

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

ALEXANDRIA DIVISION

JANE DOE and)
JOHN DOE,)
)
Plaintiffs,)
) Civil Action No. 1:04 CV 1361 (LMB/BRP)
v.)
)
YUSUF ABDI ALI,)
)
Defendant.)

PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS

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INTRODUCTION

This is a civil action for compensatory and punitive damages for torts in violation of international and domestic law. Plaintiffs, citizens of Somalia, instituted this action under the Alien Tort Claims Act (“ATCA”), 28 U.S.C. § 1350, and the Torture Victim Protection Act (“TVPA”), 28 U.S.C. § 1350 note, against Defendant Yusuf Adbi Ali (“Ali”), who served as a commander in the Somali National Army in the 1980s. Plaintiffs allege that Ali is liable to Plaintiffs for acts of attempted extrajudicial killing; torture; crimes against humanity; war crimes; cruel, inhuman or degrading treatment or punishment; and arbitrary detention.

Ali now seeks to have Plaintiffs’ Complaint dismissed. He argues that (1) Plaintiffs improperly have proceeded anonymously; (2) Plaintiffs’ claims are time-barred; (3) Plaintiffs have failed to exhaust remedies in Somalia and the case should be dismissed on forum non conveniens grounds; (4) he is immune from suit; and (5) Plaintiffs have failed to state a claim under the ATCA. For the reasons stated herein, Ali’s arguments are without merit and his motion should be denied.

STATEMENT OF FACTS

The Barre Reign

Throughout the 1980s, the Somali National Army committed gross human rights abuses against the civilian population of Somalia, including the widespread and systematic use of torture, rape, arbitrary and prolonged detention, and mass executions. Complaint (“Compl.”) ¶ 11. These human rights abuses were the hallmark of the military government that had come to power in 1969 and brutally ruled Somalia until it was toppled in 1991. *Id.*

In October 1969, a coup led by Major General Mohamed Siad Barre (“Barre”) toppled the first and only democratic government of the new nation of Somalia. Compl. ¶ 12. Power was assumed by the Supreme Revolutionary Council (“SRC”), which consisted primarily of the

army officers who had supported and participated in the coup. *Id.* The SRC suspended the existing Constitution, closed the National Assembly, abolished the Supreme Court and declared all political parties illegal. *Id.* To further strengthen its grip on power, the military leadership systematically oppressed all other clans who opposed the military government. *Id.*

In 1979, Somalia adopted a new Constitution designed largely to legitimize the military dictatorship. The 1979 Constitution established a government headed by a president and recognized the president as Somalia's Head of State. *See* Constitution of the Somali Democratic Republic ("Somali Constitution"), Article 82.¹ Barre held this position until the collapse of the regime in 1991. The Somali Constitution also required Somalia to follow "generally accepted rules of international law," including those proclaimed in the Universal Declaration of Human Rights. *Id.* at Article 19. For example, the Somali Constitution expressly prohibited torture, extrajudicial killings and arbitrary detention. *Id.* at Articles 25.2, 26.2, 26.3, and 27.1. The military government that ruled Somalia throughout the 1980s, however, consistently and flagrantly violated these prohibitions.

The Violence In Northern Somalia

The Isaaq clan, located primarily in the northwestern region of Somalia, was a special target of the Barre government, as Isaaqs were perceived from the outset as potential opponents to the Barre regime. Compl. ¶ 13. The government's extreme oppression led some members of the Isaaq clan to establish an opposition force called the Somali National Movement ("SNM") in 1981. *Id.* The government responded by placing the northern region under military control. *Id.* Throughout the 1980s, Somali National Army units were stationed in or near virtually every village and town throughout the region. *Id.*

¹ The Somali Constitution is attached to the Declaration of Martin R. Ganzglass ("Ganzglass Decl.") submitted with this Opposition as Exhibit 1.

The Somali National Army committed widespread human rights abuses in its violent campaign to eliminate the SNM and any perceived supporters. Compl. ¶ 14. It killed and looted livestock, blew up water reservoirs, burned homes, and tortured and detained alleged SNM supporters. *Id.* Particularly after 1984, it also carried out a systematic policy of indiscriminately killing civilians as collective punishment for SNM activities. *Id.* Such acts were intended to, and did, spread terror among Isaaq civilians to deter them from assisting the SNM. *Id.*

The area around the northern town of Gebiley was a center of human rights abuses by the Somali National Army. Compl. ¶ 15. This region was a strategic focus of the military campaign because of its close proximity to the Ethiopian border, where SNM bases were located. *Id.*

Ali's Role As Commander Of The Fifth Battalion

Defendant Ali commanded the army unit stationed in Gebiley. Compl. ¶ 16. From approximately 1984 through 1989, Ali, as commander of the Fifth Battalion, directed and participated in a brutal counterinsurgency campaign that refused to distinguish between civilians and combatants. *Id.*

The Plaintiffs

Plaintiffs are but two of many victims of Ali and his military subordinates. Members of the Fifth Battalion under Ali's command abducted Jane Doe and her husband, imprisoned her, brutally beat her during interrogations and caused her to miscarry. Ali personally beat her on at least one occasion. After a sham trial on charges of aiding enemies of the state, Jane Doe was convicted and sentenced to death. Her sentence was commuted to life in prison, but she was released from prison six years later, near the end of the Barre reign. Compl. ¶¶ 17-26.

Plaintiff John Doe also was abducted by members of the Fifth Battalion, who imprisoned him, interrogated him and tortured him. Ali was present for some of these torture sessions, and

Ali personally shot John Doe with his pistol and left him for dead. John Doe survived the shooting and paid soldiers to obtain his release. Compl. ¶¶ 27-38.

Post-Barre Somalia

Throughout the 1990s, Somalia fell into increasing chaos. Compl. ¶ 48. Following the violent defeat of the military government in 1991, Somalia's central government collapsed. *Id.*

Fighting among rival clan leaders resulted in the killing, displacement, and mass starvation of tens of thousands of Somali citizens. *Id.* Somalia's clan-based civil war and anarchic violence proved to be so brutal that it drove the United Nations from the country in 1994. *Id.* Rival clan militias continued to commit gross and systematic human rights abuses in the years after the United Nations' departure, including the deliberate killing and kidnapping of civilians because of their clan membership. *Id.*

Somalia remains without a functioning national government and national judicial system in which victims of Barre-era human rights abuses could bring their claims. Compl. ¶ 52. Shari'a courts operate in some regions of the country, but such courts impose religious and local customary law often in conflict with universal human rights conventions. *Id.* Despite the very recent selection of a former warlord as president, Somalia still does not have a functioning national government with a court system capable of reviewing human rights abuses committed by the military government in the 1980s. *Id.* The country remains under the de facto control of competing clan leaders, warlords and criminal gangs, many of whom commit or countenance the commission of serious human rights abuses. *Id.*

Ali's Movement After The Collapse Of The Barre Government

During his service in the Somali military Ali traveled to the United States for military training. According to Ali, one of these training programs ended in December 1990. Ali Decl.

¶ 15.² Because of the imminent fall of the Somali government, at the end of that program Ali declined to return to his home and sought refugee status in Canada. In 1992 Ali entered the United States after being deported from Canada on the grounds that he “was associated with the Barre regime,” Ali Decl. ¶ 18, which admittedly had a “poor human rights record.” Memorandum of Points and Authorities in Support of Defendant’s Motion to Dismiss With Prejudice the Complaint (“Mot. to Dismiss”) at 7. In 1994 Ali, facing deportation proceedings here, left for Ethiopia. Ali Decl. ¶ 22. In December 1996 he returned to the United States and lives in Alexandria, Virginia. Ali Decl. ¶ 22.

The Unrecognized Region of Somaliland

In 1991, the former British protectorate of Somaliland declared its independence, reclaimed its previous name, and seceded from Somalia. Compl. ¶ 51. A rudimentary civil administration was established there in 1993, but major armed conflicts in 1994 and 1996 plunged the region back into turmoil. *Id.* Since about 1997, Somaliland’s government has exercised only a modicum of authority over its territory. *Id.* No other country in the world recognizes Somaliland as an independent state.

² Plaintiffs do not necessarily accept the truth of the Ali Declaration at this stage of this case, since they have not had the opportunity to conduct discovery into Ali’s whereabouts since the fall of the Barre regime. Moreover, neither Ali’s attachment of his declaration in support of his brief, nor his reference to affidavits or declarations filed in this Court in the matter of *Yousef v. Samantar*, Civil Action No. 04-1360, should be construed as converting the motion to dismiss briefing into summary judgment briefing. Should the Court be inclined to convert the pending motion to dismiss into a summary judgment motion, Plaintiffs respectfully request that the Court give notice under Federal Rule of Civil Procedure 12(b) and allow Plaintiffs to conduct discovery and submit additional information. *Harrods Ltd. v. Sixty Internet Domain Names*, 110 F. Supp. 2d 420, 427 (E.D. Va. 2000) (converting the motion to dismiss into a motion for summary judgment would be premature because discovery had not begun and the evidentiary record had not been established). In any case, any doubts the Court has regarding factual disputes must be resolved in favor of the allegations recited in the Complaint. *Adams v. Bain*, 697 F.2d 1213, 1216 (4th Cir. 1982).

STANDARD OF REVIEW

Ali's motion is filed pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. In considering a motion under Fed. R. Civ. P. 12(b)(6), the court must accept as true all the allegations of the complaint, and the complaint may not be dismissed "unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim." *Adams v. Bain*, 697 F.2d 1213, 1216 (4th Cir. 1982) (citations omitted). Moreover, the court must draw all reasonable inferences from the facts of the complaint in the light most favorable to the plaintiff. *Krane v. Capital One Services, Inc.*, 314 F. Supp. 2d 589, 596 (E.D. Va. 2004).

Ali's immunity arguments arguably implicate the subject matter jurisdiction of this court. On a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1), unlike a motion pursuant to Rule 12(b)(6), the Court may consider evidence outside the complaint to resolve factual disputes. *Carter v. Arlington Public School System*, 82 F. Supp. 2d 561, 564 (E.D. Va. 2000).

ARGUMENT

I. PLAINTIFFS SHOULD BE PERMITTED TO PROCEED ANONYMOUSLY, AND THE CASE IS NOT SUBJECT TO DISMISSAL BECAUSE THE PLAINTIFFS HAVE PROCEEDED UNDER PSEUDONYMS.

Ali first argues that the Complaint must be dismissed because, according to Ali, Plaintiffs have improperly proceeded anonymously. Mot. to Dismiss at 9-19. To the contrary, Plaintiffs legitimately fear for their own personal safety, as fully explained in Plaintiffs' previously-filed Motion For Leave To Proceed Anonymously and supporting memorandum. Plaintiffs incorporate by reference the arguments presented in that memorandum in opposition to Ali's motion to dismiss.

II. ALI IS NOT ENTITLED TO IMMUNITY.

Ali argues that this case is barred because he is entitled to immunity from suit. Mot. to Dismiss at 30-33. Ali's immunity argument is preposterous and must fail. Ali is not entitled to head of state immunity because such immunity is reserved for heads of state, a position he concedes he never held. Moreover, Ali is not entitled to immunity under the FSIA because, to the extent that the FSIA applies to individuals, it does not immunize officials for human rights violations in derogation of norms of customary international law.

A. Ali Never Served As Somalia's Head Of State And Is Not Entitled To Head Of State Immunity.

Common law head of state immunity is strictly limited to foreign leaders who embody the conceptual identity of ruler and state. It is based on, and limited by, the principle that sovereign states are immune from suit by other states. "Head of state immunity is primarily an attribute of state sovereignty, not an individual right." *In re Grand Jury Proceedings*, 817 F.2d 1108, 1111 (4th Cir. 1987). It is "founded on the need for comity among nations and respect for the sovereignty of other nations; it should apply only when it serves those goals." *Id.* It is therefore generally reserved for sitting presidents recognized by the United States government. *See, e.g., Lafontant v. Aristide*, 844 F. Supp. 128, 133-34 (E.D.N.Y. 1994) (according head of state immunity to President Aristide, the head of state recognized by the U.S. Government); *U.S. v. Noriega*, 746 F. Supp. 1506 (S.D. Fla. 1990) (denying head of state immunity to General Noriega because head of state recognized by the U.S. Government was President Delvalle).

Ali never served as Head of State of Somalia; he was a battalion commander in the Army. Ali Decl. at 13. Throughout the entire relevant time period, the position of Head of State of the Somali Democratic Republic was held by President Major General Siad Barre. Ganzglass Decl. at 10. Article 79 of the Somali Constitution expressly states:

The President of the Somali Democratic Republic shall be the Head of State and shall represent state power and the unity of the Somali people.

It is simply beyond dispute that Ali never served as Somalia's Head of State.

Recognizing that he was not the Head of State of Somalia, Ali offers a confusing argument that his position as an official of the Somali military somehow entitles him to head of state immunity. This barely understandable argument relies on his allegation that he was granted an "A-2" diplomatic visa during his visits to the United States, which he couples with an allegation that he maintained a degree of control over the northwest region of Somalia – all in an effort to try to elevate his military position to a "cabinet-level" status. Mot. to Dismiss at 31-32. Factually, this argument is unsupported. Moreover, Ali's self-aggrandizing attempt to claim head of state immunity fails under the applicable law.

Even cabinet members and other high-ranking officials are not considered heads of state and are therefore denied the protections of head of state immunity. *See, e.g., First American Corp. v. Al-Nahyan*, 948 F. Supp. 1107, 1121 (D.D.C. 1996) (denying head of state immunity to defendants Minister of Defense and the former Prime Minister, Vice President, and member of Supreme Counsel of Rulers of the United Arab Emirates because none was head of state); *Republic of Philippines v. Marcos*, 665 F. Supp. 793 (N.D. Cal. 1987) (denying head of state immunity to Solicitor General of the Philippines); *see also El-Hadad v. Embassy of the United Arab Emirates*, 69 F. Supp. 2d 69, 82, n. 10 (D.D.C. 1999) (without reaching issue, but stating that head of state immunity would not have afforded protection to a minister and other executive officials because they were not head of state) *rev'd in part on other grounds*, 216 F. 3d 29 (D.C. Cir. 2000); *cf., Tachiona v. U.S.*, 386 F. 3d 205, 220-21 (2d Cir. 2004) (affirming grant of immunity to foreign minister but on grounds of diplomatic immunity, not head of state immunity as granted by lower court); *Kilroy v. Windsor*, Civ. No. C-78-291 (N.D. Ohio 1978), excerpted in

1978 Dig. U.S. Prac. Int'l L. 641-43 (1978) (same); *Chong Book Kim v. Kim Yong Shik* (Hawaii Cir. Ct. 1963), excerpted in 58 Am. J. Int'l L. 186-87 (1964) (same).³

Ali is not, and never was, the head of state of Somalia. Accordingly, this Court should deny Ali head of state immunity.

B. The Foreign Sovereign Immunities Act Does Not Protect Officials For Acts Outside Their Official Capacities.

As Ali concedes, the FSIA only provides immunity for acts carried out within the scope of an individual defendant's legal authority. Mot. to Dismiss at 30; see *Velasco v. Indonesia*, 370 F. 3d 392, 399 (4th Cir. 2004). In *Velasco*, a recent Fourth Circuit decision ignored by Ali, the court determined that the FSIA does not provide immunity to individuals who have been sued for acts which were not within their official capacity or were outside the scope of their authority. *Velasco*, 370 F. 3d at 399. Employing the same reasoning, courts hold that human rights abuses are, *ipso facto*, beyond the scope of an official's authority and that the official therefore is not entitled to immunity under the FSIA. *Hilao v. Marcos*, 25 F. 3d 1467, 1471 (9th Cir. 1994) (FSIA inapplicable because alleged acts of torture, execution, and disappearances were "clearly outside of [former Philippine President Ferdinand Marcos's] authority as President"); *Cabiri v. Assasie-Gyimah*, 921 F. Supp. 1189, 1198 (S.D.N.Y. 1996) (FSIA inapplicable because acts of torture "fall outside the scope" of defendant's official authority); *Xuncax v. Gramajo*, 886 F. Supp. 162, 175-76 (D. Mass. 1995) (FSIA inapplicable because acts of torture, summary execution, arbitrary detention, disappearance and cruel, inhuman or

³ Ali's reliance on *Ye v. Zemin*, is misplaced, as the defendant in question was a sitting – not former – head of state when the case was filed. *Ye v. Zemin*, 383 F. 3d 620, 622 (7th Cir. 2004). Moreover, in *Ye*, the court did not consider whether a former head of state was entitled to immunity, but rather found the Executive Branch's determination of immunity dispositive. *Ye*, 383 F. 3d at 625-26. *In re Grand Jury Proceedings*, also relied on by Ali, likewise did not address whether a former head of state had immunity, as the court's determination that former president Marcos had no immunity turned on the current government's waiver of any immunity. *In re Grand Jury Proceedings*, 817 F. 2d at 1110-11.

degrading treatment “exceed anything that might be considered to have been lawfully within the scope of Gramajo’s official authority”).⁴

Plaintiffs here allege that Ali is legally responsible for the acts of torture, attempted extrajudicial killing, arbitrary detention, war crimes and crimes against humanity committed against them. Compl. ¶¶ 1-2. The acts alleged by Plaintiffs were expressly prohibited by the Somali Constitution and violate customary international law.⁵ *Flores v. Southern Peru Copper Corp.*, 343 F. 3d 140 (2d Cir. 2003) (“official torture, extrajudicial killings, and genocide, do violate customary international law”). Plaintiffs sufficiently have alleged that Ali’s actions were committed outside the scope of his legal authority, and the FSIA does not apply.⁶

III. PLAINTIFFS’ CLAIMS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS.

Dismissal of a complaint because it is barred by the applicable statute of limitations is proper only if “the defendant . . . establish[es] that the plaintiff cannot prove any set of facts that will support his or her claim and entitle him or her to relief.” *Krane*, 314 F. Supp. 2d at 596. Ali argues that the Court should dismiss this case because the ten-year limitations period has expired. The doctrine of equitable tolling, however, which applies with particular force in claims filed pursuant to the ATCA and TVPA, makes clear that this suit is timely, for two alternative

⁴ Ali’s reference to the expansion of the FSIA’s exception for state immunity for state-sponsored terrorism, Mot. to Dismiss at 29 n. 8, is irrelevant, as the exception relates to states – not individuals – and more basically, there is no allegation against the Government of Somalia or that it engaged in state-sponsored terrorism.

⁵ For example, Article 27.1 of the Somali Constitution prohibited the use of torture. Article 25.2 prohibited extrajudicial killings. Articles 26.2 and 26.3 prohibited arbitrary detention. Article 19 required Somalia to follow customary international law.

⁶ Any ruling to the contrary effectively would nullify the TVPA, which only applies to defendants who act “under actual or apparent authority, or color of law, of any foreign nation.” 28 U.S.C. § 1350 note. Ali contends that one who acts under such authority or color of law is entitled to immunity, a theory that would completely negate the TVPA. This argument cannot be accepted.

reasons.⁷ First, the filing was timely because at the time this suit was filed, Ali had been in the United States for less than ten years since the fall of the Barre regime. Second, in the alternative, the extraordinary and chaotic circumstances in Somalia, including the Plaintiffs' fear of reprisal and the inability of their counsel to conduct the investigation necessary to bring this case, mandates equitable tolling until at least 1997.

A. The Law Of Equitable Tolling.

“Equitable tolling’ is the doctrine under which plaintiffs may sue after the statutory time period has expired if they have been prevented from doing so due to inequitable circumstances.” *Ellis v. Gen. Motors Acceptance Corp.*, 160 F. 3d 703, 706 (11th Cir. 1998). Limitations periods are “customarily subject to equitable tolling, unless tolling would be inconsistent with the text of the relevant statute.” *Young v. United States*, 535 U.S. 43, 49 (2002) (internal citations and quotation marks omitted); *accord, Rouse v. Lee*, 339 F. 3d 238, 246 (4th Cir. 2003).

The scope of any tolling to be accorded to a relevant statute is determined by congressional intent. “[T]he basic inquiry is whether congressional purpose is effectuated by tolling the statute of limitations in given circumstances.” *Burnett v. New York Central R.R. Co.*, 380 U.S. 424, 427 (1965). To decide whether and how equitable tolling applies, courts “examine the purposes and policies underlying the limitation provision, the Act itself, and the remedial scheme developed for the enforcement of the rights given by the Act.” *Id.*

Furthermore, as a matter of equity, courts permit tolling in certain situations where a plaintiff is prevented from asserting his claims earlier. *Rouse*, 339 F. 3d at 246. Thus, a plaintiff

⁷ Ali acknowledges that the applicable ten-year statute of limitations is subject to equitable tolling, but he suggests that the tolling period ended when the Barre government was overthrown. Mot. to Dismiss at 22-23. For the reasons stated herein, Ali's admission that tolling applies is correct, but his choice of the date of termination of the tolling period is wrong.

is entitled to equitable tolling “if he presents (1) extraordinary circumstances, (2) beyond his control or external to his own conduct, (3) that prevented him from filing on time.” *Id.*

B. The Suit Is Timely Because At The Time This Suit Was Filed Ali Had Been In The United States For Less Than Ten Years Since the Fall Of The Barre Regime.

The statute of limitations was tolled because two extraordinary circumstances prevented Plaintiffs from asserting their claims earlier: first, the Somali military--in which Ali was an officer--continued to rule Somalia until 1991. Thus the statute of limitations must be tolled until that time. Second, since 1991, Ali was beyond the jurisdictional reach of the U.S. courts for approximately four years, thus, in the U.S. for less than ten years. Taken together, these extraordinary circumstances--both beyond Plaintiffs' control--tolled the statute of limitation for a sufficient period so that this suit was timely filed.

1. It Is Beyond Dispute That The Statute Of Limitations Was Tolled Until The Fall of the Barre Regime.

There is no dispute that the statute of limitations for Ali's acts, committed while he was an officer in the Somali National Army, was tolled at least until the 1991 overthrow of the military government headed by Major General Siad Barre. Ali concedes this very point. *See* Mot. to Dismiss at 22-23 (tolling based on fear of reprisal “is limited to the period of the leader's or regime's power”). This application of tolling principles is also uniformly supported by the relevant case law. *See Hilao v. Marcos*, 103 F.2d 767, 773 (9th Cir. 1996) (tolling the statute of limitations until the end of the Marcos presidency, which also happened to be the beginning of the period Marcos entered into this jurisdiction); *Estate of Cabello v. Fernandez-Larios*, 157 F. Supp. 2d 1345, 1368 (tolling the statute of limitations through period in which General Pinochet's military regime was replaced by a civilian government); *Forti v. Suarez-Mason*, 672 F. Supp. 1531, 1550 (N.D. Cal. 1987) (declining to dismiss complaint on statute of limitations

grounds because plaintiffs' allegations raised issue of fact regarding tolling of statute of limitations).

Such tolling is wholly appropriate under the circumstances at hand. The Plaintiffs simply cannot have been expected to bring a case against the perpetrator of human rights abuses while the brutal military government remained in power and while Ali, himself, maintained military authority over the area where Plaintiffs and their families lived. Even during Ali's absence for military training in the United States, Plaintiffs clearly could not have brought an action against Ali, considering his anticipated return to military command and the continued military control exercised by the Barre regime over the area in which they resided. Indeed, Jane Doe was imprisoned by Ali through September 1990. Compl. 26. Thus, although the statute of limitations is tolled for a longer period, as discussed below, the earliest the statute of limitations begins to run coincides with the fall of the Barre government in 1991.

2. The Statute Of Limitations Is Further Tolled During All Periods When No U.S. Court Would Have Had Jurisdiction Over Ali.

After the fall of the Barre regime, the courts of the United States could not assert jurisdiction over Ali except for the time he was present in this country.⁸ As discussed below, Congress clearly intended that, in the context of the TVPA and ATCA, the statute of limitations be tolled for the duration of a defendant's absence from the United States. The case law confirms this conclusion. Because the statute of limitations is tolled for all periods of time when Ali was outside the country, this suit has been brought within the ten-year limitations period.

⁸ Because the acts that are the subject of this complaint were neither committed in the United States nor targeted at U.S. citizens, this court would not have been able to assert jurisdiction over Ali unless he was present in the U.S. and subject to service of process. *International Shoe Co. v. Wash.*, 326 U.S. 310 (1954); *Burnham v. Superior Court of California*, 495 U.S. 604 (1990) (requisite minimum contacts were satisfied by petitioner's physical presence in the forum).

In enacting the TVPA, Congress intended to (1) provide an avenue for torture victims to pursue claims against their torturers in the United States because “[j]udicial protection against flagrant human rights violation is often least effective in those countries where such abuses are most prevalent,” S. Rep. No. 102-249, at 3 (1991);⁹ and (2) denounce and deter foreign torturers from seeking haven in this country.¹⁰ Such Congressional intent is given effect by tolling the limitations period when a defendant is outside of the reach of United States courts. Indeed, if the statute of limitations were permitted to run on ATCA and TVPA claims while human rights defendants remained outside the United States, the goals of Congress would be stymied. Under such a legal system, foreign torturers would merely have to wait until the statute of limitations expired before entering the United States, safe in the knowledge that they could no longer be sued for their human rights violations. This is the polar opposite of Congress’ intent.

Indeed, Congress expressly contemplated this exact factual scenario. Initial drafts of the TVPA went so far as to reject any limitations period whatsoever for the statute. S. 1629, 101st Cong. § 2(b) (1989) (“The court shall not infer the application of any statute of limitations or similar period of limitations in an action under this section.”). While the TVPA ultimately did incorporate a ten-year limitations period, 28 U.S.C. § 1350 note, § 2(c), both houses of Congress stated unequivocally that equitable tolling should apply. Both the Senate and House Reports on the TVPA declare without ambiguity that “all equitable tolling principles” should apply under this law. S. Rep. No. 249, 102d Cong., 1st Sess., at 10-11 (1991); H.R. Rep. No. 367, 102d

⁹ For the Court’s convenience, the Senate Report on the TVPA is attached as Exh. 2.

¹⁰ See, e.g., 138 Cong. Rec. S4176, at 4176 (daily ed. Mar. 3, 1992) (statement of Sen. Arlen Specter) (“[o]ne reason for enacting [the TVPA] is to discourage torturers from ever entering this country.”); 137 Cong. Rec. H34785, at 34785 (daily ed. Nov. 25, 1991) (statement of Rep. Mazzoli) (“[The TVPA] puts torturers on notice that they will find no safe haven in the United States.”); *Id.* (statement of Rep. Yatron) (TVPA “sends a distinct and forceful message that the U.S. will not host torturers within its borders.”). Where, as here, statements of individual legislators are consistent with statutory language and other legislative history, “they provide evidence of Congress’ intent.” *Brock v. Pierce County*, 476 U.S. 253, 263 (1986).

