

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

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CLERK OF COURT
7500 MAIN ST., ALEXANDRIA, VA 22304

BASHE ABDI YOUSUF, *et al.*,)
)
Plaintiffs,)
)
v.)
)
MOHAMED ALI SAMANTAR,)
)
Defendant.)

Civil Action No. 1:04-CV-1360 (LMB/JFA)

NOTICE OF POTENTIAL PARTICIPATION
BY THE UNITED STATES OF AMERICA

The parties in this action dispute whether Defendant is immune from the Court’s jurisdiction. The United States hereby respectfully notifies the Court that it is actively considering whether to participate in this litigation as allowed by 28 U.S.C. § 517. That statute authorizes the Attorney General of the United States to send any officer of the Department of Justice to “attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.” *Id.*

This suit against a former, high-level foreign official raises significant issues that require further consideration by a number of senior officials in the Executive Branch before a final decision can be made about the United States’ participation in this matter. The United States did not learn the identity of Defendant’s newly retained counsel until November 12, 2010, after which the State Department promptly requested meetings with counsel for both parties in order to solicit their views on the potential application of immunity principles. The United States is in

the process of carefully reviewing the arguments made by the parties in the context of the renewed motion to dismiss. *See* Def.'s Mem., at 7-13, Doc. #139 (Nov. 29, 2010); Pls.' Opp'n, at 2-11, Doc. #143 (Dec. 14, 2010), Def.'s Reply, at 6-11, Doc. #144 (Dec. 22, 2010). The United States is simultaneously reviewing developments in other cases that have raised similar questions concerning immunities. *See, e.g., Abu Jaoudi & Azar Trading Corp. v. CIGNA Worldwide Ins. Co.*, 2:91-cv-06758 (E.D. Pa.); *Ahmed v. Magan*, 2:10-cv-342 (S.D. Ohio).

While recognizing the importance of the suit proceeding expeditiously, the United States respectfully requests that any decision that addresses the immunity of a foreign official be deferred until it has had the opportunity to complete its deliberations. As this Court is aware, the United States participated in this case in the Supreme Court, and the Supreme Court recognized the determinative role the State Department plays in deciding whether foreign government officials should be immune from suit. The Court observed that before the Foreign Sovereign Immunities Act was enacted, courts surrendered jurisdiction over a case when the State Department suggested that a foreign sovereign defendant was immune from suit. *See Samantar v. Yousuf*, 130 S. Ct. 2278, 2284 (2010). And if the Executive Branch did not participate in the litigation, district courts had to consider whether a foreign sovereign or foreign official defendant was entitled to immunity under "the established policy of the [State Department]." *Id.* (quotation marks and citation omitted). In concluding that the Foreign Sovereign Immunities Act does not control the immunity of foreign officials, the Court found "no reason to believe that Congress saw as a problem, or wanted to eliminate, the State Department's role in determinations regarding individual official immunity." *Id.* at 2291. Thus, the Court recognized that the Executive Branch continues to determine the applicable principles of foreign official immunity.

The United States currently expects to complete its consideration by February 14, 2011, and will advise the Court of its determination by that date. We regret any delay to the Court and to the parties.

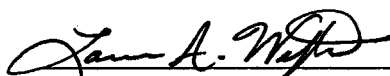
Dated: January 5, 2011

Respectfully submitted,

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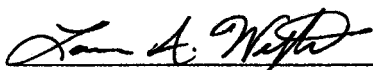
Counsel for the United States

CERTIFICATE OF SERVICE

I hereby certify, this 5th day of January, 2011, that a true copy of the foregoing was sent via U.S. Mail and electronic mail to the following counsel of record in this matter:

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