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6
7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9

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

12)
13) Plaintiffs,)

14) v.)

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

16) Defendants.)
17)

No. **C 02 00672 CW EMC**

**PLAINTIFFS' RESPONSE TO
MAGISTRATE JUDGE CHEN'S
AMENDED REPORT AND
RECOMMENDATION**

18 In response to this Court's Order of Reference of September 17, 2004, Magistrate Judge
19 Chen issued his Amended Report and Recommendation on October 28, 2004. Judge Chen
20 recommends that the Court grant in part Plaintiffs' Motion for Default Judgment in the form of
21 declaratory relief for Plaintiffs Jane Doe I and Jane Doe II on their claims for torture and arbitrary
22 detention and Plaintiff Helene Petit on her claim for cruel, inhuman or degrading treatment.
23

24 Plaintiffs disagree with the following three conclusions reached by Judge Chen. First, Judge
25 Chen found that the act of state doctrine applies in this case. Plaintiffs contend that human rights
26 abuses which have been disavowed, denounced and denied by a foreign government are not "acts
27 of state" that can trigger the doctrine of judicial abstention. See Plaintiffs' Objections to Magistrate
28

1 Judge Chen’s Report and Recommendation (D.E. 77) at 5-9. Yet, even if the act of state doctrine
2 applies, the factors enunciated by the Supreme Court in *Banco Nacional de Cuba v. Sabbatino*, 376
3 U.S. 398 (1964), weigh in favor of the Court’s granting default judgment in the form of monetary
4 relief, rather than only declaratory relief as Judge Chen recommends, particularly because the
5 assessment of money damages would not interfere with foreign relations. *See* Plaintiffs’
6
7 Objections to Magistrate Judge Chen’s Report and Recommendation at 11-17.

8 Second, Judge Chen concludes that Plaintiffs’ claims for crimes against humanity and
9 interference with freedom of religion or belief are not justiciable in a default proceeding. Plaintiffs
10 addressed this finding in Plaintiffs’ Objections to Magistrate Judge Chen’s Report and
11 Recommendation, at 17-20.

12 Third, Judge Chen concludes that the Supreme Court in *Sosa v. Alvarez-Machain*, ___ U.S.
13 ___, 124 S.Ct. 2739 (2004), mandates that “the first step in the [arbitrary detention] analysis is to
14 determine whether the detention was prolonged.” Amended Report and Recommendation at 84.
15 Plaintiffs respectfully disagree with this interpretation. The Supreme Court found that the specific
16 circumstances under which the petitioner Alvarez was held failed to measure up to a violation of a
17 norm of customary international law. Specifically, the court ruled, “It is enough to hold that a
18 single illegal detention of less than a day, followed by the transfer of custody to lawful authorities
19 and a prompt arraignment, violates no norm of customary international law so well defined as to
20 support the creation of a federal remedy.” *Sosa*, ___ U.S. at ___, 124 S.Ct. at 2769. The court
21 limited its decision to the specific facts of the case before it, namely a detention of less than a day
22 followed by a transfer to lawful authorities. The court held that the particular “relatively brief
23 detention” in that case did not violate an international law norm that meets the stringent
24 requirements of the Alien Tort Claims Act. The Court did not hold that all detentions must be
25 “prolonged” to be arbitrary. *Id.*
26
27
28

1 **CERTIFICATE OF SERVICE**

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

3 On November 9, 2004, I served a true copy of the following document:

4 **PLAINTIFFS' RESPONSE TO MAGISTRATE JUDGE CHEN'S AMENDED REPORT**
5 **AND RECOMMENDATION**

6 on the following persons:

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

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

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

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

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

26 Executed in San Francisco, California, on November 9, 2004.

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

28 /s/Matthew Eisenbrandt
MATTHEW EISENBRANDT