

**IN THE UNITED STATES DISTRICT COURT IN THE
EASTERN DISTRICT OF PENNSYLVANIA**

JANE W, in her individual capacity, and in her capacity as the personal representative of the estates of her relatives, James W, Julie W and Jen W,

JOHN X, in his individual capacity, and in his capacity as the personal representative of the estates of his relatives, Jane X, Julie X, James X and Joseph X,

JOHN Y, in his individual capacity, and

JOHN Z, in his individual capacity,

Plaintiffs,

v.

MOSES W. THOMAS,

Defendant.

Case No. 2:18-CV-00569-PBT

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION OF PLAINTIFFS JANE W, JOHN X, JOHN Y, AND JOHN Z
FOR LEAVE TO PROCEED ANONYMOUSLY**

I. INTRODUCTION

Plaintiffs Jane W, John X, John Y, and John Z (“**Plaintiffs**”) submit this Memorandum of Law in Support of Their Motion for Leave to File Anonymously.

Plaintiffs—all Liberian citizens living in Liberia—filed a Complaint on February 12, 2018, alleging that Defendant Moses Thomas (“**Thomas**”) is responsible for extrajudicial killing, torture, war crimes, crimes against humanity and other serious human rights abuses committed against them and their families during the First Liberian Civil War (the “**Civil War**”). Thomas, a commander in the Liberian armed forces during the Civil War, directed and participated in a

hellish massacre of 600 Liberian civilians confined within the sanctuary of the St. Peter's Lutheran Church, a Red Cross humanitarian aid center. Among those killed were Plaintiffs' families. Plaintiffs themselves survived only by hiding under the bodies of the dead and dying. Plaintiffs now invoke this Court's jurisdiction under the Torture Victim Protection Act and the Alien Tort Statute to seek redress for their unimaginable losses.

Plaintiffs face a serious risk of violent retribution should their role in this case become public. There has been no meaningful accountability in Liberia for perpetrators of human rights abuses during the First and Second Liberian Civil Wars (the "**Civil Wars**"). To the contrary, many war criminals remain in power at the highest levels of government. Liberians who previously sought accountability in other cases have been threatened with physical violence and death, and Plaintiffs face serious risks for attempting to seek justice against Thomas and for promoting accountability generally.

Plaintiffs have little recourse in Liberia for protection from these threats. Liberia's police and security structures are weak, incapacitated by corruption, and include powerful individuals highly motivated to prevent any steps toward accountability. These problems are pervasive throughout Liberia. As ethnic minorities and residents of rural communities, Plaintiffs are even more vulnerable. Were Plaintiffs' identities to be disclosed, they would face threats from which the state is unable or unwilling to protect them.

Plaintiffs have a reasonable fear of severe harm that outweighs the public's interest in disclosure of their identities or home addresses. Accordingly, Plaintiffs' motion to proceed anonymously should be granted.

I. FACTUAL BACKGROUND

Plaintiffs are seeking to hold Thomas accountable for his role in a massacre of unarmed Liberian civilians seeking refuge at St. Peter's Lutheran Church (the "**Massacre**") in Monrovia,

Liberia during the Civil War. Compl. ¶¶ 2-3. At the time of the Massacre, Thomas served as the commander of the Special Anti-Terrorist Unit within the Armed Forces of Liberia under former President Samuel Doe (“**Doe**”), among others. During Doe’s regime, the military and government leadership was composed primarily of members of the Krahn tribe. Compl. ¶12. Tensions between the Krahns and two ethnic groups—the Manos and the Gios—escalated when civil war broke out in 1989, and the Armed Forces of Liberia were engaged in targeted attacks against civilians from these two ethnic groups, as well as individuals perceived as aligned with Charles Taylor’s rebel movement.

Thomas, a member of the Krahn tribe, directed the troops under his command to initiate the Massacre, which resulted in the death of 600 unarmed men, women and children, primarily from the Mano and Gio tribes. Plaintiffs survived by hiding under piles of dead bodies, and several of their immediate relatives were murdered. *Id.* Thomas left Liberia for the United States in 2000, and is currently residing in Pennsylvania. Compl. ¶ 8. Plaintiffs assert claims against him under the Alien Tort Statute (the “**ATS**”) and Torture Victim Protection Act (the “**TVPA**”). Compl. ¶¶ 5–6.

All Plaintiffs currently reside in Liberia. Compl. ¶ 9. Their accusations against Thomas are serious, even extraordinary, and include harms related to extra-judicial killing, war crimes and crimes against humanity. Compl. ¶ 4. Liberia offers little protection for individuals who come forward to identify perpetrators of wartime atrocities. Revealing Plaintiffs’ identities at this time would potentially expose them and their families to violence and retaliation from multiple sources.

First, Plaintiffs reasonably fear reprisal from former members of the military and government who engaged in human rights abuses during the Civil Wars. Perpetrators of Civil

War-era atrocities continue to live freely in Liberia, and some hold positions of power in the Liberian government, including in the legislature, executive, judiciary and law enforcement. Declaration of Mark A. Kroeker in Support of Motion of Plaintiffs Jane W, John X, John Y and John Z for Leave to Proceed Anonymously (“Kroeker Decl.”) ¶¶ 8, 10–11; Compl. ¶ 4. A former Minister in Doe’s government and a member of the Krahn tribe, George Boley, was deported from the United States in 2012 after evidence came to light of his involvement in serious human rights abuses in Liberia, including conscription of child soldiers and extrajudicial killings. Witnesses in West Africa who testified against him in connection with the U.S. immigration proceedings were subsequently threatened and their family members attacked. Declaration of Alain Werner in Support of Motion of Plaintiffs Jane W, John X, John Y, and John Z for Leave to Proceed Anonymously (“Werner Decl.”) ¶¶ 6–7. In 2017, Boley was elected to the Liberian House of Representatives and lives freely in Liberia with impunity. *Id.* at ¶ 6. Another Krahn member of Doe’s government, linked to the Lutheran Church Massacre and other extrajudicial killings during the Civil War, ran for president of Liberia in 2017—less than a year ago—and received thousands of votes. Rodney D. Siah, *Liberia: Quiet Pursuit of War Criminals Signals Hope Against Impunity*, FRONT PAGE AFRICA, Nov. 2017, <https://www.frontpageafricaonline.com/index.php/jabbateh-trial/5839-liberia-quiet-pursuit-of-war-criminals-signals-hope-against-impunity>.

Perpetrators in positions of power have worked to thwart efforts to seek accountability for the crimes committed during the Civil Wars. As a result, there has never been meaningful accountability in Liberia for perpetrators. *See* Compl. ¶¶ 44–45; Kroeker Decl. ¶¶ 8–12. Liberia’s Truth and Reconciliation Commission, which had a mandate that included pursuing post-conflict justice, was widely perceived as a “smoke screen” covering a lack of political will

to pursue true accountability. *Id.* ¶¶ 12-13. Political pressure from the highest levels of government led to the Commission's recommendations being swiftly declared nonbinding, rendering them wholly ineffective. *Id.*

Second, Liberians who have testified, been witnesses, or in any way helped to bring cases against Liberian perpetrators of war crimes in international cases have been threatened with violence and death, stalked, stabbed and had family members killed. *See* Werner Decl. ¶¶ 7, 10, 12, 14. Regardless of which side they took during the Civil Wars, perpetrators evading justice for wartime atrocities are united against a common enemy: Liberians such as Plaintiffs, whose search for accountability threatens the perpetrators' power in Liberia. Kroeker Decl. ¶ 10. Perpetrators who have built comfortable lives on the assumption of continued impunity are likely to resort to violence, and have the power and the means to follow through on their threats against those who, like Plaintiffs, threaten the status quo in Liberia. Kroeker Decl. ¶¶ 15–17. Former combatants who have carried out retaliatory measures describe threats and violence as a means of discouraging others from pursuing accountability. Werner Decl. ¶ 15. They share an interest in ensuring a system of impunity that goes beyond shielding any specific person or former armed group.

Pursuing their case in the United States does not protect Plaintiffs from the risk of violent retaliation. Liberian witnesses and plaintiffs in cases prosecuted outside of Liberia have regularly been threatened within Liberia. *See* Werner Decl. ¶¶ 7, 10–12, 14; *see also* Kroeker Decl. ¶ 16 (noting that a perpetrator in a different region or country can still threaten a witness or victim). Witnesses against perpetrators like Thomas, who were previously aligned with former President Samuel Doe and are now living in the United States, have been the targets of threats and violence. Werner Decl. at ¶¶ 6–7. Because U.S. courts are held in high regard in Liberia,

Plaintiffs' suit may be seen as a particular threat to Liberian perpetrators and thereby make Plaintiffs an even greater target for retaliation. Kroeker Decl. ¶ 14. In addition, even Liberians living in the United States have reportedly received threats after speaking to reporters about former Liberian war criminals living in the United States. Some of those who have been threatened reportedly specifically named Thomas as a former fighter living in the United States. See Ryan Lovelace, *Liberian Expats Threatened After Speaking with NRO*, NAT'L REVIEW CORNER, Feb. 16, 2015, <http://www.nationalreview.com/corner/413867>.

Third, Liberia does not have a national police force capable of protecting Plaintiffs from violence or threats of violence. Police corruption is pervasive throughout Liberia, and bribes of less than US\$100 can be enough to buy someone out of prison, or buy the police's assistance in intimidating crime victims. Kroeker Decl. ¶¶ 18–24. Even where the police have the will and integrity to protect witnesses, they do not have the manpower. Liberian police are severely undertrained and have few officers in rural areas, such as where Plaintiffs live. *Id.* at ¶¶ 25–27. Should their identities become known, Plaintiffs would have little protection against serious risk of violent retaliation.

II. ARGUMENT

The Third Circuit allows litigants to proceed anonymously when they “ha[ve] a reasonable fear of severe harm that outweighs the public’s interest in open litigation.” *Doe v. Megless*, 654 F.3d 404 (3d Cir. 2011), *cert. denied*, 132 S. Ct. 1543 (2012). A litigant’s fear of harm must be assessed within the broader “circumstances of a case.” Courts in the Third Circuit have allowed litigants to proceed under pseudonyms in a wide variety of cases, including those involving “abortion, birth control, transsexuality, mental illness, welfare rights of illegitimate children, AIDS, and homosexuality.” *Doe v. Unum Life Ins. Co. of America*, No. 13-6900, 2014 WL 1599919, at *2 (E.D. Pa. Apr. 18, 2014) (quotation omitted).

In *Megless*, the Third Circuit adopted a nine-factor analysis for assessing motions to proceed anonymously, with six factors weighing in favor of granting anonymity and three factors weighing against anonymity. Granting leave to proceed anonymously does not require that all factors support anonymity, only that the factors in favor of anonymity outweigh the factors against it. *See, e.g., Unum Life*, 2014 WL 1599919, at *2; *Freedom From Religion Found., Inc. v. Connellsville Area Sch. Dist.*, No. 2:12-cv-1406, 2013 WL 2296075, at *2 (W.D. Pa. May 24, 2013). Here, as detailed below, all nine factors support granting Plaintiffs leave to proceed anonymously.

A. Plaintiffs Satisfy All Six Factors in Favor of Granting Anonymity

Under the *Megless* analysis, courts are directed to consider six factors that support anonymity:

(1) the extent to which the identity of the litigant has been kept confidential; (2) the bases upon which disclosure is feared or sought to be avoided, and the substantiality of these bases; (3) the magnitude of the public interest in maintaining the confidentiality of the litigant's identity; (4) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigant's identity; (5) the undesirability of an outcome adverse to the pseudonymous party and attributable to his refusal to pursue the case at the price of being publicly identified; and (6) whether the party seeking to sue pseudonymously has illegitimate ulterior motives.

64 F.3d at 409 (quoting *Doe v. Provident*, 176 F.R.D. at 467–68). Here, all six factors weigh in favor of granting Plaintiffs leave to proceed anonymously.

First, Plaintiffs' identities have been kept entirely confidential. Only Plaintiffs' lawyers know Plaintiffs' identities. Plaintiffs adopted pseudonyms and purposefully did not include information in the Complaint that would have made their identities apparent. *See, e.g., Unum Life*, 2014 WL 1599919, at *2 (finding it significant that Plaintiff Doe had used a pseudonym in the complaint and had otherwise “taken measures to maintain the confidentiality of Doe’s identity”). It is difficult to identify Plaintiffs from the facts of the Complaint alone, as there were

at least 2,000 Liberians seeking refuge in the Church on the night of the massacre. Many were from the same towns and ethnic groups as Plaintiffs, and, like Plaintiffs, survived while their family members were killed.

Second, Plaintiffs fear that disclosure of their identities would pose an acute threat to their physical safety. *Provident Life*, 176 F.R.D. at 467. As set out in the factual background above, Plaintiffs face a serious risk of violent retaliation by powerful former perpetrators in Liberia, given previous threats and acts of violence against those seeking accountability and the inability of the police or other state apparatuses in Liberia to offer any meaningful protection. *See* Werner Decl. ¶¶ 7, 10–12, 14; Kroeker Decl. ¶¶ 10, 15–17, 22–23, 25–27. Indeed, enabling ATS and TVPA cases to proceed often requires protecting the plaintiffs’ safety by allowing them to proceed anonymously, given the risk of retribution often entailed by raising claims of such a serious nature. *See, e.g., Doe v. Chiquita Brands Int’l, Inc.*, No. 07–3406 (JMV), 2018 WL 497322 (D.N.J. Jan. 18, 2018); *Yousuf v. Samantar*, No. 1:04cv1360, 2007 WL 2220579 (E.D. Va. Aug. 1, 2007); *Wiwa v. Royal Dutch Petroleum Co.*, No. 96 CIV. 8386(KMW), 2002 WL 319887 (S.D.N.Y. Feb. 28, 2002); *Doe v. Islamic Salvation Front*, 993 F. Supp. 3 (D.D.C. 1998); *Doe v. Unocal Corp.*, 963 F. Supp. 880 (C.D. Cal. 1997).

Plaintiffs’ fear is reasonable, and courts in the Third Circuit have granted motions to proceed anonymously where the plaintiffs feared for their physical safety, as well as where they faced substantially lesser threats. *See, e.g., Freedom from Religion Found.*, 2013 WL 2296075, at *2–3 (granting motion to proceed anonymously where plaintiffs faced “threats of violence and ostracism”); *Provident Life*, 176 F.R.D. at 468 (granting motion to proceed anonymously where plaintiff feared being “stigmatized in the community”); *Unum Life*, 2014 WL 1599919, at *2 (granting motion to proceed anonymously where plaintiff feared the stigma of mental illness and

losing her job). Here, Plaintiffs face threats to their lives and physical well-being substantially greater than the possibility of stigma or ostracism that courts have found sufficient to grant leave to proceed anonymously.

Third, there is substantial public interest in maintaining the confidentiality of Plaintiffs' names. Congress enacted the TVPA to allow claims to be brought in U.S. courts against perpetrators of human rights violations, finding that "universal condemnation of human rights abuses 'provide[s] scant comfort' to the numerous victims of gross violations if they are without a forum to remedy the wrong." *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 106 (2d Cir. 2000) (quoting H.R. Rep. No.102-367, at 3 (1991), reprinted in 4 U.S.C.C.A.N. 84, 85 (1992)). Congress has also recognized that the ATS and the TVPA are important tools for holding perpetrators of human rights violations overseas accountable for their acts, when those perpetrators have sought safe haven in the United States. *See* S. Rep. 102-249, at 3 (1991) ("The [Convention against Torture] obligates state parties to adopt measures to ensure that torturers within their territories are held legally accountable for their acts. This legislation will do precisely that—by making sure that torturers and death squads will no longer have a safe haven in the United States."); *see also* No Safe Haven: Accountability for Human Rights Violators, Part II: Hearing Before the S. Comm. on the Judiciary, 111th Cong. 10 (2009) (statement of Lanny A. Breuer, Assistant Att'y Gen.) (declaring a commitment to "ensuring that no human rights violator or war criminal ever again finds safe haven in the United States"). TVPA and ATS litigation such as the present case seeks to identify and hold to account perpetrators of serious human rights violations who have sought safe haven in the United States. Such cases, however, would not be possible if the individuals coming forward to bring such claims faced a risk of violent retaliation. Permitting victims, such as Plaintiffs, to proceed anonymously at this stage of

the proceedings will serve the public interest in allowing claims to be brought against human rights abusers, and to ensure that such abusers will no longer find safe haven in the United States.

Fourth, although the case may generate public interest, Plaintiffs’ use of pseudonyms “will not interfere with the public’s right or ability to follow the proceedings.” *Provident Life*, 176 F.R.D. at 468. This case turns on the Massacre and Thomas’s role in it. Any public interest generated by the case is likely to focus on the Massacre itself, the culpability of Thomas as a longtime Pennsylvania resident, and the potential to hold Thomas accountable in court—not the identities of the four individuals residing in Liberia who filed the case. *See Lozano v. City of Hazleton*, 496 F. Supp. 2d 477, 513 (M.D. Pa. 2013) (“There is widespread public interest in this case, but that interest is focused not on the identities of the plaintiffs, but on the legal issues at the heart of the case.”).

Fifth, denying Plaintiffs leave to proceed anonymously may lead them or other victims of human rights violations to “sacrifice” their claims and never receive a determination on the merits. *See Kroeker Decl.* ¶ 32; *see also Megless*, 654 F.3d at 410 (directing courts to consider whether a litigant will “potentially sacrifice a potentially valid claim simply to preserve their anonymity”).

Sixth, Plaintiffs do not have any “illegitimate ulterior motive” for proceeding anonymously. *Megless*, 654 F.3d at 410. Plaintiffs seek to protect the safety of themselves and their families while they pursue accountability for those responsible for the Massacre, and justice for the violation of their human rights and the deaths of their family members.

B. No Factors Weigh Against Granting Plaintiffs Anonymity

The *Megless* analysis also directs courts to consider whether three factors disfavoring anonymity outweigh the factors in its favor:

(1) the universal level of public interest in access to the identity of the litigant; (2) whether, because of the subject matter of this litigation, the status of the litigant as a public figure, or otherwise, there is a particularly strong interest in knowing the litigant's identity, beyond the public's interest which is normally obtained; and (3) whether the opposition to using pseudonyms by counsel, the public, or the press is illegitimately motivated.

64 F.3d at 409 (quoting *Doe v. Provident*, 176 F.R.D. at 467–68). None of the factors disfavoring disclosure is present here.

First, the general public interest in knowing the identities of the litigants is weak in this case, where the issues do not turn on the specific identities of the Plaintiffs, and “the public may continue to follow the proceedings without knowing Plaintiff’s identity.” *Smith*, 2014 WL 12768838, at *2. Further, “the public will maintain access to the docket and any resolution of [Plaintiffs’] legal claims.” *Unum Life*, 2014 WL 1599919, at *2.

Second, Plaintiffs are not public figures whose identities would be meaningful or of interest to the public.

Third, there has been no registered opposition to Plaintiffs’ proceeding in pseudonym or indication that it would interfere with the case proceeding.

No countervailing considerations outweigh Plaintiffs’ justified concerns about the risk of violent reprisal against them or their families, in light of the serious nature of their allegations, continued impunity for perpetrators of wartime atrocities in Liberia, the positions of authority occupied by perpetrators of human rights abuses within the Liberian government and the inability of the Liberian government to protect Plaintiffs against violent retaliation.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an Order granting Plaintiffs leave to proceed anonymously.

Dated: April 9, 2018

Respectfully submitted,

/s Nushin Sarkarati

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**DECLARATION OF ALAIN WERNER IN SUPPORT OF
MOTION OF PLAINTIFFS JANE W, JOHN X, JOHN Y, AND JOHN Z
FOR LEAVE TO PROCEED ANONYMOUSLY**

I, Alain Werner, declare as follows:

1. I am a human rights lawyer with more than 15 years of experience pursuing accountability for human rights violations in Liberia and other countries. I am currently the director of Civitas Maxima (“Civitas”), a non-governmental organization that works in Liberia, Sierra Leone, and the Ivory Coast to collect evidence of human rights violations and build legal cases against the alleged perpetrators of these abuses.

2. I am a lawyer registered with the Geneva Bar (Switzerland). I received an LL.M. from Columbia University. I previously worked as a trial attorney in the Office of the Prosecutor of the Special Court for Sierra Leone, where I worked, among other things, on the trial in The Hague of Charles Taylor, the former President of Liberia. From late 2009 to early 2012, I worked at Aegis Trust, a non-governmental organization focused on preventing mass atrocities worldwide, where I specialized on crimes committed in Liberia and Sierra Leone. I have also worked as a legal representative of victims in the trial of former president of Chad in front of the Extraordinary African Chambers and as a representative for victims in the Extraordinary Chambers of the Courts of Cambodia.

3. I founded Civitas in 2012 to focus resources on gathering and preserving the evidence necessary to build cases against alleged perpetrators of war crimes and crimes against humanity. I chose to begin Civitas's work with Liberia because there had been total impunity for the crimes committed there. At the same time as I founded Civitas, Liberian human rights activist Hassan Bility established the Global Justice and Research Project ("GJRP"), Civitas's Liberian sister organization. GJRP works to interview witnesses and collect evidence to support cases against alleged war criminals. Civitas works closely with GJRP to document civil war-era atrocities, connect witnesses to prosecutors of these crimes, and support civil plaintiffs filing cases against these perpetrators.

4. In this role, Civitas has worked with criminal prosecutors and civil litigators around the world to hold perpetrators accountable. Civitas and the GJRP have

so far assisted with four cases against individuals who committed human rights and humanitarian law violations in Liberia during the Liberian Civil Wars, namely cases against Martina Johnson in Belgium, Agnes Reeves Taylor in the United Kingdom, Alieu Kosiah in Switzerland, and Mohammed Jabateh in the United States. Civitas is also working on other Liberian cases which are currently not public. Moreover, Civitas works on Sierra Leonean cases and this work has led to the arrest and indictment of a business man involved in the “blood diamond” trade in Europe in 2015.

5. In the course of each of these cases, witnesses and GJRP staff in Liberia were threatened with violence, and sometimes violently retaliated against, because of their participation in the process intended to hold perpetrators accountable. From a combination of firsthand information and conversations with and reports from colleagues in the work described herein, I learned the following information about the threats made to witnesses and staff members in relation to these and other cases.

6. In 2012, George Boley, the former leader of the rebel group the Liberian Peace Council, faced deportation proceedings in the U.S. due to his role in perpetrating human rights abuses during the first Liberian Civil War. Following the assassination of President Samuel Doe in September 1990, Boley created a rebel group made up mostly of ethnic Krahn soldiers from former President Doe’s Armed Forces of Liberia in an effort to defeat Charles Taylor’s rebellion to take control over Liberia. Boley travelled to the U.S. on numerous occasions and, in 2012, was ordered removable because of his involvement in the use and recruitment of child soldiers, and for the commission of extrajudicial killings in Liberia in the 1990s. He was deported back to Liberia in March

2012. In October 2017, Boley was elected to the Liberian House of Representatives, representing the County of Grand Gedeh before the Legislature of Liberia.

7. During the immigration proceedings, one witness testified that Mr. Boley had executed his mother and four of the witness's friends. Our colleague, Hassan Bility, learned that prior to the witness's testimony, one of Mr. Boley's former mistresses contacted the witness and demanded that he testify on Mr. Boley's behalf, rather than against him, threatening that people would "get even" with the witness if he "[left] George E.S Boley in the cold." Mr. Bility informed us that the witness understood this as a threat. In late 2012, after Boley had been deported back to Liberia, the witness learned that his father had been stabbed in the neck from behind by an unknown person. In addition, one of Mr. Boley's former combatants promised to kill the man and his family. We later learned that the witness's family members received additional anonymous threats, and the witness observed strangers tailing his movements. During the same period, the man's wife died of unknown causes, and his brother was stabbed to death by unknown persons.

8. These threats and actions put Civitas and GJRP on alert of the threat of violence against witnesses testifying against perpetrators of civil war era abuses, and we implemented a security protocol to protect future witnesses and victims testifying in relation to investigations and cases moving forward in Europe and the U.S.

9. In addition, threats were made against witnesses and GJRP staff in another case against an alleged perpetrator of civil war era abuses in Liberia. In November 2014, Alieu Kosiah, a former commander of rebel group United Liberation Movement of

Liberia for Democracy (“ULIMO”), was arrested in Switzerland in connection with human rights violations he allegedly committed during the First Civil War. After news of his arrest became public, GJRP staff and witnesses against Mr. Kosiah were threatened by Mr. Kosiah’s allies in Liberia.

10. On or about January 19, 2015, an anonymous man called Mr. Bility and warned him to “back off the Alieu Kosiah case,” saying that he and other former combatants that served with Kosiah would not “sit idly by to let that happen” while the case went on and that it was in Mr. Bility’s interest to “stay clear of this case.” On or about January 24, 2015, Mr. Bility received a second call threatening to “deal with” him, warning him that they knew where he was located. He also received warnings from friends who had heard of people committed to “fight for Kosiah at all costs.”

11. Similarly, during hearings in the Alieu Kosiah case in Bern, a former high-level combatant stated that in Liberia former combatants from all warring factions were “waiting” for Mr. Bility and that Mr. Bility could “not come back easily” to Liberia.

12. On April 13, 2016, Mohammed Jabbateh, another former ULIMO commander, was arrested in the United States in connection with human rights violations he committed during the First Civil War. In the immediate weeks following Mr. Jabbateh’s arrest, GJRP staff received death threats from Mr. Jabbateh’s sympathizers in Liberia, who believed that GJRP were responsible for the arrest. Mr. Bility also received reliable information that former ULIMO soldiers had met to form plans to inflict bodily harm upon and, if possible, kill GJRP staff members assisting the prosecution against Mr. Jabbateh.

13. In response to the threats detailed above, Civitas expanded its security protocol to protect local staff, witnesses, and clients. This included moving the office of our Liberian NGO partner, GJRP, to a more secure location, providing protection for its staffs' homes, hiring additional security for GJRP's office as well as hiring a personal guard for Mr. Bility.

14. In or around April 2017, after former rebel group commander Martina Johnson had been arrested in Belgium (in September 2014), GJRP received information from three reliable individuals that former combatants of the disbanded National Patriotic Front of Liberia were on a mission to "find and physically identify" two people who were planning to testify in the case against Mrs. Johnson, one of them a plaintiff.

15. Across these cases, Civitas and GJRP received credible reports that some former combatants, when meeting to discuss retaliation against GJRP and witnesses, specifically described being motivated to retaliate in order to frighten others into abandoning efforts to pursue accountability against alleged war criminals.

16. Based on these experiences, I believe that anyone in Liberia who is identified as seeking accountability against perpetrators of human rights violations during the Liberian Civil Wars may risk threat of serious physical injury and/or death.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 29th day of March, 2018.



Alain Werner

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**DECLARATION OF MARK A. KROEKER IN SUPPORT OF
MOTION OF PLAINTIFFS JANE W, JOHN X, JOHN Y, AND JOHN Z
FOR LEAVE TO PROCEED ANONYMOUSLY**

I, Mark Kroeker, declare as follows:

I. Personal Background and Expertise

1. I am a law enforcement and rule of law expert with more than 50 years of experience working in or with police forces, security sector development efforts, and transitional justice. I am currently the senior partner of Kroeker Partners LLC., which consults on institutional capacity building and rule of law in post-conflict environments. I have over 20 years' experience on international rule of law and security initiatives, as detailed in my CV attached hereto as Exhibit A, including five of the past 15 years working in or on issues involving Liberia.

2. In September 2003, I was appointed Police Commissioner for the United Nations Mission in Liberia ("UNMIL"), a position in which I led a police force of approximately 1,100 members from 36 nations, under a mandate to restructure, retrain, and rebuild the Liberian police and to reform the local security sector generally. I remained in this position through June 2005.

3. In June 2005, I was appointed by the United Nations ("UN") Secretary General as Police Advisor to the Department of Peacekeeping Operations at UN Headquarters in New York. In this capacity, I was responsible for overseeing police operations in 17 peacekeeping missions, including UNMIL. I remained in this position until June 2007.

4. From 2012 to 2015, I was Senior Vice President for Justice and Rule of Law at PAE, a government contractor. In that position, I continued to engage in international rule of law and institutional development work, including by administering a program to recruit, second, equip and support police officers to the UN Mission in Liberia under a U.S. Government contract. Through that project, I held weekly meetings with the Deputy Program Manager who

was stationed on the ground in Monrovia, Liberia, and who provided me with regular situation reports.

5. In June 2015, I returned to Liberia as Deputy Special Representative of the Secretary-General for Rule of Law, *ad interim*, with UNMIL. In that role, I was responsible for the development of rule of law and security sector institutions in Liberia. This portfolio included oversight of the police, human rights initiatives, and legal reform efforts, working closely with the courts, prosecutors, prisons, police officers and government officials. I remained in this post through September 2015.

6. Since leaving Liberia, I have continued to follow, write and speak publicly about the situation with security and rule of law in Liberia. Drawing on my experiences in Liberia, among other post-conflict and conflict areas where I have worked, I contributed a chapter on institutional development to a 2016 volume entitled *Impunity: Countering Illicit Power in War and Transition*.¹

7. Throughout my work, I have observed little progress within Liberia on rule of law and anti-corruption. Networks of powerful former combatants and others within Liberia remain resolutely committed to preventing accountability. Corruption remains endemic, and the state lacks both the capacity and political will to protect witnesses and victims. Many actors who once engaged in war crimes have since gained financial or political power, and maintaining that power depends on public acceptance and collective amnesia about past wrongdoing.

¹ Mark Kroeker, *Make It Matter: Ten Rules for Institutional Development that Works* 331–340, in *IMPUNITY: COUNTERING ILLICIT POWER IN WAR AND TRANSITION* (Michelle Hughes and Michael Miklaucic, eds., 2016).

II. Powerful Actors Share a Commitment to Impunity

8. Perpetrators of crimes, including war crimes committed during the First and Second Liberian Civil Wars, remain in positions of power within Liberia, including as politicians, in law enforcement, and in the judiciary. The members of this illicit power structure oppose all accountability efforts, even efforts to hold their past or current opponents to account, because they recognize that creating a precedent of accountability jeopardizes their power. Members of this power structure would perceive a U.S. lawsuit against any one war actor as a threat to everyone with a stake in the maintenance of impunity.

9. During the course of my work, when I attempted to support accountability efforts in Liberia, I and others, including the head of the UN mission, consistently met resistance. There was simply no political will to promote real accountability, even for the most egregious acts, which included serial sexual assault and mass extrajudicial killings during Liberia's wars. This indifference extended to the very highest levels of government, including the transitional President and the Chief Justice of Liberia's Supreme Court, both of whom I spoke with independently about my efforts to pursue justice for victims of unspeakable crimes. When I spoke with the Chief Justice about accountability efforts, he responded, "The past is the past."

10. This commitment is not sectarian, and it is shared across those who were on opposing sides during the war, within an "old boys' network" of perpetrators united by their past crimes. For example, known war criminals are today in public office. From the various warring factions, these include Saye-Taayor Adolphus Dolo (known as "**General Peanut Butter**"), who spoke openly about perpetrating war crimes and infamously commanded a contingent of child soldiers. I personally encountered Mr. Dolo commanding his contingent of child soldiers in Liberia's jungles, as I was working as Police Commissioner in cooperation with UNMIL's

military component toward disarmament and demobilization efforts. Mr. Dolo is now a sitting senator from Nimba County.

11. Another member of this network is Prince Johnson, a former general in Charles Taylor's army, who later tortured and directed the assassination of President Samuel Doe. After participating in the torture and killing of President Doe, Mr. Johnson publicly released a video tape of the acts. Once in Government, Mr. Dolo and Mr. Johnson served alongside allies and family members of President Samuel Doe such as George Dweh. Mr. Dolo, Mr. Johnson, and Mr. Dweh are openly known to have committed atrocities during the war, and for different warring factions. After the war, however, all three assumed positions in Government, and to this day enjoy impunity and broad public support.

12. To date, this shared commitment to impunity among a powerful segment of Liberia's elite has prevented any meaningful accountability. The Truth and Reconciliation Commission ("TRC") that operated from 2005–2010 issued a series of recommendations in its final report in 2009. Even during my first stint in Liberia, when the concept of the TRC was being discussed, I spoke with Liberians from multiple communities who had little faith in its ability to create meaningful accountability. Liberians consistently described it as an effort by elites to be seen as on the side of justice, without actually challenging impunity in practice. They thus considered the TRC to be a smoke screen.

13. Fears about the TRC's ineffectiveness proved true after it issued its recommendations, which included holding trials and banning from public office many perpetrators implicated in Civil War-era crimes, including then-President Ellen Johnson Sirleaf. The Supreme Court acted quickly to overturn or render non-binding both recommendations. President Sirleaf obtained a ruling from the Supreme Court deeming the recommendation to ban

her from office unconstitutional, and all recommendations of the TRC were ultimately declared non-binding.

14. Liberians today have little confidence in Liberian courts to provide accountability for Civil War-era crimes. However, U.S. courts are held in high regard, and so Plaintiffs' suit here will be seen as uniquely threatening to the powerful perpetrators in Liberia who are determined to prevent any real accountability, and who are concerned about a high-profile case bringing back into focus, Civil War-era crimes from which many have sought to distance themselves. Because Moses Thomas is well-known and considered a high-profile target, the fact that he is the subject of this suit will only increase the perceived threat. They fear that accountability in U.S. civil courts could promote publicity and transparency in Liberia, which could catalyze political will to pursue criminal accountability in Liberia.

15. Because perpetrators, especially those in positions of power, believe that any step toward accountability is such an extreme threat to their power, it is my professional view that they will likely resort to extreme means, including attempts at lethal violence, to discourage or punish those who speak out against impunity. If the identities of Plaintiffs in this case become known, the fact that they have demonstrated a willingness to pursue justice against individual perpetrators who have enjoyed impunity for decades will only compound the danger.

16. In my years working with the law enforcement system in Liberia, I have seen intimidation of victims and witnesses in numerous ways. For example, when someone learns that an individual is pursuing justice—such as by filing a report with a police officer—the perpetrator may hire someone to pay the individual a visit. The perpetrator and victim or witness need not be in the same region, or even country: through phone, internet, and word-of-mouth, the perpetrator can easily and inexpensively find a “hired gun” to do the intimidation for him.

Moreover, even if a perpetrator is taken into custody, they can secure their release and end any prosecution with a small bribe.

17. Intimidation generally starts with threats. If the victim or witness continues in the pursuit of justice, the hired gun will escalate to physical violence or violence against property. If the individual still persists, the perpetrator can—again, easily and inexpensively—buy a “hit” and have the witness or victim killed.

III. Corruption Compounds Victims’ Vulnerability

18. In addition to corruption resulting from the efforts of powerful perpetrators to avoid accountability, police bribery and everyday corruption remain serious problems in Liberia. The pervasiveness of police corruption was one of the major obstacles that I confronted during both of my postings in Liberia. During my first assignment as Police Commissioner, while running a police officer training academy, I gave a talk to each graduating class on core values in law enforcement, including integrity. After one such speech, a trainee approached me and said, “Commissioner, I can’t feed *my* family on *your* integrity.” This statement is representative of the mindset among law enforcement. Police officers went through periods in which the state simply failed to pay their salaries, and they developed other strategies, including accepting bribes, in order to survive.

19. Upon my return to Liberia in 2015, I was disappointed to observe that, although officers were getting paid more, the mindset among many had not changed, and corruption remained pervasive.

20. Bribery can buy a person almost anything, and the prices are low by U.S. standards, meaning that, for someone earning money in the United States, paying for a corrupt act in Liberia would be trivial. With US\$50 or US\$100, a person in Liberia can be put into or

bought out of prison. A little more will buy the state's assistance in intimidating crime victims using violence. For example, if a victim reported a perpetrator to a police officer, and the perpetrator learned of the report and bribed the police officer, the police would very likely turn around and punish the reporting victim, including with physical violence.

21. As a result, today Liberians who need protection from the law, or who seek accountability through law, face a law enforcement system where perpetrators can quite literally buy the outcome they want. Ordinary citizens' experiences with the legal system repeatedly bear this out, as, time and time again, corrupt outcomes underscore that no one can reasonably expect justice to prevail.

22. In 2015, I participated in a major UNMIL anti-corruption effort. UNMIL was attempting to strengthen the Liberian Anti-Corruption Commission. However, Liberians refused to testify against corrupt officers, public servants, or other powerful people because of widespread fear of intimidation. The problem was so widespread that UNMIL, with my oversight, contracted with an expert to consult with Liberian governmental entities on witness protection, but I am not aware of any meaningful progress that occurred as a result.

23. Because of the pervasiveness of corruption, victims of intimidation—whether the intimidation is directed by a private or public person—have no recourse. During my time in and following events in Liberia, I never heard of a single instance in which someone was taken to court or otherwise held legally accountable for using or threatening violence to intimidate a victim or witness. Witnesses and victims simply cannot trust the police and courts to protect them from intimidation.

24. These problems exist even for the victims of ordinary crimes. As noted above, pursuing any form of justice for Civil War-era crimes would leave a victim or witness even more

vulnerable to retaliation, because high-ranking individuals within law enforcement and elsewhere in government fear being implicated themselves.

IV. Capacity to Provide Protection for Witnesses Is Weak

25. Even leaving aside the likelihood that an individual who tried to report intimidation would encounter corruption, the fortunate witness who found an honest police officer with honest supervisors would face an additional problem: the police in Liberia lack the capacity to provide the sort of protection necessary for victims and witnesses in high-profile cases such as this especially outside of Monrovia, the nation's capital city.

26. While lack of capacity is a problem everywhere, courts and law enforcement are especially weak in rural areas, and the personnel there severely under-trained. In his June 2017 progress report on UNMIL, the Secretary-General noted that only one-quarter of Liberia's 5,127 police officers are deployed in counties outside the county that contains Monrovia.² In my experience, those living in rural areas cannot count on the police or the courts for protection, even leaving aside the issues of corruption. As a result, the baseline level of vulnerability experienced by any Liberian, including in Monrovia, is compounded dramatically for those in other parts of the country.

27. Within rural areas, ethnic minorities, including Mano and Gio, are even more vulnerable to violence and, at the same time, more likely to be ignored by the police.

V. The Closure of UNMIL Will Contribute to a Power Vacuum

28. Since its arrival in 2003, UNMIL has provided a stabilizing influence on postwar Liberia and has contributed much to the protection of Liberia's most vulnerable populations. It

² Secretary-General, Thirty-Third Progress Report of the Secretary-General on the United Nations Mission in Liberia, S/2017/510 (16 June 2017), ¶ 47.

has filled major gaps in security while attempting to prepare Liberia's security and rule of law institutions to stand on their own, under elected leaders. However, the Civil War-era perpetrators and their allies who comprise Liberia's illicit power structures have not been dislodged from power. Thus, the withdrawal of UNMIL only stands to embolden them. Thus, I believe that victims and witnesses, especially those in high profile war crimes cases, will have even more cause for fear after March 30, 2018.

VI. Conclusion

29. Powerful individuals in Liberia remain highly motivated to prevent any accountability for Civil War-era crimes. They will see efforts to seek accountability in court, and in a high-profile case in U.S. court in particular, as a serious threat to their power and security—even if they have no personal connection to Defendant in this case.

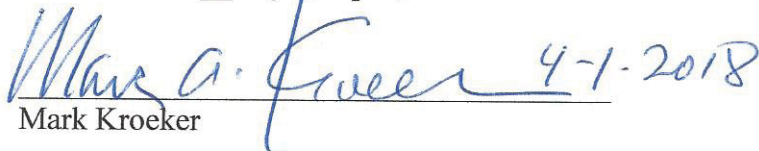
30. Based on my knowledge of criminal justice and efforts at accountability in Liberia, if Plaintiffs' identities were disclosed, powerful perpetrators would be highly motivated and well-placed to threaten and harm Plaintiffs.

31. Plaintiffs could not rely on the state to protect them, due to a combination of perpetrators in positions of power, the pervasiveness of corruption, and the lack of police resources. On the scale of people most vulnerable to intimidation and violence, rural people and ethnic minorities such as Plaintiffs are at particular risk.

32. If Plaintiffs are required to disclose their identities in this case, I believe that they and their family members face a serious risk of harm. Conversely, if Plaintiffs are allowed to proceed anonymously, that will send a message to others, that it is safe to come forward and it may contribute to efforts to promote accountability even beyond the proceeding in this Court.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 1 day of April, 2018.

 4-1-2018
Mark Kroeker