

[REDACTED]

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

In re:	:	2005 APR 29 A 8:20
JANE DOE, et alii,	:	CLERK US DISTRICT COURT ALEXANDRIA, VIRGINIA
Plaintiffs,	:	
versus	:	Civil Action No. 04-1361
YUSUF ABDI ALI,	:	:Next Event: 26 April 2005
Defendant.	:	Hearing before Judge Brinkema :on "Plaintiffs' Motion for Voluntary Dismissal Without Prejudice on Terms : and Conditions"

***DEFENDANT YUSUF ABDI ALI'S FORMAL MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR VOLUNTARY DISMISSAL WITHOUT PREJUDICE ON
TERMS AND CONDITIONS***

COMES NOW, before this Honorable Court, your defendant in respect of the above-encaptioned cause, *viz.*, YUSUF ABDI ALI, by and through his undersigned attorney and counsellor at bar, *viz.*, Joseph Peter Drennan, and pursuant to the Rules of Court, respectfully, to Oppose your plaintiffs' Motion for Voluntary Dismissal Without Prejudice on Terms and Conditions (hereinafter referenced *qua* "your plaintiffs' Motion"), and, in support whereof, your defendant would direct the attention of this Honorable Court to the following considerations, *viz.*:

1. That the averred *gravamen* of your plaintiffs' Motion, *viz.*, the litany of assorted difficulties that their counsel have been said to have encountered, in respect of their endeavoring, as it were, to secure the requisite permission from the Government of the United States, for your plaintiffs' to travel to the United States, to give evidence, essentially, begs the question of what efforts, *if any*, were initiated by your plaintiffs, or their counsel, to initiate such visa and travel arrangements, in the course of their putative pre-suit investigation;

2. That, given the audacious, if ill-considered, breadth and scope of the allegations contained in the Complaint, one would have certainly have thought that appropriate efforts to conduct an appropriately thorough pre-suit factual and legal investigation would have been initiated many months, if not years, prior to the 10 November 2004, filing of the instant law suit;

3. That, ever since his initial face-to-face meeting with your plaintiffs' counsel, on 7 January 2005, it has been quite apparent to the undersigned that, *inter alia*, astonishingly, your plaintiffs undertook no efforts, whatsoever, to plan to bring your plaintiffs to this forum in order to prosecute their instant law suit, *inter alia*, to make themselves available to give their inevitable depositions here in the law office of your defendant's counsel; such ominous conclusions have only been validated by your plaintiffs' studious avoidance of the topic in their otherwise prodigious pleadings to this Honorable Court, whithersoever the undersigned's continuous questioning to this Honorable Court about your plaintiffs' pre-suit efforts in such regard;

4. That, rather than confront their palpable lack of due diligence in respect of their putative preparations to file this instant law suit, whatever they were, your plaintiffs' counsel have indulged, gratuitously, this Honorable Court with immodest, self-congratulatory recantations of their averredly "Herculean efforts" (Mem. at 7), in the proverbial eleventh hour, to secure their clients' presence here, including mention, *inter alia*, of the many law firms they have engaged in different countries, and allusions to the large sums of money that they have spent in the course of their belated exercise in "diligence";

5. That, for all of their prodigious pleading before this Honorable Court, your plaintiffs have adduced nary a scintilla of evidence to support the notion that they conducted *any* pre-suit investigation at all, much less an adequate inquiry as regards the various avenues that might have been explored, at an early stage of their supposed pre-suit investigation, in order to secure their presence here; indeed, even at this late stage of the subject litigation, neither of your plaintiffs has yet furnished to your

defendant *any* documentation, *whatsoever*, establishing their respective supposed identities; that your plaintiffs have recently equivocated about the supposed dates of certain supposed occurrences in the Complaint (*e.g.*, what supposedly happened in 1984, may have supposedly happened in 1985) further reinforces this view of a shambolic, and surely inadequate, pre-suit investigation by your plaintiffs;

6. That it would appear axiomatic that one of the first issues to be tackled by any plaintiff contemplating a civil action of this sort before this Honorable Court would be that of the logistics of coming to the forum in order to testify; apparently, in the instant case, what should have been a fundamental threshold consideration was only treated as an afterthought, and addressed only upon the importuning of the undersigned;

7. That, for all of their efforts evidently devoted to laying out their legal argument for the extraordinary relief that they now seek, your defendant would note, in passing, that your plaintiffs have cited no persuasive, much less compelling, authority supportive of the proposition that a foreign litigant may exercise the preferment of, willy-nilly, filing a civil action with this Honorable Court, without first, as it were, working out the logistics of how he would get here to prosecute the action, only to take a voluntary non-suit later, as such is, as it were, akin to putting the proverbial cart before the horse; the undersigned is unaware of any *federal* jurisprudence that would give the plaintiff in a civil action the prerogative of taking a non-suit at any point, after the joinder of issue, let alone after garnering significant discovery from the defendant sued; of course, this is a *federal* court, not a Virginia circuit court, where such a right does exist;

8. That your defendant, ever mindful of the utter lack of merit to your plaintiffs' infamous charges against him, as a leader in the local Somali diaspora community, is troubled by the curious timing of the filing of the instant action, coming, as it did, but one month to the day following the formation, in exile, in Nairobi, Kenya, of the Transitional Government of Somalia, and is, therefore, led to the

ineluctable conclusion that, *inter alia*, the course of political developments in his beloved, but troubled homeland, appears to have precipitated the timing of the filing of the instant action; given the staleness of the instant cause, he respectfully submits that such timing appears to be more than mere coincidence; it bears mention also that he is equally disturbed by the fact that, just as your plaintiffs propose to this Honorable Court to adjourn their oppressive civil action against him for a period of ninety (90) days, the United States Government, just last week, indicted his beloved wife, Intisar Khalif Ali, and the mother of the couple's three minor children, aged thirteen (13), ten (10) & seven (7), on a charge of alleged naturalization fraud,¹ notwithstanding that she was naturalized way back in 1995; incidentally, she is currently slated to be arraigned on said charge, before Judge Lee, this very morning, at 9:30, A.M., *id est*, just before the slated commencement of the instant hearing, especially as your plaintiffs, or, more aptly, their spokesmen, have made no secret of the fact that they have been agitating against your defendant's being allowed to continue to reside in the United States²;

9. That your defendant respectfully submits that, although there are many disquieting questions concerning the timing of the filing of the instant lawsuit, one thing that is pellucidly clear is that the instant action is politically motivated³; as such, your defendant respectfully submits that your plaintiffs

¹ *United States of America v. Intisar Khalif Ali*, Docket No. 05cr163, before the United States District Court for the Eastern District of Virginia (Alexandria Division).

² *See, e.g.*: 11 November 2005 press release issued by plaintiffs' counsel entitled "Former Somali Prime Minister and Military Officer Face Lawsuits in U.S. Court for Torture, Murder, Crimes Against Humanity", a copy of which continues to be posted on the Internet website of plaintiffs' San Francisco based counsel, at the following URL, *viz.*: www.cja.org. *Inter alia*, said press release contains the following statement attributed to your plaintiffs' counsel concerning your defendant and former Somali Prime Minister Mohamed Ali Samatar, who is a defendant in a coeval civil action filed with this Honorable Court in tandem with the instant cause, *viz.*: "These men should not be permitted to live with impunity in the United States."

³ Lest there be any doubt about this, we invite the attention of this Honorable Court to the Internet website maintained by your plaintiffs' San Francisco based counsel, *viz.*, "The Center for Justice & Accountability," which is suffused with, *inter alia*, one-sided and incomplete putative "coverage" of the instant litigation. Indicative of such one-sidedness is that the website contains a hyperlink that purports to contain "Legal Documents" relating to the instant case; yet, mouse-clicking on such link causes the inquirer's computer to display but one other hyperlink entitled "Complaint for Torture; Attempted Extrajudicial Killing; Cruel, Inhuman or Degrading Treatment or Punishment; Arbitrary (sic) Detention; Crimes Against Humanity; and War Crimes.", as if that such were the only legal document on file in the instant case. While such selective display of putative information may, indeed, be considered to be an exercise in free, if reckless, speech protected by the First Amendment, it also is strongly suggestive of, *inter alia*, an animating political agenda behind the instant action. Further indications of your plaintiffs' transparent political purpose in bringing this law suit may be found also, *inter loci*, in the following, only partially correct statements concerning your defendant's immigration status in the United States, *viz.*:

are deserving of no indulgence, whatsoever, in terms of the relief that they now seek in your plaintiffs' Motion;

10. That, since your defendant respectfully submits that all of the putative cause of action lain in the Complaint are barred by the applicable Statute(s) of Limitations, your defendant is adamantly opposed to your plaintiffs' receiving any relief, per your plaintiffs' Motion, or otherwise, which would give them any equitable tolling as regards any contemplated re-filing of the case, as, *inter alia*, to do so would irrefragably further prejudice your defendant, *inter alia*, by having him have answer allegations that become staler by the day, after he has already expended prodigious sums on attorney's fees, not to mention the untold anguish that this case has visited upon your defendant and his family; &

11. That, in addition to the foregoing articulated considerations, your defendant respectfully submits that the attached rebuttal expert report of Ambassador Trusten Frank Crigler, of even date, designated "Exhibit 'A'"⁴, *inter alia*, raises a whole host of other considerations, militating strongly

"(Your defendant) was deported from Canada in October 1992 based on evidence of his extreme brutality. He came to the U.S. and filed for permanent residency in 1993. In his visa application, he reportedly swore that he had not persecuted others. Shortly thereafter, the Immigration and Naturalization Service (INS) placed him in deportation proceedings on the ground that he had committed fraud in completing his visa application. He withdrew his application. The INS allowed him to voluntarily depart the U.S. and, in 1994, he left for Kenya. In 1996, he was permitted to return to the United States to join his wife, a U.S. citizen. In 1998, the INS arrested him on fraud charges, stemming from misstatements in his 1993 visa application. However, an immigration judge dismissed the case on the ground that he had withdrawn the 1993 application and that his misrepresentation was therefore not 'material'. He has lived openly in Virginia since then."

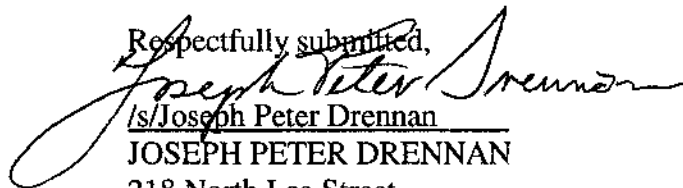
Inter alia, it is becoming quite clear that the alleged travails of "Jane Doe" and "John Doe" recounted in the Redacted Complaint are a pretextually based, craven effort to run your defendant out of the United States, that, apparently, knows no ends, as exemplified by the fact, *inter alia*, that any fair reading of the foregoing excerpted passage invites the reader to deduce that a United States Immigration Judge found, *inter alia*, that your defendant had, indeed, made a misrepresentation in his visa application. Having perused the subject 26 January 1999 Decision and Order of Immigration Judge Wayne Iskra, the undersigned, as an officer of this Honorable Court, can assure this Honorable Court that such characterization is demonstrably false. If need be, your defendant is prepared to submit the aforesaid Decision and Order of the Immigration Judge, under seal, to this Honorable Court, for inspection at today's hearing. As the undersigned has previously noted to this Honorable Court, *inter alia*, your defendant harbors the concern that the instant case represents a collateral attack on your defendant's having been granted permanent residence in the United States.

⁴ As adverted to above, Ambassador Crigler is designated as a rebuttal expert witness, as well as his being a fact witness, as he was United States Ambassador to Somalia in the 1980s; upon information and belief, the erudite and esteemed Ambassador Crigler probably represents the most knowledgeable and objective source available concerning the circumstances in Somalia at the time of the subject allegations; however, because he has just been retained in this case, and his subject expert report just been received by telefax, at the undersigned's Alexandria, Virginia law office, at 11:27, P.M., last evening, the undersigned was not able to submit the instant Opposition Memorandum to this Honorable Court yesterday, as he had earlier hoped. The undersigned, nonetheless, apologizes to this Honorable Court for the timing of the instant submission and regrets any inconvenience to the Court.

against any continuation of the instant misbegotten litigation, which concerns of Ambassador Crigler, *inter alia*, are suggestive of possible political intrigue behind the maintainment of the instant cause, and the hazard of possible damage to the ongoing, delicate efforts at reconciliation and national renewal in Somalia, among the many feuding factions there, represented by the Transitional Government of Somalia, posed by the instant lawsuit.

WHEREFORE, upon the foregoing premises considered, your defendant ever prays that your plaintiffs' Motion be denied, *in toto*; alternatively, your defendant prays that any relief to be afforded your plaintiffs under F. R. Civ. P. 41 be expressly conditioned upon, *inter alia*, there being *no tolling* of the running of the Statute of Limitations, full payment of all fees and costs by your defendant in the instant action, and an express proviso that your plaintiffs be precluded from refileing unless they each certify that they will be present in this jurisdiction within ninety (90) days of any such refileing, and stay here through trial, so that their infamous charges may be fairly put to a jury, assuming, *arguendo*, that they were to survive a contemplated motion for summary judgment. Your defendant further prays for the deliverance of such other and further relief as this Honorable Court in its wisdom may deem just and fitting under the existent, truly extraordinary, circumstances presented by your plaintiffs' Motion, and the course that the instant litigation appears to have taken.

Respectfully submitted,



/s/ Joseph Peter Drennan

JOSEPH PETER DRENNAN

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Third Floor

Alexandria, Virginia 22314

Telephone: (703) 519-3773

Telecopier: (703) 548-4399

Virginia State Bar No. 023894

ATTORNEY AND

COUNSELLOR,

IN PRAESENTI,

FOR YUSUF ABDI ALI

CERTIFICATE OF SERVICE

I, Joseph Peter Drennan, undersigned, hereby and herewith certify that, on this 29th day of April , 2005, a true cyclostyled facsimile of the foregoing was served by hand carriage upon:

Robert R. Vieth, Esquire
Scott Johnson, Esquire
Daniel J. Wadley, Esquire
Tara M. Lee, Esquire
Cooley Godward, L.L.P.
One Freedom Square
11951 Freedom Drive

Reston, Virginia 20190-5656; and that, on even date, another true, cyclostyled facsimile of the

foregoing was despatched by carriage of First Class Post, through the United States Postal Service, with adequate postage affixed thereto, enshrouded in a suitable wrapper, unto co-counsel for your plaintiffs,

viz.:

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

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

Respectfully submitted,

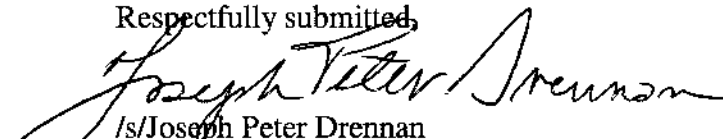

/s/ Joseph Peter Drennan
JOSEPH PETER DRENNAN

Exhibit "A"

Trusten Frank Crigler
Consultant in International Relations
703 Watts Street • Durham NC 27701

DECLARATION

I, Trusten Frank Crigler, a resident of Durham County, North Carolina, do hereby make the following statements in connection with the case of JANE DOE, *et alii*, v. YUSUF ABDI ALI, Civil Action No. 04-1361, before the United States District Court for the Eastern District of Virginia (Alexandria Division).

1. I served as a career Foreign Service Officer of the United States from 1961 to 1990, assigned to posts in Africa and Latin America and to the Department of State in Washington. My last assignment before retiring was a presidential appointment as American Ambassador to Somalia from September 1987 to April 1990. I afterward returned briefly to Somalia three times as a private consultant, first with ABC television's "Nightline" (December 1992) and, subsequently, at the invitation of individual Somali faction leaders who sought my help as an advisor and mediator (in September 1993 and August 1994).

2. Following my return visits to Somalia, I prepared descriptive analyses of developments in Somalia that were published on the op-ed pages of the *Christian Science Monitor*, *The Baltimore Sun*, and *The Washington Post*. I also contributed a critical essay examining U.S. policies and United Nations peace-enforcement actions in Somalia to the Autumn 1993 issue of *Joint Force Quarterly*, a professional military journal published by the National Defense University and approved by the Secretary of Defense. (The same issue contained articles on our intervention in Somalia by Prof. Sam Huntington of Harvard, former ambassador Robert Oakley, and Marine General Joseph P. Hoar.) For two years (1993-95), I occupied the endowed chair of Warburg Professor of International Relations at Simmons College in Boston, where I taught courses and lectured on human rights, U.N. peacekeeping missions, and ethnic conflict in Somalia, Bosnia, Rwanda, the Congo, southern Africa, Central America, and elsewhere.

3. During 1996-2000, I was cofounder and publisher of the online journal *American Diplomacy*, under the auspices of the Triangle Institute of Security Studies and the University of North Carolina at Chapel Hill. Under my direction and that of the editor, Dr. Henry Mattox, the journal published numerous scholarly articles and analyses of developments and armed conflicts in Africa and elsewhere, including one of my own dealing with tribal violence and genocide in Rwanda, where I had also served as U.S. Ambassador. (The journal continues to publish and may be found at <http://americandiplomacy.org>.) During the same period and thereafter, I lectured on conflicts in Africa and taught classes at the John F. Kennedy School at Fort Bragg, NC, and at the Joint Forces Staff College at Norfolk, VA.

4. During September 1998, in the wake of rather tendentious media coverage of remarks I made in connection with a Canadian immigration case involving the defendant, I was asked by his attorney to draft an affidavit setting forth what I knew of the charges against him and the

political context in which his alleged actions took place. A copy of that draft is attached as Exhibit 1 in the hope that it might further inform the present deliberations; I do not know whether it was finally entered in the earlier proceedings. For the record, I have not testified as a witness in any courtroom, on this or any other case, during the past four years.

5. Throughout the period since my retirement from the Federal Government in 1990, I have remained intensely interested and occasionally involved in developments in Somalia, and I have regularly participated in meetings of members of the Somali community, and of others, here and in Canada, concerned about that country's future. In all of these, I have tried to maintain an open mind and an impartial position on controversial issues (some Somalis, not least of all members of the Isaak clan, but others as well, would disagree).

6. With respect to the present litigation involving the defendant Yusuf Abdi Ali,

(a) I have been retained by Mr. Joseph Peter Drennan, Attorney-at-Law, with law offices located in Alexandria VA, to provide my personal opinions (at the agreed-upon rate of \$225.00 per hour) regarding the case against the defendant from the standpoint of one who served professionally as a diplomat in Somalia during the time frame encompassed by the charges;

(b) I have studied the Redacted Complaint against Colonel Ali, and although I disagree with many of its sweeping indictments of the Siad régime and its broad-brush condemnation of its policies, I am unqualified to judge its specific charges against the defendant;

(c) I have also carefully read and considered the April 11, 2005, expert report of my former Foreign Service colleague Robert Gosende, and while I respect his interpretation of the major events that occurred in Somalia prior to his arrival there, I question how pertinent his overview of those events may be to the specific charges leveled against the defendant; and,

(d) I have read with particular interest the March 29, 2005, letter of the Minister of State for Foreign Affairs of the so-called interim Somali government with its startling appeal to United States courts "not to give consideration for this case and similar ones by allowing the Somali Reconciliation to take its course." In my opinion as a former diplomat, the Minister's letter, despite its awkward style and unorthodox procedural character, deserves special consideration both by the court and by our own foreign affairs experts, as it may serve as a useful cautionary signal about the unintended impact such actions as this one may have upon efforts to bring about national reconciliation and restore authentic government in Somalia.

7. With respect to the defendant himself: To the best of my recollection, I have never met Colonel Ali, either in Somalia or in the United States, nor do I recall ever seeing his name either on relevant intelligence reports about the conflict in northern Somalia or on the list of "undesirables" that my embassy carefully maintained for purposes of screening visa applicants. My assumption, based on established procedures at my embassy, is that he was thoughtfully and carefully selected by my military staff from among dozens of possible Somali officers as a suitable candidate for the prestigious military training grant (or grants) he received; that he was approved as a nominee by my Country Team, which included civilian intelligence and consular

specialists as well as military officers, after further debate and scrutiny; and that he was awarded an appropriate visa (or visas) to enter the United States *only* after passing the rigorous review process that I regularly required of candidates for this program.

8. Nevertheless, on its face Colonel Ali's case strikes me as a microcosm of the larger civil conflict in which his misdeeds are alleged to have occurred, wherein norms of kinship crumbled in the face of fratricidal enmity. Unlike recent conflicts elsewhere in Africa, in the former Yugoslavia, and even in Iraq, nearly all the parties to the fighting in Somalia — like the litigants in this case — claim a common familial identity as Somalis and thus have close cultural and kinship ties with one another. It was my view at the time and remains so today: that none of the parties to the civil war was innocent of the suffering, destruction, and death that resulted from the resort to violence, neither the dictator-president Mohammed Siad Barre and his minions nor the insurgent "warlord" faction leaders and their lieutenants. All committed gross human rights violations; all refused to explore peaceful alternatives and spurned offers of mediation; and all disregarded the tragic consequences of their actions for the masses of Somalis who had no voice in decision making.

9. In a small but very important way, this case also dramatizes the enormous difficulties Somalis face today in reconciling their differences, rebuilding mutual confidence, and restoring a semblance of government to their homeland. For it occurs precisely at the moment when, after two years of the most difficult and arduous negotiations, rival Somali faction leaders are attempting at last to begin the process of reconciliation and establish an authentic, broadly-based federal government on Somali soil. Sponsored by Somalia's closest neighbors and supported by the United States government, those negotiations have been marked by bitter acrimony and deep skepticism on all sides. At the end of last year, however, delegates elected an "interim federal government" that is just now grappling with how and where that government should be seated, in the face of very real security dangers within Somalia and the absence of any peacekeeping authority. Only this week, during a rather daring exploratory visit by the newly elected "interim president" Abdullahi Yusuf Ahmed, factional fighting erupted into bloodshed over whether the government should be located in Mogadishu or in some other Somali city.

10. It is remarkable, therefore, but hardly surprising, that the Minister of State for Foreign Affairs of the fragile interim authority has personally registered his government's discomfort with the litigation of the present case, arguing that it intrudes upon the mandate of the newly-formed Somali Reconciliation Commission to "engage itself with truth and reconciliation efforts," and calling upon U.S. courts "not to give any consideration for this case and similar ones" but rather to allow the Somali reconciliation effort "to take its course."

11. There is yet one more way in which the present case mirrors the larger issues facing Somalis today, in that it reflects the deep-running feud between two branches of the Somali family: the Isaak clan that traditionally dominated the northern portion of the country, the part governed separately under British rule as "Somaliland"; and the Darod clan, whose homelands lie in central and southern Somalia, and which has largely dominated Somali politics since independence. For the past half-century of combined government, the northerners have chafed at what they regarded (often justly) as unfair or discriminatory treatment by the southerners, while the latter have suspected the northerners (also with some justice) of harboring secessionist

tendencies. When the Isaak-led SNM launched its insurgency against the Siad Barre regime in the mid-'eighties, it tacitly signaled its aim of separating the northern region from Siad's south and forming a separate "Somaliland" nation. And when Siad's government collapsed, the SNM did just that, ultimately setting up a government that successfully isolated the region from the turmoil in the rest of Somalia. It has since organized and managed its own affairs reasonably well, convened a parliament, held its own elections, and sought — so far unsuccessfully — diplomatic recognition by the U.S. and the United Nations.

12. Somaliland's leaders have kept a close eye on the recent negotiations in Kenya but have declined up to now to take part, instead reaffirming their intention to remain independent. However, a common theme among faction leaders' rhetoric in Nairobi has been the goal of reuniting all of Somalia under a single flag, possibly through some form of federation but certainly as one nation. A major task facing the "transitional federal government," therefore, will be to figure out how to achieve this reconciliation — by peaceful means, one hopes. But the weight and magnitude of the problem are clearly indicated by the forceful appeal of the Minister of State of the transitional government, warning that litigation of the present sort could adversely affect national reconciliation prospects.

13. If it is indeed true, as northerners allege, that officers of the Somali National Army and of the President's own security guard were guilty of torture and extra-judicial killings of Isaak clan members in the North, it is also true that leaders of the Isaak insurgency placed their own clan and family members at mortal risk of such reprisals by attacking army installations in the heavily populated areas of Hargeisa, Burao, and Berbera, knowing full well what the consequences would be for "innocent" civilians. And if it is indeed true that President Siad Barre sought to use his military forces throughout the country to maintain political control and deter domestic opposition and civil unrest, often by brutal means, it is also true that his opponents fomented that unrest and financed their rebellion by appealing to clan loyalties and jealousies—so successfully, in fact, that they finally drove Siad from power and left Somalia in shambles as they scrambled for the spoils of "victory."

14. Some have blamed the United States for fueling the conflict by rewarding Siad Barre with military aid in exchange for his cooperation in our own Cold War contest with the Soviet Union, while turning a blind eye upon his use of US-supplied weapons against his own people. It is true, and lamentable, that a final shipment of small arms and ammunition reached the port of Berbera just before the regime launched its most intensive attack on rebel-held Hargeisa (I was present at the port when it arrived), and much of that weaponry doubtless contributed to the city's destruction and the toll of human lives there. It is also true, however, that the Isaak rebellion was itself amply supplied with weaponry and ammunition by its supporters outside Somalia and smuggled across borders with Ethiopia and Djibouti. But much more significant is the fact that the "infamous" shipment to Berbera marked the end of all U.S. military aid to Somalia and of significant U.S. support for the regime itself because of its unacceptable human rights record — a signal, in effect, to both Siad Barre and his opponents that he could no longer look to the United States to keep him in power.

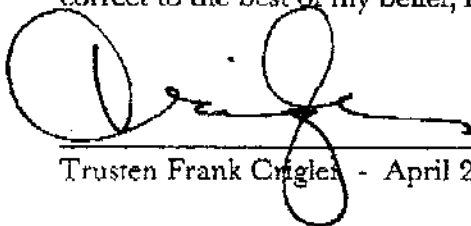
15. During my three years as the president's representative in Somalia, I appealed repeatedly, on Washington's behalf, for moderation, restraint, and compromise on the part of

everyone, both despotic government and terror-sowing rebels. In two successive Fourth of July speeches (1998 and 1999) carried on Somali radio and television, I recited my own country's bloody experience with civil war and quoted President Lincoln's aim of "binding up the wounds" of that conflict. To no avail. Not even U.S. humanitarian intervention nor U.N. peacekeeping could halt the killing or head off disaster. The drama of civil war wound on like Greek tragedy until nothing remained of the Somali state but rubble. There were no winners, only losers. An entire nation of eight million people had been deprived of its "human rights" and left to starve.

16. After hitting bottom, however, Somalia has begun to bounce back. Without a central government of any sort for fourteen years, Somalis have looked inward, to their own clans, communities and traditions, for keys to their survival. In many ways, economic activity is flourishing, thanks in no small part to currency remittances from Somalis who have found refuge and employment abroad (one banker estimated these at a level of nearly one billion dollars a year). Exports of camels and goats to Middle East customers have risen nearly to prewar levels. Medical services are again available in most urban areas. Small industries are gradually recovering. Primary schools are proliferating (most of them Sharia religious schools funded and staffed by Saudi Arabia); some secular secondary schools are now operating as well. Mogadishu University, a newly created private institution now in its eighth year housed mainly in an abandoned luxury hotel, has a current enrollment of some 750 students, has graduated over 300 with B.A. degrees plus almost 50 nurses, and is building a new campus on the city's outskirts with the help of Sudan and Kuwait.

16. In summary, Somalia's recovery as a nation (if not a nation-state) is within sight, and its prospects have improved in large part because Somalis have been "abandoned" to their own devices and allowed gradually to rediscover their own strengths and cope with their weaknesses. They are doing just what is needed to put their country back on its feet: finding ways of living together, joining forces and resources, and resolving differences peacefully. While the country remains desperately poor in economic terms and is indeed suffering severely from the prolonged drought affecting much of east Africa, it would not be well served by another international rescue effort. Modest material support is now being channeled by non-governmental relief agencies to those most in need and should certainly be continued and increased by friendly nations, including our own. But its recovery can most be aided by thoughtful understanding, steady moral support, and a firm resolve not to tell or show Somalis how to solve their problems. The case involving the plaintiffs and the defendant should be weighed not only on its own merits but also in terms of its likely impact on the search for peace in their homeland.

Upon the penalties of perjury, I declare that the foregoing statements are accurate, true, and correct to the best of my belief, information, and knowledge.



Trusten Frank Crigler - April 28, 2005

Attachments:

Exhibit 1 - Draft Affidavit of Trusten Frank Crigler, dated September 1998

Exhibit 2 - Biographic summary for Trusten Frank Crigler

Exhibit 3 - Letter of the Somali Minister of State for Foreign Affairs Ibrahim Sheikh Ali
to Joseph Peter Drennan, dated March 29, 2005

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DRAFT AFFIDAVIT

I, Trusten Frank Crigler, a resident of Durham County, North Carolina, do hereby make the following statements in connection with the immigration case of YUSUF ABDI ALI, described to me as a former colonel in the Somali National Army now residing in the United States:

1. I served as a career U.S. Foreign Service Officer from 1961 to 1990, assigned to posts in Africa and Latin America and to the Department of State in Washington. My last assignment before retiring was a presidential appointment as American Ambassador to Somalia from September 1987 to April 1990. I have since returned briefly three times to Somalia as a private consultant, first with ABC television's "Nightline" (December 1992) and subsequently at the invitation of individual Somali faction leaders who sought my help as an advisor and mediator (in September 1993 and August 1994 *["check dates"]*).

Background: U.S. interest in northern Somalia

2. When I arrived in Mogadishu in 1987, Somalia was the recipient of the largest single U.S. military assistance program in Africa *["amount?"]*. US-Somali relations had never been close, however, and they were especially cool after the military *coup d'etat* that brought Gen. Mohamed Siad Barre to power in 1969 *["date?"]*. Declaring himself a "scientific socialist," General Siad successfully won generous support from the Soviet Union until 1977, when he became embroiled in a bitter border war with Ethiopia (the "Ogaden War"). Seeing a better opportunity next door, the Soviets switched sides suddenly and backed Ethiopia's new marxist dictator, Colonel Haile Mengistu Mariam, at Somalia's expense. The United States, expelled from its privileged position in Ethiopia by Mengistu's radical revolution, very reluctantly chose to switch sides as well, in hopes of neutralizing Soviet influence in the region and keeping a strategic foothold on the margins of the Indian Ocean.

3. U.S. military aid to Somalia never reached the levels the Somalis hoped for or President Siad believed he had been promised. Moreover, it consisted largely of light-weight weapons and ammunition, unarmed vehicles, communications equipment, uniforms, and boots — never the tanks, artillery, and aircraft that Siad Barre begged for. Accordingly, a large part of each subsequent American ambassador's task (including my own) consisted of attempting to mollify the President and maintain our Indian Ocean foothold without succumbing to his demands for increased military aid levels and more sophisticated firepower. (By the time of my arrival in 1987, practically no U.S. aid funds were being budgeted for any other than non-lethal supplies and technical assistance, although some quantity of weapons and ammunition were still in the pipeline

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from previous years—see below. The largest single MAF item was a flashy, costly, but essentially harmless hi-tech command-and-control center dubbed "Peace Cube.")

4. In exchange for its military aid, the United States received certain military rights and advantages in Somalia that were important to U.S. strategic plans and military operations in the Middle East and southwest Asia. These consisted mainly of access to seaports and airports built or enlarged by the Soviets, at significant cost, during their earlier period of friendship with Somalia. The United States, in its turn, modified or developed these facilities for its own purposes, maintained some of them with skeletal crews of contractors, and utilized them from time to time for reconnaissance purposes. Most notable among these were the seaport and airport at Berbera in northern Somalia, situated near the mouth of the Red Sea, the Persian Gulf, and the Soviet-fortified island of Socotra, and whose runway was the longest in sub-Saharan Africa. (Significantly, however, these facilities were practically unutilized during the "first" Gulf War between Iran and Iraq in 1988-1989 [check dates!], and as a result their value to U.S. military planners declined precipitously thereafter.)

Somali-Ethiopian border conflict

5. As the foregoing suggests, U.S. policy interest in Somalia at the beginning of my tenure as ambassador centered upon preserving our military access rights as part of a broader strategy for countering Soviet military and political influence in the region. In this connection, some amount of attention was paid to continuing cross-border friction between Somali and Ethiopian armed forces, largely because Siad Barre used that conflict to justify his perennial claim for lethal military aid from the United States. For our own part, we pressed the Somalis instead to work out a peaceful accommodation with Ethiopia, whose own post-Mengistu government had taken a more moderate turn.

6. Meanwhile, relatively little U.S. policy interest was devoted Somalia's own internal dissidence problems in 1987, as Siad's iron-fisted regime seemed to have its potential opponents neutralized and intimidated. We were generally aware that the "Ethiopian" forces with whom the Somali army was trading border raids included groups of left-leaning, disaffected Somali nationals from the North, mostly members of the Isaaq clans that comprise a majority there; but we did not consider them a significant security threat to the régime. We were also aware that the Somali army was supporting similar groups of dissident Ethiopians that were carrying out raids from the Somali side of the border. This low-level war between "proxy" guerrilla forces seemed relatively insignificant.

7. In early 1988 [check date], however, an remarkable diplomatic maneuver altered the

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landscaper just as we had urged him to do, President Siad reached agreement with his Ethiopian counterpart to "end" the Ogaden War, provisionally delineate and demilitarize their disputed border, and suppress cross-border raids by their respective "proxy" guerrilla forces. Although we were initially skeptical that the agreement would be implemented after so many years of conflict, we praised both sides for their statesmanship and watched to see whether actions matched their hopeful words. To our surprise, the two leaders generally held to their commitments. (One bit of U.S. encouragement to do so was our decision to proceed with delivery of a last, long-delayed shipment of small arms and ammunition destined for the Somali army, and I traveled to Berbera to preside over its delivery in early 1988, making a speech that stressed the importance of defending Somali territory while bringing the Ogaden War an honorable end. Sadly, these same weapons were later used by the Somali army against the populace of Hargeisa.)

8. We were especially surprised that the Ethiopian government seriously carried out its commitment to suppress cross-border raiding by Somali dissidents and close down their camps on the Ethiopian side of the border. What we — and probably Siad Barre — failed to anticipate was that the chief dissident group inside Ethiopia, the Somali National Movement (SNM), would move its insurgent operation onto Somali territory and intensify its campaign against the dictatorship. It did so by infiltrating the home region of most SNM members, the traditional Isaaq homelands of northern Somalia, centered on the region's capital, Hargeisa. There the movement was met with snowballing support among clan kinsmen, most of whom despised the President and the Dared clans and subclans from whom Siad drew his support; and within just a few months the SNM grew from a minor nuisance along the border into a major security threat to the régime throughout the North.

The "Battle of Hargeisa" - June 1988

9. By mid-May 1988, SNM forces had rallied sufficient strength and support in the North that they were able not only to harry isolated military posts but also to seize control of numerous villages and key cities and towns around the region. Momentum continued growing, and by early June SNM forces effectively controlled much of the city of Hargeisa itself. Moral and material support flowed generously from the population in general; members of both the majority Isaaq clan and most of the smaller minority clans resented the Army's presence, particularly as it assumed increasing responsibility for civil affairs under "state of emergency" conditions, and they welcomed the SNM bid to drive "Siad Barre's army" off their homeland.

10. The army's sector commander, Gen. Mohamed Hersi "Morgan" (with whom I was well acquainted), functioned as military Governor of the region during early 1988 but failed to win acceptance among its populace. Married to a daughter of President Siad and a Dared himself,

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"Morgan" was inevitably regarded by northerners as a tool of the President and was said to be responsible for all manner of crimes and abuses of power. He impressed me, my predecessors, and my U.S. military associates quite differently, however. He had been selected earlier as a military exchange student and graduated with highest marks from warfare psychology courses at Ft. Leavenworth, Kansas. When I visited his civilian headquarters or walked the streets of Hargeisa, even while it was under SNM attack, I saw evidence of Gen. "Morgan's" efforts to apply the post-Vietnam lessons he learned in the United States to winning the "hearts and minds" of the Somaliland population—public works and employment programs, food distributions to poor communities and medicines to hospitals, nonstop meetings with local political and religious leaders, businessmen, elders, etc. What was not at all clear to me, however, was whether he was successful at preventing his subordinate officers from conducting "business as usual."

11. General "Morgan" is widely blamed among Northerners today for the destruction of Hargeisa in early June 1988, when army forces launched a powerful sustained attack against the rebellious city from their surrounded base on its outskirts. Ironically, "Morgan" was in fact far removed from the battle scene, having been stripped of his command by the President some weeks earlier on grounds that he had been too soft in dealing with the SNM and its followers. When it appeared that SNM forces might soon overwhelm the Hargeisa military base itself, President Siad shifted direct command responsibility to his Minister of Defense, Gen. Abdullahi Nur "Gabyow," and then sent his Vice President, Gen. Mohamed Samantar, to co-direct punitive action to "save" Hargeisa.

12. I visited the Somaliland capital some ten days after the one-sided "battle." It was clear that punishment had been ruthless: the city was swept practically empty, the surviving population having fled deep into the desert, and most buildings (houses, shops, factories, public offices) were destroyed. Hospitals, filled with wounded, were barely functioning. Shell casings were everywhere, and it was evident from the pattern of destruction that the army's tanks had passed down one city street after another, blasting at buildings with their heavy guns. (Similarities to scenes of bombed-out European cities in World War II gave rise to reports that Hargeisa had been subjected to a bombing raid by Somali Air Force planes, but this was untrue. The Air Force had only two or three flyable aircraft at the time, and none was capable of doing damage of this magnitude.)

Col. Abdi Yusuf Ali

13. Some four years after the Hargeisa battle (and well after my own departure from Somalia), I learned of allegations that Col. Abdi Yusuf Ali had committed serious violations of human rights while assigned to the sector commanded by General "Morgan." The allegations

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were brought to my attention in the course of a television interview I gave in Canada, and the interviewer explained to me that the charges arose in the context of a feud in Toronto between Isak and Dard clan factions whose members had carried their acrimonious dispute with them into their Canadian refuge.

14. I can neither confirm nor deny these allegations. I do not recall having ever met Col. Yusuf Ali personally, nor do I remember whether a person by that name ever commanded the military post at Gabiley. Nor do I recall ever hearing or seeing his name mentioned, either by my embassy's officers or by any of our Somali contacts, as someone responsible for committing such acts. However, I do recall that the village and military post at Gabiley, among many others, were mentioned in several unconfirmed intelligence reports as the scene of alleged extrajudicial killings by Somalia army personnel.

15. I have been advised that Col. Yusuf Ali (like General "Morgan" and numerous other mid-level Somali military officers) had been selected for advanced military training in the United States and granted a diplomatic visa (A-2) for that purpose by Embassy Mogadishu. Selection of persons to receive this prestigious training assignment were made by the commissioned officer heading the embassy's Office of Military Cooperation (OMC), in close consultation with the embassy's intelligence, political, and consular offices and with the final approval of the ambassador. A check of the so-called visa "lookout book," supplied electronically by the Immigration and Naturalization Service and maintained up-to-date by the chief of the consular section in coordination with embassy intelligence offices, was a routine step in this consultation process. The purpose of the "lookout book" was precisely that of ensuring that visa applications by such persons, legally excludable from admission under terms of U.S. immigration law, were systematically refused.

16. Given the great care with which these training candidates were screened and selected, I consider it highly unlikely that any Somali military officer (or any other prominent visa applicant, for that matter) could have received a category A-2 visa if there were any record—anywhere in the embassy or in Washington—of that person's having been credibly charged with a serious human rights violation. Issuance of a second visa to such a person would have been even more improbable in the wake of the Hargeisa tragedy, when all of our sensitivities were heightened and when our policy mandate from Washington was to make dramatically clear to the Somali government, army, and citizenry in general our overriding concern for human rights.

Insurgency spreads southward

17. The army's attack on Hargeisa, along with simultaneous punitive attacks on SNM

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strongholds in Barbersa, Borama, and Burao, succeeded halting the momentum of the rebellion and driving SNM leadership temporarily into hiding. Tens of thousands of Northerners (Isaak and others) fled into Ethiopia and swelled UNHCR refugee camps along the border, creating an almost unmanageable humanitarian crisis. Within the northern towns themselves, many of the refugees' homes and businesses were occupied by "outsiders," many themselves former refugees from the earlier Ogaden fighting with Ethiopia and often close tribal kin of the President's Darod clan family. Ethnic tensions rose sharply as a result, and it became increasingly difficult for foreigners to sort out the players and understand the conflicts.

18. During ensuing months, efforts were made by international agencies, relief organizations, foreign embassies, and the government itself to repair the damage and regain some measure of confidence between the population of the North and Somali governing authorities. As American Ambassador, I made repeated appeals to President Siad Barre, his army commanders, and senior members of his government on behalf of known prisoners of conscience we knew were being held, and in many cases tortured, in Somali jails or military detention centers. (I kept a pocket list with over 300 names of such persons, nearly all of them Isaaks, and reviewed it regularly in my increasingly awkward meetings with top Somalia officials.) Some genuine concessions—including, finally, the release of every prisoner on my list—were made by the régime, and some degree of calm was restored for a time. But the insurgency soon spread beyond the borders of the North, engaging other clans with fresh manpower, newly acquired weapons, and enmities of their own toward Siad Barre. By mid-1990 it had reached the outskirts of Mogadishu itself.

19. Despite our own warnings and those of other embassies, the government's repressive measures grew sharper and more desperate as the Siad Barre régime fought for control and finally for survival. While punishment and abuses were first directed at the SNM and its Isaak sympathizers in the North, there became lost in the turmoil as more clan factions joined the rebellion and engaged the government's dwindling security forces. Some individuals were probably responsible for more human rights abuse than others, but violence, counter-violence, and human rights abuses by all parties became so widespread and generalized that any attempt to identify responsible individuals short of the President himself became a futile exercise.

20. Foreign diplomats (with the American, Italian, and German ambassadors taking the lead) repeatedly warned President Siad that he should rein in his security forces, punish human rights violations, and undertake political reforms that would respond to popular demands, or else face termination of all foreign aid programs (all U.S. military assistance and most economic aid had been cut off as of mid-1989). But Siad Barre either would not or could not. His régime fell at the end of December 1990, his own clan supporters fled the capital and became just one more ethnic faction fighting for survival, and Somalia descended into a nightmare of feuding and anarchy.

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from which it has not yet emerged.

Subscribed to and sworn this _____th day of September, 1998.

Truston Frank Crigler

Trusten Frank Crigler

Consultant in International Relations



Ambassador Crigler served for thirty years as a career diplomat in the US Foreign Service, mostly in so-called "hardship" posts, and enjoyed each one. He retired in 1990 at the end of his most challenging appointment, as President Reagan's ambassador to Somalia, a nation just then on the verge of collapse. He subsequently returned to Mogadishu as a consultant to ABC's "Nightline," wrote opinion pieces for the Washington Post and Christian Science Monitor, and lobbied Congress for changes in policy that might have averted the failure of American military intervention there. He subsequently consulted for the World Bank and private investors in Latin America. He now lives with his wife Bettie in Durham, North Carolina.

Born and raised in Phoenix, Arizona, Frank Crigler earned a bachelor's degree *magna cum laude* from Harvard College in 1957. He entered the Foreign Service in 1961 and was assigned to the State Department's bureau of intelligence and research. He next served in Guadalajara, Mexico, and at the US embassy in Mexico City. From 1966 to 1971, he was posted in Africa: first in the Congo, as political officer at Embassy Kinshasa and then as consular officer in the interior cities of Bukavu and Kisangani; and later in Gabon, as economic officer and chargé d'affaires at Embassy Libreville.

After a Washington assignment as political advisor to the US ambassador to the Organization of American States and a second assignment to Mexico, Frank was appointed Ambassador to Rwanda by President Gerald Ford. In 1979-1981, he was deputy chief of mission and later chargé d'affaires at the US embassy in Bogota, Colombia, receiving awards there for his management of the crisis that erupted when Ambassador Diego Acensio was kidnapped and held hostage by terrorists.

The incoming Reagan administration recalled him to Washington in 1981 to serve as Director of Mexican Affairs at the State Department, during a period of growing bilateral difficulties in our bilateral relations. He was subsequently appointed senior Foreign Service inspector, examining US diplomatic operations in Europe, Africa, and Latin America. Then, in 1987, he received the most challenging assignment of his career, when President Reagan appointed him Ambassador to Somalia.

Since retiring from government service in 1990, Crigler has presented his views on foreign policy issues before the Congress, in the press, and on national network television. In 1992, he traveled to Somalia with Ted Koppel of ABC's *Nightline* and helped cover the arrival of US troops sent there by President George H.W. Bush to suppress tribal fighting and relieve suffering and hunger. During 1993-1995, he taught international affairs at Simmons College in Boston. He has also served as a writer and editor for the World Bank, as an advisor to the president of the Central Bank of Honduras, and as a consultant to a private Italian firm growing bananas in Central America.

In 1996, Frank and his wife of fifty years, Bettie Morris, settled in Durham, North Carolina, where for five years he published a monthly online journal, *American Diplomacy*, one of the first of its kind on the Web. Currently, he lectures and helps train US Army Special Forces troops at Fort Bragg and mid-career military officers at the Joint Forces Staff College in Norfolk, Virginia. When not pronouncing on foreign affairs, Frank bicycles, reads history, studies piano, and maintains a 90-year old four-square bungalow that "requires lots of tender loving care." The Criglers have three children and three grandchildren.

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**الحكومة الانتقالية الفيدرالية
لجمهورية الصومال**

**Transitional Federal Government of Somali Republic
MINISTRY OF STATE FOR FOREIGN AFFAIRS**

Joseph Peter Drennan,
Attorney-at-Law,
218 North Lee Street,
Third floor,
Alexandria, Virginia 22314-2660

Tuesday, March 29, 2005

Subject: JANE DOE, et alii v. YUSUF ABDI ALI
Civil Action No, 04-1361, before the
United States District court for the
Eastern District of Virginia (Alexandria Division).

Dear Drennan,

Having seen the subject litigation, the Somali National Transitional Federal Government be known that it has set up Somali National Reconciliation Commission, with a responsibility to undertake all reconciliation efforts in Somalia, in accordance with new National Transitional Charter (constitution). The litigation of this kind and other similar ones in the American courts or elsewhere will interfere with the polity, embodied of the Somali Reconciliation Commission to engage itself with truth and reconciliation efforts.

According to the Commander of the 26th Sector of the Somali National Army Gen. Mohamed Said Hersi (Morgan) Col. Yusuf Abdi Ali was not the Commander of 5th BDE, CDR in 1984, but its commander was Col. Omar Haji Mohamoud. Furthermore the areas the plaintiffs mentioned in their litigation were not under the responsibility of 5th BDE, CDR, kindly see the Map in their locations.

In view of this, the allegations made by these two anonymous Issaq plaintiffs has no foundations other than to make obstacles for the Somali reconciliation mission.

The Somali National Transitional Government calls for the courts of the United States of America not to give any consideration for this case and similar ones by allowing the Somali Reconciliation efforts take its course.

Yours truly,


Ibrahim Sheik Ali (Jebbo)
Minister of State

