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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 JANE DOE I, JANE DOE II, HELENE PETIT,)
MARTIN LARSSON, LEESHAI LEMISH, and)
12 ROLAND ODAR)

13 Plaintiffs,)

14 v.)

15 LIU QI, and DOES 1-5, inclusive)

16 Defendants.)
17

No. **C 02 0672 CW EMC**

**PLAINTIFFS' REPLY TO
STATEMENT OF INTEREST OF THE
UNITED STATES**

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19 On January 16, 2004, the United States filed a Statement of Interest in response to this
20 Court's request for comment on the substance of U.S. Magistrate Judge Chen's recommendations
21 (and Plaintiffs' Objections thereto) regarding Plaintiffs' motion for entry of default judgment. The
22 United States' "response" recommends that this case be stayed until the U.S. Supreme Court has
23 decided *Sosa v. Alvarez-Machain*. The Court should reject the United States' suggestion for the
24 reasons discussed below. Even if the Court decides to stay Plaintiffs' claims under the Alien Tort
25 Claims Act, 28 U.S.C. § 1350 ("ATCA"), it nevertheless should enter a default judgment on the
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1 claims brought under the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992)
2 (codified at 28 U.S.C. § 1350 note) (“TVPA”).

3 **I. A Decision in *Alvarez-Machain* Cannot Dispose of This Action**

4 The United States’ suggestion to stay this case should be rejected because the Supreme
5 Court’s decision in *Alvarez-Machain* – regardless of how it is decided – cannot fully dispose of this
6 litigation. The issues to be decided in *Alvarez-Machain* exclusively concern the character of
7 claims that can be brought under the ATCA. As the United States’ own brief in support of the
8 petition for certiorari in *Alvarez-Machain* states:

9
10 The questions presented are:

- 11 1. Whether the ATS [Alien Tort Statute, another name for the ATCA] creates a private
12 cause of action for aliens for torts committed anywhere in violation of the law of nations or
13 treaties of the United States or, instead, is a jurisdiction-granting provision that does not
14 establish private rights of action.
- 15 2. Whether, to the extent that the ATS is not merely jurisdictional in nature, the challenged
arrest in this case is actionable under the ATS.

16 See Brief for the United States in Support of the Petition for a Writ of Certiorari to the United
17 States Court of Appeals for the Ninth Circuit at
<http://www.usdoj.gov/osg/briefs/2003/0responses/2003-0339.resp.html> (last visited on January 25,
18 2004).

19 The current action, by contrast, does not rely solely on the ATCA. Plaintiffs’ first claim
20 seeks relief for torture under the TVPA. *See* Complaint ¶¶ 39-46. The Court should not stay these
21 proceedings given that this claim will be entirely unaffected by the Supreme Court’s ruling and that
22 Plaintiffs, who suffered at the hands of police controlled by Defendant, deserve a speedy resolution
23 of their claims.

24 **II. Even if the ATCA Claims Are Stayed, the Court Should Enter Default Judgment on
the TVPA Claim**

25 Even if this Court decides to postpone consideration of Plaintiffs’ ATCA claims, the Court
26 should still proceed to enter default judgment on Plaintiffs’ claim for torture under the TVPA. The
27 TVPA provides a cause of action for torture, and its viability is not at issue in the *Alvarez-Machain*
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1 case. Indeed, Judge Chen expressly found that Plaintiffs' TVPA cause of action is justiciable and
2 recommended that default judgment be entered on this claim. *See* Report and Recommendations
3 Re: Plaintiffs' Motion for Entry of Default Judgment at 89. Thus even in the far narrower case
4 envisioned by Judge Chen, the Supreme Court's decision in *Alvarez-Machain* will not entirely
5 resolve this case. Because the TVPA claim remains untouched, this Court should enter a default
6 judgment on Plaintiffs' claim brought under that statute.
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8 For the foregoing reasons, Plaintiffs respectfully request that the Court reject the suggestion
9 by the United States to stay the current proceedings, or if the Court stays resolution of the ATCA
10 claims, enter default judgment as to the torture claim under the TVPA.
11

12 Dated: January 28, 2004

13 Respectfully submitted,

14 /s/Matthew Eisenbrandt

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1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, declare under penalty of perjury that:

3 On January 28, 2004, I served a true copy of the following document:

4 **PLAINTIFFS' RESPONSE TO STATEMENT OF INTEREST OF THE UNITED STATES**

5 on the following persons:

6 Alexander Haas
7 U.S. Department of Justice
8 Civil Division, Federal Programs Branch
9 P.O. Box 883
10 Washington, D.C. 20044

11 Morton Sklar
12 World Organization Against Torture USA
13 1725 K St., N.W., Suite 610
14 Washington, D.C. 20006

15 Karen Parker
16 154 5th Ave.
17 San Francisco, CA 94118

18 Thomas A. Willis
19 Remcho, Johansen & Purcell
20 201 Dolores Avenue
21 San Leandro, CA 94577

22 By placing a true copy of said document, enclosed in a sealed envelope, and by placing said
23 envelope, with postage thereon fully prepaid, in the United States mail in San Francisco,
24 California, addressed to said persons.

25 Executed in San Francisco, California, on January 28, 2004.

26 I declare under penalty of perjury that the foregoing is true and correct.

27 /s/Matthew Eisenbrandt
28 MATTHEW EISENBRANDT