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February 3, 2005 DATE:

TO: Robert R. Vieth, Esq.

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FROM: Frank Riley, Paralegal

to Julian H. Spirer

FAX. NO.: (703) 456-8100

Number of pages (including cover sheet): 4

## COMMENTS/MESSAGE:

As you requested, attached is a copy of the report that we expect will be filed with the Court later this afternoon. A copy of the report, including the complete attachment, will be mailed to you today as well.

THIS FACSIMILE TRANSMISSION CONTAINS CONFIDENTIAL AND/OR LEGALLY PRIVILEGED INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL (9) NAMED ON THIS TRANSMISSION SHEET. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU HEREBY ARE NOTIFIED THAT ANY DISCLOSURE, COPYING, OR DISTRIBUTION OF, OR THE TAKING OF ANY ACTION IN RELIANCE ON, THE CONTENTS OF THIS FACSIMILE TRANSMISSION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE CALL US COLLECT IMMEDIATELY SO THAT WE CAN ARRANGE FOR RETURN OF THE DOCUMENT AT NO COST TO YOU. THANK YOU.

# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

### ALEXANDRIA DIVISION

BASHE ABDI YOUSUF, ET AL.

Plaintiffs,

•

Civil Action No. 1:04 CV 1360

v.

:

MOHAMED ALI SAMANTAR

Defendant.

# DEFENDANT'S REPORT TO THE COURT REGARDING POSITION OF THE DEPARTMENT OF STATE

Defendant Mohamed Ali Samantar, in compliance with this

Court's order dated January 7, 2005, hereby respectfully submits,

through undersigned counsel, his report to the Court on his

efforts to date to obtain the position of the United States

Department of State (the "State Department") regarding whether he should receive head-of-state immunity.

Promptly following the issuance of the Court's order, defendant initiated communications with the new transitional government of Somalia to request that it petition the State Department to undertake the filing with this Court of a suggestion of immunity or interest urging this Court to dismiss the claims against defendant. While defendant has received some indication that such a petition will be forthcoming from the Somali government, defendant cannot give the Court any assurance as to what any such the petition will contain or when it will be sent.

On or about January 21, 2005, defendant submitted to the State Department's Legal Advisor, directly and through counsel, his own petition that the Department undertake the filing with this Court of such a suggestion of immunity or interest. A copy of defendant's submission to the Legal Advisor, with all exhibits, is attached hereto and incorporated herein.

On February 2, 2005, counsel to defendant spoke with the attorney advisor in the State Department with responsibility for managing the State Department's response to defendant's petition in order to ascertain the likely timetable within the Department for a response. The attorney advisor noted that this matter was a priority one but hesitated to give a date citing the complexities of the legal and political issues raised and potential delays arising out of the personnel changes currently taking place in the Department. He indicated that a response would be provided expeditiously but it was not likely to occur within the thirty days established by the Court.

Respectfully submitted,
SHAUGHNESSY, VOLZER & GAGNER

Harvey J. Volze

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Attorneys for Defendant

#### CERTIFICATE OF SERVICE

of \_\_\_\_\_\_, 2005, I caused to be served a true and correct copy of the foregoing Defendant's Report to the Court Regarding Position of the Department of State by first-class U.S. Mail, postage pre-paid, as indicated below on the following:

Robert R. Vieth, Esq.
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