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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA

KEMAL MEHINOVIC, et al.,	)	Civil Action No. 1: 98-CV-2470-WBH
	)	
Plaintiffs,	)	
	)	
v.	)	Trial Date: October 22-23, 2001
	)	
NIKOLA VUCKOVIC, a/k/a Nikola Nikolac	)	
	)	
Defendant.	)	
	)	
	)	
	)	
	)	
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	)	
	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW [PROPOSED]**

1	I.	BACKGROUND.....	1
2	II.	DEFENDANT NIKOLA VUKOVIC .....	5
3	III.	THE PLAINTIFFS’ ORDEALS .....	6
4	A.	Kemal Mehinovic .....	6
5	B.	Muhamed Bicic .....	10
6	C.	Safet Hadzialijagic.....	12
7	D.	Hasan Subasic.....	15
8	IV.	“ETHNIC CLEANSING” -- THE CONTEXT OF DEFENDANT’S ACTIONS.....	18
9	V.	JURISDICTION.....	23
10	VI.	PLAINTIFFS’ ATCA AND TVPA CLAIMS .....	23
11	A.	Torture .....	25
12	1.	ATCA .....	25
13	2.	TVPA.....	28
14	B.	Cruel, Inhuman and Degrading Treatment.....	29
15	C.	Arbitrary Detention .....	30
16	D.	War Crimes.....	32
17	1.	Common Article 3 .....	33
18	2.	Grave Breaches.....	34
19	E.	Crimes Against Humanity .....	35
20	F.	Genocide.....	38
21	VII.	DEFENDANT VUKOVIC IS LIABLE FOR AIDING AND ABETTING HUMAN RIGHTS VIOLATIONS PERPETRATED AGAINST PLAINTIFFS .....	40
22	VIII.	MUNICIPAL LAW CLAIMS.....	42
23	A.	Assault and Battery/Violent Injury or Attempt to Commit Injury .....	42
24	B.	False Imprisonment .....	43
25	C.	Intentional Infliction of Emotional Distress.....	43
26	D.	Conspiracy .....	44
27			
28			

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22  
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24  
25  
26  
27  
28

IX. DAMAGES ..... 44

A. Compensatory Damages ..... 44

B. Punitive Damages ..... 46

1 **INTRODUCTION**

2 This is an action for torture, cruel, inhuman or degrading treatment, war crimes,  
3 crimes against humanity, genocide, and municipal torts brought by four refugees from Bosnia and  
4 Herzegovina against Georgia resident Nikola Vukovic<sup>1</sup>, a former Bosnian Serb soldier. Plaintiffs  
5 allege that Vukovic committed acts of brutality against them in detention facilities in Bosnia and  
6 Herzegovina (“Bosnia”) during the so-called “ethnic cleansing” campaign directed against  
7 Bosnia’s non-Serb population. Plaintiffs are each Bosnians of Muslim ethnic descent.

8 Trial in this matter was specially set for October 22, 2001. Following defendant  
9 Vukovic’s failure to appear on the day appointed for trial, the court declared Vukovic in default  
10 and struck his answer. A one and a half day bench trial on the merits was held on October 22-23,  
11 2001. Witnesses included each of the four plaintiffs, a percipient witness who first recognized  
12 Vukovic in the United States, and a former senior researcher for Human Rights Watch, Diane Paul,  
13 who testified as an expert witness. The court also accepted the prepared direct testimony of  
14 Ms. Paul and physician Vincent James Iacopino, and documentary exhibits submitted in support of  
15 plaintiffs’ claims.

16 Upon careful consideration of the evidence presented at trial and the entire record in  
17 this matter, the Court finds that a judgment for damages shall be rendered in favor of plaintiffs as  
18 set forth in the findings and conclusions below.

19 **FINDINGS OF FACT**

20 **I. BACKGROUND<sup>2</sup>**

21 The events at issue in this case took place against the backdrop of the inter-ethnic  
22

23  
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<sup>1</sup> Plaintiffs believe “Vukovic” is the correct spelling of defendant’s last name, and will move for an order  
amending the case caption.

25 <sup>2</sup> While citations for the following brief background are largely to the testimony of expert witness Diane Paul,  
26 additional citations are provided where necessary or helpful to documents introduced into evidence, and to decisions of  
27 the International Criminal Tribunal for the Former Yugoslavia (“ICTY”). In particular, the decision of the ICTY in  
28 *Prosecutor v. Tadic*, Case No. IT-94-1, Opinion and Judgment (Trial Chamber II, May 7, 1997), ¶¶ 53-126 provides a  
comprehensive review of the background of the conflict which supports these findings. *See Tadic* Opinion and  
Judgment at Tab 1 of International Legal Materials: Decisions of the International Criminal Tribunal for the Former  
Yugoslavia (hereinafter “ICTY App.”).

1 conflict which engulfed the former nation of Yugoslavia in the early 1990's:

2 1. The modern Yugoslavian state was established in 1946 as a federation of six  
3 republics, including Serbia, Croatia, Slovenia, Bosnia and Herzegovina ("Bosnia"), Montenegro,  
4 and Macedonia, and two autonomous provinces, Kosovo and Vojvodina. Generally, people from  
5 all of these regions share the same Slavic ethnic origin. (See Prepared Testimony of Diane Paul  
6 (hereinafter "Paul P.T."), ¶¶ 10-11).

7 2. At the same time, each of the republics were comprised of groups with varying  
8 religious and cultural backgrounds. The northern republics of Slovenia and Croatia, due to their  
9 geographic location, had close ties to modern-day Austria and other western European powers  
10 under the influence of the Austro Hungarian Empire. These areas, accordingly, became  
11 predominantly Catholic. The eastern republics of Serbia, Montenegro, Macedonia, as well as  
12 Bosnia-Herzegovina and the province of Kosovo lived for many years under the rule of the  
13 Ottoman Empire. Under the Ottoman influence, many people in these areas adopted the Islamic  
14 faith. The population of Serbia, Montenegro, and Macedonia, however, remained primarily  
15 Christian Orthodox, based on ties to Russia and the influence of the Christian Orthodox church.  
16 (Paul P.T. ¶ 8).

17 3. Bosnia hosted the most ethnically diverse population of the six Yugoslav republics,  
18 and was unique in that unlike the other republics it had no majority ethnic population. According  
19 to a 1991 census, approximately 44 percent of Bosnia's population was Muslim, 31 percent Serb  
20 Orthodox Christians, or "Serbs," and 17 percent Croatian Catholics, or "Croats."<sup>3</sup>

21 4. Overlaying this ethnic patchwork, each of the republics -- including multi-ethnic  
22 Bosnia -- increasingly became home to an emerging "nationalist" identity. (Paul P.T. ¶¶ 10-24).<sup>4</sup>

23 5. Though significant inter-ethnic atrocities were committed in this Balkans region  
24 during the Second World War, particularly by Croat groups against Serbs, Yugoslavia's post-war  
25 Communist leader Marshal Tito managed to keep ethnic animosities, and separatist nationalist

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26  
27 <sup>3</sup> *Tadic*, Opinion and Judgment (Trial Chamber), ¶¶ 57, 65.

28 <sup>4</sup> *See also id.* ¶¶ 65-79.

1 movements, under check. (Paul P.T. ¶¶ 10-11). In Bosnia, members of different ethnic and  
2 religious backgrounds appear generally to have coexisted peacefully, including in plaintiffs' home  
3 town of Bosanski Samac, as plaintiffs testified. Members of each of the three major ethnic groups  
4 worked together, intermarried, and served together in government and the military.<sup>5</sup>

5 6. The death of Tito in 1980 left a political void, particularly with the concurrent  
6 decline of the Soviet Union. Nationalist Serb leaders took advantage of this situation, and  
7 launched a movement to create a "Greater Serbia" by uniting Serbs throughout the various  
8 Yugoslavian republics. Slobodan Milosevic, in 1989 the head of the League of Communists of  
9 Serbia, played a significant role in promoting and implementing this vision. (Paul P.T. ¶¶ 12-14).

10 7. Beginning with the June 1991 declaration of independence by Slovenia, followed  
11 months later by Croatia, several of the former Republics began to "break away" from the  
12 Yugoslavian state. These efforts were met with attacks by the Yugoslavian armed forces (or  
13 "JNA" by its Yugoslavian acronym), which increasingly came under Serbian control. (Paul P.T.  
14 ¶¶ 16-22).

15 8. In 1991, Bosnian Serb and Serbian military forces began preparing through a variety  
16 of measures for a takeover of territory within the Republic of Bosnia and Herzegovina. Each  
17 republic had been home to a network of weapons stockpiles under the control of "territorial  
18 defense" ("TO") units. The TO units were civilian defense units under the control of the  
19 government of each republic. By the autumn of 1991, Serbian militias began appearing in Serbian-  
20 populated areas of Bosnia. Hoping to avoid a confrontation with the JNA, the Bosnian President  
21 Alija Izetbegovic allowed the "federal" army to confiscate weapons from Bosnian territorial  
22 defense units. These weapons largely went to the Serbian militias. JNA units which had been  
23 withdrawn from Croatia and Slovenia began openly distributing weapons to Serb militias. (Trial  
24 Transcript, Oct. 23, 2001 (hereinafter Tr. Vol. II) (Testimony of Diane Paul) (hereinafter "Paul"),  
25

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26 <sup>5</sup> *Tadic*, Opinion and Judgment (Trial Chamber), ¶¶ 64, 108-09; *see also* ICTY, *Prosecutor v. Todorovic*, Case  
27 No. 1-95-9/1, Sentencing Judgment (Trial Chamber I, July 31, 2001), ¶ 90 (quoting statement by Bosanski Samac  
28 police chief, in guilty plea to persecution of non-Serbs, referring to "prewar times when all people of Bosnia lived in  
unity and happily together."), at Tab 2 of ICTY App.

1 at 8:13 – 9:13; 13:16 – 15:6; Paul P.T. ¶¶ 17, 22-23, 35).

2 9. On the political front, beginning in 1991, the principal Bosnian Serb political party  
3 began establishing so-called “Crisis Staffs” or “Crisis Committees” in Serb-populated  
4 municipalities. These committees began preparations for the takeover of power and for the  
5 subsequent implementation of plans to “ethnically cleanse” these areas of non-Serbs. In January  
6 1992, a separatist assembly of Bosnian Serbs within the Bosnian Republic rejected becoming part  
7 of an independent multi-ethnic state, and declared an independent Serb republic, called the  
8 “Serbian Republic of Bosnia and Herzegovina” or “Republica Srpska.” (Paul, Tr. Vol. II at 7:15 –  
9 17:12; Paul P.T. ¶¶ 28-34).

10 10. In March 1992, voters in Bosnia and Herzegovina approved a referendum on  
11 independence, though many Serbs, incited by Serb separatists, refused to participate. Using the  
12 international recognition of Bosnia’s independence as a pretext, Bosnian Serb and Serb forces  
13 invaded and began seizing control of territory throughout the former republic. On April 17, 1992,  
14 the JNA and Serb paramilitary forces from Bosnia and Serbia occupied the municipality of  
15 Bosanski Samac, near a Serb-controlled area of Croatia. This was one of the first areas to come  
16 under attack by these forces. In the first weeks of the war, pro-Serb forces had seized from 50-70  
17 percent of the territory of Bosnia, particularly in the northern, eastern, and central areas of the  
18 former republic. (Paul P.T. ¶¶ 23-25).

19 11. Throughout these areas, Serb forces immediately began a campaign of terror against  
20 the Bosnian Muslim population, which included killings, rapes, detention, looting and destruction  
21 of property, forced displacement, forced labor, and other abuses. This campaign, which shocked  
22 the world conscience, has come to be known as “ethnic cleansing.” (Paul, Tr. Vol. II at 17:3 –  
23 18:15; 19:13 – 23:8; Paul P.T. ¶¶ 26, 46-49).

24 12. The four plaintiffs in this case each were detained without charge, and subsequently  
25 tortured, in ad hoc detention facilities in their home town of Bosanski Samac in northern Bosnia in  
26 the days and weeks following the Serb takeover of that area.

1 **II. DEFENDANT NIKOLA VUKOVIC**

2 13. Defendant Vukovic, presently a resident of Georgia, is an ethnic Serb from the  
3 Former Yugoslavia. (Defendant’s First Amended Answer (“FAA”), ¶¶ 6-7).<sup>6</sup> Vukovic moved to  
4 Bosanski Samac some years prior to the events at issue with his wife, a Bosanski Samac native.  
5 (*Id.* ¶ 7; see Tr. Vol. I, at 15:18 – 17:22). Prior to the takeover by Serb forces, Vukovic began  
6 serving as a soldier in the Fourth Detachment (5th Battalion) of the 2nd Posavina Brigade of the  
7 Bosnian Serb Army, stationed in Bosanski Samac. (FAA ¶ 19; Plaintiffs’ First Amended  
8 Complaint, ¶ 19). This brigade was a paramilitary arm of the Bosnian Serb army, and its arms and  
9 uniforms were supplied by the JNA. (Paul, Tr. Vol. II, at 38:19 – 39:19; Paul P.T. ¶ 48).

10 14. Plaintiffs each knew or were acquainted with Vukovic from before the war through  
11 his own residence in Bosanski Samac, or through contact with his wife and sister. (See Part III,  
12 *infra*). However, as the Serb “ethnic cleansing” campaign was launched, Vukovic turned against  
13 the town’s non-Serb population, and beat and perpetrated acts of cruelty and humiliation against  
14 plaintiffs at a police station and other detention facilities in Bosanski Samac. (*Id.*).

15 15. The Court is satisfied that the defendant named and served in this action is the  
16 person identified by plaintiffs as having committed these abuses against them. In stipulations of  
17 fact and in his First Amended Answer prior to its being stricken, Vukovic admitted to facts  
18 establishing his identity as the person named by plaintiffs in this suit. Among other things,  
19 Vukovic admitted that he was a soldier in the Fourth Detachment of the Bosnian Serb 2<sup>nd</sup> Posavina  
20 Brigade, that his wife’s name is Mersada, and that she is, ironically, herself a Bosnian Muslim.  
21 (FAA ¶¶ 6-8, 19; Facts Stipulated by the Parties, Pretrial Order, Attachment E). Plaintiffs  
22 identified Vukovic at trial through photographs taken of him by an Atlanta newspaper for an article  
23 relating to this lawsuit, by past identifications, and by descriptions of his background consistent  
24 with each other and with Vukovic’s own admissions. (Tr. Vol. I, at 17:23 - 19-18; 27:25 – 29:19;  
25 52:7 – 53:3; 85:11-15). Vukovic’s photo was further identified at trial by a witness, also a former  
26 Bosanski Samac resident, who had seen Vukovic in an Atlanta suburb before this suit was initiated,

27 \_\_\_\_\_  
28 <sup>6</sup> Defendant admitted to certain facts in his First Amended Answer prior to its being stricken by the Court.



1 and alerted plaintiff Kemal Mehinovic that the person who had tortured Mehinovic in Bosnia was  
2 now here in the United States. (*Id.* at 97:19 – 102:6).

### 3 4 **III. THE PLAINTIFFS' ORDEALS**

5 16. All four plaintiffs are Muslim citizens of Bosnia and Herzegovina from the town of  
6 Bosanski Samac in northern Bosnia. Each were living normal lives as civilians when Serb military  
7 and paramilitary forces from Bosnia and elsewhere in the former Yugoslavia seized control of  
8 Bosanski Samac and the surrounding area on April 17, 1992. Though none of the plaintiffs were  
9 combatants in the armed conflict erupting at the time in the former Yugoslavia, each were  
10 subsequently detained for prolonged periods without charge, under inhumane conditions, and  
11 subjected by defendant Vukovic and others to severe beatings and other acts of cruelty and  
12 humiliation.

#### 13 **A. Kemal Mehinovic<sup>7</sup>**

14 17. Plaintiff Kemal Mehinovic is 42 years old, and was born and raised in the town of  
15 Bosanski Samac. He is married and has two children. He currently resides in Salt Lake City, Utah.

16 18. Mehinovic initially worked as a baker in Bosanski Samac at his father's bakery. In  
17 1981, he opened a restaurant with his brother. He also worked full time as an inspector in a boiler  
18 company, working in his restaurant in the evenings.

19 19. Mehinovic had known defendant Vukovic since the 1970's, and had personal ties to  
20 him. Vukovic had been a frequent customer in Mehinovic's father's bakery, and Vukovic's  
21 brother-in-law worked in the bakery. Vukovic's sister visited the bakery almost every day.  
22 Vukovic's wife, Mirsada, grew up a few block from Mehinovic's home, and Mehinovic had known  
23 her his entire life.

24 20. In the days after the Serb seizure of Bosanski Samac, Mehinovic was required to  
25 report to the Bosanski Samac police station, and was required to perform forced labor, digging

26  
27 <sup>7</sup> Proposed findings regarding plaintiff Mehinovic are based on Mehinovic's trial testimony at Trial  
28 Transcript, Oct. 22, 2001 (hereinafter Tr. Vol. I) at 12:10 – 25:20, and Tr. Vol. II at 56:14 – 79:13, except as otherwise  
or specially noted.

1 trenches at the front line for the Serbian forces. Mehinovic was issued a white strip of cloth by  
2 Serb police and required to wear it on his hand when moving about the town to identify himself as  
3 a non-Serb.

4 21. On May 27, 1992, Mehinovic was taken into custody at his home by two Serb  
5 policemen in military uniform. They had no arrest warrant, and did not advise him that he was  
6 charged with any offense. The policemen beat him on the steps of his house, and hit him with  
7 “brass knuckles.” Mehinovic was taken to the local police station.

8 22. When he arrived at the police station, Mehinovic saw defendant Vukovic in the  
9 station, wearing the same uniform worn by the policemen that arrested him and other Serb soldiers  
10 and guards at the station. Defendant told Mehinovic that he would “see him later.”

11 23. Mehinovic was taken into an interrogation room at the police station and was  
12 interrogated by Stevan Todorovic, the newly-installed Bosnian Serb Chief of Police,<sup>8</sup> and  
13 Todorovic’s bodyguards. Although Mehinovic was not involved in political activities, he had gone  
14 to school with the President of the local chapter of the leading Bosnian Muslim political party,  
15 known as the SDS, and Todorovic demanded information about the SDS and its leadership.  
16 Mehinovic was beaten with batons and then with a baseball bat. He was forced to spread his legs  
17 and was beaten on his genitals, being told, “You won’t be needing that anymore.” Mehinovic  
18 estimated this interrogation and torture session lasted two or three hours.

19 24. That evening, defendant Vukovic entered the interrogation room. Mehinovic was  
20 lying on the floor as a result of the previous beatings. Vukovic kicked him on the left side of his  
21 face, disfiguring Mehinovic’s face, and causing him to be unable to eat for 10 days. Vukovic also  
22 kicked him in the genitals and other parts of his body. As he carried out these beatings, Vukovic  
23 used a derogatory term about Muslims, and made remarks that Muslims were an “invented nation”  
24 and that they “don’t need to exist.” At one point, Vukovic forced Mehinovic to lick his own blood  
25

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26 <sup>8</sup> Todorovic was brought before the ICTY and pled guilty to a charge of “persecution” based on his admitted  
27 participation, while serving as Police Chief, in murder, sexual assaults, beatings, arbitrary detention, inhumane  
28 treatment, forced deportation, and other acts against non-Serb civilians in Bosanski Samac. *Todorovic*, Sentencing  
Judgment (Trial Chamber), ¶¶ 1-17, 34-48.

1 from the walls. Vukovic and others stood laughing as Mehinovic licked the blood. Mehinovic was  
2 in constant fear that night that he would be killed by Vukovic.

3 25. Mehinovic was kept in the police interrogation room for several days. Vukovic  
4 came to the interrogation room daily, and specifically sought out Mehinovic for beatings.  
5 Mehinovic testified that the beatings Vukovic inflicted on already injured areas were particularly  
6 painful.

7 26. During another interrogation session, Vukovic watched while police chief  
8 Todorovic tortured Mehinovic by dislocating Mehinovic's finger. He forced Mehinovic to place  
9 his hand on a table, palm up, and then hit Mehinovic's hand with the butt of a rifle, dislocating his  
10 finger and nearly causing him to lose consciousness from the pain. Vukovic stood laughing in the  
11 room with other guards during the incident. Mehinovic's hand was swollen for two to three  
12 months following the incident.

13 27. Mehinovic was later moved to a small room at the police station, approximately  
14 twenty-five square meters, that housed approximately thirty other people, all Muslims and Croats.  
15 He remained in that room at the police station for approximately three months. Each day he was  
16 fed just one slice of bread smeared with pork fat which he was forced to eat although it was against  
17 his religious principles. He was given water just once a day.

18 28. Vukovic also beat Mehinovic during his time in this cell. Vukovic called for  
19 Mehinovic one day at the entrance of the room. As Mehinovic reached the entrance after passing  
20 through the group of other detainees, Vukovic struck him hard on the back of the head with an  
21 object. Vukovic continued to beat him with a baton and kicked him in the ribs with his boots. This  
22 beating caused Mehinovic to scream with pain.

23 29. As a result of the repeated beatings and threat of beatings, Mehinovic began to  
24 involuntarily shake in fear at the thought that his name would again be called for a beating. While  
25 in this cell, Mehinovic was forced to clean up blood from victims of other beatings in the hallway  
26 outside, and on one occasion to carry away the body of a fellow detainee who died following a  
27 beating. Having to face these horrors caused Mehinovic extreme fear that he, too, would be killed.

28

1           30.     In or about August 1992, Mehinovic was transferred from the police station across  
2 the street to a warehouse, formerly used as a munitions warehouse for the Bosnian territorial  
3 defense units, or (“TO”) units. Mehinovic remained in the TO warehouse, detained with some 180  
4 other Muslim and Croat men, from August to November 1992.

5           31.     Mehinovic also endured beatings while held at the TO warehouse. He was beaten  
6 with baseball bats, metal pipes, and chair legs. On some occasions, he was tied up and hung  
7 against windows during beatings. During others, he was forced to lie on his stomach on the floor  
8 and beaten on the soles of his feet. His torturers would then humiliate him and cause further pain  
9 by forcing Mehinovic, after suffering beatings to the soles of his feet, to stand up and run around in  
10 circles.

11          32.     The prisoners at the TO warehouse were also subject to games of “Russian  
12 roulette.” In these games, prisoners were arranged in a circle, and a guard or soldier would spin his  
13 revolver on the floor. The guard or soldier would then shoot in the direction where it pointed.  
14 According to Mehinovic, Vukovic liked to play this game, and shot at Mehinovic on one occasion.  
15 Mehinovic was afraid he would be killed during the incident, but the bullet went above his head.  
16 Vukovic said, “Look at that, he’s so lucky, the bullet wouldn’t hit him.”

17          33.     Vukovic also participated in beatings during which three guards would take a  
18 number of the detainees to a yard outside and force them to run in a circle. The guards would then  
19 swing wooden planks at them as they ran by. They would be hit so hard that one blow made them  
20 fall to the ground in so much pain they were unable to get up. Mehinovic was subject to these  
21 beatings and humiliations.

22          34.     Mehinovic was transferred from the TO warehouse to a larger regional detention  
23 facility, or “concentration camp,” in November 1992. After performing forced labor in various  
24 camps and facilities for more than two years, Mehinovic finally was released in a prisoner  
25 exchange in Sarajevo on December 6, 1994, more than two and a half years after first being  
26 detained in Bosanski Samac.

27          35.     Mehinovic suffers from chronic and debilitating medical problems due to injuries  
28

1 received during his detention and abuse. He suffers from constant physical pain, and needs  
2 painkillers frequently. He suffers from anxiety, flashbacks and nightmares, and has difficulty  
3 sleeping. Mehinovic continues to suffer thinking about what happened to him during this ordeal,  
4 and has been unable to work as a result of the continuing effects of the torture he endured.

5 **B. Muhamed Bicic<sup>9</sup>**

6 36. Muhamed Bicic was born in Bosanski Samac on January 8, 1956, into one of the  
7 town's prominent Muslim families. Bicic co-owned a pizzeria, a gaming parlor, and a clothing  
8 boutique, along with his brother and brother's wife.

9 37. Bicic was also well acquainted with the defendant and his wife. Mrs. Vukovic  
10 worked as an assistant cook in Bicic's restaurant at one point in the 1980's. Vukovic's sister,  
11 Nada, lived across from the Bicic's pizzeria, and from time to time Bicic encountered Vukovic and  
12 his wife when they visited Nada. Bicic exchanged greetings with them on these occasions.

13 38. Bicic was the first of the plaintiffs to be detained following the April 17, 1992,  
14 occupation of Bosanski Samac. The following day, several police and soldiers broke into Bicic's  
15 home, beat him and his brother, and took them to the local police station. The policemen and  
16 soldiers did not present any arrest warrant.

17 39. At the police stations, soldiers and police repeatedly kicked and beat Bicic with a  
18 variety of objects, including batons, chair legs, and weapons. Later that evening, Bicic and a group  
19 of other Muslim and Croat men were who also had been detained and beaten were taken across the  
20 street to a small room in the TO warehouse, where plaintiff Mehinovic also was later held, as  
21 identified above.

22 40. Bicic was placed in the small room in the warehouse with as many as 50 other  
23 Muslim and Croat men from Bosanski Samac. Each day, members of the Serb paramilitary forces  
24 subjected the detainees to sadistic beatings with batons, chair legs, boots, and weapons, often in  
25 front of the other detainees. On one occasion, a detainee was beaten to death in front of Bicic and  
26 the other detainees. The victim's head was split open and he was shot twice.

---

27 <sup>9</sup> Proposed findings regarding plaintiff Bicic are based on Bicic's trial testimony at Tr. Vol. I at 26:16 – 50:12.  
28

1           41.     Bicic and his brother were singled out for beatings in particular because of their  
2 wealth and position in the community. Bicic was often beaten until he lost consciousness. The  
3 soldiers carrying out the beatings demanded gold and money. On one occasion, soldiers broke the  
4 fingers of Bicic's brother, while they beat and taunted Bicic, asking why he was not laughing while  
5 watching his brother being tortured.

6           42.     Some 8-10 days after being detained at the TO warehouse, Bicic and the other  
7 detainees from the warehouse, including plaintiffs Subasic and Hadzialijagic, were transported in  
8 military trucks to detention facilities in military barracks in the outlying region, first in Brcko, then  
9 Bijeljina.

10          43.     On March 13, 1992, the group was then returned to Bosanski Samac, and placed  
11 under guard in the gymnasium of the local elementary school. Bicic remained a detainee at the  
12 elementary school for the next three and a half months. At the school, Bicic and other detainees  
13 were beaten daily and nightly by guards and by local or visiting soldiers and paramilitary troops.

14          44.     While at the school, Bicic and other detainees observed defendant Vukovic and his  
15 wife and family regularly entering and leaving from a home adjacent to the school that had  
16 belonged to a Muslim family before the war. Bicic and other detainees determined that Vukovic  
17 and his family had occupied the house.

18          45.     Vukovic came to the elementary school at least once a week to participate in or  
19 oversee beatings of detainees. Vukovic beat Bicic on many occasions, and was present during  
20 other beatings he received. He often used a revolver that he always carried to strike Bicic and  
21 other detainees. In one instance, Vukovic ordered Bicic to get on all fours, while another soldier  
22 stood or rode on his back and beat him with a baton – a game the soldiers called “horse.” Vukovic  
23 also subjected Bicic and other detainees to games of “Russian roulette,” putting a bullet in his  
24 revolver and pulling the trigger while aiming at or just above the heads of the detainees. Bicic was  
25 afraid he would be shot and killed by Vukovic.

26          46.     Vukovic taunted Bicic and other detainees during these beatings with ethnic slurs,  
27 calling them “baliija,” an epithet for Muslims, and Muslim “Mothers.” Detainees, including Bicic,  
28

1 were often humiliated by being forced to sing Serbian songs while they or their fellow detainees  
2 were being beaten. Vukovic participated in this abuse.

3 47. On one evening, Vukovic along with a group of 10-15 soldiers came to the school  
4 and beat and forcibly extracted teeth from many of the detainees with pliers. Bicic was among the  
5 many victims of this incident. The soldiers dragged Bicic into a locker room in the gymnasium,  
6 forced him to the ground with his hands behind his back, stuck wooden instrument or objects into  
7 his mouth to keep his jaw open, and extracted several teeth with pliers.

8 48. Bicic suffered eight broken ribs during his detention, a broken nose and finger, and  
9 numerous scars on the head and elsewhere. He suffered internal injuries, as well, and urinated  
10 blood for over a month at one point. Each of these beatings caused Bicic to suffer immense pain,  
11 which lasted for days. While detained, Bicic lost well over half of his weight.

12 49. Today, Bicic continues to suffer from the beatings perpetrated by Vukovic and  
13 others. He feels severe pain and headaches, particularly when the weather changes. He suffers  
14 from anxiety, sleeps very little, and has frequent nightmares. At the same time, as a result of  
15 damage he suffered to his kidneys during his ordeal, doctors have advised him not take any  
16 sedatives. Bicic has found it impossible to return to work, and described his frustration at no  
17 longer feeling like a “normal person” able to sustain himself through work.

18 50. Bicic fled Bosnia with his wife and daughter after being released from detention,  
19 and currently lives as a refugee in Germany. He lost all his property and businesses in Bosanski  
20 Samac. He presently resides as a refugee in Germany.

21 **C. Safet Hadzialijagic<sup>10</sup>**

22 51. Safet Hadzialijagic also is a Bosanski Samac native. Before the war, he worked as  
23 the manager of the municipal water system in Bosanski Samac, and owned a mixed goods store.

24 52. Hadzialijagic was acquainted with Vukovic prior to the war from having seen him  
25 in the town, and knew Vukovic’s wife and sister.

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26  
27 <sup>10</sup> Proposed findings regarding plaintiff Hadzialijagic are based on his trial testimony at Tr. Vol. I at 50:25 –  
28 70:4.

1           53.     A few days after the Serbian occupation of Bosanski Samac, Hadzialijagic received  
2 a call from the newly-installed Bosnian Serb police chief Stevan Todorovic, and was told to report  
3 to the local police station to receive “instruction” on how to behave under the new government  
4 installed in the town. Although he feared trouble, a neighbor advised Hadzialijagic that it would be  
5 in his best interests to comply with the demand.

6           54.     Immediately upon his arrival at the police station, Todorovic hit Hadzialijagic twice  
7 in the head. Another soldier in police uniform then beat Hadzialijagic further, and took him to a  
8 cell at the station. At the police station, Hadzialijagic was subjected to further beatings and abuse.  
9 In one incident, his captors subjected him to a game of “Russian roulette,” placing a gun in his  
10 mouth and pulling the trigger twice before pointing away and shooting out a window.

11           55.     Hadzialijagic was then transferred to the TO warehouse, and to detention facilities  
12 in Brcko and Bijeljina, along with plaintiffs Bicic and Subasic and a group of other Muslim and  
13 Croat men from Bosanski Samac. On or about March 13, 1992, the group was brought back to  
14 Bosanski Samac, and held in detention at the local elementary school.

15           56.     Hadzialijagic and other captives were subjected to repeated daily beatings by  
16 guards, and by visiting soldiers, paramilitary forces, and policemen. The detainees were beaten  
17 with metal pipes, bats, sticks, and weapons. Detainees sometimes were awoken at night and  
18 beaten. The detainees were all kept together, so Hadzialijagic regularly saw or heard the screaming  
19 of others being beaten. Hadzialijagic also was a victim of the teeth-pulling incident already  
20 described, having five teeth forcibly extracted from his mouth with pliers. Two other teeth were so  
21 damaged and loosened in the incident that he removed them himself the same evening.  
22 Hadzialijagic’s tormentors routinely made defamatory statements against Muslims as they  
23 perpetrated these beatings. They would state that Muslims should be killed.

24           57.     Hadzialijagic was singled out by defendant Vukovic on one occasion and subjected  
25 by him to a particularly severe beating. On that day, Vukovic appeared with a group of three or  
26 four other soldiers. Vukovic was the leader. Vukovic ordered Hadzialijagic to kneel on his hands  
27 and knees, and then sat on his back. Hadzialijagic had to carry Vukovic across the gymnasium in  
28



1 this manner, carrying Vukovic like a horse and rider. While Vukovic rode Hadzialijagic like an  
2 animal, Vukovic hit him in the head and on his body with the handle of a knife, and the other  
3 soldiers kicked and hit him. If Hadzialijagic fell down, the soldiers forced him to get up and  
4 continue.

5 58. At one point, Vukovic and the other soldiers tied Hadzialijagic with a rope, hung  
6 him upside down, and beat him. When they noticed that Hadzialijagic was losing consciousness,  
7 they dunked his head in a bowl used as a toilet.

8 59. Hadzialijagic suffered numerous blows to his head and face in this incident. His  
9 face was deformed and bleeding, and the boots and uniforms of his captors were bloodied as well.  
10 At one point, Vukovic ordered Hadzialijagic to lick his blood off Vukovic's boots. As he tried to  
11 lick the blood, Vukovic kicked Hadzialijagic with the heel of his boot. Hadzialijagic thought he  
12 would be killed that day.

13 60. At the conclusion of this incident, Vukovic used his knife to cut a rude semicircle  
14 into Hadzialijagic's forehead, representing a crescent, a symbol of the Muslim faith. As he carved  
15 the crescent into Hadzialijagic's forehead, Vukovic called Hadzialijagic "balija," a defamatory  
16 term against Muslims, and stated that Muslims deserved such treatment. The crescent scar on  
17 Hadzialijagic's forehead is still visible today.

18 61. Hadzialijagic was severely injured during this incident, and went into cardiac arrest.  
19 He was saved by plaintiff Hasan Subasic, when guards gave Subasic permission to summon  
20 medical help from a nearby ambulance corps. Hadzialijagic suffered six broken ribs as a result of  
21 the beatings he suffered in this and other incidents in detention.

22 62. Following his ordeal in detention, Hadzialijagic fled to Belgium, where he currently  
23 resides. Hadzialijagic continues to suffer chronic pain throughout his body, and has frequent  
24 nightmares. He has had to use medication to help him sleep. His experience has made him feel  
25 depressed and reclusive, and he has not been able to work since he escaped from this ordeal.

1           **D. Hasan Subasic<sup>11</sup>**

2           63.     Plaintiff Hasan Subasic was born in Odzak, Bosnia, near Bosanski Samac. He was  
3 raised from the age of three in Bosanski Samac. He is married and has two children, and now  
4 resides in the United States.

5           64.     Subasic was detained on April 24, 1992, when four policemen with Serbian police  
6 insignia on their uniforms came to his home and told him that he had to come to the police station.  
7 They told Subasic he needed to give a statement, and that it should only take an hour or two. He  
8 felt he had no choice, and complied with their demand. After being questioned for an hour or two  
9 at the police station, he was not released, but rather placed in detention at the TO warehouse.

10          65.     Neither the police that arrested him, nor anyone at the police station, advised  
11 Subasic of any charges against him, showed him a warrant for his arrest, or advised him that he  
12 could see a lawyer. Subasic remained captive for some 26 months in various detention centers and  
13 labor camps. Subasic was just 24 years old when he was detained.

14          66.     At the TO warehouse, Subasic was detained in the same small room as plaintiffs  
15 Bicic and Hadzialijagic. When he first had an opportunity to see the faces of the other detainees,  
16 he had difficulty recognizing them at first as their faces were bruised, cut, and deformed from  
17 beatings. Subasic was detained for three days at the warehouse. While there, Subasic witnessed a  
18 variety of abuses and atrocities, including the brutal beating and murder of a fellow detainee less  
19 than a meter away from him. The victim was beaten with a chair leg until his head split open and  
20 brains spilled out on the floor. The victim was then taken outside and shot.

21          67.     At the warehouse, Subasic and other detainees were awakened and forced to sing  
22 Serb nationalist songs while guards and members of Serbian special police units beat them with  
23 weapons, pipes, and other instruments. They were hit on the head and in bony areas where it  
24 would hurt most.

25          68.     Subasic, along with co-plaintiffs Bicic and Hadzialijagic, was transferred from the  
26 warehouse to detention centers at Brcko and Bijeljina, and returned about two weeks later to

27 \_\_\_\_\_  
28           <sup>11</sup> Proposed findings regarding plaintiff Subasic are based on his trial testimony at Tr. Vol. I at 70:11 – 95:10.

1 Bosanski Samac. Upon his return, he also was held in detention at the elementary school  
2 gymnasium, where he was again subjected to frequent brutal beatings. Ironically, the school was  
3 the same school that he had attended as a youth.

4 69. Beatings took place throughout the day and night at the elementary school, with  
5 Serbian police, soldiers and Serbian civilians taking part in the abuse. Subasic often heard guards  
6 in an adjacent room scheduling forthcoming beatings, making arrangements as to the time of the  
7 next round of beatings, who they would take out of the gymnasium for beatings, how many victims  
8 or soldiers there would be, and how many new detainees were at the school. While at the  
9 elementary school, Subasic observed Vukovic on a number of occasions driving to and from the  
10 nearby home that had belonged before the war to a Muslim family.

11 70. Subasic was routinely beaten at the elementary school. On one occasion, Subasic  
12 was forced to kneel and spread his arms in front of him while encircled by three or four guards.  
13 The guards hit and kicked him, breaking three ribs and leaving him virtually immobile for three  
14 days because of his injuries and pain. Subasic felt that he was in imminent danger of death at all  
15 times while detained at the school.<sup>12</sup>

16 71. Subasic too was a victim of the teeth-pulling incident. On that night, he was taken  
17 out into a hallway by guards, kicked, beaten and forced to open his mouth. Guards forcibly  
18 extracted four of Subasic's teeth.

19 72. Subasic and his fellow Muslim detainees also were subjected to other humiliations  
20 based on their religion. In one incident, they were forced to kneel for twenty hours straight as if  
21 engaging in Muslim prayer. Subasic was often beaten in the genitalia, with guards making  
22 comments that that this would prevent any more Muslim children from being born. The only food  
23 made available was a small amount of bread smeared with pork fat. It was well known to the  
24 guards that it was against the Muslim religion to eat pork.

25 73. Subasic had seen defendant Vukovic in Bosanski Samac prior to the war, and so  
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27 <sup>12</sup> Police Chief Todorovic admitted to participating in repeated beatings against Bicic, among others, at the  
28 elementary school and TO warehouse. *Todorovic*, Sentencing Judgment (Trial Chamber), ¶¶ 9, 41.

1 recognized him when he came to the elementary school. Subasic was directly beaten by Vukovic  
2 on two occasions. On both occasions, Vukovic punched him and kicked him with his military  
3 boots. On at least one occasion, Subasic had been forced into a kneeling position when Vukovic  
4 kicked him in the stomach. These beatings caused Subasic to lose his breath, and to suffer severe  
5 physical and emotional pain. Subasic stated that these beatings caused him to fear for his life, and  
6 made him feel like “less than an animal.” Subasic described that his mental anguish was as strong  
7 as his physical pain, as he felt helpless at being unable to defend himself.

8           74. Subasic also witnessed Vukovic brutalize plaintiffs Bicic and Hadzialijagic.  
9 Subasic remembers in particular the incident in which Vukovic carried out a severe beating of  
10 plaintiff Hadzialijagic, described above, because it was so extreme. Subasic testified that he felt  
11 anguish that is impossible to describe being forced to observe his fellow detainee being subject to  
12 such abuse. Indeed, Subasic appealed to a guard to get an ambulance for Hadzialijagic, who had  
13 been gravely injured from the beatings. Subasic was told the radio did not work, and was given  
14 permission to run down the street to summon medical help. Subasic felt he was risking his life in  
15 doing so, as he believed he could have been shot by a Serb policeman or soldier mistaking him for  
16 an escaped prisoner.

17           75. Subasic was taken from the school to the TO warehouse, where he was kept for  
18 approximately one and a half months. He was then transferred to the Batkovic camp and was  
19 eventually released in a prisoner exchange in 1994.

20           76. Subasic felt particular anguish at being separated from his family during his long  
21 detention. He worried that he may never see his newborn daughter again. His daughter was two  
22 months old when Subasic was first detained. When he was first reunited with his family after some  
23 26 months in detention, his daughter was just two years old, and would run away from him when  
24 left alone with him because he seemed to be a stranger.

25           77. As a result of his detention, Subasic lost approximately half of his body weight. He  
26 continues to suffer intense pain in his mouth as a result of the teeth extraction on occasion, and in  
27 his ribs, joints, stomach, and hands as a result of the repeated beatings he endured. He endures  
28

1 flashbacks and nightmares, suffers from nervousness, angers easily, and has difficulty trusting  
2 people. These effects directly impact and interfere with his ability to work.

3  
4 **IV. “ETHNIC CLEANSING” -- THE CONTEXT OF DEFENDANT’S**  
5 **ACTIONS<sup>13</sup>**

6 78. The abuses committed by defendant Vukovic against plaintiffs were not isolated  
7 incidents, but rather took place within the context of the campaign by Bosnian Serb and Serbian  
8 military and political forces to “cleanse” broad areas of Bosnia of its Muslim and Croat population  
9 through terror, mass displacement, detention, and murder.

10 79. “Ethnic cleansing” was the means by which nationalist Serb leaders sought to create  
11 a contiguous ethnically-pure Serb territory throughout the ethnically-mixed areas bordering the  
12 Serbian republic, including Bosnia and Croatia. Serb leaders and the Serbian-controlled media  
13 increasingly promoted this vision of a “Greater Serbia” in the early 1990’s, and fomented fear and  
14 hatred of Muslims and Croats. In the early 1990s there were rallies that advocated and promoted  
15 these views, with Serbian leaders in attendance. (Paul P.T. ¶¶ 13-15). By 1992, some Bosnian  
16 Serb leaders openly advocated measures to rid ethnically-mixed areas of non-Serbs, including  
17 pressure and terror tactics, deportation, and liquidation.<sup>14</sup>

18 80. Within weeks of the outset of armed attacks by Bosnian Serb and Serb forces in  
19 Bosnia, Bosnian Serbs maintained control over at least half of the territory of the former republic.  
20 The ethnic cleansing campaign was carried out throughout these Serb-controlled areas of Bosnia,  
21 and affected the entire Balkans region. (Paul, Tr. Vol. II at 30:5 – 31:16). According to our own

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22 <sup>13</sup> As with the Background section above, while citations to findings relating to the Serb “ethnic cleansing” are  
23 largely to the testimony of expert witness Diane Paul, additional citations are provided where necessary or helpful to  
24 documents introduced into evidence, and to decisions of the ICTY. In addition to the ICTY’s *Tadic* decision, cited  
25 above, the following documents in evidence also provide authoritative descriptions of the outlines of the “ethnic  
26 cleansing” campaign which supports the factual statements herein: U.S. Dept. of State, *Country Report on Human*  
27 *Rights Practices for 1992, Bosnia-Herzegovina*, at 719-730, Plaintiffs’ Exhibit 22; the Final Report of the Commission  
28 of Experts Established Pursuant to Security Council Resolution 780 (1992) (hereinafter “U.N. Comm’n of Experts”),  
Plaintiff’s Exhibit 20, and Annexes IV (“The Policy of Ethnic Cleansing”) and VIII (“Prison Camps”) thereto. See  
Paul, Tr. Vol. II at 6:13-19 (noting reliability and credibility of the Commission’s Report). Both Report and Annexes  
are available at <http://www.ess.uwe.ac.uk/comexpert/>. See also HELSINKI WATCH, HUMAN RIGHTS WATCH, WAR  
CRIMES IN BOSNIA-HERCEGOVINA I-II (1992).

<sup>14</sup> *Tadic*, Opinion and Judgment (Trial Chamber), ¶ 89.

1 Department of State, by the end of 1992 an estimated one half of the entire Bosnian Muslim  
2 population had been displaced. (Paul P.T. ¶ 102).<sup>15</sup> Hundreds of thousands of refugees streamed  
3 into Croatia and other neighboring areas. (Paul P.T. ¶ 99).

4 81. The extent of the campaign can be measured by its results and aftermath. In the  
5 Bosanski Krajina region of northwest Bosnia, for example, the non-Serb population prior to the  
6 ethnic cleansing campaign was 536,000. It is estimated that fewer than 20,000, or just 3.7 percent,  
7 remained as of 1995. Prior to the Serb takeover of Bosanski Samac, the population of the town and  
8 surrounding area was 33,000, divided almost equally between Serb and non-Serb groups. After the  
9 ethnic cleansing, less than 2 percent (300) of the pre-war non-Serb population of 17,000 remained.  
10 (Paul, Tr. Vol. II at 44:12 – 45:5; Paul P.T. ¶ 41).

11 82. The ethnic cleansing campaign was plainly carried out by design, and with the  
12 coordination of political and military leaders in all the territories brought under Bosnian Serb  
13 control. Through actions such as the creation of a separate Bosnian Serb assembly, the  
14 establishment of Serb-controlled local crisis committees and regional quasi-governmental bodies  
15 ready to seize control of governmental functions, and seizures of the territorial defense weapons  
16 stockpiles, already outlined above, Bosnian Serbs and Serbia laid the groundwork to begin and  
17 quickly implement ethnic cleansing with the commencement of military and paramilitary  
18 operations in Bosnia. .” (Paul, Tr. Vol. II at 7:15 – 17:12; Paul P.T. ¶¶ 28-34).

19 83. The rapidity with which Bosnian Serbs assumed control of government functions  
20 and began carrying out initial stages of ethnic cleansing evidences significant advance planning.  
21 (Paul Tr. Vol. II at 16:16 – 17:12). Plaintiffs testified that Bosnian Serb civilians became police  
22 officers overnight: some of the plaintiffs were arrested in the days following the April 17, 1992,  
23 occupation of Bosanski Samac by Bosnian Serbs in police uniform who had been civilians prior to  
24 April 17. Stevan Todorovic, who has pled guilty at the ICTY to the grave crime of persecution of  
25 non-Serbs in Bosanski Samac, served as a member of the town’s Serb “Crisis Committee” and was  
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27 <sup>15</sup> U.S. Dept. of State, *Country Report on Human Rights Practices for 1992*, Bosnia-Herzegovina, at 724-25,  
28 Plaintiffs’ Exhibit 22.

1 installed as the Bosnian Serb police chief at or around the time of the attack.<sup>16</sup>

2 84. Carrying out the ethnic cleansing campaign with such speed and on such a massive  
3 scale also required a high degree of coordination between Bosnian Serb military and political  
4 authorities, as well with Serbia and its political, military, and paramilitary forces. Orders relating  
5 to ethnic cleansing operations were sent from the Bosnian Serb government and channeled through  
6 the crisis committees and the new Serb-controlled governments. The committees worked together  
7 with military and paramilitary forces to carry out ethnic cleansing operations, and in some cases  
8 even hired paramilitary forces to attack towns or outlying villages. (Paul, Tr. Vol. II at 8:13 –  
9 11:12; 15:7 – 18:15).

10 85. Ethnic cleansing operations were coordinated across borders, as well. The  
11 Serb-controlled JNA supplied arms and heavy weapons to Bosnian Serb paramilitary and military  
12 forces, and Serbian paramilitary forces participated in joint actions with Bosnian Serb forces in  
13 seizing control of Bosnian territory and displacing the non-Serb population. Notoriously violent  
14 Serbian paramilitaries, themselves supported by the JNA, operated freely in these areas, including  
15 in Bosanski Samac. (Id. at 7:13 – 18:2; Paul P.T. ¶ 47-48).

16 86. As has been extensively documented by international bodies, human rights  
17 organizations, and other bodies, ethnic cleansing also followed a distinct pattern and practice.  
18 Typically, a town or village was attacked with heavy weaponry and artillery, despite the fact that in  
19 most areas, there was little or no resistance by non-Serb forces. In multi-ethnic towns, non-Serb  
20 neighborhoods were targeted. Many Muslim villages were simply destroyed in total. These  
21 attacks were designed to terrorize and displace the Muslim population. As there was little or no  
22 military resistance, these attacks were not part of a military campaign, but were rather ethnic  
23 cleansing operations directed against civilians and civilian objects. (Paul, Tr. Vol. II at 13:19 –  
24 21:6; Paul. P.T. ¶¶ 46-49).

25 87. Following these initial attacks, non-Serb men were detained, and in some cases,  
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27 <sup>16</sup> Todorovic admitted to being designated Chief of Police beginning March 28, 1992, a few weeks prior to the  
28 April 17, 1992, takeover of Bosanski Samac. *Todorovic*, Sentencing Judgment (Trial Chamber), ¶ 60.

1 executed. Political and business leaders typically were rounded up first, followed by others. (Paul,  
2 Tr. Vol. II at 21:8 – 22:17; Paul P.T. ¶¶ 50-62). Indeed, plaintiffs Bicic and Hadzialijagic,  
3 prominent business and government figures in Bosanski Samac, were the first of plaintiffs to be  
4 detained there after the town was seized.

5 88. Those who did not flee, or who were not killed, became victims of other practices  
6 designed to further ethnic cleansing. Both in and outside of detention facilities, non-Serbs  
7 commonly were subject to rape and other forms of sexual assault and humiliation. Those in  
8 detention and those remaining in towns and villages often were required to perform forced labor –  
9 often dangerous or arduous tasks such as digging trenches in areas on the front lines of fighting, or  
10 working in fields for long hours with only bare hands. In some areas, civilians, especially women  
11 and children, were confined to ghetto villages. Some were forced out of their homes and bused to  
12 border areas. (Paul, Tr. Vol. II at 22:17 – 35:21; Paul P.T. ¶¶ 63-77). The Bosnian Serb police  
13 chief Todorovic admitted to participating in such forcible transfers in Bosanski Samac.<sup>17</sup>

14 89. Throughout areas brought under Serb control, Serb forces plundered, destroyed, or  
15 expropriated homes and businesses of Muslims and Croats.<sup>18</sup> In some areas, military forces  
16 methodically shot artillery at each Muslim home, one by one, systematically destroying the houses  
17 for no tactical reason. Particularly in mixed areas in the towns, many non-Serb homes were taken  
18 over by Serb families or soldiers after their non-Serb owners were killed or forced out. (Paul, Tr.  
19 Vol. II at 25:16 – 27:16, 35:4-21; Paul P.T. ¶¶ 78-84). As noted above, for example, defendant  
20 Vukovic apparently occupied the home of a Muslim family close to the elementary school.

21 90. Religious leaders also were targeted for repression, and places of worship  
22 systematically demolished. The destruction of non-Serb religious property was so complete that  
23 today, just one mosque remains in all of the present-day Republica Srpska out of the more than 600  
24 that existed prior to the war. In Bosanski Samac, the central mosque and church both were leveled,  
25

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26 <sup>17</sup> *Todorovic*, Sentencing Judgment (Trial Chamber), ¶ 45.

27 <sup>18</sup> According to the ICTY, Bosanski Samac was subject to “plunder and looting” by Serbs; Todorovic also  
28 admitted to participating in these activities. *Id.* ¶ 47.



1 and the rubble removed to a dump site outside of town. The sites are now just empty lots covered  
2 with weeds. (Paul, Tr. Vol. II at 21:8 – 22:17, 40:25 – 44:10; Paul P.T. ¶¶ 85-87).

3 91. Detention of non-Serb men, and the terrorization of detainees, was a salient feature  
4 of ethnic cleansing. The U.N. Commission of Experts identified over 300 Serb-controlled  
5 detention facilities in more than 90 municipalities in Bosnia, all holding predominantly Muslim and  
6 Croat draft age males.<sup>19</sup>

7 92. The detention of large numbers of non-Serb males furthered ethnic cleansing by  
8 facilitating control of the non-Serb population. Additionally, although detainees technically  
9 remained in the Serb-controlled areas, Serb intentions were eventually to force detainees out of  
10 Bosnia as detainees appear to have been held largely as “bargaining chips” to be exchanged later  
11 for Serb prisoners held by Croatia or Bosnia. Each of the plaintiffs, for example, were released in  
12 exchanges that, while securing their freedom, left them far from their homes in Bosnia. Detainees  
13 were routinely terrorized, murdered, tortured, raped, and humiliated, serving the ethnic cleansing  
14 campaign by causing detainees to fear returning to their home towns following their release. (Paul,  
15 Tr. Vol. II at 31:14 - 35:3; Paul P.T. ¶¶ 52-62).

16 93. Milosevic’s Serbia and the separatist Bosnian Serb leadership met with considerable  
17 success in their objective of creating an ethnically pure Serbian territory in Bosnia. As indicated  
18 above, less than five percent of the original Muslim and Croat populations remain in most areas  
19 subject to the ethnic cleansing campaign. Under the 1995 Dayton Agreement, approximately one  
20 half of the former territory of Bosnia and Herzegovina remains under the administration and  
21 control of the Bosnian Serb leadership. Bosanski Samac itself is just one of many areas now part  
22 of the Bosnian Serb Republica Srpska. (Paul, Tr. Vol. II at 45:6 – 46:3; Paul P.T. ¶ 43, 109-112).

23 94. Conditions in Bosnian Serb-controlled areas of Bosnia remain hostile to non-Serbs,  
24 and to any attempt by victims of “ethnic cleansing” to seek justice in these areas. Many Bosnian  
25 Serbs who allegedly took part in the abuses described above remain in positions of leadership.  
26 There has been little or no effort within the Republica Srpska to bring those responsible for war

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27 <sup>19</sup> See U.N. Comm’n of Experts, Annex VIII, at Part C.  
28

1 crimes and crimes against humanity to justice. Evidence before the court suggests that not one  
2 alleged war criminal has been prosecuted in the Republica Srpska. Bosnian Serb authorities have  
3 resisted efforts to investigate ethnically-motivated crimes allegedly perpetrated by Bosnian Serbs.  
4 (Paul, Tr. Vol. II at 45:18 – 46:22; 49:15 – 50:18; Paul P.T. ¶¶ 104-16). As the U.S. State  
5 Department noted in its 1998 report on human rights practices in Bosnia and Herzegovina, courts  
6 in Republic Srpska were reluctant or unwilling to try cases of human rights abuses referred to  
7 them.<sup>20</sup>

## 8 9 **CONCLUSIONS OF LAW**

10 Plaintiffs bring these claims under the Alien Tort Claims Act (“ATCA”), the  
11 Torture Victim Protection Act (“TVPA”) and the laws of the State of Georgia and of Bosnia and  
12 Herzegovina.

### 13 **V. JURISDICTION**

14 This Court has jurisdiction over plaintiffs’ federal claims under the Alien Tort  
15 Claims Act (“ATCA”), the Torture Victim Protection Act (“TVPA”) and 28 U.S.C. § 1331, and  
16 supplemental jurisdiction over plaintiffs’ related state law claims under 28 U.S.C. § 1367.  
17 *Abebe-Jira v. Negewo*, 72 F.3d 844, 847 (11th Cir. 1996), *cert. denied*, 519 U.S. 830 (1996); *Kadic*  
18 *v. Karadzic*, 70 F.3d 232, 246 (2d Cir. 1995), *cert. denied*, 518 U.S. 1005 (1996).

### 19 **VI. PLAINTIFFS’ ATCA AND TVPA CLAIMS**

20 The ATCA provides:

21 The district courts shall have original jurisdiction of any civil  
22 action by an alien for a tort only, committed in violation of the law  
of nations or a treaty of the United States.

23 The United States Court of Appeals for the Eleventh Circuit has held that the ATCA  
24 provides a federal remedy when (1) an alien sues (2) for a tort (3) committed in violation of the law  
25 of nations. *Abebe-Jira*, 72 F.3d at 846-48. As all four plaintiffs are aliens and sue in tort, they

26  
27 \_\_\_\_\_  
<sup>20</sup> U.S. Dept. of State, *Country Report on Human Rights Practices for 1998*, Bosnia-Herzegovina, at 9,  
28 Plaintiffs’ Exhibit 28.

1 clearly meet the first two elements of an ATCA claim.

2 As to the third criterion, conduct violates the “law of nations” if it contravenes  
3 “well-established, universally recognized norms of international law.” *Kadic*, 70 F.3d at 239  
4 (citing *Filartiga v. Pena-Irala*, 630 F.2d 876, 888 (2d Cir. 1980)). To be actionable under the  
5 ATCA, these norms must be “specific, universal and obligatory.” *Alvarez-Machain v. United*  
6 *States*, 266 F.3d 1045, 1050 (9th Cir. 2001).<sup>21</sup>

7 United States courts may ascertain contemporary norms of customary international  
8 law by “consulting the works of jurists, writing professedly on public law; or by the general usage  
9 and practice of nations; or by judicial decisions recognizing and enforcing that law.” *Kadic*, 70  
10 F.3d at 238 (quoting *Filartiga*, 630 F.2d at 880, in turn quoting *United States v. Smith*, 18 U.S. (5  
11 Wheat.) 153, 160-61 (1820)). Among various contemporary sources, the statutes of the  
12 International Criminal Tribunal for the Former Yugoslavia (“ICTY”) and International Criminal  
13 Tribunal for Rwanda (“ICTR”) and recent opinions of these Tribunals are particularly relevant.<sup>22</sup>  
14 The United States has explicitly endorsed the approach of the ICTY Statute and the convening of  
15 the Tribunal.<sup>23</sup>

16 Plaintiffs have shown, as to each of them individually, that defendant Vukovic  
17 committed the following violations of customary international law which confer jurisdiction, and  
18 liability, under the ATCA: Torture, Cruel, Inhuman or Degrading Treatment; Arbitrary Detention,  
19

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20 <sup>21</sup> Although a *jus cogens* violation satisfies the ‘specific, universal and obligatory’ standard, it is not necessary  
21 to prove a *jus cogens* violation to show a violation of customary international law, and therefore a claim under the  
22 ATCA. *Alvarez*, 266 F.3d at 1049-50.

23 <sup>22</sup> The Tribunals are only empowered to apply international humanitarian law that is “beyond any doubt  
24 customary law.” *Tadic*, Opinion and Judgment (Trial Chamber), ¶ 662 (citing Report of the Secretary General  
25 Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), U.N. Doc. S/25704, ¶ 34); see Statute of the  
26 International Tribunal for Rwanda (“ICTR Statute”) art. 1 (Tribunal “shall have the power to prosecute persons  
27 responsible for serious violations of international humanitarian law”), available at <http://www.ictt.org>.

28 <sup>23</sup> See United Nations Security Council Resolution 827 (1993) reaffirming United Nations Security Council  
Resolution 713 (1991) and approving the Report of the Secretary General (S-25T04 and Add. 1) made pursuant to  
paragraph 2 of United Nations Security Council Resolution 808 (1993); see *Tachiona v. Mugabe*, 169 F. Supp. 2d. 259,  
280 (S.D.N.Y. 2001) (“The Yugoslavia and Rwandan Tribunals, though creatures of U.N. Security Council resolutions,  
both have been legitimized, by way of implementing legislation, as playing an important role in the legal machinery of  
the United States for the Tribunals’ specified purposes. . . . As such, the Tribunals bear the imprimatur of both  
international consensus and domestic implementing legislation.”) (citation omitted).

1 War Crimes, Crimes Against Humanity, and Genocide.

2 **A. Torture**

3 **1. ATCA**

4 United States courts presented with the issue have unanimously recognized that  
5 official torture violates obligatory norms of customary international law and is thus actionable  
6 under the ATCA.<sup>24</sup> The prohibition of torture under customary international law is evidenced.  
7 among other things, by specific prohibitions on its use in numerous international human rights  
8 treaties.<sup>25</sup> The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or  
9 Punishment, Article 1, defines torture as:

10 any act by which severe pain or suffering, whether physical or  
11 mental, is intentionally inflicted on a person for such purposes as  
12 obtaining from him or a third person information or a confession,  
13 punishing him for an act he or a third person has committed or is  
14 suspected of having committed, or intimidating or coercing him or a  
15 third person, or for any reason based on discrimination of any kind,  
16 when pain or suffering is inflicted by or at the instigation of or with  
17 the consent or acquiescence of a public official or other person

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18 <sup>24</sup> See, e.g., *In re Estate of Marcos Human Rights Litigation*, 25 F.3d 1467, 1475 (9th Cir. 1994) (noting that  
19 torture violates “specific, universal and obligatory standard” of international law); *Siderman de Blake v. Republic of*  
20 *Argentina*, 965 F.2d 699, 717 (9th Cir. 1992) (finding that the prohibition against official torture has attained status of  
21 *jus cogens* norm); *Filartiga*, 630 F.2d at 876 (holding that former Inspector General of Police in Asuncion, Paraguay,  
22 could be held liable under the ATCA for the torture and consequent death of a seventeen-year old boy); *Mushikiwabo*  
23 *v. Barayagwiza*, 1996 WL 164496 (S.D.N.Y. April 9, 1996) (finding Rwandan Hutu leader liable for torture and  
24 summary execution committed as part of the genocidal campaign); *Paul v. Avril*, 901 F. Supp. 330, 335 (S.D. Fla.  
25 1994) (finding former military leader of Haiti liable under the ATCA for torture of six Haitian citizens by soldiers  
26 under his command and control); *Xuncax v. Gramajo*, 886 F. Supp. 162, 184 (D. Mass 1995) (“Numerous federal court  
27 decisions and an ever-growing number of international agreements and conventions have established beyond question  
28 that the use of official torture is strictly prohibited by the most fundamental principles of international law.”); *Forti v.*  
*Suarez-Mason*, 672 F. Supp. 1531 (N.D. Cal 1987).

<sup>25</sup> See, e.g., Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, at 71, art. 5, U.N.  
Doc. A/810 (1948) (“No one shall be subjected to torture. . . .”) [hereinafter “Universal Declaration”]; S. Rep. No. 249-  
102, at 3 (1991) (“Official torture and summary execution violate standards accepted by virtually every nation. This  
universal consensus condemning these practices has assumed the status of customary international law.”); Convention  
Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 39 U.N. GAOR,  
Supp. No. 51, at 197, U.N. Doc A/39/51 (Dec. 10, 1984) (entered into force June 26, 1987) (ratified by the United  
States Oct. 21, 1994) [hereinafter “Torture Convention”]; International Covenant on Civil and Political Rights, G.A.  
Res. 2200 A (xx1), 21 U.N. GAOR, Supp. No.16, at 52, art. 7, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 717 (Dec. 16,  
1966) (entered into force Mar. 23, 1976) (ratified by the United States Sept. 1992) [hereinafter “ICCPR”]; European  
Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Nov. 26, 1987, 27  
I.L.M. 1154 (entered into force Feb. 1, 1989); European Convention for the Protection of Human Rights and  
Fundamental Freedoms, Nov. 4, 1950, art. 3, 213 U.N.T.S. 222 (entered into force Sept. 3, 1953) [hereinafter  
“European Convention”].

1 acting in an official capacity.<sup>26</sup>

2 Plaintiffs have each established that defendant Vukovic was responsible for torture  
3 against them as defined under international law.

4 The incidents identified in the findings above demonstrate that defendant Vukovic  
5 perpetrated or was complicit in, severe beatings against each plaintiff which caused each plaintiff  
6 severe physical pain and suffering:

- 7 • Vukovic’s beatings against plaintiff Mehinovic at both the police station and the *TO*  
8 warehouse included kicks and blows to the face, genitals, and other areas. These  
9 beatings disfigured Mehinovic and may have broken his ribs, and caused him nearly to  
10 lose consciousness, to be unable to eat. Vukovic also was present during, and took  
11 pleasure in, a torture session led by police chief Todorovic in which Todorovic broke  
12 Mehinovic’s finger.
- 13 • Vukovic beat plaintiff Bicic repeatedly on numerous occasions, using revolvers, rifles,  
14 and other instruments. On one occasion, Vukovic presided over a beating during which  
15 another soldier rode on Bicic’s back and hit him on the head with a baton during a game  
16 of “horse.” Plaintiff Bicic identified Vukovic as one of the participants in the  
17 teeth-pulling incident at the elementary school.
- 18 • Plaintiff Hadzialijagic also suffered many beatings at Vukovic’s hands, including a long  
19 and nightmarish beating that included being hit while hanging upside down from a rope  
20 until he almost lost consciousness, and being kicked in the face and torso while  
21 kneeling or lying on the ground. Vukovic apparently nearly killed Hadzialijagic during  
22 this incident.
- 23 • Vukovic hit plaintiff Subasic and kicked him in the stomach with his military boots and  
24 while Subasic was forced into a kneeling position, causing Subasic to suffer severe  
25 pain.

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26  
27 <sup>26</sup> This definition is substantially similar to the definition used in the TVPA, which legislation is intended to  
28 “carry out the intent” of the Torture Convention. S. Rep. No. 249-102, at 3.

1 Vukovic also caused or participated in the plaintiffs' mental torture. Mental torture  
2 consists of "prolonged mental harm caused by or resulting from: the intentional infliction or  
3 threatened infliction of severe physical pain or suffering; ... the threat of imminent death; or the  
4 threat that another person will imminently be subjected to death, [or] severe physical pain or  
5 suffering." As set out above, plaintiffs noted in their testimony that they feared that they would be  
6 killed by Vukovic during the beatings he inflicted or during games of "Russian roulette." Each  
7 plaintiff continues to suffer long-term psychological harm as a result of the ordeals they suffered at  
8 the hands of defendant and others.

9 Plaintiffs have shown that defendant Vukovic acted with the intent required to  
10 establish that his acts constituted torture. Vukovic's anti-Muslim statements, and the entire context  
11 in which the beatings occurred, evidence the fact that the defendant beat and threatened plaintiffs  
12 for discriminatory reasons.<sup>27</sup> Plaintiffs have also established that the acts of defendant Vukovic  
13 were carried out with the intent of intimidating or terrorizing them because of their ethnicity  
14 pursuant to the Bosnian Serb government's campaign of ethnic cleansing.

15 Finally, the beatings carried out by Vukovic and his accomplices clearly  
16 perpetrated, instigated, and acquiesced in, by persons acting in an official capacity as part of the  
17 police or military forces of *Republika Srpska*.<sup>28</sup> Vukovic himself was a soldier in a unit tied to and  
18 supported by the Bosnian Serb and Serbian governments. He often carried out beatings with other  
19 soldiers. The beatings inflicted by Vukovic all were committed in official or designated detention  
20 facilities, guarded by Bosnian Serb or Serbian police or soldiers. Without their permission or  
21 acquiescence, and of those in the political and military hierarchy above him, Vukovic could not  
22 have perpetrated abuses against plaintiffs. Plaintiff Subasic described frequently hearing guards  
23 scheduling beatings in advance. The fact that the beatings carried out by Vukovic and others were

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24  
25 <sup>27</sup> The ICTY has held with respect to the interpretation of the Torture Convention: "there is no requirement  
26 that the conduct must be solely perpetrated for a prohibited purpose. Thus, in order for this requirement to be met, the  
27 prohibited purpose must simply be part of the motivation behind the conduct and need not be the predominating or sole  
28 purpose." ICTY, *Prosecutor v. Delalic*, Case No. IT-96-21, Judgment (Trial Chamber II, November 16, 1998), ¶ 470,  
at Tab 4 of ICTY App.

<sup>28</sup> Officials purporting to act for *Republika Srpska* may be considered to have acted in an official capacity in  
light of its *de facto* governing authority. See *Kadic*, 70 F.3d at 244-45.

1 routine, daily occurrences at these facilities also indicates that the beatings were, in fact, ordered,  
2 authorized, and perpetrated as part and parcel of official policy.

3 For these reasons, defendant Vukovic is liable for torture under the ATCA.

## 4 2. TVPA

5 The Torture Victim Protection Act (“TVPA”),<sup>29</sup> also provides a cause of action for  
6 official torture. The TVPA provides, in relevant part:

7 An individual who, under actual or apparent authority, or color of  
8 law, of any foreign nation—(1) subjects an individual to torture  
shall, in a civil action, be liable for damages to that individual[.]

9 28 U.S.C. 1350 note, at § 1.

10 As set out in the section above, defendant Vukovic clearly committed abuses against  
11 plaintiff under official authority. In light of the *de facto* governmental authority of the *Republika*  
12 *Srpska*, under which Vukovic served as a soldier, and the control exerted over it by the Serbian  
13 government, Vukovic may be considered also to have been acting under the authority of a “foreign  
14 nation.”<sup>30</sup> Additionally, as the definition of torture under the TVPA closely follows the definition  
15 of torture under the Torture Convention in all relevant respects,<sup>31</sup> for the same reasons as above,  
16 Vukovic’s actions also constitute torture under the TVPA. Accordingly, defendant Vukovic also is  
17 liable to plaintiffs for torture under the TVPA.<sup>32</sup>

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18 <sup>29</sup> Torture Victim Protection Act of 1991, Pub. L .No. 102-256, 106 Stat. 73, codified at 28 U.S.C. § 1350  
19 note.

20 <sup>30</sup> See *Kadic*, 70 F.3d at 244-46 (“customary international law of human rights, such as the proscription of  
official torture, applies to states without distinction between recognized and unrecognized states”); ICTY, *Prosecutor*  
*v. Tadic*, Case No. IT-94-1, Judgment (Appeals Chamber, July 15, 1999), ¶¶ 82-162, at Tab 6 of ICTY App.

21 <sup>31</sup> The TVPA defines torture as:

22 “[A]ny act, directed against an individual in the offender’s custody or physical control, by  
23 which severe pain or suffering (other than pain or suffering arising only from or inherent in,  
24 or incidental to, lawful sanctions), whether physical or mental, is intentionally inflicted on  
25 that individual for such purposes as obtaining from that individual or a third person  
information or a confession, punishing that individual for an act that individual or a third  
person has committed or is suspected of having committed, intimidating or coercing that  
individual or a third person, or for any reason based on discrimination of any kind[.]

26 TVPA, § 3(b).

27 <sup>32</sup> While the TVPA requires a plaintiff to exhaust “adequate and available” remedies in the country where the  
conduct occurred, TVPA, at § 3, the burden is on defendant to raise non-exhaustion. *Hilao v. Estate of Marcos*, 103  
28 F.3d 767, 778, n.5 (9th Cir. 1996) (citing S.Rep. No. 249-102, at 9-10). Defendant has not met that burden here. Even  
if the exhaustion requirement were applicable, testimony by plaintiffs’ expert Diane Paul and other documentation in

1                   **B.      Cruel, Inhuman and Degrading Treatment**

2                   Cruel, inhuman, or degrading treatment (“CIDT”) is a discrete and well-recognized  
3 violation of customary international law and is, therefore, a separate ground for liability under the  
4 ATCA. *Abebe-Jira*, 72 F.3d at 847; *Cabello v. Fernandez-Larios*, 157 F. Supp 2d. 1345, 1362  
5 (S.D. Fla. 2001); *Xuncax*, 886 F. Supp. at 187. In particular, the Eleventh Circuit and other courts  
6 have recognized CIDT as a violation of customary international law, at least to the extent that the  
7 conduct also would be prohibited by the Fifth, Eighth, and/or Fourteenth amendments to the U.S.  
8 Constitution. *Abebe-Jira*, 72 F.3d at 847; *Cabello*, 157 F. Supp. at 1362; *Paul*, 901 F. Supp. at  
9 330; *Xuncax*, 886 F. Supp. at 187-89.<sup>33</sup> These courts, accordingly, have allowed defendants to be  
10 held liable for the infliction of cruel, inhuman or degrading treatment. International instruments  
11 and decisions also recognize cruel, inhuman and degrading treatment as a distinct violation of  
12 international law.<sup>34</sup>

13                   Generally, CIDT includes acts which inflict mental or physical suffering, anguish,  
14 humiliation, fear and debasement which do not rise to the level of “torture” or do not have the same  
15 purposes as “torture.”<sup>35</sup>

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16 evidence regarding the absence of any efforts to bring war criminals to justice clearly demonstrates that any remedies  
17 for plaintiffs in *Republika Srpska*, would have been “unattainable, ineffective, inadequate, or obviously futile.” S. Rep.  
18 No. 249-102 at 9-10. As the Second Circuit observed in *Kadic*: “[I]t seems evident that the courts of the former  
19 Yugoslavia, either in Serbia or war-torn Bosnia, are not now available to entertain plaintiffs’ claims.” *Kadic*, 70 F.3d  
20 at 250.

21                   <sup>33</sup> The District Court for the Northern District of Georgia, in *Abebe-Jiri*, held that cruel, inhuman and  
22 degrading treatment, in addition to torture, was contrary to settled international law and a proper ground for liability  
23 under the ATCA. *Abebe-Jiri v. Negewo*, 1993 WL 814304 (N.D. Ga. 1993). The Eleventh Circuit Court of Appeals  
24 affirmed that District Court opinion in its entirety, although its decision only mentions torture. *Abebe-Jira*, 72 F.3d at  
25 845-48.

26                   <sup>34</sup> ICCPR, art. 7 (“No one shall be subjected to torture *or* to cruel, inhuman, or degrading treatment or  
27 punishment.”) (emphasis added); Universal Declaration, art. 5 (same); American Convention on Human Rights, 1144  
28 U.N.T.S. 23 (entered into force July 18, 1978), art. 5 [hereinafter “American Convention”] (same).

29                   <sup>35</sup> Restatement (Third) of Foreign Relations Law § 702, Reporters’ Note 5 (1987). See also *Torture and Other*  
30 *Cruel, Inhuman, or Degrading Treatment or Punishment*, 101 S. Exec. Rep. 30, at 13 (1990) (“[T]orture is at the  
31 extreme end of cruel, inhuman or degrading treatment.”); *Ireland v. United Kingdom*, 25 Eur. Ct. H.R. (ser. A) at  
32 65-67, ¶ 167 (1978); Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel,  
33 Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452, 30 U.N. GAOR, Supp. No. 34, at 91, art. 1, U.N.  
34 Doc. A/10034 (1975) (“Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment  
35 or punishment.”); J. H. Burgers & H. Danelius, *The U.N. Convention Against Torture: A Handbook on the Convention*  
36 *Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* 150 (1988) (“Unlike in the  
37 definition of torture . . . the purpose of the act is irrelevant in determining whether or not the act should be considered  
38 to constitute cruel, inhuman or degrading treatment.”).



1 A number of Vukovic's actions against plaintiffs specifically and uniquely  
2 constitute cruel, inhuman and degrading treatment under international law. Apart from the acts  
3 noted above which constituted torture, Vukovic carried out certain acts intended specifically to  
4 degrade and humiliate plaintiffs.

- 5 • Plaintiff Hadzialijagic is permanently scarred with a crescent, a recognized Muslim  
6 symbol, that Vukovic carved into his forehead with a knife during one incident. During  
7 this same incident, Vukovic forced Hadzialijagic to carry him like a horse, ordered him  
8 to lick his own blood off Vukovic's boots, and dunked his head in a bowl used as a  
9 toilet.
- 10 • Vukovic shouted anti-Muslim epithets plaintiff Mehinovic while beating him, and then  
11 forced him to lick his own blood off the police station walls why Vukovic laughed. He  
12 also participated in the "game" in which Mehinovic was forced to run in a circle while  
13 Vukovic or other guards swung wooden planks at them.
- 14 • Vukovic also subjected Bicic to the game of "horse," beating him and shouting anti-  
15 Muslim epithets while forcing Bicic to carry Vukovic on his back.
- 16 • Plaintiff Subasic described how the feeling of helplessness he suffered at being beaten  
17 and kicked by Vukovic while forced on his hands and knees was as extreme as the  
18 physical pain Vukovic caused him to endure.

19 Vukovic typically carried out these beatings and humiliations in front of others, exacerbating the  
20 humiliation and degradation of the ordeals. Additionally, each was forced to observe the suffering  
21 of their friends and neighbors, another form of inhumane and degrading treatment.

22 In light of the above, defendant Vukovic is liable for acts of cruel, inhuman, or  
23 degrading treatment against each plaintiff.

### 24 **C. Arbitrary Detention**

25 Arbitrary detention is a violation of customary international law and thus actionable  
26 under the ATCA. *See Alvarez*, 266 F.3d at 1052-53; *Fernandez-Roque v. Smith*, 622 F. Supp. 887,  
27 903 (N.D. Ga. 1985); *Forti*, 672 F. Supp. at 1541. "Arbitrary detention is cited as a violation of  
28

1 international law in all comprehensive international human rights instruments.”<sup>36</sup> Generally,  
2 detention is arbitrary if “it is not pursuant to law; it may be arbitrary also if it is incompatible with  
3 the principles of justice or with the dignity of the human person.”<sup>37</sup> More specifically, arbitrary  
4 detention is the detention of a person in an official detention facility or in any other place, without  
5 notice of charges and failure to bring that person to trial within a reasonable time. *Id.* See  
6 *Fernandez*, 622 F. Supp. at 903 (indefinite detention of Cuban refugees without periodic hearings  
7 violates customary international law); see also *Soroa-Gonzales v. Civiletti*, 515 F. Supp. 1049,  
8 1061, n.18. (N.D. Ga. 1981) (indefinite detention of Cuban refugees would violate customary  
9 international law if question were properly before court).

10 Here, plaintiffs each were detained without ever being advised of any charges  
11 against them. There is no evidence that any were brought before a court or ever tried for any  
12 offense, or that the detentions were made pursuant to any law. Additionally, each were detained  
13 for prolonged periods of time with defendant’s knowledge and participation.<sup>38</sup>

- 14 • Plaintiff Mehinovic was detained for more than six months in Bosanski Samac alone,  
15 before being transferred to concentration and labor camps in other areas for an  
16 additional two years;
- 17 • Plaintiff Bicic was detained in Bosanski Samac, including a brief period in barracks  
18 outside the town, until at least four and a half months after the date of his initial  
19 detention there;
- 20 • Plaintiff Hadzialijagic was detained for at least one month, and apparently some  
21 substantial period beyond that. The record indicates that Hadzialijagic was detained  
22 several days after the Serb takeover of Bosanski Samac on April 17, 1992, and was  
23 among the group of Bosanski Samac prisoners returned to the town and held at the

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24  
25 <sup>36</sup> Restatement (Third) of Foreign Relations Law § 702, Reporters’ Note 6 (1987) (citing, *inter alia*, Universal  
Declaration, art. 9; ICCPR, art 9; European Convention, art. 5; American Convention, art. 7).

26 <sup>37</sup> Restatement (Third) of Foreign Relations Law, § 702 comment h (1987).

27 <sup>38</sup> The length of time plaintiffs were detained is clearly sufficient to support their claims for arbitrary  
28 detention. See *Alvarez*, 266 F.3d at 1052-53 (24-hour detention); *Kodak v. Kavlin*, 978 F. Supp. 1078, 1092-94 (S.D.  
Fla. 1997) (8-10 day detention).

1 elementary school on or about March 13, 1992, after brief transfers to nearby military  
2 barracks. Hadzialijagic testified to repeated beatings, including the particularly brutal  
3 incident perpetrated by Vukovic, at the elementary school, indicating some period of  
4 detention beyond March 13;

- 5 • Plaintiff Subasic was detained in Bosanski Samac, including the brief period in nearby  
6 military barracks, for approximately six months, and then transferred to concentration  
7 camps where he remained another 20 months.

8 Defendant Vukovic was plainly aware, or at minimum should have been aware, that  
9 plaintiffs were detained arbitrarily. Vukovic routinely carried out beatings and other abuses against  
10 plaintiffs and others during his visits to the elementary school and other detention facilities, and  
11 even lived just outside the school while several of the plaintiffs were detained there. Vukovic  
12 directly and indirectly participated in plaintiffs' continued unlawful detention by keeping them  
13 forcibly restrained during torture sessions in which he participated, and through his actions against  
14 plaintiffs aiding and abetting others who kept plaintiffs in detention.

15 Based on the above, defendant Vukovic may be held liable for the arbitrary  
16 detention of plaintiffs.

#### 17 **D. War Crimes**

18 Acts of torture, inhumane treatment, and arbitrary detention of civilians committed  
19 in the course of hostilities violate the international law of war as codified in the Geneva  
20 Conventions and, hence, are a proper basis for liability under the ATCA. *Kadic*, 70 F.3d at 242-43,  
21 citing *In re Yamashita*, 327 U.S. 1, 14 (1946).<sup>39</sup> Such acts, whether committed in an international  
22 armed conflict or a non-international armed conflict, violate customary international law and are  
23 enforceable under the ATCA. *Id.* As set forth below, the defendant has committed violations of

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24  
25 <sup>39</sup> See also Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in  
26 the Field, Aug. 12, 1949, 6 U.S.T.S. 3114, 75 U.N.T.S. 31 ("Convention I"); Convention for the Amelioration of the  
27 Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T.S. 3217, 75  
28 U.N.T.S. 85 ("Convention II"); Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T.  
3316, 75 U.N.T.S. 135 ("Convention III"); Convention Relative to the Protection of Civilian Persons in Time of War,  
Aug. 12, 1949, 6 U.S.T.S. 3516, 75 U.N.T.S. 287 ("Convention IV"). The United States is party to all four Geneva  
Conventions. See U.S. Dep't of State, *Treaties in Force*, at 428-32.

1 customary international humanitarian law and is liable to plaintiffs for these violations.

2 **1. Common Article 3**

3 Common article 3, which is substantially identical in each of the four Geneva  
4 Conventions, applies to “armed conflict[s] not of an international character” and binds “each Party  
5 to the conflict ... to apply, as a minimum, the following provisions”:

6 Persons taking no active part in the hostilities ... shall in all  
7 circumstances be treated humanely, without any adverse distinction  
8 founded on race, colour, religion or faith, sex, birth or wealth, or any  
9 other similar criteria.

10 To this end, the following acts are and shall remain prohibited at any  
11 time and in any place whatsoever with respect to the above-  
12 mentioned persons:

13 (a) violence to life and person, in particular murder of all kinds,  
14 mutilation, cruel treatment and torture;

15 (b) taking of hostages;

16 (c) outrages upon personal dignity, in particular humiliating and  
17 degrading treatment;

18 (d) the passing of sentences and carrying out of executions without  
19 previous judgment pronounced by a regularly constituted court....

20 *Kadic*, 70 F.3d. at 242 (citing Geneva Conventions common art. 3(1)). “Thus, under the law of  
21 war as codified in the Geneva Conventions, all ‘parties’ to a conflict--which includes insurgent  
22 military groups--are obliged to adhere to these most fundamental requirements of the law of war.”

23 *Id.* at 242. Plaintiffs have shown that they are protected persons under common article 3 as they  
24 are and were civilians and non-combatants. Plaintiffs have also shown that defendant Vukovic’s  
25 conduct constitutes violence to life and person in the form of torture and cruel treatment, outrages  
26 upon the personal dignity of the plaintiffs and the passing of sentences against plaintiffs without  
27 previous judgment. Defendant Vukovic is liable to plaintiffs for these violations of common article  
28 3 and the customary international humanitarian norms embodied in those provisions.

1                                   **2. Grave Breaches**

2                                   I find that the “grave breaches” provisions of the Geneva Conventions<sup>40</sup> to be  
3 applicable to the conduct of the defendant and to similarly define the bounds of customary  
4 international law.<sup>41</sup> These provisions, found in each of the Geneva Conventions, are also codified  
5 in Article 2 of the ICTY Statute as follows:

6                                   The International Tribunal shall have the power to prosecute persons  
7 committing or ordering to be committed grave breaches of the  
8 Geneva Conventions of 12 August 1949, namely the following acts  
9 against persons or property protected under the provisions of the  
10 relevant Geneva Convention:

- 11                                   (a) willful killing;
- 12                                   (b) torture or inhuman treatment, including biological experiments;
- 13                                   (c) willfully causing great suffering or serious injury to body or  
14 health;
- 15                                   (d) extensive destruction and appropriation of property, not justified  
16 by military necessity and carried out unlawfully and wantonly;
- 17                                   (e) compelling a prisoner of war or a civilian to serve in the forces of  
18 a hostile power;
- 19                                   (f) willfully depriving a prisoner of war or a civilian of the rights of  
20 fair and regular trial;
- 21                                   (g) unlawful deportation or transfer or unlawful confinement of a  
22 civilian;
- 23                                   (h) taking civilians as hostages.

24                                   Plaintiffs have shown that they are protected persons under the grave breaches  
25 provisions as they were “in the hands of a Party to the Conflict or Occupying Power of which they  
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27  
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23                                   <sup>40</sup> Convention I, art. 50; Convention II, art. 51; Convention III, art. 130; Convention IV, art. 147.

24                                   <sup>41</sup> The ICTY has concluded that the conflict in the former Yugoslavia was, for all relevant periods,  
25 international in character. *Tadic*, Judgement (Appeals Chamber), ¶¶ 170-71; *Delalic*, Judgement (Appeals Chamber,  
26 February 20, 2001), ¶¶ 6-50. The testimony of plaintiffs’ expert Diane Paul further supports this proposition.  
27 Therefore, the grave breaches provisions clearly apply to the defendant’s conduct. Moreover, the ICTY has held that  
28 common article 3 prescribes “minimum mandatory rules applicable to internal armed conflicts . . . [that] reflect  
elementary considerations of humanity applicable under customary international law to any armed conflict, whether it  
is of an internal or international character. Therefore, at least with respect to the minimum rules in Article 3, the  
character of the conflict is irrelevant.” *Tadic*, Case No. IT-94-1-T, Decision on the Defence Motion on Jurisdiction  
(Appeals Chamber, Oct. 2, 1995) (citation omitted).

1 are not nationals.”<sup>42</sup> As set out above, plaintiffs also have shown that defendant Vukovic  
2 committed the following grave breaches, in addition to that conduct which constitutes a violation  
3 of common article 3: inhuman treatment, willfully causing great suffering or serious injury and  
4 unlawful confinement. Defendant Vukovic is liable to plaintiffs for these grave breaches of the  
5 Geneva Conventions, and the customary international humanitarian norms embodied in these  
6 provisions.

7 Notably, under international law, “inhuman treatment” includes “not only acts such  
8 as torture and intentionally causing great suffering or inflicting serious injury to body, mind or  
9 health but also extended to other acts contravening the fundamental principle of humane treatment,  
10 in particular those which constitute an attack on human dignity.”<sup>43</sup> Similarly, “willfully causing  
11 great suffering or serious injury to body or health” includes injury to “mental health” and “includes  
12 those acts which do not fulfill the conditions set for the characterization of torture, even though  
13 acts of torture may also fit the definition given.”<sup>44</sup> Therefore, it is clear that those facts which  
14 prove defendant Vukovic’s violation of the customary international legal prohibition against cruel,  
15 inhuman and degrading treatment during armed conflict also make out a violation of the laws of  
16 war under the grave breaches provisions of the Geneva Conventions. Likewise, those facts which  
17 prove plaintiffs’ arbitrary detention claim, described herein, also show a violation of the “unlawful  
18 confinement” portion of the grave breaches provisions.

### 19 **E. Crimes Against Humanity**

20 Crimes against humanity have been recognized as a violation of customary  
21 international law since the Nuremberg trials, and therefore are actionable under the ATCA.<sup>45</sup>

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22 <sup>42</sup> See *Tadic*, Judgment (Appeals Chamber), ¶ 164-67 (holding that Bosnian Serbs operated as organs of  
23 another state and, therefore, that the Bosnian Muslim victims were protected persons within the meaning of the grave  
breaches provisions.)

24 <sup>43</sup> ICTY, *Prosecutor v. Blaskic*, Case No. IT-95-14, Judgment (Trial Chamber I, March 3, 2000), ¶ 155 (citing  
25 *Delalic*, Judgment (Trial Chamber), ¶ 544), at Tab 5 of ICTY App.

26 <sup>44</sup> *Blaskic*, Judgment (Trial Chamber), ¶ 156 (citing *Delalic*, Judgment (Trial Chamber), ¶ 511).

27 <sup>45</sup> *Cabello*, 157 F. Supp. at 1360 (finding that “the ruling of the Nuremberg Tribunal memorialized the  
28 recognition of ‘crimes against humanity’ as customary international law.”) See also *Tadic*, Opinion and Judgment  
(Trial Chamber), ¶ 623. (Since Nuremberg, “the customary status of the prohibition against crimes against humanity  
and the attribution of individual criminal responsibility for their commission have not been seriously questioned.”)

1 Crimes against humanity were first codified in the Charter of the International Military Tribunal  
2 (IMT), which authorized the criminal trials at Nuremberg. The IMT Charter defined crimes against  
3 humanity as:

4 murder, extermination, enslavement, deportation, and other  
5 inhumane acts committed against any civilian population, before or  
6 during the war, or persecutions on political, racial, or religious  
7 grounds in execution of, or in connection with, any crime within the  
8 jurisdiction of the Tribunal, whether or not in violation of the  
9 domestic law of the country where perpetrated.<sup>46</sup>

10 Since the Nuremberg trials, the definition of crimes against humanity under  
11 customary international law has evolved significantly. Importantly, while the IMT Charter  
12 formerly required a nexus between the wrongful acts and an armed conflict, this element, the  
13 definition of crimes against humanity no longer requires any connection to an international or  
14 internal armed conflict.<sup>47</sup> Additionally, the scope of enumerated offenses has been expanded to

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15 <sup>46</sup> Charter of the International Military Tribunal, Aug. 8, 1945, art. 6(c), 59 Stat. 1546, 1547, E.A.S. No. 472,  
16 82 U.N.T.S. 284 (hereinafter “IMT Charter”). In 1946, the General Assembly endorsed the principles of international  
17 law recognized in the IMT Charter. *See* G.A. Res. 95, 1 U.N. GAOR, at 1144, U.N. Doc. A/236 (1946); *see also*  
18 *Convention on the Non-Applicability of Statutory Limits to War Crimes and Crimes Against Humanity*, Nov. 26,  
19 1968, art. 1(b), 660 U.N.T.S. 195, *reprinted in* 8 I.L.M. 68 (1969) (adopting Nuremberg definition of crimes against  
20 humanity except for in connection with aggressive war).

21 <sup>47</sup> *See* Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic  
22 Conference on the Establishment of an International Criminal Court on 17 July 1998 [hereinafter “Rome Statute”], art.  
23 7 (see text *infra*).

24 Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of  
25 International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 [hereinafter “ICTY  
26 Statute”], art. 5. That statute provides:

27 The International Tribunal shall have the power to prosecute persons responsible  
28 for the following crimes when committed in armed conflict, whether international  
or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;
- (f) torture;
- (g) rape;
- (h) persecutions on political, racial and religious grounds;
- (i) other inhumane acts.

Although the statute suggests that crimes against humanity must be committed in the context of an “armed conflict,”  
the ICTY has held that this requirement relates only to the jurisdiction of the Tribunal and is not a substantive element  
of the offense. *Tadic*, Judgment (Appeals Chamber), ¶ 249.

1 include, *inter alia*, imprisonment, rape, and torture.<sup>48</sup>

2 The Rome Statute of the International Criminal Court defines crimes against  
3 humanity as any of certain enumerated acts that are prohibited by international law “when  
4 committed as part of a widespread or systematic attack directed against any civilian population,  
5 with knowledge of the attack.”<sup>49</sup> These acts include: murder, extermination, imprisonment or  
6 other severe deprivation of physical liberty, torture, rape or sexual violence, persecution against  
7 any identifiable group on the basis of racial, political, ethnic, cultural or religious status and other  
8 inhumane acts.<sup>50</sup>

9 Although the Rome Statute’s definition of crimes against humanity may be  
10 narrower in scope than the customary law definition of crimes against humanity today, the  
11 evidence before this Court clearly demonstrates that the defendant has committed acts which  
12 constitute crimes against humanity under any of the applicable definitions enforceable under the  
13 ATCA.

14 Plaintiffs have shown that the acts of the defendant described herein, including  
15 torture, imprisonment, and cruel, inhuman and degrading treatment, were committed in furtherance

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17 ICTR Statute, art 3. That section states:

18 The International Tribunal for Rwanda shall have the power to prosecute persons  
19 responsible for the following crimes when committed as part of a widespread or  
20 systematic attack against any civilian population on national, political, ethnic,  
21 racial or religious grounds:

- 22 a) Murder;
- 23 b) Extermination;
- 24 c) Enslavement;
- 25 d) Deportation;
- 26 e) Imprisonment;
- 27 f) Torture;
- 28 g) Rape;
- h) Persecutions on political, racial and religious grounds;
- i) Other inhumane acts.

<sup>48</sup> *Id.*; see also Control Council Law No. 10, art. II (1)(c) (Dec. 20, 1945).

<sup>49</sup> Rome Statute, art. 7. In *Prosecutor v. Furundzija*, Case No. IT-95-17/1, Judgment (Trial Chamber II, December 19, 1998), ¶ 227, the ICTY noted that the Rome Statute, though not yet entered into force, was adopted by an overwhelming majority of the States attending the Rome Diplomatic Conference and was substantially endorsed by the U.N. General Assembly’s Sixth Committee, and therefore in many areas, “may be regarded as indicative of the legal views, i.e. *opinio juris* of a great number of States.” See Judgment at Tab 3 of ICTY App.

<sup>50</sup> *Id.*; see also ICTY Statute, art. 5; ICTR Statute, art. 3.



1 of the Bosnian Serb government’s policy of “ethnic cleansing.” As documented in numerous  
2 reports by governmental and non-governmental organizations, by the ICTY, and as described in the  
3 testimony of the plaintiffs and plaintiffs’ expert witness Diane Paul, the Bosnian Serb campaign  
4 constituted a widespread and systemic attack on and persecution of Bosnian Muslims and other  
5 groups because of their ethnicity and religion.

6 Defendant’s actions were consistent with the pattern and practice of abuses against  
7 Bosnian Muslims, and demonstrate that he was well aware of being part of a campaign of ethnic  
8 cleansing that was both widespread and systematic.<sup>51</sup> Vukovic was necessarily aware, by virtue of  
9 his residence in Bosanski Samac and visits to ad hoc detention facilities holding Bosnian Muslims  
10 and Croats, that civilians from these groups had been detained pursuant to a plan implemented  
11 upon the Bosnian Serb attack on the town, and that others from these groups had been displaced  
12 from the town. Vukovic even apparently lived in the home of a Muslim family displaced by the  
13 Bosnian Serb assault. Vukovic directly and even fervently participated in, aided, and observed  
14 horrific acts of brutality committed against defenseless civilian detainees whose only crime was  
15 that they were members of the Muslim ethnic group in Bosanski Samac. These acts were at the  
16 core of the definition of crimes against humanity.<sup>52</sup>

## 17 **F. Genocide**

18 Genocide unquestionably constitutes a violation of customary international law.<sup>53</sup>

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19 <sup>51</sup> The U.S. Department of State noted in its 1992 *Report on Human Rights Practices* for Bosnia and  
20 Herzegovina that the “policy” of “so-called ethnic cleansing, was carried out by Serbian forces in Bosnia on a scale  
21 that dwarfs anything seen in Europe since Nazi times.” 1992 *Report on Human Rights Practices*, at 719, Plaintiff’s  
Exhibit 22.

22 <sup>52</sup> Defendant Vukovic is liable for the commission of these acts even if he was not aware that his conduct  
23 might rise to the level of a crime against humanity. International law provides that an actor is responsible if he knew or  
24 should have known that his conduct would contribute to a widespread or systematic attack against civilians. *See* ICTR,  
25 *Prosecutor v. Kayeshima*, Case No. ICTR-95-1-T, Judgment (Trial Chamber, May 21, 1999), ¶ 133 (noting that  
26 defendant must have “actual or constructive knowledge” of a widespread or systematic attack), available at  
<http://www.icty.org>; ICTY, *Prosecutor v. Kordic*, Case No. IT-95-14/2, Judgment (Trial Chamber III, Feb. 26, 2001),  
¶ 185 (same; quoting *Kayeshima*), available at <http://www.un.org/icty/kordic/trialc/judgement/index.htm>. Plaintiffs  
have shown that the “ethnic cleansing” campaign necessarily was widespread and common knowledge to all persons in  
areas affected by it, such that Vukovic at minimum should have been aware that his actions would contribute to a  
widespread or systematic campaign attack against a civilian population.

27 <sup>53</sup> *Kadic*, 70 F.3d at 241-42. *See also* *Princz v. Federal Republic of Germany*, 26 F.3d 1166, 1180 (D.C. Cir.  
28 1994) (“One need not pause long before concluding that the international community’s denunciation of both genocide  
and slavery are accepted norms of customary international law and, in particular, are *jus cogen* norms.”); *Siderman de*

1 The Second Circuit in *Kadic* relied upon the Convention on the Prevention and Punishment of the  
2 Crime of Genocide (“Genocide Convention”) to find a “specific articulation of the prohibition  
3 against genocide in international law.”<sup>54</sup>

4 The Genocide Convention absolutely prohibits genocide “whether committed in  
5 time of peace or in time of war.”<sup>55</sup> Subsequent international agreements, resolutions and court  
6 decisions have reaffirmed its absolute prohibition.<sup>56</sup> Genocide is defined as any of certain  
7 enumerated acts, including “(a) Killing members of the group; (b) Causing serious bodily or mental  
8 harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated  
9 to bring about its physical destruction in whole or in part; (d) Imposing measures designed to  
10 prevent births within the group; [and] (e) Forcibly transferring children of the group to another  
11 group” when they are “committed with intent to destroy, in whole or in part, a national, ethnical,  
12 racial, or religious group, as such.”<sup>57</sup> Notably, in the *Kadic* decision, the Second Circuit affirmed  
13 that “the proscription of genocide has applied equally to state and non-state actors.”<sup>58</sup>

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14  
15 *Blake*, 965 F.2d at 715; *Benel v. Freeport-McMoran, Inc.*, 969 F. Supp. 362, 372 (E.D. La. 1997); *Xuncax*, 886 F.  
Supp. at 187, n.35.

16 <sup>54</sup> *Kadic*, 70 F.3d at 241, citing Convention on the Prevention and Punishment of the Crime of Genocide, 78  
U.N.T.S. 277 in U.S. State Department of State, Treaties in Force 345 (1994) (entered into force Jan. 12, 1951)  
17 [hereinafter “Genocide Convention”]; see also *The Genocide Convention Implementation Act of 1987*, 18 U.S.C.  
§ 1901 (1988), which criminalizes genocide and makes it actionable under domestic U.S. law.

18 <sup>55</sup> Genocide Convention, art. 1. The Genocide Convention also states explicitly that it is intended to codify  
19 existing customary law. The parties “confirm that genocide . . . is a crime under international law which they undertake  
to prevent and to punish.” *Id.* (emphasis added).

20 <sup>56</sup> See, e.g., Rome Statute, art. 5 (making genocide a core crime within the jurisdiction of the Court);  
21 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. Advisory  
Opinion, Reservations to the Convention on Genocide Case, 1951 I.C.J. Rep. 15, 23; G.A. Res. 96(I), U.N. GAOR,  
22 U.N. Doc. A/64/Add.1 (1946) (affirming that genocide is a crime under international law); G.A. Res. 180(II), 2 U.N.  
GAOR, U.N. Doc. A/519 (1947) (same); Principles of International Cooperation in the Detection, Arrest, Extradition,  
23 and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity, G.A. Res. 3074 (Dec. 3, 1973); 3  
*Trials of War Criminals Before the Nuremberg Military Tribunals* 983 (1951).

24 <sup>57</sup> *Kadic*, 70 F.3d at 241 (citing Genocide Convention, art. 2).

25 <sup>58</sup> *Id.* at 242 (“Appellants’ allegations . . . clearly state a violation of the international law norm proscribing  
26 genocide, regardless of whether Karadzic acted under color of law or as a private individual.”). See also Genocide  
Convention, art. 4 (“[P]ersons committing genocide . . . shall be punished, whether they are constitutionally responsible  
27 rulers, public officials or private individuals.”); Restatement (Third) of Foreign Relations Law of the United States, Pt.  
II Introductory Note (1987) (“[I]ndividuals may be held liable for offenses against international law, such as piracy,  
28 war crimes, or genocide.”). Genocide is a crime under international and United States law whether perpetrators are  
“private individuals, public officers or statesmen.” G.A. Res. 96(1), I U.N. GAOR, at 188-89, U.N. Doc. A/64/Add.1  
(1946).

1           The evidence before the Court regarding the intent and nature of the attacks and  
2 abuses against civilians in Bosnia, and in Bosanski Samac in particular, and defendant’s knowledge  
3 and willing participation in this plan, appears to support a finding that the defendant committed  
4 genocide under this definition. However, in light of the court’s assessment of liability for crimes  
5 against humanity and other grave human rights abuses, the Court does not reach this issue.

6  
7 **VII. DEFENDANT VUKOVIC IS LIABLE FOR AIDING AND ABETTING**  
8 **HUMAN RIGHTS VIOLATIONS PERPETRATED AGAINST PLAINTIFFS**

9           In addition to bearing direct responsibility for abuses against plaintiffs, defendant  
10 Vukovic also may be held liable for aiding and abetting others in acts against plaintiffs that violate  
11 customary international law. Plaintiffs have demonstrated that Vukovic acted in concert with  
12 others in committing many of the abuses suffered by plaintiffs.

13           United States courts have recognized that principles of accomplice liability apply  
14 under the ATCA to those who assist others in the commission of torts that violate customary  
15 international law.<sup>59</sup> Similarly, the Senate report on the TVPA notes that that statute is intended to  
16 apply to those who “ordered, abetted, or assisted” in the violation.<sup>60</sup>

17           Principles of accomplice liability are well-established under international law.  
18 Relevant international conventions explicitly provide that those who assist in the commission of  
19 acts prohibited by international law may be held individually responsible.<sup>61</sup> Article 7(1) of the  
20 ICTY Statute, for example, states that “[a] person who planned, instigated, ordered, committed or  
21 otherwise aided and abetted in the planning, preparation or execution of a crime referred to in  
22 Articles 2 to 5 of the present statute [grave breaches of the Geneva Conventions of 1949, violations

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23           <sup>59</sup> *Abebe-Jira*, 72 F.3d at 845-48 (affirming verdict for torture and cruel, inhuman or degrading treatment  
24 where defendant supervised or participated with others in “some of the acts of torture” against plaintiffs); *Carmichael*  
25 *v. United Technologies Corp.*, 835 F.2d 109, 113-114 (5th Cir. 1998) (ATCA jurisdiction over “private parties who  
26 conspire in, or *aid or abet*, official acts of torture by one nation against the citizens of another nation” (emphasis  
added)); *National Coalition Government of Union of Burma v. Unocal, Inc.*, 176 F.R.D. 345, 348 (C.D. Cal. 1997)  
(recognizing liability for violations of customary international law may be based on “joint action” by private party with  
state).

27           <sup>60</sup> *See* S. Rep. No. 249-102, at 8-9 and n.16.

28           <sup>61</sup> *See, e.g.*, Rome Statute, art. 25; IMT Charter, art. 6; ICTY Statute, art 7(1); ICTR Statute, art. 6(1).

1 of laws or customs of war, genocide or crimes against humanity] shall be individually responsible  
2 for the crime.”<sup>62</sup>

3 The ICTY has held that secondary liability under Article 7(1) requires both an *actus*  
4 *reus* and *mens rea* distinct to from the acts and intent of the principal.<sup>63</sup> Under the Tribunal’s  
5 jurisprudence, the *actus reus* of aiding and abetting requires “practical assistance, encouragement  
6 or moral support which has a substantial effect on the perpetration of the crime.”<sup>64</sup> Notably, this  
7 formulation does not require the tangible assistance of the aider and abettor.<sup>65</sup> As to *mens rea*, the  
8 ICTY has found that it is not necessary for the accomplice to share the same wrongful intent as the  
9 principal. Rather, it is sufficient that the accomplice knows that his or her actions will assist the  
10 perpetrator in the commission of the crime.<sup>66</sup>

11 In this case, plaintiffs have demonstrated that defendant Vukovic aided and abetted  
12 Serb military and political forces in committing genocide, war crimes, torture and other wrongful  
13 acts against plaintiffs. For example, he participated in acts of torture against plaintiffs in  
14 cooperation with the Bosnian Serb Chief of Police Todorovic at the Bosanski Samac police station.  
15 Plaintiffs identified that Vukovic perpetrated acts of abuse against plaintiffs together with other  
16 Bosnian Serb soldiers and police officials at the *TO* Warehouse, jointly carrying out torture and  
17 humiliations of plaintiffs, and taking turns beating them. Plaintiff Bicic identified Vukovic as one  
18 of those participating in the teeth-pulling incident identified above. The defendant also participated  
19 in the unlawful detention of plaintiffs in these facilities. The evidence suggests that in doing so,  
20 Vukovic both provided assistance and encouragement to those who directly perpetrated acts of  
21 torture and abuse against plaintiffs, and that he knew that his own participation in and  
22 encouragement of these actions would assist others in committing these acts. Therefore, Defendant  
23 Vukovic is “responsible under international law for his own acts, [and] for acts which he directed,

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24  
25 <sup>62</sup> ICTY Statute, art. 7(1).

26 <sup>63</sup> *Furundzija*, Judgment (Trial Chamber), ¶¶ 192-249.

27 <sup>64</sup> *Id.* ¶ 235.

28 <sup>65</sup> *Id.* ¶ 232.

<sup>66</sup> *Id.*

1 ordered, aided, abetted or participated in”<sup>67</sup>

2 The evidence demonstrated that Vukovic not only participated directly in  
3 committing human rights violations against the plaintiffs and others detained with them, but also  
4 that the defendant actively encouraged, aided, and even supervised the commission of human rights  
5 abuses by other guards at the detention facilities at which the plaintiffs were held. By his actions  
6 and words, Vukovic associated himself with the brutality of other guards who also violated the  
7 plaintiffs’ rights and caused them serious injuries. Vukovic is also responsible for the actions of  
8 his associates.

9 **VIII. MUNICIPAL LAW CLAIMS**

10 Plaintiffs have shown that Defendant Vukovic committed the following torts under  
11 the laws of the State of Georgia: Assault and Battery, False Imprisonment, Intentional Infliction of  
12 Emotional Distress and Conspiracy to commit those torts.<sup>68</sup>

13 **A. Assault and Battery/Violent Injury or Attempt to Commit Injury**

14 Under Georgia law, the elements of assault and battery are: (1) a physical injury  
15 done to another; (2) whatever may be the intention of the person causing the injury; (3) unless his  
16 is justified under some rule of law; and (4) intention shall be considered in the assessment of  
17 damages. Ga. Code Ann. § 51-1-13 (1998). Any violent or illegal attempt to commit a physical  
18 injury upon a person is a tort for which damages may be recovered. Ga. Code Ann. § 51-1-14  
19 (1998). Defendant Vukovic is liable for assault and battery for committing unjustified acts of  
20 physical violence which constituted harmful and offensive contacts. *See Greenfield v. Colonial*  
21 *Stores*, 139 S.E.2d 403, 405-06 (Ga. Ct. App. 1964). The defendant’s intention in committing such  
22 injuries does not affect his liability. *See Hendricks v. Southern Bell Tel. & Tel. Co.*, 387 S.E.2d  
23 593, 594-95 (Ga. Ct. App. 1989). Plaintiffs have shown that Defendant Vukovic committed

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25 <sup>67</sup> *Abebe-Jiri v. Negewo*, 1993 WL 814304 at \*4, affirmed *Abebe-Jira v. Negewo*, 72 F.3d 844 (11th Cir.  
1996).

26 <sup>68</sup> Plaintiffs presented extensive information on the laws of Bosnia and Herzegovina which demonstrates that  
27 there is no conflict between the laws of Bosnia and Herzegovina and the laws of the State of Georgia as to these  
28 municipal law claims. See Plaintiff’s Trial Brief, at 33-53. Therefore, the laws of Bosnia and Herzegovina are not  
considered herein.

1 extensive physical injuries against all of the plaintiffs, without their consent, and in a harmful and  
2 offensive manner. Therefore, Vukovic is liable to plaintiffs under Georgia state law prohibiting  
3 assault and battery.

4 **B. False Imprisonment**

5 False imprisonment is the unlawful detention of the person of another, for any  
6 length of time, whereby such person is deprived of his personal liberty. Ga. Code Ann. § 51-7-20  
7 (1998). Plaintiffs need not show malice or lack of probable cause to state a claim for false  
8 imprisonment. *Lowe v. Turner*, 154 S.E.2d 792, 795 (Ga. Ct. App. 1967). A detention need not  
9 consist of physical restraint, but may arise out of words, acts, gestures or the like which induce a  
10 reasonable apprehension that force will be used if the plaintiff does not submit; and it is sufficient  
11 if they operate upon the will of the person threatened and result in a reasonable fear of personal  
12 difficulty or personal injury. *Kemp v. Rouse-Atlanta, Inc.* 429 S.E.2d 264, 268 (Ga. Ct. App.  
13 1993). Each of the plaintiffs was detained without an arrest warrant and without being told of the  
14 charges against them. Plaintiffs have shown that defendant Vukovic subjected plaintiffs to restraint  
15 and physical violence in detention, and was complicit in plaintiffs' ongoing arbitrary detention.  
16 *See Hampton v. Norred & Assocs.* 454 S.E.2d 222, 223-24 (Ga. Ct. App. 1995). Therefore,  
17 Vukovic is liable to plaintiffs under Georgia state law prohibiting false imprisonment.

18 **C. Intentional Infliction of Emotional Distress**

19 The defendant is liable for intentional infliction of emotional distress if he engaged  
20 in conduct that (1) was intentional or reckless, (2) extreme and outrageous, and (3) had a causal  
21 connection to plaintiffs' emotional distress that was (4) severe. *See Hendrix v. Phillips*, 428 S.E.2d  
22 91, 92-93 (Ga. Ct. App. 1993). Defendant Vukovic intentionally harmed and humiliated the  
23 plaintiffs. The extreme and outrageous nature of the defendant's actions, which are, in fact,  
24 violations of the law of nations, are "intolerable in a civilized community" as required under  
25 Georgia law. *Phinazee v. Interstate Nationalease, Inc.*, 514 S.E.2d 843, 844-45 (Ga. Ct. App.  
26 1999). Furthermore, the plaintiffs suffered severe mental anguish as a direct result of the  
27 defendant's actions. Defendant Vukovic's conduct thus meets all of the requisite elements for  
28

1 imposing liability for intentional infliction of emotional distress.

2 **D. Conspiracy**

3 Georgia law allows plaintiffs to recover for civil conspiracy, defined as a  
4 combination between two or more persons to do some unlawful act which is a tort or else to do  
5 some lawful act by methods which constitute a tort. *Cook v. Robinson*, 116 S.E.2d 742, 744-45  
6 (Ga. 1960). As described herein, Vukovic acted together with other guards and soldiers to detain,  
7 torture and abuse plaintiffs, and may be held liable for acts perpetrated by others pursuant to their  
8 common design. *Id.* at 745-46.

9  
10 **IX. DAMAGES**

11 In light of defendant's egregious conduct detailed above, plaintiffs are entitled to an  
12 award of damages as compensation for their injuries and suffering, and to punish defendant and  
13 deter others from committing similar abuses. It is well-established that victims of human rights  
14 abuses actionable under ATCA and the TVPA may recover both compensatory and punitive  
15 damages. *See, e.g., Hilao*, 103 F.3d at 779-82; *Xuncax*, 886 F. Supp. at 197-202; *Filartiga v. Pena-*  
16 *Irala*, 577 F. Supp. 860, 862-63 (E.D.N.Y. 1984). As the Eleventh Circuit has noted, ATCA  
17 establishes a federal forum where courts may "fashion domestic common law remedies to give  
18 effect to violations of customary international law." *Abebe-Jira*, 72 F.3d at 848.

19 **A. Compensatory Damages**

20 Courts have awarded substantial compensatory damage awards to plaintiffs in  
21 ATCA and related cases in light of the gravity of the abuses involved, and the serious physical and  
22 psychological injuries caused by acts such as those suffered by plaintiffs in this case. *See, e.g., id.*  
23 at 846-48 (affirming award of \$200,000 in compensatory damages to each of three plaintiffs for  
24 torture and cruel, inhuman, or degrading treatment); *Hilao*, 103 F.3d at 779-82 (affirming class  
25 award of \$767.5 million in compensatory damages for torture, summary execution, and  
26 disappearances); *Avril*, 901 F. Supp. at 335-36 (awarding from \$2.5 - \$3.5 million in compensatory  
27 damages to each of six plaintiffs for arbitrary detention, torture, and cruel, inhuman or degrading  
28

1 treatment); *Xuncax*, 886 F. Supp. at 197-98 (awarding from \$500,000 - \$3 million in compensatory  
2 damages to each plaintiff for summary execution, torture, arbitrary detention, and/or cruel,  
3 inhuman and degrading treatment); *Filartiga*, 577 F. Supp. at 864-67 (awarding \$175,000 and  
4 \$200,000 in compensatory damages, respectively to plaintiffs for extrajudicial killing of son and  
5 brother).

6           These decisions reflect the international law of damages, which recognizes that  
7 victims of violations of international norms are entitled to compensation for all harm proximately  
8 caused by a defendant's wrongful acts. "It is a principle of international law . . . that every  
9 violation of an international obligation which results in harm creates a duty to make adequate  
10 reparation."<sup>69</sup> Such reparation must, to extent possible, "wipe out all the consequences of the  
11 illegal act and reestablish the situation which would, in all probability, have existed if that act had  
12 not been committed."<sup>70</sup> Under international law, individuals are entitled to damages for a broad  
13 range of physical, emotional, and social harms:

14           That one injured is, under the rules of international law, entitled to be  
15 compensated for an injury inflicted resulting in mental suffering,  
16 injury to his feelings, humiliation, shame, degradation, loss of social  
17 position or injury to his credit or to his reputation, there can be no  
18 doubt, and such compensation should be commensurate to the  
19 injury.<sup>71</sup>

20           Plaintiffs also are entitled to compensatory damages on each of their municipal tort  
21 law claims. *See Wal-Mart Stores, Inc. v. Johnson*, 249 Ga. App. 84, 87 (Ga. Ct. App. 2001).

22           As identified in the findings above, each plaintiff has presented compelling  
23 testimony of the extreme physical and emotional pain and suffering each endured as a result of  
24 torture and other inhumane acts perpetrated by defendant Vukovic. Vukovic's acts contributed to  
25 the daily and nightly fear each felt that they could be tortured or killed at any time during their  
26 detention. By his complicity in plaintiffs' unlawful detention, Vukovic also contributed to

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27           <sup>69</sup> *Velasquez Rodriguez*, Inter-Am. C.H.R., 11 H.R.L.J. 127, ¶ 25 (1989) (awarding the family of a  
28 disappeared person damages for loss of earnings and psychological injuries). Available at:  
<http://www1.umn.edu/humanrts/iachr/C/7-ing.html>.

<sup>70</sup> *Concerning the Chorzow Factory* (F.R.G. v. Pol.), 1928 P.C.I.J. (Ser. A) No. 17, at 47.

<sup>71</sup> M. Whiteman, DAMAGES IN INTERNATIONAL LAW, 718-19 (1943).



1 plaintiffs' misery caused by their unlawful detention in a hellish world of daily torture, humiliation,  
2 and deprivation, separated from spouses, children, and family.

3 Plaintiff Subasic described the distinct suffering he and other detainees endured as a  
4 result of their prolonged captivity. He identified as one of the most painful aspects of his ordeal  
5 the inability to visit with his wife and newborn child because of his captivity, and becoming a  
6 stranger to his own daughter through his long absence.

7 Plaintiffs continue to suffer from their ordeals both physically and emotionally. As  
8 identified above, all have lasting physical scars and injuries, and continue to experience pain from  
9 the injuries they suffered as a result of torture. All but one have found it impossible to return to  
10 work. Even plaintiff Subasic, presently employed, has occasionally found it necessary to leave  
11 work after becoming distressed on being reminded of his ordeal by some incident. All suffer in  
12 various combinations and degrees from nightmares, difficulty sleeping, flashbacks, anxiety,  
13 difficulty relating to others, and feeling abnormal.

14 Vukovic's actions were a substantial cause and contributing factor in the past and  
15 ongoing injuries, pain and suffering experienced by plaintiffs, and justifies a substantial award of  
16 compensatory damages commensurate with awards for similar conduct in other cases.<sup>72</sup> The court,  
17 accordingly, awards plaintiffs compensatory damages as follows:

- 18 a) Kemal Mehinovic:\_\_\_\_\_.
- 19 b) Muhamed Bicic:\_\_\_\_\_.
- 20 c) Safet Hadzialijagic:\_\_\_\_\_.
- 21 d) Hasan Subasic:\_\_\_\_\_.

22 **B. Punitive Damages**

23 Punitive damages are an appropriate if not essential mechanism for upholding  
24 prohibitions against human rights abuses reviled by the international community. As the court  
25 noted in *Filartiga*: "[T]he objective of the international law making torture punishable as a crime

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27 <sup>72</sup> Appendix A, attached hereto, identifies compensatory and punitive damage awards in other ATCA and  
28 TVPA cases.

1 can only be vindicated by imposing punitive damages." *Filartiga*, 577 F. Supp. at 864.

2 Numerous courts have found substantial punitive damage awards justified against  
3 defendants found to have violated customary international human rights norms. *See, e.g., Abebe-*  
4 *Jira*, 72 F.3d at 846-48 (affirming award of \$300,000 to each of three plaintiffs in punitive  
5 damages for torture and cruel, inhuman, or degrading treatment); *Hilao*, 103 F.3d at 779-82  
6 (affirming class award of \$1.2 billion in exemplary damages for torture, summary execution, and  
7 disappearances); *Avril*, 901 F. Supp. at 335-36 (awarding \$4 million to each of six plaintiffs for  
8 arbitrary detention, torture, and cruel, inhuman or degrading treatment); *Xuncax*, 886 F. Supp. at  
9 197-98 (awarding punitive damages of \$500,000 - \$5 million for summary execution, torture,  
10 arbitrary detention, and cruel, inhuman and degrading treatment); *Filartiga*, 577 F. Supp. at 864-67  
11 (awarding \$5 million in punitive damages to each of two relatives of victim of torture and  
12 extrajudicial killing).<sup>73</sup>

13 Punitive damages are designed both to punish and teach a defendant, and to deter  
14 others from committing the same abuses. *Filartiga*, 577 F. Supp. at 866. To accomplish that  
15 purpose, courts "must make clear the depth of the international revulsion against torture and  
16 measure the award in accordance with the enormity of the offense." *Id.* The Supreme Court has  
17 noted that evidence of repeated misconduct is relevant in determining an appropriate punitive  
18 damage award:

19 Certainly, evidence that a defendant has repeatedly engaged in  
20 prohibited conduct while knowing or suspecting that it was unlawful  
21 would provide relevant support for an argument that strong medicine  
22 is required to cure the defendant's disrespect for the law . . . Our  
23 holdings that a recidivist may be punished more severely than a first  
24 offender recognize that repeated misconduct is more reprehensible  
25 than an individual instance of malfeasance. [Citation omitted].

26 *BMW of North America Inc. v. Gore*, 517 U.S. 559, 576-77 (1996).

27 As discussed above, defendant repeatedly tortured and humiliated each plaintiff on a  
28 variety of different occasions, and committed these abuses in furtherance of a deliberate campaign  
to destroy, terrorize, and displace the Muslim population of large sections of Bosnia. These abuses

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<sup>73</sup> *See id.* for further punitive damage awards in ATCA and TVPA cases.

1 were carried out wantonly and maliciously, and violated of the most fundamental international  
2 norms of human rights. Accordingly, the court finds that an award of substantial punitive damages  
3 in the following amounts is entirely appropriate in this case.

- 4 a) Kemal Mehinovic: .
- 5 b) Muhamed Bicic: .
- 6 c) Safet Hadzialijagic: .
- 7 d) Hasan Subasic: .

8 DATED: \_\_\_\_\_  
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12 MARVIN H. SHOOB  
13 United States District Judge  
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Dated: December 21, 2001

Respectfully submitted,

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