

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

BASHE ABDI YOUUF, AZIZ MOHAMED DERIA (IN HIS CAPACITY AS
PERSONAL REPRESENTATIVE OF THE ESTATES OF MOHAMED DERIA
ALI, MUSTAFA MOHAMED DERIA, JAMES DOE I, AND JAMES DOE II),
JOHN DOE I, JANE DOE, AND JOHN DOE II,

Appellants,

versus

MOHAMED ALI SAMANTAR,

Appellee.

**RESPONSE TO PLAINTIFFS' MOTION
FOR JUDICIAL NOTICE**

Defendant Mohamed Ali Samantar ("Samantar") opposes the motion of Plaintiffs that the Court take judicial notice of certain alleged facts. First, Plaintiffs could and should have presented all of these assertions to the district court below, and they may not be introduced into the record for the first time on appeal. Moreover, nearly all of the assertions offered by the Plaintiffs for judicial notice, including most of those on which Plaintiffs rely in their opening Brief,

constitute contestable allegations rather than indisputable facts and are, accordingly, inappropriate for judicial notice.

I. The Record of this Case is Closed to the Assertions Proffered by Plaintiffs.

An appeal is a review of a decision of a district court, and "an appellate court normally will not consider facts outside the record on appeal." *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989). In refusing to consider for the first time on appeal certain medical journals and public health publications, this Court stated that "we will not consider factual evidence that was not presented at trial." *Montalvo v. Radcliffe*, 167 F.3d 873, 878 (4th Cir. 1999); see *Deutser v. Marlboro Shirt Co.*, 81 F.2d 139, 143 (4th Cir. 1936).

All of the alleged facts presented for judicial notice by Plaintiffs to this Court could have been presented to the district court below for judicial notice.¹ This case was pending before the district court for almost three years and was twice the subject of full briefings and hearings on motions by Defendant Samantar to dismiss. Plaintiffs had ample opportunity to request supplementation of the district court record with the assertions they now press for judicial notice upon this

¹ While some of the proffered assertions appear in sources that postdate the district court's opinion, Plaintiffs do not allege that these assertions are new and do not appear in predecessor sources.

Court. Plaintiffs provide no explanation as to why they did not present these alleged facts below.² *See Causey v. Balog*, 162 F.3d 795, 803 n.5 (4th Cir. 1998) (evidence may not be considered on appeal if it could have been but was not offered to the district court and "no legitimate reason" is provided for the omission).

II. The Assertions Urged by Plaintiffs do not Qualify for Judicial Notice in that They are not Indisputable.

Numerous of Plaintiffs' alleged facts are not even eligible for admission by judicial notice in that they clearly are disputable. The Federal Rules of Evidence provide that "A judicially noticed fact must be one not subject to reasonable dispute" Fed. R. Evid. 201(b). "Only indisputable facts are susceptible to judicial notice." *Nolte v. Capital One Fin. Corp.*, 390 F.3d 311, 317 n. (4th Cir. 2004) (citations omitted); *see United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994) ("the fact must be one that only an unreasonable person would insist on

² An apparent reason for Plaintiffs' first offering these alleged facts on appeal is that they are to be used in support of an argument that Plaintiffs did not make to the district court and wrongfully seek to make for the first time on appeal, *viz.*, that, because of alleged unrest in Somalia, the country does not qualify as a "Foreign State" under the Foreign Sovereign Immunity Act (28 U.S. C. §§ 1608-11). *See* Plaintiffs' Brief at 21 (citations to alleged facts proposed for judicial notice).

disputing”). Indeed, several of the “facts” are disputed within the very documents that Plaintiffs attach to their motion as the sources of their alleged facts.

Thus, Plaintiffs assert that: “The Transitional Federal Government (“TGF”) formed in 2004 has never had a defined territory or population under control, nor does it govern the autonomous areas that make up Somaliland or Puntland’” Motion at ¶ 1. These contentions are contradicted in both the "Background Note: Somalia," issued by the U.S. Department of State and in the World Factbook issued by the Central Intelligence Agency ("CIA") attached to Plaintiffs' motion as Exhibits A and C, respectively. Both publications set out a map of Somalia with defined boundaries no different from the boundaries that obtained when Defendant was Prime Minister, and both documents refer to the Transitional Federal Government as the governing authority of that territory. Motion, Exhibit A, at 1-2; Motion, Exhibit C, at 1, 5.

Similarly, Plaintiffs assert that Somaliland and Puntland are “autonomous.” Motion at ¶ 1. The Department of State reports that: “Two regional administrations exist in northern Somalia—the self-declared ‘Republic of Somaliland’ in the northwest and the semi-autonomous region of Puntland in the northeast.” Motion, Exhibit A, at 7. The CIA document contains similar language. Motion, Exhibit C, at 6. The State Department and the CIA,

accordingly, dispute that these regions are “autonomous” as the Plaintiffs would have this Court find to be indisputable fact.

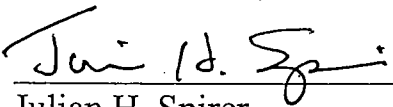
Finally, Plaintiffs assert that “the U.S. Government does not officially recognize a government in Somalia and has no official presence in the former Somalia or Somaliland.” Motion at ¶ 2. Leaving aside Plaintiffs' reference to a “former Somalia” or to a “Somaliland,” both contentious issues that are discussed above, Plaintiffs’ blanket assertion of the absence of U.S. Government recognition or presence is belied, or at least strongly qualified, by a number of statements in Plaintiffs’ own sources. Hence, the State Department, in its Background Note, affirms that the United States has never severed diplomatic relations with Somalia and that it “maintains regular dialogue with the Transitional Federal Government . . . through the U.S. Embassy in Nairobi, Kenya.” Motion, Exhibit A, at 9. Moreover, Plaintiffs’ Exhibit E comprises a transcript of an interview with the U.S. Special Envoy to Somalia who describes not only supervising a Somali unit within the U.S. Embassy in Nairobi but also traveling to Somalia to meet with the Somali prime minister and to speak with the Somali parliament. Motion, Exhibit E, at 1-2. In fact, contrary to Plaintiffs’ assertions, the State Department does recognize Somalia as an independent state and maintains diplomatic relations

with Somalia. U.S. Dep't of State, Bureau of Intelligence and Research,
Fact Sheet: Independent States in the World (Nov. 27, 2007),
<http://www.state.gov/s/inr/rls/4250.htm> (last visited Dec. 13, 2007),
attached hereto as Exhibit A.

Because all of the assertions submitted by Plaintiffs for judicial notice could and should have been presented to the district court below and numerous, if not all, of them are subject to reasonable dispute, Defendant Samantar maintains that they cannot be noticed judicially by this Court. Accordingly, Defendant Samantar respectfully requests that Plaintiffs' motion for judicial notice be denied.

Dated: December 13, 2007

MOHAMED ALI SAMANTAR
By counsel

By: 
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 13th day of December, 2007, I filed with the Clerk's Office of the United States Court of Appeals for the Fourth Circuit this Response to Plaintiffs' Motion for Judicial Notice by sending the same to the Clerk's Office via DHL-USA overnight delivery, and have served the required copies of the same upon counsel of record for the parties and amici by sending them via DHL-USA overnight delivery addressed to the following:

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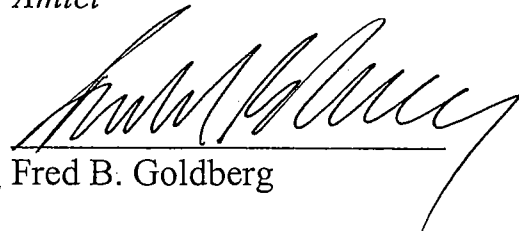

Fred B. Goldberg

EXHIBIT A



U.S. DEPARTMENT of STATE

Fact Sheet
Bureau of Intelligence and Research
Washington, DC
November 27, 2007

Independent States in the World

See also:

[Dependencies and Areas of Special Sovereignty](#)

[How's That Place Spelled? \(GEOnet\)](#)

[State Department Country Background Notes](#)

Total count of independent states: 193

* Diplomatic relations with the United States

+ Member of United Nations

! New change, since previous list

STATE

| Short-form name | Long-form name | FIPS Code (see note 2) | Capital |
|------------------------|---|---------------------------|------------------|
| Afghanistan ** | Islamic Republic of Afghanistan | AF | Kabul |
| Albania ** | Republic of Albania | AL | Tirana |
| Algeria ** | People's Democratic Republic of Algeria | AG | Algiers |
| Andorra ** | Principality of Andorra | AN | Andorra la Vella |
| Angola ** | Republic of Angola | AO | Luanda |
| Antigua and Barbuda ** | (no long-form name) | AC | Saint John's |
| Argentina ** | Argentine Republic | AR | Buenos Aires |
| Armenia ** | Republic of Armenia | AM | Yerevan |
| Australia ** | Commonwealth of Australia | AS | Canberra |
| Austria ** | Republic of Austria | AU | Vienna |
| Azerbaijan. ** | Republic of Azerbaijan | AJ | Baku |
| Bahamas, The ** | Commonwealth of The Bahamas | BF | Nassau |
| Bahrain ** | Kingdom of Bahrain | BA | Manama |
| Bangladesh ** | People's Republic of Bangladesh | BG | Dhaka |
| Barbados ** | (no long-form name) | BB | Bridgetown |
| Belarus ** | Republic of Belarus | BO | Minsk |
| Belgium ** | Kingdom of Belgium | BE | Brussels |

| | | | |
|--|----------------------------------|----|--|
| Belize ** | (no long-form name) | BH | Belmopan |
| Benin ** | Republic of Benin | BN | Porto-Novo |
| Bhutan + | Kingdom of Bhutan | BT | Thimphu |
| Bolivia ** | Republic of Bolivia | BL | La Paz (administrative) Sucre (legislative/judiciary) |
| Bosnia and Herzegovina ** | (no long-form name) | BK | Sarajevo |
| Botswana ** | Republic of Botswana | BC | Gaborone |
| Brazil ** | Federative Republic of Brazil | BR | Brasilia |
| Brunei ** | Brunei Darussalam | BX | Bandar Seri Begawan |
| Bulgaria ** | Republic of Bulgaria | BU | Sofia |
| Burkina Faso ** | Burkina Faso | UV | Ouagadougou |
| Burma ** | Union of Burma | BM | Rangoon Nay Pyi Taw (administrative) |
| Burundi ** | Republic of Burundi | BY | Bujumbura |
| Cambodia ** | Kingdom of Cambodia | CB | Phnom Penh |
| Cameroon ** | Republic of Cameroon | CM | Yaoundé |
| Canada ** | (no long-form name) | CA | Ottawa |
| Cape Verde ** | Republic of Cape Verde | CV | Praia |
| Central African Republic ** | Central African Republic | CT | Bangui |
| Chad ** | Republic of Chad | CD | N'Djamena |
| Chile ** | Republic of Chile | CI | Santiago |
| China ** (see note 3) | People's Republic of China | CH | Beijing |
| Colombia ** | Republic of Colombia | CO | Bogotá |
| Comoros ** | Union of the Comoros | CN | Moroni |
| Congo (Brazzaville) ** (see note 4) | Republic of the Congo | CF | Brazzaville |
| Congo (Kinshasa) ** (see note 4) | Democratic Republic of the Congo | CG | Kinshasa |
| Costa Rica ** | Republic of Costa Rica | CS | San José |
| Côte d'Ivoire ** | Republic of Côte d'Ivoire | IV | Yamoussoukro |
| Croatia ** | Republic of Croatia | HR | Zagreb |
| Cuba + | Republic of Cuba | CU | Havana |
| Cyprus ** | Republic of Cyprus | CY | Nicosia |
| Czech Republic ** | Czech Republic | EZ | Prague |
| Denmark ** | Kingdom of Denmark | DA | Copenhagen |
| Djibouti ** | Republic of Djibouti | DJ | Djibouti |
| Dominica ** | Commonwealth of Dominica | DO | Roseau |

| | | | |
|-----------------------|---|----|------------------------|
| Dominican Republic ** | Dominican Republic | DR | Santo Domingo |
| Ecuador ** | Republic of Ecuador | EC | Quito |
| Egypt ** | Arab Republic of Egypt | EG | Cairo |
| El Salvador ** | Republic of El Salvador | ES | San Salvador |
| Equatorial Guinea ** | Republic of Equatorial Guinea | EK | Malabo |
| Eritrea ** | State of Eritrea | ER | Asmara |
| Estonia ** | Republic of Estonia | EN | Tallinn |
| Ethiopia ** | Federal Democratic Republic of Ethiopia | ET | Addis Ababa |
| Fiji ** | Republic of the Fiji Islands | FJ | Suva |
| Finland ** | Republic of Finland | FI | Helsinki |
| France ** | French Republic | FR | Paris |
| Gabon ** | Gabonese Republic | GB | Libreville |
| Gambia, The ** | Republic of The Gambia | GA | Banjul |
| Georgia ** | Georgia | GG | Tbilisi |
| Germany ** | Federal Republic of Germany | GM | Berlin |
| Ghana ** | Republic of Ghana | GH | Accra |
| Greece ** | Hellenic Republic | GR | Athens |
| Grenada ** | (no long-form name) | GJ | Saint George's |
| Guatemala ** | Republic of Guatemala | GT | Guatemala |
| Guinea ** | Republic of Guinea | GV | Conakry |
| Guinea-Bissau ** | Republic of Guinea-Bissau | PU | Bissau |
| Guyana ** | Co-operative Republic of Guyana | GY | Georgetown |
| Haiti ** | Republic of Haiti | HA | Port-au-Prince |
| Holy See * | Holy See | VT | Vatican City |
| Honduras ** | Republic of Honduras | HO | Tegucigalpa |
| Hungary ** | Republic of Hungary | HU | Budapest |
| Iceland ** | Republic of Iceland | IC | Reykjavik |
| India ** | Republic of India | IN | New Delhi |
| Indonesia ** | Republic of Indonesia | ID | Jakarta |
| Iran + | Islamic Republic of Iran | IR | Tehran |
| Iraq ** | Republic of Iraq | IZ | Baghdad |
| Ireland ** | (no long-form name) | EI | Dublin |
| Israel ** | State of Israel | IS | Jerusalem (see note 5) |
| Italy ** | Italian Republic | IT | Rome |
| Jamaica ** | (no long-form name) | JM | Kingston |
| Japan ** | (no long-form name) | JA | Tokyo |

| | | | |
|------------------------------------|---|----|--------------|
| Jordan *+ | Hashemite Kingdom of Jordan | JO | Amman |
| Kazakhstan *+ | Republic of Kazakhstan | KZ | Astana |
| Kenya *+ | Republic of Kenya | KE | Nairobi |
| Kiribati *+ | Republic of Kiribati | KR | Tarawa |
| Korea, North + | Democratic People's Republic of Korea | KN | Pyongyang |
| Korea, South *+ | Republic of Korea | KS | Seoul |
| Kuwait *+ | State of Kuwait | KU | Kuwait |
| Kyrgyzstan *+ | Kyrgyz Republic | KG | Bishkek |
| Laos *+ | Lao People's Democratic Republic | LA | Vientiane |
| Latvia *+ | Republic of Latvia | LG | Riga |
| Lebanon *+ | Lebanese Republic | LE | Beirut |
| Lesotho *+ | Kingdom of Lesotho | LT | Maseru |
| Liberia *+ | Republic of Liberia | LI | Monrovia |
| Libya *+ | Great Socialist People's Libyan Arab Jamahiriya | LY | Tripoli |
| Liechtenstein *+ | Principality of Liechtenstein | LS | Vaduz |
| Lithuania *+ | Republic of Lithuania | LH | Vilnius |
| Luxembourg *+ | Grand Duchy of Luxembourg | LU | Luxembourg |
| Macedonia *+ | Republic of Macedonia | MK | Skopje |
| Madagascar *+ | Republic of Madagascar | MA | Antananarivo |
| Malawi *+ | Republic of Malawi | MI | Lilongwe |
| Malaysia *+ | (no long-form name) | MY | Kuala Lumpur |
| Maldives *+ | Republic of Maldives | MV | Male |
| Mali *+ | Republic of Mali | ML | Bamako |
| Malta *+ | Republic of Malta | MT | Valletta |
| Marshall Islands *+ | Republic of the Marshall Islands | RM | Majuro |
| Mauritania *+ | Islamic Republic of Mauritania | MR | Nouakchott |
| Mauritius *+ | Republic of Mauritius | MP | Port Louis |
| Mexico *+ | United Mexican States | MX | Mexico |
| Micronesia, Federated States of *+ | Federated States of Micronesia | FM | Palikir |
| Moldova *+ | Republic of Moldova | MD | Chisinau |
| Monaco *+ | Principality of Monaco | MN | Monaco |
| Mongolia *+ | (no long-form name) | MG | Ulaanbaatar |
| Montenegro + | ! Montenegro | MJ | Podgorica |
| Morocco *+ | Kingdom of Morocco | MO | Rabat |
| Mozambique *+ | Republic of Mozambique | MZ | Maputo |

| | | | |
|-------------------------------------|--|----|--|
| Namibia *+ | Republic of Namibia | WA | Windhoek |
| Nauru ** | Republic of Nauru | NR | Yaren District (no capital city) |
| Nepal ** | Nepal | NP | Kathmandu |
| Netherlands ** | Kingdom of the Netherlands | NL | Amsterdam The Hague (seat of gov't) |
| New Zealand ** | (no long-form name) | NZ | Wellington |
| Nicaragua ** | Republic of Nicaragua | NU | Managua |
| Niger *+ | Republic of Niger | NG | Niamey |
| Nigeria ** | Federal Republic of Nigeria | NI | Abuja |
| Norway ** | Kingdom of Norway | NO | Oslo |
| Oman ** | Sultanate of Oman | MU | Muscat |
| Pakistan *+ | Islamic Republic of Pakistan | PK | Islamabad |
| Palau *+ | Republic of Palau | PS | Melekeok |
| Panama *+ | Republic of Panama | PM | Panama |
| Papua New Guinea *+ | Independent State of Papua New Guinea | PP | Port Moresby |
| Paraguay *+ | Republic of Paraguay | PA | Asunción |
| Peru ** | Republic of Peru | PE | Lima |
| Philippines *+ | Republic of the Philippines | RP | Manila |
| Poland *+ | Republic of Poland | PL | Warsaw |
| Portugal *+ | Portuguese Republic | PO | Lisbon |
| Qatar *+ | State of Qatar | QA | Doha |
| Romania *+ | (no long-form name) | RO | Bucharest |
| Russia *+ | Russian Federation | RS | Moscow |
| Rwanda *+ | Republic of Rwanda | RW | Kigali |
| Saint Kitts and Nevis *+ | Federation of Saint Kitts and Nevis | SC | Basseterre |
| Saint Lucia *+ | (no long-form name) | ST | Castries |
| Saint Vincent and the Grenadines ** | (no long-form name) | VC | Kingstown |
| Samoa *+ | Independent State of Samoa | WS | Apia |
| San Marino *+ | Republic of San Marino | SM | San Marino |
| Sao Tome and Principe *+ | Democratic Republic of Sao Tome and Principe | TP | São Tomé |
| Saudi Arabia *+ | Kingdom of Saudi Arabia | SA | Riyadh |
| Senegal *+ | Republic of Senegal | SG | Dakar |
| Serbia *+ | Republic of Serbia | RB | Belgrade |
| Seychelles ** | Republic of Seychelles | SE | Victoria |
| Sierra Leone *+ | Republic of Sierra Leone | SL | Freetown |
| Singapore *+ | Republic of Singapore | SN | Singapore |
| Slovakia *+ | Slovak Republic | LO | Bratislava |

| | | | |
|----------------------------|---|----|--|
| Slovenia ** | Republic of Slovenia | SI | Ljubljana |
| Solomon Islands ** | (no long-form name) | BP | Honiara |
| Somalia ** | (no long-form name) | SO | Mogadishu |
| South Africa ** | Republic of South Africa | SF | Pretoria (administrative) Cape Town (legislative) Bloemfontein (judiciary) |
| Spain ** | Kingdom of Spain | SP | Madrid |
| Sri Lanka ** | Democratic Socialist Republic of Sri Lanka | CE | Colombo Sri Jayewardenepura Kotte (legislative) |
| Sudan ** | Republic of the Sudan | SU | Khartoum |
| Suriname ** | Republic of Suriname | NS | Paramaribo |
| Swaziland ** | Kingdom of Swaziland | WZ | Mbabane (administrative) Lobamba (legislative) |
| Sweden ** | Kingdom of Sweden | SW | Stockholm |
| Switzerland ** | Swiss Confederation | SZ | Bern |
| Syria ** | Syrian Arab Republic | SY | Damascus |
| Tajikistan ** | Republic of Tajikistan | TI | Dushanbe |
| Tanzania ** | United Republic of Tanzania | TZ | Dar es Salaam Dodoma (legislative) |
| Thailand ** | Kingdom of Thailand | TH | Bangkok |
| Timor-Leste ** | Democratic Republic of Timor-Leste | TT | Dili |
| Togo ** | Togolese Republic | TO | Lomé |
| Tonga ** | Kingdom of Tonga | TN | Nuku'alofa |
| Trinidad and Tobago ** | Republic of Trinidad and Tobago | TD | Port-of-Spain |
| Tunisia ** | Tunisian Republic | TS | Tunis |
| Turkey ** | Republic of Turkey | TU | Ankara |
| Turkmenistan ** | (no long-form name) | TX | Ashgabat |
| Tuvalu ** | (no long-form name) | TV | Funafuti |
| Uganda ** | Republic of Uganda | UG | Kampala |
| Ukraine ** | (no long-form name) | UP | Kyiv |
| United Arab Emirates ** | United Arab Emirates | AE | Abu Dhabi |
| United Kingdom ** | United Kingdom of Great Britain and Northern Ireland | UK | London |
| United States + | United States of America | US | Washington, DC |
| Uruguay ** | Oriental Republic of Uruguay | UY | Montevideo |
| Uzbekistan ** | Republic of Uzbekistan | UZ | Tashkent |
| Vanuatu ** | Republic of Vanuatu | NH | Port-Vila |
| Venezuela ** | Bolivarian Republic of Venezuela | VE | Caracas |
| Vietnam ** | Socialist Republic of Vietnam | VM | Hanoi |

| | | | |
|-------------|----------------------|----|--------|
| Yemen *+ | Republic of Yemen | YM | Sanaa |
| Zambia *+ | Republic of Zambia | ZA | Lusaka |
| Zimbabwe *+ | Republic of Zimbabwe | ZI | Harare |

OTHER

| Short-form name | Long-form name | FIPS Code (see note 2) | Capital |
|---------------------|---------------------|------------------------|---------|
| Taiwan (see note 6) | (no long-form name) | TW | Taipei |

NOTES

Note 1: In this listing, the term "independent state" refers to a people politically organized into a sovereign state with a definite territory recognized as independent by the US.

Note 2: Federal Information Processing Standard (FIPS) 10-4 codes.

Note 3: With the establishment of diplomatic relations with China on January 1, 1979, the US Government recognized the People's Republic of China as the sole legal government of China and acknowledged the Chinese position that there is only one China and that Taiwan is part of China.

Note 4: "Congo" is the official short-form name for both the Republic of the Congo and the Democratic Republic of the Congo. To distinguish one from the other, the U.S. Department of State adds the capital in parentheses. This practice is unofficial and provisional.

Note 5: Israel proclaimed Jerusalem as its capital in 1950. The United States, like nearly all other countries, maintains its embassy in Tel Aviv.


Note 6: Claimed by both the Government of the People's Republic of China and the authorities on Taiwan. Administered by the authorities on Taiwan. (see note 3)

Source: Office of The Geographer and Global Issues, Bureau of Intelligence and Research, U.S. Department of State, Washington, D.C.

How's That Place Spelled?

The GEOnet Names Server (GNS) provides access to the National Imagery and Mapping Agency's (NIMA's) database of foreign geographic feature names. If you want to see the official U.S. Government spelling of places around the world, go to:

[GEOnet Names Server](#) (an interactive search tool)

 [BACK TO TOP](#)