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

BASHE ABDI YOUSUF, *et alii,*	*	
	*	
Plaintiffs,	*	
	*	
v.	*	**Civil Action No. 1:04 CV 1360 (LMB/JFA)**
	*	
MOHAMED ALI SAMANTAR,	*	
	*	
Defendant.	*	

REPLY IN SUPPORT OF DEFENDANT SAMANTAR'S MOTION TO DISMISS SECOND AMENDED COMPLAINT

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Dated: 22 December 2010

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COMES NOW, before this Honorable Court, your Defendant in the instant matter, *viz.*, Mohamed Ali Samantar ("Samantar"), through undersigned counsel, respectfully replies to Plaintiffs' Opposition (Docket Entry ("DE") #143) ("Opposition") to Samantar's Motion to Dismiss Second Amended Complaint (DE #138), by showing unto this Honorable Court as follows, *viz.*:

ARGUMENT

I. *THIS HONORABLE COURT LACKS SUBJECT MATTER JURISDICTION.*

A. *This Case Requires Treatment of Nonjudiciable Political Questions and Acts of State.*

Your Plaintiffs, with all due respect, could not be more wrong in deigning to assert that this case, suffused in poisonous clan-based grievances from long ago, presents no nonjudiciable issues of political questions and acts of state. The principal argument that Plaintiffs make for their contention in such regard is the absence of any opinion from the State Department. Opposition at 13. However, Plaintiffs misconstrue the significance of State Department inaction. As explained in *Alperin v. Vatican Bank*, 410 F.3d 532, 555-56 (9th Cir. 2005), addressing State Department abstention:

> Had the State Department expressed a view, that fact would certainly weigh in evaluating the fourth *Baker* formulation .... It is unclear, however, how courts should construe executive silence. We are not mind readers. And, thus, we cannot discern whether the State Department's decision not to intervene is an implicit endorsement, an objection, or simple indifference. At best, this silence is a neutral factor. [1]

Id. (dismissing, on the basis of the political question doctrine, claims by Holocaust survivors against the Vatican for war crimes, crimes against peace, and crimes against humanity).

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1 Plaintiffs quote the first sentence of this passage in their brief to argue that State Department silence mandates an inference that this case does not present a political question. Opposition at 13. Of course, that sentence only addresses the consequence of State Department action and not inaction as here.

As to whether, *vel non,* the instant case presents a political question, your Plaintiffs try to distinguish the instant circumstances from those in *Doe v. Exxon Mobile Corp.* 393 F. Supp. 2d 20 (D.D.C. 2005), cited by Samantar (Brief in Support of Motion to Dismiss (DE #139) ("Brief") at 5), on the basis that, in *Doe,* but not here, the State Department submitted to the court a letter cautioning about the potential foreign policy implications of the case. The State Department did not, however, provide guidance to the courts in the two other cases cited by Samantar that were dismissed on political question grounds. *See Corrie v. Caterpillar, Inc.*, 403 F. Supp. 2d 1019, 1032 (W.D. Wash. 2005); *In re Refined Petroleum Products Antitrust Litigation,* 649 F. Supp. 2d 572, 596-98 (S.D. Tex. 2009).

Nor did the State Department intervene in other cases where the courts dismissed claims on the basis of the potential issues they raised for the conduct of U.S. foreign policy. In addition to *Alperin*, these cases include, on facts resembling the instant ones, *Hereros ex rel. Riruako v. Deutsche Afrika-Linien GMBLT & Co.*, 232 Fed. Appx. 90, 96 (3d Cir. 2007) (dismissing a complaint under the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350, on the grounds, in part, that the case arose out of a war long concluded and "implicates foreign policy decisions made long ago"); *Iwanova v. Ford Motor Co,* 67 F. Supp. 2d 424, 486 (D.N.J. 1999) ("allowing private litigation of war-related claims would express a lack of respect for the executive branch"); *Kelberine v. Societé Internationale*, 363 F.2d 989, 995 (D.C. Cir. 1966) (holding that courts cannot provide relief for persons injured in the course of a war).

In what may only be viewed as a disturbingly nihilistic diatribe (*see generally* Declaration of Martin R. Ganzglass, Opposition, Exhibit 1, *passim*, at ¶¶ 25-27), your Plaintiffs go on to try to discount and disparage the views of the Transitional Federal Government ("TFG"), setting the stage, as it were, to argue for abstention by this Honorable Court, by

highlighting a statement in a footnote in the amicus brief filed by the U.S. Government with the Supreme Court in this case to the effect that the Honorable Court should not attach significance to the statements of the TFG. Opposition at 13 (citing Brief for the United States as Amicus Curiae Supporting Affirmance, *Samantar v. Yousuf*, 130 S. Ct. 2278 (2010) (No. 08-1555), 2010 WL 342031 ("Amicus Brief") at 31-32 n.12). Whatever deference this Honorable Court might choose to give to this isolated statement, a proper contextual reading of such comment reveals that it was directed, solely, to whether, *vel non*, the TFG's expressions might represent the official views of the Somali Government. [2] This statement cannot diminish the force of the opinion of the head of a body that the U.S. supports militarily in the interest of ending the violence in Somalia (Brief at 3) that the continuation of this lawsuit will "exacerbate the inter-clan tensions that have been at the root of so many of the difficulties that our country has faced and will face in the challenging process ahead." Letter from Prime Minister Mohamed Abdullahi Mohamed to Secretary of State Clinton (28 Nov. 2010). Brief, Exhibit 3, at 1. The solitary opinion served up by your Plaintiffs, essentially, deigning to pooh-pooh the palpable risks that prosecution of this case risks interfering with the recovery process in Somalia is the statement of an individual whose last dealings with Somalia consisted on an article written in 1997 and who acknowledges that his only information about the current situation in Somalia comes from "continu[ing] to remain in contact with Somali friends in the United States and Canada and to

2 It should also be noted that the Amicus Brief was filed in January 2010, prior to the remarks by Assistant Secretary of State Carson cited in Samantar's Brief that disclose military support by the U.S. for the TFG. *See* Brief, Ex. 2, at 2. It is also noteworthy that, literally, on the afternoon that the instant Reply is to be submitted to this Honorable Court, the United Nations Security Council has just voted, unanimously, to bolster the TFG by increasing the peacekeeping force in Somalia by 50 percent, from 8,000 to 12,000 soldiers. See the Associated Press wire-story "UN increases troops in Somalia by 50 percent" (22 December 2010), attached hereto as Exhibit 6. Thus, there can be no gainsaying that the U.S. Government does, indeed, support the TFG, Plaintiffs' threadbare contentions, dare we say, sentiments, to the contrary, notwithstanding.

read about developments in the former country of Somalia." Declaration of Martin R. Ganzglass, Opposition, Exhibit 1, at ¶¶ 7-8.

Ironically, the two cases cited by Plaintiffs to allege the absence of a political question (Opposition at 14) actually stand for the opposite proposition. As noted above, the court in *Alperin* dismissed on political question grounds the international law allegations brought by the plaintiff Holocaust survivors in that case. 410 F.2d at 558-62. Similarly, in *Linder v. PortCarrero*, 963 F.3d 332, 336 (11th Cir. 1992), the court sustained the dismissal by the lower court on nonjusticiability grounds of all of the allegations of international law violations and allowed consideration simply of claims of battery and intentional infliction of emotional distress, claims under state law not made here. The *Linder* court cited with approval the view of the district court that courts are not competent "'to measure and carefully assess the use of the tools of violence and warfare in the midst of a foreign civil war'" or to inquire into "'the relationship between United States policy and the actions of the contras.'" *Id.* at 335 (quoting *Linder v. Portocarrero*, 747 F. Supp. 1452, 1460, 1469 (S.D. Fla. 1990)). Since these are precisely the kinds of issues that Plaintiffs ask this Honorable Court to address, Plaintiffs' claims present the same sorts of political questions that the court in *Linder* rejected and that must, perforce, be rejected here.

For similar reasons, the instant case must be dismissed on the basis that it requires this court to pass judgment on acts of the Somali state. [3] Samantar concurs with Plaintiffs that, as the Supreme Court stated in *W.S. Kirkpatrick & Co., Inc. v. Envtl. Tectonics Corp., Int'l*, 393 U.S. 400 (1990), "Act of state issues only arise when a court *must* decide – that is, when the outcome

3 It is no barrier to the application of this doctrine that Samantar is no longer an official of Somalia. *See Hatch v. Baez*, 14 N.Y. Sup. Ct. 596, 600 (1876) ("The fact that the defendant has ceased to be president of St. Domingo does not destroy his immunity [under the act of state doctrine].").

of the case turns upon – the effect of official actions by a foreign sovereign." This is precisely the posture of this case in that Plaintiffs seek a judicial ruling on Samantar's actions as a senior political and military official of a sovereign state engaged in what the Complaint alleges was "a violent campaign to eliminate Isaaq clan opposition" to that state. Second Amended Complaint (DE #76, Ex.1) ("Complaint") at ¶ 19. Military actions are quintessentially official acts. Thus, "if a court determines the military officer acted on behalf of a recognized government and if the lawsuit turns on a challenge to the officer's order, then the act of state doctrine bars adjudication of the matter." *Roe v. Unocal Corp.*, 70 F. Supp. 2d 1073, 1079 (C.D. Cal. 1999) (dismissing on act of state grounds a claim to compensation by a Burmese soldier for work performed for an American corporation under orders from the Burmese military); *see also Saudi Arabia v. Nelson*, 507 U.S. 349, 361-62 (1993) ("however monstrous such abuse undoubtedly may be, a foreign state's exercise of the power of its police has long been understood for purposes of the restrictive theory as particularly sovereign in nature").

Whether a particular act of state warrants court abstention depends on considerations similar to those that inform the political question doctrine – "international comity, respect for the sovereignty of foreign nations on their own territory, and the avoidance of embarrassment to the Executive Branch in its conduct of foreign relations." *W.S. Kirkpatrick & Co.*, 393 U.S. at 408. Each of these factors, as demonstrated in the analysis above of the application of the political question doctrine, inclines towards the application as well of the act of state doctrine.

Even applying the older act of state analytical factors found in *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964), and cited by Plaintiffs (Opposition at 15), this court should dismiss this case. These factors consist of the following: (1) "the greater the degree of codification or consensus concerning a particular area of international law, the more appropriate

it is for the judiciary to render decisions regarding it"; (2) "the less important the implications of an issue are for our foreign relations, the weaker the justification for exclusivity in the political branches"; and (3) whether "the government which perpetrated the challenged act of state is no longer in existence." 376 U.S. at 427-28. As established in the discussion in Samantar's Brief, *passim,* and in this Reply, regarding the failure of Plaintiffs to state claims for relief under the ATS and the Torture Victim Protection Act ("TVPA"), 28 U.S.C. § 1350 note, (Brief at 20-29; *infra* at part III), none of the purported bases for claims against Samantar had achieved international law status at the time the predicate acts allegedly took place. The breadth of the potential consequences of the continued prosecution of this case for the conduct of U.S. foreign policy is amply set out in the examination of the application of the political question doctrine in Samantar's Brief (at 2-5) and in this Reply (*supra,* at part I.A). As for the third factor, *id est*, whether *vel non* there has been a change of government, this again goes to the extent of the risk of interference by this court with the Executive's conduct of foreign policy. "The balance of relevant considerations may also be shifted if the government which perpetrated the challenged act of state is no longer in existence . . . for the political interest of this country may, as a result, be measurably altered." 376 U.S. at 428. Since the risk of interference here is substantial, notwithstanding the change in government, this factor, when considered in conjunction with the other two, should not impede application of the act of state doctrine, and this case should be dismissed.

B. *Plaintiffs Would Have this Court Abrogate Samantar's Common Law Immunity.*

1. Samantar is Entitled to Immunity for Actions Taken in his Official Capacity.

Plaintiffs and Samantar agree that, in the absence of any suggestion of common law

immunity from the Executive Branch, this Honorable Court should dismiss this case if "'the ground of immunity is one which it is the established policy of the [State Department] to recognize.'" *Samantar v. Yousuf*, 130 S. Ct. 2278, 2284 (2010) (quoting *Republic of Mexico v. Hoffman*, 324 U.S. 30, 36 (1945)). The parties disagree, however, as to the source of that "established policy" and the application of that policy to Samantar's eligibility for immunity.

As to the source of established immunity policy, Plaintiffs would have this Honorable Court look exclusively to the brief of the United States before the Supreme Court. Opposition at 4. However, tellingly, the pronouncements of the Executive Branch in the Amicus Brief, fall well short of established policy. First, these pronouncements were submitted not to establish principles of common law immunity but for the much narrower purpose of asserting that immunity determinations under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1330, 1332, 1391, and 1602-1611, should not govern the immunity of an individual such as Samantar because "the scope of immunity for foreign officials is not necessarily co-extensive with that of foreign states – and can diverge in either direction." Amicus Brief at 13. Second, the discussion as to how state and individual immunities might diverge is couched in highly tentative language. Thus in the Government's first attempt to formulate possible bases for divergence, the brief recites that the "Executive *reasonably could find it appropriate* to take into account [certain circumstances regarding Samantar]." *Id.* at 7 (emphasis added). Similarly in its second recitation, the Government speaks of a "*number* of complexities that *could* attend the immunity determinations in this and other cases." *Id.* at 24 (emphasis added). Indeed, it would be difficult to find language that was more equivocal.

Plaintiffs are in effect trying to transmogrify the Government's Amicus Brief into a statement of interest. There can be no gainsaying that, to find established Government policy,

the better source would be an actual statement of interest. The Government's Statement of Interest in *Matar v. Dichter*, 563 F.3d 9 (2d Cir. 2009) ("Dichter Statement of Interest"), proves instructive in that it is relatively recent and addresses circumstances almost identical to those presented in the instant case, *id est*, the immunity of a former high military official for actions taken incident to the suppression of a perceived insurgency against a sovereign state. According to the Dichter Statement of Interest, the established policy of the Executive Branch can be stated quite simply, "[F]oreign officials enjoy civil immunity for their official acts." *Id.* at 20. In a fuller elaboration of this principle, the Government adopted the following language:

> "State officials cannot suffer the consequences of wrongful acts that are not attributable to them personally but to the State on whose behalf they act: they enjoy so-called 'functional immunity.' This is a well-established rule of customary international law going back to the eighteenth and nineteenth centuries, restated many times since[.]"

Id. (quoting *Prosecutor v. Blaskic* (issue of subpoena *duces tecum*), 110 I L R 607, 707 (1997)). The Complaint alleges that Samantar acted solely in furtherance of his official duties. Second Amended Complaint (DE #76, Ex. 1) at ¶ 65 ("Defendant . . . acting as Minister of Defense, and later as Prime Minister, bears responsibility."). Thus, according to the established policy of the State Department, Samantar is thus entitled to be recognized as immune by this Honorable Court.

Even if the Amicus Brief could be read to create "established policy," Samantar would still be entitled to immunity. The Amicus Brief makes it clear the points of departure are the "generally applicable principles of immunity" which the brief summarizes as follows: "[B]oth current and former officials of a foreign state usually enjoy immunity for acts undertaken in their official capacity." Amicus Brief at 6 (citing *Underhill v. Hernandez*, 65 F. 577, 579-80 (2d Cir. 1895), *aff'd*, 168 U.S. 250 (1897)). As for the additional possible considerations that the Government formulates for the first time in the Amicus Brief, the Government describes them as

follows:

> In this case, for example, the Executive reasonably could find it appropriate to take into account petitioner's residence in the United States rather than Somalia, the nature of the acts alleged, respondents' invocation of the statutory right of action in the TVPA against torture and extrajudicial killing, and the lack of any recognized government of Somalia that could opine on whether petitioner's alleged actions were taken in an official capacity or that could decide whether to waive any immunity that petitioner otherwise might enjoy.

Amicus Brief at 7.

While one can only speculate as to the significance or weight to be given to any of these factors, none of them should result in any qualification of Samantar's traditional entitlement to immunity. To be sure, Samantar does reside in the United States; he came here, however, because of what Plaintiffs recognize was a collapse of Somalia's central government in 1991 (Complaint at ¶ 86) and only after living openly in Italy for 6 years (Affidavit of Mohamed Ali Samantar, Memorandum in Support of Defendant Samantar's Motion to Dismiss (DE #90, Exhibit 1), at ¶¶ 9-10). The acts alleged against him are all ones that the Plaintiffs acknowledge he took in his official capacity. Complaint at ¶ 65. Plaintiffs seek to assert that his acts were not official because they were not authorized under Somali law. Opposition at 6-7. But the established common law policy of the Executive, as expressed in the Dichter Statement of Interest, rejects such a putative distinction. In response to the identical charge against Dichter, the Government noted that, "[b]y definition, a civil lawsuit against a foreign official will challenge the lawfulness of the official's acts. Hence, the official's immunity would be rendered meaningless if it could be overcome by such allegations alone." Dichter Statement of Interest at 23. As for any invocation by Plaintiffs of the TVPA, this invocation is improper since, as discussed in Samantar's Brief (at 27-29), the TVPA has no retroactive application to the events in the Complaint and, more importantly, the legislative history of the TVPA makes clear that the

law was not intended to alter any of the customary rules regarding immunity. *See* S. Rep. No. 249, 102d Cong., 1st Sess., 1991 WL 258662 ("Senate Report") at *7-8. If the Congress expected that immunity principles would not bar TVPA claims, it was only because it expected that states would, in most instances, not including the instant one, waive their officials' immunity from such claims. *Id.* at *8. Finally, whatever significance the absence of U.S. recognition of the TFG may have had at the time the Amicus Brief was written, the significance has to have diminished by the decision of the U.S. Government since then to cooperate closely with the TFG in providing military assistance for its efforts to achieve national stability. Thus, even if any of these standards developed for the Amicus Brief could figure in an immunity determination, none should be found to change the conclusion under historic and established common law principles that Samantar is entitled to immunity.

2. Samantar is Entitled to Immunity for Acts Taken by Him as a "Head of State."

Your Plaintiffs challenge Samantar's right to head of state immunity on three grounds: that Samantar was never a "head of state," that the Government has never recognized him as a head of state, and that, in any event, head of state immunity is not available to former officials. Each one of these arguments is unavailing. While denominated "head of state" immunity, the immunity is in fact available to "heads of state and other high ranking officials." Amicus Brief at 1 n.5; *see also* cases cited in Brief at 13; Restatement (Second) of Foreign Relations Law § 66 (1965) (extending head of state immunity to a head of state, head of government, and foreign minister). As for the Government's recognition of Samantar's right to such immunity, the Complaint concedes that Samantar was variously the Prime Minister, First Vice President, and Minister of Defense of Somalia (Complaint at ¶¶ 5-7), and Samantar's roles as Prime Minister of

Somalia and as a former high ranking official have been acknowledged by the Government. Amicus Brief at 3, 11 n.5. While Samantar has not been the subject of a Government statement of head of state immunity, "[i]n the absence of guidance from the Executive Branch, courts may decided for themselves whether all the requisites of immunity exist." *Abiola v. Abubakar*, 267 F. Supp. 2d 907, 915 (N.D. Ill. 2003) (recognizing head of state immunity in the absence of any expression of such immunity from the Government). Finally, as to the availability of immunity to former officials, the Government has indicated that its established policy has been that "[a]fter [heads of state and other high officials] leave office, they generally retain residual immunity . . . for their official acts." Amicus Brief at 11 n.5; *see also Abiola*, 267 F. Supp. 2d at 916.

Despite the citation by Plaintiffs of *In re Grand Jury Proceedings, Doe No. 700*, 817 F.2d 1108, 1111 (4th Cir 1987), and *Estate of Domingo v. Republic of Philippines*, 694 F. Supp. 782, 786 (W.D. Wash. 1988), in an attempt to advance a proposition that head of state immunity can lapse when an official leaves office, these cases offer little guidance in such regard. In the former case, the Government of the Philippines waived President Marcos's immunity and, in the latter, the court gave significance to the fact that the State Department failed to renew a suggestion of immunity given to then-President Marcos after he left office, suggesting a rejection by the U.S. Government of Marcos's immunity. *In re Grand Jury Proceedings*, 817 F.2d at 1111; *Estate of Domingo*, 694 F. Supp. at 786.

II. *PLAINTIFFS' CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.*

A. *Equitable Tolling is Not Available for Claims under the TVPA or ATS.*

Samantar agrees with Plaintiffs that "[t]he 'basic inquiry' in an equitable tolling analysis is 'whether congressional purpose is effectuated by tolling the statute of limitations in given circumstances.'" Opposition at 16 (quoting *Burnett v. N.Y. Cent. R.R.*, 380 U.S. 424, 427

(1966)). Plaintiffs fail, however, to demonstrate how the congressional purpose would be furthered by equitable tolling in this instance. [4] They rely instead on a line of cases that has found equitable tolling to be available based solely upon language from a Senate report that elaborated on an equitable tolling provision ultimately stricken from the bill. An analysis of congressional intent leads to the conclusion that this is not one of "those rare instances where – due to circumstances external to the party's own conduct – it would be unconscionable to enforce the limitations period against the party and gross injustice would result." *Harris v. Hutchinson,* 209 F.3d 325, 330 (4th Cir. 2000).

"In order to determine congressional intent, we must examine the purposes and policies underlying the limitation provision, the Act itself, and the remedial scheme developed for the enforcement of the rights given by the Act." *Burnett,* 380 U.S. at 427. These factors have to be considered in light of their principal purpose, as expressed in *Burnett,* that, "[s]tatues of limitation are primarily designed to assure fairness to defendants. Such statutes promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Id.* at 428.

As for the first *Burnett* factor, the specific purpose of the TVPA, the Act itself is silent, but both the House and Senate Reports, in substantially identical language, recite that the object is to give a judicial remedy to victims of abuse in countries where the "general collapse of democratic institutions" has not left "the judiciary intact." H.R. Rep. No. 367(I), 102d Cong., 1st Sess., 1991 WL 255964, *3 ("House Report"); *see also* Senate Report at *3 ("Judicial protection against flagrant human rights violations is often least effective in those countries where such

4 Due to the dearth of information about the Congressional purpose in enacting the ATS (*Sosa v. Alvarez-Machain,* 562 U.S. 692, 712-14 (2004)), this analysis focuses on the purpose behind the TVPA.

abuses are most prevalent."). At the very least, this means that equitable tolling must cease to be available as soon as plaintiffs have a judicial remedy for their abuses anywhere in the world. This conclusion finds support even in the expansive tolling language of the Senate Report which denies tolling whenever, in "any jurisdiction[,] . . . the same or a similar action arising from the same facts may be maintained by the plaintiff, provided that the remedy in that jurisdiction is adequate and available." Senate Report at *11.

As the opinion of Samantar's legal expert demonstrates, Plaintiffs had an adequate and available remedy for the same or a similar action in Italy from 1991, when Samantar took up residence there. Mr. Rucellai confirms, through citation to code and case authority, that Samantar could have been sued under all of the instant causes of action for the damages that Plaintiffs allegedly suffered. Affidavit of Cosimo Rucellai, attached hereto as Exhibit 4 ("Rucellai Affidavit"), at ¶¶ 5-11. He also indicates that, in the jurisdiction of the Tribunal of Rome where Samantar resided (Supplemental Samantar Declaration, attached hereto as Exhibit 5 4, at ¶ 3), the duration of civil proceedings was not the ten to fifteen years asserted for Italy generally by Plaintiffs' expert but "around three years approximately." Rucellai Affidavit at ¶ 12. The statute of limitations could accordingly have begun to run no later than 1991, and the current action, begun in 2004, is untimely.

The second *Burnett* factor, the language of the Act itself, also inclines towards a conclusion that your Plaintiffs are not entitled to the tolling they seek. The Senate committee version of the bill contained language authorizing equitable tolling. *See* Senate Report at *2 (text of S. 313, § 2(c) ("All principles of equitable tolling, however, shall apply in calculating his limitation period."). The full Congress rejected this equitable tolling language and must be understood, at the very least, to have wished to limit the circumstances under which equitable

tolling would be available.[5] *See* 2A *Sutherland Statutory Construction* § 48:18 (7th ed.) ("Adoption of an amendment is evidence that the legislature intends to change the provisions of the original bill."). The House Report, which accompanied a bill that did not provide for equitable tolling, indicated that equitable tolling might yet be available, but "only in some instances, such as where a defendant fraudulently conceals his or her whereabouts from the claimant." House Report at *5. Plaintiffs make no allegation that Samantar concealed his whereabouts, and, accordingly, the language of the Act can provide no support for the availability of equitable tolling for Plaintiffs' claims.

Finally, the third *Burnett* factor, the TVPA's remedial scheme, also dictates against the equitable tolling sought by Plaintiffs. The TVPA provides for a 10-year statute of limitations. The more generous the statute of limitations, the more likely it is that the Congress intended to limit, if not bar, the availability of equitable relief. *See, e.g., United States v. Beggerly*, 524 U.S. 38, 48 (1998) (considering the 12-year statute of limitations under the Quiet Title Act, 28 U.S.C. § 2409a(g) as a factor in rejecting equitable tolling); *Garza v. Burnett,* 2010 WL 1212084, *5 (D. Utah 2010) ("Given Utah's generous limitations period for § 1983 claims, applying equitable tolling to further extend the filing deadline would likely cause substantial prejudice to potential defendants.").

In *The Hereros v. Deutsche Afrika-Linien GMBLT & Co.*, 2006 WL 182078, at *9 (D.N.J. 2006), *aff'd,* 232 Fed. Appx. 90 (3d Cir. 2007), this principle was applied to the TVPA, in an action under the ATS, in order to reject equitable tolling in a claim similar to the instant one, by members of a tribe for alleged genocide in Namibia. As the court noted, "[T]he more generous

5 Plaintiffs incorrectly assert that Samantar contended that "the House version of the TVPA explicitly rejected equitable tolling." Opposition at 17. However, Samantar only argued, accurately, that the House rejected the provision of the Senate bill explicitly allowing for equitable tolling. Brief at 15.

10 year limitations period [of the TVPA] imputed to the [ATS] permits alien plaintiffs to bring timely claims despite hindrances such as 'difficulties of gathering evidence sufficient to support a complaint; unavailability or hesitation of witnesses who may fear reprisal by a corrupt regime; other delays caused by ongoing human rights violations.'" *Id.* (quoting *Jama v. I.N.S.*, 343 F. Supp. 2d 338, 366 (D.N.J. 2004)). The remedial scheme of the TVPA, in providing an extended period of time for addressing any physical or political impediments to bringing a case, manifests an intention that equitable tolling not be available under such circumstances. [6] Thus, each of the *Burnett* factors inclines against a finding that Congress intended equitable tolling to be available under the circumstances set forth in the Complaint, and, accordingly, the instant action must be dismissed as untimely.

III. *PLAINTIFFS HAVE FAILED TO STATE CLAIMS FOR RELIEF UNDER THE ATS AND THE TVPA.*

A. *The Plaintiffs have Failed to set out Cognizable Claims under the ATS.*

Your Plaintiffs do not dispute that, for a claim for relief to be found under the ATS, there had to exist at the time of the alleged events giving rise to the claim "a norm of international character accepted by the civilized world and defined with a specificity comparable to the features of the 18th-century paradigms we have recognized" – "violation of safe conducts, infringement of the rights of ambassadors, and piracy." *Sosa v. Alvarez-Machain*, 562 U.S. 692,

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6 It is significant that the court in *The Hereros* also noted, consonant with Samantar's argument (Brief at 18-19), that those cases that have found tolling to be available due to a fear of reprisal and difficulty in obtaining access to the courts have limited that tolling to those periods when the oppressive regime remained in authority, a circumstance which the Plaintiffs have acknowledged ceased to exist in Somalia in 1991. 2006 WL 182078 at *8; Complaint at ¶ 24. Plaintiffs further assert that Samantar has provided no authority for his assertion that, once any tolling ended, the Plaintiffs would have had only a reasonable period of time in which to commence this action and not the seven years that they took. Opposition at 19 n.16. While Samantar cannot point to any decision applying this general principle of equitable tolling to actions under the ATS or TVPA, the brief contains authority for the application of this equitable principle in comparable contexts. Brief at 20 n.8.

724-25 (2004).[7] Samantar contends, and Plaintiffs insufficiently controvert, that none of claims asserted by Plaintiffs represented such a universally recognized norm in the 1980's when the relevant events allegedly occurred.

1. *First Claim for Relief, Extrajudicial Killing, Fails.*

The only case authority cited by Plaintiffs to support an assertion that a prohibition of extrajudicial killing was a binding norm in the 1980's is *In re Estate of Ferdinand Marcos, Human Rights Litigation*, 25 F.3d 1467, 1475 (9th Cir. 1994) (Opposition at 23), a decision which, in turn, relied for its conclusion wholly on an analysis in *Forti v. Suarez-Mason*, 694 F. Supp. 707, 710 (N.D. Cal. 1988). The court in *Forti* for its part, however, depended for its conclusion on the Universal Declaration of Human Rights, G.A. Res. 217 A (III) ("Universal Declaration") and the International Covenant on Political and Civil Rights, G.A. Res. 2200 (XXI) ("International Covenant"). As Samantar noted (Brief at 31), the Court in *Sosa* rejected both the Universal Declaration and the International Covenant as sources for finding a "relevant and applicable rule of law." 562 U.S. at 728. Plaintiffs have failed, accordingly, to establish that extrajudicial killing was a tort cognizable under the ATS when the events relevant to Plaintiffs' claims allegedly took place.

Plaintiffs also dispute Samantar's assertion that Plaintiffs failed to plead facts adequate to support their claims for extrajudicial killing. Opposition at 24-26. Plaintiffs do not deny that the facts as pled would not, even if accepted as true, establish that any individuals were victims of

7 In *Morrison v. Nat'l Australia Bank Ltd.*, 130 S. Ct. 2869, 2881 (2010), the Supreme Court recently held that the presumption that federal law is not meant to have extraterritorial effect is applicable universally. This case, which only came to the attention of Samantar after the filing of his brief, raises a question as to whether the ATS, which makes no mention of any extraterritorial effect, can be applied to adjudicate events that took place wholly outside the United States. *See also Sarei v. Rio Tinto, PLC*, 625 F.3d 561, 563-64 (9th Cir. 2010) (dissenting opinion).

extrajudicial killing. Instead the disagreement is over whether drawing a conclusion that the individuals were the victims or extrajudicial killing represents a reasonable inference from the facts or, as Samantar continues to maintain, "mere conjecture." *United States v. Diamond Coal & Coke Co.*, 255 U.S. 323, 334 (1921).

2. ***Second Claim for Relief, Attempted Extrajudicial Killing, Fails.***

Plaintiffs cite no authority to suggest that attempted extrajudicial killing has ever been recognized as a tort actionable under the ATS.

3. ***Third Claim for Relief, Torture, Fails.***

In support of their assertion that torture was a binding norm of customary international law during the relevant period, Plaintiffs cite *Filartiga v.Pena-Irala*, 630 F.2d 876, 890 (2d Cir. 1980), and *In re Estate of Ferdinand Marcos*, 25 F.3d at 1475. Opposition at 23. Yet the former relies for its conclusion on a series of treaties, including the International Covenant, not incorporated into U.S. law at the time of the events alleged in the Complaint. *Filartiga*, 630 F.2d at 883-84. The latter relies in addition on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 39 U.N. GAOR Supp. (No. 51), 23 I.L.M. 1027 (1987). *In re Estate of Ferdinand Marcos,* 25 F.3d at 1475. This Convention did not come into force until 1987 and, when ratified by the United States Senate in 1990, was declared not to be self-executing. *See Wang v. Ashcroft*, 320 F.3d 130, 140 (2d Cir. 2003). The TVPA was enacted in 1992 to give first effect to the proscriptions against torture in the Convention. Plaintiffs cannot accordingly establish that a prohibition against torture by a state of its own citizens was a norm of customary international law and actionable under the ATS in the 1980's.

4. *Fourth Claim, for Relief, Cruel, Inhuman, or Degrading Treatment or Punishment, Fails.*

Plaintiffs cite four cases in putative support of the proposition that these acts were recognized as torts when the events in the Complaint allegedly took place. These cases, however, treated events that took place after the 1980's and cannot rebut the authorities cited in Samantar's Brief (at 24-25) that each held that during the relevant period any norms proscribing these acts were insufficiently defined to be actionable under the ATS.

5. *Fifth Claim, for Arbitrary Detention, Fails.*

Plaintiffs cite six cases for the proposition that arbitrary detention could be considered an actionable norm under the ATS. Opposition at 24. While three of the cases do indeed treat events that took place during or prior to the events alleged in the Complaint, the facts of the cases, as recited by Plaintiffs, are readily distinguishable from the instant ones. In *Rodriguez-Fernandez v. Wilkinson*, 654 F.2d 1382, 1388 (10th Cir. 1981), the relevant confinement lasted more than a year. In *Xuncax v. Gramajo*, 886 F. Supp. 330, 334 (S.D.Fla. 1994), the detention included torture resulting in permanent injury. In *Forti v. Suarez-Mason*, 672 F. Supp. 1531, 1541 (N.D. Cal. 1987), one plaintiff was held for more than four years and another arrested and never charged or released. These circumstances must be contrasted with the detentions of John Does I and II under the "facts" alleged by Plaintiffs. John Doe I was imprisoned for five days and John Doe II was imprisoned for one day, albeit in a cell that lacked sanitary facilities. These detentions far more closely resemble the detention "of less than a day" without mistreatment that the Supreme Court in *Sosa* determined was not actionable under the ATS (*Sosa,* 542 U.S. at 738) than the lengthy or torture-tainted detentions that the courts found actionable in the cases cited by Plaintiffs. *See also* Restatement (Third) of Foreign Relations Law of the United States (1986)

§ 702 (international law may be violated by "*prolonged* arbitrary detention") (emphasis added).

6. *Sixth and Seventh Claims, for Crimes Against Humanity and War Crimes, Fail.*

While Plaintiffs have cited some purported authority for the existence of these causes of action, the predicates that Plaintiffs allege are simply the same events that they allege for the first five claims, none of which states a cause of action under the ATS. Where none of the individual acts of alleged wrongdoing makes out a claim, the acts in combination can hardly be said to make out a claim.

B. *Plaintiffs have Failed to set out Cognizable Claims under the TVPA.*

The parties agree that, if the presumption against retroactivity of the TVPA is to be overcome, it must be shown that its enactment did not impose any "new legal consequences" upon events that occurred prior to its enactment. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 290 (1994); Opposition at 26. As to whether the TVPA simply ratified a cause of action that had previously existed, the responsible Congressional committees clearly thought otherwise. They indicated that the TVPA was intended to "*provide* a Federal cause of action" (Senate report) by "*establishing* a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing" (House report). Senate Report at *3; House Report at *1 (emphasis added). Plaintiffs do not dispute that those few courts that have applied the TVPA retroactively [8] have all relied, if, perhaps, not exclusively, on sources that the *Sosa* court indicated do not themselves establish norms of customary international law. [9] *Sosa*, 542 U.S. at 735. Moreover, these courts

8 Plaintiffs assert that the court in *Gonzalez-Vera v. Kissinger*, 2004 WL 5584578, at *8 n.16 (D.D.C. Sept. 17, 2004),whose decision Samantar cited for the proposition that the TVPA was not retroactive (Brief at 28), never considered the issue of retroactivity. Opposition at 27 n.22. While the language of the decision is somewhat ambiguous, the court, at the very least, found "credible" an argument by defendants that the TVPA was not to be applied retroactively. 2004 WL 5584578 at *8 n.16.

9 Despite Plaintiffs claim to the contrary (Opposition at 28), *Sosa* did not approve of

found only that torture was proscribed before the TVPA's enactment. Plaintiffs point to no court that has ever applied the TVPA's proscriptions against extrajudicial killing retroactively.

C. *Plaintiffs have Failed Adequately to State a Claim for Secondary Liability.*

Samantar continues to believe that his sources are more persuasive than Plaintiffs' for the proposition that secondary liability was not available at the time of the events alleged in the Complaint. As for the critical element in any allegation of secondary liability that Samantar "knew of such conduct by the military and failed to use his power to prevent it" (*Hilao v. Estate of Marcos*, 103 F.3d 767, 776 (9th Cir. 1996)), none of the paragraphs in the Complaint cited by the Plaintiffs as alleging such knowledge do more than assert, *ipse dixit*, that Samantar, through his position, acquiesced in the commission of human rights abuses generally. There is no allegation, as should be necessary to sustain a claim of secondary liability against Samantar, that Samantar was aware of the particular abuses that allegedly resulted in the injury to these Plaintiffs. The allegations, therefore, amount to conclusory charges of recklessness or indifference which are not sufficient to meet the standard set for secondary liability in *Hilao*. *See United States v. Carr*, 303 F.3d 539, 540 (4th Cir. 2002) (distinguishing generally between the concepts of knowledge and reckless indifference).

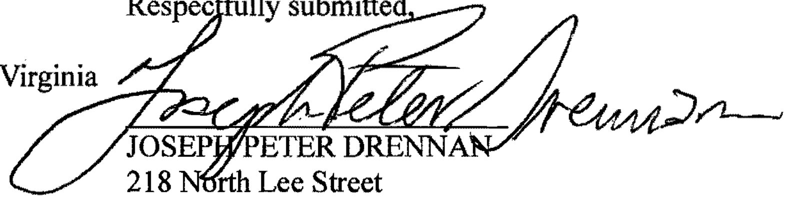
CONCLUSION

For the foregoing reasons, Samantar requests that your Plaintiffs' claims be dismissed, in toto, and that he be afforded such other and further relief as may be warranted under the existent circumstances.

Filartiga's comment about mankind's condemnation of the torturer but only expressed approval of the method that *Filartiga* employed in seeking to determine whether a prohibition of torture had become a norm actionable under the ATS. *Sosa*, 542 U.S. at 732.

Respectfully submitted,

Dated: 22 December 2010, at Alexandria, Virginia



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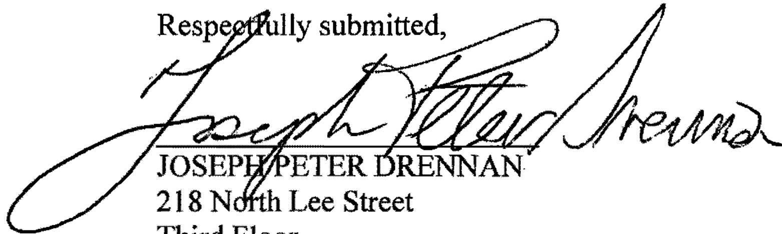
ATTORNEY AND COUNSELOR,
IN PRAESENTI, FOR
MOHAMED ALI SAMANTAR

CERTIFICATE OF SERVICE

I, Joseph Peter Drennan, undersigned, hereby and herewith certify that, on this 22nd of December 2010, I did despatch a true, xerographic facsimile of the foregoing, by carriage of First Class Mail, through the United States Postal Service, with adequate postage pre-paid thereon, enshrouded in a suitable wrapper, unto counsel of record for your plaintiffs.

Respectfully submitted,



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ATTORNEY AND COUNSELOR,
IN PRAESENTI, FOR
MOHAMED ALI SAMANTAR

Exhibit 4

RUCELLAI&RAFFAELLI
STUDIO LEGALE

AVV. COSIMO RUCELLAI
AVV. ENRICO ADRIANO RAFFAELLI
AVV. ANDREA VISCHI
AVV. MADDALENA PALLADINO
AVV. ENRICO SISTI
AVV. SARA BIGLIERI
AVV. ANTONIO DEBIASI
AVV. PAOLO TODARO
AVV. PAOLO BELLI
AVV. STEFANO CASSAMAGNAGHI
AVV. LORENZO CONTI
AVV. GIUSEPPE AMINZADE
AVV. FRANCESCA PRATI
AVV. ELISA TETI
AVV. ANDREA PUPESCHI
AVV. LUCA DE BENEDETTO
AVV. GABRIELLA DI MARTINO
AVV. ELENA BASSAN
AVV. ANDREA POCCI
AVV. MICHELA DALL'ANGELO
AVV. FRANCESCO PEDRONI
AVV. CHRISTIAN BAGNASCO
AVV. MICHELE FRANZOSI
AVV. RAFFAELLA AMBU
AVV. RICCARDO BERTANI
AVV. FRANCESCO BRACCO
AVV. LEONARDO DE VECCHI
AVV. MARTA BRICHETTO
AVV. GIANNA MARIA IANNOTTI
AVV. CATERINA GASTALDI
AVV. GIOVANNI PREVITI
AVV. MICHELE LOMBARDO
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Associazione Professionale
C.F./P.I. 07478470151

UNITED STATES DISTRICT COURT FOR

THE EASTERN DISTRICT OF VIRGINIA

BASHI ABDI YOUSUF, et. al.	*	
Plaintiffs,	*	Civil Action No. 1:04W1360
vs.	*	
MOHAMED ALI SAMANTAR	*	
Defendant.	*	

AFFIDAVIT OF COSIMO RUCELLAI

I, Cosimo Rucellai, under oath, do hereby state as follows:

1. I am over eighteen years of age and am otherwise qualified to testify to the facts and opinions set forth below. All the facts and opinions rendered herein are based upon the best of my knowledge and belief.

2. I hold a bachelors of law degree from Florence University in Italy and a masters of law degree from the Harvard Law School in the United States.

3. I am a member of the bar of Italy and name partner of the law firm Rucellai & Raffaelli in Milan, Italy.

4. I assume that during the period 1991-1997 Mr. Samantar was domiciled within the district of the Tribunal of Rome based exclusively on the information conveyed to me.

5. During the period 1991-1997 Mr. Samantar could certainly have been sued in an Italian civil court by nationals of Countries other than Italy. This is so not only on the basis of the Code of civil procedure quoted in my previous affidavit but also, in the case in question, on the basis of the following two basic provisions of the Constitution of the Republic of Italy:

   art. 2: "The Republic recognizes and guarantees the inviolable human rights of the individual";

   art. 10: "The Italian legal system conforms to generally recognized provisions of International law".

6. These constitutional principles have been recently applied by the United Sections of the Italian Supreme Court of Last Appeal ("*Cassazione Civile Sezioni Unite*") in the following decision (n. 5044, 11 March 2004):

   "*The generally recognized provisions of international law protecting freedom and human dignity as fundamental values and configuring as international crimes all behaviors that most seriously attempt on the integrity of such values have become automatically part of our judicial system and are therefore entirely suitable as role of parameter of the injustice of the damage caused by third parties' facts committed with fraud or negligence*".

7. In the light of the foregoing the alleged circumstance that Italian law does not contain a specific cause of action for torture, extrajudicial killing, inhuman treatment or crimes against humanity is totally irrelevant.

8. Moreover the allegation that Italian law does not specifically contemplate any of the aforementioned crimes as source of right to compensation for damages is in contrast with the text of art. 2043 of the Italian civil code: "*Any fraudulent or negligent act that causes an unjustified damage to another person obligates the person who committed the act to compensate such damage*".

9. The right to compensation for fraudulent or negligent acts committed by another party is characterized by the atypical nature of such right, in the sense that such right does not require that the fraudulent or negligent act which caused the damage be contemplated by any specific provision of Italian law.

   This principle has been recently established by the United Sections of Italian Supreme Court of Last Appeal ("*Cassazione Civile Sezioni Unite*"), as follows: "*The compensation for* economic (emphasis added) *damage resulting from any unfair act* (whether tortious or criminal, our parenthesis) *is characterized by its* atypical *nature* (emphasis added), *as the injustice of the damage causing the right to compensation requires, pursuant to art. 2043 of the Italian Civil Code, that any legally material interests be injured, while compensation for non-economic damage* (emphasis added) *is characterized by its typical nature* (emphasis added), *because such latter damage must be compensated only in those cases which are contemplated by the law or in those cases where such damage is caused by the injury to specific inviolable rights of the human person* (emphasis added)": Supreme Court decision n. 26972, 11 November 2008.

   Therefore, according to this decision, in the event of injury to inviolable rights of the human person, the relevant damage must be compensated even regardless of the provision of art. 2043 of the Italian civil.

   The same principle was established by the Supreme Court as follows: "*It is impossible to determine in advance* (a priori, our parenthesis) *which interests deserve protection: the main feature of an unfair fact pursuant to art. 2043 of the Italian Civil Code, as primary provision of protection, is in fact its atypical nature* (emphasis added)": United Sections of the Italian Supreme Court of Last Appeal ("*Cassazione Civile Sezioni Unite*") decision n. 500, 22 July 1999.

   This decision so confirms that in the event of damages caused by injury to specific inviolable rights of human person there is no requirement that the relevant fact be specifically indicated by the law as source of damages.

10. Moreover: "*Pursuant to Art. 2043 of the Italian Civil Code, any unfair fact obligates the person who committed such fact to compensate the damage*

deriving therefrom and such compensation is due regardless of any requirement of correspondence of the actually committed fact with any specific legal paradigm of crime provided by law (emphasis added). *Such principle is also confirmed as follows: art. 185 Italian Penal Code* does not *(emphasis added) provide that damage caused by a specific crime may be compensated only if such fact still constitutes such specific crime at the time when the judicial decision is issued, but, confirming implicitly the aforesaid general principle,* (art. 185, our parenthesis) *establishes that any crime obligates the offender to compensate the damage caused if such crime also damages a legally protected interest and, therefore, causes an unfair damage"; ...; the Italian Code of Penal Procedure, ... is inspired by the principle of total autonomy of the civil action from the penal action* (emphasis added). *From the same fact may therefore derive, respectively in the civil ambit and in the penal ambit, two different kinds of sanctions (damages and penal punishment) which do not always concur and are always reciprocally irrelevant, in the sense that each kind of consequences* (penal or civil, our parenthesis) *is regulated by its own specific and independent discipline*": Third Section of Italian Supreme Court of Last Appeal ("*Cassazione Civile III Sezione*") decision n. 1761, 19 February 1998.

The above quoted decision further confirms that the right to damages provided by the civil law is independent from any requirement that the fraudulent or negligent facts in question be also specifically regarded as crimes by the law.

11. As aforesaid, the generally recognized provisions of international law are automatically recognized by the Italian legal system by virtue of art. 10 of the Constitution of the Republic of Italy. Moreover art. 2 of same Constitution specifically provides that "*the Republic recognizes and guarantees the inviolable human rights of the individual*".

12. Finally I refer to the statement, contained in the "Declaration of Paola Gaeta" dated 14 December 2010, that "*the length of the Italian civil proceedings is ..... abnormal, ranging from ten to fifteen years*" and that "*for that reason Italy has been frequently condemned by the European Court of the Human Rights for breaching art. 6 of the European Convention of the Human Rights*".

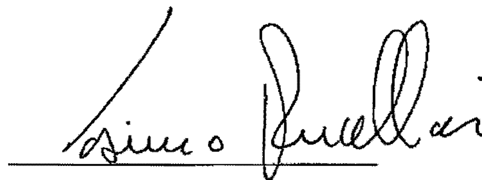
It should be noted that such assumption could be utilized only with respect to those Italian civil courts which actually caused, due to the length of their proceedings, the complaint to and the consequent decision of the European Court of Human Rights condemning Italy. Not with respect to Italian civil courts which did not cause any such complaint.

It should be stressed in this regard that, due to the fact that Mr. Samantar during his residence in Italy was domiciled within the district of the Tribunal of Rome, any civil action against him in Italy should have been brought before the Tribunal of Rome.

To the best of my knowledge and belief Italy has been condemned by the European Court of Human Rights with respect to the length of proceedings of Tribunals of minor centers of Italy (with the exception of Genova). Not for the length of proceedings before Tribunals of major Italian cities. In other terms, the Tribunals and the Courts of Appeals of cities such as Rome, Milan, Turin, Naples, Palermo, Florence, Bologna and other centers of similar size (Genova excluded) did not cause complaints before the European Court of Human Rights. To the best of my knowledge and belief the average duration of proceedings before the Tribunal of Rome during the period 1991/1997 could be estimated around three years approximately. A similar average duration (probably somewhat less) may be estimated for proceedings before the Court of Appeals of Rome during the same period.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct and confirm in full my previous affidavit dated 7 January 2005.

22 December 2010



Cosimo Rucellai

Exhibit 5

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

BASHI ABDI YOUSEF, *et alii*,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	**Civil Action No. 04-1360 (LMB/JFA)**
	*	
MOHAMAD ALI SAMANTAR,	*	
	*	
Defendant.	*	

SUPPLEMENTAL DECLARATION OF MOHAMMAD ALI SAMANTAR

I, Mohamed Ali Samantar, do hereby declare as follows, *viz*.:

1. That I am over eighteen years of age and am otherwise qualified to testify to the facts and opinions contained in the instant Declaration;

2. That all of the opinions expressed or rendered herein are based on my personal knowledge, information, or belief;

3. That, from 20 February 1991 to 25 June 1997, I was domiciled in the Italian Republic, within the judicial district of the Tribunal of Rome.

I declare under the penalty of perjury that the foregoing statements are true and correct.

Executed, at Fairfax, Virginia, on: 22 December 2010.

12/22/10

Mohamed Ali Samantar

Exhibit 6

Hosted by Google™ Search News

UN increases troops in Somalia by 50 percent

(AP) – 1 hour ago

UNITED NATIONS (AP) — Moving to better protect Somalia's weak, U.N.-backed government from armed opposition groups, the Security Council unanimously agreed Wednesday to increase the peacekeeping force there by 50 percent, from 8,000 to 12,000 troops.

Council members also authorized the African Union to extend its deployment of the peacekeeping force known as AMISOM through Sept. 30, 2011, calling the move "vital for the long-term stability of Somalia."

Uganda said it would contribute the additional 4,000 troops.

The resolution approved by council members said the extended deployment and the troop increase are necessary to support Somalia's so-called Transitional Federal Government and civilians from attacks by al-Shabab and other opposition groups.

Al-Shabab and the other largest armed group in the country, Hizbul Islam, announced in recent days they would drop their feud and merge forces to concentrate on fighting the Mogadishu-based government and the African Union troops who protect it.

Al-Shabab has publicly pledged allegiance to Osama bin Laden and counts several hundred foreign fighters in its ranks. Considered Somalia's most dangerous armed group, al-Shabab practices a harsh, conservative brand of Islam that bans television and movies. Its punishments include the chopping off of hands of thieves and death by stoning of adulterers.

The council also repeated its worries about the worsening humanitarian situation in Somalia, and condemned attacks by armed groups on aid workers and their obstruction of aid shipments.

It also touched on the problem of piracy off Somalia's coast, saying countries must work together to provide solutions, and repeated its demand that all armed groups in the country stop recruiting child soldiers.

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