

THE LEGAL ADVISER  
DEPARTMENT OF STATE  
WASHINGTON

September 27, 2006

Jeffrey S. Bucholtz, Esquire  
Principal Deputy Assistant Attorney General  
Civil Division  
United States Department of Justice  
10<sup>th</sup> Street and Constitution Avenue, NW  
Washington, D.C. 20530

Re: *Doe, et al. v. Constant*, 04 Civ. 10108

Dear Mr. Bucholtz:

By letter of August 16, 2006, U.S. District Judge Sidney H. Stein inquired whether the Department of State wishes to be heard in any way regarding the above-referenced action. The Department of State appreciates the Court's effort to bring the above-referenced action to its attention, and requests that you arrange for the Department of Justice to communicate to the Court in an appropriate manner the following response.

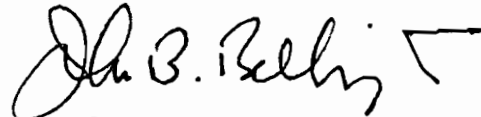
The complaint raises a significant number of complex legal issues, including by making a number of assertions about the content of customary international law and the applicability of international humanitarian law to non-state actors. In addition, claims are asserted under the jurisdiction granted to federal courts by the Alien Tort Statute (ATS). The Department of State notes, however, that in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), the Supreme Court recognized that federal courts have "residual common law discretion" (*id.* at 738) to recognize a "narrow class" (*id.* at 729) of federal common law claims that could be asserted under the ATS. The Court in *Sosa* cautioned that courts should not "recognize private claims under federal common law for violations of any international law norm with less definite content and acceptance among civilized nations than the historical paradigms" familiar when the statute was enacted in the 18<sup>th</sup> century. *Id.* at 732.

The Department of State understands that an order of default has been entered in this case because the defendant has failed to appear. The Government of Haiti has not expressed interest in this case to the Department.

Under these circumstances, the concerns that the Department of State would have relating to the case would focus on the articulation of legal principles by the Court, which will not have the benefit of briefing from both sides. To the extent possible, the Department's concerns could be avoided if the judgment were entered without necessarily endorsing the theories espoused in the complaint.

The Department of State takes no position with respect to the factual allegations of the litigation, and would not condone or excuse any violations of human rights that may have occurred in connection with the incidents underlying this case.

Respectfully,



John B. Bellinger, III