

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

In re: :
JANE DOE, et alii, :
Plaintiffs, :
versus : **Civil Action No. 04-1361**
YUSUF ABDI ALI, : **:Next Event: 15 April 2005**
Defendant. : **Hearing before Judge Poretz**
: **: on "Plaintiffs' Motion to Compel**
: **Court-Ordered Discovery"**
: **DEFENDANT'S ^{OMNIBUS} OMINOUS REPLY TO PLAINTIFFS' OPPOSITION TO**
DEFENDANT'S MOTION FOR A LIMITED ENLARGEMENT OF THE AMBIT
OF TIME WITHIN WHICH TO ANSWER INTERROGATORIES AND RESPOND
TO REQUEST FOR THE PRODUCTION OF DOCUMENTS AND
SUPPLEMENTAL MEMORANDUM IN SUPPORT OF OPPOSITION TO
PLAINTIFFS' MOTION TO COMPEL COURT-ORDERED DISCOVERY

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 law, *in praesenti*, Joseph Peter Drennan, respectfully, to Reply to Plaintiffs' Opposition to Defendant's Motion for a Limited Enlargement of the Ambit of Time Within Which to Answer Interrogatories and Respond to Request for the Production of Documents and Supplemental Memorandum in Support of Opposition to Plaintiffs' Motion to Compel Court-Ordered Discovery, by showing unto this Honorable Court as follows, viz.:

1. That, since interposing his aforesaid pleading yesterday, there have been two noteworthy developments, viz.: a.) on a salutary note, the undersigned is pleased to report to this Honorable Court that counsel for the parties have conferred by telephone this morning in an effort to narrow, if not resolve, any outstanding discovery issues raised by

the pleadings before this Honorable Court; essentially, the parties agree that, inasmuch as the discovery motions presently before this Honorable Court do not address the validity of the timely objections that have been lodged by your defendant as regards the subject written discovery propounded by your plaintiffs, upon the production of a full privilege log, which the undersigned hopes to have completed by the time of the hearing scheduled for tomorrow, the only outstanding issue in dispute as regards discovery insofar as the plaintiffs' interrogatories and requests for the production of documents would be your defendant's claim of entitlement to the withholding of pleadings in respect of your defendant's underlying proceedings before the erstwhile Immigration and Naturalization Service, pursuant to 8 U.S.C., § 1158, as per 8 C.F.R., § 1208.6 (2004);

2. That the effort of your plaintiffs' as it were to trivialize, if not question, the undersigned's ongoing difficulties in completing the preparation of a privilege log, there are a few more points that, perhaps, were not sufficiently emphasized in earlier pleading to this Honorable Court; for one thing, this Honorable Court's subject 17 March 2005 Order does not explicitly *require* or mandate the production of an attorney's log; nonetheless, the undersigned has set about preparing such a log as he is thoroughly familiar with the custom and practice before this Honorable Court, that a detailed privilege log be submitted as a prelude, in any event, to this Honorable Court's ruling on the validity of any objections to discovery, whensoever, if ever, such specific objections were to be made in respect of the instant case, *Federal Election Commission v. Christian Coalition*, 178 F.R.D. 456, 469 (E.D. Va. 1998);

3. That since *Federal Election Commission, supra*, contemplates, *inter alia*, that such log be accompanied by an affidavit or declaration, the undersigned has had to exercise

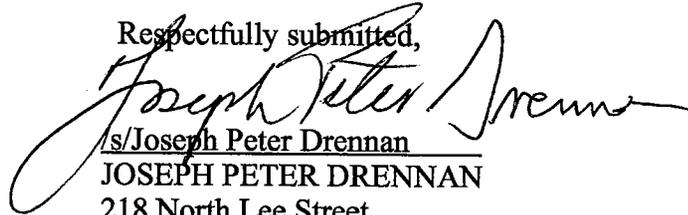
great care and deliberation in categorizing and describing multitudinous documents from the files of immigration attorneys in, *inter loci*, Buffalo, New York and Washington, D.C., compiled, in some instances well over a decade ago –a process that has taken the undersigned far longer to tackle than initially contemplated or imagined;

4. That, as adverted to in your defendant's pending motion [Document # 56], the burdensome task of compiling such an attorney's log in respect of the instant cause has been made even more difficult by the undersigned's ongoing work on a Fourth Circuit appeal, *viz.*, *Kamara v. Gonzales*, Record No. 04-2079, in which the undersigned's co-counsel in said case, *viz.*, James Thomas Reynolds, Esquire, has recently been diagnosed as having terminal brain cancer, and, hence, is only able to offer limited assistance, thus causing a conflation of circumstances in which the Brief of the Appellant and the Joint Appendix in said latter matter are now overdue –lest there be any doubt about the verities of such logistical dilemma, the undersigned has attached hereto the Notice of Intent to Dismiss under Local Rule Rule 41, of even date, which graced the undersigned's *e-mail* box early this morning, a true copy of which is annexed hereunto *qua* “Exhibit 'A'”; &

5. That, just this morning, the undersigned was advised for the first time, by counsel for your plaintiffs, that, either later today or tomorrow, your plaintiffs' intent to file a motion seeking the issuance of commissions to have them give evidence, *in situ*, in Addas Abba, Ethiopia, in the first week of May; although such contemplated motion is not, as it were, directly, on this Honorable Court's agenda for tomorrow's noticed hearing, the undersigned would observe here that, *inter alia*, such development begets the question raised by the undersigned at the 1 April 2005, hearing on your Plaintiffs' Objections to this Honorable Court's Denial of their Motion for a Protective Order as to

how individuals who claim to possess nary a scintilla of documentation¹ as to who they are could ever be properly sworn, by a competent judicial officer, to give evidence in the instant action.²

Respectfully submitted,



/s/ Joseph Peter Drennan

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Virginia State Bar No. 023894

ATTORNEY AND
COUNSELLOR,
IN PRAESENTI,
FOR YUSUF ABDI ALI

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- 1 As was also pointed out by the undersigned, in the course of the said 1 April 2005, hearing, *inter alia*, each plaintiff essentially responded in the negative to corresponding Interrogatories seeking the identification of any and all documents verifying their respective identities.
 - 2 Although, pursuant to this Honorable Court's 28 January 2005 Order [Document # 36], which allowed your plaintiffs to proceed anonymously, your plaintiffs ultimately did supply, in confidence, to the undersigned, their alleged true names, the constraints imposed on the disclosure of their respective identities to third parties, under the terms of the said Order, for all practical purposes, preclude any meaningful discovery of the anonymous plaintiffs' *bona fides*, such that the plaintiffs ostensibly bringing the instant lawsuit are, for all practical purposes, still anonymous, and, absent documentation of their averred "true" identities, would remain anonymous even as they testify in a far away land, as they apparently deign to propose after defaulting in terms of their court-ordered compliance with Local Rule 30 (A).

CERTIFICATE OF SERVICE

I, Joseph Peter Drennan, undersigned, hereby and herewith certify that, on the 14th of April , 2005, a true cyclostyled facsimile of the foregoing was despatched by carriage of First Class Mail, through the United States Postal Service, with adequate postage prepaid thereon, enshrouded in a suitable wrapper, unto:

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

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, *sans* the documents referenced therein, at the respective *e-mail* address of each, *viz.*: rvieth@cooley.com ,
tlee@cooley.com & hsilverberg@cja.org .

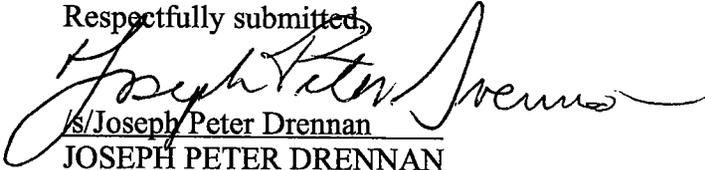
Respectfully submitted,

/s/ Joseph Peter Drennan
JOSEPH PETER DRENNAN

Exhibit "A"

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Lewis F. Powell, Jr. United States Courthouse Annex
1100 E. Main Street, Suite 501
Richmond, Virginia 23219-3517

Patricia S. Connor
Clerk

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April 14, 2005

NOTICE OF INTENT TO DISMISS

James Thomas Reynolds, Esq.
PAUL SHEARMAN ALLEN & ASSOCIATES
1329 18th Street, NW
Washington, DC 20036

Joseph Peter Drennan, Esq.
3rd Floor
218 North Lee Street
Alexandria, VA 22314

Re: 04-2079 Kamara v. Gonzales
A79-505-736

Dear Counsel:

You were directed by the briefing order to file a brief and joint appendix, and you have not done so.

Pursuant to Local Rule 45, the clerk is required to notify you that this appeal will be dismissed unless the brief and joint appendix, together with a motion for leave to file out of time, are filed by 4/29/05.

Enclosed for your information is a copy of Local Rule 45, Dismissals for Failure to Prosecute.

Yours truly,

PATRICIA S. CONNOR
Clerk

/s/ Sharon A. Wiley
By: _____
Deputy Clerk

Enclosure(s)

cc: Victor Matthew Lawrence

LOC. R.45 DISMISSALS FOR FAILURE TO PROSECUTE

When an appellant in either a docketed or non-docketed appeal fails to comply with the Federal Rules of Appellate Procedure or the rules or directives of this Court, the clerk shall notify the appellant or, if appellant is represented by counsel, appellant's counsel that upon the expiration of 15 days from the date thereof the appeal will be dismissed for want of prosecution, unless prior to that date appellant remedies the default. Should the appellant fail to comply within said 15-day period, the clerk shall then enter an order dismissing said appeal for want of prosecution, and shall issue a certified copy thereof to the clerk of the district court as and for the mandate. In no case shall the appellant be entitled to reinstate the case and remedy the default after the same shall have been dismissed under this rule, unless by order of this Court for good cause shown. The dismissal of an appeal shall not limit the authority of this Court, in an appropriate case, to take disciplinary action against defaulting counsel.