

Record No. 07-1893

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

BASHE ABDI YOUSUF, 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.*

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**PLAINTIFFS' MOTION FOR JUDICIAL NOTICE  
IN SUPPORT OF PLAINTIFFS' BRIEF**

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FOURTH CIRCUIT

## MOTION FOR JUDICIAL NOTICE

In accordance with Federal Rule of Appellate Procedure 27 and Federal Rule of Evidence 201, Plaintiffs request that the Court take judicial notice of the following facts or documents:

1. The region known as Somalia was formed in 1960, by a merger of two former colonial territories: British Somaliland in the north, and Italian Somaliland in the South. British Somaliland gained its independence on June 16, 1960. Italian Somaliland gained its independence on July 1, 1960. The two former protectorates united on July 1, 1960 to form the Democratic Republic of Somalia. From 1960 to 1991 the two countries existed as one independent sovereign republic. A Somali Constitution was first ratified in 1961. The Barre government initially allied itself with the Soviet Union. Following its 1978 defeat in the Ogden War with Soviet-backed Ethiopia, the Barre regime severed its ties to the Soviet Union and turned to the West for support. From 1982 through 1988 the United States viewed Somalia as a partner in the Cold War.

There have been approximately 14 failed attempts to form a government of Somalia since the fall of the Barre regime in 1991. A fragile parliamentary government was formed in 2000, but it expired in 2003 without establishing control of the country. The Transitional Federal Government ("TFG") formed in 2004 has never had a defined territory or population under its control, nor does it govern the autonomous areas that make up Somaliland or Puntland, which together account for one third of the territory that made up the former Somalia controlled by the Barre government. Ali Mohammed Gedi has recently left his position of Prime Minister within the TFG. U.S. Dep't of State, Bureau of Public Affairs: Electronic Information and Publications Office, BACKGROUND NOTE: SOMALIA (Nov., 2007), <http://www.state.gov/r/pa/ei/bgn/2863.htm> (last visited Nov. 29, 2007). [Attached hereto as Exhibit A].

2. Today, the U.S. Government does not officially recognize a government of Somalia and has no official presence in the former Somalia or Somaliland. The TFG was formed in 2004 for the purpose of guiding Somalia through a transitional process designed to result in a new constitution and elections in 2009. The TFG lacks governance capacity and exercises only limited

control over the southern and central parts of the former Somalia. General insecurity and inter- and intra- clan violence frequently occur throughout the country, and attacks and fighting between anti-government elements and the TFG (with the backing of Ethiopian forces) take place regularly in Mogadishu. U.S. Dep't of State, Bureau of Consular Affairs, CONSULAR INFORMATION SHEET: SOMALIA, (Oct. 4, 2007), [http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_1023.html](http://travel.state.gov/travel/cis_pa_tw/cis/cis_1023.html) (last visited Nov. 29, 2007). [Attached hereto as Exhibit B].

3. Somalia has no permanent national government but only a transitional, parliamentary federal government and a transitional governing entity with a five-year mandate, known as the Transitional Federal Institutions (TFIs). The TFG continues to struggle to exert control over the capital and to prevent the reemergence of warlord rule. The TFG continues to struggle to establish effective governance in the country. It exercises only limited control over the southern and central parts of the former Somalia. The Somali Embassy in the United States ceased operations on May 8, 1991. A new Somali Constitution was ratified on August 25, 1979, and remained in force until the fall of the Barre regime. The CIA World Fact Book: SOMALIA, <https://www.cia.gov/library/publications/the-world-factbook/print/so.html> (last visited Nov. 29, 2007) [attached hereto as Exhibit C].
4. The United States views the framework outlined by the Transitional Federal Charter as an opportunity to rebuild Somalia and restore effective governance representative of all aspects of Somali society. The United States sees the Transitional Federal Institutions not as permanent institutions, rather as transitional mechanisms that provide a framework for achieving the objectives outlined in the Charter following the transitional process. James Swan, Deputy Assistant Secretary of State, Remarks on Somalia, Address before the Center for Strategic and International Studies (CSIS) and the U.S. Institute of Peace (USIP) (Sept. 5, 2007), available at [www.state.gov/p/af/rls/rm/91895.htm](http://www.state.gov/p/af/rls/rm/91895.htm) (last visited Nov. 29, 2007) [attached hereto as Exhibit D].
5. The United States Special Envoy to Somalia, John M. Yates expresses concern over the widespread lack of confidence in the TFG and their failure to deliver services to the Somali people. He states that the United States is working to establish a stable state in Somalia that can help fight terrorism in the region, but in order to do so, there must first be a working government.

Interview by Stephanie Hanson, News Editor, with John M. Yates, U.S. Special Envoy to Somalia (Sept. 19, 2007), available at <http://www.cfr.org/publication/14247/> (last visited Nov. 29, 2007) [attached hereto as Exhibit E].

6. Only five governments have been designated by the State Department as state sponsors of terrorism - Cuba, Iran, North Korea, Sudan and Syria. U.S. Dep't of State, Office of the Coordinator for Counterterrorism, STATE SPONSORS OF TERRORISM, <http://www.state.gov/s/ct/c14151.htm> (last visited November 29, 2007) [attached hereto as Exhibit F].
7. The May 23, 2007 letter brief and exhibits filed by the United States Department of Justice in the United States Court of Appeals for the Second Circuit in the case of *Kensington International, Ltd. v. Bruno Jean Itoua and Societe Nationale des Petroles du Congo*, Nos. 06-1763 and 06-2216 [attached hereto as Exhibit G].

## ARGUMENT

Judicial notice of these facts is proper under Federal Rule of Evidence 201(b)(2) because they are not subject to reasonable dispute and are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Rule 201(f) provides that “[j]udicial notice may be taken at any stage of the proceeding.” Fed. R. Evid. 201(f). Indeed, under Rule 201(d), “[a] court *shall* take judicial notice if requested by a party and supplied with the necessary information.” Fed. R. Evid. 201(d) (emphasis added).

Plaintiffs seek judicial notice of facts readily available on the websites of the U.S. Department of State and Central Intelligence Agency. This Court has taken judicial notice of matters of public record, including facts published on

government websites. *See, e.g., Sec’y of State for Defence v. Trimble Navigation, Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007); *Hall v. Virginia*, 385 F.3d 421, 424 n. 3 (4th Cir. 2004), (citing *Papasan v. Allain*, 478 U.S. 265, 268 n. 1 (1986)). Courts also regularly take notice of factual information in internet publications. *See, e.g., O’Toole v. Northrop Grumman Corp.*, 499 F.3d 1218, 1225 (10th Cir. 2007); *Caldwell v. Caldwell*, 420 F. Supp. 2d 1102, 1105 n.3 (N.D. Cal. 2006); *Twentieth Century Fox Film Corp. v. Marvel Enters. Inc.*, 220 F. Supp. 2d 289, 296 n.9 (S.D.N.Y. 2002); *Richards v. Cable News Network, Inc.*, 15 F. Supp. 2d 683, 691 (E.D. Pa. 1998) (all taking judicial notice of web pages). Moreover, these sources are updated versions of sources relied upon by the lower court in its opinion. *See Yousuf v. Samantar*, 1:04cv1360, 2007 U.S. Dist. LEXIS 56227, at \*7-8 (E.D. Va. Aug. 1, 2007).

Plaintiffs also seek judicial notice of the letter brief and exhibits filed by the federal government in the United States Court of Appeals for the Second Circuit, attached as Exhibit G. As a court filing, it is appropriate for this Court to take judicial notice of the government’s brief, *Colonial Penn Insurance Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989), without accepting as true the factual statements made therein. *Nolte v. Capital One Financial Corp.*, 390 F.3d 311, 317 (4th Cir. 2004). Plaintiffs only request that the Court take notice of the government’s

position as stated in Exhibit G, as opposed to the truth of all statements made therein. *Id.*

### CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this request and take judicial notice of the facts requested in the documents attached to this motion as Exhibits A through G.

Dated: November 30, 2007

BASHE ABDI YOUSUF  
AZIZ MOHAMED DERIA  
JOHN DOE I  
JANE DOE,  
and  
JOHN DOE II  
By Counsel

By:



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## STATEMENT OF COUNSEL

Pursuant to Local Rule 27(a), the undersigned counsel states that opposing counsel has been informed of the intended filing of this Motion for Judicial Notice in Support of Plaintiffs-Appellants' Brief, and opposing counsel reserves the right to oppose this Motion.

A handwritten signature in black ink, appearing to read "Renee J. [unclear]". The signature is fluid and cursive, with a prominent initial "R" and a final flourish.



## CERTIFICATE OF FILING AND SERVICE

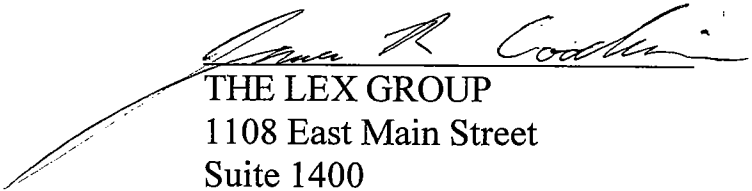
I hereby certify that on this 30th day of November, 2007, I filed with the Clerk's Office of the United States Court of Appeals for the Fourth Circuit, via hand delivery, the required number of copies of this Motion, and I further certify that I served, via UPS Ground, the required copies upon:

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*Counsel for Appellee*

The necessary filing and service upon Counsel were performed in accordance with the instructions given me by counsel in this case.



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