved "willful and malicious injury" to the Tort Claimants.

52. Under the doctrine of *res judicata*, a final judgment on the merits bars not only further claims by parties or their privies on specific causes of action, but also prevents further litigation on any defenses to recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding. *See Brown v. Felsen*, 442 U.S. 127 (1979). By precluding further litigation, the doctrine of *res judicata* ensures the finality

of decisions and “encourages reliance on judicial decisions, bars vexatious litigation and frees the courts to resolve other disputes.” *Id.*

53. The doctrine of *res judicata* bars relitigation of a claim when a court has entered a valid and final judgment rendered on the merits in a prior proceeding between the same parties or their privies on the same cause of action. *See Fed. Ins. Co. v. Gilson (In re Gilson)*, 250 B.R. 226, 236 (Bankr. E.D. Va. 2000). “The term ‘on the merits’ is a term of art and does not necessarily mean that the issues were actually litigated. ‘A judgment on the merits is one which is based on legal rights as distinguished from mere matters of practice, procedure, jurisdiction or form.’” *In re Gilson*, 250 B.R. at 236 (internal citations omitted). A default judgment may be the basis to preclude further litigation challenging those claims under the doctrine of *res judicata*. *Id.* at 240 n.9 (citing *Riehle v. Margolies*, 279 U.S. 218 (1929)).

54. Courts in this jurisdiction have ruled that judgments entered *after* the commencement of a debtor’s bankruptcy case, as here, are entitled to *res judicata* effect. *See, e.g., In re Gilson*, 250 B.R. at 239-40 (“[R]es judicata is applicable to post-petition judgments obtained after the bankruptcy court grants stay relief to pursue that litigation.”); *In re Parks*, No. 93-30327, 1996 WL 33676728, at *6-9 (Bankr. E.D. Va. Feb. 15, 1996) (concluding that postpetition default judgment was entitled to *res judicata* effect in non-dischargeability action).

55. The reason *res judicata* prevents parties from challenging postpetition judgments is that, unlike in the prepetition context, the parties are fully aware of the potential impact of the to-be-litigated proceeding, and accordingly have incentive to litigate their causes of action with an eye towards dischargeability. As the *Gilson* court explained:

[I]n the post-petition judgment situation, all of the parties are well aware that the debtor has already filed bankruptcy and that the only way that the debt will be enforceable is to allege and prove that it falls within § 523. Consequently, the issue of bankruptcy is no

longer hypothetical. It is an established fact. The parties are aware of what they must allege and prove or what they must defend against.

In re Gilson, 250 B.R. at 239. Moreover, bankruptcy courts are aware that granting relief from the stay may lead to a judgment with *res judicata* effect on postpetition litigation. *See id.*

Indeed, as in this case, that is the reason for allowing such claims to proceed postpetition in the first place. Accordingly, there is “every reason to give full *res judicata* effect to the litigation in the non-bankruptcy forum.” *Id.*

56. Here, the District Court Judgment is entitled to *res judicata* effect and prevents Debtor from asserting new defenses or otherwise challenging the validity of the Tort Claims, for the following reasons:

- First, the District Court Judgment is a postpetition judgment entitled to *res judicata* effect in this Proceeding under *Gilson*, given that it was obtained after the Tort Claimants obtained relief from the automatic stay to prosecute their claims and after the Debtor chose to admit liability and default.
- Second, there is complete overlap between the parties to the Tort Action and this Proceeding.
- Third, the District Court Judgment, which awarded the Tort Claimants compensatory and punitive damages in the total aggregate amount of \$21 million, is a final judgment on the merits establishing the Debtor’s liability on the Tort Claims.
- Fourth, the Tort Action arose from the same operative facts that form the basis of this Proceeding, as both the Tort Action and this Proceeding are based on the same Human Rights Abuses for which the Debtor has been found liable.
- Fifth, if the District Court Judgment were not afforded *res judicata* effect, the Debtor would be permitted to relitigate matters that were raised, or that were available to Debtor, in the Tort Action, resulting in a waste of judicial resources as well as additional litigation costs and burdens on all parties.

Accordingly, based on the District Court Judgment, the Debtor is precluded from seeking to raise new defenses or otherwise relitigating matters already resolved in the Tort Action, including the fact that the Debtor willfully and maliciously caused injuries to the Tort Claimants.

B. The Doctrine of Collateral Estoppel Bars Relitigation of the District Court Judgment

57. The doctrine of collateral estoppel also confirms that the Human Rights Abuses cannot be litigated again in this Court. Collateral estoppel bars relitigation of the issues resolved by the District Court Judgment, including all issues relating to the Debtor's liability for the willful and malicious injuries the Debtor caused to the Tort Claimants. It is well settled that the doctrine of collateral estoppel applies in non-dischargeability actions. *See, e.g., Grogan v. Garner*, 498 U.S. 279, 284 (1991). By "preclud[ing] parties from contesting matters that they have had a full and fair opportunity to litigate," the doctrine protects against "the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." *Montana v. United States*, 440 U.S. 147, 153–154 (1979). The use of collateral estoppel as a means of avoiding unnecessary litigation is left to the broad discretion of the trial court. *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 331 (1979).

58. To determine whether to give collateral estoppel effect to a federal court judgment, courts apply federal principles of collateral estoppel. *In re Giordano*, 472 B.R. 313 (Bankr. E.D. Va. 2012) (Kenney, J.). Specifically, courts must consider whether the following elements have been satisfied: (i) the issue sought to be precluded was the same as that involved in the prior action; (ii) that issue was actually litigated; (iii) it was determined by a valid and final

judgment; and (iv) the determination was essential to the prior judgment.¹⁶ *See Combs v. Richardson*, 838 F.2d 112, 115 (4th Cir. 1988). Each of these elements is satisfied here.

i. The Issues of Whether the Debtor Caused Willful and Malicious Injuries to the Tort Claimants Were Involved in the Tort Action

59. In this Proceeding, the Tort Claimants seek to preclude the Debtor from relitigating all issues relating to whether the Debtor caused willful and malicious injuries to the Tort Claimants. In the District Court Complaint, the Tort Claimants alleged that they suffered injuries as a result of the Human Rights Abuses committed against them. In addition, the Tort Claimants alleged that the Debtor was liable for the injuries caused to the Tort Claimants on the basis of command responsibility and aiding and abetting liability, which, as discussed above, implicate questions of whether the Debtor acted willfully and maliciously. *See* District Court Complaint ¶¶ 100, 109, 119, 129, 138, 147, 152. Furthermore, in seeking punitive damages, the Tort Claimants alleged that the Debtor's actions and inactions "were deliberate, willful, intentional, wanton, malicious, and oppressive." District Court Complaint ¶¶ 102, 111, 121, 131, 140, 149, 157.

ii. The Issues of Whether the Debtor Caused Willful and Malicious Injuries to the Tort Claimants Were Actually Litigated in the Tort Action

60. The issues of whether the Debtor caused willful and malicious injuries to the Tort Claimants were actually litigated in the Tort Action. Although default judgments do not always

¹⁶ Some courts have articulated the elements for collateral estoppel in the following manner: (i) the issue or fact is identical to the one previously litigated; (ii) the issue or fact was actually resolved in the prior proceeding; (iii) the issue or fact was critical and necessary to the judgment in the prior proceeding; (iv) the judgment in the prior proceeding is final and valid; and (v) the party to be foreclosed by the prior resolution of the issue or fact had a full and fair opportunity to litigate the issue or fact in the prior proceeding. *See, e.g., In re Microsoft Corp. Antitrust Litig.*, 355 F.3d 322, 326 (4th Cir. 2004); *Simpson v. Suntrust Mortg., Inc. (In re Hurst)*, 409 B.R. 79, 82-83 (Bankr. D. Md. 2009). The Tort Claimants do not believe that there is a material difference between these elements and the elements identified in the Fourth Circuit's ruling in *Combs*. Moreover, regardless of the manner in which the collateral estoppel elements are articulated, the requirements for application of the doctrine of collateral estoppel are satisfied here, as discussed herein.

satisfy the actually litigated requirement, some courts within the Fourth Circuit have held that such requirement is satisfied, “even if there is no adversarial hearing, when (1) a defendant files an answer, (2) the issues are submitted to a jury or finder of fact, (3) the issues are determined after the party has notice and an opportunity to be heard, and (4) the defendant had proper incentive to litigate the matter in the prior hearing and could reasonably foresee litigation on the same issue.”¹⁷ *Nestorio v. Assocs. Commercial Corp. (In re Nestorio)*, 250 B.R. 50, 56 (Bankr. D. Md. 2000); *see also Ramsey v. Bernstein (In re Bernstein)*, 197 B.R. 475, 479-83 (Bankr. D. Md. 1996), *aff’d*, 113 F.3d 1231 (4th Cir. 1997).

61. Here, each of the foregoing factors for determining whether an issue has been actually litigated is satisfied, as set forth below:

- First, the Debtor filed an answer to the District Court Complaint. *See* Defendant Samantar’s Answer to Plaintiffs’ Second Amended Complaint, *Bashe Abdi Yousuf, et al. v. Mohamed Ali Samantar*, No. 04-1360 (E.D. Va. May 25, 2011), ECF No. 171 (the “Answer”).¹⁸ Furthermore, as discussed above, the Debtor and his counsel were actively involved in discovery in the Tort Action and the Debtor’s default came after seven years of pre-trial litigation and on the morning of the trial itself.
- Second, after the Tort Claimants presented evidence at the damages hearing, the District Court made extensive factual findings regarding the Human Rights Abuses committed against the Tort Claimants and the injuries suffered by the Tort Claimants. *See* District Court Opinion at pp. 14-25, 34-38. In addition, the District Court

¹⁷ In several cases, courts have ruled that default judgments are not entitled to collateral estoppel effect because the issues were not actually litigated. *See, e.g., M&M Transmissions, Inc. v. Raynor (In re Raynor)*, 922 F.2d 1146, 1150 (4th Cir. 1991). These courts have generally declined to give collateral estoppel effect to default judgments under facts and circumstances that differ substantially from the facts and circumstances of this Proceeding, including where (i) the defaulting party had no notice of the litigation or failed to appear in the litigation, (ii) the defaulting party did not file an answer to the complaint or otherwise participate in the litigation, (iii) the default judgment was entered on procedural grounds or (iv) the record from the litigation was insufficient. *See In re Raynor*, 922 F.2d at 1147-48 (defaulting party failed to answer complaint or appear in state court litigation and did not have notice of trial); *In re Gilson*, 250 B.R. at 230-31 (default judgment entered after defaulting party failed to respond to discovery requests); *Kulesa v. Stankovich (In re Stankovich)*, 171 B.R. 27, 28-29 (Bankr. E.D. Va. 1994) (default judgment entered after party failed to respond to requests for admissions); *Outlaw v. Cuffey (In re Cuffey)*, 162 B.R. 469, 470 (Bankr. E.D. Va. 1993) (default judgment not entitled to collateral estoppel effect where no record of state court litigation existed). As discussed herein, the Tort Claimants believe that the District Court Judgment was actually litigated, and that the requirements for application of the doctrine of collateral estoppel are satisfied here.

¹⁸ A true and correct copy of the Answer is attached hereto as Exhibit M.

concluded that the Debtor was liable to the Tort Claimants on the basis of command responsibility and aiding and abetting liability. *See* District Court Opinion at pp. 32-38. Furthermore, in awarding the Tort Claimants punitive damages, the District Court found that the evidence presented at the Damages Hearing showed that “[the Debtor’s] conduct was intentional, malicious, wanton, and reckless” *See* District Court Opinion at p. 36.

- Third, as evidenced by the fact that the Debtor attended the trial in the District Court to admit liability, the Debtor received notice and had an opportunity to be heard. In fact, the Debtor was an active participant in the Tort Action over a period of several years. Among other things, the Debtor (a) filed over two dozen motions and numerous objections to the Tort Claimants’ motions, (b) appeared through counsel at over one dozen hearings, (c) submitted a joint discovery plan with the Tort Claimants, (d) sought extensions of the discovery period and propounded discovery requests, (e) submitted an exhibit list with over 39 exhibits and a witness list with over 27 witnesses and (f) prosecuted three interlocutory appeals all the way to the United States Supreme Court.
- Fourth, the Debtor also had a proper incentive to litigate the Tort Action and could reasonably foresee further litigation over his liability for the Tort Claims and the willful and malicious nature of his conduct. Indeed, in the Stay Relief Motion, the Tort Claimants specifically indicated that they intended to commence this Proceeding to obtain a determination that the Debtor’s liability on the Tort Claims is not dischargeable under Bankruptcy Code section 523(a)(6). *See* Stay Relief Motion at ¶¶ 47-8. Accordingly, the Debtor had every reason to litigate the Tort Action and defend against any allegations that would provide this Court with a basis for ruling that he willfully and maliciously caused injuries to the Tort Claimants.

62. Based on the foregoing, the second element for application of the doctrine of collateral estoppel is also satisfied.

iii. The District Court Judgment Is a Final Judgment

63. The District Court Judgment is a final judgment because it resolves the Tort Action on the merits and leaves nothing for the District Court to do except execute on the judgment. *See Cunningham v. Hamilton County, Ohio*, 527 U.S. 198, 203 (1999) (explaining that a final judgment “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment”). Moreover, there are no pending appeals with respect to the District Court Judgment. Accordingly, the third element for application of collateral estoppel is satisfied.

iv. The Issues of Whether the Debtor Caused Willful and Malicious Injuries to the Tort Claimants Were Essential to the District Court Judgment

64. The issues of whether the Debtor caused willful and malicious injuries to the Tort Claimants were essential to the District Court Judgment. As stated above, the District Court's findings regarding the injuries suffered by the Tort Claimants, and ruling that the Debtor is liable to the Tort Claimants on the basis of command responsibility and aiding and abetting liability, were necessary to the District Court's decision to award damages to the Tort Claimants. *See* District Court Opinion at p. 32. Similarly, the District Court's finding that the Debtor engaged in "intentional, malicious, wanton, reckless" conduct provided the basis for the District Court's decision to award punitive damages. *See* District Court Opinion at 36.

65. Based on the foregoing, all of the requirements for application of the doctrine of collateral estoppel have been satisfied, and thus, the District Court Judgment bars the Debtor from relitigating all issues relating to the Debtor's liability for the willful and malicious injuries the Debtor caused to the Tort Claimants.

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CONCLUSION

For the foregoing reasons, the Tort Claimants respectfully request that the Court (i) grant the Motion, (ii) determine, pursuant to section 523(a)(6) of the Bankruptcy Code, that the Debtor is not entitled to discharge the Bankruptcy Claims under Bankruptcy Code section 727, and (iii) award such other and further relief as this Court deems appropriate.

Dated: May 29, 2015

Respectfully Submitted,

/s/ J. Robertson Clarke

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of May 2015, he has filed this *Tort Claimants' Memorandum of Law in Support of Motion For Summary Judgment Against Mohamed Ali Samantar* using this court's CM/ECF filing system which will serve a copy of the pleading on opposing counsel by electronic mail.

/s/ J. Robertson Clarke

J. Robertson Clarke

EXHIBIT A

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. They 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.

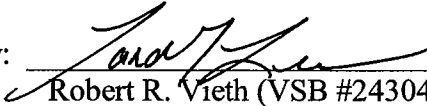
151. This armed conflict bound Defendant Samantar to follow the obligations of Common Article 3 of Geneva Conventions of 1949 and the customary norms of internal armed conflict.

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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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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Bethesda, MD 20814



244496 v6/RE

EXHIBIT B

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:

L. KATHLEEN ROBERTS, ESQ.
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Washington, D.C. 20036

FOR THE DEFENDANT:

JOSEPH PETER DRENNAN, ESQ.
218 North Lee Street, Third Floor
Alexandria, VA 22314

SOMALI INTERPRETER:

ABDURAHMAN KHASSE

ALSO PRESENT:

MOHAMED ALI SAMANTAR

OFFICIAL COURT REPORTER:

ANNELIESE J. THOMSON, RDR, CRR
U.S. District Court
401 Courthouse Square
Alexandria, VA 22314
(703)299-8595

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

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

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

8 THE COURT: Good morning.

9 MR. McLISH: Good morning, Your Honor.

10 MS. ROBERTS: Good morning.

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

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

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

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

23 MR. DRENNAN: I do understand, Your Honor.

24 THE COURT: All right. Now, what concerns the
25 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

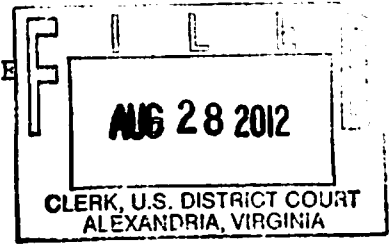
14 I certify that the foregoing is a correct transcript of
15 the record of proceedings in the above-entitled matter.

16
17
18 _____ /s/
Anneliese J. Thomson

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EXHIBIT C

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



BASHE ABDI YOUSUF, et al.,)
)
 Plaintiffs)
)
 v.) 1:04cv1360 (LMB/JFA)
)
 MOHAMED ALI SAMANTAR,)
)
 Defendant.)

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


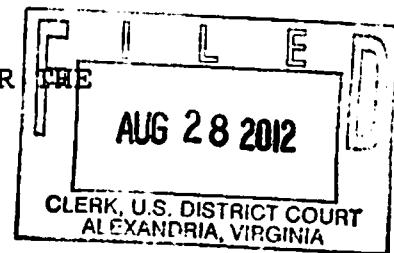
/s/ 
Leonie M. Brinkema
United States District Judge

EXHIBIT D

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



Leonie M. Brinkema
United States District Judge

EXHIBIT E

**United States Bankruptcy Court
 Eastern District of Virginia**

In re **Mohamed Ali Samantar**,
 Debtor

Case No. **12-11085**

Chapter **7**

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	0.00		
B - Personal Property	Yes	3	920.00		
C - Property Claimed as Exempt	Yes	1			
D - Creditors Holding Secured Claims	Yes	1		0.00	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	Yes	1		0.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	3		12,350.70	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	Yes	1			0.00
J - Current Expenditures of Individual Debtor(s)	Yes	1			50.00
Total Number of Sheets of ALL Schedules		14			
		Total Assets	920.00		
			Total Liabilities	12,350.70	

**United States Bankruptcy Court
Eastern District of Virginia**

In re Mohamed Ali Samantar,
Debtor

Case No. 12-11085
Chapter 7

STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	
Student Loan Obligations (from Schedule F)	
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	
TOTAL	

State the following:

Average Income (from Schedule I, Line 16)	
Average Expenses (from Schedule J, Line 18)	
Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20)	

State the following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column		
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column		
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column		
4. Total from Schedule F		
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)		

In re Mohamed Ali Samantar, Debtor Case No. 12-11085

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim." If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
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None

Sub-Total > **0.00** (Total of this page)
 Total > **0.00**
 (Report also on Summary of Schedules)

0 continuation sheets attached to the Schedule of Real Property

In re Mohamed Ali Samantar, Debtor Case No. 12-11085

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petitioner is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1. Cash on hand		Cash Location: 9901 Five Oaks Rd, Fairfax VA 22031	H	20.00
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Checking Account: Location: Wells Fargo	H	200.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.	X			
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.		Clothing	-	700.00
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			
			Sub-Total >	920.00
			(Total of this page)	

2 continuation sheets attached to the Schedule of Personal Property

In re Mohamed Ali Samantar, Debtor Case No. 12-11085

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			

Sub-Total > **0.00**
(Total of this page)

Sheet 1 of 2 continuation sheets attached to the Schedule of Personal Property

In re Mohamed Ali Samantar, Debtor Case No. 12-11085

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.	X			
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			

Sub-Total > **0.00**
(Total of this page)
Total > **920.00**

Sheet 2 of 2 continuation sheets attached to the Schedule of Personal Property

(Report also on Summary of Schedules)

B6C (Official Form 6C) (4/10)

In re Mohamed Ali Samantar, Debtor Case No. 12-11085

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor claims the exemptions to which debtor is entitled under: Check if debtor claims a homestead exemption that exceeds \$146,450. (Amount subject to adjustment on 4/1/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.)
 (Check one box)
 11 U.S.C. §522(b)(2)
 11 U.S.C. §522(b)(3)

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Value of Property Without Deducting Exemption
Cash on Hand			
Cash Location: 9901 Five Oaks Rd, Fairfax VA 22031	Va. Code Ann. § 34-4	20.00	20.00
Checking, Savings, or Other Financial Accounts, Certificates of Deposit			
Checking Account: Location: Wells Fargo	Va. Code Ann. § 34-4	200.00	200.00
Wearing Apparel			
Clothing	Va. Code Ann. § 34-26(4)	700.00	700.00

Total: **920.00** **920.00**

0 continuation sheets attached to Schedule of Property Claimed as Exempt

B6D (Official Form 6D) (12/07)

In re Mohamed Ali Samantar, Debtor

Case No. 12-11085

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor" ,include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion" on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R H W J C	Husband, Wife, Joint, or Community		C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
		DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN						
Account No.								
			Value \$					
Account No.								
			Value \$					
Account No.								
			Value \$					
Account No.								
			Value \$					
Subtotal (Total of this page)								
Total (Report on Summary of Schedules)							0.00	0.00

0 continuation sheets attached

In re Mohamed Ali Samantar

Case No. 12-11085

Debtor

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

Domestic support obligations

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

Extensions of credit in an involuntary case

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

Wages, salaries, and commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$11,725* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

Contributions to employee benefit plans

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

Certain farmers and fishermen

Claims of certain farmers and fishermen, up to \$5,775* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

Deposits by individuals

Claims of individuals up to \$2,600* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

Taxes and certain other debts owed to governmental units

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

Commitments to maintain the capital of an insured depository institution

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

Claims for death or personal injury while debtor was intoxicated

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

0 continuation sheets attached

In re Mohamed Ali Samantar

Case No. 12-11085

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	Husband, Wife, Joint, or Community		C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H W J C					
Account No. x8052 Alexandria Fairfax Neurology 1500 N. Bearuegard St Suite 300 Alexandria, VA 22311		W					784.25
Account No. Assiz Mohamd Deria c/o Akin Gump Strauss Hauer & 1333 New Hampshire Avenue, NW Washington, DC 20036		-				X	Unknown
Account No. Bashe Abdi Yousuf c/o Akin Gump Strauss Hauer & 1333 New Hampshire Avenue, NW Washington, DC 20036		-				X	Unknown
Account No. x0577 Cardiovascular & Thoracic Nationwide Credit Corporation PO Box 9156 Alexandria, VA 22304		H					1,300.00
Subtotal (Total of this page)							2,084.25

2 continuation sheets attached

In re Mohamed Ali Samantar, Debtor Case No. 12-11085

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H W J C					DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.
Account No. xxxxxxxxx-2023 Inova Fairfax Hospital PO Box 37019 Baltimore, MD 21297	H		02/01/2012 Medical			8,848.45
Account No. Inova Health System 2990 Telestar CT Falls Church, VA 22042	H		Medical			1,200.00
Account No. Inova Helath Care Services Inova Health Care Services PO Box 37175 Baltimore, MD 21297	H		01/25/2012 Medical			218.00
Account No. Jane Doe c/o Akin Gump Strauss Hauer & 1333 New Hampshire Avenue, NW Washington, DC 20036	-		Alleged "torts in violation of international and domestic law"		X	Unknown
Account No. John Doe I c/o Akin Gump Strauss Hauer & 1333 New Hampshire Avenue, NW Washington, DC 20036	-		Alleged "torts in violation of international and domestic law"		X	Unknown
					Subtotal (Total of this page)	10,266.45

Sheet no. 1 of 2 sheets attached to Schedule of
 Creditors Holding Unsecured Nonpriority Claims

In re Mohamed Ali Samantar, Debtor Case No. 12-11085

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	Husband, Wife, Joint, or Community		C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H W J C					
Account No. John Doe, II c/o Akin Gump Strauss Hauer & 1333 New Hampshire Avenue, NW Washington, DC 20036		-				X	Unknown
Account No. Joseph Peter Drennan, Esq. 218 North Lee Street 3rd Floor Alexandria, VA 22314		-				X	Unknown
Account No.							
Account No.							
Account No.							

Sheet no. 2 of 2 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page)

0.00

Total
(Report on Summary of Schedules)

12,350.70

B6G (Official Form 6G) (12/07)

In re Mohamed Ali Samantar, Debtor Case No. 12-11085

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser", "Agent", etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.
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0

_____ continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

In re Mohamed Ali Samantar
Debtor

Case No. 12-11085

SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
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0 continuation sheets attached to Schedule of Codebtors

B6I (Official Form 6I) (12/07)
 In re **Mohamed Ali Samantar**

Case No. **12-11085**

Debtor(s)

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

Debtor's Marital Status: Married	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP(S): None.	AGE(S):
Employment:	DEBTOR	SPOUSE
Occupation		
Name of Employer		
How long employed		
Address of Employer		

INCOME: (Estimate of average or projected monthly income at time case filed)	DEBTOR	SPOUSE
1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly)	\$ <u>0.00</u>	\$ <u>0.00</u>
2. Estimate monthly overtime	\$ <u>0.00</u>	\$ <u>0.00</u>
3. SUBTOTAL	\$ <u>0.00</u>	\$ <u>0.00</u>
4. LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	\$ <u>0.00</u>	\$ <u>0.00</u>
b. Insurance	\$ <u>0.00</u>	\$ <u>0.00</u>
c. Union dues	\$ <u>0.00</u>	\$ <u>0.00</u>
d. Other (Specify): _____	\$ <u>0.00</u>	\$ <u>0.00</u>
	\$ <u>0.00</u>	\$ <u>0.00</u>
5. SUBTOTAL OF PAYROLL DEDUCTIONS	\$ <u>0.00</u>	\$ <u>0.00</u>
6. TOTAL NET MONTHLY TAKE HOME PAY	\$ <u>0.00</u>	\$ <u>0.00</u>
7. Regular income from operation of business or profession or farm (Attach detailed statement)	\$ <u>0.00</u>	\$ <u>0.00</u>
8. Income from real property	\$ <u>0.00</u>	\$ <u>0.00</u>
9. Interest and dividends	\$ <u>0.00</u>	\$ <u>0.00</u>
10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	\$ <u>0.00</u>	\$ <u>0.00</u>
11. Social security or government assistance (Specify): _____	\$ <u>0.00</u>	\$ <u>0.00</u>
	\$ <u>0.00</u>	\$ <u>0.00</u>
12. Pension or retirement income	\$ <u>0.00</u>	\$ <u>0.00</u>
13. Other monthly income (Specify): _____	\$ <u>0.00</u>	\$ <u>0.00</u>
	\$ <u>0.00</u>	\$ <u>0.00</u>
14. SUBTOTAL OF LINES 7 THROUGH 13	\$ <u>0.00</u>	\$ <u>0.00</u>
15. AVERAGE MONTHLY INCOME (Add amounts shown on lines 6 and 14)	\$ <u>0.00</u>	\$ <u>0.00</u>
16. COMBINED AVERAGE MONTHLY INCOME: (Combine column totals from line 15)	\$ <u>0.00</u>	

(Report also on Summary of Schedules and, if applicable, on Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:

B6J (Official Form 6J) (12/07)

In re Mohamed Ali Samantar

Case No. 12-11085

Debtor(s)

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home)		\$	<u>0.00</u>
a. Are real estate taxes included?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
b. Is property insurance included?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
2. Utilities:		\$	<u>0.00</u>
a. Electricity and heating fuel		\$	<u>0.00</u>
b. Water and sewer		\$	<u>0.00</u>
c. Telephone		\$	<u>0.00</u>
d. Other _____		\$	<u>0.00</u>
3. Home maintenance (repairs and upkeep)		\$	<u>0.00</u>
4. Food		\$	<u>0.00</u>
5. Clothing		\$	<u>50.00</u>
6. Laundry and dry cleaning		\$	<u>0.00</u>
7. Medical and dental expenses		\$	<u>0.00</u>
8. Transportation (not including car payments)		\$	<u>0.00</u>
9. Recreation, clubs and entertainment, newspapers, magazines, etc.		\$	<u>0.00</u>
10. Charitable contributions		\$	<u>0.00</u>
11. Insurance (not deducted from wages or included in home mortgage payments)		\$	<u>0.00</u>
a. Homeowner's or renter's		\$	<u>0.00</u>
b. Life		\$	<u>0.00</u>
c. Health		\$	<u>0.00</u>
d. Auto		\$	<u>0.00</u>
e. Other _____		\$	<u>0.00</u>
12. Taxes (not deducted from wages or included in home mortgage payments)		\$	<u>0.00</u>
(Specify) _____		\$	<u>0.00</u>
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)			
a. Auto		\$	<u>0.00</u>
b. Other _____		\$	<u>0.00</u>
c. Other _____		\$	<u>0.00</u>
14. Alimony, maintenance, and support paid to others		\$	<u>0.00</u>
15. Payments for support of additional dependents not living at your home		\$	<u>0.00</u>
16. Regular expenses from operation of business, profession, or farm (attach detailed statement)		\$	<u>0.00</u>
17. Other _____		\$	<u>0.00</u>
Other _____		\$	<u>0.00</u>
18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)		\$	<u>50.00</u>
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document:			
20. STATEMENT OF MONTHLY NET INCOME			
a. Average monthly income from Line 15 of Schedule I		\$	<u>0.00</u>
b. Average monthly expenses from Line 18 above		\$	<u>50.00</u>
c. Monthly net income (a. minus b.)		\$	<u>-50.00</u>

**United States Bankruptcy Court
Eastern District of Virginia**

In re **Mohamed Ali Samantar**

Debtor(s)

Case No. **12-11085**

Chapter **7**

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of **16** sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date **March 23, 2012**

Signature **/s/ Mohamed Ali Samantar**

Mohamed Ali Samantar

Debtor

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.
18 U.S.C. §§ 152 and 3571.

B7 (Official Form 7) (04/10)

United States Bankruptcy Court
Eastern District of Virginia

In re Mohamed Ali Samantar Debtor(s) Case No. 12-11085 Chapter 7

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. If the answer to an applicable question is "None," mark the box labeled "None." If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

None State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT SOURCE

2. Income other than from employment or operation of business

None State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the two years immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT SOURCE

3. Payments to creditors

None Complete a. or b., as appropriate, and c.

a. *Individual or joint debtor(s) with primarily consumer debts.* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
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None b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within **90 days** immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,850*. If the debtor is an individual, indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS/ TRANSFERS	AMOUNT PAID OR VALUE OF TRANSFERS	AMOUNT STILL OWING
Galinowski and Colorusso (for Inova) 4019 Chain Bridge Road Fairfax, VA 22030	2011	\$2,800.00	\$1,200.00

None c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING
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4. Suits and administrative proceedings, executions, garnishments and attachments

None a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
Bashi Abdi Yousef, et al v Samantar 1:04-CV-1360	Tort action	U.S. District Court, Alexandria, VA	Set for trial 2/22/2012

None b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
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* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

5. Repossessions, foreclosures and returns

None List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
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6. Assignments and receiverships

None a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
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None b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
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7. Gifts

None List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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8. Losses

None List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
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9. Payments related to debt counseling or bankruptcy

None List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Christopher S. Moffitt	2/20/2012 Yousef Samintar	\$3,306.00

10. Other transfers

None a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
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None b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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11. Closed financial accounts

None List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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12. Safe deposit boxes

None List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
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13. Setoffs

None List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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14. Property held for another person

None List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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15. Prior address of debtor

None If the debtor has moved within **three years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
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16. Spouses and Former Spouses

None If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within **eight years** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

None a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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None b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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None c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
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18 . Nature, location and name of business

None a. *If the debtor is an individual*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

NAME	LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/ COMPLETE EIN	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
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None b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS
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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

19. Books, records and financial statements

None a. List all bookkeepers and accountants who within **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
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None b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED
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None c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME	ADDRESS
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None d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within **two years** immediately preceding the commencement of this case.

NAME AND ADDRESS	DATE ISSUED
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20. Inventories

None a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY	INVENTORY SUPERVISOR	DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)
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None b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY	NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS
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21 . Current Partners, Officers, Directors and Shareholders

None a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST
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None b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP
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22 . Former partners, officers, directors and shareholders

None a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL
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None b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
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23 . Withdrawals from a partnership or distributions by a corporation

None If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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24. Tax Consolidation Group.

None If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within **six years** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER (EIN)
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25. Pension Funds.

None If the debtor is not an individual, list the name and federal taxpayer-identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within **six years** immediately preceding the commencement of the case.

NAME OF PENSION FUND

TAXPAYER IDENTIFICATION NUMBER (EIN)

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date March 23, 2012

Signature /s/ Mohamed Ali Samantar
Mohamed Ali Samantar
Debtor

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

B8 (Form 8) (12/08)

**United States Bankruptcy Court
Eastern District of Virginia**

In re Mohamed Ali Samantar
Debtor(s)

Case No. 12-11085
Chapter 7

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

PART A - Debts secured by property of the estate. (Part A must be fully completed for **EACH** debt which is secured by property of the estate. Attach additional pages if necessary.)

Property No. 1	
Creditor's Name: -NONE-	Describe Property Securing Debt:
Property will be (check one): <input type="checkbox"/> Surrendered <input type="checkbox"/> Retained	
If retaining the property, I intend to (check at least one): <input type="checkbox"/> Redeem the property <input type="checkbox"/> Reaffirm the debt <input type="checkbox"/> Other. Explain _____ (for example, avoid lien using 11 U.S.C. § 522(f)).	
Property is (check one): <input type="checkbox"/> Claimed as Exempt <input type="checkbox"/> Not claimed as exempt	

PART B - Personal property subject to unexpired leases. (All three columns of Part B must be completed for each unexpired lease. Attach additional pages if necessary.)

Property No. 1		
Lessor's Name: -NONE-	Describe Leased Property:	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): <input type="checkbox"/> YES <input type="checkbox"/> NO

I declare under penalty of perjury that the above indicates my intention as to any property of my estate securing a debt and/or personal property subject to an unexpired lease.

Date March 23, 2012

Signature /s/ Mohamed Ali Samantar
Mohamed Ali Samantar
Debtor

United States Bankruptcy Court Eastern District of Virginia

In re Mohamed Ali Samantar Debtor(s)

Case No. 12-11085 Chapter 7

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor(s) and that compensation paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

Table with 3 rows: For legal services, I have agreed to accept; Prior to the filing of this statement I have received; Balance Due. Columns include dollar sign and amounts: 3,000.00, 3,000.00, 0.00.

2. The source of the compensation paid to me was:

Other (specify) Yousef Samintar

3. The source of compensation to be paid to me is:

Other (specify) Yousef Samintar, Osob Samintar

I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation, is attached.

- In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including: a. Analysis of the debtor's financial situation... b. Preparation and filing of any petition... c. Representation of the debtor... d. Other provisions as needed:

Negotiations with secured creditors to reduce to market value; exemption planning; preparation and filing of reaffirmation agreements and applications as needed; preparation and filing of motions pursuant to 11 USC 522(f)(2)(A) for avoidance of liens on household goods. Extraordinary matters to be billed at \$300 hourly rate

6. By agreement with the debtor(s), the above-disclosed fee does not include the following services:

Representation of the debtors in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding. Representation with respect to any investigation or examination other than and additional to 341 meeting

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

March 23, 2012

Date

/s/ Christopher S. Moffitt

Christopher S. Moffitt 18195
Signature of Attorney

Law Offices of Christopher S. Moffitt

Name of Law Firm
211 South Union Street
Suite 100
Alexandria, VA 22314
703-683-0075 Fax: 703-229-0566

For use in Chapter 13 Cases where Fees Requested Not in Excess of \$3,000
(For all Cases Filed on or after 10/17/2005)
NOTICE TO DEBTOR(S) AND STANDING TRUSTEE
PURSUANT TO INTERIM PROCEDURE 2016-1(C)(7)

Notice is hereby given that pursuant to Local Bankruptcy Rule 2016-1(C)(7)(a), you have ten (10) business days from the meeting of creditors in this case in which to file an objection with the court to the fees requested in this disclosure of compensation opposing said fees in their entirety, or in a specific amount.

PROOF OF SERVICE

The undersigned hereby certifies that on this date the foregoing Notice was served upon the debtor(s), the standing Chapter 13 Trustee, and U. S. Trustee pursuant to Interim Procedure 2016-1(C)(7)(a) and Local Bankruptcy Rule 2002-1(D)(1)(f), by first-class mail or electronically.

Date

Signature of Attorney

B22A (Official Form 22A) (Chapter 7) (12/10)

In re Mohamed Ali Samantar
 Debtor(s)
 Case Number: 12-11085
 (If known)

According to the information required to be entered on this statement (check one box as directed in Part I, III, or VI of this statement):

The presumption arises.

The presumption does not arise.

The presumption is temporarily inapplicable.

CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME AND MEANS-TEST CALCULATION

In addition to Schedules I and J, this statement must be completed by every individual chapter 7 debtor. If none of the exclusions in Part I applies, joint debtors may complete one statement only. If any of the exclusions in Part I applies, joint debtors should complete separate statements if they believe this is required by § 707(b)(2)(C).

Part I. MILITARY AND NON-CONSUMER DEBTORS	
1A	<p>Disabled Veterans. If you are a disabled veteran described in the Declaration in this Part IA, (1) check the box at the beginning of the Declaration, (2) check the box for "The presumption does not arise" at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input type="checkbox"/> Declaration of Disabled Veteran. By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. § 901(1)).</p>
1B	<p>Non-consumer Debtors. If your debts are not primarily consumer debts, check the box below and complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input checked="" type="checkbox"/> Declaration of non-consumer debts. By checking this box, I declare that my debts are not primarily consumer debts.</p>
1C	<p>Reservists and National Guard Members; active duty or homeland defense activity. Members of a reserve component of the Armed Forces and members of the National Guard who were called to active duty (as defined in 10 U.S.C. § 101(d)(1)) after September 11, 2001, for a period of at least 90 days, or who have performed homeland defense activity (as defined in 32 U.S.C. § 901(1)) for a period of at least 90 days, are excluded from all forms of means testing during the time of active duty or homeland defense activity and for 540 days thereafter (the "exclusion period"). If you qualify for this temporary exclusion, (1) check the appropriate boxes and complete any required information in the Declaration of Reservists and National Guard Members below, (2) check the box for "The presumption is temporarily inapplicable" at the top of this statement, and (3) complete the verification in Part VIII. During your exclusion period you are not required to complete the balance of this form, but you must complete the form no later than 14 days after the date on which your exclusion period ends, unless the time for filing a motion raising the means test presumption expires in your case before your exclusion period ends.</p> <p><input type="checkbox"/> Declaration of Reservists and National Guard Members. By checking this box and making the appropriate entries below, I declare that I am eligible for a temporary exclusion from means testing because, as a member of a reserve component of the Armed Forces or the National Guard</p> <p style="margin-left: 40px;">a. <input type="checkbox"/> I was called to active duty after September 11, 2001, for a period of at least 90 days and</p> <p style="margin-left: 80px;"><input type="checkbox"/> I remain on active duty /or/</p> <p style="margin-left: 80px;"><input type="checkbox"/> I was released from active duty on _____, which is less than 540 days before this bankruptcy case was filed;</p> <p style="margin-left: 80px;">OR</p> <p style="margin-left: 40px;">b. <input type="checkbox"/> I am performing homeland defense activity for a period of at least 90 days /or/</p> <p style="margin-left: 80px;"><input type="checkbox"/> I performed homeland defense activity for a period of at least 90 days, terminating on _____, which is less than 540 days before this bankruptcy case was filed.</p>

Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION																			
2	<p>Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 3-11.</p> <p>b. <input type="checkbox"/> Married, not filing jointly, with declaration of separate households. By checking this box, debtor declares under penalty of perjury: "My spouse and I are legally separated under applicable non-bankruptcy law or my spouse and I are living apart other than for the purpose of evading the requirements of § 707(b)(2)(A) of the Bankruptcy Code." Complete only column A ("Debtor's Income") for Lines 3-11.</p> <p>c. <input type="checkbox"/> Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.</p> <p>d. <input type="checkbox"/> Married, filing jointly. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.</p>																		
All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.		Column A Debtor's Income	Column B Spouse's Income																
3	Gross wages, salary, tips, bonuses, overtime, commissions.	\$	\$																
4	<p>Income from the operation of a business, profession or farm. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. If you operate more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part V.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2"></th> <th style="text-align: center;">Debtor</th> <th style="text-align: center;">Spouse</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">a.</td> <td>Gross receipts</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary business expenses</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Business income</td> <td colspan="2" style="text-align: center;">Subtract Line b from Line a</td> </tr> </tbody> </table>			Debtor	Spouse	a.	Gross receipts	\$	\$	b.	Ordinary and necessary business expenses	\$	\$	c.	Business income	Subtract Line b from Line a		\$	\$
		Debtor	Spouse																
a.	Gross receipts	\$	\$																
b.	Ordinary and necessary business expenses	\$	\$																
c.	Business income	Subtract Line b from Line a																	
5	<p>Rents and other real property income. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 5. Do not enter a number less than zero. Do not include any part of the operating expenses entered on Line b as a deduction in Part V.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2"></th> <th style="text-align: center;">Debtor</th> <th style="text-align: center;">Spouse</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">a.</td> <td>Gross receipts</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary operating expenses</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Rent and other real property income</td> <td colspan="2" style="text-align: center;">Subtract Line b from Line a</td> </tr> </tbody> </table>			Debtor	Spouse	a.	Gross receipts	\$	\$	b.	Ordinary and necessary operating expenses	\$	\$	c.	Rent and other real property income	Subtract Line b from Line a		\$	\$
		Debtor	Spouse																
a.	Gross receipts	\$	\$																
b.	Ordinary and necessary operating expenses	\$	\$																
c.	Rent and other real property income	Subtract Line b from Line a																	
6	Interest, dividends, and royalties.	\$	\$																
7	Pension and retirement income.	\$	\$																
8	Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support paid for that purpose. Do not include alimony or separate maintenance payments or amounts paid by your spouse if Column B is completed. Each regular payment should be reported in only one column; if a payment is listed in Column A, do not report that payment in Column B.	\$	\$																
9	<p>Unemployment compensation. Enter the amount in the appropriate column(s) of Line 9. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Unemployment compensation claimed to be a benefit under the Social Security Act</td> <td style="width: 20%;">Debtor \$</td> <td style="width: 20%;">Spouse \$</td> </tr> </table>	Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$	Spouse \$	\$	\$													
Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$	Spouse \$																	
10	<p>Income from all other sources. Specify source and amount. If necessary, list additional sources on a separate page. Do not include alimony or separate maintenance payments paid by your spouse if Column B is completed, but include all other payments of alimony or separate maintenance. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2"></th> <th style="text-align: center;">Debtor</th> <th style="text-align: center;">Spouse</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">a.</td> <td></td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> </tbody> </table> <p>Total and enter on Line 10</p>			Debtor	Spouse	a.		\$	\$	b.		\$	\$	\$	\$				
		Debtor	Spouse																
a.		\$	\$																
b.		\$	\$																
11	Subtotal of Current Monthly Income for § 707(b)(7). Add Lines 3 thru 10 in Column A, and, if Column B is completed, add Lines 3 through 10 in Column B. Enter the total(s).	\$	\$																

12	Total Current Monthly Income for § 707(b)(7). If Column B has been completed, add Line 11, Column A to Line 11, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 11, Column A.	\$	
Part III. APPLICATION OF § 707(b)(7) EXCLUSION			
13	Annualized Current Monthly Income for § 707(b)(7). Multiply the amount from Line 12 by the number 12 and enter the result.	\$	
14	Applicable median family income. Enter the median family income for the applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	\$	
15	Application of Section 707(b)(7). Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 13 is less than or equal to the amount on Line 14. Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete Part VIII; do not complete Parts IV, V, VI or VII. <input type="checkbox"/> The amount on Line 13 is more than the amount on Line 14. Complete the remaining parts of this statement.		

Complete Parts IV, V, VI, and VII of this statement only if required. (See Line 15.)

Part IV. CALCULATION OF CURRENT MONTHLY INCOME FOR § 707(b)(2)															
16	Enter the amount from Line 12.		\$												
17	Marital adjustment. If you checked the box at Line 2.c, enter on Line 17 the total of any income listed in Line 11, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. Specify in the lines below the basis for excluding the Column B income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If you did not check box at Line 2.c, enter zero. <table border="1" style="width:100%; margin-top: 10px;"> <tr> <td style="width:5%;">a.</td> <td style="width:65%;"></td> <td style="width:10%; text-align: center;">\$</td> </tr> <tr> <td>b.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td>c.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td>d.</td> <td></td> <td style="text-align: center;">\$</td> </tr> </table> Total and enter on Line 17		a.		\$	b.		\$	c.		\$	d.		\$	\$
a.		\$													
b.		\$													
c.		\$													
d.		\$													
18	Current monthly income for § 707(b)(2). Subtract Line 17 from Line 16 and enter the result.		\$												

Part V. CALCULATION OF DEDUCTIONS FROM INCOME

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

19A	National Standards: food, clothing and other items. Enter in Line 19A the "Total" amount from IRS National Standards for Food, Clothing and Other Items for the applicable number of persons. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) The applicable number of persons is the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.	\$																									
19B	National Standards: health care. Enter in Line a1 below the amount from IRS National Standards for Out-of-Pocket Health Care for persons under 65 years of age, and in Line a2 the IRS National Standards for Out-of-Pocket Health Care for persons 65 years of age or older. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) Enter in Line b1 the applicable number of persons who are under 65 years of age, and enter in Line b2 the applicable number of persons who are 65 years of age or older. (The applicable number of persons in each age category is the number in that category that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.) Multiply Line a1 by Line b1 to obtain a total amount for persons under 65, and enter the result in Line c1. Multiply Line a2 by Line b2 to obtain a total amount for persons 65 and older, and enter the result in Line c2. Add Lines c1 and c2 to obtain a total health care amount, and enter the result in Line 19B. <table border="1" style="width:100%; margin-top: 10px;"> <thead> <tr> <th colspan="3" style="text-align: center;">Persons under 65 years of age</th> <th colspan="3" style="text-align: center;">Persons 65 years of age or older</th> </tr> </thead> <tbody> <tr> <td style="width:5%;">a1.</td> <td style="width:30%;">Allowance per person</td> <td style="width:25%;"></td> <td style="width:5%;">a2.</td> <td style="width:30%;">Allowance per person</td> <td style="width:25%;"></td> </tr> <tr> <td>b1.</td> <td>Number of persons</td> <td></td> <td>b2.</td> <td>Number of persons</td> <td></td> </tr> <tr> <td>c1.</td> <td>Subtotal</td> <td></td> <td>c2.</td> <td>Subtotal</td> <td></td> </tr> </tbody> </table>	Persons under 65 years of age			Persons 65 years of age or older			a1.	Allowance per person		a2.	Allowance per person		b1.	Number of persons		b2.	Number of persons		c1.	Subtotal		c2.	Subtotal		\$	
Persons under 65 years of age			Persons 65 years of age or older																								
a1.	Allowance per person		a2.	Allowance per person																							
b1.	Number of persons		b2.	Number of persons																							
c1.	Subtotal		c2.	Subtotal																							
20A	Local Standards: housing and utilities; non-mortgage expenses. Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court). The applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.	\$																									

20B	<p>Local Standards: housing and utilities; mortgage/rent expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court) (the applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 42; subtract Line b from Line a and enter the result in Line 20B. Do not enter an amount less than zero.</p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:65%;">IRS Housing and Utilities Standards; mortgage/rental expense</td> <td style="width:30%;">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42</td> <td>\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Net mortgage/rental expense</td> <td>Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Housing and Utilities Standards; mortgage/rental expense	\$	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	\$	c.	Net mortgage/rental expense	Subtract Line b from Line a.	\$
a.	IRS Housing and Utilities Standards; mortgage/rental expense	\$									
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	\$									
c.	Net mortgage/rental expense	Subtract Line b from Line a.									
21	<p>Local Standards: housing and utilities; adjustment. If you contend that the process set out in Lines 20A and 20B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:</p>	\$									
22A	<p>Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation. Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 8. <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more. If you checked 0, enter on Line 22A the "Public Transportation" amount from IRS Local Standards: Transportation. If you checked 1 or 2 or more, enter on Line 22A the "Operating Costs" amount from IRS Local Standards: Transportation for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (These amounts are available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>	\$									
22B	<p>Local Standards: transportation; additional public transportation expense. If you pay the operating expenses for a vehicle and also use public transportation, and you contend that you are entitled to an additional deduction for you public transportation expenses, enter on Line 22B the "Public Transportation" amount from IRS Local Standards: Transportation. (This amount is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>	\$									
23	<p>Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more. Enter, in Line a below, the "Ownership Costs" for "One Car" from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 42; subtract Line b from Line a and enter the result in Line 23. Do not enter an amount less than zero.</p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:65%;">IRS Transportation Standards, Ownership Costs</td> <td style="width:30%;">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42</td> <td>\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Net ownership/lease expense for Vehicle 1</td> <td>Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	\$									
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.									
24	<p>Local Standards: transportation ownership/lease expense; Vehicle 2. Complete this Line only if you checked the "2 or more" Box in Line 23. Enter, in Line a below, the "Ownership Costs" for "One Car" from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 42; subtract Line b from Line a and enter the result in Line 24. Do not enter an amount less than zero.</p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:65%;">IRS Transportation Standards, Ownership Costs</td> <td style="width:30%;">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42</td> <td>\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Net ownership/lease expense for Vehicle 2</td> <td>Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs	\$	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42	\$	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42	\$									
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.									
25	<p>Other Necessary Expenses: taxes. Enter the total average monthly expense that you actually incur for all federal, state and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. Do not include real estate or sales taxes.</p>	\$									

26	Other Necessary Expenses: involuntary deductions for employment. Enter the total average monthly payroll deductions that are required for your employment, such as retirement contributions, union dues, and uniform costs. Do not include discretionary amounts, such as voluntary 401(k) contributions.	\$
27	Other Necessary Expenses: life insurance. Enter total average monthly premiums that you actually pay for term life insurance for yourself. Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.	\$
28	Other Necessary Expenses: court-ordered payments. Enter the total monthly amount that you are required to pay pursuant to the order of a court or administrative agency, such as spousal or child support payments. Do not include payments on past due obligations included in Line 44.	\$
29	Other Necessary Expenses: education for employment or for a physically or mentally challenged child. Enter the total average monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	\$
30	Other Necessary Expenses: childcare. Enter the total average monthly amount that you actually expend on childcare - such as baby-sitting, day care, nursery and preschool. Do not include other educational payments.	\$
31	Other Necessary Expenses: health care. Enter the total average monthly amount that you actually expend on health care that is required for the health and welfare of yourself or your dependents, that is not reimbursed by insurance or paid by a health savings account, and that is in excess of the amount entered in Line 19B. Do not include payments for health insurance or health savings accounts listed in Line 34.	\$
32	Other Necessary Expenses: telecommunication services. Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone and cell phone service - such as pagers, call waiting, caller id, special long distance, or internet service - to the extent necessary for your health and welfare or that of your dependents. Do not include any amount previously deducted.	\$
33	Total Expenses Allowed under IRS Standards. Enter the total of Lines 19 through 32.	\$

Subpart B: Additional Living Expense Deductions

Note: Do not include any expenses that you have listed in Lines 19-32

34	Health Insurance, Disability Insurance, and Health Savings Account Expenses. List the monthly expenses in the categories set out in lines a-c below that are reasonably necessary for yourself, your spouse, or your dependents.		\$	
	a.	Health Insurance		\$
	b.	Disability Insurance		\$
	c.	Health Savings Account		\$
Total and enter on Line 34. If you do not actually expend this total amount, state your actual total average monthly expenditures in the space below: \$				
35	Continued contributions to the care of household or family members. Enter the total average actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.		\$	
36	Protection against family violence. Enter the total average reasonably necessary monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.		\$	
37	Home energy costs. Enter the total average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. You must provide your case trustee with documentation of your actual expenses, and you must demonstrate that the additional amount claimed is reasonable and necessary.		\$	

38	Education expenses for dependent children less than 18. Enter the total average monthly expenses that you actually incur, not to exceed \$147.92* per child, for attendance at a private or public elementary or secondary school by your dependent children less than 18 years of age. You must provide your case trustee with documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.	\$
39	Additional food and clothing expense. Enter the total average monthly amount by which your food and clothing expenses exceed the combined allowances for food and clothing (apparel and services) in the IRS National Standards, not to exceed 5% of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) You must demonstrate that the additional amount claimed is reasonable and necessary.	\$
40	Continued charitable contributions. Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).	\$
41	Total Additional Expense Deductions under § 707(b). Enter the total of Lines 34 through 40	\$

Subpart C: Deductions for Debt Payment

42	<p>Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, and state the Average Monthly Payment, and check whether the payment includes taxes or insurance. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Enter the total of the Average Monthly Payments on Line 42.</p> <table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%;">Name of Creditor</th> <th style="width: 30%;">Property Securing the Debt</th> <th style="width: 15%;">Average Monthly Payment</th> <th style="width: 20%;">Does payment include taxes or insurance?</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">a.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> <td style="text-align: center;"><input type="checkbox"/> yes <input type="checkbox"/> no</td> </tr> <tr> <td colspan="3"></td> <td style="text-align: right;">Total: Add Lines</td> <td></td> </tr> </tbody> </table>		Name of Creditor	Property Securing the Debt	Average Monthly Payment	Does payment include taxes or insurance?	a.			\$	<input type="checkbox"/> yes <input type="checkbox"/> no				Total: Add Lines		\$
	Name of Creditor	Property Securing the Debt	Average Monthly Payment	Does payment include taxes or insurance?													
a.			\$	<input type="checkbox"/> yes <input type="checkbox"/> no													
			Total: Add Lines														

43	<p>Other payments on secured claims. If any of debts listed in Line 42 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 42, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.</p> <table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%;">Name of Creditor</th> <th style="width: 30%;">Property Securing the Debt</th> <th style="width: 35%;">1/60th of the Cure Amount</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">a.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td colspan="3"></td> <td style="text-align: right;">Total: Add Lines</td> </tr> </tbody> </table>		Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount	a.			\$				Total: Add Lines	\$
	Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount											
a.			\$											
			Total: Add Lines											

44	Payments on prepetition priority claims. Enter the total amount, divided by 60, of all priority claims, such as priority tax, child support and alimony claims, for which you were liable at the time of your bankruptcy filing. Do not include current obligations, such as those set out in Line 28.	\$
----	--	----

45	<p>Chapter 13 administrative expenses. If you are eligible to file a case under Chapter 13, complete the following chart, multiply the amount in line a by the amount in line b, and enter the resulting administrative expense.</p> <table border="1" style="width: 100%;"> <tbody> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 55%;">Projected average monthly Chapter 13 plan payment.</td> <td style="width: 40%; text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</td> <td style="text-align: center;">x</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Average monthly administrative expense of Chapter 13 case</td> <td style="text-align: right;">Total: Multiply Lines a and b</td> </tr> </tbody> </table>	a.	Projected average monthly Chapter 13 plan payment.	\$	b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x	c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b	\$
a.	Projected average monthly Chapter 13 plan payment.	\$									
b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x									
c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b									

46	Total Deductions for Debt Payment. Enter the total of Lines 42 through 45.	\$
----	---	----

Subpart D: Total Deductions from Income

47	Total of all deductions allowed under § 707(b)(2). Enter the total of Lines 33, 41, and 46.	\$
----	--	----

Part VI. DETERMINATION OF § 707(b)(2) PRESUMPTION

48	Enter the amount from Line 18 (Current monthly income for § 707(b)(2))	\$
49	Enter the amount from Line 47 (Total of all deductions allowed under § 707(b)(2))	\$

* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

50	Monthly disposable income under § 707(b)(2). Subtract Line 49 from Line 48 and enter the result.	\$
51	60-month disposable income under § 707(b)(2). Multiply the amount in Line 50 by the number 60 and enter the result.	\$
52	Initial presumption determination. Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 51 is less than \$7,025* . Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. Do not complete the remainder of Part VI. <input type="checkbox"/> The amount set forth on Line 51 is more than \$11,725* Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII. Do not complete the remainder of Part VI. <input type="checkbox"/> The amount on Line 51 is at least \$7,025*, but not more than \$11,725* . Complete the remainder of Part VI (Lines 53 through 55).	
53	Enter the amount of your total non-priority unsecured debt	\$
54	Threshold debt payment amount. Multiply the amount in Line 53 by the number 0.25 and enter the result.	\$
55	Secondary presumption determination. Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 51 is less than the amount on Line 54. Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. <input type="checkbox"/> The amount on Line 51 is equal to or greater than the amount on Line 54. Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII.	

Part VII. ADDITIONAL EXPENSE CLAIMS

56	Other Expenses. List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.																			
	<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:5%;"></th> <th style="width:75%;">Expense Description</th> <th style="width:20%;">Monthly Amount</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">a.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">d.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td colspan="2" style="text-align: right;">Total: Add Lines a, b, c, and d</td> <td style="text-align: center;">\$</td> </tr> </tbody> </table>		Expense Description	Monthly Amount	a.		\$	b.		\$	c.		\$	d.		\$	Total: Add Lines a, b, c, and d		\$	
	Expense Description	Monthly Amount																		
a.		\$																		
b.		\$																		
c.		\$																		
d.		\$																		
Total: Add Lines a, b, c, and d		\$																		

Part VIII. VERIFICATION

57	I declare under penalty of perjury that the information provided in this statement is true and correct. <i>(If this is a joint case, both debtors must sign.)</i> Date: <u>March 23, 2012</u> Signature: <u>/s/ Mohamed Ali Samantar</u> <div style="text-align: center;">Mohamed Ali Samantar <i>(Debtor)</i></div>	
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* Amounts are subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

EXHIBIT F

PUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

BASHE ABDI YOUSUF; OFFICER JOHN
DOE 1; JANE DOE 1; JOHN DOE 2;
JOHN DOE 3; JOHN DOE 4; AZIZ
DERIA,

Plaintiffs-Appellants,

v.

MOHAMED ALI SAMANTAR,

Defendant-Appellee.

ALLARD K. LOWENSTEIN
INTERNATIONAL HUMAN RIGHTS
CLINIC, Yale Law School;
AMERICAN FRIENDS SERVICE
COMMITTEE; BOSTON CENTER FOR
REFUGEE HEALTH AND HUMAN
RIGHTS; CONSISTENT LIFE;
EARTHRIGHTS INTERNATIONAL;
DOLLY FILARTIGA; FLORIDA
CENTER FOR SURVIVORS OF
TORTURE; GLOBAL LAWYERS AND
PHYSICIANS; HUMAN RIGHTS FIRST;
HUMAN RIGHTS WATCH;
MARYKNOLL OFFICE OF GLOBAL
CONCERNS; MUSLIM PUBLIC AFFAIRS
COUNCIL; SISTER DIANNA ORTIZ;

No. 07-1893

PROGRAM FOR SURVIVORS OF
TORTURE AND SEVERE TRAUMA;
PROGRAM FOR TORTURE VICTIMS;
ROCKY MOUNTAIN SURVIVORS
CENTER; SURVIVORS OF TORTURE,
INTERNATIONAL; THE SHALOM
CENTER; TORTURE ABOLITION AND
SURVIVORS SUPPORT COALITION
INTERNATIONAL; WORLD
ORGANIZATION FOR HUMAN RIGHTS
USA; INTERNATIONAL RIGHTS
ADVOCATES; INTERNATIONAL HUMAN
RIGHTS CLINIC, Human Rights
Program of Harvard Law School;
UNITED STATES MEMBER OF
CONGRESS AND LAW PROFESSORS,

Amici Supporting Appellants.

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)

Argued: September 23, 2008

Decided: January 8, 2009

Before TRAXLER, KING, and DUNCAN, Circuit Judges.

Reversed and remanded by published opinion. Judge Traxler wrote the opinion, in which Judge King joined. Judge Duncan wrote a separate concurring opinion.

YOUSUF v. SAMANTAR

3

COUNSEL

ARGUED: Tara M. Lee, COOLEY, GODWARD & KRONISH, L.L.P., Reston, Virginia, for Appellants. Frederick B. Goldberg, Bethesda, Maryland, for Appellee. **ON BRIEF:** Robert R. Vieth, Sherron N. Thomas, COOLEY, GODWARD & KRONISH, L.L.P., Reston, Virginia; Maureen P. Alger, COOLEY, GODWARD & KRONISH, L.L.P., Palo Alto, California; Pamela Merchant, Moira Feeney, CENTER FOR JUSTICE & ACCOUNTABILITY, San Francisco, California, for Appellants. Julian H. Spierer, SPIRER & GOLDBERG, P.C., Bethesda, Maryland, for Appellee. Tyler Giannini, HARVARD LAW SCHOOL, International Human Rights Clinic, Human Rights Program, Cambridge, Massachusetts, for Torture Survivors Support Organizations, Human Rights Organizations, Religious Organizations and Torture Survivors and Their Family Members, Amici Supporting Appellants. Deena R. Hurwitz, Germaine S. Dunn, Kerry M. Shapleigh, UNIVERSITY OF VIRGINIA SCHOOL OF LAW, Charlottesville, Virginia, for United States Member of Congress and Law Professors, Amici Supporting Appellants.

OPINION

TRAXLER, Circuit Judge:

Plaintiffs, all of whom are natives of Somalia, brought this action under the Torture Victim Protection Act of 1991, *see* Pub. L. 102-256, 106 Stat. 73 (1992), and the Alien Tort Statute, *see* 28 U.S.C. § 1350, seeking to impose liability against and recover damages from Defendant Mohamed Ali Samantar for alleged acts of torture and human rights violations committed against them by government agents commanded by Samantar during the regime of Mohamed Siad Barre. The district court concluded that Samantar enjoys immunity under the Foreign Sovereign Immunities Act ("FSIA"), *see* 28

U.S.C. §§ 1602-1611, and dismissed the action for lack of subject matter jurisdiction.

For the reasons set forth below, we conclude that the FSIA does not apply to individuals and, as a result, Samantar is not entitled to immunity under the FSIA. Because the FSIA does not apply in this case, it consequently does not deprive the district court of jurisdiction. Accordingly, we reverse the ruling of the district court dismissing for lack of subject matter jurisdiction under the FSIA and remand this action for further proceedings.

I.

A.

Plaintiffs all claim to have suffered torture or other abuses in violation of international law at the hands of Somali soldiers or other government agents under the general command of Samantar. Samantar became a high-ranking government official in Somalia as a result of his participation in a socialist coup staged by General Mohamed Barre in 1969. According to plaintiffs, "[p]ower 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." J.A. 32. In order to squelch potential opposition to its seizure of power, the SRC outlawed political parties and any organization not sanctioned by the government, and the SRC "systematically favored its own clans and oppressed other clans." J.A. 32. In particular, plaintiffs allege that the military government brutally oppressed the generally prosperous and well-educated Isaaq clan, which the government viewed as a threat, and imposed measures intended to harm the clan politically and economically.

Beginning in the late 1970s, opposition to the Barre regime developed within the disfavored clans and grew among the

general citizenry following Somalia's unsuccessful war against Ethiopia over the Ogaden territory. The military leadership reacted by imposing harsh control measures against government opponents, including the alleged commission of "numerous atrocities against ordinary citizens" in order to "terrorize the civilian population and to deter it from supporting the growing opposition movements." J.A. 33. Plaintiffs allege that government intelligence agencies, including the National Security Service ("NSS") and the military police, engaged in "the widespread and systematic use of torture, arbitrary detention and extrajudicial killing against the civilian population of Somalia." J.A. 33.

Three of the plaintiffs allege that they were personally subjected to this brutality. Plaintiff Bashe Abdi Yousuf, a member of the Isaaq clan, claims that NSS agents, suspecting him of anti-government activities, abducted him and tortured him by various methods, including electric shock and "the Mig," a means of torture whereby Yousuf's hands and feet were bound together in the air behind his back and a heavy rock was placed on his back. Plaintiff Jane Doe, also an Isaaq clan member, alleges that in 1985, she was abducted from her family home in Hargeisa by NSS agents, repeatedly tortured and raped, beaten to the point that she could not walk, and placed in solitary confinement for three and a half years. Finally, plaintiff John Doe II, also born into the Isaaq clan, alleges that, although he was a non-commissioned officer in the Somali National Army, he was arrested in 1988 with other Somali soldiers who were Isaaq clansmen and then shot during a mass execution. Doe survived his non-fatal wound by hiding under a pile of bodies.

The remaining plaintiffs are pursuing claims as personal representatives of the estates of family members allegedly killed by government agents. Plaintiff Aziz Mohamed Deria alleges that his father and brother were tortured and killed by soldiers based on his family's affiliation with the Isaaq clan. Plaintiff John Doe I, an Isaaq clansman, asserts that his two

brothers were abducted by government forces while tending the family's livestock and then executed.

Plaintiffs do not allege that Samantar personally committed these atrocities or that he was directly involved, but they claim that the responsible government agents operated against them and other civilians "with the tacit approval and permission of the Armed Forces and their commander, Defendant Samantar," J.A. 33, who served as Somalia's Minister of Defense from January 1980 to December 1986, and as Prime Minister from January 1987 to September 1990. Regardless of whether the alleged acts occurred during Samantar's tenure as Prime Minister or his stint as Minister of Defense, plaintiffs claim Samantar is subject to liability because, in either capacity, he knew or should have known about this conduct and, essentially, gave tacit approval for it.

Ultimately, any oppression of Somali civilians ended in January 1991, when the Barre regime collapsed and high ranking officials, including Samantar, fled Somalia. Samantar ended up in Virginia, where the plaintiffs, some of whom apparently are naturalized American citizens, found him.

B.

Plaintiffs brought this action for damages under the auspices of two statutes. First, plaintiffs seek to impose liability against Samantar under the Alien Tort Statute ("ATS"). The ATS grants 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." 28 U.S.C. § 1350. The ATS was enacted as part of the Judiciary Act of 1789 and has been on the books, in essentially its current form, ever since. *See Sosa v. Alvarez-Machain*, 542 U.S. 692, 712-13 & n.10 (2004). Fundamentally, "the ATS is a jurisdictional statute [that] creat[ed] no new causes of action"; rather, it was "enacted on the understanding that the common law would provide a cause of action for the modest number of

international law violations with a potential for personal liability at the time." *Id.* at 724.¹

Plaintiffs claim that the torture they suffered and the extrajudicial killings of their family members constituted violations of international law. Plaintiffs contend that Samantar is liable for these acts, both in his capacity as Minister of Defense and as Prime Minister of Somalia, because he "possessed and exercised command and effective control over the Armed Forces of Somalia" and that he "knew or should have known that his subordinates had committed, were committing, or were about to commit extrajudicial killings, . . . torture, crimes against humanity, war crimes, cruel, inhuman, or degrading treatment." J.A. 45.

Plaintiffs also contend that Samantar is liable under the Torture Victim Protection Act of 1991 ("TVPA"). The TVPA provides that "[a]n individual who, under actual or apparent authority, or color of law, of any foreign nation . . . subjects an individual to torture" or "subjects an individual to extrajudicial killing," is liable in a civil action for damages to the victim or the victim's legal representative. § 2(a), 106 Stat. 73. "Though the Torture Victim Act creates a cause of action for official torture, this statute, unlike the Alien Tort Act, is not itself a jurisdictional statute." *Kadic v. Karadzic*, 70 F.3d 232, 246 (2d Cir. 1995) (concluding that the TVPA "permits the appellants to pursue their claims of official torture under the jurisdiction conferred by the Alien Tort Act and also under the general federal question jurisdiction of section

¹According to the plain statutory language, one precondition for subject-matter jurisdiction to be conferred under the ATS is that suit be filed by an *alien*, not a citizen. See *Kadic v. Karadzic*, 70 F.3d 232, 238 (2d Cir. 1995) ("[The ATS] confers federal subject-matter jurisdiction when the following three conditions are satisfied: (1) an alien sues (2) for a tort (3) committed in violation of the law of nations (*i.e.*, international law).") To the extent that any of the claims under the ATS are being asserted by plaintiffs who are American citizens, federal subject-matter jurisdiction may be lacking. This issue should be explored upon remand.

1331"); *see Arce v. Garcia*, 434 F.3d 1254, 1257 n.8 (11th Cir. 2006) (assuming that § 1331, not the ATS, provides the jurisdictional basis for the TVPA).

C.

Samantar moved to dismiss for lack of jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure, arguing that he is entitled to immunity under the FSIA. The FSIA provides that, subject to certain exceptions not relevant here, "a *foreign state* shall be immune from the jurisdiction of the courts of the United States." 28 U.S.C. § 1604 (emphasis added).

Plaintiffs, of course, did not bring this action against Somalia or any other foreign state — they brought it against Samantar individually. Under the FSIA, however, the term "foreign state" encompasses more than merely the foreign sovereign itself; "foreign state" includes "a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in [§ 1603(b)]." 28 U.S.C. § 1603(a).² A majority of the courts considering the scope of "agency or instrumentality" have concluded that an individual foreign official acting within the scope of his official duties qualifies as an "agency or instrumentality of a foreign state." *See, e.g., Chuidian v. Philippine Nat'l Bank*, 912 F.2d 1095, 1103 (9th Cir. 1990).

The district court followed the majority view that individuals are covered under the FSIA and granted Samantar's motion to dismiss because "[t]he allegations in the complaint

²The FSIA distinguishes between "foreign state" and "agency or instrumentality of a foreign state" in only one instance – service of process under section 1608, which prescribes different methods for serving a foreign state and an instrumentality of that state. *See* 28 U.S.C. § 1608(a), (b). Otherwise, the phrase "agency or instrumentality of a foreign state" is essentially interchangeable with "foreign state" as those terms appear in the FSIA.

clearly describe Samantar, at all relevant times, as acting upon the directives of the then-Somali government in an official capacity, and not for personal reasons or motivation." J.A. 223. Additionally, the district court found it important that the current government in Somalia has expressly adopted the position that Samantar's alleged actions were taken in his official capacity.

The district court relied heavily upon two district court decisions. In *Belhas v. Ya'Alon*, 466 F. Supp. 2d 127 (D.D.C. 2006), a decision later affirmed by the District of Columbia Circuit Court of Appeals, *see* 515 F.3d 1279 (D.C. Cir. 2008), the court held that former Israeli general Moshe Ya'Alon was entitled to sovereign immunity under the FSIA against claims by civilian bombing victims pursuant to the ATS and the TVPA based on attacks conducted by the Israeli military in a 1996 skirmish with Hezbollah. Ya'Alon submitted a letter from the State of Israel officially affirming that his alleged acts were within the scope and course of his official duties and were "approved by the government of Israel in defense of its citizens against terrorist attacks." 466 F. Supp. 2d at 129 (internal quotation marks omitted). The court concluded that because plaintiffs attempted to impose liability based on Ya'Alon's command responsibility for state-approved attacks rather than acts of a personal or private nature, Ya'Alon "was acting as an agency or instrumentality of the foreign state [and was therefore] immune from suit under the FSIA." *Id.* at 130. Similarly, in *Matar v. Dichter*, 500 F.Supp.2d 284 (S.D.N.Y. 2007), the district court concluded that the FSIA immunized a former director of an Israeli intelligence agency from claims asserted under the ATS and the TVPA based on the director's involvement in the planning and execution of the bombing of a residential neighborhood in Gaza City. The district court in *Matar* based its conclusion on the absence of allegations suggesting that the director's conduct was of a personal nature and on a letter from the Israeli state department asserting that anything the director did in connection to the bombing incident was done in furtherance of his official duties.

In light of these decisions, the district court below reasoned that, "[a]s in the *Belhas* and *Matar* complaints, the complaint at issue does not allege that Samantar was acting on behalf of a personal motive or for private reasons." J.A. 218. The court further accorded "great weight" to the letters submitted by the current Somali government, concluding that the government's opinion reaffirmed that Samantar's involvement in the alleged atrocities was "in his official capacit[y]" and in furtherance of government efforts to "quell[] . . . the insurgencies from 1981 to 1989." J.A. 219. Accordingly, the district court concluded that Samantar was entitled to sovereign immunity under the FSIA and dismissed the plaintiffs' claims for lack of subject-matter jurisdiction. See *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989) ("[T]he text and structure of the FSIA demonstrate Congress' intention that the FSIA be the sole basis for obtaining jurisdiction over a foreign state in our courts.")

Plaintiffs challenge the district court's application of the FSIA on numerous grounds. Plaintiffs' most fundamental assertion is that Congress did not intend for individual foreign officials to claim sovereign immunity under the FSIA, *i.e.*, that the FSIA applies only to foreign states, not to individuals. Alternatively, plaintiffs contend that, even if the FSIA does apply to individual foreign officials, such persons are immune only if they are agents or officials of a foreign state at the time of suit. The FSIA, plaintiffs argue, does not shield *former* officials like Samantar from suit. We address each of these issues below.³

³Plaintiffs also contend that, even if the FSIA extends sovereign immunity to former foreign officials, the alleged acts attributed to Samantar, such as the torture and killing of civilians, are *per se* violations of "universally accepted norms of international law," *Kadic*, 70 F.3d at 243, which can never be within the scope of a foreign official's duties. Plaintiffs also claim that the FSIA is inapplicable because Somalia currently does not even exist in a form that would qualify it as a "foreign state" under the FSIA. See 28 U.S.C. § 1603(a). If there is no "foreign state," then *a fortiori* there is no "agency or instrumentality of a foreign state," 28 U.S.C. § 1603(b), as there would be no source from which an individual could derive sovereign immunity. In light of our disposition of this appeal, we need not address these arguments.

II.

When Congress enacted the FSIA in 1976, it did so against a backdrop of foreign sovereign immunity jurisprudence spanning more than 150 years. *See Amerada Hess*, 488 U.S. at 434 n.1. Beginning with *The Schooner Exchange*, 11 U.S. (7 Cranch) 116 (1812), the Supreme Court essentially granted absolute immunity from suit to all foreign states. Since foreign sovereign immunity is a matter of comity rather than constitutional law, the Court routinely "deferred to the decisions of the political branches . . . on whether to take jurisdiction over actions against foreign sovereigns and their instrumentalities." *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 486 (1983). And, "[u]ntil 1952, the State Department ordinarily requested immunity in all actions against friendly foreign sovereigns." *Id.* In 1952, however, the State Department changed its policy of suggesting immunity in every case involving a foreign sovereign and instead adopted a restrictive theory of sovereign immunity which permitted "foreign states [to] be sued in United States courts for their commercial acts, but not for their public acts." *Amerada Hess*, 488 U.S. at 431 n.1. One consequence of the restrictive theory, however, was that "foreign nations often placed diplomatic pressure on the State Department," which still bore the primary "responsibility for deciding questions of sovereign immunity." *Verlinden*, 461 U.S. at 487.

In 1976, Congress enacted the FSIA, shifting responsibility for deciding questions of foreign sovereign immunity from the Executive Branch to the Judicial Branch "in order to free the Government from the case-by-case diplomatic pressures, [and] to clarify the governing standards." *Id.* at 488; *see* 28 U.S.C. § 1602. The FSIA essentially codifies the restrictive theory of foreign sovereign immunity under which a "foreign state" is "immune from the jurisdiction of the courts of the United States . . . except as provided in sections 1605 to 1607."⁴

⁴None of these sections contains an applicable exception in this case. *See* 28 U.S.C. § 1605 (exceptions to foreign state's presumptive immunity)

28 U.S.C. § 1604. Congress did not define the term "foreign state" except to say that it "includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b)." 28 U.S.C. § 1603(a). In turn, subsection (b) defines "agency or instrumentality of a foreign state" as

any entity—

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (e) of this title, nor created under the laws of any third country.

28 U.S.C. § 1603(b).

Because there is no explicit mention of individuals or natural persons, it is not readily apparent that Congress intended the FSIA to apply to individuals. Before we address the merits of this issue, however, we must make sure that we are not foreclosed from doing so by circuit precedent.

include waiver of immunity; commercial activity within or directly affecting the United States; various claims involving property; noncommercial torts committed in the United States; and maritime liens); § 1606 (prescribing the extent of a foreign state's liability on claims "with respect to which [it] is not entitled to immunity"; § 1607 (involving counterclaims in lawsuits brought in federal courts by a foreign state); *see generally Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 439-40 (1989) (listing and discussing exceptions set forth in § 1605).

A.

Samantar takes the position that we settled the question of whether the FSIA applies to individual foreign government officials in *Velasco v. The Government of Indonesia*, 370 F.3d 392 (4th Cir. 2004), siding with the majority of the federal appellate courts that have directly addressed the issue.

As noted previously, the majority view clearly is that the FSIA applies to individual officials of a foreign state, as explained in the Ninth Circuit's seminal *Chuidian* decision. See 912 F.2d at 1099-1103. Most of the decisions embracing the view that individuals are covered by the FSIA either expressly adopt *Chuidian*'s reasoning or incorporate substantially similar reasoning. See, e.g., *In re Terrorist Attacks on September 11, 2001*, 538 F.3d 71, 83 (2d Cir. 2008) (explaining that "agency or instrumentality" is broad enough to encompass "senior members of a foreign state's government"); *Keller v. Central Bank of Nigeria*, 277 F.3d 811, 815-16 (6th Cir. 2002) (concluding individual defendants were within "agency or instrumentality" provision); *Byrd v. Corporacion Forestal y Industrial de Olancho*, 182 F.3d 380, 388-89 (5th Cir. 1999) (adopting majority position as articulated in *Chuidian*); *El-Fadl v. Central Bank of Jordan*, 75 F.3d 668, 671 (D.C. Cir. 1996) (same). *Chuidian* holds the definition of an "agency or instrumentality of a foreign state" under § 1603(b) encompasses "individual officials acting in their official capacity." 912 F.2d at 1101. By contrast, the Seventh Circuit stands alone in concluding that the FSIA does not apply to individuals. See *Enahoro v. Abubakar*, 408 F.3d 877, 881-82 (7th Cir. 2005) (rejecting the *Chuidian* approach as inconsistent with the statutory text).

For the reasons that follow, we believe this is still an open question in the Fourth Circuit. In fairness to Samantar, however, he is not alone in his reading of *Velasco*, as a number of courts and commentators believe *Velasco* adopted the majority position. See, e.g., *Kensington Int'l Ltd. v. Itoua*, 505

F.3d 147, 160 (2d Cir. 2007) (reading *Velasco* as "conclud[ing] that the FSIA applies to individuals acting in their official capacity" in reliance on *Chuidian*); Stewart, David P., *The UN Convention on Jurisdictional Immunities of States and Their Property*, 99 Am. J. Int'l L. 194, 196 n.13 (2005) (including *Velasco* in a list of decisions by "[a] growing number of U.S. courts [that] have held that the FSIA applies to individual officials of foreign governments to the extent their actions were performed in their official capacities"). We do not read our decision in *Velasco* in this manner.

It is true that *Velasco* cited *Chuidian* and noted that numerous courts have construed the FSIA to cover individual foreign officials acting within the scope of their authority. *Velasco*, however, was ultimately focused on the wholly separate question of whether, and under what circumstances, the acts of an individual operate to *bind* a foreign sovereign claiming immunity under the FSIA. *See Velasco*, 370 F.3d at 399-400.

The plaintiff in *Velasco* brought an action to collect on an Indonesian promissory note issued by staff members of Indonesia's National Defense Security Council ("NDSC"). Indonesia claimed sovereign immunity under the FSIA, and the parties agreed the only possible basis for jurisdiction was the FSIA's "commercial activity" exception under which there is no immunity against claims "based upon a commercial activity carried on in the United States by the foreign state." 28 U.S.C. § 1605(a)(2). As it turned out, the promissory notes were fraudulent instruments that the NDSC staff members had no authority to issue. Indonesia argued that the lawsuit was not based on commercial activity "by [a] foreign state," *i.e.*, that the unauthorized conduct of the NDSC staffers could not be attributed to Indonesia. *See Velasco*, 370 F.3d at 398. Applying the well-established tenet that an "act of an agent beyond what he is legally empowered to do is not binding on the government," *id.* at 399, we concluded that

[b]y issuing the notes, the individual Defendants acted ultra vires and in violation of Indonesian law. As a consequence, the issuance of the notes cannot be characterized as the commercial activity of a foreign state which divests the NDSC or the Government of Indonesia of their sovereign immunity.

Id. at 402. Thus, despite the reference to *Chuidian* and other decisions addressing the scope of § 1603(b), *Velasco* was not about whether an individual government official was entitled to sovereign immunity as an "agency or instrumentality of a foreign state." Rather, it was about whether the Indonesian government was bound, through *agency principles*, by the unauthorized acts of individual government officials.⁵

Accordingly, *Velasco* did not settle the question of whether Congress intended to confer sovereign immunity under the FSIA on an individual acting within the scope of his authority.

B.

In determining congressional intent, we focus of course on the language of the provision at issue, but we also consider the overall structure and purpose of the statute. *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992). Under the FSIA, an "agency or instrumentality of a foreign state" is defined as an "entity" that "is a separate legal person, corporate or otherwise." 28 U.S.C. § 1603(b)(1). The phrase

⁵*Velasco* also examined and rejected the question of whether a foreign state can be bound under the FSIA by an individual agent who has apparent but not actual authority. *See Velasco v. The Government of Indonesia*, 370 F.3d 392, 400 (4th Cir. 2004) ("Whether a third party reasonably perceives that the sovereign has empowered its agent to engage in a transaction . . . is irrelevant if the sovereign's constitution or laws . . . do not authorize the agent's conduct and the third party fails to make a proper inquiry. We conclude that a foreign official's manifestation of authority to bind the sovereign is insufficient to bind the sovereign.").

"separate legal person" is laden with corporate connotations. Generally, courts use this phrase as "a convenient way to capture the essence of the principal of limited liability" that flows from "[t]he fiction of corporate personhood." *Beiser v. Weyler*, 284 F.3d 665, 670 (5th Cir. 2002). "A basic tenet of American corporate law is that the corporation and its shareholders are distinct entities." *Dole Food Co. v. Patrickson*, 538 U.S. 468, 474 (2003). The idea of a "[s]eparate legal personality has been described as an almost indispensable aspect of the public corporation." *First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 625 (1983) (internal quotation marks omitted). We find the Seventh Circuit's view of this passage especially persuasive:

[I]f it was a natural person Congress intended to refer to, it is hard to see why the phrase "separate legal person" would be used, having as it does the ring of the familiar legal concept that corporations are persons, which are subject to suit. Given that the phrase "corporate or otherwise" follows on the heels of "separate legal person," we are convinced that the latter phrase refers to a legal fiction—a business entity which is a legal person. If Congress meant to include individuals acting in the official capacity in the scope of the FSIA, it would have done so in clear and unmistakable terms.

Enahoro, 408 F.3d at 881-82. Thus, the FSIA's use of the phrase "separate legal person" suggests that corporations or other business entities, but not natural persons, may qualify as agencies or instrumentalities.

Moreover, in order to ensure that an "agency or instrumentality" seeking the benefits of sovereign immunity is actually connected to a "foreign state," the FSIA requires that the "entity" be "neither a citizen of a State of the United States as defined in section 1332(c) and (e) of [Title 28], nor created under the laws of any third country." 28 U.S.C. § 1603(b)(3)

(emphasis added). Sections 1332(c) and (e), which govern the citizenship of corporations and legal representatives of estates, are inapplicable to individuals, and it is nonsensical to speak of an individual, rather than a corporate entity, being "created" under the laws of a country.

Construing "agency or instrumentality" to refer to a political body or corporate entity, but not an individual, is also consistent with the overall statutory scheme of the FSIA. Section 1608, for example, establishes the exclusive means for service of process on a foreign state or its agencies or instrumentalities. *See* 28 U.S.C. § 1608(a), (b); Fed. R. Civ. P. 4(j)(1). Section 1608(b), which addresses service upon an agency or instrumentality, does not contemplate service on an individual, but instead provides that absent a "special arrangement for service between the plaintiff and the agency or instrumentality," service must be perfected "by delivery of a copy of the summons and complaint either to an *officer, a managing or general agent, or to any other agent authorized by appointment or by law* to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents." 28 U.S.C. § 1608(b) (emphasis added). This language is strikingly similar to the general procedural rule for service on a corporation or other business entity. *See* Fed. R. Civ. P. 4(h)(1)(B). The requirements for serving an individual, by contrast, can be found back in Rule 4(e) ("Serving an Individual Within a Judicial District of the United States"), or even Rule 4(f) ("Serving an Individual in a Foreign Country"). The fact that section 1608 uses language virtually identical to that found in Rule 4(h) for service upon corporate entities and fails to prescribe or refer to service provisions for individual defendants strongly supports our interpretation that "an agency or instrumentality of a foreign state" cannot be an individual.

We also find confirmation for our understanding of the FSIA in the House Committee Report on the FSIA. The House Report explained that "separate legal person" was "in-

tended to include a corporation, association, foundation, or any other entity which, under the law of the foreign state where it was created, can sue or be sued in its own name, contract in its own name or hold property in its own name." H.R. Rep. No. 94-1487, at 15 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 6604, 6614. The House Committee Report provided some examples of entities that would satisfy the prerequisites for an agency or instrumentality under section 1603(b), "including a state trading corporation, a mining enterprise, a transport organization such as a shipping line or airline, a steel company, a central bank, an export association, a governmental procurement agency or a department or ministry which acts and is suable in its own name." H.R. Rep. No. 94-1487, at 16, *as reprinted in* 1976 U.S.C.C.A.N. at 6614.

Accordingly, we conclude, based on the language and structure of the statute, that the FSIA does not apply to individual foreign government agents like Samantar. Accordingly, the district court erred by concluding that Samantar is shielded from suit by the FSIA.

III.

Plaintiffs also present the closely related argument that the FSIA requires the court to assess whether an entity qualifies as an "agency or instrumentality of a foreign state" under section 1603(b) based on that entity's status at the time that the action is filed rather than the time of the underlying conduct. More simply, plaintiffs believe that even if the FSIA applies to individual defendants, Congress did not intend to shield *former government agents* from suit under the FSIA. We agree.

The Supreme Court addressed the temporal implications of section 1603(b) in *Dole Food Co. v. Patrickson*, 538 U.S. 480 (2003). In *Dole Food*, the Dead Sea Companies corporation claimed immunity under the FSIA as an instrumentality of the State of Israel, which owned a majority share in parent com-

panies of the Dead Sea Companies at the time of the events being litigated but not at the time of suit. *See* 28 U.S.C. § 1603(b)(2) ("An 'agency or instrumentality of a foreign state' includes an entity "a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof."). The Court held that "the plain text of this provision, because it is expressed in the present tense, requires that instrumentality status be determined at the time suit is filed." *Id.* at 478. The Court explained that its focus on the significance of the present tense was faithful to the general rule "that 'the jurisdiction of the Court depends upon the state of things at the time of the action brought.'" *Id.* (quoting *Keene Corp. v. United States*, 508 U.S. 200, 207 (1993)).

Samantar argues that *Dole Food* does not apply here because the Court was construing language that applied exclusively to corporations. Unfortunately for Samantar, this argument knocks the legs out from under his own contention that the FSIA applies to individuals. If, as Samantar suggests, an individual can be an "agency or instrumentality of a foreign state," then the language of section 1603(b)(2) — the very section considered in *Dole Food*—*must* apply to both corporations *and* individuals. An entity, regardless of its form, can be an "agency or instrumentality of a foreign state" only if that entity satisfies all three provisions of subsection (b). *See* 28 U.S.C. § 1603(b). Therefore, we cannot dismiss the Supreme Court's construction merely because the defendant in *Dole Food* was a corporate entity. And, like the "ownership interest" clause at issue in *Dole Food*, the clause immediately preceding it is also expressed in the present tense. Under section 1603(b)(2), an entity can be an "agency or instrumentality of a foreign state" only if that entity "*is* an organ of a foreign state or political subdivision thereof." 28 U.S.C. § 1603(b)(2) (emphasis added); *cf. Yi v. Federal Bureau of Prisons*, 412 F.3d 526, 533 (4th Cir. 2005) (noting "the strong presumption that identical terms used in the same sentence of a statute carry the same meaning"). Samantar's interpretation would require us to bypass the plain text of the statute in favor

of a reading at odds with *Dole Food*. We see nothing in the statute suggesting that, if Congress intended individual foreign officials to be covered by the FSIA in the first place, it likewise intended to treat individuals differently than any other entity qualifying as an "agency or instrumentality" or depart from the principle that jurisdiction hinges on "the state of things at the time of the action" only in the case of individuals. *Dole Food*, 538 U.S. at 478 (internal quotation marks omitted).

Finding the plain text unavailing, Samantar offers a policy basis for distinguishing between former individual government officials and corporations formerly owned by a foreign state. He suggests that when a government sells or transfers its majority interest in a corporation, the new purchasers have an opportunity to bargain for indemnification for any liabilities arising before the transfer of ownership, making immunity from suit less critical than it is for former individual government agents, who have no such opportunity. Beyond requiring us to ignore unambiguous language in a statute, which we cannot do, *see Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 461-62 (2002), Samantar's reasoning is inconsistent with the purpose of foreign sovereign immunity, which is to protect international relations between the United States and foreign sovereigns as a matter of comity. *See Republic of Austria v. Altmann*, 541 U.S. 677, 696 (2004). Samantar's hypothesis, by contrast, focuses on the protection of individual foreign officials in a way that is reminiscent of qualified immunity or other status-based immunities that are concerned with matters as they exist at the time of the offending conduct.

Dole Food is instructive on this point, explaining that qualified immunity, for example, "prevent[s] the threat of suit from crippling the proper and effective administration of public affairs," *id.* at 479 (alteration and internal quotation marks omitted), while "[f]oreign sovereign immunity, by contrast, is *not meant to avoid chilling* foreign states or their instrumentalities *in the conduct of their business* but to give foreign

states and their instrumentalities some protection from the inconvenience of suit as a gesture of comity between the United States and other sovereigns." *Id.* (emphasis added); see *Verlinden*, 461 U.S. at 486 (explaining that the underpinnings of "foreign sovereign immunity" are "a matter of grace and comity on the part of the United States"). The doctrine of foreign sovereign immunity developed in the pre-FSIA common law out of a concern for "our national interest" and the preservation of amicable international relations. *Ex parte Republic of Peru*, 318 U.S. 578, 589 (1943); *Republic of Mexico v. Hoffman*, 324 U.S. 30, 36 (1945) (observing that the assertion of judicial power over the property of a foreign state may be viewed as "an affront to its dignity and may . . . affect our relations with it"). The FSIA preserves this basic purpose of sovereign immunity, which "has never been to permit foreign states and their instrumentalities to shape their conduct in reliance on the promise of future immunity from suit," but instead "aims to give foreign states . . . some *present* protection from the inconvenience of suit as a gesture of comity." *Altmann*, 541 U.S. at 696 (internal quotation marks omitted) (emphasis in original).

In sum, we conclude that even if an individual foreign official could be an "agency or instrumentality under the FSIA," sovereign immunity would be available only if the individual were still an "agency or instrumentality" at the time of suit. *Dole Food* guides our resolution of this issue, regardless of whether the purported agency or instrumentality is a corporation owned by a foreign government or an individual foreign official; we see nothing in the statute or its underlying purpose to suggest otherwise. Samantar was certainly no longer a Somali government official at the time the plaintiffs brought this action and is therefore not entitled to immunity under the FSIA.

IV.

For these reasons, we reverse the decision of the district court that it lacks subject matter jurisdiction under the FSIA,

and we remand for further proceedings. Samantar suggests, despite the adverse ruling on the question of sovereign immunity, that we ought to affirm the result on alternative grounds. Samantar contends that, even if he is not covered under the FSIA, he is shielded from suit by a common law immunity doctrine such as head-of-state immunity. *See In re Grand Jury Proceedings*, 817 F.2d 1108, 1110 ("Head-of-state immunity is a doctrine of customary international law . . . maintain[ing] that a head of state is immune from the jurisdiction of a foreign state's courts, at least as to authorized official acts taken while the ruler is in power.") (4th Cir. 1987); *see also Ye v. Zemin*, 383 F.3d 620, 625 (7th Cir. 2004) ("Because the FSIA does not apply to heads of states, the decision concerning the immunity of foreign heads of states remains vested where it was prior to 1976 — with the Executive Branch."). He also contends that plaintiffs' claims under the ATS and the TVPA are time-barred, and that plaintiffs' claims are also barred because they failed to exhaust their legal remedies in Somalia. In view of its conclusion that it lacked jurisdiction, the district court did not address these issues below. We conclude that these questions are better addressed in the first instance by the district court and therefore decline to address them now. We conclude only that Samantar is not entitled to sovereign immunity under the FSIA; whether he can successfully invoke an immunity doctrine arising under pre-FSIA common law is an open question which Samantar is free to pursue on remand, along with the aforementioned procedural questions. Finally, our decision should not be read to intimate that plaintiffs have necessarily stated viable claims against Samantar under the ATS or TVPA; those are also open questions for remand.

REVERSED AND REMANDED

DUNCAN, Circuit Judge, concurring in Parts I and II and concurring in the judgment:

With respect, I join in all but Part III of Judge Traxler's incisive opinion. I agree with the majority that the Foreign

Sovereign Immunities Act ("FSIA") does not, upon examination of its plain language and the context of its drafting, apply to individual officers of foreign states. I note as well that our decision on this issue is not the radical departure from the course of current authority that it might seem. While few of our sister circuits have reached the same conclusion, the United States Department of State has argued in analogous cases that the common law immunities that predate the FSIA remain the appropriate body of law under which courts should consider the sovereign immunity of individuals. Our decision in this case is in keeping with this position and with the statutory text of the FSIA itself. I therefore concur in Parts I and II of the opinion and in the judgment reversing the district court and remanding this case for further proceedings.

Our conclusion that the FSIA does not apply to individuals is sufficient to resolve the case before us. Therefore, I do not join my colleagues in reaching the question of whether and how *Dole Food Co. v. Patrickson*, 538 U.S. 480 (2003), would apply to individual foreign officers. Prudential considerations also militate against an expansive holding. Sovereign immunity, while a judicial question, is inextricably bound up with the executive branch's conduct of foreign affairs, and I would prefer to err on the side of caution in the extension of our jurisprudence.

EXHIBIT G

(Slip Opinion)

OCTOBER TERM, 2009

1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SAMANTAR *v.* YOUSUF ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT

No. 08–1555. Argued March 3, 2010—Decided June 1, 2010

Respondents, who were persecuted by the Somali government during the 1980’s, filed a damages action alleging that petitioner, who then held high level government positions, exercised command and control over the military forces committing the abuses; that he knew or should have known of these acts; and that he aided and abetted in their commission. The District Court concluded that it lacked subject-matter jurisdiction and granted petitioner’s motion to dismiss the suit, resting its decision on the Foreign Sovereign Immunities Act of 1976 (FSIA or Act), which provides that a “foreign state shall be immune from the jurisdiction” of both federal and state courts except as provided in the Act, 28 U. S. C. §1604. The Fourth Circuit reversed, holding that the FSIA does not apply to officials of a foreign state.

Held: The FSIA does not govern petitioner’s claim of immunity. Pp. 4–20.

(a) Under the common-law doctrine of foreign sovereign immunity, see *Schooner Exchange v. McFaddon*, 7 Cranch 116, if the State Department granted a sovereign’s diplomatic request for a “suggestion of immunity,” the district court surrendered its jurisdiction, *Ex parte Peru*, 318 U. S. 573, 581, 587. If the State Department refused, the court could decide the immunity issue itself. *Id.*, at 587. In 1952, the State Department moved from a policy of requesting immunity in most actions against friendly sovereigns to a “restrictive” theory that confined immunity “to suits involving the foreign sovereign’s public acts.” *Verlinden B. V. v. Central Bank of Nigeria*, 461 U. S. 480, 487. Inconsistent application of sovereign immunity followed, leading to the FSIA, whose primary purposes are (1) to endorse and codify the restrictive theory, and (2) to transfer primary responsibility for deciding “claims of foreign states to immunity” from the State Department

Syllabus

to the courts. §1602. This Act now governs the determination whether a foreign state is entitled to sovereign immunity. Pp. 4–7.

(b) Reading the FSIA as a whole, there is nothing to suggest that “foreign state” should be read to include an official acting on behalf of that state. The Act specifies that a foreign state “includes a political subdivision . . . or an agency or instrumentality” of that state, §1603(a), and specifically delimits what counts as an “agency or instrumentality,” §1603(b). Textual clues in the “agency or instrumentality” definition—“any entity” matching three specified characteristics, *ibid.*—cut against reading it to include a foreign official. “Entity” typically refers to an organization; and the required statutory characteristics—*e.g.*, “separate legal person,” §1603(b)(1)—apply awkwardly, if at all, to individuals. Section 1603(a)’s “foreign state” definition is also inapplicable. The list set out there, even if illustrative rather than exclusive, does not suggest that officials are included, since the listed defendants are all entities. The Court’s conclusion is also supported by the fact that Congress expressly mentioned officials elsewhere in the FSIA when it wished to count their acts as equivalent to those of the foreign state. Moreover, other FSIA provisions—*e.g.*, §1608(a)—point away from reading “foreign state” to include foreign officials. Pp. 7–13.

(c) The FSIA’s history and purposes also do not support petitioner’s argument that the Act governs his immunity claim. There is little reason to presume that when Congress codified state immunity, it intended to codify, *sub silentio*, official immunity. The canon of construction that statutes should be interpreted consistently with the common law does not help decide the question whether, when a statute’s coverage is ambiguous, Congress intended it to govern a particular field. State and official immunities may not be coextensive, and historically, the Government has suggested common-law immunity for individual officials even when the foreign state did not qualify. Though a foreign state’s immunity may, in some circumstances, extend to an individual for official acts, it does not follow that Congress intended to codify that immunity in the FSIA. Official immunity was simply not the problem that Congress was addressing when enacting that Act. The Court’s construction of the Act should not be affected by the risk that plaintiffs may use artful pleading to attempt to select between application of the FSIA or the common law. This case, where respondents have sued petitioner in his personal capacity and seek damages from his own pockets, is governed by the common law because it is not a claim against a foreign state as defined by the FSIA. Pp. 13–19.

(d) Whether petitioner may be entitled to common-law immunity and whether he may have other valid defenses are matters to be ad-

Cite as: 560 U. S. ____ (2010)

3

Syllabus

 dressed in the first instance by the District Court. P. 20.
552 F. 3d 371, affirmed and remanded.

 STEVENSON, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, ALITO, and SOTOMAYOR, JJ., joined. ALITO, J., filed a concurring opinion. THOMAS, J., filed an opinion concurring in part and concurring in the judgment. SCALIA, J., filed an opinion concurring in the judgment.

Cite as: 560 U. S. ____ (2010)

1

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 08–1555

MOHAMED ALI SAMANTAR, PETITIONER *v.* BASHE
ABDI YOUSUF ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[June 1, 2010]

JUSTICE STEVENS delivered the opinion of the Court.

From 1980 to 1986 petitioner Mohamed Ali Samantar was the First Vice President and Minister of Defense of Somalia, and from 1987 to 1990 he served as its Prime Minister. Respondents are natives of Somalia who allege that they, or members of their families, were the victims of torture and extrajudicial killings during those years. They seek damages from petitioner based on his alleged authorization of those acts. The narrow question we must decide is whether the Foreign Sovereign Immunities Act of 1976 (FSIA or Act), 28 U. S. C. §§1330, 1602 *et seq.*, provides petitioner with immunity from suit based on actions taken in his official capacity. We hold that the FSIA does not govern the determination of petitioner’s immunity from suit.

I

Respondents are members of the Isaaq clan, which included well-educated and prosperous Somalis who were subjected to systematic persecution during the 1980’s by the military regime then governing Somalia. They allege that petitioner exercised command and control over mem-

Opinion of the Court

bers of the Somali military forces who tortured, killed, or arbitrarily detained them or members of their families; that petitioner knew or should have known of the abuses perpetrated by his subordinates; and that he aided and abetted the commission of these abuses.¹ Respondents' complaint sought damages from petitioner pursuant to the Torture Victim Protection Act of 1991, 106 Stat. 73, note following 28 U. S. C. §1350, and the Alien Tort Statute, 28 U. S. C. §1350. Petitioner, who was in charge of Somalia's armed forces before its military regime collapsed, fled Somalia in 1991 and is now a resident of Virginia. The United States has not recognized any entity as the government of Somalia since the fall of the military regime. See Brief for United States as *Amicus Curiae* 4.

Respondents filed their complaint in November 2004, and petitioner promptly moved to dismiss. The District Court stayed the proceedings to give the State Department an opportunity to provide a statement of interest regarding petitioner's claim of sovereign immunity. Each month during the ensuing two years, petitioner advised the court that the State Department had the matter "still under consideration." No. 1:04cv1360 (ED Va., Aug. 1, 2007), App. to Pet. for Cert. 44a. In 2007, having received no response from the State Department, the District Court reinstated the case on its active docket. The court concluded that it did not have subject-matter jurisdiction and granted petitioner's motion to dismiss.

The District Court's decision rested squarely on the

¹Although we do not set out respondents' allegations in detail, the District Court's written opinion contains a comprehensive summary, describing not only the abuses respondents suffered but also the historical context in which the abuses occurred, as well as some of the attempts to establish a stable government in Somalia in recent years. See No. 1:04cv1360 (ED Va., Aug. 1, 2007), App. to Pet. for Cert. 31a–43a.

Cite as: 560 U. S. ____ (2010)

3

Opinion of the Court

FSIA.² The FSIA provides that a “foreign state shall be immune from the jurisdiction” of both federal and state courts except as provided in the Act, 28 U. S. C. §1604, and the District Court noted that none of the parties had argued that any exception was applicable, App. to Pet. for Cert. 46a–47a. Although characterizing the statute as silent on its applicability to the officials of a foreign state, the District Court followed appellate decisions holding that a foreign state’s sovereign immunity under the Act extends to “an individual acting in his official capacity on behalf of a foreign state,” but not to “an official who acts beyond the scope of his authority.” *Id.*, at 47a (quoting *Velasco v. Government of Indonesia*, 370 F. 3d 392, 398, 399 (CA4 2004)). The court rejected respondents’ argument that petitioner was necessarily acting beyond the scope of his authority because he allegedly violated international law.³

The Court of Appeals reversed, rejecting the District Court’s ruling that the FSIA governs petitioner’s immunity from suit. It acknowledged “the majority view”

²Petitioner argued that, in addition to his immunity under the FSIA, the complaint should be dismissed on a number of other grounds, which the District Court did not reach. See *id.*, at 45a, n. 11.

³Because we hold that the FSIA does not govern whether an individual foreign official enjoys immunity from suit, we need not reach respondents’ argument that an official is not immune under the FSIA for acts of torture and extrajudicial killing. See Brief for Respondents 51–53. We note that in determining petitioner had not acted beyond the scope of his authority, the District Court afforded great weight to letters from the Somali Transitional Federal Government (TFG) to the State Department, App. to Pet. for Cert. 55a, in which the TFG supported petitioner’s claim of immunity and stated “the actions attributed to [petitioner] in the lawsuit . . . would have been taken by [petitioner] in his official capacities,” App. 104. Although the District Court described the TFG as “recognized by the United States as the governing body in Somalia,” App. to Pet. for Cert. 54a, the United States does not recognize the TFG (or any other entity) as the government of Somalia, see Brief for United States as *Amicus Curiae* 5.

Opinion of the Court

among the Circuits that “the FSIA applies to individual officials of a foreign state.” 552 F.3d 371, 378 (CA4 2009).⁴ It disagreed with that view, however, and concluded, “based on the language and structure of the statute, that the FSIA does not apply to individual foreign government agents like [petitioner].” *Id.*, at 381.⁵ Having found that the FSIA does not govern whether petitioner enjoys immunity from suit, the Court of Appeals remanded the case for further proceedings, including a determination of whether petitioner is entitled to immunity under the common law. *Id.*, at 383–384. We granted certiorari. 557 U. S. ____ (2009).

II

The doctrine of foreign sovereign immunity developed as a matter of common law long before the FSIA was enacted in 1976. In *Verlinden B. V. v. Central Bank of Nigeria*, 461 U. S. 480, 486 (1983), we explained that in *Schooner Exchange v. McFaddon*, 7 Cranch 116 (1812), “Chief Justice Marshall concluded that . . . the United States had impliedly waived jurisdiction over certain activities of

⁴Compare 552 F.3d, at 381 (holding the FSIA does not govern the immunity of individual foreign officials), and *Enahoro v. Abubakar*, 408 F.3d 877, 881–882 (CA7 2005) (same), with *Chuidian v. Philippine Nat. Bank*, 912 F.2d 1095, 1103 (CA9 1990) (concluding that a suit against an individual official for acts committed in his official capacity must be analyzed under the FSIA), *In re Terrorist Attacks on September 11, 2001*, 538 F.3d 71, 83 (CA2 2008) (same), *Keller v. Central Bank of Nigeria*, 277 F.3d 811, 815 (CA6 2002) (same), *Byrd v. Corporacion Forestal y Industrial de Olancho S. A.*, 182 F.3d 380, 388 (CA5 1999) (same), and *El-Fadl v. Central Bank of Jordan*, 75 F.3d 668, 671 (CA10 1996) (same).

⁵As an alternative basis for its decision, the Court of Appeals held that even if a current official is covered by the FSIA, a former official is not. See 552 F.3d, at 381–383. Because we agree with the Court of Appeals on its broader ground that individual officials are not covered by the FSIA, petitioner’s status as a former official is irrelevant to our analysis.

Cite as: 560 U. S. ____ (2010)

5

Opinion of the Court

foreign sovereigns.” The Court’s specific holding in *Schooner Exchange* was that a federal court lacked jurisdiction over “a national armed vessel . . . of the emperor of France,” *id.*, at 146, but the opinion was interpreted as extending virtually absolute immunity to foreign sovereigns as “a matter of grace and comity,” *Verlinden*, 461 U. S., at 486.

Following *Schooner Exchange*, 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 (CA2 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. Although cases involving individual foreign officials as defendants were rare, the same two-step procedure was typically followed when a foreign official asserted immunity. See, e.g., *Heaney*, 445 F. 2d, at 504–505; *Waltier v.*

Opinion of the Court

Thomson, 189 F. Supp. 319 (SDNY 1960).⁶

Prior to 1952, the State Department followed a general practice of requesting immunity in all actions against friendly sovereigns, but in that year the Department announced its adoption of the “restrictive” theory of sovereign immunity. *Verlinden*, 461 U. S., at 486–487; see also Letter from Jack B. Tate, Acting Legal Adviser, Department of State, to Acting Attorney General Philip B. Perlman (May 19, 1952), reprinted in 26 Dept. State Bull. 984–985 (1952). Under this theory, “immunity is confined to suits involving the foreign sovereign’s public acts, and does not extend to cases arising out of a foreign state’s strictly commercial acts.” *Verlinden*, 461 U. S., at 487. This change threw “immunity determinations into some disarray,” because “political considerations sometimes led the Department to file ‘suggestions of immunity in cases where immunity would not have been available under the restrictive theory.’” *Republic of Austria v. Altmann*, 541 U. S. 677, 690 (2004) (quoting *Verlinden*, 461 U. S., at 487).

Congress responded to the inconsistent application of sovereign immunity by enacting the FSIA in 1976. *Altmann*, 541 U. S., at 690–691; see also *Verlinden*, 461 U. S., at 487–488. Section 1602 describes the Act’s two primary purposes: (1) to endorse and codify the restrictive theory of sovereign immunity, and (2) to transfer primary responsibility for deciding “claims of foreign states to immunity” from the State Department to the courts.⁷

⁶Diplomatic and consular officers could also claim the “specialized immunities” accorded those officials, Restatement (Second) of Foreign Relations Law of the United States §66, Comment *b* (1964–1965) (hereinafter Restatement), and officials qualifying as the “head of state” could claim immunity on that basis, see *Schooner Exchange v. McFaddon*, 7 Cranch 116, 137 (1812) (describing “the exemption of the person of the sovereign” from “a jurisdiction incompatible with his dignity”).

⁷The full text of §1602, entitled “Findings and declaration of pur-

Cite as: 560 U. S. ____ (2010)

7

Opinion of the Court

After the enactment of the FSIA, the Act—and not the pre-existing common law—indisputably governs the determination of whether a foreign state is entitled to sovereign immunity.

What we must now decide is whether the Act also covers the immunity claims of foreign officials. We begin with the statute’s text and then consider petitioner’s reliance on its history and purpose.

III

The FSIA provides that “a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States” except as provided in the Act. §1604. Thus, if a defendant is a “foreign state” within the meaning of the Act, then the defendant is immune from jurisdiction unless one of the exceptions in the Act applies. See §§1605–1607 (enumerating exceptions). The Act, if it applies, is the “sole basis for obtaining jurisdiction over a foreign state in federal court.” *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U. S. 428, 439 (1989). The question we face in this case is whether an individual sued for conduct undertaken in his official capacity is a “foreign state” within the meaning of the Act.

The Act defines “foreign state” in §1603 as follows:

“(a) A ‘foreign state’ . . . includes a political subdivi-

pose,” reads as follows:

“The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.”

Opinion of the Court

sion of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

“(b) An ‘agency or instrumentality of a foreign state’ means any entity—

“(1) which is a separate legal person, corporate or otherwise, and

“(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

“(3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (e) of this title, nor created under the laws of any third country.”

The term “foreign state” on its face indicates a body politic that governs a particular territory. See, e.g., Restatement §4 (defining “state” as “an entity that has a defined territory and population under the control of a government and that engages in foreign relations”). In §1603(a), however, the Act establishes that “foreign state” has a broader meaning, by mandating the inclusion of the state’s political subdivisions, agencies, and instrumentalities. Then, in §1603(b), the Act specifically delimits what counts as an agency or instrumentality. Petitioner argues that either “foreign state,” §1603(a), or “agency or instrumentality,” §1603(b), could be read to include a foreign official. Although we agree that petitioner’s interpretation is literally possible, our analysis of the entire statutory text persuades us that petitioner’s reading is not the meaning that Congress enacted.

We turn first to the term “agency or instrumentality of a foreign state,” §1603(b). It is true that an individual official could be an “agency or instrumentality,” if that term is given the meaning of “any thing or person through which action is accomplished,” *In re Terrorist Attacks on*

Cite as: 560 U. S. ____ (2010)

9

Opinion of the Court

Sept. 11, 2001, 538 F. 3d 71, 83 (CA2 2008). But Congress has specifically defined “agency or instrumentality” in the FSIA, and all of the textual clues in that definition cut against such a broad construction.

First, the statute specifies that “‘agency or instrumentality . . .’ means any *entity*” matching three specified characteristics, §1603(b) (emphasis added), and “entity” typically refers to an organization, rather than an individual. See, e.g., Black’s Law Dictionary 612 (9th ed. 2009). Furthermore, several of the required characteristics apply awkwardly, if at all, to individuals. The phrase “separate legal person, corporate or otherwise,” §1603(b)(1), could conceivably refer to a natural person, solely by virtue of the word “person.” But the phrase “separate legal person” typically refers to the legal fiction that allows an entity to hold personhood separate from the natural persons who are its shareholders or officers. Cf. *First Nat. City Bank v. Banco Para el Comercio Exterior de Cuba*, 462 U. S. 611, 625 (1983) (“Separate legal personality has been described as ‘an almost indispensable aspect of the public corporation’”). It is similarly awkward to refer to a person as an “organ” of the foreign state. See §1603(b)(2). And the third part of the definition could not be applied at all to a natural person. A natural person cannot be a citizen of a State “as defined in section 1332(c) and (e),” §1603(b)(3), because those subsections refer to the citizenship of corporations and estates. Nor can a natural person be “created under the laws of any third country.” *Ibid.*⁸ Thus, the

⁸Petitioner points out that §1603(b)(3) describes only which defendants *cannot* be agencies or instrumentalities. He suggests that it therefore tells us nothing about which defendants *can* be covered by that term. Brief for Petitioner 46. Even if so, reading §1603(b) as petitioner suggests would leave us with the odd result that a corporation that is the citizen of a state is excluded from the definition under §1603(b)(3), and thus not immune, whereas a natural person who is the citizen of a state is not excluded, and thus retains his immunity.

Opinion of the Court

terms Congress chose simply do not evidence the intent to include individual officials within the meaning of “agency or instrumentality.”⁹ Cf. *Dole Food Co. v. Patrickson*, 538 U. S. 468, 474 (2003) (describing §1603(b) as containing “indicia that Congress had corporate formalities in mind”).

Petitioner proposes a second textual route to including an official within the meaning of “foreign state.” He argues that the definition of “foreign state” in §1603(a) sets out a nonexhaustive list that “includes” political subdivisions and agencies or instrumentalities but is not so limited. See Brief for Petitioner 22–23. It is true that use of the word “include” can signal that the list that follows is meant to be illustrative rather than exhaustive.¹⁰ And, to

⁹Nor does anything in the legislative history suggest that Congress intended the term “agency or instrumentality” to include individuals. On the contrary, the legislative history, like the statute, speaks in terms of entities. See, e.g., H. R. Rep. No. 94–1487, p. 15 (1976) (hereinafter H. R. Rep.) (“The first criterion, that the entity be a separate legal person, is intended to include a corporation, association, foundation, or any other entity which, under the law of the foreign state where it was created, can sue or be sued in its own name”).

JUSTICE SCALIA may well be correct that it is not strictly necessary to confirm our reading of the statutory text by consulting the legislative history, see *post*, at 1–2 (opinion concurring in judgment). But as the Court explained some years ago in an opinion authored by Justice White:

“As for the propriety of using legislative history at all, common sense suggests that inquiry benefits from reviewing additional information rather than ignoring it. As Chief Justice Marshall put it, ‘[w]here the mind labours to discover the design of the legislature, it seizes every thing from which aid can be derived.’ *United States v. Fisher*, 2 Cranch 358, 386 (1805). Legislative history materials are not generally so misleading that jurists should never employ them in a good-faith effort to discern legislative intent. Our precedents demonstrate that the Court’s practice of utilizing legislative history reaches well into its past. See, e.g., *Wallace v. Parker*, 6 Pet. 680, 687–690 (1832). We suspect that the practice will likewise reach well into the future.” *Wisconsin Public Intervenor v. Mortier*, 501 U. S. 597, 611–612, n. 4 (1991) (alteration in original).

¹⁰See 2A N. Singer & J. Singer, *Sutherland Statutory Construction*

Cite as: 560 U. S. ____ (2010)

11

Opinion of the Court

be sure, there are fewer textual clues within §1603(a) than within §1603(b) from which to interpret Congress' silence regarding foreign officials. But even if the list in §1603(a) is merely illustrative, it still suggests that "foreign state" does not encompass officials, because the types of defendants listed are all entities. See *Russell Motor Car Co. v. United States*, 261 U. S. 514, 519 (1923) ("[A] word may be known by the company it keeps").

Moreover, elsewhere in the FSIA Congress expressly mentioned officials when it wished to count their acts as equivalent to those of the foreign state, which suggests that officials are not included within the unadorned term "foreign state." Cf. *Kimbrough v. United States*, 552 U. S. 85, 103 (2007) ("Drawing meaning from silence is particularly inappropriate . . . [when] Congress has shown that it knows how to [address an issue] in express terms"). For example, Congress provided an exception from the general grant of immunity for cases in which "money damages are sought against a foreign state" for an injury in the United States "caused by the tortious act or omission of *that foreign state or of any official* or employee of that foreign state while acting within the scope of his office." §1605(a)(5) (emphasis added). The same reference to officials is made in a similar, later enacted exception. See 28 U. S. C. A. §1605A(a)(1) (Supp. 2009) (eliminating immunity for suits "in which money damages are sought against a foreign state" for certain acts "engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency"); see also §1605A(c) (creating a cause of action against the "foreign state" and "any official, employee, or

§47.7, p. 305 (7th ed. 2007) ("[T]he word 'includes' is usually a term of enlargement, and not of limitation" (some internal quotation marks omitted)).

Opinion of the Court

agent” thereof).¹¹ If the term “foreign state” by definition includes an individual acting within the scope of his office, the phrase “or of any official or employee . . .” in 28 U. S. C. §1605(a)(5) would be unnecessary. See *Dole Food Co.*, 538 U. S., at 476–477 (“[W]e should not construe the statute in a manner that is strained and, at the same time, would render a statutory term superfluous”).

Other provisions of the statute also point away from reading “foreign state” to include foreign officials. Congress made no express mention of service of process on individuals in §1608(a), which governs service upon a foreign state or political subdivision. Although some of the methods listed could be used to serve individuals—for example, by delivery “in accordance with an applicable international convention,” §1608(a)(2)—the methods specified are at best very roundabout ways of serving an individual official. Furthermore, Congress made specific remedial choices for different types of defendants. See §1606 (allowing punitive damages for an agency or instrumentality but not for a foreign state); §1610 (affording a plaintiff greater rights to attach the property of an agency or instrumentality as compared to the property of a foreign state). By adopting petitioner’s reading of “foreign state,” we would subject claims against officials to the more limited remedies available in suits against states,

¹¹Petitioner argues that §1605A abrogates immunity for certain acts by individual officials, which would be superfluous if the officials were not otherwise immune. See Brief for Petitioner 41–43. But the import of §1605A is precisely the opposite. First, §1605A(a)(1) eliminates the immunity of the *state* for certain acts of its officers; it says a “foreign state shall not be immune” in a suit “in which money damages are sought against a foreign state.” As it does not expressly refer to the immunity of individual officers, it adds nothing to petitioner’s argument. Second, the creation of a cause of action against both the “foreign state” and “any official, employee, or agent” thereof, §1605A(c), reinforces the idea that “foreign state” does not by definition include foreign officials.

Cite as: 560 U. S. ____ (2010)

13

Opinion of the Court

without so much as a whisper from Congress on the subject. (And if we were instead to adopt petitioner’s other textual argument, we would subject those claims to the different, more expansive, remedial scheme for agencies). The Act’s careful calibration of remedies among the listed types of defendants suggests that Congress did not mean to cover other types of defendants never mentioned in the text.

In sum, “[w]e do not . . . construe statutory phrases in isolation; we read statutes as a whole.” *United States v. Morton*, 467 U. S. 822, 828 (1984). 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.¹² The text does not expressly foreclose petitioner’s reading, but it supports the view of respondents and the United States that the Act does not address an official’s claim to immunity.

IV

Petitioner argues that the FSIA is best read to cover his claim to immunity because of its history and purpose. As discussed at the outset, one 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. See §1602. We have observed

¹²Nor is it the case that the FSIA’s “legislative history does not even hint of an intent to exclude individual officials,” *Chuidian*, 912 F. 2d, at 1101. The legislative history makes clear that Congress did not intend the FSIA to address position-based individual immunities such as diplomatic and consular immunity. H. R. Rep., at 12 (“The bill is not intended . . . to affect either diplomatic or consular immunity”). It also suggests that general “official immunity” is something separate from the subject of the bill. See *id.*, at 23 (“The bill does not attempt to deal with questions of discovery. . . . [I]f a plaintiff sought to depose a diplomat in the United States or a high-ranking official of a foreign government, diplomatic and official immunity would apply”).

Opinion of the Court

that a related purpose was “codification of international law at the time of the FSIA’s enactment,” *Permanent Mission of India to United Nations v. City of New York*, 551 U. S. 193, 199 (2007), and have examined the relevant common law and international practice when interpreting the Act, *id.*, at 200–201. Because of this relationship between the Act and the common law that it codified, petitioner argues that we should construe the FSIA consistently with the common law regarding individual immunity, which—in petitioner’s view—was coextensive with the law of state immunity and always immunized a foreign official for acts taken on behalf of the foreign state. Even reading the Act in light of Congress’ purpose of codifying *state* sovereign immunity, however, we do not think that the Act codified the common law with respect to the immunity of individual officials.

The canon of construction that statutes should be interpreted consistently with the common law helps us interpret a statute that clearly covers a field formerly governed by the common law.¹³ But the canon does not help us to decide the antecedent question whether, when a statute’s coverage is ambiguous, Congress intended the statute to govern a particular field—in this case, whether Congress intended the FSIA to supersede the common law of official immunity.¹⁴

¹³Congress “is understood to legislate against a background of common-law . . . principles,” *Astoria Fed. Sav. & Loan Assn. v. Solimino*, 501 U. S. 104, 108 (1991), and when a statute covers an issue previously governed by the common law, we interpret the statute with the presumption that Congress intended to retain the substance of the common law. See *Isbrandtsen Co. v. Johnson*, 343 U. S. 779, 783 (1952) (“Statutes which invade the common law . . . are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident”).

¹⁴We find similarly inapposite petitioner’s invocation of the canon that a statute should be interpreted in compliance with international law, see *Murray v. Schooner Charming Betsy*, 2 Cranch 64, 118 (1804),

Cite as: 560 U. S. ____ (2010)

15

Opinion of the Court

Petitioner argues that because state and official immunities are coextensive, Congress must have codified official immunity when it codified state immunity. See Brief for Petitioner 26–30. But the relationship between a state’s immunity and an official’s immunity is more complicated than petitioner suggests, although we need not and do not resolve the dispute among the parties as to the precise scope of an official’s immunity at common law. The very authority to which petitioner points us, and which we have previously found instructive, see, *e.g.*, *Permanent Mission*, 551 U. S., at 200, states that the immunity of individual officials is subject to a caveat not applicable to any of the other entities or persons¹⁵ to which the foreign state’s immunity extends. The Restatement provides that the “immunity of a foreign state . . . extends to . . . any other 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 §66 (emphasis added).¹⁶

and his argument that foreign relations and the reciprocal protection of United States officials abroad would be undermined if we do not adopt his reading of the Act. Because we are not deciding that the FSIA bars petitioner’s immunity but rather that the Act does not address the question, we need not determine whether declining to afford immunity to petitioner would be consistent with international law.

¹⁵The Restatement does not apply this caveat to the head of state, head of government, or foreign minister. See Restatement §66. Whether petitioner may be entitled to head of state immunity, or any other immunity, under the common law is a question we leave open for remand. See 552 F. 3d 371, 383 (CA4 2009). We express no view on whether Restatement §66 correctly sets out the scope of the common law immunity applicable to current or former foreign officials.

¹⁶Respondents contend that this caveat refers to “the compulsive effect of the judgment on the state,” Brief for Respondents 42, but petitioner disputes that meaning, Reply Brief for Petitioner 17–18. We need not resolve their dispute, as it is enough for present purposes that the Restatement indicates a foreign official’s immunity may turn upon a requirement not applicable to any other type of defendant.

Opinion of the Court

And historically, the Government sometimes suggested immunity under the common law for individual officials even when the foreign state did not qualify. See, e.g., *Greenspan v. Crosbie*, No. 74 Civ. 4734 (GLG), 1976 WL 841 (SDNY, Nov. 23, 1976). There is therefore little reason to presume that when Congress set out to codify state immunity, it must also have, *sub silentio*, intended to codify official immunity.

Petitioner urges that a suit against an official must always be equivalent to a suit against the state because acts taken by a state official on behalf of a state are acts of the state. See Brief for Petitioner 26. We have recognized, in the context of the act of state doctrine, that an official's acts can be considered the acts of the foreign state, and that "the courts of one country will not sit in judgment" of those acts when done within the territory of the foreign state. See *Underhill v. Hernandez*, 168 U. S. 250, 252, 254 (1897). Although the act of state doctrine is distinct from immunity, and instead "provides foreign states with a substantive defense on the merits," *Altmann*, 541 U. S., at 700, we do not doubt that in some circumstances the immunity of the foreign state extends to an individual for acts taken in his official capacity. But it does not follow from this premise that Congress intended to codify that immunity in the FSIA. It hardly furthers Congress' purpose of "clarifying the rules that judges should apply in resolving sovereign immunity claims," *id.*, at 699, to lump individual officials in with foreign states without so much as a word spelling out how and when individual officials are covered.¹⁷

¹⁷The courts of appeals have had to develop, in the complete absence of any statutory text, rules governing when an official is entitled to immunity under the FSIA. For example, Courts of Appeals have applied the rule that foreign sovereign immunity extends to an individual official "for acts committed in his official capacity" but not to "an official who acts beyond the scope of his authority." *Chuidian*, 912

Cite as: 560 U. S. ____ (2010)

17

Opinion of the Court

Petitioner would have a stronger case if there were any indication that Congress' intent to enact a comprehensive solution for suits against states extended to suits against individual officials. But to the extent Congress contemplated the Act's effect upon officials at all, the evidence points in the opposite direction. As we have already mentioned, the legislative history points toward an intent to leave official immunity outside the scope of the Act. See n. 12, *supra*. And although questions of official immunity did arise in the pre-FSIA period, they were few and far between.¹⁸ The immunity of officials simply was not the particular problem to which Congress was responding when it enacted the FSIA. The FSIA was adopted, rather, to address "a modern world where foreign state enterprises are every day participants in commercial activities," and to assure litigants that decisions regarding claims against states and their enterprises "are made on purely legal grounds." H. R. Rep., at 7. We have been given 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.¹⁹

F. 2d, at 1103, 1106. That may be correct as a matter of common-law principles, but it does not derive from any clarification or codification by Congress. Furthermore, if Congress intended the FSIA to reach individuals, one would expect the Act to have addressed whether *former* officials are covered, an issue it settled with respect to instrumentalities, see *Dole Food Co. v. Patrickson*, 538 U.S. 468, 478 (2003) ("[I]nstrumentality status [must] be determined at the time suit is filed").

¹⁸A study that attempted to gather all of the State Department decisions related to sovereign immunity from the adoption of the restrictive theory in 1952 to the enactment of the FSIA reveals only four decisions related to official immunity, and two related to head of state immunity, out of a total of 110 decisions. *Sovereign Immunity Decisions of the Dept. of State, May 1952 to Jan. 1977* (M. Sandler, D. Vagts, & B. Ristau eds.), in *Digest of U. S. Practice in Int'l Law* 1020, 1080 (1977) (hereinafter *Digest*).

¹⁹The FSIA was introduced in accordance with the recommendation

Opinion of the Court

Finally, our reading of the FSIA will not “in effect make the statute optional,” as some Courts of Appeals have feared, by allowing litigants through “artful pleading . . . to take advantage of the Act’s provisions or, alternatively, choose to proceed under the old common law,” *Chuidian v. Philippine Nat. Bank*, 912 F.2d 1095, 1102 (CA9 1990). Even if a suit is not governed by the Act, it may still be barred by foreign sovereign immunity under the common law. And not every suit can successfully be pleaded against an individual official alone.²⁰ Even when a plaintiff names only a foreign official, it may be the case that the foreign state itself, its political subdivision, or an agency or instrumentality is a required party, because

of the State Department. H. R. Rep., at 6. The Department sought and supported the elimination of its role with respect to claims against foreign states and their agencies or instrumentalities. See Hearings on H. R. 11315 before the Subcommittee on Administrative Law and Governmental Relations of the House of Representatives Committee on the Judiciary, 94th Cong., 2d Sess., 34 (1976) (testimony of Monroe Leigh, Legal Adviser, Dept. of State) (“[I]t is our judgment . . . that the advantages of having a judicial determination greatly outweigh the advantage of being able to intervene in a lawsuit”). But the Department has from the time of the FSIA’s enactment understood the Act to leave intact the Department’s role in official immunity cases. See Digest 1020 (“These decisions [of the Department regarding the immunity of officials] may be of some future significance, because the Foreign Sovereign Immunities Act does not deal with the immunity of individual officials, but only that of foreign states and their political subdivisions, agencies and instrumentalities”).

²⁰ Furthermore, a plaintiff seeking to sue a foreign official will not be able to rely on the Act’s service of process and jurisdictional provisions. Thus, a plaintiff will have to establish that the district court has personal jurisdiction over an official without the benefit of the FSIA provision that makes personal jurisdiction over a foreign state automatic when an exception to immunity applies and service of process has been accomplished in accordance with 28 U. S. C. §1608. See §1330(b) (“Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a),” *i.e.*, claims for which the foreign state is not entitled to immunity, “where service has been made under section 1608 of this title”).

Cite as: 560 U. S. ____ (2010)

19

Opinion of the Court

that party has “an interest relating to the subject of the action” and “disposing of the action in the person’s absence may . . . as a practical matter impair or impede the person’s ability to protect the interest.” Fed. Rule Civ. Proc. 19(a)(1)(B). If this is the case, and the entity is immune from suit under the FSIA, the district court may have to dismiss the suit, regardless of whether the official is immune or not under the common law. See *Republic of Philippines v. Pimentel*, 553 U.S. 851, 867 (2008) (“[W]here sovereign immunity is asserted, and the claims of the sovereign are not frivolous, dismissal of the action must be ordered where there is a potential for injury to the interests of the absent sovereign”). Or it may be the case that some actions against an official in his official capacity should be treated as actions against the foreign state itself, as the state is the real party in interest. Cf. *Kentucky v. Graham*, 473 U.S. 159, 166 (1985) (“[A]n official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is *not* a suit against the official personally, for the real party in interest is the entity” (citation omitted)).

We are thus not persuaded that our construction of the statute’s text should be affected by the risk that plaintiffs may use artful pleading to attempt to select between application of the FSIA or the common law. And we think this case, in which respondents have sued petitioner 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 Act defines that term. Although 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.

Opinion of the Court

V

Our review of the text, purpose, and history of the FSIA leads us to the conclusion that the Court of Appeals correctly held the FSIA does not govern petitioner's claim of immunity. The Act therefore did not deprive the District Court of subject-matter jurisdiction. We emphasize, however, the narrowness of our holding. Whether petitioner may be entitled to immunity under the common law, and whether he may have other valid defenses to the grave charges against him, are matters to be addressed in the first instance by the District Court on remand. The judgment of the Court of Appeals is affirmed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Cite as: 560 U. S. ____ (2010)

1

ALITO, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 08–1555

MOHAMED ALI SAMANTAR, PETITIONER *v.* BASHE
ABDI YOUSUF ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[June 1, 2010]

JUSTICE ALITO, concurring.

I join the opinion of the Court, although I think that the citations to legislative history are of little if any value here.

Cite as: 560 U. S. ____ (2010)

1

Opinion of THOMAS, J.

SUPREME COURT OF THE UNITED STATES

No. 08–1555

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ABDI YOUSUF ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[June 1, 2010]

JUSTICE THOMAS, concurring in part and concurring in
the judgment.

I join the Court’s opinion except for those parts relying
on the legislative history of the Foreign Sovereign Immu-
nities Act of 1976, 28 U. S. C. §§1330, 1602, *et seq.* In my
view, the Court’s textual analysis is sufficient to re-
solve this case. See *post*, at 1–4 (SCALIA, J., concurring in
judgment).

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1

SCALIA, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[June 1, 2010]

JUSTICE SCALIA, concurring in the judgment.

The Court’s admirably careful textual analysis, *ante*, at 7–13, demonstrates that the term “foreign state” in the provision “a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States,” 28 U. S. C. §1604, does not include foreign officials. Yet the Court insists on adding legislative history to its analysis. I could understand that (though not agree with it) if, in the absence of supposed legislative-history support, the Court would reach a different result. Or even if there was something in the legislative history that clearly contradicted the Court’s result, and had to be explained away. That is not the situation here (or at least the Court’s opinion does not think it to be so). The Court assures us, however (if this could be thought assurance), that legislative history is “not generally so misleading” that it should “never” be used. *Ante*, at 10, n. 9 (quoting *Wisconsin Public Intervenor v. Mortier*, 501 U. S. 597, 611–612, n. 4 (1991)). Surely that is damning by faint praise. And the Court’s mention of the past practice of using legislative history, *ante*, at 10, n. 9, does not support the Court’s use of it today. The past practice was “not the practice of using legislative history for the purpose of giving authoritative content to the meaning of a statutory text,” *Mortier*, *supra*, at 622 (SCALIA, J., concurring in

SCALIA, J., concurring in judgment

judgment).

The Court’s introduction of legislative history serves no purpose except needlessly to inject into the opinion a mode of analysis that not all of the Justices consider valid. And it does so, to boot, in a fashion that does not isolate the superfluous legislative history in a section that those of us who disagree categorically with its use, or at least disagree with its superfluous use, can decline to join. I therefore do not join the opinion, and concur only in the result.

The Court relies on legislative history to support three of its positions. First, after explaining why the phrase “agency or instrumentality” in the definition of “foreign state,” see §1603(a), (b), does not refer to natural persons, *ante*, at 9–10, the Court says “[n]or does anything in the legislative history suggest that Congress intended the term ‘agency or instrumentality’ to include individuals,” *ante*, at 10, n. 9. According to the Court, “the legislative history, like the statute, speaks in terms of entities.” *Ibid.* Apparently, the legislative history must be consulted, not to show that it *supports* the Court’s textual analysis, or even to explain why its seeming contradiction of the Court’s analysis is inconsequential, but to show nothing more than that it contains the same ambiguous language as the text. This is beyond all reason.

Second, after concluding its review of the statute’s text, the Court states that the “legislative history makes clear that Congress did not intend the [Foreign Sovereign Immunities Act of 1976] to address position-based individual immunities such as diplomatic and consular immunity,” *ante*, at 13, n. 12. See also *ante*, at 17. It cites for this proposition a House Committee Report that we have no reason to believe was read (much less approved) by the Senate—or, indeed, by the Members of the House who were not on the Committee—or even, for that matter, by the members of the Committee, who never voted on the Report. In any case, the quoted excerpt does not address

Cite as: 560 U. S. ____ (2010)

3

SCALIA, J., concurring in judgment

“position-based individual immunities” in general but only “consular and diplomatic immunity,” which is not at issue here. Unless consular and diplomatic immunity, on the one hand, and, on the other hand, what *is* at issue here—state-agent immunity—are always treated the same (which I doubt and the Court does not attempt to establish), the passage contributes nothing to analysis of the present case.

The same footnote also quotes a portion of the same House Report as follows:

“The bill does not attempt to deal with questions of discovery. . . . [I]f a plaintiff sought to depose a diplomat in the United States or a high-ranking official of a foreign government, diplomatic and official immunity would apply.” *Ante*, at 13, n. 12.

If anything, this passage cuts against the Court’s result. The two sentences omitted from the above quotation read as follows:

“Existing law appears to be adequate in this area. For example, if a private plaintiff sought the production of sensitive governmental documents of a foreign state, concepts of governmental privilege would apply.” H. R. Rep. No. 94–1487, p. 23 (1976).

Thus, the House Report makes it clear that the bill’s failure to deal with discovery applies to *both* discovery against sovereigns *and* discovery against foreign officials. But the latter would have been unnecessary if the bill dealt only with sovereigns. The implication (if any) is that the bill’s provisions regarding immunity from suit apply to both sovereigns and foreign officials.

Third, and finally, the Court points to legislative history to establish the purpose of the statute. See *ante*, at 17, and n. 19. This is particularly puzzling, because the *enacted* statutory text itself includes findings and a declara-

SCALIA, J., concurring in judgment

tion of purpose—the very same purpose (surprise!) that the Court finds evidenced in the legislative history. See 28 U.S.C. §1602. To make matters worse, the Court itself notes this statutory declaration of purpose twice earlier, in the body of its opinion, see *ante*, at 6, 13. If those textual references to the statute itself were deleted, the footnoted citation of legislative history would at least perform some function. As it is, however, it adds nothing except the demonstration of assiduous law-clerk research.

It should be no cause for wonder that, upon careful examination, all of the opinion’s excerpts from legislative history turn out to be, at best, nonprobative or entirely duplicative of text. After all, legislative history is almost never the real reason for the Court’s decision—and make-weights do not deserve a lot of the Court’s time.

EXHIBIT H

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

BASHE ABDI YOUSUF;	.	
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	.	Civil Action No. 1:04cv1360
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,	.	12:00 p.m.
	.	
	.	
Defendant.	.	
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TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

VOLUME 1

(Pages 1 - 158)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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

2 THE COURT: Go ahead, counsel.

3 MS. ROBERTS: Good morning, Your Honor. I want to
4 thank you and the plaintiffs thank you for giving them an
5 opportunity to have their day in court.

6 Obviously, our case has changed a little bit in the
7 last couple of hours. In the light of this morning's default
8 by the defendant, we've refined our case to speak really only
9 to the issues of compensatory and punitive damages.

10 We plan to present testimony from each of our
11 plaintiffs or from their surviving family members. I think the
12 Court is aware that Aziz Deria was not at his home at the time
13 when his father and brother were taken. So, his sister will be
14 speaking to the issues of what happened there.

15 Punitive damages are given with a view to the
16 enormity of the offense and require a showing that the
17 defendant's actions were intentional, malicious, or were taken
18 with wanton disregard for the rights of others.

19 So, we will be presenting some evidence on those
20 points as well. And I really just want to give you an idea of
21 what we plan to present to be sure it's what you want to hear
22 from us. And for logistical reasons, this may not be the exact
23 order, we are still working that out.

24 So, in addition to the plaintiffs and their family
25 members, we'd like to introduce Ambassador Jim Bishop's expert

1 report, which speaks to the enormity of the crimes that were
2 being committed in Somalia at that time, and in particular to
3 the attack on Hargeisa in June 1988 when over 5,000 people were
4 executed at the center of town for being Isaaq, and the nearly
5 half million people that fled the country and were forced to
6 flee from their own military at that time. Two of our
7 plaintiffs are speaking to what happened to them during those
8 attacks.

9 We would also like to present a short excerpt, very
10 short excerpt from a deposition of a Somali military judge who
11 served under General Samantar and overheard a conversation
12 between General Samantar, the defendant, and the dictator where
13 the dictator expressed concern for civilian life, and defendant
14 General Samantar overruled his concern and insisting on bombing
15 the town. Which he did.

16 We'd also like to present short video testimony of a
17 civilian that was captured by Samantar's soldiers and was
18 forced to dig mass graves with a Caterpillar bulldozer. That's
19 about a 35-minute video I think if we put the whole thing in.
20 And we will probably see if we can cut that.

21 We also expect to present some brief expert testimony
22 from Colonel Culwell, who was the military attaché to the U.S.
23 embassy in Somalia in the latter years of the regime. He will
24 be speaking to the issue of punitive damages in a very limited
25 way in that he visited Hargeisa after the bombing and the

1 civilian attacks, and he can talk about the extent of the
2 damage.

3 We will also want to present testimony of the BBC
4 reporter who interviewed General Samantar in 1989 when he
5 admitted to giving the final okay to those operations. And
6 that would also go to punitive damages.

7 THE COURT: All right. Well, we will see how it goes
8 as the evidence comes in.

9 MS. ROBERTS: Okay. Thank you, Your Honor.

10 THE COURT: Call your first witness.

11 MS. ROBERTS: Our first witness will be Bashe Yousuf.

12 THE COURT: All right, Mr. Yousuf.

13 NOTE: The witness duly affirms.

14 BASHE ABDI YOUSUF, called by counsel for the
15 plaintiffs, first duly affirming, testifies and states:

16 DIRECT EXAMINATION

17 BY MS. ROBERTS:

18 Q. Good morning, Bashe.

19 A. Good morning.

20 Q. Would you please state and spell your name for the record.

21 A. Bashe, B-a-s-h-e, Abdi, A-b-d-i, Yousuf, Y-o-u-s-u-f.

22 Q. When were you born?

23 A. I was born in Hargeisa, Somalia.

24 Q. When was that?

25 A. That was March 22, 1953.

1 Q. Would you please tell us a little bit about your childhood
2 in Hargeisa.

3 A. Yeah. I was, I had, I was born, as I say, in Hargeisa. I
4 had all my education up to the high school in Hargeisa. I was
5 involved in Boy Scouts and I was really active young man when I
6 was young.

7 Q. Directing your attention to 1969.

8 What noteworthy event happened in Somalia in that
9 year.

10 A. In 1969 the government was, you know, the Muslim radical
11 government in Africa was taken over by young officers which
12 were called the Supreme Revolutionary Council. And they
13 changed everything to a socialist country.

14 Q. Just to clarify your testimony, was that '96 or '69?

15 A. 1969.

16 Q. Thank you. And did you learn anything different in school
17 after that?

18 A. Yeah, after that we were taught that the capitalism was
19 the worst thing in the world. We were bombarded by socialist
20 propaganda. And we were learning the revolutionary generals or
21 colonels that were taking over, particularly the five major
22 ones, which was one of them was Ali Samantar, and we call it
23 Political Bureau.

24 Q. I am sorry, the Political Bureau?

25 A. Yeah.

1 Q. Did you learn anything about General Samantar outside of
2 school?

3 A. Outside of school other than, you know, other than seeing
4 his pictures and sometimes hearing from, what he is talking
5 from the radio, I didn't learn very much.

6 Q. Where did you see his pictures?

7 A. Almost everywhere, mainly the government places. And
8 almost everywhere.

9 Q. You mentioned the Political Bureau. Are you aware what
10 the Political Bureau was?

11 A. Yeah, they were the five major members of the
12 Revolutionary Council.

13 Q. And was General Samantar part of that?

14 A. Yeah, he was the second in command.

15 Q. Okay. Where do you live now?

16 A. I live in Atlanta, Georgia.

17 Q. And of what country are you a citizen?

18 A. I am a U.S. citizen.

19 Q. Okay. What do you do for a living?

20 A. I am actually a computer information system, and I am a
21 tech support at the moment.

22 Q. When did you come to the United States?

23 A. I came in 1991.

24 Q. Okay. Now, directing your attention to 1981.

25 Where were you living in that year.

1 A. 1981 I was living in Hargeisa.

2 Q. What were you doing for work then?

3 A. I was a businessman.

4 Q. Who did you work with?

5 A. You mean by my work or--

6 Q. In your work, did you have employees?

7 A. Yeah. I didn't have-- It was mainly family work, a
8 business.

9 Q. How successful was it?

10 A. It was actually really successful until I was put in jail.

11 Q. Okay. In 1981 was the military dictatorship still in
12 power?

13 A. Yeah, they were.

14 Q. What, if anything, changed under the military dictatorship
15 with respect to the schools in Hargeisa?

16 A. Hargeisa was, Somalia in general there was not much of the
17 schools, but they have a very good quality before the
18 revolution. After the 1960, there was a quantity, but the
19 quality of the school was really bad. Teachers were not paid
20 enough, so they were not going to the school. The grades of
21 the schools were dropping. Almost you can say students were
22 learning nothing.

23 Q. And in 1981, what was the state of healthcare in Hargeisa?

24 A. Healthcare was even worse than the education. I was in
25 Hargeisa at the time, there was no electric lights. There was

1 only one generator in Hargeisa, and that wasn't working because
2 the government would not provide any gas for that. So, it was
3 dark day and night.

4 And there was not any kind, you know, little bit of
5 medication. The doctors were not there, the same as teachers.
6 And there was completely, there was not what you call a
7 hospital at all.

8 Q. Anything else about the hospital?

9 A. The hospital we decided afterwards, you know, to help the
10 people there. Most of us were actually young men then, I was
11 only 26 or something at that time. And a group of my friends
12 who mainly came from America, Europe or Arabia, when we saw how
13 the city was really getting bad, we tried to help the little
14 bit we can do.

15 So, we tried to clean up the hospital. We tried to
16 buy some, you know, minor facilities for this hospital. And we
17 tried to at the same time encourage the doctors to go with us.
18 And we really did that.

19 Q. What was the first thing, if anything, that you-- Well,
20 you mentioned that. What was the first thing that you did to
21 address your concerns about healthcare and education in 1981?

22 A. In healthcare mainly what we did, what I said was
23 cleaning. And at the same time, because I was a business, with
24 other business guys, we collected money and tried to get some
25 stuff, like syringe or some bandage or that kind of thing. We

1 took them, we bought them from Saudi Arabia.

2 In the school because the teachers mostly worked with
3 my friends or worked by, what is that, classmates in high
4 school, we tried to, you know, collect some money and tried
5 them to, you know, provide them a little bit, a little money so
6 they can afford to go back to school instead of staying out of
7 school.

8 So, the teachers, most of them were going back to
9 school and teaching the students.

10 Q. Did you ever bring the state of education and healthcare
11 to the attention of the government?

12 A. Not really, but they got their own attention of this
13 immediately. What they did was they thought that we were
14 challenging them. We were young ourselves and we were naive,
15 we didn't know what a dictatorship means. So, they took us as
16 a challenge, and immediately they make us that we were angry,
17 antirevolutionary.

18 Q. Okay. What was the government's reaction then when they
19 thought, to this charitable work?

20 A. Immediately they arrested us, arrest the first group of
21 us. And one of the others they were torturing and taking us
22 from, at nighttime with security people, military and
23 everything. They were coming to us one after the other.

24 Q. So, you and your friends who were doing this charitable
25 work at the hospital, were you all of Isaaq background?

1 A. No. We were not all Isaaq, but the government made it
2 only Isaaq. They didn't arrest the rest of the people, friends
3 that was working in the hospital.

4 Q. So, turning your attention to November 1981. What
5 happened to you on your last day of work in Hargeisa?

6 A. Well, what happened was I was in my working place, and at
7 least three or four, I mean four or five military and security
8 people came to my work, to my working place, and they asked me
9 if I was Bashe. They didn't know my face, but they know all
10 about me. And I told them yes.

11 Q. What did they do?

12 A. What they did was they, you know, they told me that they
13 would have a chat with me. And they showed me their
14 credentials-- I asked them actually who they are. And they
15 showed me their cards.

16 So, I went with them with the Land Cruiser. And I
17 was taken to confinement I would say.

18 Q. Where did they take you?

19 A. They took me to, a new building that was supposed to be an
20 immigration office.

21 Q. Okay. And what happened? That was a government building?

22 A. They put me in a cell, I mean, in what is supposed to be a
23 room, but it was a cell to me. And I was left there without
24 food or nothing for two days.

25 Q. And what happened after two days?

1 A. After two days one of the military guard who was having,
2 you know, a gun with him, opened my door. And there were
3 several, you know, two or three plain, not in uniform, came to
4 my office and they have took me to a conference room.

5 Q. Okay. Let me stop you there. You mentioned that there
6 were military people. How were they dressed?

7 A. They were dressed in camouflage dress, the kind of, you
8 know, military dress.

9 Q. Camouflage?

10 A. Yeah, camouflage.

11 Q. Anything distinctive about their uniforms?

12 A. Can you say that again?

13 Q. Were they Somali government uniforms, or were they some
14 other kind of uniforms?

15 A. They were Somalia government for sure.

16 Q. I am sorry, I meant to ask if they were military uniforms
17 or police uniforms?

18 A. No, no, military uniforms.

19 Q. So, when they took you to this conference room that you
20 mentioned, what happened next?

21 A. They asked me about, you know, some, which I couldn't
22 believe what they were asking me, I was put in jail for, if I
23 was a friend with this guy, if I have chatted with that guy, if
24 I know somebody. I said all of them yes. I didn't see
25 anything wrong with being a friend to a friend, you know, to

1 somebody. If I had, for example, working in the hospital or
2 all that-- They just, you know, things I did, they are asked
3 me.

4 Q. So, when they were asking you about your friends, were
5 they asking you about all of your friends, or was there a
6 particular group that you could discern?

7 A. They were asking me any particular group, which I would
8 say mainly tribal Isaaq, with the exception of one.

9 Q. Who was that exception?

10 A. Dr. Tani.

11 Q. Dr. Tani?

12 A. Yeah.

13 Q. So, how long did that interrogation last?

14 A. I don't know exactly the time, but I would say it was
15 about two hours for the first one.

16 Q. What happened after that?

17 A. After that maybe, after maybe three weeks they came back
18 to me and they asked me if I had throw a bomb.

19 THE COURT: I am sorry?

20 THE WITNESS: A hand bomb.

21 THE COURT: What did they ask you?

22 THE WITNESS: If I had thrown a hand bomb to military
23 place.

24 THE COURT: In the three weeks, where were you in
25 that three-week period?

1 THE WITNESS: I was in the same room.

2 THE COURT: In the same building?

3 THE WITNESS: Same building, same room that I was
4 brought first in the first place.

5 THE COURT: All right.

6 BY MS. ROBERTS: (Continuing)

7 Q. How long were you held in that interrogation building
8 altogether?

9 A. Altogether it would be three to four months.

10 Q. So, in your second interrogation they asked you if you had
11 been throwing a bomb. What did you tell them?

12 A. I told them that I never had once even seen a bomb, let
13 alone throwing it. And I never have been in military training.

14 And actually that time they called me, took me, come
15 back to me in the nighttime about 12 clock, and I was taken
16 out. I don't know where it was, which side of the city it was
17 because I was brought out blindfolded, and I was in a Land
18 Cruiser.

19 Q. Okay. Let me stop you there. There was an interrogation
20 where they accused you of throwing a bomb. And then did they
21 take you back to your cell?

22 A. Yeah, they took me back to my cell.

23 Q. So, then the next time that they came to you, how long,
24 how long was it until the next time that the soldiers came to
25 take you out?

1 A. Actually the same night.

2 Q. The same night?

3 A. Yeah.

4 Q. And did they blindfold me?

5 A. Yeah, they blindfold me. They took me in a Land Cruiser.

6 And I was taken from out of the city, the only way I can know

7 that it was out of the city because they stopped in the

8 control, and they were talking to the guard in there, giving

9 them a code name.

10 Q. When you say control, do you mean like a military

11 checkpoint?

12 A. Military checkpoint, yes.

13 Q. When they took you outside of the city, what happened?

14 A. Well, they took me, they start torturing me. First what

15 they did was they put my hands and they bound my legs together,

16 what we called MiG, and they tied me tightly. Somebody

17 pressing his foot on my back. And they, you know, tightened me

18 like that. Every time telling me to admit what I did, you

19 know, to admit that I had thrown that bomb.

20 When I, at first I was trying to be a man, be strong

21 and not cry. But later on I started crying because it was

22 painful. And they turn me over and poured water over my face,

23 which was just like drowning. I don't know how long it was,

24 but, you know, it was forever to me.

25 Q. Would you mind standing up to demonstrate for the Court

1 what you mean by the MIG position.

2 A. Yeah. What they did was they actually tied my hands
3 together like that. And they tied my legs together. And put
4 my, you know, put the string from, tied my back to my legs and
5 stretch me all the way. And they put something heavy, I don't
6 know whether it was foot or a stone, but some heavy stuff so I
7 can be in a ball like, bent like a ball.

8 Q. Thank you. Were there any physical, visible injuries that
9 you had as a result of being tied like that?

10 A. Yeah. There was, you know, it was cut all over my hands,
11 my legs and my knees.

12 Q. Were you bleeding?

13 A. It was bleeding. And I actually when I was tortured, I
14 would not be able to stand up for three days. Even I was going
15 to the bathroom crawling.

16 Q. Were you able to recognize the voices of any of the people
17 that were doing this to you?

18 A. Afterwards I was able to understand, you know, to
19 recognize some of them. Mainly the guy who was torturing me at
20 the time.

21 Q. Were you aware of how long you were held in the MIG
22 position?

23 A. Not really. At the time it was, I was not time conscious
24 at the time. But it was forever. It was long, long for us, as
25 far as I am concerned.

1 Q. Was this type of treatment ever repeated?

2 A. Yeah, it was repeated to me at least four or five times.
3 And they even use one time inside my cell an electric in my
4 armpits.

5 Q. Was it just one time that they used the electric shock in
6 your armpits?

7 A. Yes, it was only one time.

8 Q. And four or five times for the MIG and the water or--

9 A. Yeah, MIG and the water together, yeah.

10 Q. Why weren't you able to walk or stand after?

11 A. Because it was so painful and so, you know, hard. I was
12 really-- Second day I was able to stand most of the time. But
13 the first day, especially the first time, when I get up, I came
14 completely hungry and thirsty. And I was not even able to
15 move, you know, because all my hands and my legs get numb. So,
16 it was hard to even stand up.

17 Q. Did you ever participate in any antigovernment activities?

18 A. Never.

19 Q. Did you ever participate in any protests?

20 A. No.

21 Q. You mentioned earlier that you were kept at this
22 interrogation building for three to four months.

23 What, if any, document were you provided during that
24 time?

25 A. Yeah, the one time almost after they have done their

1 interrogation, they gave us a document that was I think, what
2 do you call, all our charge, what was written on.

3 Q. What were you charged with?

4 A. I was charged that I was a member of an illegal
5 government, I mean, illegal party that was taking, you know,
6 trying to overthrow the government.

7 Q. At that time were you a member of any organization?

8 A. Not that I know of.

9 Q. What's the highest sentence you could receive for that
10 charge?

11 A. It was death penalty.

12 Q. Where was the trial?

13 A. The trial was in National Security Court.

14 Q. Had you ever seen that court before?

15 A. Yeah, I have seen it because when I was younger I was
16 interested to be a lawyer, I guess. I always went to the
17 courts to listen for the proceedings.

18 Q. What did you see when you arrived at the court?

19 A. When I arrived at the court, there was military people all
20 around the court. And there was student uprising. The other
21 side of the crowd, the soldiers. And we went inside the court.

22 And the judge, the people who were sitting on the
23 judge chairs were military and a police guy, two judges. One
24 of them was military guy, I think he was a Major. And a
25 police, I think he was a Captain.

1 Q. Were they in uniforms?

2 A. They were both in uniforms, yes.

3 Q. And you could recognize those uniforms?

4 A. Oh, yeah.

5 Q. Were you allowed to testify?

6 A. No.

7 Q. Who did testify?

8 A. The only people who testified was the people who were
9 torturing us, which was the witnesses of the government. The
10 only thing my, you know, what is that, lawyer, told me, I asked
11 him what's my options. And he said he will be lucky if he
12 saves my skin.

13 Q. How did you recognize that the witnesses were your
14 torturers?

15 A. Oh, those are guys who were with me for, torturing me for
16 three, four months. I recognize their voice, everything of
17 them.

18 Q. Okay. Were those witnesses, from what branch of the armed
19 forces were those witnesses?

20 A. They were security people, military people and police, all
21 together.

22 Q. When you say security people--

23 A. I mean National Security. Like CIA here, I guess.

24 Q. National Security Service?

25 A. Yeah, NSS.

1 Q. Okay. Are you familiar with the term "Uffo"?

2 A. Yeah, I am.

3 Q. Was UFFO an organization?

4 A. It was never an organization, but the government made it
5 an organization.

6 Q. What do you mean when you say the government made it an
7 organization?

8 A. The first time I have heard that Uffo is an organization
9 was in a court. I didn't even hear that when I was being
10 interrogated. The only time that they said I was a member of
11 Uffo group was in the court. I never heard that before then.

12 Q. Had you ever heard of Uffo before?

13 A. Uffo is a Somali word, so it's--

14 THE COURT: I am sorry, what is it?

15 THE WITNESS: It is a normal Somali word, uffo, it is
16 a breeze that comes before the rain.

17 BY MS. ROBERTS: (Continuing)

18 Q. How many defendants were on trial at once?

19 A. 25.

20 Q. What did you have in common with the other defendants?

21 A. We were all young, all came from, most of us came from
22 outside of the country then. And all of them, but one, was
23 Isaaq clan.

24 Q. And were these the people that you had been working with
25 in the hospitals and in the schools?

1 A. Yeah, they were all of them working there.

2 Q. How long did the trial last?

3 A. Two days.

4 Q. Two days for 25 defendants?

5 A. Yeah.

6 Q. Were you convicted?

7 A. I was convicted for 20 years.

8 Q. What was your reaction when you heard the verdict?

9 A. Even though my lawyers have advised me to expect the
10 worst, it still, when the names were called one after another
11 from 20 years to life sentence, it sounded strange. And I
12 thought in Arabic then I said, mustaheel, which means
13 impossible.

14 Q. How many of the other defendants were convicted?

15 A. 20 of us.

16 Q. I am sorry, I didn't hear you.

17 A. 20.

18 Q. 20.

19 A. Four of them were released, I think. They were not
20 charged for anything or they were not taken part of the-- I
21 don't know the term that you use.

22 Q. Did you consider appealing?

23 A. There was no appealing for Supreme Court, none whatsoever.

24 Q. Where were you and the other convicted defendants taken
25 after your trial?

1 A. We were taken to the main center, I think they call it
2 Hargeisa Central Jail.

3 Q. Can you please describe the conditions of your confinement
4 in the Hargeisa Central Jail.

5 A. Yeah. Hargeisa Central Prison was built in the colonial
6 times, probably in 1940s or even older, I don't know. It was
7 kind of old building. It was very dirty with cockroach, rats,
8 mice was everywhere. And we were back in one room, all 20 of
9 us. And there was no bathroom. We were using buckets as a
10 bathroom.

11 Q. Were you allowed any visitors?

12 A. Yes.

13 Q. And did you have visitors?

14 A. Yeah, I have some, I have, you know, friends, family.
15 With the exception of my father, he never came to me.

16 Q. Why not?

17 A. Because he can't stand, you know, me sitting in jail.

18 Q. How long were you held at Hargeisa Central Jail?

19 A. About eight, nine months.

20 Q. Could you please describe the conditions under which you
21 left the Hargeisa Central Jail.

22 A. About I think 1 or 1:30 in the morning a military, you
23 know, almost about 40 or 45 members of military came to all of
24 us and we were taken in a truck, in the back of a truck. There
25 was a caravan. In front of the caravan was an armored motor

1 car with a big gun, I don't know what you call it, on the top.
2 And we were the second car. And there was another truck with
3 military police, I think you call, with the red cap going
4 behind us. And there was another motor car at the end of the
5 caravan.

6 Q. Where did they take you?

7 A. First they took us all the way to Galkayo, which is almost
8 the center of Somalia. And we were, we stayed one night in
9 there.

10 Q. Okay. Bashe, I would like to direct your attention to a
11 map to help clarify your testimony at this point.

12 Jamey, could we put up Demonstrative No. 3.

13 Bashe, can you indicate to the Court where Galkayo
14 is?

15 A. Galkayo is the dot in the center, almost under the yellow
16 part of the map.

17 Q. Okay. And could you go ahead and describe where else they
18 took you after Galkayo.

19 A. After Galkayo they took us all the way to Mogadishu, which
20 is the capital of Somalia, and we stayed there for three
21 nights. After that we were taken to Labataan Jirow, which as
22 far as I know is no man's land. It's somewhere in the middle
23 of the country. I mean, south of the country.

24 Q. Let me just stop for a moment and point you to the map.
25 Is this an accurate map of Somalia?

1 A. Yeah, it is accurate, as far as I can tell an accurate map
2 of Somalia.

3 Q. Can you tell the Court what the area demarcated as yellow
4 refers to?

5 A. Somalia is composed of two countries joined together. The
6 yellow part is ex-British colonist part of Somalia, which we
7 now like to call it Somaliland. The south is the Italian
8 Somalia.

9 So, the Somali Republic was made up of the north and
10 the south part of Somalia.

11 Q. Okay, thank you. Where did they take you first when you
12 arrived at Labataan Jirow?

13 A. Well, when we were took to Labataan Jirow, they
14 blindfolded us, so I really can't, we didn't see any part of
15 it, but they unfold when they put us in a cell.

16 Q. So, could you-- So, they took off your blindfold in the
17 cell, is what you're saying?

18 A. Yeah.

19 Q. Could you please describe that cell.

20 A. The cell was a small, you know, about four or five steps,
21 I can take four or five, maximum five steps in both ways. You
22 know, it was made of concrete. The wall, the outside part was
23 longer, was thicker than if I stretch my hands. Inside there
24 was a concrete table made of, table that was made of concrete,
25 and a chair made of the same thing.

1 At the other end there was, you know, kind of a
2 bathroom that was cut for a bathroom.

3 Q. Was that a plumbing toilet or--

4 A. I mean, toilet, yeah. Around the toilet, there was a
5 shower too.

6 Q. Was it plumbing or was it a dug toilet?

7 A. Oh, it was a dug toilet.

8 Q. Could you describe the door to the cell, please.

9 A. The door was made up of, I would say two kind of iron
10 doors. The outside one was completely solid sheet of iron, you
11 know, heavy iron. The one inside was kind of, I think it was
12 welded together, kind of a mesh door I would say.

13 Q. Okay. How many people were in that cell initially?

14 A. In my cell there was only me and my friend, one of my
15 friends.

16 Q. And how long did the two of you stay in that cell
17 together?

18 A. As a matter of fact, it is hard for me to tell the time at
19 that time. As you can understand, my watch was taken.
20 Sometimes we don't know even the date because we have nothing
21 to, you know, measure the day or the time. But I would say
22 about maybe six, seven months is maximum.

23 Q. Okay. And after six or seven months, what happened?

24 A. My friend was taken from this cell, transferred to another
25 cell. I was in complete isolation for the rest of that.

1 Q. How long were you kept in complete isolation like that?

2 A. I was seven years for complete isolation. I did not speak
3 with anybody. I didn't even remember, I was sometimes
4 wondering if I still remember my, even my native language.

5 Q. Did you have anything to read?

6 A. I had with me two novels and a newspaper that I kept with
7 me from my last jail.

8 Q. Are you familiar with the layout of Labataan Jirow?

9 A. Yes, I do.

10 Q. I would like to show you a drawing to help the Court
11 understand your testimony about Labataan Jirow.

12 JAMEY: Jamey, if we could put up Demonstrative Exhibit No.

13 4.

14 THE COURT: Just for the record, the previous exhibit
15 is what number?

16 MS. ROBERTS: I'm sorry, that wasn't an exhibit.

17 It's only--

18 THE COURT: Then it will not be part of the appellate
19 record.

20 MS. ROBERTS: It will not be part of the appellate
21 record.

22 THE COURT: All right.

23 MS. ROBERTS: It is just to help Your Honor
24 understand what he is going to describe.

25 THE COURT: All right.

1 BY MS. ROBERTS: (Continuing)

2 Q. Could you tell us or tell the Court which one of those
3 cells was yours?

4 A. As you can see, the Labataan Jirow was kind of a
5 triangular construction. I was on the left side on the top
6 column, I mean, row of the cells. I was somewhere in the
7 middle.

8 Q. What could you see from that cell when the door was
9 opened?

10 A. I could see was that, what I call post card, only that
11 part I have been seeing for seven years. The only change that
12 came with me was the seasonal change, whether it is green or
13 dry.

14 And the other thing I saw was the flag, that was
15 right across the other side of the wall.

16 Q. Thank you. And I think I misspoke. I said when the door
17 was open, but I meant when the outer door was open.

18 What would it be like when the outer door was closed?

19 A. You mean outer doors?

20 Q. The outer solid sheet, when that door was closed, was
21 there light in your cell?

22 A. No, there was not.

23 Q. Is there anything missing from this drawing?

24 A. The only thing missing? Yeah, the only thing missing is
25 the military.

1 THE COURT: I am sorry, is the what?

2 Q. The military?

3 A. Actually it was a jail, at the same time it was base, a
4 military base. So, all around the sides there were military
5 everywhere, tanks, there was-- I don't know the names of the
6 weaponry, but a lot of heavy machines around.

7 Q. Okay. And you're talking about the Somali government
8 military?

9 A. Oh, yeah.

10 Q. Could you please describe for the Court the conditions of
11 your daily life in Labataan Jirow.

12 A. The condition was I think monotonous, it was the same all
13 the time. In the daytime I used to see the light, that's when
14 I didn't make misbehave or I did anything wrong because if I
15 misbehave or if they decide that I was not behaving the way
16 they want, the only door I had was closed. So, it would be
17 dark 24 hours.

18 The food I was given was the poorest you can imagine
19 in a third world country jail. I won't blame them. They would
20 give me what they had. They gave me, they tried to give me as
21 much as they can, but it was really poor.

22 There was no electric light. The place was full of
23 cockroaches. You know, there was mice everywhere. There was,
24 what is that, cockroach flying, you know, like you are in
25 Atlanta airport, flying everywhere.

1 And it was really bad. One time I remember I fainted
2 somehow, I don't know what was wrong with me. We use to, the
3 bathroom, to put a bucket on the top of it, a full bucket of
4 water so the rats will not come out.

5 One night I remember I tried to lift that bucket and
6 I fell down, I fainted. And I remember it, a drop of water
7 hitting me on my chest, which was coming from the, you know,
8 the shower in there. And there was, I was covered with every
9 kind of cockroach, mouse, rats, everything.

10 And I was, I was not sure where I was, so I have to
11 crawl. When I see the small window of the outside, I figured
12 out where I was.

13 From that night on, I tied myself to my bed so I will
14 not be able, you know, because if I fainted and I hit one of
15 those concrete chairs or tables, I might have died immediately.

16 So, I was, I didn't go outside for, I didn't go at
17 nighttime anymore again in the bathroom.

18 Q. Were you able to leave your cell?

19 A. In the first part of when I was brought, when I was in
20 Labataan Jirow, they gave us 15 minutes walk. Usually where
21 the building goes, you know, a little bit outside, we used to
22 walk around that for 15 minutes.

23 And all the doors that was toward this way were
24 closed so we won't see my friends, you know, anybody in the
25 jail.

1 After that, I don't know whether the politics has
2 changed or what changed, but all of a sudden, that's when we
3 were two persons together too, they stopped taking us outside
4 and they put each one of us in a different cell.

5 Q. So, what, if anything, did you do in order to leave your
6 cell after that first six to seven months when you were given
7 that chance?

8 A. I don't know if anybody in here will imagine, but when you
9 are in a cell for a long time--

10 Q. Okay. Do you need a second?

11 A. Give me a minute.

12 When you are in a cell for a long time, sometimes the
13 most precious thing will be to see a star. Or just fresh air.

14 Thanks. I'm sorry.

15 Q. Perfectly all right. Would you like me to repeat the
16 question?

17 A. I will try.

18 Q. What, if anything, did you do in order to be taken out of
19 that cell?

20 A. Yes, sometimes I will argue with the soldiers or bang the
21 door so I would be taken outside and see-- I will be taken to
22 the-- What is that? The command officer, which is on the
23 other side around here on the right-hand side of the colony
24 there.

25 Q. On the right-hand side of the drawing?

1 A. On that side of the prison. So, I will be taken across
2 almost half, more than half of the prison. Just to get the
3 stars and the fresh air, I will misbehave even though I will
4 know that my door will be closed maybe for another month.

5 Q. Could you describe for the Court what it was like to be in
6 solitary confinement.

7 A. I have been in torture for a long time. The worse torture
8 you can go through is isolation. You turn into an animal.

9 THE COURT: You are going to need speak closer to the
10 microphone.

11 A. Yeah, you completely turn an animal. It's really, really
12 bad.

13 Q. How did it compare with your time at the interrogation
14 center?

15 A. It was incomparable. There is nothing like isolation.
16 You know, when you are tortured, it's painful in that time, but
17 it's only physical. But when you are tortured mentally, there
18 is nothing like it. It will affect you for the rest of your
19 life.

20 Q. Over those years, were you allowed any communication with
21 your friends who were in the other cells?

22 A. Yeah, probably that's what have saved us because we were,
23 about a year when we were in jail or maybe one-and-a-half year
24 I would think, we were able to make kind of north code.

25 Q. A kind of Morse code?

1 A. Morse code I mean. Morse code. So, we were able to
2 communicate across the walls by bang, making two different
3 sounds. Like, for example, this would be dot, and this would
4 be bang.

5 So, the code is made of only two sounds. So, we were
6 able to communicate with my friends on either side of my cell.

7 Q. One letter at a time?

8 A. Yeah, I mean, one letter at time, yeah.

9 Q. What sorts of things did you communicate with the other
10 prisoners through the walls?

11 A. Actually I was, the guy next to, for example, next to my,
12 my cell, was, you know, Ph.D. economist from-- What was the
13 name of his school? London School of Economics. And he was my
14 dictionary. So, the all books I have, I used to ask him. I
15 learn most of, some of the, more than I know before because we
16 were, you know, communicating a lot.

17 And one time I have even get medication through the
18 wall.

19 Q. How did you end up getting medication through the wall?

20 A. One time my leg has turned blue, and it was not stretching
21 enough. And I told my, you know, the guy next, the left side
22 of my cell, who was a doctor, Dr. Ismal, I told him that I
23 have, that my leg is blue. He told me, you know, a technical
24 term, I don't remember now. And he said I might loose my leg
25 if I don't do anything about it.

1 I tell him, what shall I do. He told me he has the
2 medication, but he is not sure whether it has expired. At the
3 same time he was not sure how to get that medicine to me
4 because we were not supposed to talk or to tell them that, you
5 know, the other person is sick, he will not talk to the
6 soldiers.

7 Q. So, what did you do?

8 A. Well, what I told, tell him was he can throw the
9 medication, wrap it with something and throw it outside. So,
10 the only way, only time we can ask to get outside when we are
11 getting, when they shave our hair and beard or to cut the
12 nails.

13 So, he threw away, throw out, throw the medicine. I
14 told them the soldiers I need to get my hair shaven. So, I
15 seen the place that was, the medicine was thrown. And I took
16 the medicine. And that is how I have, you know, saved my leg.

17 Q. When were you finally able to leave Labataan Jirow?

18 A. I was able in 1989.

19 Q. Do you know why you were released?

20 A. No, I didn't know. But later I found out there was a war,
21 a really heavy war in 1988 in north part of the country where I
22 am from, Hargeisa mainly. And all my people is in refugee
23 camps. All my family were in the refugee camp.

24 So, I believe the government, I have no value for the
25 government anymore.

1 Q. Could you please describe what happened when you were
2 released.

3 A. Yeah. I was taken, I was again blindfolded, taken into a
4 Land Cruiser. First we were released in three different times.
5 I was the last group that was taken out. I was taken, I was
6 put in a Land Cruiser, the back of the Land Cruiser with other
7 three friends, other two friends of mine.

8 Q. Did you-- I am sorry, go ahead.

9 A. They have taken our, I mean, the blindfold somewhere in
10 the middle where there is no city or anything, just an empty,
11 you know, countryside.

12 Q. Did you recognize each other?

13 A. Not that part. Then they told us to urinate. And they
14 didn't put the blindfold again. So, when we were, we came to a
15 city, it was nighttime. So, a friend of mine who was next to
16 the door, because we know geographically where the Labataan
17 Jirow was, and we know the closest city to that in Somalia is
18 Biadaba, and I used to be a teacher in Biadaba. And he asked
19 me if I know this city. Is this Biadaba, he asked me. I said,
20 no, it cannot be because it was like a picture I have in my
21 mind how New York will be.

22 I told him it should be New York or somewhere, maybe
23 we are in Kenya. But it turned out it was Biadaba actually.

24 Q. Did they return your clothes to you?

25 A. Did they what?

1 Q. Your clothes.

2 A. Yeah. The strange part was they took me to a, what is
3 that, in a place where they put all the bags we had, and they
4 told me, pick up your bag. I don't even remember what the bag
5 looks like. I don't even remember what clothes I had.

6 So, I asked them, I look one of them-- Because there
7 is no way I could. Then I remember I had a Rolex watch. And I
8 told them I had a Rolex watch and that will be strange, nobody
9 would ever, my friends have that kind of watch. And I asked
10 them, I have a Rolex watch. Then I found because of that which
11 one my bag was.

12 Q. How did your friends look to you when you were finally,
13 when your blindfold was taken off?

14 A. When I was immediately released from the cell, I came
15 face-to-face with one person. I didn't recognize him first. I
16 recognized when he was smiling that he was my best friend. I
17 can't even tell it was him because he changed so much.

18 Q. After your seven years of solitary confinement, were you
19 finally able to see your father?

20 A. No.

21 Q. Why not?

22 A. Because my father was killed, he was shot while he was
23 trying to see me when he heard that I came to Ethiopia.

24 He never, my father was an older person who was
25 crippled and all, and he was waiting for, he let the rest of

1 the family to go to Ethiopia, but he was staying inside
2 Hargeisa so he can take care of his father, I mean, his
3 brother. When I was released and my mother went to him,
4 because only women were able to go, you know, back to the city.
5 And she told him that I was released. And he said, now I can
6 go to Ethiopia too.

7 But when he was coming out, trying to go to-- What
8 is that? Turopak (phonetic), which is another part, another
9 Isaaq city, he was trying to go through there, but he was shot
10 in the-- What is that? He was killed there by the military
11 people.

12 Q. Did you decide to stay in Somalia or to leave?

13 A. I decided to leave.

14 Q. Why?

15 A. Because it was not safe for me, or for anybody for that
16 matter in 1989.

17 Q. What did you do when you left Somalia?

18 A. I don't know how I get the passport or when the picture
19 was taken because people were afraid even to make, to get
20 passport for me. I don't know who made it today, but I was
21 given a passport with my picture on it.

22 And there was, in Muslim calendar there is time
23 called The Hajj. That means you can go to Saudi Arabia for the
24 pilgrimage. So, I went there first. And I end up Djibouti, I
25 came back to Djibouti.

1 Q. When did you finally come to the United States?

2 A. I came to the United States-- First we apply for
3 political asylum in Djibouti. We were immediately given that.
4 But we told them at least a time to see our family in the
5 refugee camps. And maybe after one year we came to Djibouti
6 back and came to America.

7 Q. Could you please explain for the Court how this experience
8 has affected, excuse me, has affected your life.

9 A. It actually affected me in every way. Even today when I
10 am standing, I still walk the four or five steps that I was
11 pacing in my cell. I don't remember most of the numbers, the
12 dates, even my, the birthday of my daughters. And I even
13 forget my daughter was in the hospital.

14 Q. So, what did you forget on the day when your daughter was
15 in the hospital?

16 A. My daughter in the hospital.

17 Q. What did you forget?

18 A. I was trying to take her to the hospital, and I went
19 outside, I just drove, I didn't ever remember until my wife
20 called me.

21 Q. What physical effects has this experience had, I know this
22 is hard, I am sorry, what physical effects has this experience
23 had on you?

24 A. I believe I was so depressed that I cannot even handle my
25 own marriage. Even today when I feel everything, I lay down, I

1 like to in a dark place. To turn off the lights, close all the
2 doors, that is the best place in my life now.

3 Q. Do you have nightmares?

4 A. A lot. Even last night, especially when I talk about it
5 or remember, any of my friends calls me who were in jail with
6 me, that's when I usually have the nightmares.

7 Q. You mentioned pacing. What do you mean by that?

8 A. What it is is whenever I stand up or smoke, I was so used
9 to be-- When you are in a cell, you go around like a lion in a
10 cage, you don't sit down. It's really, you have to, you know,
11 go around, somehow, I don't know why.

12 So, when I stand up or smoke, I still go with the
13 lengths of my jail, the five steps coming back, the same, same
14 pace, I still do.

15 Q. Why do you think General Samantar is responsible for what
16 happened to you?

17 A. General Samantar was the vice-president of Somalia, he was
18 the commander of the military, he was the highest ranking
19 general in Somalia. And from the start to the last, I was, my
20 ordeal was in the hands of the military police, of the military
21 people. From the jail I was, in the cell I was tortured,
22 interrogated. Even Labataan Jirow was a military base, and he
23 was there under his own direct command.

24 MS. ROBERTS: Thank you, Bashe. I have nothing
25 further.

1 THE WITNESS: Thank you.

2 THE COURT: Thank you, sir, you may step down.

3 NOTE: The witness stood down.

4 THE COURT: Call your next witness.

5 MS. ROBERTS: Next witness would be Buralle Mohamoud.

6 Your Honor, this witness will be testifying in

7 Somali, so we need to have--

8 THE COURT: All right, our interpreter is the same

9 gentleman from this morning, correct? Counsel?

10 MS. ROBERTS: I believe so, yes.

11 THE COURT: Yes. All right. So, we will have the

12 witness affirmed.

13 NOTE: The witness duly affirms.

14 THE COURT: Now, I am going to ask the interpreter,

15 we need to hear you. So, if you will stand near the microphone

16 so when you are speaking English, I can hear you.

17 THE INTERPRETER: All right, Your Honor.

18 THE COURT: Go ahead.

19 BURALLE SALAH MOHAMOUD, called by counsel for the

20 plaintiffs, first duly affirming, testifies and states:

21 DIRECT EXAMINATION

22 BY MS. ROBERTS: (Through Interpreter)

23 Q. Good morning.

24 A. Good morning, Your Honor.

25 Q. Would you please state and spell your name for the record.

1 A. Buralle Salah Mohamoud.

2 Q. May I remind you to speak up and speak slowly for the
3 translator.

4 Buralle, where do you live?

5 A. Burao, Sasha'anade.

6 THE COURT: I am sorry, what? You have to spell that
7 for us.

8 THE WITNESS: Sasha'anade, which is district in
9 Burao, that's a region in Somalia called Burao.

10 THE COURT: All right.

11 THE WITNESS: In Somaliland.

12 BY MS. ROBERTS: (Continuing)

13 Q. When were you born?

14 A. 1962.

15 Q. And where were you born?

16 A. Sasha'anade.

17 Q. What do you do for a living?

18 A. I live in what you call a countryside.

19 Q. And what do you do to earn your living?

20 A. I have goats and two camels.

21 THE COURT: Camels?

22 THE INTERPRETER: Camels.

23 THE COURT: Camels.

24 BY MS. ROBERTS: (Continuing)

25 Q. How long have you cared for goats and camels?

1 A. I born in the countryside and that's where I live, that's
2 where I am.

3 Q. If I understand you, you have done that all your life?

4 A. Yes.

5 Q. Okay. Directing your attention to the year 1984.

6 Where did you live then?

7 A. I was in the countryside.

8 Q. In the same area?

9 A. Around the same area.

10 Q. How far was closest town?

11 A. Around hour, hour-and-a-half.

12 Q. Were there soldiers in your village?

13 A. I used to live in the village. The soldiers, they don't
14 used to live there, but they used to come to the village.

15 Q. And were the soldiers from the Somali National Army or
16 some other group?

17 A. They were Somali National Military.

18 Q. Okay. Was there a military base in your region?

19 A. The closest base was Beldeke (phonetic). And I used to
20 see in also Burao.

21 Q. Do you know who the person was in charge of the military
22 base in Burao?

23 A. Yes, I used to know, I know him.

24 Q. Who is that?

25 A. Kahiye.

1 Q. Did you know Kahiye's rank or how he was addressed?

2 A. Colonel Kahiye.

3 Q. How did you come to know Colonel Kahiye was in charge of
4 the military base in Burao?

5 A. He used to come to the villages and he used to go around,
6 and I know that he was in charge.

7 Q. Directing your attention to the year 1984.

8 Did Colonel Kahiye ever come to your home?

9 A. Yes.

10 Q. Would you please describe for the Court what happened on
11 that morning.

12 A. We were, you know, village people, we used to herd goats
13 and camels. One of the morning we have kind of ceremony, our
14 family.

15 Q. Was that the ceremony of allah bari?

16 A. Yes.

17 Q. Okay. Could you explain what allah bari is.

18 A. Allah bari, it means when you beg to God, that you just
19 wishing to have rain or peace.

20 Q. Okay. So, your family was celebrating allah bari when the
21 soldiers came. And then what happened?

22 A. Yes.

23 Q. How many soldiers were there?

24 A. If I imagine, around maybe 60 or 70.

25 Q. And what kinds of weapons did they have with them, if any?

1 A. Rifle, AK or Kalashnikov.

2 Q. How were Colonel Kahiye and his soldiers dressed?

3 A. They were wearing camouflage.

4 Q. So, when the soldiers, when the 60 to 70 soldiers arrived
5 at your home while you were celebrating allah bari, what did
6 the soldiers do?

7 A. They circled us.

8 Q. Then what?

9 A. They just, you know, rounded up all of us. Then they
10 started shooting us. At that time ask us to tell SNM.

11 Q. Did you know what they meant by the SNM?

12 A. Well, I didn't know, but they told us that they were
13 looking for militia, SNM, that's what they were looking for.

14 Q. Okay. You mentioned shooting. Where were the soldiers
15 shooting?

16 A. Just in our heads, on top, so we become frightened.

17 Q. Were you frightened?

18 A. Yes.

19 Q. What else did the soldiers do?

20 A. They asked us, you know, who cooking the food for.

21 Q. What did you tell them?

22 A. That this allah bari, we just begging God.

23 Q. Were the soldiers satisfied with that answer?

24 A. No.

25 Q. So, what happened next?

1 A. They rounded up me and my-- They rounded at that time me
2 and my three brothers.

3 Q. I believe he said their names, yeah.

4 A. Abdullahi Salah. Awil, A-w-i-l S-a-l-a-h. And Burle
5 Salah, B-u-r-l-e Salah, S-a-l-a-h.

6 Q. Where did the soldiers take you and your two brothers,
7 Abdullahi and Cawil?

8 A. They put us in a truck.

9 Q. Where did you go?

10 A. Then they took us, they start driving the car, they took
11 us to another military base by the name of Waridaad.

12 Q. And how long did you stay in Waridaad?

13 A. We spent that night.

14 Q. Could you please describe the conditions where they kept
15 you and your brothers at the military base in Waridaad.

16 A. It was empty place. At that time the soldiers who pick up
17 us or rounded up us and the soldiers, other soldiers, they were
18 there together. So, we spend that night in that area.

19 Q. How many soldiers were there in that area?

20 A. 60 and 70 those who rounded up first place, first time,
21 and also there was other more soldiers there.

22 Q. I just want to clarify, did you say that that was a
23 military base or was it a military camp?

24 A. Actually it was a camp, those who rounded up us and the
25 other soldiers, they were there together.

1 Q. Where did you sleep?

2 A. So, we slept, you know in that area, the circle area. It
3 means--

4 Q. Inside or outside?

5 A. It's empty place. So, what they did is they circle us.
6 So, we slept in the middle.

7 Q. What did they give you to eat and drink?

8 A. They didn't give us anything.

9 Q. So, what happened in the morning?

10 A. At that time they took us to, they put us to the truck and
11 they drove, then they took us to a place called Magaalooyer.

12 Q. What happened when you got to Magaalooyer?

13 A. At that time they just took us from the truck. Then at
14 that time they just get real strong rope, so they just tied us
15 together in MiG way. At that time just they stepped on us,
16 they stepped on our back and tightly they tied us.

17 Q. Did you say that was in the MiG way?

18 A. In a MiG way, yes.

19 Q. Would you please explain to the Court what the MiG way of
20 tying means.

21 A. The MiG, they tie both your hands at the back together.
22 And they just take one of your leg, they tie it together. And
23 also the other one, the other leg, they tie it together. So,
24 then they put you on your chest, that's it.

25 Q. And you mentioned kicking. Was that during the time that

1 they were tying you or after?

2 A. While they tied us, also they beat us.

3 Q. How did it feel to be tied like that?

4 A. It was very hard, very harsh. It was frightening. It's
5 not something to do to a human.

6 Q. Was it painful?

7 A. It's more than pain. It was very harsh. We were just, we
8 were very, it was very hard anyway.

9 Q. How long were you held in that MiG position?

10 A. After they take us, then put us, they load us to the
11 trucks.

12 Q. Still in the same position?

13 A. Yes, in the MiG position they load us to the truck.

14 Q. Okay. And then what happened?

15 A. Then they took us to the Third, what you call, Battalion
16 in Burao.

17 Q. Gass is division.

18 A. Gass or division.

19 THE COURT: I'm sorry, I missed that. What was that?

20 MS. ROBERTS: I am sorry, I was helping him with the
21 translation. The word "gass" is division. I haven't worked
22 with an interpreter that hasn't been thrown off by it. We
23 didn't get a chance to prepare him.

24 THE COURT: You were taken to a division? The
25 question is, after they were loaded into the truck, where were

1 they taken?

2 THE WITNESS: They took us to Burao, that's the Third
3 Gass on the military.

4 THE COURT: All right.

5 BY MS. ROBERTS: (Continuing)

6 Q. When you say the Third Gass of the military, do you mean
7 the Third Division headquarters in Burao?

8 A. Yes.

9 Q. Were you still in the MiG position at that time?

10 A. Yes.

11 Q. What happened when you got to the Third Division
12 headquarters in Burao?

13 A. At that time they untied us. Then they asked us to come
14 out from the truck. We were unable to get down. Just, you
15 know, our, my hand and my legs, they just stayed the same
16 position, they stuck.

17 Q. How long did it take to get from Magaalooyer when they
18 tied you to when you got to the Third Division army
19 headquarters in Burao?

20 THE INTERPRETER: Counsel, could you repeat that.

21 Q. How long did it take, how much time passed, if that's
22 better, how much time passed between the time when they tied
23 you in the MiG position at Magaalooyer to when they untied you
24 at the Third Division army headquarters in Burao?

25 A. Could be hour, hour-and-a-half.

1 Q. And why weren't you able to get down from the truck?

2 A. Because the tie was very tight, the rope was very tight,
3 that killed off-- Because I was unable to move because we were
4 just, they put our chest to the floor. I didn't have enough
5 strength to move my arm to put it back, or to my leg.

6 Q. So, when they untied you, what did they do next?

7 A. At that time we were unable to get up. Then they come
8 back, and at that time they start just beating us, jumping on
9 us, on our body. They just started moving our arms and our
10 legs. Also they started jumping our backs or kicking our
11 backs.

12 Then at that time they asked us by force to get out.
13 Then at that time we come from the truck.

14 Q. How did it feel when the soldiers were jumping on you and
15 shaking your limbs like that?

16 A. That was, that was very hard.

17 Q. So, what happened next?

18 A. Then they take us to the office. Then at that time they
19 start taking information or notes.

20 Q. Was this the office on the military base?

21 A. That was inside the military base.

22 Q. And did they ask you anything?

23 A. They asked us questions. Those soldiers who first rounded
24 up, they were the ones who said, those people, probably they
25 hiding something, and we asked them and they didn't give us

1 information, they hide the information.

2 And they asked us if we do the same thing. We say
3 no.

4 Q. Were they satisfied with your answer?

5 A. No.

6 Q. Were you charged with any crime?

7 A. Those soldiers who rounded up, they the ones who say just
8 we hiding SNM, but I didn't know if they charge us another
9 crime. And we didn't commit any crime.

10 Q. Did you have access to a lawyer during this questioning?

11 A. No.

12 Q. So, after, after this, after you gave your answers in the
13 questioning and after you had been tied, what did they do next?

14 A. At that time they just put us in, what you call, they
15 chain us by two, two/two, handcuff two/two, then they took us
16 to the jail.

17 Q. Who were you handcuffed to?

18 A. My brother.

19 Q. So, they took you to the jail?

20 A. Yes. That jail was inside the military compound.

21 Q. Okay. How many other men were in the cell they brought
22 you to?

23 THE INTERPRETER: Counsel, could you repeat that.

24 Q. How many other people were in the cell?

25 A. We were 13 people together.

1 Q. Did you get to know who the other men in the cell were?

2 A. I know all of them was from Isaaq.

3 Q. Are you a member of the Isaaq?

4 A. Yes.

5 Q. Could you please describe the conditions of your
6 confinement in that cell.

7 A. It was small place. It was not a very big one. It was
8 very, very crowded. And there was no windows.

9 Q. Was there any light?

10 A. No.

11 Q. Was there a toilet?

12 A. No.

13 Q. How clean was the cell?

14 A. Inside that cell we used to urinate and we used to poop.
15 They took us to the bathroom only two days, two nights or two
16 days. It was very harsh living condition.

17 Q. How healthy were the people in the cell?

18 A. It was, very poor, very bad. Some of them, they were
19 throwing out, and nobody was getting--

20 Q. What were you given by the soldiers to eat and drink?

21 A. During the day maybe we used to have small portion of
22 rice.

23 Q. Anything to drink?

24 A. Uh-uh, no.

25 Q. Were you permitted exercise outside of the cell?

1 A. Just during the time they used to open the door is when
2 they gave us that rice.

3 Q. How long did you remain in that cell before you left the
4 first time?

5 A. Four days, after four days. Four nights I mean. At that
6 time they take us.

7 Q. Could you please describe what happened on the fourth day.

8 A. They took us to a place called rest house that is close to
9 Burao. That was a military court, that's where they took to
10 the people to convict.

11 Q. About how far away was rest house from the base?

12 A. Not that far.

13 Q. How long did it take to drive there?

14 A. Maybe 10 to 15 minutes distance. Short distance.

15 Q. Did they remove your cuffs when you got to rest house?

16 A. No.

17 Q. About how many other prisoners were taken to rest house at
18 the time when you were there?

19 A. All 13 of us, we were together in one truck. And also
20 they brought other people from the jail, around 80 people.

21 Q. How many soldiers were there?

22 A. It was a lot of soldiers inside and outside.

23 Q. What happened when you were taken to rest house? What
24 happened when you got there?

25 A. At that time they charge us a crime.

1 Q. Did you have a lawyer?

2 A. We didn't hire a lawyer, and they not allow us to have a
3 lawyer. One of the military attorneys, lawyers say that I am
4 going to be your lawyer. And he was wearing military uniform.
5 And we didn't hire him. And he didn't do anything for us.

6 Q. Did you believe him?

7 A. No.

8 Q. Did you even know you were going to be charged with a
9 crime?

10 A. No, I didn't do anything, so I was not expecting to be
11 charged in a crime.

12 Q. What evidence was presented against you?

13 A. They didn't have any evidence. So, the only things they
14 have against us was allah bari, they say that we were cooking
15 that food to SNM. That's how they build their case.

16 Q. Who accused of you cooking allah bari for the SNM?

17 A. Those soldiers who rounded up, they are the ones.

18 Q. Was there any other evidence against you?

19 A. No.

20 Q. Were you allowed to testify on your own behalf?

21 A. No.

22 Q. How long did this procedure last?

23 A. Maybe, there is a lot of people, maybe one hour-and-a-half
24 to two hours. It was very quick. People was not trying to
25 express their feeling, they were not asking any questions.

1 Q. So, 80 people were tried in one-and-a-half to two hours,
2 did you say?

3 A. Yes. Because we are not free to speak. Not free, I mean.

4 Q. After the trial, what happened?

5 A. At that time they just loaded us back to truck, they took
6 us to the jail.

7 Q. Did they remove your handcuffs at the jail?

8 A. No.

9 THE COURT: All right, counsel, it is 1:30, and I am
10 giving my staff a break. We are going to only have a 45-minute
11 lunch break today.

12 So, we will reconvene at 2:15.

13 MS. ROBERTS: Okay. Thank you.

14 NOTE: At this point a lunch recess is taken; at the
15 conclusion of which the case continues as follows:

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1 A F T E R N O O N S E S S I O N

2 THE COURT: All right, Mr. Mohamoud needs to be back
3 on the witness stand.

4 MS. ROBERTS: I'm sorry, Your Honor, I believe he's
5 still on his way up the court steps.

6 THE COURT: All right.

7 BURALLE SALAH MOHAMOUD, PLAINTIFFS' WITNESS,

8 PREVIOUSLY AFFIRMED, RESUMED

9 DIRECT EXAMINATION (Cont'd.)

10 BY MS. ROBERTS: (Through Interpreter)

11 Q. Good afternoon, Buralle.

12 A. Good afternoon.

13 Q. I think that your brothers' names may not have come out
14 very clearly in the earlier testimony.

15 THE COURT: No, we heard them.

16 MS. ROBERTS: Okay.

17 THE COURT: Cawil and Abdullahi.

18 MS. ROBERTS: Abdullahi and Cawil.

19 Q. I will ask Jamey to put up the correct spellings so that
20 you can verify them for the Court. If you look to the screen
21 behind you, are those spelled correctly? Are those your
22 brothers?

23 A. Yes.

24 Q. Okay. And when we were speaking before the break, you had
25 just described your first trip to rest house, and I believe you

1 had just -- well, I'll just start right there. After, after
2 that first visit to rest house and the trial, where did the
3 soldiers take you?

4 A. They took us back to the jail.

5 Q. And how long total did you end up spending in this cell?

6 A. Eight nights or eight days.

7 Q. And during these eight days, at any time were your
8 handcuffs removed?

9 A. No.

10 Q. At any time during these eight days, did the conditions in
11 that cell improve?

12 A. No, it gets worse.

13 Q. Directing your attention to the eighth day of your
14 confinement at the, at the military base in Burao, what
15 happened on the eighth day?

16 A. In the morning, they load us truck. There was -- the car
17 we were in, there was another car before the car we were in,
18 and there's also another car behind us, and they took us to a
19 rest house, and also, they brought all other people to rest
20 house.

21 Q. So, how many prisoners do you think were at rest house on
22 that eighth day, if you could estimate?

23 A. Around 80 people.

24 Q. And how many soldiers?

25 A. You mean the soldiers around the area or --

1 Q. At the court.

2 A. There was five or six of those people also in the court,
3 but outside there's other soldiers.

4 Q. Was it more than 50?

5 A. I didn't count. Maybe there were more than 50. Inside
6 and outside, there were soldiers.

7 Q. So, what happened when you first arrived at rest house?

8 A. Those people who work in the court, they come to the rest
9 house. At that time, they were carrying a lot of papers,
10 files.

11 Q. Which people were carrying files?

12 A. Those people who was forming the court.

13 Q. The soldiers?

14 A. You mean those soldiers who tried to charge us the crime
15 or the judge or those people who's working for courts?

16 Q. Okay. Thank you. Please continue.

17 A. When they come to the court, they ask us to stand up. At
18 that time, we stand up, and they say, you know, the court is in
19 session. Then at that time, they start calling the names one
20 by one. Some of them, they were convicted, you know, death.
21 Some of them, they were sent to jail. And two people is being
22 released, two old, old guys.

23 Q. What was your sentence?

24 A. Me and my brothers were being convicted to death,
25 Abdullahi Salah, Cawil Salah, Buralle Salah.

1 Q. How many people were sentenced to death?

2 A. Death, it was very hot day. Maybe 42, more than 40
3 people.

4 Q. How long did it take to read, for the court to announce
5 these verdicts?

6 A. So they call your name, and then it takes, you know, not
7 short time -- not long time to be convicted.

8 Q. How long -- I'm sorry, how did you feel when you heard
9 that you and your brothers were sentenced to death?

10 A. We were told that they already kill us. We consider that
11 death.

12 Q. After the sentences were read, what happened next?

13 A. So they just brought a big truck. There was a net hold on
14 the truck.

15 THE COURT: I'm sorry, there was what?

16 THE INTERPRETER: A net.

17 THE COURT: All right.

18 THE WITNESS: So at that time, they start calling
19 names those people who, who sentenced to death. The two are
20 just to each other, they just handcuffed, and they just put to
21 the truck two by two.

22 Me and my brothers, Cawil Salah, Abdullahi Salah,
23 Buralle Salah, we were in queue close to each other. They were
24 ahead of me. I was behind them.

25 Q. And what happened when the man who was calling the names

1 called out the names of each of your brothers and then you?

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

3 Q. And then what?

4 A. Then he ask me, "Where are you?" when he call my name.

5 Then I said, "I'm here."

6 Then he did cry a little bit. So then he have a pen,
7 so he bite his pen.

8 Q. And then after he bit his pen?

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

13 Q. Then what happened next?

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

17 Q. So after they put your brothers and the other men on the
18 truck, what happened to your brothers?

19 A. They took them to the field.

20 THE COURT: Well, at this point, counsel, even though
21 there's no -- wait a minute. Even though there's no opposing
22 counsel, you still can't put in hearsay or evidence where the
23 witness has not indicated how he would possibly know. So
24 you're going to have to rephrase the question.

25 MS. ROBERTS: You're right, Your Honor.

1 Q. Let me stop you there -- or the Court has stopped you
2 there. After you saw the truck drive away, did you see your
3 brothers ever again?

4 A. No.

5 Q. What did you hear after the truck drove away?

6 A. That -- I heard the shooting, that they killed my
7 brothers.

8 Q. Did you hear anything else?

9 A. After they kill all of them, the truck who took them to
10 the field come back.

11 Q. Did you ever see any of those other men that were on the
12 truck with your brothers again?

13 A. No.

14 Q. How much time passed after the truck left with those men
15 before it returned?

16 A. Maybe around 30 minutes or less than 30 minutes.

17 Q. Please describe what you observed when the truck returned.

18 A. At that time came the soldiers, they were carrying those
19 handcuffs, empty ones.

20 Q. So when they came back with the empty handcuffs, what
21 happened next?

22 A. At that time, they start handcuffing those people who get
23 sentences. Then at that time, they again loaded to the truck.

24 Q. And what happened to you?

25 A. I was frightened at that time. I was in shock. So I knew

1 at that time, you know, they kill my brothers. Also, I was
2 expecting them to also kill me.

3 Q. And then what happened?

4 A. When they loaded the truck, then the truck left, but me
5 and there's also those two old other guys who had been
6 released, three of us were there. Then one of the guard asked
7 those two old guys, "Who are you?"

8 You know, "We've been released." That's what we told
9 him.

10 Then he say, "Just go."

11 And I go with those two other guys, I go with them.

12 Q. Where did you go?

13 A. And I went to the market.

14 Q. What did you observe in the market?

15 A. So when I went to market and saw the people, they were
16 really emotional. They were yelling.

17 Q. Why were they emotional and yelling?

18 A. Because they were mad or they were, what do you call,
19 angry because the people have been killed.

20 Q. What did you do?

21 A. Then I went to my uncle's house. Then at that time, I
22 started taking a shower. Then I became sick. I fell. I was
23 having a fever because I have a lot of trauma. I was -- I was
24 sleeping the house.

25 And late evening, they told me was someone looking

1 for me. A lady who worked the court, she's the one who
2 said, "They looking for you."

3 Q. Let me stop you there. How long did you stay with your
4 uncle?

5 A. Just only the rest of the day.

6 Q. And where did you go next?

7 A. Then I left the house. So I went to another house that
8 owns by my uncle. I spent that night that house. In the
9 morning, I starting, you know, leaving the city by foot.

10 Q. Do you know why you were let free?

11 A. I don't know.

12 Q. What effect has this experience had on your life?

13 A. Because they do me -- this side of my body I have a lot of
14 problem. Sometimes I start shaking on my left side, that I
15 have that kind of, you know, pain.

16 Q. Any other physical effects?

17 A. When I start, you know, having the flashbacks, when I
18 have, you know, this flashback of what happened at that time, I
19 really become frightened. And everything I do in that time
20 when I start having those flashbacks, I forget everything I was
21 doing.

22 Q. And are there any financial effects?

23 A. You mean economically? That's what you mean?

24 Q. Yes.

25 A. You know, I'm a village man. I used to have goats. You

1 know, the only problem I have is, you know, they kill my
2 brothers, and physically I have a problem.

3 Q. Okay. Did your brothers have any children?

4 A. One of them has two boys.

5 Q. And who takes care of those boys now?

6 A. Me and my brothers, we are raising them, my family, me and
7 my family.

8 MS. ROBERTS: Okay. I have nothing further. Thank
9 you.

10 THE COURT: Thank you, Mr. Mohamoud. You may step
11 down.

12 (Witness excused.)

13 THE COURT: Call your next witness.

14 MS. ROBERTS: Plaintiffs called Nimo Dirie.

15 THE INTERPRETER: Does she need an interpreter?

16 MS. ROBERTS: She speaks English.

17 (Affirmation given.)

18 THE COURT: Did you understand? You have to answer
19 yes or no if you understand that question.

20 Reread the affirmation.

21 NIMO MOHAMED DIRIE, PLAINTIFFS' WITNESS, AFFIRMED

22 THE COURT: Mr. Wood, make sure that microphone is
23 right in front of the witness, all right?

24 THE COURT SECURITY OFFICER: Right here?

25 THE COURT: Right in front.

DIRECT EXAMINATION

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BY MS. ROBERTS:

Q. Would you please state and spell your name for the record.

A. My name is Nimo Mohamed Dirie.

THE COURT: No, that's not going to work.

THE WITNESS: N-i-m-o M-o-h-a-m-e-d, Dirie,
D-i-r-i-e.

BY MS. ROBERTS:

Q. May I remind to you speak up and speak slowly so that the
Court can understand your testimony.

A. Okay.

Q. Where do you live today?

A. I'm living in Kuwait.

THE COURT: Kuwait?

THE WITNESS: Yes.

BY MS. ROBERTS:

Q. Who do you live with in Kuwait?

A. My husband and my six kids.

Q. That must keep you busy.

A. Yes, of course.

Q. What does your husband do?

A. He's, he's working at the University of Gulf. He's a dean
of the Department of Physics.

Q. Where were you born?

A. I was born in Hargeisa.

1 Q. Is that in Somalia?

2 A. Yes.

3 Q. When were you born?

4 A. I was born October 18, 1970.

5 Q. When did you leave Somalia?

6 A. I leave Somalia in 1988.

7 Q. Why did you leave Somalia?

8 A. Because the war was happen and also my father was killed.

9 Q. What's your father's name?

10 A. My father's name, Mohamed Deria Ali.

11 Q. With the assistance of Mr. Wood, I'd like to direct your

12 attention to what's been previously marked as Plaintiffs'

13 Exhibit 344. Do you recognize this document?

14 A. Yes. It's my father and my mother and my brother Aziz

15 when he was young, when he was a baby actually.

16 MS. ROBERTS: Your Honor, we'd request to admit this

17 photograph into evidence.

18 THE COURT: Yes, 344 is in.

19 (Plaintiffs' Exhibit No. 344 was received in

20 evidence.)

21 BY MS. ROBERTS:

22 Q. What did your father do for work?

23 A. He was a businessman.

24 Q. How well did his business go?

25 A. His business doing well. He has many storages, a hotel,

1 and some houses.

2 MS. ROBERTS: I'm sorry, Mr. Wood, I should have
3 given you our two exhibits at the same time.

4 Q. I have one more document, previously marked as Plaintiffs'
5 Exhibit 345, that I'd like to ask you to take a look at. Do
6 you recognize this document?

7 A. Yes.

8 Q. What is this document?

9 A. This is my brother Mustafa and my brother Aziz and my
10 brother Ali (phonetic).

11 MS. ROBERTS: I'd like to move this photograph into
12 evidence.

13 THE COURT: All right, it's in.

14 (Plaintiffs' Exhibit No. 345 was received in
15 evidence.)

16 BY MS. ROBERTS:

17 Q. Is your brother Aziz in this courtroom?

18 A. Yes, he is.

19 Q. Can you tell us how is your brother -- how is your brother
20 Aziz involved in this lawsuit?

21 A. He was -- he's, he's, he was the first this case because
22 he started this case. He was starting this case.

23 Q. Can you tell us a little bit about your childhood?

24 A. Yeah. I was taken in my childhood in Hargeisa, Somalia,
25 and I have two sisters and eight brothers. I was in grade

1 school at that time. We play together. We love each other.
2 We were a big family.

3 Q. What was your brother Mustafa like?

4 A. My brother Mustafa, he was very smart and intelligent. He
5 was good at school. He was working with my father.

6 Q. Do you remember when your brother Mustafa started working
7 with your father?

8 A. Yes, I remember. He bought me a watch at that time and
9 also shoes. We like each other. We close each other. I love
10 him so much. He was a nice brother.

11 Q. Are you associated with a Somali clan?

12 A. Yes.

13 Q. What's your clan?

14 A. My clan is Cidagale.

15 Q. And is Cidagale --

16 A. Cidagale clan comes from Isaaq.

17 Q. What languages did you speak growing up?

18 A. Somali and also we learn Arabic in school.

19 Q. Okay. Directing your attention to May 1988, where were
20 you living at that time?

21 A. I was living in Hargeisa.

22 Q. And who else was living in the family home at that time?

23 A. My six brothers, my mom, and my father and my other two
24 sisters.

25 Q. Who was the oldest among the children in the house?

1 A. Mustafa.

2 Q. And how old was he at that time?

3 A. He was 22.

4 Q. Directing your attention to the time period from May 31,
5 1988, until the end of July 1988, what was happening in
6 Hargeisa?

7 A. The war was happening in Hargeisa.

8 Q. What did you do during the fighting?

9 A. We all, we stay in home. We are in the house all the
10 time.

11 Q. Did your family support either side of the conflict?

12 A. No.

13 Q. Would you please describe what you heard of the fighting
14 from inside the house?

15 A. We hear shooting, rockets, bombs.

16 Q. Could you please describe what of the fighting you could
17 see from inside your house?

18 A. We saw soldiers outside the house.

19 Q. How old were you?

20 A. I was 18.

21 Q. And during this time period from May 31, 1988, through the
22 end of July 1988, did any soldiers come to your house?

23 A. Yes. Every day they come to our house.

24 Q. And were they Somali government soldiers or other
25 soldiers?

1 A. Yes, of course Somali government soldiers.

2 Q. What kind of weapons were they carrying, if any?

3 A. They carrying guns.

4 Q. Do you remember the first time the soldiers came to your
5 house?

6 A. Yeah. They come to our house. Some was, some was outside
7 our house and some come inside our house.

8 Q. How many of them were there?

9 A. I don't know the ones who's outside, but inside ten or
10 nine. It was ten or nine.

11 Q. Do you know what date that was?

12 A. What? Can you repeat?

13 Q. What year did they first come to your house?

14 A. Yes. It was June 1.

15 Q. June 1?

16 A. Yes.

17 Q. 1988?

18 A. 1988.

19 Q. What did they do that first time?

20 A. The first time, they scare us, and they point us at the
21 guns, and they collect us in the hallway our house, and they
22 check our house, if we were behind the chairs.

23 Q. How did they scare you?

24 A. They point us at the guns, and they say to us, "Move,
25 move."

1 Q. Did they threaten you?

2 A. They turn us --

3 Q. I'm sorry, I withdraw that question.

4 Other than pointing their guns at you and pointing at
5 you, what else did they do to try to scare you?

6 A. Actually, they just yell at us and say to us, "Take away
7 the, you know, curtains," or something like that.

8 Q. How many more times did the soldiers come to your house?

9 A. Every day they come to our house.

10 Q. Okay. Directing your attention to the 12th of June, 1988,
11 what happened when the soldiers came that day?

12 A. That was I call my black day. They took my father and my
13 brother and my cousin, Yousuf.

14 Q. So when the soldiers first came, how many were there on
15 that day?

16 A. There were many of them outside. Inside around 12, inside
17 our house.

18 Q. I'm sorry, and what did they do?

19 A. They scare us. They collect us as usual in the hallway.
20 And my father wasn't with us that time. He was in his room.
21 They went there, they took him, and they force him to go with
22 them.

23 Q. And when they forced your father out of the house, do you
24 remember what he was wearing?

25 A. Yes, I remember clearly. My father, he was touching my

1 head, and he was wearing a white shirt and a macawis in Somali
2 culture they were called. It was green and blue.

3 Q. You mentioned he wore a macawis. Is that, is that what
4 you're referring to?

5 A. Yes.

6 Q. And what is -- is that traditionally worn outside of the
7 house?

8 A. Yeah -- no, it's like pajamas.

9 Q. After the soldiers took your father, did you ever see him
10 again?

11 A. No.

12 Q. How old was your father at that time?

13 A. Huh?

14 Q. How old was he?

15 A. My father?

16 Q. When they took him.

17 A. Around 49.

18 Q. Did they take anyone else from the neighborhood?

19 A. Yeah.

20 Q. Who?

21 A. The guy who was our neighborhood, who was called Ali
22 Sadex.

23 Q. Did the soldiers return to your house anymore that day?

24 A. Yeah.

25 Q. So, when they came the second time, what did they do?

1 A. They ask my mom where is her husband, and my mom
2 said, "You took them guys."

3 And then they point to my brother Mustafa, who was
4 beside my mom, and they said, "Who is he?"

5 And she said, "He's my son."

6 And they -- after that, they took my cousin and my
7 brother Mustafa.

8 Q. How old was your cousin, Yousuf, at that time?

9 A. He was 18.

10 Q. And how old was Mustafa again?

11 A. He was 22.

12 Q. After these two visits to your house, did the soldiers
13 return again?

14 A. Yes.

15 Q. And what happened the third time?

16 A. They took me and my mom and my eight siblings.

17 Q. Where did they take you?

18 A. They take us our neighbors' fence.

19 Q. And so after the soldiers took you to your neighbors'
20 fence, did they stay with you, or did they go?

21 A. No, they stayed with us.

22 Q. What did the soldiers do?

23 A. They asked us our clan.

24 Q. Did someone in your family inform them of your clan?

25 A. Yeah. My brother Mustafa answer that, and he said, "We

1 are in the Cidagale."

2 Q. What does the name "Cidagale" mean literally in Somali?

3 A. It means into the sand.

4 THE COURT: I'm sorry, it means what?

5 THE WITNESS: Into the sand.

6 BY MS. ROBERTS:

7 Q. Based on what you heard, what did you think was going to
8 happen to you?

9 A. Actually, we think they kill us. They will kill us, yeah.

10 Q. Were the soldiers doing anything else to make you think
11 they were going to kill you?

12 A. Yes. They took my father, and also they say to us, "We
13 will kill you." And one of the soldiers who was the leader, he
14 was cutting a piece of sheet, and he said to us, "I will put on
15 your eyes, and then after, I will kill you."

16 Q. Did you understand he was making blindfolds?

17 A. Yes.

18 Q. And what's the significance of blindfolds for you?

19 A. That means he will kill us.

20 Q. Did you see your brother Mustafa and Yousuf again?

21 A. No, I never see them again.

22 Q. What were the last words that you heard your brother
23 Mustafa say?

24 A. He said -- when he said, "I will kill you," he said, "It's
25 our day if you kill us."

1 Q. What happened next after they took your brother and
2 cousin?

3 A. They took us, too, and they put us a truck.

4 Q. After they put your family in a truck, what was your
5 family's reaction?

6 A. We were really shocked.

7 Q. What did the kids do?

8 A. They were crying a lot. And they say to us when they put
9 the truck, they say to us, "Get down now, you stinky people."

10 Q. And so where did you go after you got back out of the
11 truck?

12 A. Came back to our house, but we don't have -- we realize
13 when we come back to our house, we realize we didn't have a
14 key, because they took our keys, and we sit under the shade of
15 the trees. And my mom was really, really shock, and she
16 collect us there, and the shooting was happening and also
17 rockets, bombs.

18 Q. Was your brother a member of Uffo?

19 A. No.

20 Q. Was your father a member of Uffo?

21 A. No.

22 Q. Were either your brother or your father members of the
23 SNM?

24 A. No.

25 Q. What do you believe happened to them?

1 A. They killed them, because if they are alive, I would saw
2 them one day.

3 Q. How was your life in Hargeisa after that?

4 A. It was so difficult because my mom was shock. We all
5 shock. We didn't have a father, so -- and also my brother.
6 And we didn't have any food. We have only little sugar and
7 little rice there, and my mother was so depressed, and she was
8 so shocked.

9 So middle of the night, and if I wake up, she collect
10 us all the time in our hallway. I was the oldest at that time.
11 When I wake up, I saw my mom sitting down and crying.

12 Q. When did you leave Somalia?

13 A. The war had been two months. The end of July in 1988.

14 Q. As you were leaving Hargeisa, what did you see?

15 A. I saw many bodies laying on the ground and smelling very
16 bad, and I saw many, many soldiers sitting of the groups, and
17 they discussed us all the time. They said to us, "We will kill
18 you," when we leaving.

19 Q. If it isn't too troubling, would you please describe what
20 you smelled?

21 A. It smells very bad, and I saw the bodies lay down on the
22 ground and squishing and the blood is going all over the land.

23 Q. How many bodies?

24 A. It was maybe, maybe 50 or 60 bodies.

25 Q. Where did you go?

1 A. We go to -- we are out of Hargeisa, and we went to
2 Ethiopia.

3 Q. And did you go to --

4 A. Camp refugee in Ethiopia.

5 Q. Could you please explain to the Court how this -- how
6 these events have affected your life?

7 A. It affects my life because we lost our wealth there, and
8 we lost our father, my brother, my cousin, and I cannot forget
9 that, because it's inside my deep down heart.

10 Q. Do you have nightmares?

11 A. Yes, of course.

12 Q. How long did you live in a refugee camp?

13 A. One year.

14 MS. ROBERTS: Thank you. I have nothing further.

15 THE COURT: All right, thank you, ma'am. You may
16 step down.

17 (Witness excused.)

18 THE COURT: Call your next witness.

19 MS. ROBERTS: Aziz Deria.

20 THE COURT: All right.

21 AZIZ MOHAMED DERIA, PLAINTIFFS' WITNESS, AFFIRMED

22 DIRECT EXAMINATION

23 BY MS. ROBERTS:

24 Q. Would you please -- I'm sorry, go ahead.

25 A. That's all right, go ahead.

1 Q. Could you please state and spell your name for the record.

2 A. Aziz Mohamed Deria. A-z-i-z, Mohamed, M-o-h-a-m-e-d,
3 Deria, D-e-r-i-a.

4 Q. When were you born?

5 A. I was born May 29, 1964.

6 Q. And where were you born?

7 A. Hargeisa, Somalia.

8 Q. Where do you live now?

9 A. I live in Bellevue, Washington state.

10 Q. And with whom do you live?

11 A. I'm a single father of five. I live with my children, age
12 7 to 20.

13 Q. Aziz, I want to ask you some questions about your
14 capacity -- the capacity in which you're participating in this
15 lawsuit.

16 A. Okay.

17 Q. Are you familiar with the term "estate representative"?

18 A. Yes.

19 Q. Are you acting as an estate representative?

20 A. Yes.

21 Q. What, what does that mean to you?

22 A. I'm representing deceased members of my family and
23 Buralle's family.

24 Q. Okay. With the assistance of the court security officer,
25 Mr. Wood, I would like to direct your attention to four

1 documents previously marked as Plaintiffs' Exhibits 330, 331,
2 332, and 333.

3 First, if you would direct your attention to the
4 document marked 330, Plaintiffs' 330, do you recognize it?

5 A. Yep.

6 Q. What is it?

7 A. It is a court document.

8 Q. It's a court document that does what?

9 A. That shows that I am a representative of the estate of the
10 deceased members of two people here. One is -- let me find the
11 name.

12 THE COURT: Well, counsel, the documents speak for
13 themselves. My only question is for evidence purposes, these
14 are not valid without a raised court seal. Do you have
15 originals?

16 MS. ROBERTS: I believe that we do.

17 THE COURT: All right. I just want to make sure that
18 that would be the --

19 MS. ROBERTS: Their authenticity was also stipulated
20 by the defendant.

21 THE COURT: Then there's no question, all right. 330
22 through 333 are in evidence. You may move on.

23 MS. ROBERTS: All four documents are in?

24 THE COURT: Yes.

25 (Plaintiffs' Exhibit Nos. 330 through 333 were

1 received in evidence.)

2 MS. ROBERTS: Okay. Thank you, Your Honor.

3 Q. Aziz, you testified that you were born in Hargeisa. Could
4 you describe a little bit about your childhood in Hargeisa?

5 A. Yes. I had a beautiful life growing up. I was supported
6 by my family, and I was raised well both emotionally and
7 financially.

8 Q. Turning your attention to the early 1980s, what were you
9 doing in Hargeisa in 1981?

10 A. I was a student.

11 Q. What was it like to be a student in Hargeisa in the early
12 1980s?

13 A. Well, it was fine until that we had a military emergency
14 situation. Do you want me to explain the whole thing now?

15 Q. Well, what was the significant change that happened in
16 1981?

17 A. Well, General Gaani has been transferred to the 26th
18 Sector of Somali Army, and he was actually my neighbor. As
19 soon as he came to that location, he took over pretty much the
20 different sectors of the government, including the police and
21 the security forces. He was pretty much a one-man show. He
22 took over the whole power structure of the government.

23 Q. And that power structure and government that General Gaani
24 took over, did it include Hargeisa?

25 A. Yes.

1 Q. What changes did you observe in the schools after General
2 Gaani took over?

3 A. We were okay until he arrested our teachers, and then we
4 started protesting against the government, and he harshly
5 crushed us with his soldiers.

6 Q. How did you hear about the arrest of your teachers?

7 A. I knew some of them were my own teachers from Farah Omaar
8 High School. That's where I was going at the time. Some of
9 the people that were arrested, one of them was Dr. Osman. He
10 my father's personal doctor. Mohamed Barud was also working
11 with my father. My father was the head of the Pepsi-Cola
12 Bottling Company in Hargeisa, and he was working there.

13 Q. So, you mentioned that you joined with others in protest.
14 Why did you protest?

15 A. I protested because I thought that the arrest -- there was
16 no justice for arresting teachers without any reason
17 whatsoever. He was just showing a power there, but there was
18 no cause of their arrest whatsoever.

19 Q. How did the government respond to the protests?

20 A. Very harshly. They came up with their armored vehicles,
21 and they shot about 20 students that day. They jailed about
22 200 students. And after that, we insisted that we keep on
23 continue protesting, and they keep on pretty much doing what
24 they do good, which was come to the classrooms, take the
25 students out of the classrooms, take the students out of their

1 houses, harass and intimidate parents.

2 And that's what they did. They just torture some of
3 the students. They took them to jails.

4 Q. Did you personally arrest -- I'm sorry, did you personally
5 observe any students being arrested?

6 A. Yes, both from the classrooms and the location we were
7 protesting.

8 Q. How did you feel about the government doing these things?

9 A. Well, we were shocked. We thought the government supposed
10 to protect us. We were innocent students who had no weapons
11 against the government, but yet we were crushed so badly by the
12 military forces led by General Gaani and Samantar.

13 Q. Why did you decide to leave Somalia?

14 A. I decided to leave Somalia because my life was in danger
15 at the time.

16 Q. Why did you think your life was in danger?

17 A. I was one of the student organizers that were against the
18 movement against the government and what they were doing to the
19 students.

20 Q. When did you learn what happened to your father and
21 brother?

22 A. I was here in the United States when I learned what
23 happened to my family.

24 Q. And when was that?

25 A. That was in 1988. I think it was June.

1 THE COURT: I'm sorry, what year?

2 THE WITNESS: 1988.

3 THE COURT: And what month?

4 THE WITNESS: June.

5 I'm sorry, it was later that year, I'm sorry. June
6 was when the war broke out, and it took me about two to three
7 months to locate, so it was end of '88.

8 THE COURT: All right.

9 BY MS. ROBERTS:

10 Q. How did you feel when you heard the news about your father
11 and your brother?

12 A. Well, I was on the phone for three months, and I thought
13 the whole family was gone. They couldn't get out of Hargeisa
14 and the war zone. And finally, I reached someone in Djibouti,
15 and I -- he informed me that my father and my brother was
16 killed, and at that time, the rest of the family were trying to
17 move out of Hargeisa to Ethiopia, and that's when I learned the
18 reality.

19 Of course, I didn't took it well, but at least some
20 of my family members survived, so it was a good and bad news at
21 the same time to me.

22 Q. Could you please describe for the Court how the loss of
23 your father and brother has affected your life and that of the
24 family?

25 A. It affected so badly because I did not -- I stop working

1 when the war broke out, because how can I even go to work? I
2 don't even know where my family is. So I didn't work for about
3 four months just trying to locate where they are.

4 After that -- my father was supporting me, and I was
5 going to school here. He sent me to school here. I have to
6 save the rest of the family. I was the oldest of the whole
7 family, and my, you know, from going to school and trying to
8 get a degree, I change into a survival mode. So now I have to
9 save my family. And, you know, it was very difficult, long
10 period.

11 Q. Do you have any mental effects that continue to today?

12 A. Yes. I do have insomnia, and I -- it took me about 15
13 years to get my B.S. degree, because I have to save the family
14 and I have to take care of them. I have to do a lot of things.

15 It caused a breakup of my marriage. My ex-wife was
16 one of those people who were bombed by the Somali Air Force.
17 She had post-traumatic disorder as a result of that action by
18 the Somali Army, and she was sick for a long time. She's still
19 sick today. And that caused the divorce. I have to take care
20 of my children on my own.

21 Q. Why do you think General Samantar is responsible for all
22 of this?

23 A. General Samantar clearly said while he was in Hargeisa, he
24 gave the order for the shelling and the bombardment of the
25 airplane -- Air Force, and he is the one behind it. He was the

1 right-hand man of Siad Barre, he was doing a lot of dirty work
2 for him, and he did quite well for the dirty job of killing so
3 many innocent civilians.

4 MS. ROBERTS: Thank you, Aziz. I have nothing
5 further.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you. You may step down.

8 (Witness excused.)

9 THE COURT: All right, your next witness?

10 MS. ROBERTS: Your Honor, we're going to now play a
11 short excerpt from a video deposition with a BBC reporter.

12 THE COURT: All right. Now, my understanding is that
13 Mr. Drennan participated in that deposition.

14 MS. ROBERTS: That's correct.

15 THE COURT: All right. Have you left in his portion
16 of it as well?

17 MS. ROBERTS: I don't think he actually designated
18 any portion of it.

19 MS. DRAKE: If I may, Your Honor?

20 THE COURT: Yes.

21 MS. DRAKE: We submitted -- the plaintiffs submitted
22 their designations with the Court on ECF on Saturday night, I
23 believe, and Mr. Drennan never responded with any counters.

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

25 And just for the record, the name of this witness is

1 what?

2 MS. ROBERTS: I'm sorry, it's Elizabeth Ohene,
3 O-h-e-n-e.

4 THE COURT: Thank you.

5 (Videotape deposition excerpt played as follows:)

6 ELIZABETH AKUA OHENE, PLAINTIFFS' WITNESS, SWORN

7 DIRECT EXAMINATION

8 BY PLAINTIFFS' COUNSEL:

9 Q. Good morning, Ms. Ohene. Would you please -- will you
10 please state your full name for the record.

11 A. My name is Elizabeth Akua Ohene.

12 Q. And, Ms. Ohene, in what country are you in right now?

13 A. I am in the Republic of Ghana, in West Africa.

14 Q. And are you able to hear me clearly over our video link?

15 A. Yes, I am.

16 Q. And can you see me?

17 A. Yes, I can.

18 Q. And, Ms. Ohene, the reporter just administered your oath.

19 Do you understand that the testimony you will give today is
20 given under oath?

21 A. Yes, I do.

22 Q. And do you understand that the testimony you are about to
23 provide today will be played in a court of law here in the
24 United States at a trial next week?

25 A. Yes, I do.

1 Q. Ms. Ohene, is there any medical reason why you cannot
2 testify fully and completely today?

3 A. No.

4 Q. Ms. Ohene, of what country are you a citizen?

5 A. Ghana, a citizen of Ghana.

6 Q. And have you ever been a citizen of another country?

7 A. No. I have always been a citizen of Ghana.

8 Q. Ms. Ohene, what languages do you speak?

9 A. Well, I speak English.

10 Q. Yes.

11 A. I speak three Ghanian languages: Ewe, Twi, and Ghan. And
12 if my life is at risk, I can probably make myself understood in
13 French.

14 Q. Do you speak Somali?

15 A. No.

16 Q. Do you understand --

17 A. No.

18 Q. And I'm sorry to interrupt you.

19 Do you understand Somali?

20 A. No.

21 Q. Ms. Ohene, what is your educational background?

22 A. I, I went to the University of Ghana in Legon. I have
23 done a postgraduate certificate of communications at the
24 University of Indiana, Bloomington. I have done a press
25 fellowship at Cambridge University in the UK. I think -- yeah.

1 Q. And what year did you receive the certificate of
2 communications from the University of Indiana at Bloomington?

3 A. It was a, it was a trip organized by the Department of
4 State -- State Department, U.S. State Department, and what it
5 was was a trip to the U.S. where you did something at Indiana
6 and then you went around and did things with other -- in other
7 parts, and I had a trip around the United States, 1971.

8 Q. 1971. Ms. Ohene, what, if any, work do you currently do
9 in terms of employment?

10 A. I said to myself that I am retired. I'm probably retired
11 from the BBC World Service and also from the government of
12 Ghana, but I still do some work for the BBC. Every once in a
13 while, I write pieces for them, and I do commentary and
14 research for them that for which I am paid, but that I think my
15 main source of income is from my two pensions.

16 Q. And, Ms. Ohene, for the record, when you say "BBC," are
17 you speaking of the British Broadcasting Company?

18 A. Oh, yes. Sorry. British Broadcasting Corporation, yes.

19 Q. Corporation, thank you.

20 A. Yeah.

21 Q. And you mentioned that you had retired from the
22 government. What position did you have with the Ghana
23 government?

24 A. Oh, between January 2001 to January 2009, I served as a
25 minister of state in the government, minister in the Office of

1 the President, and the minister for higher education for
2 six-and-a-half years.

3 Q. And prior to holding those minister positions in the
4 government of Ghana, with whom were you employed?

5 A. The last employment before I got -- I came to serve in the
6 government of Ghana was with the BBC World Service, and that
7 was for, oh, 14-something years, from September 1986 to January
8 2001, and that was mostly in London. I was mostly based in
9 London, in the UK, from where they could send me wherever,
10 mostly to all around Africa. The longest period I served
11 outside the UK was to spend two years in South Africa as a
12 correspondent.

13 Q. So just so the record is clear, you began working for the
14 BBC in 1986?

15 A. Yes.

16 Q. And what types of jobs, positions did you hold within the
17 BBC during your tenure there?

18 A. I was employed as a producer of radio programs, and which
19 was a reporter. I left -- I was a deputy of what was called
20 African English programs, in other words, the programs that are
21 broadcast mostly to Africa in English.

22 Q. Could you provide examples of the types of countries, the
23 names of the countries in Africa you covered during your tenure
24 at the BBC?

25 A. Countries I reported from?

1 Q. Yes.

2 A. Myself? Oh, Zambia, Somalia, Kenya, Zimbabwe, Sierra
3 Leone, Liberia, Senegal, South Africa, of course. I have been
4 in Nigeria, Nigeria many times. And I think -- Zambia, Zambia.
5 I think those are the ones that come to my mind immediately.

6 Q. Okay. As part of your job duties for the BBC, did you
7 conduct interviews?

8 A. Yes. Making programs invariably involved a lot of
9 interviewing, so you interviewed people. Sometimes you wrote
10 up the interview that you had conducted, but more often than
11 not, you played the interview that you had conducted in the
12 program.

13 Q. Do you recall ever interviewing Mohamed Ali Samantar?

14 A. Yes, I do. He was at that time the prime minister of
15 Somalia. I did.

16 Q. Do you recall the year that this interview took place?

17 A. I would say 1989.

18 Q. And do you recall sitting here today in what city the
19 interview took place?

20 A. It was in London. Not in -- I didn't do it in the BBC
21 studio. I had to go to his hotel, which was in the west end of
22 London. I think it was the Churchill Hotel. It was in his
23 hotel.

24 Q. And, Ms. Ohene, you said -- you testified that the
25 interview took place at a hotel, is that correct, in London?

1 A. Yes, I did.

2 Q. And was your interview with Prime Minister Samantar a
3 one-on-one interview?

4 A. Yes. It was one on one. Yes, it was.

5 Q. And did you interview him -- where did you interview him
6 in the hotel?

7 A. It was a suite kind of, so in the, in the room like a
8 sitting room just before where, you know, his bedroom was.
9 That's where.

10 Q. And what language did Mr. Samantar use when he conversed
11 with you during this interview?

12 A. English.

13 Q. Did Mr. Samantar ever speak any other language to you
14 during the interview?

15 A. No, no.

16 Q. Do you recall whether Mr. Samantar ever asked for a
17 translator during your interview of him?

18 A. No, no, he didn't.

19 Q. To your recollection, did Mr. Samantar have any trouble
20 understanding your English?

21 A. No, no. I think he was -- he was quite fluent as I recall
22 it.

23 Q. Was the interview you conducted with Prime Minister
24 Samantar recorded?

25 A. Yes. I took a tape recorder to record the interview, so

1 it was recorded.

2 Q. And who operated the tape recorder?

3 A. I recall myself. It was at that time of years I been here
4 we will record -- a Sony Professional. It is one of these
5 little ones.

6 Q. And to your recollection, was Prime Minister Samantar
7 aware that you were tape recording the interview?

8 A. Oh, yes, because I had to hold the microphone to his mouth
9 literally, yes, and we would have gone through a trial thing to
10 make sure that I was recording it. So normally you would tell
11 the prime minister -- often -- I am not sure that I asked him
12 to, but often what you do is you say, "We are about to start
13 the interview. Would you state for the record your name and
14 your title?" That's what we normally do.

15 I don't think I asked the prime minister that, but it
16 would have been, "How is London?" or stuff like that.

17 Q. What I'd like to do now is I'd like to mark as Exhibit 1
18 to the Ohene deposition what has been marked as Plaintiffs'
19 Trial Exhibit 2A. There's a copy.

20 And the court reporter, I am going to hand you a
21 copy. I will put that right there.

22 Ms. Ohene --

23 A. Yes.

24 Q. -- we are about to play a portion of an audio recording
25 that has been marked as Exhibit 1 and PX No. 2A to this

1 deposition.

2 A. Okay.

3 Q. And if you would, let us know if you have any trouble
4 hearing the audio over the video link. We're going to play
5 parts of it right now.

6 (Audiotape excerpt played.)

7 Q. I stopped that there. Ms. Ohene, were you able to hear
8 that audio recording from where you are sitting?

9 A. Yes, I did.

10 Q. And as you sit here today, do you recognize that voice
11 that was on the recording just now?

12 A. Oh, yes. That was Chris Bickerton. He -- Chris Bickerton
13 used to be very famous. He was a presenter of Focus on Africa
14 program for years and years and years. He has sadly passed on
15 now, but he was a famous presenter of the BBC African service
16 programs. Chris Bickerton, that's who -- that's who it was.

17 Q. Okay. Thank you, Ms. Ohene. We're going to continue
18 playing the tape now.

19 Oh, please, pardon me a moment. Were you able to
20 hear the audio tape? Okay. Please play. Thank you.

21 (Audiotape excerpt played.)

22 (End of videotape deposition excerpt.)

23 THE COURT: Counsel, stop at this time. Are you
24 going to introduce the Samantar interview this way or as a
25 separate tape? This is not going to be sufficiently audible.

1 I'm not going to put my court reporter or my own ears through
2 this.

3 MS. DRAKE: No, Your Honor, we are laying foundation
4 through this testimony, but after, we'll move into admission
5 2A, which is just a portion of the audio recording that she's
6 listening to.

7 THE COURT: All right. And I need to tell you that
8 the reason why I normally don't let video depositions in is,
9 this is a perfect example of it. There was about 11 minutes of
10 that video that was absolutely unnecessary for the reason why
11 this woman is called as a witness.

12 She is here to authenticate the tape. All her
13 background about Indiana University and all that is absolutely
14 irrelevant, and if this were a case where she were live in the
15 courtroom, I would have stopped all of that background, which
16 just wastes everybody's time, and get to the essence of her
17 testimony, which is, "Were you a BBC reporter back in 1986?
18 During the course of that, did you have occasion to interview
19 so-and-so?"

20 So I hope that any of the other videos that you're
21 planning to play for the Court are adequately edited, because
22 I'm not going to waste time listening to all of that preamble,
23 all right?

24 MS. DRAKE: Your Honor, if -- with the Court's
25 indulgence, if we had had time, we would have shortened it

1 because now it was just you hearing it, but for the jury --

2 THE COURT: I still wouldn't let that go to the jury.
3 It's too much background that's not necessary. This woman is
4 only an authentication witness, and a lot of what you asked her
5 is nice background if people had unlimited time, but the reason
6 why this Court moves expeditiously is we don't waste a jury's
7 time or for that matter a court's time.

8 So I'm just alerting you now in case we go into
9 tomorrow that I want the evidence better, better focused than
10 that.

11 MS. DRAKE: Okay.

12 THE COURT: All right. So how much longer do we have
13 on this?

14 MS. DRAKE: It's only about listening to the audio
15 tape and about three minutes of questioning afterwards.

16 THE COURT: All right.

17 (Videotape deposition excerpt continued:)

18 (Audiotape excerpt played.)

19 THE PLAINTIFFS' COUNSEL:

20 Q. Ms. Ohene, were you able to hear the audiotape that was
21 just played?

22 A. Yes, I did.

23 Q. And the female voice, do you recognize the female voice on
24 the audio recording?

25 A. Yeah. That was me.

1 Q. And the male voice on the recording, do you recognize that
2 voice?

3 A. Yeah. That would be Prime Minister Samantar at the time.

4 Q. I'm going to ask my assistant to resume playing the audio
5 recording.

6 (Audiotape excerpt played.)

7 Q. Ms. Ohene, were you able to hear that portion of the audio
8 recording?

9 A. Yes, I did.

10 Q. And was the female voice on that -- do you recognize the
11 female voice in that recording?

12 A. Yes. That's me.

13 Q. And the person -- the voice responding to your questions,
14 do you recognize that voice?

15 A. Yes. Prime Minister Samantar.

16 Q. Is the audio recording that you just heard an accurate
17 replication of your 1989 interview of Samantar in London?

18 A. Come again? Is that a what?

19 Q. An accurate copy of --

20 A. Yes, it is. Yes, it is.

21 Q. And just so the question is clean, is the audio recording
22 that you just heard an accurate copy of the recording that you
23 made of your 1989 interview with Samantar?

24 A. To the best of my recollection, it is.

25 Q. I am going to now hand the court reporter what we will

1 mark as Exhibit 2. And in Ghana, Jonathan, it's, it's the
2 document that has the green passport cover on the first page.

3 A. Yeah.

4 Q. And for the record, I've handed what's been marked as
5 Exhibit 2 to the Ohene deposition. This is a document, Defense
6 Exhibit P -- as in Peter -- in this matter.

7 A. Yeah. Defense Exhibit P, I think, yeah.

8 Q. Ms. Ohene, if you would, would you turn to page 2 of this
9 exhibit?

10 A. Yeah.

11 Q. And let the record reflect that this exhibit is a copy of
12 the passport of Mr. Samantar.

13 A. Yeah.

14 Q. And page 2 contains a photograph of Mr. Samantar as taken
15 in his passport.

16 Ms. Ohene, would you please just raise the picture of
17 what you're looking at so we can see it on the screen?

18 Thank you.

19 A. Yeah.

20 Q. Ms. Ohene, is the, is the man in this passport picture the
21 same man you interviewed for the BBC in 1989?

22 A. Yes, he is.

23 Q. You can put that aside, Ms. Ohene.

24 I would now like you to take a look at what's been
25 marked -- well, what will be marked as Exhibit 3 to the Ohene

1 deposition, and this is the document that's marked at the very
2 bottom PX 005.

3 A. Um-hum, yes.

4 Q. And, Ms. Ohene, if you would, turn to what is marked as
5 PX 005 and then page 4, 004.

6 A. Okay.

7 Q. And starting on the page, do you see in the middle of the
8 page, Ms. Ohene, where it has the number 15, which indicates
9 the time?

10 A. Yeah.

11 Q. You don't have to review it. Have you seen this document
12 before, Ms. Ohene?

13 A. Yeah. It was -- yes, I have.

14 Q. Ms. Ohene, does the description of the audio recording
15 reflected in PX 05 reflect an accurate transcription of your
16 1989 interview with Prime Minister Samantar?

17 A. Yes, it does.

18 Q. Ms. Ohene, to the best of your knowledge, was your 1989
19 interview of Prime Minister Samantar broadcast?

20 A. Oh, yes, it was, on Focus on Africa, yes.

21 Q. And Focus on Africa is a program on the BBC?

22 A. Yes. Yes, it's a program on the BBC. At the time, it
23 goes out three times a day. The first edition goes out at 1500
24 GMT, and then it goes out again at 1705, and then it goes out
25 again at 1930 GMT.

1 Q. Did you listen to the broadcast?

2 A. Yes. Yes, I did. Well, often the first edition would go
3 out when we are all still in the office and still scrambling to
4 put out the second edition, so anybody who was working that
5 would have listened to it in the office, yes.

6 Q. Did the broadcast on the BBC accurately reflect -- let me
7 rephrase, excuse me.

8 Did the broadcast on the BBC network accurately
9 reflect your recorded interview of Prime Minister Samantar?

10 A. Yes, it did.

11 Q. Ms. Ohene, what, if any, public reaction was there to the
12 broadcast of your 1989 interview with Prime Minister Samantar?

13 A. Well, there was uproar in the Somali community. We had
14 lots of phone calls from people really, and I think what caused
15 the uproar was more the last question that I put to the prime
16 minister about someone having called in to us and what the
17 accusation was, that he was in charge of the Hargeisa
18 operation. That was the bit that caused the uproar.

19 They were all terribly excited by it, you know.
20 Everybody kept -- talked about it for weeks most excitedly,
21 yes.

22 (End of videotape deposition excerpt.)

23 MS. DRAKE: Your Honor, plaintiffs would like to move
24 into admission what's been marked as PX 2A, which is the audio
25 recording that we heard, as well as PX 5 and 6, which are the

1 official transcriptions of that audio recording.

2 THE COURT: All right, they're in.

3 (Plaintiffs' Exhibit Nos. 2A, 5, and 6 were received
4 in evidence.)

5 MS. DRAKE: And, Your Honor, thank you for the
6 indulgence. Mr. Samantar under oath swore that he had never
7 given this interview, that it wasn't him in the tape, and, in
8 fact, accused counsel of creating a hoax tape, and that is why
9 we had to go into so much detail with Ms. Ohene. So thank you
10 for your indulgence.

11 THE COURT: All right, call your next witness.

12 MR. WHITEHEAD: Your Honor, we call Colonel Kenneth
13 Culwell to the stand.

14 THE COURT: All right.

15 THE COURT SECURITY OFFICER: What's the last name?

16 MR. WHITEHEAD: Culwell.

17 COLONEL KENNETH CULWELL, PLAINTIFFS' WITNESS, AFFIRMED

18 DIRECT EXAMINATION

19 BY MR. WHITEHEAD:

20 Q. Good afternoon, Colonel Culwell. Will you please
21 introduce yourself to the Court.

22 A. My name is Kenneth Culwell. I'm a retired Army colonel,
23 U.S. Army. I live in Cadiz, Kentucky, which is in the western
24 part of the state, near Lake Barkley. As I said, I was
25 retired. I'm a founder of a local citizens group that's

1 focused on economic development.

2 Q. Thank you, Colonel.

3 I'd like to hand forward a document. This hasn't
4 been previously marked as an exhibit.

5 THE COURT: What number do you want on it?

6 MR. WHITEHEAD: It would be PX 349, Your Honor.

7 THE COURT: All right.

8 (Plaintiffs' Exhibit No. 349 was marked for
9 identification.)

10 BY MR. WHITEHEAD:

11 Q. Colonel Culwell, do you recognize this document?

12 A. I do.

13 Q. How do you recognize it?

14 A. Well, it has my name on top of it, and it talks about
15 expert report as to the military command structure of Somalia,
16 and I assisted in the preparation of it.

17 Q. So this is your expert report and CV?

18 A. Yes.

19 MR. WHITEHEAD: Your Honor, in the interest of time,
20 we'd like to offer this as Plaintiffs' Exhibit 349.

21 THE COURT: All right, it's in evidence.

22 (Plaintiffs' Exhibit No. 349 was received in
23 evidence.)

24 MR. WHITEHEAD: Thank you, Your Honor.

25 Q. Colonel, I'd like to focus on your experience in Somalia.

1 What military position have you held, if any, in Somalia?

2 A. I was the defense attaché in Somalia, which meant that I
3 was working for the Defense Intelligence Agency, but I reported
4 to the ambassador.

5 Q. And what time did you hold that position?

6 A. I reported to Somalia in the January-February time frame
7 1990, and I was -- I departed one year later.

8 Q. And what training was required?

9 A. I attended the Defense Intelligence College here in the
10 D.C. area in preparation for that assignment.

11 Q. After leaving that assignment, what, if any, experience do
12 you have regarding Somalia?

13 A. After leaving that assignment, well, we were evacuated in,
14 in January of '91. At the end of that year, I retired. I went
15 to Italy and taught computer war games, specifically,
16 logistics.

17 At the -- in December of '92, I was asked if they
18 minded -- if I would mind if they recalled me to active duty,
19 because the U.S. Army was headed back to Somalia, and they
20 needed advice on terrain, personalities, just which way they
21 should go in certain areas, and I said yes.

22 MR. WHITEHEAD: Thank you, Colonel.

23 Your Honor, I'd like to proffer Colonel Culwell as an
24 expert on the Somali command structure during the Barre regime.

25 THE COURT: All right, I'll allow that to go forward.

1 BY MR. WHITEHEAD:

2 Q. Colonel, is your expert opinion in your report?

3 A. I'm sorry?

4 Q. Is your expert opinion contained in the report?

5 A. Yes.

6 Q. Thank you.

7 Colonel, what travel was required for your job as
8 defense attaché?

9 A. I traveled all over Somalia. My office had a Beechcraft
10 King Air. My office had also pilots for that. So we traveled
11 to all of the various sectors: Hargeisa, we went to Berbera,
12 and we went to the other sectors in the south.

13 Q. Colonel, you said you traveled to Hargeisa. What did you
14 see there?

15 A. I saw a city in complete devastation, and you get a better
16 view of that when you see it from the air.

17 Q. And when did that devastation occur?

18 A. Exactly, I'm not sure. Late '80s. Before I got there.

19 Q. Thank you, Colonel.

20 Colonel, I'd like to hand you Plaintiffs' Exhibit 64.
21 Colonel, do you recognize this document?

22 A. I do.

23 Q. How do you recognize it?

24 A. It's a routine document used by the American Embassy
25 abroad to communicate with the State Department.

1 Q. Thank you, Colonel.

2 Is there a common term used for this type of
3 document?

4 A. They're called cables. They're called Telexes. They're
5 called telegrams. Commonly they would say "cable."

6 Q. Thank you, Colonel.

7 And what training have you received regarding cables?

8 A. When I was at the Defense Intelligence College, we
9 received specific instruction on how to prepare cables, a
10 summary of what we saw, who we got it from, evaluation of the
11 source, and so on, and routinely, we also received all of the
12 State Department cables so that we could be up to speed on our
13 various countries when we arrived.

14 Q. Thank you, Colonel.

15 And what was your experience with cables as the
16 Somali defense attaché?

17 A. Every day, we'd probably review 10, 20, 30 of them,
18 because the State Department, the CIA, the Office of Military
19 Cooperation, and my office would send out cables practically
20 every day. The State Department obviously had more people, so
21 they would send out more cables, and we'd review -- the reading
22 file would come around every day.

23 Q. What information is included in a cable?

24 A. It includes first of all a summary of what the preparer --
25 the author saw, but what you'd have to understand is this is

1 communication between the author and an address in the State
2 Department, and while it may give the information of a specific
3 event, it should be tied together with everything else that
4 that analyst saw at the other end. So one cable is only a
5 piece of the pie.

6 Q. And who writes cables?

7 A. Anybody in the embassy, but it's released by the
8 ambassador.

9 Q. So the ambassador approves transmission of cables?

10 A. Yes.

11 Q. And to what extent was writing cables a requirement of
12 your job as a defense attaché?

13 A. My office received questions from the Defense Intelligence
14 Agency generally related to military strength, personalities,
15 locations, and my job was to go around and try to get answers
16 to those questions, and when I answered them, I would send off
17 my version of the cable.

18 Q. Are they official communications?

19 A. Oh, yes.

20 Q. Are they made at or near the time of the event that they
21 report?

22 A. Oh, yes.

23 Q. Are they written by people with knowledge of the events?

24 A. Yes.

25 MR. WHITEHEAD: Your Honor, we'd like to offer

1 Plaintiffs' 64 into evidence.

2 THE COURT: It's in.

3 (Plaintiffs' Exhibit No. 64 was received in
4 evidence.)

5 MR. WHITEHEAD: And we'd like to publish it, also.

6 THE COURT: Well, you don't need to. We don't have a
7 jury. I just read it.

8 MR. WHITEHEAD: I understand. So the witness could
9 see it.

10 THE COURT: I mean, if the witness needs it, but you
11 have a copy of it in front of you.

12 THE WITNESS: I do.

13 THE COURT: Yeah.

14 THE WITNESS: I do.

15 BY MR. WHITEHEAD:

16 Q. Now, Colonel Culwell, would you please turn to paragraph
17 9, beginning on page 3 of the document?

18 THE COURT: We can go ahead and put it on the screen
19 so everybody can see it.

20 BY MR. WHITEHEAD:

21 Q. Can you read that for us?

22 A. Certainly. "Fully half the city has been extensively
23 damaged. In some areas, entire city blocks have been leveled
24 or damaged beyond repair. Life as it once must have been has
25 ceased. Rubble of buildings, together with shell casings,

1 abandoned suitcases, the occasional desiccated corpse,
2 anomalies, like four pairs of 1970s-style platformed disco
3 shoes, litter the streets. The landmarks that lent grace to
4 this once picturesque city: the theatre, the mosque, the
5 Oriental hotel, et al., are in ruins. Much of the city is a
6 ghost town whose repair (according to one of our USARCENT
7 colleagues) would likely require two years, requiring maximum
8 infusion of capital, equipment, expertise, and manpower."

9 Q. Thank you, Colonel.

10 To what extent is this description consistent with
11 what you observed in your travels?

12 A. It's exactly correct.

13 Q. Thank you, Colonel.

14 Can you please turn to page 5, paragraph 13? And
15 read that for us.

16 A. "Destruction of buildings clearly indicated that most
17 damage was done by an attacking force moving from southwest to
18 northeast; i.e., most of the damage to buildings was observed
19 on the southward or westward faces of buildings located on the
20 north and east sides of street. Given the direction of
21 destruction, most of it had to have been inflicted by the
22 Army."

23 Q. Thank you, Colonel.

24 And this is what the U.S. Department of State
25 reported in October of 1988?

1 A. That's correct.

2 Q. What military force does the term "Army" at the end of
3 this paragraph refer to?

4 A. Somali National Army.

5 Q. Colonel, given everything you know, in your expert
6 opinion, how does this paragraph -- sorry, what does this
7 paragraph indicate regarding the destruction of Somalia -- of
8 Hargeisa?

9 A. It indicates that there was a large battle at that
10 location. It also tells me that, that it had to come from
11 something other than small arms.

12 Q. What type of --

13 A. I'd say artillery or air.

14 Q. Thank you, Colonel.

15 What other conclusions can you draw?

16 A. That there's mass devastation of that area.

17 Q. Thank you, Colonel.

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

20 A. He would most likely approve it or authorize it. Given,
21 however, the scarce resources in Somalia, he would have to
22 allocate resources to it, so if he didn't approve it initially,
23 he would certainly have to send resources to it after it was
24 done --

25 Q. Thank you, Colonel.

1 A. -- so they could resupply.

2 Q. Thank you.

3 And based on your expert opinion and observations,
4 what efforts were made to prevent civilian casualties?

5 A. None.

6 Q. In your expertise, what does that demonstrate to you
7 regarding the military's efforts to save civilians?

8 A. I don't think they did any. I don't think they caused any
9 effort to save civilians.

10 THE COURT: How can you tell that from, from the
11 evidence that was before you?

12 THE WITNESS: The -- from the cable?

13 THE COURT: From the cable or from your personal
14 observations.

15 THE WITNESS: When they shoot artillery and air
16 without trying to evacuate the civilians, then indiscriminate
17 killings of civilians will take place, and that's what it
18 looked like happened.

19 MR. WHITEHEAD: Thank you, Colonel. I have no
20 further questions.

21 THE COURT: Thank you, Colonel. You may -- you're
22 excused.

23 (Witness excused.)

24 THE COURT: I think this is about the right time to
25 take the mid-afternoon break. We'll take a 15-minute break and

1 reconvene at 10 after four.

2 (Recess from 3:55 p.m., until 4:13 p.m.)

3 THE COURT: Yes, sir.

4 MR. McLISH: Your Honor, Mr. Culwell -- Colonel
5 Culwell laid the foundation for a number of the exhibits that
6 we have put forward which are State Department cables.

7 THE COURT: All right.

8 MR. McLISH: I'd like to, if Your Honor will allow
9 it, read those numbers.

10 THE COURT: Go ahead.

11 MR. McLISH: So it's 33 different exhibits, so it's
12 Plaintiffs' Exhibit 1, 12, 14, 15, 27A, 30, 35, 40, 48, 49, 64,
13 67, 102, 104, 113, 205, 206, 207, 208, 210, 211, 218, 234, 236,
14 237, 247, 249, 252, 253, 263, 267, 279, and 282.

15 Those are all State Department cables, the
16 authenticity of which were stipulated to by Mr. Drennan, and as
17 Mr. Culwell testified, they're business records. I think they
18 could also come in as public records.

19 THE COURT: Fine. They're all in.

20 (Plaintiffs' Exhibit Nos. 1, 12, 14, 15, 27A, 30, 35,
21 40, 48, 49, 67, 102, 104, 113, 205, 206, 207, 208, 210, 211,
22 218, 234, 236, 237, 247, 249, 252, 253, 263, 267, 279, and 282
23 were received in evidence.)

24 MR. McLISH: Your Honor, could we also offer the
25 expert report of former ambassador to Somalia Jim Bishop, which

1 is Plaintiffs' Exhibit No. 20?

2 THE COURT: That's in.

3 (Plaintiffs' Exhibit No. 20 was received in
4 evidence.)

5 MR. McLISH: And before we're through, Your Honor,
6 we'd probably move in some additional documents, but we'd like
7 to move ahead now.

8 THE COURT: All right.

9 MR. McLISH: And Ms. Roberts will introduce our next
10 presentation.

11 THE COURT: Yes, ma'am.

12 MS. ROBERTS: Good afternoon, Your Honor. We have
13 had designated video deposition testimony, which there's really
14 only a small portion that's relevant for the damages hearing,
15 so my intention is to be -- is to read that, and we have
16 Mr. Drennan's counters to that.

17 Sorry, I'm wrong. We have a shorter video that we
18 actually would like to go ahead and play.

19 THE COURT: All right. Which witness is this?

20 MS. ROBERTS: This is the grave digger. His name is
21 Ibrahim Abdullahi.

22 THE COURT: All right.

23 (Videotape deposition excerpt of IBRAHIM HAMED
24 ABDULLAHI played as follows:)

25 DIRECT EXAMINATION

1 BY PLAINTIFF'S COUNSEL: (Through Interpreter)

2 Q. Please state your full name for the record.

3 A. My name is Ibrahim Hamed Abdullahi.

4 Q. When were you born?

5 A. 1942.

6 Q. And where were you born?

7 A. I was born in Hargeisa.

8 Q. Are you married, sir?

9 A. Yes.

10 Q. Do you have -- how long have you been married?

11 A. About -- more than, more than 30 years.

12 Q. And do you have any children?

13 A. Yes.

14 Q. How many children do you have?

15 A. There are more than 12, around 14, and there are my
16 grandchildren.

17 Q. Is there a particular department or branch or agency that
18 he work -- that you worked for?

19 A. It is the Ministry of General Works.

20 Q. And when did you begin working for the Ministry of General
21 Works?

22 A. I was working for it for 30 years.

23 Q. And what year did you begin?

24 A. In 1960. In 1960.

25 Q. Sir, where were you living in May of 1988?

1 A. I was living in Hargeisa.

2 Q. And who was living with you at the time?

3 A. My family: my wife, my children, my mother.

4 Q. And what happened in Hargeisa in May of 1988?

5 A. We were asleep then -- we were asleep. Then we heard
6 something like quake, earthquake, and then noise.

7 Q. What is the SNM?

8 A. I don't know what it is called in Somalia.

9 Q. What does it mean to you?

10 A. It was a movement that came to the town, to the, to the
11 land, and they wanted to call and take it over.

12 Q. When did the SNM come into Hargeisa? When did that begin?

13 A. I told you 31st May.

14 Q. Now, were you a member of the SNM?

15 A. No, no, I do not know about that.

16 Q. Did you support the SNM?

17 A. No.

18 Q. Where were your wife and children when the fighting
19 started?

20 A. They stay with me in that night that the fight started.
21 In the morning, they left.

22 Q. Where did they go?

23 A. They went to Ethiopia.

24 Q. And what did you do?

25 A. When they left in the morning, in the evening, I was

1 arrested.

2 Q. Well, where were you when you were arrested?

3 A. In that evening, an officer came to me and told me to come
4 out of the house.

5 Q. Did they come to your house?

6 A. Yes.

7 Q. And what kind of officers were they?

8 A. They were the officers from the government of the then
9 regime, Siad.

10 Q. What kind of government officers? Were they police?
11 soldiers?

12 A. They were military officers. I knew them -- the colonel
13 who was commanding them.

14 Q. Okay. Before I go on, what date did this happen?

15 A. It was the 2nd June, 2nd June.

16 Q. In 1988?

17 A. Yes.

18 Q. You say you recognized the colonel that was with them.
19 What was his name?

20 A. Mohamed Aalin.

21 Q. And how did, how did you recognize him?

22 A. I knew him initially. I knew him before. We were
23 neighbors.

24 Q. Okay. And how many people were with him?

25 A. There were several officials. I don't know how many they

1 were, and I did not know them. Then they left -- he remained
2 there with the soldiers who arrested me.

3 Q. So let me just clarify that. The officials who were also
4 there, were they in uniform?

5 A. They were in their dress, in their official dress.

6 Q. What does that mean by "official dress"?

7 A. The military uniform, the usual uniform -- it is all the
8 same uniform, dress -- all the same.

9 Q. All right. Did anyone tell you why the colonel and these
10 soldiers came for you?

11 A. Yes.

12 Q. What -- why, why did they come looking for you?

13 A. They said we needed the Caterpillar.

14 Q. Can you describe -- what do you mean by "Caterpillar"?
15 Can you describe it?

16 A. It is the name of the thing, and it's also called a
17 shovel.

18 Q. Is it -- what -- is it a type of vehicle?

19 A. It is a tractor.

20 Q. A tractor. And could you describe this tractor?

21 A. Yes.

22 Q. Please describe it.

23 A. It is used for -- it digs the ground. It takes the soil
24 from that place it dug and then throws it out -- takes it.

25 Then these places where they wanted to put the dead people --

1 Q. Okay. We will get to that.

2 How -- by the way, how did these soldiers know where
3 to find you, where you live? How did they know where you
4 lived?

5 A. Somebody knew my house.

6 Q. Let's go back to the question. What I wanted to know was
7 did these soldiers -- they took you someplace? Did they take
8 you someplace?

9 A. Yes.

10 Q. Does the place where you were taken have a name?

11 A. Yes.

12 Q. What is the name?

13 A. I was taken to a place called Malka-Durdura.

14 Q. Is Malka-Durdura in Hargeisa?

15 A. Yes. Yes, it is in Hargeisa.

16 Q. Where? Where in Hargeisa is it? Were there any landmarks
17 nearby?

18 A. It is near the military headquarters.

19 Q. Please describe the physical detail of Malka-Durdura,
20 starting with what does it look like?

21 A. It is a school, it is a school -- near a school and a
22 valley. It's an area of a school, yes.

23 Q. Had you ever been there before?

24 A. Yes. My children are students in that school. I used to
25 take my children from the school.

1 Q. What did you see at Malka-Durdura when the soldiers
2 brought you there?

3 A. They took me to a place where there were dead bodies, dead
4 bodies.

5 Q. About how many bodies were there?

6 A. There are many.

7 Q. Hundreds?

8 A. Yes.

9 Q. Well, let's stay on in this day. Did they look like they
10 had been -- did they look recently dead?

11 A. Yes.

12 Q. All of them?

13 A. Yes. They died shortly before I reached there.

14 Q. Okay. I'm sorry?

15 A. Before I --

16 Q. Okay. Were the bodies dressed?

17 A. They were in their dress, their clothes.

18 Q. Were any of them in uniform?

19 A. Some in uniform, some of them in civilian dress, and they
20 were tied together.

21 Q. The bodies were tied together?

22 A. Yeah. They were --

23 Q. How were the bodies tied together?

24 A. Ten, ten. Every ten dead bodies were tied together.

25 Q. Okay. Did you see any visible wounds on the bodies?

1 A. Yes. They had, they had bullet marks all over their
2 bodies.

3 Q. How do you know they were bullet wounds?

4 A. Because I had seen it.

5 Q. What did the wounds look like?

6 A. The instant -- all over the body, from head to toe.

7 Q. So are you saying that the bodies had bullet wounds from
8 head to toe?

9 A. Yes.

10 Q. Okay. And what did you do next?

11 A. I buried those that I could bury then, those that it was
12 possible to bury then.

13 Q. How did you bury them?

14 A. I dug a hole. Then I put 11 dead bodies in the -- in the
15 mouth of what I was using. Then I put it inside. Then I
16 covered it, them with the soil.

17 Q. Did -- and were the soldiers there at the time, the
18 soldiers that brought you there?

19 A. Yeah, they were with me.

20 Q. Did they help you bury the bodies?

21 A. I was -- they are putting the dead body in the shovel,
22 then the covering I was using, and then I was doing the rest of
23 it, putting the dead body in the place I dug, then putting the
24 soil over, covering them with soil.

25 Q. How -- about how deep were the graves?

1 A. It was just hiding or burying the dead, and it was, it was
2 just -- the idea was to just hide these dead bodies, put
3 them -- bury them, to bury, to cover these dead bodies, and the
4 way you know it's not -- some places are hard -- harder than
5 some other places. So it depended on how soft the soil in that
6 place was.

7 Q. Going back to how the soldiers were helping you -- just
8 indulge me for a second -- how were the soldiers putting the
9 bodies into the tractor?

10 A. I was putting the -- I was putting it down. Then they
11 were holding the dead body together -- dead bodies together.
12 Then they put it -- when they put it, that is when I put the
13 dead bodies. They hold them together, they bring them there.
14 Then that is when I was taking them to the --

15 Q. Did the bodies remain tied together when they were put
16 into the tractor shovel?

17 A. They were still tied together.

18 Q. Okay. Do you know how many graves you dug that day?

19 A. That time, it was late in the evening. I came in the next
20 day to continue with it.

21 Q. Okay. But do you remember how many graves you dug that
22 first day?

23 A. From 80 to hundred.

24 Q. And how many bodies went into any one grave?

25 A. Ten people who were tied -- ten dead bodies who were tied

1 together.

2 Q. Okay. And how many hours did you spend that day burying
3 bodies?

4 A. I came in three in the afternoon, three in the afternoon.
5 It was one-and-a-half hours -- I came after -- let me start it
6 from I came at three in the afternoon until 4:30, because there
7 was, there was a curfew. People could not move, were not
8 allowed to walk around after that. It was one hour -- I think
9 it was one hour or one-and-a-half hours.

10 Q. Were you able to bury all the bodies there in that time?

11 A. Yeah. I did it in -- yeah, I did it very fast. I did it
12 in hurry and very fast.

13 Q. Just to clarify, what date -- do you remember what date
14 this was that you buried the bodies that first day?

15 A. It was second day of June.

16 Q. 1988?

17 A. Yes, 1988. And in the following morning, I came to the
18 same spot.

19 Q. Okay. But before they came back, what did you do
20 immediately after you finished burying the bodies on that first
21 day?

22 A. I was, I was, I was taken to the military base, and I put
23 the tractor there or the bulldozer, and they gave me a place to
24 sleep, and they told me to leave early in the morning.

25 Q. Do you, do you know the name of the base where you were

1 taken?

2 A. It was called Birjeeh.

3 Q. Okay. And you say you were taken there -- well, tell me
4 about the next day. What happened the next day?

5 A. I went back where I left the day, the previous day, where
6 I left the previous day.

7 Q. Did the soldiers take you there?

8 A. Yes.

9 Q. And did they take you to Malka-Durdura?

10 A. Yes.

11 Q. And what did you see when you arrived there?

12 A. I met dead bodies more than those that I met the previous
13 day.

14 Q. Okay. The thing that's confusing me is before you said
15 you had buried all the bodies the day before. You didn't leave
16 any out.

17 A. On the previous day, what I did was when I buried a number
18 of them, of the bodies that were there, I was told to leave
19 while there were some still remaining. Then in the early
20 morning, I came to finish what I started.

21 Q. Okay. So then the next day, there were more bodies than
22 you had left the day before?

23 A. Yes, yes.

24 Q. Do you know how the new bodies got to Malka-Durdura?

25 A. I just met them. My work was just to bury them.

1 Q. Did you see any wounds on these new bodies?

2 A. The bullet marks.

3 Q. Similar to the bodies the day before?

4 A. Yes, yes.

5 Q. And were they also bound, the new bodies?

6 A. Yes, every ten, they were ten, not more, not less. Every
7 ten bodies were tied together.

8 Q. And after this day, did you bury bodies any other days?

9 A. Yes.

10 Q. Were all the bodies that you buried, were they buried at
11 Malka-Durdura?

12 A. No.

13 Q. Where else did you bury bodies?

14 A. In the milk factory at Sinai.

15 Q. When you were burying bodies, did you ever find anyone
16 alive among the bodies?

17 A. Yes.

18 Q. Could you describe what happened when you found that body?

19 A. I was working -- there were ten, ten, ten people -- ten
20 tied together, ten of them tied together. When I buried
21 several ten, the last ten that I thought will be my last body,
22 a live person who moved his upper part of the body and asked --
23 he said -- he asked to be untied.

24 Q. And what did you do?

25 A. I tried to look -- to check what was -- to check it -- I

1 wanted to see the guy, to look at the guy. Then the soldiers
2 who were with me told me to go, told me to go back to my seat
3 on the tractor. I went back to the thing.

4 Q. So what happened next?

5 A. They -- many soldiers -- many soldiers who sat, who took
6 positions, who took positions -- in one line, an angle, then
7 they made the place -- they opened fire on the place. They
8 opened -- they opened fire on the dead bodies, and the one who
9 was alive, then he became like dead like the rest.

10 Q. How long did you spend burying bodies?

11 A. It was months. It wasn't days. It was more than days.
12 It was months. It took months.

13 Q. How many months?

14 A. A month and 28 days. This was when I was back -- I was
15 doing -- in the month that followed this or the time that
16 followed this, it was -- they were calling me whenever they,
17 they needed me. And one and 28 -- 20 days, it was buried -- a
18 continuous bout -- bouts of burying, of burying people, dead,
19 dead bodies.

20 Q. Okay. And then the next month was -- and then the next
21 month was lighter?

22 A. Was later.

23 Q. All right. Did you -- the entire time you were burying
24 bodies, were you -- did you stay at the military base that
25 entire time?

1 A. Most of the time.

2 Q. And where were you the rest of the time?

3 A. My house. My house was just near there.

4 Q. How long did you stay at the military base?

5 A. The military base -- the 20 days, they were telling --
6 they were even order -- showing me the place to sleep. Then I
7 told the colonel, "This place, I cannot be sleeping here. My
8 house is just nearby."

9 Then he accepted. "Why can't you let me sleep in my
10 house?"

11 Then he accepted, but my assumption was then that I
12 was free, and they just went back to their camp, but when I
13 realized that they were always around me, in the morning, they
14 tell me to follow them.

15 Q. Okay. Did there ever come a time -- did any soldiers go
16 with you to your house?

17 A. They went -- when they take me to my house, they pretend
18 that they're leaving, but they never used to leave. They used
19 to change duties. Every time, some were guarding me.

20 Q. Can you describe the sounds that you heard while the
21 fighting was occurring in Hargeisa?

22 A. Yeah. The fire exchange, the bullets.

23 Q. Early -- in the beginning of your testimony, you mentioned
24 an earthquake. Can you describe that sound in a little more
25 detail?

1 A. When they were entering, we were asleep -- we were
2 sleeping in our houses, and we had the quake. Then we put off
3 the lights and sat and waited for what was -- not knowing what
4 was happening. It continued until the morning.

5 Q. Were you ever aware of bombing in Hargeisa?

6 A. Yes. The aircraft were bombarding.

7 Q. How often did you see aircraft bombarding?

8 A. Several, several.

9 Q. Several what?

10 A. Several types.

11 Q. How long did the bombing last?

12 A. A month or less than a month, by a few days. It wasn't a
13 full month, but around 20 days, 20 and more.

14 Q. Did you see any of the places in Hargeisa that had been
15 bombed?

16 A. When I was on that side of a raised ground, in the raised
17 ground of that side, I could see the flames and the burning
18 inside the town.

19 Q. What did you see in the city after the bombing?

20 A. People ran away from town. The town was deserted. The
21 town was destroyed. There was no even movement moving inside
22 the town. It was empty.

23 Q. Could you describe -- sorry. Could you describe what the
24 buildings looked like?

25 A. Houses were destroyed, some destroyed, some partially

1 destroyed.

2 Q. Did you see any casualties?

3 A. The dead bodies were all over.

4 Q. Were -- could you tell whether they were civilians or
5 military?

6 A. The people in the markets and in town mostly were
7 civilians.

8 Q. Were there women and children among them?

9 A. Yes.

10 Q. You mentioned the milk factory. Approximately how many
11 dead bodies did you bury near the milk factory?

12 A. I'm not sure, but I can imagine -- I can estimate -- I can
13 give estimate.

14 Q. An estimate is fine.

15 A. In the milk factory, 200 -- more than 200.

16 Q. Okay. And about how many were buried in Sinai?

17 A. The same.

18 Q. Did you ever see -- did you ever see any bodies in
19 Hargeisa that were in uniform as soldiers of the Somali
20 National Army?

21 A. I'm talking about the first days --

22 Q. The first day, yes.

23 A. Yes. The first, yeah. Many.

24 Q. When did you see them?

25 A. The first days.

1 Q. They were at Malka-Durdura?

2 A. The bodies I buried, most of them were in, in uniform,
3 many of them. Too much.

4 Q. Were they also bound?

5 A. Yes.

6 Q. Do you know how many soldiers -- how many dead bodies --
7 how many soldiers you saw among the dead bodies?

8 A. There was -- there was so many.

9 Q. Can you give us an estimate?

10 A. The people that I was -- took me a whole month to bury
11 them daily. You estimate. You can do the estimation.

12 Q. Fair enough. So it's more than a hundred then?

13 A. They are thousand and something. Hundred was what I was
14 burying in the early part of every day.

15 Q. Did you ever see bodies in school uniforms?

16 A. Yes, yes.

17 Q. When did you see those?

18 A. One of the days.

19 Q. Okay. Where were these bodies?

20 A. Malka-Durdura, near Malka-Durdura.

21 Q. Was there a school nearby?

22 A. Between the command headquarters and Malka-Durdura.

23 Between Malka-Durdura and the base, closer to the base. That's
24 the command headquarters.

25 Q. Was there a school near there?

1 A. The school is called Malka-Durdura.

2 Q. Is that -- what kind of school is that? Is that a primary
3 school? secondary school?

4 A. It was a middle school. I'm not sure. I'm not sure. It
5 was long time ago, but it was a school.

6 Q. But it was not a university?

7 A. No, no, no, no.

8 Q. Okay. How many bodies did you see in school uniforms?

9 A. Along the road, I saw eight somewhere. On the other side,
10 there are four. And they are brought there with a vehicle, by
11 a vehicle.

12 Q. Okay. But you -- first of all, let me ask you, you
13 didn't -- did you see the vehicle bring the bodies?

14 A. I was seeing it leaving.

15 Q. Okay. And what kind of vehicle was that?

16 A. It was a military vehicle.

17 Q. Was it a truck?

18 A. It was a big lorry, a truck.

19 Q. Okay. How did you come upon these bodies in school
20 uniforms?

21 A. I stopped, I stopped between the eight and the -- the
22 eight bodies and the four bodies.

23 Q. What were you doing right before you found the bodies?

24 A. I came from another place, and the colonel was leading me.

25 Q. And what were you -- were you on foot?

1 A. I was on the tractor.

2 Q. Okay. And, and who was with you?

3 A. Colonel was before me, and the other soldiers were behind
4 me.

5 Q. Can you please describe what the bodies were -- how the
6 bodies were dressed?

7 A. They were dressed in uniform, secondary school uniform,
8 secondary school uniform, khaki, which was khaki.

9 Q. And could you tell how old these -- how old these people
10 were?

11 A. From 20, 20, below 17, 16, 17 years old up to 20.

12 Q. And did you say anything to the soldiers?

13 A. Yes.

14 Q. What did you say?

15 A. I asked an officer who was standing there. I asked what
16 happened, what happened to them, what happened to them.

17 Q. And did, did you get an answer?

18 A. Yes.

19 Q. What was the answer?

20 A. He cried.

21 Q. Okay. And what, if anything, did you do with these bodies
22 in school uniform?

23 A. I buried them there.

24 Q. Okay. How many graves did you use to bury them?

25 A. The eight, I buried them together, and then the four.

1 Q. So that's two graves?

2 A. Yes.

3 Q. Okay. Do the mass graves about which you testified today,
4 do they still exist today?

5 A. It was in a valley. Some of this work was cleared by the,
6 the floods.

7 Q. Are you talking about Malka-Durdura?

8 A. Yes.

9 Q. Okay. How do you know that, that the floods have affected
10 the graves at Malka-Durdura?

11 A. I went there.

12 Q. When did you go there?

13 A. Many times, many times. Those days and the other days.

14 Q. Okay. Well, what did you see at Malka-Durdura? Did
15 the -- did you see the bodies after the flood?

16 A. Yes. The tie -- the ropes that were tied -- that tied got
17 hold of on the roots of the trees. You can see the rope
18 hanging from the root of a tree. Then when the next rain and
19 the next flood comes, it cleared that.

20 Q. Okay. And did more bodies come up?

21 A. Yes.

22 Q. And you saw those as well?

23 A. Yes.

24 Q. Okay. And what, if anything, is happening to the graves,
25 if you know, at the milk factory?

1 A. People settled there. Initially, it was an open place.
2 People settled there now.

3 Q. So have those graves ever been excavated?

4 A. They settled there. They filled there.

5 Q. The graves at Malka-Durdura, have they ever been excavated
6 by people?

7 A. Yes.

8 Q. Now, do you know when this occurred?

9 A. It was -- this was -- this started with the, with the
10 floods. When the flood came, the bones were still outside,
11 were brought outside. Then the people took the bones and
12 buried them elsewhere.

13 CROSS-EXAMINATION

14 BY DEFENSE COUNSEL: (Through Interpreter)

15 Q. And how long had you known Colonel Aalin?

16 A. I knew him for a long time.

17 Q. More than ten years at that point?

18 A. When, when there were games and sports in the military, he
19 used to -- he was known for his loud or big voice. It was many
20 years.

21 Q. Did you see the soldiers burying their own dead?

22 A. No.

23 Q. You testified earlier this morning that you personally
24 witnessed at least one person being shot and killed, correct?

25 A. He was wounded.

1 Q. He was wounded, and then he was shot and killed by the
2 soldiers?

3 A. I cannot tell you whether he was injured -- I cannot tell
4 whether he was injured or wounded. What I can say is -- all I
5 saw was him raising up his upper part of the body and
6 shouting, "Untie me. Untie me."

7 Q. All right. And you saw this person essentially executed,
8 correct?

9 A. Yes, yes.

10 Q. Did you ever report that incident to Colonel Aalin?

11 A. He was even there. He was there.

12 Q. But you don't know if that person was wounded before they
13 were shot?

14 A. What I remember is him saying, "Untie me, please." I was
15 seeing just the upper part of the body.

16 Q. All right. So you went on doing these burials for a
17 month, correct?

18 A. Two months and 28 days, but it was continuous, and it was
19 for one month and 28 days. And after that, they used to call
20 me on daily basis, come -- they tell me, "Come. Few, few dead
21 bodies in different places."

22 Q. As time went on, most of those bodies were to the north,
23 northern part of Hargeisa, weren't they?

24 A. I did not even go to the side of the north even once. I
25 used to go -- it was mostly in the western side and Hawd.

1 Q. When did you finish the burials?

2 A. Yes, when I -- the two months -- up to two months and 28
3 days is when I escaped, was when I escaped. I went to
4 Ethiopia. I joined my family and my children.

5 Q. All right. And -- so during that entire period, Colonel
6 Aalin was still in Hargeisa?

7 A. He did not go anywhere.

8 Q. So he was still in Hargeisa?

9 A. Then we met him still there, yes, yes.

10 Q. And you're absolutely certain of that?

11 A. Yes.

12 Q. All right. Now, after you fled to Ethiopia, after a time,
13 you did return to Hargeisa, did you not?

14 A. I came back when the land, the land was -- when they
15 entered and the other people, other group left.

16 Q. And approximately when was that?

17 A. It was -- it was after '91, after 1991. It was in 1991.
18 It was in 1991.

19 Q. All right. So you -- and from 1991 to the present, you
20 have -- from 1991 to the present, you've been living in
21 Hargeisa?

22 A. Yes. I did not go anywhere else.

23 Q. All right. How did you first become aware of this
24 lawsuit?

25 A. There are people looking to us there in Hargeisa and told

1 us to show them the mass graves.

2 Q. Who's "us"? When you say people came to us --

3 A. They came to me and told me, "Where did you, where did you
4 bury these people?"

5 And then I told them.

6 Q. All right. How did you get to Djibouti?

7 A. I was called.

8 Q. How did you arrive here? Did you arrive by car or by
9 plane?

10 A. I came by plane.

11 Q. Who paid for your air ticket?

12 A. These, these people.

13 Q. Who is "these people"?

14 A. These people from the court, these people from the court.

15 Q. You're not suggesting that the court paid for you to come
16 here, are you?

17 A. Those who were coming from the courts.

18 Q. What court?

19 A. I understand you are two groups. The other group.

20 Q. What do you mean by "the other group"?

21 A. Not your side, but the other side.

22 Q. Okay. So you're not suggesting that I paid for you coming
23 here. But your airfare was paid, correct?

24 A. Yes.

25 Q. And when did you arrive here?

1 A. I was here three nights.

2 Q. When you say, "I was here three nights," you mean
3 by "here" the Palace Kempinski Djibouti Hotel?

4 A. Yeah, I'm talking about this hotel.

5 Q. All right. And who is paying for your stay here at the
6 hotel?

7 A. The same group that was also doing it. That's what
8 they're doing.

9 Q. You're also eating here, too, aren't you?

10 A. Yeah, I eat here. I eat my food. Then I go to the place
11 I'm given and sleep.

12 When I finish now, I'm going to sleep after eating.
13 After eating, I will sleep.

14 Q. And when do you plan on returning to Hargeisa?

15 A. When I'm told to go, I'm going -- when I'm told to go, I'm
16 going. When I'm given the means to go -- even this afternoon,
17 if I'm told to it's over, I'm going.

18 Q. All right. Why did you come here?

19 A. I have to give testimony for this -- I came to give
20 testimony, to answer the question I'm asked. I tell you what I
21 know.

22 (End of videotape deposition excerpt.)

23 THE COURT: All right, call your next witness.

24 MS. ROBERTS: Your Honor, I failed to note for the
25 record and it probably was obvious that the defendant's

1 counters were included in that.

2 THE COURT: Right. That was obvious.

3 MS. ROBERTS: The next witness is Ahmed Gulaid. He
4 will need translation.

5 AHMED JAMA GULAIID, PLAINTIFFS' WITNESS, AFFIRMED

6 DIRECT EXAMINATION

7 BY MS. ROBERTS: (Through Interpreter)

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Could you please state your name and spell it for the
11 record.

12 A. Ahmed, A-h-m-e-d; Jama, J-a-m-a; Gulaid, G-u-l-u-d.

13 Q. I think that there may have been an error there.

14 A. I don't know.

15 THE COURT: All right, let's move along.

16 BY MS. ROBERTS:

17 Q. All right. When were you born?

18 A. I born '50.

19 Q. The 1950s?

20 A. 1950.

21 Q. 1950. And where were you born?

22 A. Hargeisa.

23 Q. And where do you live today?

24 A. Hargeisa.

25 Q. At any point, did you ever join the Somali National Army?

1 A. Yes.

2 Q. When was that?

3 A. 1968.

4 Q. When did you leave the service of the Somali National
5 Army, if ever?

6 A. In 1988, after the war started in Hargeisa.

7 Q. Okay. We'll return to that.

8 Directing your attention to the year 1984, were you
9 aware of an armed conflict in your region at that time?

10 A. Yes.

11 Q. What did you observe with your own eyes relating to that
12 conflict?

13 A. I saw with my eyes a group from SNM militia, they went to
14 the, to the mountain.

15 Q. And what happened to them?

16 A. Saw at that time they captured 27 of them.

17 Q. And what happened to them?

18 A. Saw they killed, you know, and some are in Hargeisa -- the
19 ground in Hargeisa.

20 Q. Who executed these men in Hargeisa?

21 A. Military government.

22 Q. Where were you stationed in the year 1988?

23 A. Somewhere close to, in between Borama and Hargeisa.

24 Q. And where were you personally on June 4, 1998?

25 A. I was at Hargeisa General Hospital.

1 Q. Why were you in the hospital?

2 A. So I was working at the place. I was working. I get
3 sick.

4 Q. Please describe for the Court what happened to you on the
5 morning of June 4, 1988, in the hospital.

6 A. So someone, captain by the name Ismael Buba went to my
7 house, and four of his soldiers that they have red hat and they
8 driving a Land Cruiser --

9 Q. Let me stop you there. I want you to tell me what
10 happened at the hospital.

11 A. The captain and his four soldiers, they come to me.

12 Q. And what did they do?

13 A. They asked me to come with them.

14 Q. And what were you wearing?

15 A. I have a flip-flop, you know --

16 Q. Macawis?

17 A. The traditional pajama, macawis, yeah, and a shirt, with
18 no T-shirt.

19 Q. Okay. So where did they take you?

20 A. The Second Brigade, Birjeeh. That's where they took me
21 to, military base.

22 Q. Was it the Second Brigade or the Second Division?

23 A. Gass, I think it's a battalion.

24 MS. ROBERTS: "Gass" is division.

25 THE COURT: Counsel, you can't --

1 MS. ROBERTS: Sorry, Your Honor.

2 THE INTERPRETER: Division. Sorry, it's my mistake.
3 Division 2.

4 BY MS. ROBERTS:

5 Q. And does the Second Division go by another name?

6 A. Yes. Second Division called 26th maybe, the sector.

7 Q. I think I heard you mention the name Birjeeh a moment ago.
8 What does that refer to?

9 A. It's a military base name.

10 Q. How did you enter the base?

11 THE INTERPRETER: Counsel?

12 BY MS. ROBERTS:

13 Q. How did you enter the base?

14 A. The men who brought me from hospital, they are the one who
15 took me to the base.

16 Q. And did you enter through a checkpoint, or was there a
17 different kind of entrance to the base?

18 A. The base has two doors. The base has two, anyway, two
19 doors. It's a big base.

20 Q. Could you drive through the door, or did you have to walk
21 through the door?

22 A. What happened was there's the captain who's driving the
23 car. I am in that car with other four soldiers. So they knew
24 the captain.

25 Q. All right. What did you see when you entered the base?

1 A. So what happened was when I come to the base, I saw all
2 the, you know, military at that base, they are all -- all of
3 them are in line, in queue.

4 Q. About how many soldiers?

5 A. Around 1,500. You know, I think there's different branch,
6 but when they come together, there are gonna be a lot of
7 people.

8 Q. And were these soldiers in uniform?

9 A. They were wearing camouflage.

10 Q. Okay.

11 A. And also, they have, you know, guns.

12 Q. And what did you do?

13 A. At that time, I was, you know, in custody.

14 Q. Did you stay in the car, or did you come out of the car?

15 A. Just at that time, they took me out from the car. I sit
16 under the tree. So someone was watching me.

17 Q. Okay. What did you see and hear while you sat under the
18 tree?

19 A. So at that time, they already clean your, you know,
20 ammunition. The place we used to be, so someone already
21 capture that area.

22 Q. I'm not sure I understood your testimony.

23 THE COURT: Well, counsel, before you go any further
24 with this, you need to make me a proffer. What is this witness
25 adding that's not been heard already so far in this proceeding?

1 MS. ROBERTS: He's a plaintiff, Your Honor.

2 THE COURT: He's one of your plaintiffs?

3 MS. ROBERTS: He's John Doe II in the complaint.

4 THE COURT: I'm working on the old one. All right,
5 sorry. Go ahead.

6 THE INTERPRETER: Counsel, could you rephrase the
7 word -- the question?

8 BY MS. ROBERTS:

9 Q. Yes. What I asked was what you saw and heard when you
10 were sitting under the tree.

11 A. So what I hear was that when I sitting under that tree,
12 they say, "Just clean your rifle, your weapon."

13 Q. So after the soldiers cleaned their weapons, what did they
14 do?

15 A. Then take it back to their storage.

16 Q. Okay. And after they took it back to the storage, did
17 they return to the parade ground, or did they do something
18 else?

19 A. At that time, they asked them to come back to, to make a
20 line.

21 Q. Okay. And then what happened?

22 A. What happened was at that time, maybe 11 or 12, 22, I
23 don't remember, soldiers, which wear a, you know, red hat, they
24 circled the whole group. So what they did was they sit all
25 close to where the soldiers were filed, was filing. That's

1 where they, those red soldiers, soldiers with the red hat,
2 that's where they sit.

3 Q. So the soldiers with the red berets, did they form a
4 circle around the soldiers who had just cleaned their weapons,
5 or was it in a different spot?

6 A. So what happened was when the soldiers, they took -- they
7 saw their weapon, so they asked them to sit, but those red
8 berets, they were different -- they were sitting different,
9 different side.

10 Q. Okay. And so then what happened?

11 A. So the captain who pick me up from the hospital, he just
12 pick up the -- he just throw the -- a note.

13 Q. He threw a note?

14 A. He took a, he took a note. He took out a note from his
15 pocket.

16 Q. And what happened next?

17 THE INTERPRETER: Or list.

18 MS. ROBERTS: A list.

19 Q. And then what did he do?

20 A. So then he started reading the list. So he picked up the
21 note -- the list, and he start reading the names on the list.
22 So I was the first one to call. So then at that time, they
23 asked me to go where those red brigades were sitting inside.

24 Q. Inside the circle of the red brigade -- or the red berets?
25 And then what happened after that?

1 A. Then they -- the list keep coming. So everyone they
2 called was coming with the red beret.

3 Q. How many people -- I'm sorry, let me take that back.

4 Did anyone at any point explain why the soldiers had
5 been disarmed?

6 A. At that time, no.

7 Q. Okay. How many men were collected inside the circle of
8 the red berets?

9 A. Including me, around 63.

10 Q. How do you know how many there were?

11 A. They count, they counted head-wise, 1, 2, 3, 4. That's
12 how I know. Also, he was checking his list.

13 Q. Why did you count each other?

14 THE INTERPRETER: Counsel, each other or?

15 BY MS. ROBERTS:

16 Q. If I understood what you just testified, that those of you
17 in the circle counted each other, I'm asking why did you do
18 that?

19 A. They the one who counted us, but we can hear numbers
20 they're reading, and I can see the people who's coming.

21 Q. Did you know any of the other men that were taken inside
22 the circle of the red berets?

23 A. You mean those coming through that area?

24 Q. The men who were inside the circle with you.

25 A. I know most of them except maybe one or two. The reason,

1 because I was one of them.

2 Q. What did you all have in common?

3 A. We are all same clan, Isaaq.

4 Q. And what happened next?

5 A. So then those people with red berets, the command ask them
6 to take the safe off their weapon. Then the other group,
7 they've been ordered to get their weapon back.

8 Q. So after the rest of the soldiers got their weapons back
9 and the red berets took the safeties off, what happened next?

10 A. So it means the red brigade, they were ready. The reason
11 they take the safe from their weapon was just if we move or if
12 we do anything, that's so they can shoot us. And so the other
13 group, also they get their weapon back to defend the base.

14 Q. And so then what happened next?

15 A. The second in command of the brigade, that comes to, to
16 the place.

17 Q. And what did you --

18 A. So what they told us, they say that you guys, you heroes.
19 You fight with, you know, war, and what we're trying to do is
20 take you back to Mogadishu.

21 Q. And did they take you to Mogadishu?

22 A. No. So what they did was they take us -- they told us to
23 pack our, our bag, and when we tried to take our clothes,
24 someone with the red berets will come with us, so we take our
25 clothes.

1 Q. Okay. So after the Isaaq soldiers packed their
2 suitcases -- did you by the way pack a suitcase?

3 A. No. I was also -- the watch I was wearing, I take it off,
4 and I told one of my friends, you know, "Take this to my
5 children, just to remember me."

6 Q. Why did you do that?

7 A. So -- just I look what's going on in the city, okay, and
8 second, I look what's going on here in the camp, because we're
9 all the same family. The rest of the civilians just gets
10 destroyed, the whole city. They used artillery and airplanes,
11 bombardment. The reason they just separate the rest of us from
12 the group was at least probably to, just to kill us.

13 So the reason -- actually, what they did was they
14 take us, they say that, you know, take your own weapon to the
15 storage. Otherwise, had they not say that, then there would be
16 a fight.

17 Q. Okay. So after -- actually, how long did it take for the
18 other Isaaq soldiers to go and pack their bags?

19 A. So they were just leaving the compound, that base. And
20 there's the other place called The Lane, which is basically
21 military families live there. Probably in between 25 and 30
22 minutes, they just told, "Pack everything."

23 Q. So after the other soldiers had packed their bags, what
24 happened next?

25 A. So at that time, they took us to load all of our bags to a

1 big truck, and also with the people to go with that truck. So
2 those red berets, some of them, they went to the front, you
3 know, of the car, front seat. Some of them, they were with us
4 at the back of the truck but still, you know, with their, with
5 their weapon ready.

6 Q. Let me ask you a question just to back up a step. Does
7 the uniform -- the army uniform that contains a red beret,
8 what's the significance of that?

9 A. You mean the red beret?

10 Q. Yes.

11 A. It's a part of the 26th Section of the brigade. Every
12 battalion or brigade has that red beret group.

13 Q. Are they military police?

14 A. Yes, they are military police.

15 Q. So where did they take you in this convoy that you
16 described?

17 A. They took us to a section, to a section sector that
18 belonged to the military police, or red berets.

19 Q. Was that the red berets' base of the 26th Sector? Did I
20 understand that right?

21 A. Yes. That was in the same area.

22 Q. What happened when you arrived there?

23 A. So all the people, whatever they carrying, they asked us
24 to put outside. At that time, they took all of us to cell, two
25 cells.

1 Q. So where did the suitcases go?

2 A. They put it outside.

3 Q. And was anything else left outside?

4 A. Just our belongings. They just left outside. I was not
5 carrying anything.

6 Q. Could you describe the conditions of your confinement in
7 that place where they took you?

8 A. There was two small cells. Each one was, I think, 3
9 meter, 3 meter. They just were crowded there. They just push
10 us in. At that time, that place was really new. They finish
11 at that time. The place was really new.

12 Q. And once you were divided into these two groups, were they
13 evenly divided so it was about 30-plus people in each room? Is
14 that right?

15 A. Not really. What they did was just they filled up one
16 cell. Then they went to the next one.

17 Q. Okay. And what happened next?

18 A. At that time, you know, it started raining a little bit,
19 so at 4 p.m., just they brought a pickup truck. So at that
20 time, they opened the cells. So they just take out the first,
21 the closest one, the first one. Just then they lock the cell.

22 So this -- the two sides of the door there's the two
23 guys guarding. So what happens, when they open the door, the
24 first -- they grabbed the first one. They just, they handcuff
25 us like this (indicating). They pull you outside, so they

1 gonna cuff you.

2 Q. Were you in handcuffs or were you tied -- or were they
3 tied?

4 A. They used a rope.

5 Q. Okay.

6 A. Then they gonna open the cell again, so they gonna pick up
7 another one. Then they gonna tie him again, and just they
8 gonna pick up another one. So they were doing four each time.
9 Then they took the -- they put them into the pickup truck.

10 Q. Could you see the pickup truck from where you were being
11 held?

12 A. Yes, when they opened the door.

13 Q. Could you see where they were taking them?

14 A. Yes. You know, we can hear that, you know, the pickup
15 truck was going out of the, that compound. Then finally, I
16 know it because they took me personally, and they took me out
17 from the base. I know.

18 Q. We're going to get to that in just a moment, but what
19 could you see and hear as they were taking out the men ahead of
20 you?

21 A. So before we -- they packing their, their bag, I told them
22 that, you guys, these people, they're gonna kill us, so don't
23 get anything from your children or don't bag yourself. So
24 don't do anything.

25 Then they say, "Well, why they gonna kill us? What

1 we did wrong?"

2 I told them that, you know, "They kill your brothers.
3 The same thing they're gonna do to you."

4 Q. After the men were taken out ahead of you in the groups of
5 four and you heard the truck drive away, did you hear anything
6 else?

7 A. So the people I was with, I was with in the cell, I told
8 them at that time, I say, "Listen, they took four people now.
9 Listen, they gonna kill them. So you can hear the, hear, you
10 know, the bullets."

11 Q. Did you hear gunfire?

12 A. Yeah. I told them, "Listen. Hear. So we can hear the
13 bullets."

14 And also at that time, I told them, I said, "Okay.
15 After they took these people, then the pickup truck will come
16 back."

17 And right away, the pickup truck come back.

18 Q. Then when it -- oh.

19 A. Then they open the door.

20 Q. When it was your turn, your group's turn, where did they
21 take you?

22 A. They took us to a place called Malka-Durdura. That's
23 close to the base. So there's this place called tog, which is
24 kind of, when there's a lot of rain, that place got a little
25 bit flooded. So there's a lot of water goes that place. So

1 they called tog.

2 Q. I'm sorry, "tog"?

3 A. "Tog."

4 Q. Is that a Somali word?

5 A. It is -- okay. It is kind of, you know, it's a dry place,
6 but when it rains or when there's a lot of -- you know, there's
7 a lot of water coming, go in that area. It's not a lake. It's
8 not a canal. Just when it rains, then there will be water.

9 Q. Is there a dry river bed?

10 THE INTERPRETER: Say again?

11 BY MS. ROBERTS:

12 Q. A dry river bed?

13 A. Kind of when it rains, then there's gonna be a lot of
14 water goes in that area.

15 Q. Okay. So when they took you to this place at
16 Malka-Durdura near the tog, could you please describe what you
17 saw there?

18 A. There's a bank which really goes up to 3 meter down. And
19 this is the ground. So it's got a little bit kind of -- so
20 this is kind of -- and just they put two sticks like this here
21 (indicating). So they tied the rope, one of them here and one
22 of them here.

23 So the four, the four people, you know, they line up
24 together. Their body was holding like this with the rope
25 attached to the, to the tree or -- eight people was there. So

1 they will take two by two. They dropped to the, to the little
2 canal or river two by two.

3 THE INTERPRETER: I need some clarification here.

4 THE WITNESS: Okay. So they would brought four
5 people, and there's eight people right here. So they will
6 grab -- two of them will grab one man. So they will throw the
7 canal -- or the water. So first -- but they shoot maybe five
8 times or ten times. First they will shoot. Then those two
9 people, they will grab the person. So they gonna throw in the
10 water.

11 BY MS. ROBERTS:

12 Q. Okay. Let me back up just a little bit and be sure that
13 we -- everybody understands your testimony.

14 THE COURT: Wait. First of all, the witness should
15 sit down. Thank you.

16 BY MS. ROBERTS:

17 Q. Please sit down.

18 You said that you saw, I think, two sticks, and then
19 you were talking about people throwing people over. Are you
20 talking about soldiers?

21 A. So what they do is first they took, took the people close
22 to where the river bank is. They shoot them. They kill them.
23 When they kill, two of the eight people sitting on the ground
24 will -- on the side will come, they will grab the person who
25 get shot or killed. So they gonna dump them on the water.

1 So there's two sticks. So they gonna throw in
2 between these two sticks, so the people are gonna pile up.

3 Q. Okay. Thank you.

4 Was there any water in the tog at this time?

5 A. No.

6 Q. Okay.

7 A. No water.

8 Q. How many groups had gone ahead of you?

9 A. Six groups by four. 24.

10 Q. So you were --

11 A. I was Group 7.

12 Q. Okay. And when your group was stood up between the poles,
13 how, how was that -- where were you in that -- I'm sorry.

14 Where were you -- was your group tied between the poles, also?

15 A. That's how they, how they were doing.

16 Q. Could you please describe what happened to you when you
17 were tied between the poles with your group?

18 A. There's men sitting somewhere close to where they're gonna
19 dump us. So he's going to give the order. The soldiers were
20 supposed to shoot us. So then he's gonna say, "Those people in
21 front of you are your enemy, so shoot them." You know, they
22 gonna shoot you -- each of us get shot or gonna be shooting by
23 five bullets.

24 Q. Did they shoot you?

25 A. Yes.

1 Q. And what happened?

2 A. So what happened was one of those people who get killed
3 was on my right, and two of them was my left. So what happened
4 was the rope that's holding the, the stick or the tree, that
5 one, the bullet cut it off. So me and the guy close to me, so
6 we fall on the ground. So the other people on our left, so
7 they tilt this way (indicating).

8 Q. And what happened next?

9 A. So at that time, the commander give them orders, those
10 people who shoot us, he say, "Just don't shoot them anymore.
11 Just close your safe."

12 Then he just come and he was checking us. He was
13 touching. At that time, I was still conscious. Then he
14 said, "They're still alive, so shoot them. Give them five
15 bullets each."

16 So at that time, I just -- so at that time, I -- so
17 at that time -- so when they start shooting at that time, I
18 just passed away. So I don't know whether I was, you know --
19 first, I was unconscious. Then second, I was, you know, passed
20 away.

21 Q. When you say you "passed away," do you mean you lost
22 consciousness?

23 A. Yes.

24 Q. Could you please describe what you thought when you woke
25 up?

1 A. So what happened, the first -- actually, they untied us,
2 but they do, you know, tie the other group.

3 Q. So --

4 A. So my thinking was, Okay. You know you passed away. You
5 already dead. Maybe this is, you know, a second life. Maybe
6 they're gonna ask you a question. That's what I was thinking
7 when I woke up, except that nobody asked me questions.

8 So at that time, they untied me. So -- but there was
9 people on top of me, so I have to take them off from me. Then
10 I, then I stood up, and at that time, I just sat looking at the
11 sky, the, you know, the stars, and the people who shoot us.

12 Q. Did you recognize the bodies that you were buried under?

13 A. Could you repeat the question, counsel?

14 Q. Could you recognize the people whose bodies you had to
15 climb out from under?

16 A. Yeah. I knew most of them. They were the same.

17 Q. What did you do next?

18 A. So at that time, I woke up. I stood up. So I just opened
19 my arms like this (indicating). I touched my toes to find out
20 if I have any broken bones or anything.

21 Q. Were you injured?

22 A. Yes.

23 Q. How were you injured?

24 A. I was injured right here, the cheek, belly area, and then
25 one of the knees. I don't know.

1 Q. So what did you do next?

2 A. So what I done, I go back to the -- go back and I pick up
3 my shoes.

4 Q. Where were your shoes?

5 A. So there's the place where they shoot us.

6 Q. Okay. So you found your shoes. And then what next?

7 A. Then I went -- then I went to my house. At that time, I
8 was really very scared. I was really very scared. So while I
9 was walking, sometimes, you know, I fell down. So I got up.

10 Q. Were you aware of an armed conflict going on at that time?

11 A. Yeah. When the, you know, when the conflict start, I was
12 at hospital. So at that time, I know they were bombarding
13 Hargeisa, using, you know, artillery and airplanes.

14 Q. What did you see and hear as you walked home?

15 A. You know, we knew there was conflict because they were
16 bombarding the city. They took us to, to that base, and they
17 shoot us. I knew what was going on. So also, before they
18 shoot us, they have to pick us from, from the cell, and when we
19 were going to the place they will try to shoot us, at that time
20 we can hear or we could see the, you know, the artillery.

21 Q. What effect has this experience had on your life?

22 A. A lot. If I have, you know, if I remember what happens,
23 sometimes even if I'm holding, you know, a cup or whatever,
24 it's gonna, you know, it's gonna fall. Sometimes I have
25 nightmares sleeping, and I remember what happened, so -- while

1 I'm sleeping on my bed. So, you know, I'm going to fall off
2 from bed.

3 If I remember or I have flashback, sometimes I start,
4 you know, crying not by, you know, voice but my eyes start
5 watering.

6 You know, sometimes now if I will lose something, you
7 know, I can't even remember. And now I start having, you know,
8 I think I'm diabetic, I have high blood pressure, and my eyes
9 are not good. And I used to have black hair. Now it's all
10 become white. And I am -- my beard now is all total white.

11 Q. Why do you think General Samantar is responsible for what
12 happened to you?

13 A. I was 19 years on the military. You know, you know, what
14 they did was really bad, you know. He have to know. He have
15 to know. The reason is because the whole town and city, they
16 all destroyed.

17 All those 63, we were 63, all those 63, we were, you
18 know, we were soldiers; we have uniforms. From three lines to
19 captain, they were all in between. He have to know it,
20 because, you know, those soldiers, you know, what they doing to
21 the city, someone have to know what's going on.

22 MS. ROBERTS: Thank you. I have nothing further.

23 THE COURT: All right, that concludes the evidence
24 for today.

25 (Witness excused.)

1 THE COURT: Counsel, how many more witnesses do you
2 think you're calling tomorrow?

3 MS. ROBERTS: We actually only have a short excerpt
4 to read from one more deposition, and then we'll be ready to
5 close.

6 THE COURT: All right, that's fine. Then I think
7 given what I have on my civil docket, why don't we push this
8 off until 11:30 tomorrow morning, all right? And I'll hear the
9 last of your testimony. Any further physical exhibits that you
10 want entered into this record you'll need to move in at that
11 point, and I'll allow a closing argument, and that will then
12 conclude the trial.

13 I'm not at all sure you'll get -- well, I know you
14 won't get an opinion tomorrow, because quite frankly, some of
15 this testimony is at this point indecipherable, and I think
16 I'll be needing the transcript to make sure that I'm on top of
17 everything these witnesses have said.

18 Anything further on this case? Oh, we are going to
19 have the motions docket in here, so you'll need to take your
20 materials off.

21 Mr. Wood, can we make a room available?

22 You don't have to take them out of the building; we
23 can just lock them up in one of the witness rooms; but you
24 can't leave them on the table, all right?

25 MS. ROBERTS: Thank you, Your Honor.

1 THE COURT: All right, we'll recess court then until
2 tomorrow morning at 9:00.

3 (Recess from 6:00 p.m., until 11:30 a.m., February 24, 2012.)

4

5 CERTIFICATE OF THE REPORTERS

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

8

9

10

/s/

Anneliese J. Thomson

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/s/

Norman B. Linnell

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I N D E X

DIRECT CROSS

WITNESSES ON BEHALF OF
THE PLAINTIFFS:

Bashe Abdi Yousuf	5	
Buralle Salah Mohamoud	39	
Nimo Mohamed Dirie	63	
Aziz Mohamed Deria	75	
Elizabeth Akua Ohene (by deposition)	84	
Col. Kenneth Culwell	98	
Ibrahim Hamed Abdullahi (by deposition)	109	129
Ahmed Jama Gulaid	134	

EXHIBITS

MARKED RECEIVED

PLAINTIFFS' :

No. 1		108
2A		98
5		98
6		98
12		108
14		108
15		108
20		109
27A		108
30		108
35		108
40		108
48		108
49		108
64		104

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EXHIBITS (Cont'd.)

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PLAINTIFFS' :

No. 67		108
102		108
104		108
113		108
205		108
206		108
207		108
208		108
210		108
211		108
218		108
234		108
236		108
237		108
247		108
249		108
252		108
253		108
263		108
267		108
279		108
282		108
330		77
331		77
332		77
333		77
344		64
345		65
349	99	99

EXHIBIT I

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

BASHE ABDI YOUSUF;	.	
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	.	Civil Action No. 1:04cv1360
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 24, 2012
MOHAMED ALI SAMANTAR,	.	11:30 a.m.
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Defendant.	.	
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TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

VOLUME 2

(Pages 159 - 203)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1
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3
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5
6
7
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APPEARANCES:

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

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

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

8 THE COURT: Good morning.

9 MR. McLISH: Good morning.

10 THE COURT: All right, my understanding is there's
11 one more witness we're going to hear from?

12 MR. McLISH: Yes, Your Honor.

13 MS. DRAKE: Yes, Your Honor. This is another witness
14 who was supposed to be put in through video. His presentation
15 was over two hours. We have cut it down to just the one point
16 and the appropriate counter-designation.

17 With the Court's permission, we can read it into the
18 record, or if you'd prefer the clerk to read it, we have a
19 marked copy.

20 THE COURT: I'll have Ms. Gassmann sit in the witness
21 box, and she'll read the witness's testimony. You can read the
22 questions. And just when it's Mr. Drennan's questions -- I
23 assume you have a couple of copies of the transcript?

24 MS. DRAKE: I have one, but we're about to get the
25 second copy so we can do that.

1 THE COURT: All right, okay. What's the name of this
2 witness?

3 MS. DRAKE: His name, Your Honor, is Yousuf,
4 Y-o-u-s-u-f, Sharmarke, S-h-a-m-a-r-k-e. The deposition was
5 taken on September 13, 2007. Mr. Drennan was present as was
6 Attorney John Robell from Akin Gump.

7 THE COURT: All right. While we're waiting for that
8 to come in, do you-all have any evidence that you developed
9 during discovery as to the financial assets of Mr. Samantar?
10 Was that investigated at all during discovery?

11 MR. McLISH: It was investigated some.

12 THE COURT: The reason I ask you this is because as
13 you know, one of the requests you have in your case is for
14 punitive damages. A factor which a court is supposed to look
15 at or a jury if the jury were doing this is the ability of a
16 defendant to pay.

17 MR. McLISH: Correct.

18 THE COURT: The only thing I have, and I consider it
19 part of the record of this case because it's a publicly filed
20 document, is the Chapter 7 petition of Mr. Samantar. I would
21 have assumed since you were seeking damages in this case that
22 there would have been discovery into that area, and I just want
23 to know since this is your opportunity to have an evidentiary
24 hearing on the issue of damages what, if any, evidence you
25 developed on that issue.

Sharmarke (By Deposition)

163

1 MR. McLISH: We did some investigation. We, we
2 inquired at his deposition. We asked for documents, I don't
3 believe we got any, that relate to his financial assets. We
4 asked him in his deposition. He denied having any assets, but
5 our investigation indicates that there was a time at which he
6 left from Somalia with large amounts of money.

7 He does own a house, we believe, either in his or his
8 wife's name, but in terms of other evidence of his current
9 financial condition, we don't know.

10 THE COURT: All right. Are we ready to proceed?

11 MS. DRAKE: Your Honor, my apologies to the Court.
12 It seems that we do not have a second copy. It was taken back
13 to the law firm last night.

14 Oh, the court reporter has one. She had made one.
15 Can I take her copy?

16 THE COURT: We're going to have to give it up for a
17 while, yes.

18 MS. DRAKE: My apologies.

19 Thank you, Your Honor.

20 THE COURT: All right, go ahead.

21 (Excerpts of the deposition of YOUSUF SHARMARKE read
22 into the record as follows:)

23 MS. DRAKE: It starts on page 86, line 18, and the
24 question:

25 "Q. This communication system that you used to talk to your

Sharmarke (By Deposition)

164

1 family through the colonel, were other officials in the
2 government using the same system to communicate?"

3 THE LAW CLERK: I'm sorry, I just need the -- okay.
4 Okay.

5 "A. When there's a peace -- when there's peace, this radar
6 system has another function. That's to detect any enemy
7 aircraft that may come into the air, into our space. In the
8 absence of any other form of communication, it was a way of
9 communication that the Armed Forces used.

10 Q. Did you ever hear President Siad Barre communicate using
11 this radar system?

12 A. Yes.

13 Q. When do you remember hearing him use the radar system to
14 communicate?

15 A. I had 31st May when the SNM invaded Burao. Other time,
16 the commander of the army of the military there was killed
17 there and then -- then the regular communication flopped
18 completely, it wasn't working because of the invasion and all
19 that. Then when the other system collapsed, the radar system
20 was used to communicate to the people of Burao. And the day I
21 had been using, I was there so that I get -- I communicate to
22 my children or get communication from my children, where I was
23 waiting the communication from my friend Warza, who was in
24 Hargeisa.

25 I came to a small building where there was a radar

Sharmarke (By Deposition)

165

1 near the airport of Galkayo, and I was waiting for
2 communication from my children, and that was the only means of
3 communication then. Then I had that Mohamed Siad Barre and the
4 President of Somalia and General Mohamed Ali Samantar, he
5 was -- military-wise, he was of higher rank than the
6 President -- that is, General Samantar -- I had them
7 communicating in through the radar. Both of them were in --
8 they were in two radars.

9 Q. Let me stop you and ask you, where was Mohamed Siad Barre?

10 A. He was in Mogadishu.

11 Q. How do you know he was in Mogadishu?

12 A. I knew he's in Mogadishu since he was my president.

13 Q. Where was --

14 A. And I also had his words, words you can -- the kind of
15 order he was giving I heard.

16 Q. Where was General Samantar?

17 A. He was in Mogadishu, also.

18 Q. How do you know he was in Mogadishu?

19 A. I heard it him say in his words, and they're the kind of
20 words that they were exchanging, orders that they were
21 exchanging.

22 Q. They were both in Mogadishu, but they were not in the same
23 exact location in Mogadishu; is that right?

24 A. No, they were not -- yeah, they were not in the same
25 place.

Sharmarke (By Deposition)

166

1 Q. Okay. What did you hear --

2 A. I could tell that from the orders they were exchanging.

3 Q. What did you -- what's the substance of the conversation
4 you heard between those two people?

5 A. It was that SNM invaded Burao, and they were fighting
6 while the people -- in town with the people, and they're
7 fighting the government forces inside the town, that General
8 Mohamed Ali Samantar received the communication that the SNM
9 was fighting from within the people, the position -- the
10 decision reached by Mohamed Ali Samantar was to use heavy --
11 artillery to drive the SNM out of town. I heard him say -- I
12 heard three words, him saying Samantar, Samantar, Samantar,"
13 concern with that -- that might not be in order.

14 MS. DRAKE: Does it continue on page 24, marked on
15 the bottom?

16 THE LAW CLERK: The next page I have is 28.

17 MS. DRAKE: Your Honor, may I finish the quote?

18 THE COURT: Go ahead.

19 MS. DRAKE: ". . . Samantar, don't be quick in
20 bombarding the town, and Samantar said, Samantar saying it
21 was -- it is must that we do that. The President saying let us
22 not reach that position -- let us not make that decision very
23 quickly of bombarding the town, then the general replying that,
24 Samantar, it is must that we do that because they're already in
25 town fighting. It is must to use the bombs to drive them out

Sharmarke (By Deposition)

167

1 of the town, the SNM troops."

2 The following for the record are the
3 counter-designations submitted by Mr. Drennan. Question by
4 Mr. Drennan: "All right."

5 And for the clerk, page 105, line 11.

6 "Q. All right. Are you here as a witness, as a volunteer" --

7 THE COURT: Wait. Do you not have it?

8 MS. DRAKE: Then I think we're set after this part.

9 I understand the issue. It should be fine on 106.

10 THE LAW CLERK: Okay.

11 MS. DRAKE: And, Your Honor, she'll be fine once I
12 get through this part, which is:

13 "Question: All right. Are you here as a witness, as
14 a volunteer, or were you ordered to be here as a witness by the
15 Government of Somaliland.

16 "Answer: No, I was not ordered -- I don't have an
17 order from the Government.

18 "Question: When were you first contacted in
19 connection with this lawsuit involving Mohamed Ali Samantar, my
20 client?

21 "Answer: I was contacted by an office that deals
22 with the massacres against the masses. The genocide that
23 happened in Hargeisa, an organization that was concerned with
24 that" --

25 And the clerk, that should start on the top of 106.

Sharmarke (By Deposition)

168

1 THE LAW CLERK: "Q. When were you contacted first?"
2 Excuse me, that was your question. So --

3 MS. DRAKE: "Q. When were you contacted first?"

4 A. When the decision -- when the decision was reached to be
5 of a different entity as the people of Somaliland, that office
6 was created, and it is the -- an office that -- which work is
7 to track the genocide.

8 Q. So this organization, this office that you've talked about
9 is connected with Somaliland?

10 A. It is an office concerned with humanitarian issues, and
11 that is the work it does, but it's not a government
12 institution.

13 Q. It is a government institution?

14 A. It is not a government institution.

15 Q. So it's what we call -- are you familiar with the term
16 "NGO"?

17 A. No.

18 Q. So it's not a government institution, but where is it
19 located?

20 A. It is in Hargeisa.

21 Q. Okay. You're familiar with the Government of Somaliland?

22 A. Yes, yes. I'm one of the officers -- a government
23 official.

24 Q. All right.

25 A. I am a government worker.

Sharmarke (By Deposition)

169

1 Q. You said you're a government official and a government
2 worker. Are you a member of the ruling party?

3 A. I'm not a member of the party, of the party. I'm a
4 soldier."

5 MS. DRAKE: Turning to page 108:

6 "Q. I see. Have you discussed testifying, or the prospect of
7 testifying in this case, with the President of the High Court
8 of the military in Somaliland?

9 A. It is not his work. It's not his duty. Because a witness
10 will not volunteer to be a witness, is just volunteering to say
11 what you witnessed as a person. It was either eyewitness or
12 ear-witness. It is not something to seek permission doing it,
13 or one seeks permission to do it.

14 Q. I want to get back to the name of the organization with
15 its office in Hargeisa that contacted you. What is the name of
16 that organization?

17 A. It is called the office of -- we know it is Somalia, and
18 the translation is the office that traces the genocide of the
19 masses."

20 MS. DRAKE: On page 109:

21 "Q. All right. So this is a group that investigates
22 allegations of genocide involving the Somali people?

23 A. It is an office that works in human rights activities that
24 is concerned -- that concerns itself with human rights
25 activities, and that is now seeking to trace the injustice that

Sharmarke (By Deposition)

170

1 happened."

2 MS. DRAKE: The next passage is on page 118:

3 "Q. All right. Let's get back to -- well, how did you get
4 here to Djibouti on this trip, the trip that brought you here?

5 A. I am on leave, and I'm on leave here.

6 Q. How did you reach Djibouti?

7 A. By air.

8 Q. All right. Who paid for your ticket?

9 A. It is paid by the office of -- the Humanitarian Office
10 that traces the genocide that happened, which is in Hargeisa.

11 Q. Okay. But -- all right.

12 And does this Humanitarian Office, as you've
13 characterized it, have a Web site?

14 A. Actually, but I'm not sure. Maybe it has.

15 Q. All right. Before coming here to testify, were you
16 interviewed by -- who interviewed you, if anyone?

17 A. Yeah, there were people who asked me about -- who
18 interviewed me about this."

19 MS. DRAKE: Page 120, line 1:

20 "Q. Let me see if I'm clear about this. This office, this
21 humanitarian organization that you've described based in
22 Hargeisa, did they contact you initially, or did you contact
23 them?

24 A. They were addressing this issue especially on this, and
25 they were -- they identified the officers, the experienced

Sharmarke (By Deposition)

171

1 officers, high officer, high-placed officers who were there
2 then, high-placed officers who were there then, and that's how
3 they contacted me.

4 Q. I see.

5 Where are you staying while you're here in Djibouti?

6 A. I stay in this hotel.

7 Q. All right. Do you customarily stay at this hotel when you
8 visit Djibouti?

9 A. This is my first time here. It is my first time here.

10 Q. All right. Who is paying for your hotel room here?

11 A. I'm guided by a person who come from the office in
12 Hargeisa who is with me here. That is the one who directs me.
13 He's the one who brought me to the office, and he settled me
14 here.

15 Q. Who is that person?

16 A. His name is Sulaymaan. I will show you now.

17 Q. What's his name?

18 A. His name is Sulaymaan. His name is Sulaymaan Ismael.

19 Q. How long are you going to be staying here?

20 A. I will go with the next flight. If I get tomorrow --
21 plane leaving, I will go by it.

22 Q. When did you arrive?

23 A. I came yesterday evening."

24 MS. DRAKE: And the next page is on page 162, line
25 20, question by Mr. Drennan:

Sharmarke (By Deposition)

172

1 "Q. Had you ever heard the President of Somalia talking to the
2 prime minister of Somalia over the radio or radar before?

3 A. I heard that way day, and that day they were compelled to
4 do so by conference, the northern region, the military that was
5 in the northern region, the whole communication collapsed, was
6 destroyed. Radar was the only way they could reach to the
7 people in the northern region, the military, the northern
8 region in the second week of -- since the start of the war, the
9 communication improved, the communication improved. The
10 channels started working again.

11 Q. I thought you told me or you told us in your testimony
12 this morning that the President was talking to the prime
13 minister and not to anyone else; isn't that true?

14 A. Yes. The words I heard he was telling -- he was talking
15 to Samantar, and Samantar was giving orders to the people who
16 were in Burao, the military commanders in Burao.

17 Q. Colonel Sharmarke, isn't it true that during that period
18 that you claimed to have overheard this conversation between
19 Mohamed Siad Barre and Mohamed Ali Samantar, that Mohamed Siad
20 Barre, the President of Somalia, was in Addis Ababa, Ethiopia,
21 meeting with the Ethiopian government?

22 A. No.

23 Q. How do you know that?

24 A. I was in the country. He was out of hospital, the
25 accident he was involved in 1986, he was a sick man. After

Sharmarke (By Deposition)

173

1 that, he went to a meeting in Djibouti -- they met in Djibouti.
2 That ended in 1986. It wasn't in 1988.

3 Q. How can you be certain that Mohamed Siad Barre was in
4 Mogadishu in late May of 1988?

5 A. The only way is to go to Mogadishu and look for the
6 officers who were working there then. I'm ready to go there.
7 Will you go with me, please, if you need to go with me?

8 Q. So the truth of the matter is that when you testified this
9 morning that Mohamed Siad Barre was present in Mogadishu in
10 late May of 1988, that you did not know that to be a fact;
11 isn't that true?

12 A. I am sure of my facts. I ask -- I request you go and get
13 your facts right.

14 Q. Well, beyond your belief that Mohamed Siad Barre was in
15 Mogadishu in May of 1988, what facts, if any, can you tell us
16 about that support your contention that Mohamed Siad Barre was
17 in Mogadishu at that time?

18 A. You told me he was in Ethiopia, and he did not go to
19 Ethiopia."

20 MS. DRAKE: The next question is on page 170.

21 THE LAW CLERK: That is a page I don't have.

22 MS. DRAKE: Page 44, the big one.

23 THE LAW CLERK: No, it goes from 42 to 45.

24 THE COURT: Do you want to read it in? Go ahead.

25 MS. DRAKE: I will. Question by Mr. Drennan:

Sharmarke (By Deposition)

174

1 "Isn't it true that Samantar was not the minister of defense in
2 May of 1988? I asked you. We will move on to the next
3 question. I want to --

4 "Answer: I will answer the way I see -- I know, not
5 the way you want it. The ministry of defense was Gabiyow. He
6 was --"

7 THE COURT: Wait. How do you spell that?

8 MS. DRAKE: G-a-b -- as in boy -- i-y-o-w.

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

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

19 "Answer: He was initially, but when he was -- but
20 when he was elected, the chairman of the Socialist Party of
21 Somalia, he gave -- he gave that role -- he passed that to
22 Samantar.

23 "He left -- he no longer used the uniform of the
24 army -- the army uniform. He put aside the army uniform, and
25 from there Samantar took over. And when the war and the

Sharmarke (By Deposition)

175

1 conflicts, that was the duty of Samantar.

2 "Question: Isn't it true that Samantar was taken out
3 of the chain of command in 1987?

4 "Answer: There was a time he removed, yes. There
5 was a time he was transferred, that duty was transferred from
6 him, yes. There are two times -- there are two times -- there
7 are two times he was removed from that hierarchy. Then they
8 required him again and they returned him. Once a time was in
9 the '80s. His place was taken by a man named Omar Haji Masale.
10 And the second time he came back, he came back, they required
11 him, then he came back. They needed him. Then he came back.

12 "Then there was a time then Gabooye was met, then
13 Gabooye was removed from that post again, and Samantar came
14 back. That time he was the minister for defense. One of the
15 sons of Mohamed Siad Barre was given that role once toward the
16 end when things were getting haywire. There's a time he wasn't
17 there, but he was returned to his post because of necessity,
18 because of his knowledge in act of war and his experience.

19 "Question: All right. At any point in May of 1988,
20 did Mohamed Ali Samantar assume the portfolio of minister of
21 defense?

22 "Answer: Yes. He used to fulfill his duty -- the
23 duty of the minister of defense, using -- as using his role as
24 the deputy -- his role as the deputy National Committee of
25 Defense, the National Committee of Security.

Sharmarke (By Deposition)

176

1 "Question: In fact, he never was renamed to be
2 minister of defense?

3 "Answer: And there is no law that was stopping him
4 from playing that role, to take over the task of the role of
5 the defense minister.

6 "But again, he even played his role in the field and
7 the frontier. There was no law that was standing between him
8 and that. And he had enough experience and knowledge, and
9 because of that, he was very quick. Whatever work can be
10 accomplished, he loved to be on the forefront, whether in
11 Mogadishu making the decision in Mogadishu or going to the
12 battlefield.

13 "Question: If -- strike that.

14 "Answer: Most of the time, he was successful in his
15 ventures before the coming of SNM, but SNM destroyed the Somali
16 Army under the leadership of Mohamed Ali Samantar and his
17 friends.

18 "Another thing, Mohamed Ali Samantar, he said -- he
19 talked to the BBC radio and declared that that was his work.

20 "Question: Again, I'm going to revisit the question:
21 Mohamed Ali Samantar was not the minister of defense in May of
22 1988, was he?

23 "Answer: In 1988, he could play that role, and
24 there's no law that barred him from that, and he had the right,
25 all the right, because he was deputy, deputy of the Security

Sharmarke (By Deposition)

177

1 Committee of the nation. He was deputy of the security of
2 the -- there was no law that stood between him and taking that
3 portfolio."

4 MS. DRAKE: Now on page 175:

5 "Q. Mohamed Ali Samantar was not -- strike that.

6 Who was the minister of defense in June of 1988?

7 A. Currently -- I can't tell -- I can't tell whether he was
8 the minister then. At that time, we were at war with the
9 government of that day, and it was -- and it was getting -- it
10 was getting worse by the day. I can't tell the month he came
11 back to that role as the defense minister. There was more --
12 the government was tilting to a side. It was to the right of
13 collapsing. It's not something --

14 Q. I want to be clear about this. You were a colonel in the
15 Somali National Army in June of 1988, were you not? Correct?

16 A. Yes.

17 Q. But you can't tell me who the minister of defense in that
18 same month was?

19 A. This -- there was not any interest I was giving at that
20 time because we were in a fight. We were fighting them.

21 Q. When you say, "We were fighting them," you were still in
22 the Somali National Army at that point, weren't you?

23 A. There was no -- the SNM that we talked about that invaded
24 was the breakaways from the Somali National Army. There's
25 nothing like the National Army that we talk about people were

Sharmarke (By Deposition)

178

1 leaving the National Army like nobody's business, and at every
2 point when meant in any better that they were met, they were
3 defeated.

4 Now about minister or who is minister, who is not
5 minister, who cared? But what I want to make it clear to you
6 is that Mohamed Ali Samantar, after the attack that Burao
7 sustained was the order that Mohamed Ali Samantar gave, and he
8 confessed that in a station, in a radio station, the BBC.

9 Q. Who do you contend was ordered in Burao to attack?

10 A. If you want the person Samantar gave the orders, I will
11 tell you.

12 Q. That's my question.

13 A. He was Colonel Kahiye. Colonel Kahiye, who was -- when
14 the commander of the brigade was killed whose name was Ade'ed,
15 in the same night he was sent from Garowe, and he led the
16 attack against Burao. Samantar gave the order to Kahiye.

17 And if you need, I will tell you the exact word he
18 ordered him. I can tell you, the words Kahiye -- Samantar told
19 Kahiye as order, if you need.

20 Q. What are those words?

21 A. Samantar told -- I heard Samantar telling use the
22 artillery, use Gaabo-addey, use Gaabo-addey, use Gaabo-addey,
23 make use of the weapon you have, make use of the weapons you
24 have, use Gaabo-addey, and Gaabo-addey -- Gaabo-addey is the
25 commander of the heavy artillery in Somalia who was a general,

Sharmarke (By Deposition)

179

1 and the man who is telling you things now knows Gaabo-addey.
2 He was the commander of the heavy artillery, and that was a
3 court that was used whenever -- the court that was used
4 whenever they want to say -- use the heavy artillery, they used
5 to say use Gaabo-addey, use -- make use of the weapon you have.
6 Those were the words of Samantar."

7 MS. DRAKE: Do you have page 46?

8 THE LAW CLERK: Yes.

9 MS. DRAKE: Question by Mr. Drennan:

10 "Q. Did you ever write down your account of this conversation
11 among Siad Barre, Mohamed Ali Samantar, and Kahiye before you
12 came here to Djibouti to give evidence today?

13 A. I gave -- I kept it in memory, and that day I acquired
14 recorder to record it, but I did not have it, but I kept it in
15 my memory. And it was an indisputable fact that it was the
16 order of Mohamed Ali Samantar that was used to destroy Burao
17 and Hargeisa, Gebiley and Burao, every place of Isaaq area
18 because if you would have ordered people not to bombard the
19 towns, that would have been fulfilled. The way his order to
20 the contrary was fulfilled.

21 Q. So the answer is no, you did not write this down, correct?

22 A. No, I did not write.

23 Q. All right, next question.

24 A. But I recorded.

25 Q. Next question, next question. No, please. Next question.

Sharmarke (By Deposition)

180

1 Did you give any interviews to the media about this
2 conversation that you alleged to have overheard between the
3 President and the prime minister?

4 A. No, I did not.

5 Q. Did you give any interview to anybody from "Africa Watch"
6 concerning this conversation you alleged to have overheard
7 between the President and the prime minister?

8 A. What is "Africa Watch"?

9 Q. Did you give this account or give any account of this
10 interview or -- strike that -- this conversation that you
11 alleged to have overheard between Siad Barre and Mohamed Ali
12 Samantar in any human rights organizations?

13 A. Yes, yes, once, once they came to me in Hargeisa, and I
14 gave --"

15 MS. DRAKE: And you have page 47?

16 THE LAW CLERK: Yes.

17 I think you cut me off.

18 MS. DRAKE: That's where his designation ended.

19 So page 182, line 18:

20 "Q. Colonel Sharmarke, just after we broke for your prayers,
21 you told us that Samantar was a good man, didn't you?

22 A. Yeah, he was. In the reign of Mohamed Siad Barre, he was
23 among the best people and men. When it comes to patriotism and
24 in the building of the Armed Forces, and when we were fighting
25 with Ethiopia, the kind of success that came because of his

Sharmarke (By Deposition)

181

1 work, that is the aspect of him that we loved. We loved him
2 because of that.

3 But there was a mistake that was made, mistake that
4 was made, a mistake or an injustice was committed against Isaaq
5 and the Majerteen. Unlucky, unfortunately or fortunately,
6 Samantar in the two incidents, he was the saw that was used to
7 cut, because that was his role, the role he performed, because
8 of the role he performed."

9 MS. DRAKE: And, Your Honor, that concludes the
10 introduction of the Sharmarke evidence.

11 THE COURT: All right.

12 MS. DRAKE: Thank you.

13 And thank you to the clerk.

14 THE COURT: All right, is there any other evidence?

15 MR. McLISH: Your Honor, I'd like to move in some
16 more exhibits.

17 THE COURT: All right. What numbers?

18 MR. McLISH: I'd like to start with No. 93.

19 THE COURT: 93?

20 MR. McLISH: Yes, Your Honor, which is a, it's a
21 cable, I think it was one that I left off my list yesterday.
22 It's the cable between the Embassy in Mogadishu, U.S. Embassy
23 to the State Department in Washington.

24 THE COURT: All right, it's in.

25

1 (Plaintiffs' Exhibit No. 93 was received in
2 evidence.)

3 MR. McLISH: Exhibit No. 94 is a copy of the Somali
4 Constitution. That was stipulated as admissible by
5 Mr. Drennan.

6 THE COURT: All right, it's in.

7 (Plaintiffs' Exhibit No. 94 was received in
8 evidence.)

9 MR. McLISH: No. 112, Plaintiffs' Exhibit 112 is a
10 report from the State Department by Robert Gersony, listed as a
11 consultant to the Bureau for Refugee Programs of the United
12 States Department of State, entitled "Why Somalis Flee,
13 Synthesis of Accounts of Conflict Experience in Northern
14 Somalia by Somali Refugees, Displaced Persons and Others,"
15 dated August 1989.

16 THE COURT: Was there an objection filed by
17 Mr. Drennan to that?

18 MR. McLISH: I believe his objection -- he did not
19 stipulate to its authenticity, and he reserved all objections,
20 I believe.

21 Oh, he did stipulate to authenticity. I'm sorry.

22 THE COURT: All right, 112 is in.

23 (Plaintiffs' Exhibit No. 112 was received in
24 evidence.)

25 MR. McLISH: Now, there are two exhibits, 121 and

1 129, which are what are called Country Reports on Human Rights
2 that are submitted by the Department of State to U.S. Congress.

3 THE COURT: Hold on a second.

4 MR. McLISH: Mr. Drennan did stipulate to the
5 authenticity of those two documents.

6 THE COURT: What are the dates on these things?

7 MR. McLISH: Pardon me, Your Honor?

8 THE COURT: What are the dates? I can't tell from
9 looking at them. In other words, what's the time frame for
10 these reports?

11 MR. McLISH: The first one, 121, is the Country
12 Reports on Human Rights Practices for 1982.

13 THE COURT: Well, that's well before the events
14 involved in this case. I don't see what the relevance of '82
15 would be. We're talking about events in the '86 to '89 time
16 period.

17 MR. McLISH: The relevance, Your Honor, is twofold.
18 One is that it's reporting on human rights violations happening
19 that early, well before many of the abuses that our plaintiffs
20 are complaining about, but I would also note that Mr. Yousuf,
21 Bashe Yousuf, his abuse began in 1981.

22 THE COURT: All right, it's in.

23 (Plaintiffs' Exhibit No. 121 was received in
24 evidence.)

25 THE COURT: And 29 is the other one?

1 MR. McLISH: 129 is the Country Reports on Human
2 Rights Practices for 1990.

3 THE COURT: All right, it's in.

4 (Plaintiffs' Exhibit No. 129 was received in
5 evidence.)

6 MR. McLISH: And both of those, I should say, Your
7 Honor, they're excerpts of a larger report that just includes
8 the Somalia portion.

9 THE COURT: All right.

10 MR. McLISH: Plaintiffs' Exhibit 144 --

11 THE COURT: Hold on. I'm sorry, 144?

12 MR. McLISH: Yes.

13 THE COURT: Yeah.

14 MR. McLISH: This is the United Nations report,
15 "Forensic report: preliminary assessment of mass graves in the
16 vicinity of Hargeisa, Somalia," dated 30 November 1988.

17 THE COURT: All right.

18 (Plaintiffs' Exhibit No. 144 was received in
19 evidence.)

20 MR. McLISH: I'm sorry, Your Honor?

21 THE COURT: That's fine. Anything else?

22 MR. McLISH: Oh, Plaintiffs' Exhibit 303 is a report
23 by the GAO. I need to look at it to see whether it was called
24 the Government Accountability Office or the General Accounting
25 Office.

1 That's still when it was called the United States
2 General Accounting Office. May 1989, a report entitled
3 "Somalia, Observations Regarding the Northern Conflict and
4 Resulting Conditions."

5 I believe Mr. Drennan stipulated to the authenticity
6 of that document.

7 THE COURT: All right, it's in.

8 (Plaintiffs' Exhibit No. 303 was received in
9 evidence.)

10 MR. McLISH: Plaintiffs' Exhibit 328 is a report from
11 the National Academy of Sciences Committee on Human Rights
12 titled "Scientists and Human Rights in Somalia." Mr. Drennan
13 did not stipulate to the authenticity of that document.

14 THE COURT: I don't see the need for this. This is
15 again, the case is only involving damages at this point, and
16 this would appear to be somewhat cumulative to what we've
17 already got in this record, and it appears to include all kinds
18 of hearsay. No, it's not going in.

19 MR. McLISH: Very well, Your Honor.

20 Now, the remaining set of exhibits that we would move
21 in are all Amnesty International reports and releases. There's
22 about a dozen of them. They're all more than 20 years old, so
23 I think they fit the ancient document exception to the hearsay
24 rule.

25 THE COURT: No, I'm not going to load up the record

1 with that. No.

2 MR. McLISH: Very well, Your Honor. Then the
3 plaintiffs rest, Your Honor.

4 THE COURT: All right. And we're going to hear
5 closing argument now?

6 MR. McLISH: Yes, Your Honor. Oh, one more thing I
7 should mention, Your Honor: There is a joint stipulation of
8 uncontested facts that is part of the court record, document
9 No. 228, filed October 20, 2011.

10 THE COURT: All right.

11 MR. McLISH: Am I right in assuming that that's part
12 of the record?

13 THE COURT: Absolutely.

14 CLOSING ARGUMENT

15 BY MR. McLISH:

16 Your Honor, it's been a long road for these
17 plaintiffs. When Mr. Gulaid was digging himself out of a pit
18 of corpses 24 years ago in Somalia, he could not have known
19 that he would ever get any justice, that any of these
20 plaintiffs would get any justice, and I'm sure could not
21 believe or would not have imagined that some justice might come
22 24 years later in a courtroom in Alexandria, Virginia.

23 The task of determining damages and meting out some
24 justice in this case falls to this Court primarily for two
25 reasons. One is that General Samantar lives in Fairfax, within

1 this district, and the second is that this country, United
2 States, democratic institutions have decided there should be a
3 remedy in a case like this.

4 The long road to today includes seven years of
5 litigation, which it's interesting that the seven years that
6 this case has been going on matches in length to a certain
7 degree the amount of time that Bashe Yousuf spent in solitary
8 confinement all by himself.

9 For the entire time that this case has been going on,
10 General Samantar has raised every obstacle that he could
11 defending his conduct in this court. When he was prime
12 minister of Somalia, when he was the defense minister of
13 Somalia and the commander of the Armed Forces, he gave the
14 plaintiffs and the other people in Somalia no process at all.

15 Mr. Gulaid had no process. He was lined up in front
16 of a pit and shot with others, but when the time came,
17 Mr. Samantar took advantage of every single opportunity that he
18 had to delay the day that he would defend his actions in this
19 court. When there were no maneuvers left, he came to this
20 court yesterday and personally defaulted and admitted all of
21 the wrongdoing alleged by these plaintiffs.

22 So although it's been a long time in coming, we're
23 grateful that this day has come. So it falls to this Court to
24 assess damages. We submit that a substantial award of
25 compensatory damages and a substantial award of punitive

1 damages is warranted.

2 With respect to compensatory damages, compensatory
3 damages, of course, are to make the plaintiff whole, and I
4 think it may go without saying that money is a grossly
5 inadequate tool for that task in a case like this. No amount
6 of money can make these plaintiffs whole, but it's the only
7 tool in the Court's toolbox, so that's the tool that the Court
8 must use.

9 With respect to Bashe Yousuf, he testified yesterday
10 that he was arrested by General Samantar's military for doing
11 good deeds around Hargeisa, like trying to improve the schools
12 and clean up the hospital. For that he was tortured, the
13 infamous MiG position, waterboarding, and worst of all in his
14 view, seven years of solitary confinement in a military prison
15 operated by General Samantar's army.

16 You saw the emotional pain that he still carries all
17 this time later, and it falls to this Court to try to put a
18 value on the pain and suffering that, that he has gone through
19 and still goes through.

20 You heard from Mr. Aziz Deria and his sister, Nimo.
21 They lost their father and their brother in the indiscriminate
22 killing in Hargeisa by General Samantar's army in June of 1988.
23 The city they were born and raised in was completely destroyed.

24 You heard Nimo Dirie's description of fleeing the
25 city, with dead bodies everywhere and the stench of it. What

1 dollar figure can make them whole for their suffering?

2 Buralle Salah Mohamoud, he and his family were
3 celebrating a holiday cooking food. General Samantar's army
4 arrived, accused them of helping the resistance, the SNM,
5 forced Buralle and his brothers into a truck, and took them to
6 a military base. They were put in the infamous MiG position,
7 kept that way for an hour-long drive from one place to another.
8 They were packed into a cell with others, summarily sentenced
9 to death.

10 Buralle only escaped because a commander let him go
11 rather than kill three brothers from one family, and as he ran
12 down the road, he could hear the gunfire as his brothers were
13 presumably executed.

14 So again, the task is for the Court, what can
15 compensate Buralle for what happened to him and for the loss of
16 his brothers?

17 I mentioned Mr. Gulaid, lined up and shot with others
18 into a pit, miraculously survived, climbed out, found his
19 shoes, and staggered home, seeing a city destroyed. What can
20 compensate him?

21 All of these people have suffered what no one should
22 have to suffer at the hands of another, much less at the hands
23 of one's own government.

24 In brief, Your Honor, the compensatory damages to
25 which these people are entitled is quite substantial. As Your

1 Honor noted earlier, we are also seeking punitive damages.
2 Punitive damages are appropriate here because the defendant's
3 conduct was intentional, malicious, wanton, and reckless. It
4 showed an utter disregard for the potential consequences of his
5 acts on the safety and rights of others.

6 He has admitted it by taking the default, and again,
7 it's going to fall to Your Honor to determine an appropriate
8 figure in light of that admission, and of course, the Court
9 will take into consideration the purposes of punitive damages,
10 which are to punish, to deter similar conduct in the future,
11 and to demonstrate that the types of conduct that General
12 Samantar committed, types of abuses that he committed will not
13 be tolerated.

14 So the Court must consider the enormity of the
15 wrongdoing that General Samantar is responsible for, and we
16 would submit, Your Honor, that here it's especially enormous.
17 His conduct is especially egregious because it's not just
18 command responsibility. It's not just the fact that General
19 Samantar was second in command and the ultimate military figure
20 in the country and the person ultimately responsible for the
21 conduct of the military. Here it's also that he personally
22 went to Hargeisa and was in command when the atrocities
23 happened there in June of 1988.

24 There's plenty of evidence to find him responsible as
25 a -- as the top commander. As Your Honor knows, the Barre

1 regime was a military dictatorship. It ran the country with an
2 iron fist. General Samantar was the fist. He was in charge of
3 the military, and you heard Mr. Sharmarke testify today he even
4 outranked Siad Barre in terms of military. He was first in
5 command of the Armed Forces.

6 You may recall that Bashe, Bashe Yousuf testified
7 about how he used to see pictures of General Samantar all
8 around. That's the type of prominence that General Samantar
9 had in the country. He had been part of the coup from 1969,
10 and he remained a close confidante of the dictator and in
11 charge of the military all the way until when the government
12 collapsed in 1991.

13 He was on the Supreme Revolutionary Council, which
14 was the junta that ruled the country. So there's plenty of
15 evidence that Samantar was aware of and could have stopped the
16 human rights abuses being perpetrated by his military, by his
17 underlings, and he made no effort to punish them.

18 I'd like to refer Your Honor to an exhibit that is in
19 evidence, Plaintiffs' Exhibit 15. I'm going to ask Jamey to
20 put it up on the screen.

21 This is a cable from the then ambassador to Somalia,
22 U.S. ambassador to Somalia, Frank Crigler, from March of 1990.
23 And, Jamey, if we could see -- well, the first page you'll
24 see -- well, can we look at the top of the second page?

25 There's a subject, "Prime Minister Samantar.

1 Perestroika in Somalia a Reality," and this is Mr. Crigler
2 reporting on communications he had with Prime Minister Samantar
3 at that time, and I just want to point to page 5 of this
4 document, and at the top is paragraph 5, and at the end of the
5 second paragraph there, you'll see Mr. Crigler is reporting
6 what he told the prime minister, Samantar, about the -- his
7 view and the U.S. government's view of what has happened in
8 Somalia, and he says, "Somalia's military establishment has
9 been the most flagrant violator of human rights."

10 That's what the United States ambassador determined.
11 That's what the United States ambassador said to Prime Minister
12 Samantar's face in 1990, and that falls on General Samantar.
13 He was Somalia's military establishment.

14 Let's also take a look at Plaintiffs' Exhibit 35, and
15 in the middle of the first page, you'll see the subject, this
16 is a cable again from Ambassador Crigler from October of 1989.
17 The subject is "1989 Country Report on Human Rights Practices:
18 Somalia." So this is the Embassy in Mogadishu reporting back
19 to the State Department their report on human rights practices
20 in Somalia, and this is a time when General Samantar is the
21 prime ministry -- prime minister of the country.

22 On the second page of the document, in the middle,
23 middle paragraph, there's a sentence: "During 1989, army
24 combat units and military police resorted to attacks on
25 civilian villages, roundups and summary executions as means of

1 combatting the anti-regime Somali National Movement (SNM),
2 other dissent groups, and rioters."

3 On page 4, the bottom of the page, there's a section
4 of the report that begins "Section 1," and then subsection A,
5 "Political and other extrajudicial killing. During 1989,
6 extrajudicial killing was employed as a method of warfare in
7 Somalia's civil conflict. Government forces were the worst,
8 though not the only offenders. Some incidents could be
9 attributed to poor leadership, poor training, inappropriate
10 equipment, or poor discipline, but the pattern of raids on
11 civilian villages, reprisal killings, and summary executions
12 suggested that extrajudicial killing had some degree of
13 official sanction."

14 It goes on to list some documented incidents, the
15 first one of which is fighting around the northern town of
16 Erigavo, and at the end, Ambassador Crigler notes that the
17 pro-government militias drove the SNM out and killed about 200
18 Isaaq civilian inhabitants of the town.

19 THE COURT: All right, let me just stop, though. I'm
20 reading the whole paragraph. Make sure I understand this. It
21 says, "In fighting around the northern town of Erigavo in
22 March, SNM fighters of the Isaaq clan killed a number of
23 unresisting civilians. Pro-government militias then drove the
24 SNM out of Erigavo and killed about 200 Isaaq civilian
25 inhabitants of the town."

1 That's the whole paragraph, correct?

2 MR. McLISH: That's the whole paragraph.

3 THE COURT: All right.

4 MR. McLISH: On page 7 of the same document --

5 THE COURT: Hold on just one second. There has been
6 reference before to Marehan. That's another clan; is that
7 right?

8 MR. McLISH: Right.

9 THE COURT: And the next paragraph says, "Marehan
10 soldiers carried out reprisal killings of Isaaq civilians, 94
11 dead according to some reports, after a landmine explosion on
12 the Burao-Berbera road in May."

13 I mean, this report is reflecting all sorts of fights
14 going on between the warring factions.

15 MR. McLISH: Correct. There were fights. There were
16 warring factions.

17 THE COURT: And reprisals by both sides against
18 civilians.

19 MR. McLISH: Reprisals by both sides. And our
20 contention is that -- and the reports will indicate that the
21 Somali government reprisals and abuses were much worse, but the
22 fact that the SNM may have been abusing human rights does not
23 excuse General Samantar's conduct of the same abuses.

24 So I offer those documents for Your Honor's
25 consideration. There are many more that talk about what was

1 going on at that time, but to indicate that there was a pattern
2 of same types of abuses going on that were being perpetrated by
3 the military of which General Samantar was in charge, but
4 again, as I said before, it's not just that. It's not just
5 that he was in charge of the military. He went to Hargeisa and
6 had direct personal control of the operations up there in June
7 1988 that left the place devastated.

8 I would like to play for Your Honor the, the
9 portion -- the key portion of his interview with the BBC that
10 we heard some of yesterday but may have been difficult to hear.
11 We have a slide that has the quotation on it as well, which is
12 now up on the screen, and, Jamey, could you play the tape?

13 (Audiotape excerpt played as follows:)

14 "I was there at that time, but I was not the
15 commander of the unit. I was the higher-ranking person in
16 Hargeisa; therefore, it was necessary those commanders to
17 consult with me and to have directions from myself.

18 "As you know, the top person in the area of conflict
19 should give the last okay.

20 "Yes, I give this okay. How to use tactically, how
21 to employ the units; it was my task to give them directions and
22 the directives."

23 (End of audiotape excerpt.)

24 MR. McLISH: That's what General Samantar admitted to
25 in 1989 in that interview with Elizabeth Ohene, and let's talk

1 about what he admitted to. The conflict in Hargeisa that he
2 was in charge of left the city destroyed, left thousands of
3 civilians dead. We've heard the testimony about mass graves,
4 mass executions. We've heard the testimony about children
5 being killed, students. We heard that from Mr. Abdullahi
6 yesterday in his video deposition. We heard about the
7 indiscriminate bombing of the town, and we heard that these
8 things were perpetrated on people with no connection to the
9 resistance whatsoever.

10 Now, I submit that General Samantar made this
11 admission in 1989 because he did not foresee that what he was
12 admitting to would be exposed to the world and the enormity of
13 what happened in Hargeisa. He thought he could pass it off as,
14 oh, that was -- there was some collateral damage, but I think
15 the tell here is that as trial approached and we were finally
16 able to take Mr. Samantar's deposition, he denied that he was
17 in charge in Hargeisa. He denied that he had given this
18 interview. He denied that he had made this admission, because
19 he knew that if he admitted it, he was sunk, because what
20 happened in Hargeisa under his command was truly, truly awful.

21 And I'd like to point Your Honor to one of the
22 documents, Plaintiff Exhibit 112, that Your Honor just admitted
23 a few moments ago. This is the report of Robert Gersony that
24 he did for the State Department. On page -- and you'll see,
25 Your Honor, that it was submitted to a director for Bureau of

1 Refugee Programs and an ambassador who was an Assistant
2 Secretary of State, Bureau for African Affairs. This is August
3 of 1989.

4 And what Mr. Gersony did is he went and he
5 interviewed hundreds of Somalis in refugee camps and other
6 places in Ethiopia and in Somalia, and his findings and
7 conclusions appear on page 65 of Plaintiffs' Exhibit 112. It's
8 page 60 of the actual report. It's the 65th page of the
9 exhibit. So in the upper right-hand corner, it's page No. 60.

10 Findings and conclusions, you'll see he -- the report
11 references that these findings are based principally on
12 interviews with over 250 residents and former residents of
13 northern Somalia, and I just want to point to -- and he breaks
14 it up, first he talks about Somali Armed Forces' conduct in the
15 report, and later in the report, he talks about conduct of the
16 SNM, so he's reporting on both sides.

17 Your Honor, our, our position is that it's the
18 conduct of the Somali Armed Forces that are relevant in this
19 proceeding.

20 So in paragraph 1, what does Mr. Gersony report? He
21 says: "In response to the SNM's May 1988 intensification of
22 the civil conflict in northern Somalia, the Somali Armed Forces
23 appears to have engaged in a widespread, systematic, and
24 extremely violent assault on the unarmed civilian Isaaq
25 population of northern Somalia in places where and at times

1 when neither resistance to these actions nor danger to the
2 Somali Armed Forces was present."

3 So that puts to rest the collateral damage idea.

4 He goes on in paragraph 2: "The Somali Armed Forces
5 conducted what appears to be a systematic pattern of attacks
6 against unarmed civilian Isaaq villages, watering points and
7 grazing areas of northern Somalia, killing many of their
8 residents and forcing the survivors to flee for safety to
9 remote areas within Somalia or to other countries.

10 "3. The Somali Armed Forces engaged in a pattern of
11 roundups, summary executions and massacres of many hundreds, if
12 not more, unarmed civilian Isaacs. Some of these actions
13 appear to have been reprisals for acts committed by the SNM;
14 the motives for others are not clear, but the appearance that
15 victims were selected for these killings principally because of
16 their ethnic identity is unmistakable."

17 I'll skip to No. 7 on the next page, where he reports
18 that civilian detainees in Somali government prisons accused of
19 supporting the SNM appear to have been at least at times
20 routinely the objects of ill treatment, including severe
21 beatings, stabbing, prolonged choking, use of metal clips and
22 electric shock on flesh and testicles, and immersion in
23 excrement. This ill treatment sometimes resulted in death.

24 Paragraph 8, "It is conservatively estimated that at
25 least 5,000 unarmed civilian Isaacs were purposefully murdered

1 by the Somali Armed Forces between May 1988 and March 1989, in
2 the absence of resistance and in contexts which presented no
3 immediate danger to these forces."

4 That's what General Samantar admitted to when he
5 admitted to being in charge in Hargeisa. And he does not have
6 the excuse that he was under orders, not that that would
7 matter, but you heard today in Mr. Sharmarke's testimony how it
8 was Barre, the dictator, who was saying don't be so swift to
9 use the artillery, and Samantar is reported to have overruled
10 Barre in saying it must be done.

11 Your Honor, the evidence in this case establishes
12 egregious conduct by the general. It establishes that his, his
13 actions were deliberately, intentionally, purposefully
14 malicious, reckless, wanton, with complete utter disregard of
15 the rights of other people, including these plaintiffs,
16 including the Isaaq population of northern Somalia. A
17 substantial punitive damage award is appropriate.

18 With regard to your question about General Samantar's
19 assets, we do not know what his assets are. When he filed
20 bankruptcy last Sunday night, he didn't include a schedule of
21 his assets. The bankruptcy judge in our hearing on Tuesday
22 noted that his assets are unknown.

23 And I would suggest to the Court that it not be
24 influenced by the filing of bankruptcy and, and by General
25 Samantar's contention that he has no assets. That's yet to be

1 determined.

2 We intend to file a motion with this Court for
3 sanctions at some point in the near future about the way the
4 lead-up to this trial occurred, and -- but I think it's telling
5 and I think General Samantar's conduct during this litigation
6 is indicative of the type of conduct for which punitive damages
7 should be awarded.

8 And I'll end with just a remark about the companion
9 case that this Court has, the *Doe v. Ali* case, which we also
10 represent the plaintiffs, and Mr. Drennan also represents the
11 defendant, and we think it's, it's important to avoid in that
12 case having a run-up -- or a reprise --

13 THE COURT: I don't think that's appropriate to raise
14 in this context. Let's take care of this case first. And I
15 don't disagree with you, but I don't expect the same problems.
16 We will address that in the context of that case, not this one.

17 MR. McLISH: Understood, Your Honor.

18 THE COURT: All right.

19 MR. McLISH: All right. With that, Your Honor,
20 plaintiffs respectfully request that Your Honor award
21 substantial compensatory damages, substantial punitive damages,
22 and I'm not going to suggest dollar amounts to the Court. If
23 Your Honor is interested in briefing about damages issues,
24 we're happy to brief any issues that the Court may have, and
25 we're also happy to provide examples of similar cases in which

1 the trier of fact both in default situations and jury trial
2 situations, where they were -- where they were awarded dollar
3 amounts in similar circumstances, so you could see the kind of
4 range that there has been.

5 THE COURT: All right, thank you. I think we have
6 more than enough evidence with which to work at this point.
7 Obviously, it will take some time to get a decision out.
8 There'll be a written decision.

9 And in the meantime, what's happening -- I'm just
10 curious, in light of the default, does that have any impact --
11 well, both the default and the still pending bankruptcy, has
12 the Fourth Circuit been notified about those events, do you
13 know?

14 MR. McLISH: I do not believe they've been notified
15 about the default.

16 Was something filed on the bankruptcy?

17 I don't, I don't think there was something filed. I
18 don't believe there was a suggestion of bankruptcy similar to
19 what was filed here. I don't believe that was filed in the
20 Fourth Circuit. So it's yet to be seen what effect these
21 events will have on the pending Fourth Circuit appeal.

22 THE COURT: All right. Well, make sure you don't
23 bump into any stay issues in case there is something there.

24 MR. McLISH: Thank you.

25 THE COURT: All right, we'll recess court for the

1 day.

2 MR. McLISH: Thank you very much.

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

5

6 CERTIFICATE OF THE REPORTER

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

9

10

11

/s/

Anneliese J. Thomson

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I N D E X

EXAMINATION

WITNESS ON BEHALF OF
THE PLAINTIFFS:

Yousuf Sharmarke 163
(by deposition)

EXHIBITS

MARKED

RECEIVED

PLAINTIFFS' :

No. 93	182
94	182
112	182
121	183
129	184
144	184
303	185

Closing Argument by Mr. McLish: Page 186

EXHIBIT J

**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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*
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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
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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:

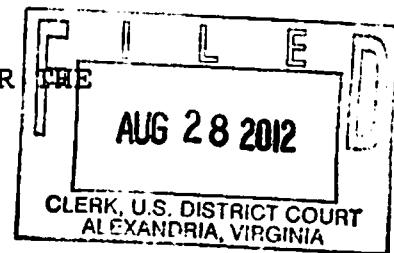
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Thomas P. McLish, Esquire
W. Randolph Teslik, Esquire
Patricia Ann Millett, Esquire
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Washington, D.C. 20036-1564, and that, on even date, an electronic copy of the foregoing was sent, by *e-mail*, 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 ,
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Respectfully submitted,

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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

EXHIBIT K

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,

v.

MOHAMED ALI SAMANTAR,

Defendant-Appellant.

No. 11-1479

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.

1. 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, reprot. 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

EXHIBIT L

FILED: February 3, 2014

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-2178
(1:04-cv-01360-LMB-JFA)

BASHE ABDI YOUSUF; BURALLE SALAH MOHAMOUD; AHMED JAMA
GULOID; AZIZ MOHAMED DERIA, 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),

Plaintiffs - Appellees,

and

JOHN DOE #1; JANE DOE #1; JOHN DOE #2; JOHN DOE #3; JOHN DOE
#4,

Plaintiffs,

v.

MOHAMED ALI SAMANTAR,

Defendant - Appellant,

and

UNITED STATES OF AMERICA,

Party-in-Interest.

O R D E R

Mohamed Ali Samantar appeals from the district court's
order entering judgment against him in this action alleging

violations of the Alien Tort Statute, 28 U.S.C. 1350 (2012), and the Torture Victim Protection Act, 21 U.S.C. § 1350 (2012). In light of our disposition in Yousuf v. Samantar, 699 F.3d 763 (4th Cir. 2012), we dismiss this appeal as moot.

Entered at the direction of the panel: Chief Judge Traxler, Judge King, and Judge Duncan.

For the Court

/s/ Patricia S. Connor, Clerk

EXHIBIT M

FILED

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

2011 MAY 25 | A: 10: 22

BASHE ABDI YOUSUF, *et alii*,

Plaintiffs,

versus

MOHAMED ALI SAMANTAR,

Defendant.

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CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

Civil Action No. 04-1360 (LMB/JFA)
Next event: Initial Pretrial Conference
on 25 May 2011, at 11:00, A.M.,
before Magistrate Judge
Anderson

***DEFENDANT SAMANTAR'S ANSWER TO
PLAINTIFFS' SECOND AMENDED COMPLAINT***

COMES NOW, before this Honorable Court, your defendant in respect of the above-encaptioned cause, *viz.*, MOHAMED ALI SAMANTAR, by and through his undersigned attorney and counsellor, *in praesenti*, *viz.*, Joseph Peter Drennan, and herewith Answers the Second Amended Complaint hereto filed¹ against him by your plaintiffs by stating unto this Honorable Court as follows, *viz.*:

SOME INITIAL QUALIFICATIONS

1. That, from the filing of the instant action, in late 2004, to the present, your defendant has consistently and emphatically asserted, *inter alia*, his immunity from suit under common law;

2. That, upon this Honorable Court's Order of 15 February 2011, striking your defendant's claim of common law immunity, [Document 148], your defendant timely moved for reconsideration of the said 15 February 2011, Order, per his Motion for Reconsideration filed on

¹ On 22 February 2007, your plaintiffs filed and served their Motion for Leave to File the Second Amended Complaint [Document 76], including, as "Exhibit 1" to the said motion their proposed Second Amended Complaint. Thereafter, on 9 March 2007, this Honorable Court granted said motion. However, for whatever reason, the Second Amended Complaint was not assigned a discrete docket entry by the Clerk. Nonetheless, your defendant now Answers said Second Amended Complaint specimen.

15 March 2011 [Document 150] , and, when said motion for reconsideration was denied by this Honorable Court by Order of 1 April 2011 [Document 158], your plaintiff filed a timely Notice of Appeal, to the United States Court of Appeals for the Fourth Circuit, on 29 April 2011 [Document 160], seeking appellate review of the said Order(s) denying your defendant's common law assertion of immunity from suit; thereafter, your defendant did, on 13 May 2011, file a Motion to Stay proceedings in this Honorable Court [Document 162], pending judicial review of this Honorable Court's striking of your defendant's defense of common law immunity, and, on 18 May 2011, this Honorable Court entered an Order, denying said Motion to Stay [Document 168];

3. That, accordingly, your defendant is presently preparing a Motion to Stay this instant proceedings, under the provisions of Federal Rules of Appellate Procedure 8 (a) (2) (A) (ii), and is now Answering the Second Amended Complaint, *without prejudice* to his claim of common law immunity from suit, because this Honorable Court has denied his Motion to Stay, as recounted above;

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

4. That the Second Amended Complaint is barred because your defendant is immune from suit at common law, under the doctrines of foreign official act and head of state immunity;

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

5. That, in the alternative to, or else in conjunction with the foregoing Affirmative Defense, the Second Amended Complaint fails to state a cause of action upon which relief may be based;

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

6. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred because the subject putative claims contained in the Second Amended Complaint constitute non-justiciable political questions beyond this Honorable Court's jurisdiction;

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

7. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred by the applicable statute(s) of limitations;

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

8. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred, in whole or in part, by customary international law, which did not recognize secondary liability at the time of the alleged actions which purport to constitute the factual basis for the Second Amended Complaint;

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

9. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred, in whole or in part, in that, *inter alia*, none of the acts complained of in the Second Amended Complaint constitute violations of binding customary international law as such was recognized at the time of the alleged occurrence of the acts complained of in the Second Amended Complaint;

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

10. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred, in whole or in part, in that, *inter alia*, any and all actions undertaken by your defendant were authorized by applicable law;

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

11. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred, in whole or in part, in that, *inter alia*, the acts complained of constitute official duties or acts of state which are not actionable in this Honorable Court;

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

12. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred, in whole or in part, in that, *inter alia*, none of the acts complained of are cognizable under the Torture Victims Protection Act of 1991, Pub. L. 102-256, 106 Stat. 73 (1992), as all such alleged acts are said to have occurred prior to the enactment of said Act;

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

13. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint fails to allege sufficient facts to support any claim for damages;

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

14. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred by the equitable doctrine of estoppel by conduct;

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

15. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred by the equitable doctrine of estoppel by silence;

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

16. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred by the equitable doctrine of estoppel by conduct;

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

17. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred by the equitable doctrine of waiver;

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

18. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred by the unavailability of equitable tolling of the applicable statute(s) of limitations, under the law governing the instant cause, and that, in any event, were equitable tolling deemed to be potentially available, your plaintiffs have failed to plead sufficient facts to warrant equitable tolling;

ANSWERING THE DISCRETE ALLEGATIONS OF FACT CONTAINED IN THE SECOND AMENDED COMPLAINT

19. That the allegations contained in ¶ 1 of the Second Amended Complaint consist of a purported characterization of the instant action to which your defendant need not plead; however, to the extent that said paragraph contains allegations or insinuations of wrongdoing vis-à-vis

your defendant, all such allegations and or insinuations are denied, *in toto*, and your defendant demands strict proof thereof;

20. That the allegations contained in ¶ 2 of the Second Amended Complaint are denied and your defendant demands strict proof thereof;

21. That, as for the allegations contained in ¶ 3 of the Second Amended Complaint, your defendant denies any and all discrete allegations of fact contained in said paragraph, and, although the remainder of the allegations contained in said paragraph constitute legal conclusions to which your defendant need not plead, your defendant denies any civil liability, denies that any of the averred claims contained in the Second Amended Complaint are cognizable under either the Torture Victim Protection Act or the Alien Tort Statute, and further denies that this Honorable Court may properly exercise jurisdiction over the instant matter;

22. That, with regard to the allegations contained in ¶ 4 of the Second Amended Complaint, your defendant admits that he is a citizen of Somalia and that he resides in Fairfax, Virginia; the remaining allegation contained in said paragraph constitutes a legal conclusion to which your defendant need not plead;

23. That the allegations contained in ¶ 5 of the Second Amended Complaint are admitted;

24. That the allegations contained in ¶ 6 of the Second Amended Complaint are admitted;

25. That the allegations contained in ¶ 7 of the Second Amended Complaint are admitted;

26. That your defendant is without sufficient information to admit or deny the allegations contained in ¶¶ 8 – 12, *seriatim*, of the Second Amended Complaint, and, therefore denies all of such allegations and demands strict proof thereof;

27. That the allegations contained in ¶ 13 of the Second Amended Complaint are denied;

28. That, your defendant takes exception as to the characterization of the events of October 1969, as stated in ¶ 14 of the Second Amended Complaint, and, therefore, denies such allegations;

29. That, as for the multifarious allegations contained in ¶ ¶ 15 – 24, *seriatim*, of the Second Amended Complaint, your defendant denies all such allegations;

30. That, as for the multifarious allegations contained in ¶ ¶ 25 – 38, *seriatim*, of the Second Amended Complaint, your defendant lacks sufficient knowledge to admit or deny said allegations, and, therefore denies all such allegations and demands strict proof thereof;

31. That the allegations contained in ¶ 39 of the Second Amended Complaint are denied;

32. That, as for the multifarious allegations contained in ¶ ¶ 40 – 64, *seriatim*, of the Second Amended Complaint, your defendant lacks sufficient knowledge to admit or deny said allegations, and, therefore denies all such allegations and demands strict proof thereof;

33. That, as for the multifarious allegations contained in ¶ ¶ 65 – 83, *seriatim*, of the Second Amended Complaint, your defendant denies all such allegations;

34. That, as for the compound allegations contained in ¶ 84 of the Second Amended Complaint, your defendant admits that he has resided in the United States since 1997, but all other allegations *ingravidated* in ¶ 84 of the Second Amended Complaint represent putative legal conclusions to which your defendant need not plead; however, to the extent that your defendant is required to answer said allegations, your defendant denies all such allegations;

35. That the allegations contained in ¶ 85 of the Second Amended Complaint are denied;

36. That, as for the compound and multifarious allegations contained in ¶ 86 of the Second Amended Complaint, while your defendant admits that there was a collapse of the central

government of Somalia in 1991, your defendant denies all other putative characterizations and averments contained in said paragraph;

37. That, as for the multifarious allegations contained in ¶¶ 87 – 91, *seriatim*, of the Second Amended Complaint, your defendant denies all such allegations;

38. That your defendant herewith denies each and every allegation contained in the Second Amended Complaint which is not specifically admitted in this Answer;

39. That your defendant reserves the right to amend, change and/or supplement this Answer upon his discovery of any material information that would warrant such emendation;

***ANSWERING THE PUTATIVE CLAIMS FOR RELIEF SET FORTH IN
THE SECOND AMENDED COMPLAINT***

40. That, with regard to the allegations contained in ¶ 92 of the Second Amended Complaint, your defendant hereby incorporates by reference, as if set out in full, all aspects of his answer(s) to each and every one of the corresponding answers to the allegations contained in paragraphs ¶¶ 1 – 91, *seriatim*, of the Second Amended Complaint, as set forth hereinbefore;

41. That the manifold allegations contained in ¶¶ 93 – 100, *seriatim*, of the Second Amended Complaint are denied, *in toto*, and your defendant demands strict proof thereof;

42. That, with regard to the allegations contained in ¶ 101 of the Second Amended Complaint, your defendant hereby incorporates by reference, as if set out in full, all aspects of his answer(s) to each and every one of the corresponding answers to the allegations contained in paragraphs ¶¶ 1 – 100, *seriatim*, of the Second Amended Complaint, as set forth hereinbefore;

43. That the manifold allegations contained in ¶¶ 102 – 109, *seriatim*, of the Second Amended Complaint are denied, *in toto*, and your defendant demands strict proof thereof;

44. That, with regard to the allegations contained in ¶ 110 of the Second Amended Complaint, your defendant hereby incorporates by reference, as if set out in full, all aspects of his answer(s) to each and every one of the corresponding answers to the allegations contained in paragraphs ¶¶ 1 – 109, *seriatim*, of the Second Amended Complaint, as set forth hereinbefore;

45. That the manifold allegations contained in ¶¶ 111 – 119, *seriatim*, of the Second Amended Complaint are denied, *in toto*, and your defendant demands strict proof thereof;

46. That, with regard to the allegations contained in ¶ 120 of the Second Amended Complaint, your defendant hereby incorporates by reference, as if set out in full, all aspects of his answer(s) to each and every one of the corresponding answers to the allegations contained in paragraphs ¶¶ 1 – 119, *seriatim*, of the Second Amended Complaint, as set forth hereinbefore;

47. That the manifold allegations contained in ¶¶ 121 – 129, *seriatim*, of the Second Amended Complaint are denied, *in toto*, and your defendant demands strict proof thereof;

48. That, with regard to the allegations contained in ¶ 130 of the Second Amended Complaint, your defendant hereby incorporates by reference, as if set out in full, all aspects of his answer(s) to each and every one of the corresponding answers to the allegations contained in paragraphs ¶¶ 1 – 129, *seriatim*, of the Second Amended Complaint, as set forth hereinbefore;

49. That the manifold allegations contained in ¶¶ 131 – 138, *seriatim*, of the Second Amended Complaint are denied, *in toto*, and your defendant demands strict proof thereof;

50. That, with regard to the allegations contained in ¶ 139 of the Second Amended Complaint, your defendant hereby incorporates by reference, as if set out in full, all aspects of his answer(s) to each and every one of the corresponding answers to the allegations contained in paragraphs ¶¶ 1 – 138, *seriatim*, of the Second Amended Complaint, as set forth hereinbefore;

51. That the manifold allegations contained in ¶¶ 140 – 147, *seriatim*, of the Second Amended Complaint are denied, *in toto*, and your defendant demands strict proof thereof;

52. That, with regard to the allegations contained in ¶ 148 of the Second Amended Complaint, your defendant hereby incorporates by reference, as if set out in full, all aspects of his answer(s) to each and every one of the corresponding answers to the allegations contained in paragraphs ¶¶ 1 – 147, *seriatim*, of the Second Amended Complaint, as set forth hereinbefore;

53. That the manifold allegations contained in ¶¶ 149 – 156, *seriatim*, of the Second Amended Complaint are denied, *in toto*, and your defendant demands strict proof thereof; &

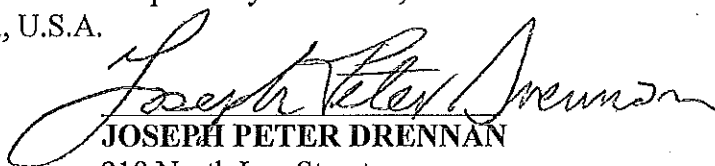
***ANSWERING THE PRAYER FOR RELIEF CONTAINED IN
THE SECOND AMENDED COMPLAINT***

54. That your defendant denies that any of your plaintiffs are entitled to any relief whatsoever.

WHEREFORE, having fully answered the Second Amended Complaint, your defendant hereby and herewith demands that the Second Amended Complaint be dismissed with prejudice, and that he be awarded all costs herein expended, inclusive of attorneys' fees.

Dated: 25 May 2011, at Alexandria, Virginia, U.S.A.

Respectfully submitted,


JOSEPH PETER DRENNAN

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CERTIFICATE OF SERVICE

I, Joseph Peter Drennan, undersigned, hereby and herewith certify that, on 25 May 2011, I caused a true, cyclostyled facsimile of the foregoing to be delivered by hand carriage, enshrouded in a suitable wrapper, unto:

Jonathan P. Robell, Esq.
Joseph Decker, Esquire
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1333 New Hampshire Avenue, N.W.
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Lauren A. Wetzler, Assistant United States Attorney
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Respectfully submitted,

Dated: 25 May 2011, at Alexandria, Virginia U.S.A.



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