

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

BASHE ABDI YOUSUF, <i>et alii</i>,	*	
	*	
Plaintiffs,	*	
	*	
versus	*	Civil Action No. 04-1360 (LMB/JFA)
	*	
MOHAMED ALI SAMANTAR,	*	
	*	
Defendant.	*	

***REPLY OF DEFENDANT MOHAMED ALI SAMANTAR TO
PLAINTIFFS' OPPOSITION TO SAMANTAR'S MOTION FOR SUMMARY JUDGMENT***

COMES NOW, before this Honorable Court, your defendant in respect of the above-encaptioned cause, *viz.*, MOHAMED ALI SAMANTAR (hereinafter referenced *qua* “Samantar”), by and through his undersigned attorney and counsellor, *in praesenti, viz.*, Joseph Peter Drennan, and, pursuant to, *inter alia*, this Honorable Court's Order of 13 December 2011 [Document 287] (hereinafter referenced *qua* “the Order”), respectfully, to submit the instant Reply to your “PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT” [Document 283] (hereinafter referenced *qua* “Plaintiffs' Opposition”), and, in support whereof, your defendant would state as follows, *viz.*:

Preliminary Statement

1. That, as stated by Samantar in his 9 December 2011 motion, *inter alia*, to continue the previously set 22 December 2011 hearing date for pretrial motions [Document 281], Samantar has been beset with certain funding issues in respect of the instant litigation which has kept the undersigned from being able to secure a number of deposition transcripts in respect of the subject litigation until such funding issues could be resolved; at this writing, such issues have not as yet

been resolved; consequently, the undersigned still does not have all needed transcripts, including, *inter alia*, a number of the transcripts excerpted as exhibits in your Plaintiffs' Opposition; however, give the clear intendment contained in the Order that the hearing in respect of Samantar's Motion for Summary Judgment go forward on 22 December 2011, and that, correspondingly, close of business on this date, *id est*, 16 December 2011, be kept as the due date in respect of any Reply by Samantar to your Plaintiffs' Opposition, Samantar now comes before this Honorable Court, to furnish what is more akin to an initial sketch of Samantar's take on your Plaintiffs' Opposition, rather than a fully developed Reply Brief, in the humble hope that the instant submission at least furnishes some foreshadowing of several of the points which the undersigned intends to raise at the hearing next Thursday to put paid to your Plaintiffs' Opposition;

Initial Riposte to Your Plaintiffs' Opposition

2. Contrary to the insinuations contained in your Plaintiffs' Opposition, there is no dispute as to the governing standards for summary judgment;

3. For all of its breadth, filling out the 30 page allotment for briefs set out in Local Rule 7 (F) (3), your Plaintiffs' Opposition does not contain a point-by-point rebuttal of the ramified grounds for relief set out in the Motion for Summary Judgment, much less a due consideration of the *stare decisis* referenced in the Brief in Support of the Motion for Summary Judgment, filed on 22 November 2011 [Document 271];

4. For example, your Plaintiffs' Opposition appears to eschew altogether a consideration of the Supreme Court decision in *Underhill v. Hernandez*, 168 U.S. 250 (1897);

5. Another noteworthy point, as regards your plaintiffs' putative plea for equitable tolling, your Plaintiffs' Opposition is devoid of any record evidence that would appear to suggest that

any of your plaintiffs was precluded from departing Somalia, for any period, in order to prosecute the instant action in any jurisdiction outside of the Horn of Africa, or else that, any imagined threat of harm to any plaintiff or else to any member of any individual plaintiff's family(ies) precluded any plaintiff from departing Somalia to pursue Samantar in the courts;

6. Nowhere in your Plaintiffs' Opposition is there any suggestion, let alone a scintilla of evidence, that Samantar made any effort to conceal his residence in Italy during the 1991 – 1997 period in which he lived there, and there is no gainsaying that Samantar actually lived in Italy from 1991 – 1997;

7. Nowhere in your Plaintiffs' Opposition is there a credible suggestion that it would have been *impossible*, or else insuperably difficult, for your plaintiffs' to engage an Italian lawyer and sue Samantar whilst the latter lived in Italy;

8. Nowhere in your Plaintiffs' Opposition is there any consideration of the scenario that had any of your plaintiffs initiated civil litigation against Samantar in the 1990s, the Italian judiciary could have not, then and there, recognized, as it subsequently did, formally, in the following decade, discrete causes of action for extrajudicial killing, arbitrary detention and torture;

9. Your Plaintiffs' Opposition, *passim*, misstates and misconstrues the requirement for intentionality for secondary liability set forth in the recent Fourth Circuit decision in the case of *Aziz v. Alcolac, Inc.*, 658 F. 3d 388 (4th Cir. 2011), which decision is correctly characterized and appropriately invoked by Samantar in the latter's subject Motion for Summary Judgment; of greater significance, nowhere in your Plaintiffs' Opposition is there any citation to any specific record evidence suggesting that Samantar harbored or otherwise had any specific knowledge, much less any specific intent, as regards any of the supposed harms said to have been suffered by any of the putative plaintiffs to the instant action;

10. Samantar respectfully emphasizes here that the foregoing enumerated points ought not to be interpreted as all-encompassing or inclusive; indeed, there are a number of other and further points of rebuttal to be made; however, given the press of time, Samantar, through the undersigned, is constrained to abbreviate the instant Reply¹, so that this Honorable Court's requirement of making the instant filing by the end of business on even date be met.

WHEREFORE, and for the the foregoing reasons, to be augmented and supplemented further at the upcoming 22 December 2011 hearing, your defendant ever prays that his Motion for Summary Judgment be granted, and that he be afforded such other and further relief as may be just and fitting under the existent circumstances.

Respectfully submitted,

Dated: 16 December 2011, at Alexandria, Virginia

/s/ Joseph Peter Drennan
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ATTORNEY AND COUNSELOR,
IN PRAESENTI, FOR
MOHAMED ALI SAMANTAR

¹ Inter alia, the undersigned has had to divide his time today, *id est*, 16 December 2011, between work on the instant Memorandum and work with the law firm of Akin Gump on coeval filing requirements in the companion case of *Jane Doe, et alii, vs. Yusuf Abdi Ali*, Civil Action No. 05-701, before this Honorable Court.

CERTIFICATE OF SERVICE

I, Joseph Peter Drennan, undersigned, hereby and herewith certify that, on 16th of December 2011, I caused a true, cyclostyled facsimile of the foregoing to be despatched, electronically, through the Court's CM/ECF filing system upon, *inter alios*:

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Joseph William Whitehead, Esquire
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Respectfully submitted,

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