IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

ABUKAR HASSAN AHMED,	**:**	CASE NO. 2:10cv00342
Plaintiff,	**:**	
		JUDGE SMITH
v.	**:**	MAGISTRATE ABEL
ABDI ADEN MAGAN.	**:**	
Defendant.	**:**	

MOTION OF DEFENDANT ABDI MAGAN TO DISMISS PURSUANT TO CIV.R.12(B)(6)

Defendant, Abdi Magan, respectfully requests this Court dismiss Plaintiff's Complaint, pursuant to Fed. R. Civ. P. 12(B)(6). The reasons for the Defendant's motion are more fully set forth in the memorandum in support which follows.

Respectfully submitted,

/s/Jeffrey Donnellon
Jeffrey Donnellon (0079472)
Peter Ezanidis (0079372)
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MEMORANDUM IN SUPPORT

I. BACKGROUND

Abdi Magan ("Mr. Magan") was a member of the Barre government. From approximately 1988 to 1990, Mr. Magan held the rank of Colonel and served as Chief of the NSS Department of Investigations.

The Barre government included members of the Plaintiff's clan. (Abgaal sub-clan of the Hawiye Clan). Magan Affidavit Paragraph 6. Mr. Magan is a member of the Marehan sub-clan of the Darod clan. In 1980, Mr. Magan married Raha Nor. She is a member of the same clan and sub-clan as the Plaintiff. Magan Affidavit Paragraph 3.

Mr. Magan absolutely denies having ever mistreated the Plaintiff. If any of the acts of torture mentioned in Plaintiff's complaint are true, Mr. Magan knew nothing about it and certainly did not authorize it. Magan Affidavit Paragraph 5.

If the Plaintiff was detained for three months in 1988 and 1989 Mr. Magan would not have had authority to detain him. To the best of Mr. Magan's knowledge, Colonel Nor Hussein would have had that authority. Colonel Nor Hussein was a member of the Barre government and was in charge of prosecuting cases at the National Security Court. He was a member of the same clan and sub-clan as the Plaintiff. Magan Affidavit Paragraph 13.

Mr. Magan was forced to resign from his position in the Barre government in approximately November of 1990. Mr. Magan refused to detain Osman Hassan Ali Atto without taking him in front of the National Security Court. Osman Hassan Ali Atto is a member of the same clan as the Plaintiff. Mr. Hassan would have been put in prison if the Barre government had not collapsed. Magan Affidavit Paragraph 7. Osman Hassan Ali Atto was a leader in the United Somali Congress (UNC).

In 1991, the Barre government collapsed. In 1991, it was no longer safe for members of Mr. Magan's clan to stay in Somalia. It was safe for members of the Plaintiff's clan to remain in Somalia. They were in control. Magan Affidavit Paragraph 9.

In 1991, Mr. Magan fled to Kenya as a refugee. Magan Affidavit Paragraph 10. Both of Mr. Magan's children were killed in Somalia by members of the Plaintiff's clan. Magan Affidavit Paragraph 11.

In 1990, Mr. Magan sought asylum in Kenya as a refugee. Mr. Magan lived openly in Kenya until 2000. In May of 2000, Mr. Magan moved to the United States and took up his current residence in Columbus, Ohio. Mr. Magan has lived in Columbus, Ohio peacefully and without public nuance for over ten years.

II. INTRODUCTION

Defendant Abdi Magan ("Defendant" or "Mr. Magan") is immune from suit in the United States courts for the claims asserted. The common law doctrine of official act immunity bars the courts of the United States from exercising jurisdiction over the officials of foreign countries for non-commercial actions taken in their official capacities. Accordingly, these principles require dismissal of this action pursuant to Federal Rule of Civil Procedure 12(b)(1).

Plaintiff's claims are time barred. The alleged events took place no later than 1989. The Torture Victims Protection Act ("TVPA"), 28 U.S.C. § 1350, requires that actions be brought within a ten-year limitations period. 28 U.S.C. § 1350 § 2(c). The same limitations period applies to human rights claims made under the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350, the alternative basis for jurisdiction in this action.

Finally, because Plaintiff could have brought an action in the functioning court system of Northern Somalia (Somaliland) or Kenya, this Court should dismiss the Complaint for failure to exhaust judicial remedies, as required by the TVPA, 28 U.S.C. § 1350, § 2 (b) and the ATS.

III. ARGUMENT

A. MR. MAGAN IS ENTITLED TO COMMON LAW IMMUNITY

1. Common Law Principles

The common law principles of foreign official act immunity doctrine extends deep into American jurisprudence and apply to immunize one who, like Mr. Magan, is accused of actions taken in his official capacity and operate with particular force where that capacity consists of service in the most senior positions of government.

The seminal expression of the this immunity doctrine was set forth nearly 200 years ago by Chief Justice Marshall in The Schooner Exchange v. McFaddon, 11 U.S. (7 Cranch) 116 (1812), which "came to be regarded as extending virtually absolute immunity to foreign sovereigns." Verlinden v. B.V. Central Bank of Nigeria, 461 U.S. 480, 486 (1983).

The "absolute" immunity of the sovereign was, even prior to the Schooner Exchange case, generally understood to encompass not only the state and the head of state, but also other individual officials insofar as they acted on the sovereign's behalf. Statements recognizing immunity for foreign officials as to their official acts appear in the earliest opinions of the Attorney General. See 1 Op. Att'y Gen. 45, 46 (1794) (as to civil suit brought against governor of French island for seizure of a ship: "I am inclined to

think, if the seizure of the vessel is admitted to have been an official act, done by the defendant by virtue, or under color, of the powers vested in him as governor, that it will of itself be a sufficient answer to the plaintiff's action; that the defendant ought not to answer in our courts for any mere irregularity in the exercise of his powers; and that the extent of his authority can, with propriety or convenience, be determined only by the constituted authorities of his own nation"); 1 Op. Att'y Gen. 81 (1797) (as to suit brought against British official: "it is as well settled in the United States as in Great Britain, that a person acting under a commission from the sovereign of a foreign nation is not amenable for what he does in pursuance of his commission, to any judiciary tribunal in the United States").

Expressions of official act immunity likewise appear in subsequent federal case law. In Underhill v. Hernandez, 168 U.S. 250 (1897), as to a suit brought against a Venezuelan general for acts undertaken in his official capacity in Venezuela, the Supreme Court held that the defendant was protected by "[t]he immunity of individuals from suits brought in foreign tribunals for acts done within their own states, in the exercise of governmental authority, whether as civil officers or as military commanders." 168 U.S. at 252; see also Lyders v. Lund, 32 F.2d 308, 309 (N.D. Cal. 1929) ("in actions against the officials of a foreign state not clothed with diplomatic immunity, it can be said that suits based upon official, authorized acts, performed within the scope of their duties on behalf of the foreign state, and for which the foreign state will have to respond directly or indirectly in the event of a judgment, are actions against the foreign state"); Heaney v. Spain, 445 F.2d 501, 504 (2d Cir. 1971) (noting in dicta that the immunity of a foreign

state extends to any official or agent of the state with respect to their official acts); United States v. Noriega, 117 F.3d 1206, 1212 (11th Cir.1997) ("head-of-state immunity could attach in cases, such as this one, only pursuant to the principles and procedures outlined in The Schooner Exchange and its progent").

The rationale for this immunity is broadly stated: "[A] suit against an individual acting in his official capacity is the practical equivalent of a suit against the sovereign directly." Chuidian, 912 F.2d at 1101; accord, e.g., Velasco, 370 F.3d at 399; In re Terrorist Attacks, 392 F. Supp. 2d at 551 (S.D.N.Y. 2005); Doe I v. Israel, 400 F. Supp. 2d at 104 (D.D.C. 2005); see also Herbage, 747 F. Supp. at 66 (finding sovereign immunity to protect individual officers on the ground that "a government does not act but through its agents").

These cases are factually similar to the within cause of action. Plaintiff's allegation's refer to official, authorized acts, performed within the scope of Magan's duties on behalf of the foreign state, and as such, are not actionable.

2. Mr. Magan Is A Foreign Official Acting Within His Official Capacity.

During the period that Mr. Magan held positions within the Somali government, the United States maintained diplomatic relations with Somalia. Mr. Magan served Somalia in an official capacity and as a representative of Somalia's executive. In addition, Somalia has never been designated a state-sponsor of terrorism under 50 U.S.C. App. § 2405 (j) or 22 U.S.C. § 2371 or otherwise been placed on a U.S. enemies list.

Mr. Magan is entitled to immunity from the claims asserted under the common law. The common law confers on Mr. Magan and all other foreign officials immunity for

actions such as those alleged here taken by the officials in their official capacities. This result is not altered by the legality or illegality of those actions under international law.

Mr. Magan's actions were taken in his official capacity. Plaintiff acknowledges, as he must to assert Mr. Magan's liability under the TVPA, that the abuses allegedly suffered by the Plaintiff were "carried out under actual or apparent authority or color of law of the government of Somalia." (Plaintiff's Complaint, ¶56) Further, Plaintiff does not allege that Magan is an official who acted beyond the scope of his authority.

A civil lawsuit against a foreign official will almost always challenge the lawfulness of the official's acts. Plaintiff has characterized the alleged conduct as violating accepted international laws. This argument would carve out an unlawful act exception that would vitiate the principle of official act immunity. There is no basis for creating such an exception where one does not exist. There is a serious failure of logic in the claim that an official cannot have immunity for "unlawful" acts. Hence, the official's immunity would be rendered meaningless if it could be overcome by such allegations alone. See Waltier v. Thomson, 189 F. Supp. 319, 321 n.6 (S.D.N.Y. 1960) (rejecting argument that foreign official's allegedly false statements could not be considered within the scope of his duties based simply on the premise that "wrongdoing is never authorized"); see also Herbage v. Meese, 747 F. Supp. 60, 67 (D.D.C. 1990) (rejecting argument that officials lost immunity by virtue of "acting illegally," finding that conduct was within the scope of their official capacities); Kline v. Kaneko, 685 F. Supp. 386, 390 (S.D.N.Y. 1988) (holding that plaintiff's claim that Mexican immigration official expelled her without due process "is in no way inconsistent with [the official] having acted in his official capacity").

An official act is one taken on behalf of the state, whether lawful or not. The official capacity test properly turns on whether the acts in question were performed on the state's behalf, and are therefore attributable to the state itself as opposed to constituting private conduct. This test flows directly from the principle underlying immunity for foreign officials. An official acting in an official capacity is a manifestation of the state, and the official's acts are attributable to the state rather than to the official personally. El-Fadl v. Cent. Bank of Jordan, 75 F.3d 668, 671 (D.C. Cir. 1996) (defendant's activities were immune in that they "were neither personal nor private, but were undertaken only on behalf of the Central Bank [of Jordan]"); cf. Park v. Shin, 313 F.3d 1138 (9th Cir. 2002) (Korean official being sued by a personal family employee was not immune because he was not acting within the scope of his official duties). As the Supreme Court held in finding that alleged police torture was "sovereign" rather than commercial activity, and thus protected by sovereign immunity:

> [H]owever 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 peculiarly sovereign in nature. . . . Exercise of the powers of police and penal officers is not the sort of action by which private parties can engage in commerce. "[S]uch acts as legislation, or the expulsion of an alien, or a denial of justice, cannot be performed by an individual acting in his own name. They can be performed only by the state acting as such."

Saudi Arabia v. Nelson, 507 U.S. 349, 361-62 (1993) (citations omitted).

Any contrary rule would invite an end-run around the immunity of the state. The immunity of a foreign state is not subject to any vague "unlawfulness" exception. It is subject only to those immunity exceptions specifically set forth in the FSIA. See Amerada Hess, 488 U.S. at 433-35; Smith v. Socialist People's Libyan Arab Jamahiriya, 101 F.3d 239, 242-45 (2d Cir. 1997); Princz v. Germany, 26 F.3d 1166, 1173-75 (D.C.

Cir. 1994). If a foreign state's immunity under the FSIA does not dissolve upon mere assertions that its acts were unlawful, the immunity of the officials through whom the state acts must be similarly indestructible. Otherwise "litigants [might] accomplish indirectly what the Act barred them from doing directly." Chuidian v. Philippine Nat'l Bank, 912 F.2d 1095, 1102 (9th Cir. 1990).

In Amerada Hess, the Supreme Court held that a foreign state's immunity was not subject to any general exception for alleged violations of international law brought under the Alien Tort Statute. 488 U.S. at 435-43. Without common law official act immunity, the litigants in Amerada Hess, which involved the bombing of a neutral ship by the Argentine military, could have avoided dismissal simply by naming the defense minister as defendant rather than the Argentine government itself. This is the very circumvention Plaintiff seeks here by naming Mr. Magan as defendant to answer for alleged actions ascribable to the Somali government.

Plaintiff does not argue that Magan's conduct was outside of his official capacity as the head of the NSS. The lawfulness of the conduct is not at issue. So long as Magan acted within his official capacity and on behalf of the Somalian government, the conduct is immune from civil liability, and this cause must be dismissed.

B. PLAINTIFF'S CLAIMS SHOULD BE DISMISSED FOR FAILURE TO EXHAUSE LEGAL REMEDIES

The TVPA requires that "[a] court shall decline to hear a claim under this section if the clamant has not exhausted adequate and available remedies in the place in which the conduct giving rise to acclaim occurred." 28 U.S.C. § 1350 § 2(c). This requirement is "not intended to create a prohibitively stringent condition precedent to recovery under the statute." Xuncax v. Granajo, 886 F. Supp. 162, 178 (D. Mass. 1995). Nevertheless,

before bringing suit in the United States, the Plaintiff first must have exhausted their legal remedies in Somalia or Somaliland.

Once a defendant raises failure to exhaust local remedies and "makes a showing of remedies abroad which have not been exhausted, the burden shifts to the plaintiff to rebut by showing that the local remedies were ineffective, unobtainable, unduly prolonged, inadequate, or obviously futile." Sinaltrainal v. Coca-Cola Co., 256 F. Supp. 2d 1345 (S.D. Fla. 2003). The Sinaltrainal court also considers exhaustion of remedies to be a jurisdictional requirement subject to challenge in a motion to dismiss. 256 F. Supp. 2d at 1357; but see Barrueto v. Larios, 291 F. Supp. 2d 1360 (S.D. Fla. 2003) (failure to exhaust remedies is an affirmative defense under TVPA).

Alessandro Campo, a licensed Italian lawyer, has been employed as the Legal Expert for the United Nations and the Italian Embassy to Somalia. Mr. Campo is an expert on Somali law and served as a participant in a United Nations Development Office mission to assess Somaliland's courts and judicial authorities, is of the opinion that "adequate and available remedies have been available in Somaliland since approximately 1991.

> From my assessment of Somaliland's judiciary, and based upon information generated by the Somaliland Government that I deem to be reliable, there has been a relatively independent and functioning judiciary within Somaliland since 1991…Somaliland's judiciary is competent to hear claims such as these, for torture and crimes against humanity.

Campo Affidavit, submitted December 1, 2004 in Civil Action No. 1:04 CV 1360 in the Eastern District Court for the Eastern District of Virginia ("First Campo Affidavit") (attached hereto as Exhibit 1) at Paragraph 6-7.

In the case at bar, Somaliland has a functioning government with a court system, where Plaintiff's claims should have been brought. The Somaliland judicial system is adequate and functions well free of political influence for claims of this nature. Second Campo Affidavit at Paragraph 6-7; Nur Affidavit at Paragraph 8-10. According to the U.S. State Department, a functioning judicial system has existed from 1991: "Somaliland's Government included . . . a functioning civil court system." Department of State 2003 Country Report on Human Rights Practices in Somalia (February 25, 2004). Furthermore, Somaliland would permit a lawsuit to be brought there for events that took place in part in Mogadishu, which remains part of Somalia. Moreover, the laws of Somaliland have provided a cause of action for victims of torture and killing. Second Campo Affidavit at Paragraph 6-9. Given the availability of an adequate remedy in Somaliland prior to the time Plaintiffs filed this action, Plaintiffs' claims must be dismissed.

Mr. Campo also disputes that fear of reprisal justifies tolling the limitations period in ACTA and TVPA cases. Mr. Campo believes that conditions in Somalia since the fall of the Barre administration have not precluded investigation and have not presented a risk of reprisal.

> After the fall of the Barre administration in 1991, a Somali bringing a claim for victimization against a former official of the Barre administration would have had little or no fear of reprisal for himself or family members still residing in Somaliland, the rest of Somalia, or outside of the area. The remnants of the Barre Administration do not exist in an organized fashion and would be incapable of taking retaliatory action against Plaintiffs or their families.

First Campo Affidavit, at 11.

In 1991, it was no longer safe for members of Mr. Magan's clan (Marehan sub-clan of the Darod clan) to stay in Somalia. It was safe for members of the Plaintiff's clan

(Abgaal sub-clan of the Hawiye clan) to remain in Somalia. They were in control. Magan Affidavit Paragraph 9. If the Plaintiff had instituted court proceedings in Somalia in 1991, he would have had no fear of reprisal or retaliation in Somalia. His clan and sub-clan had power. Mr. Magan's clan and sub-clan were forced to leave Somalia or risk death or rape. Magan Affidavit Paragraph 12.

C. PLAINTIFF'S CLAIMS ARE TIME BARRED

Plaintiffs have brought suit pursuant to the TVPA and ATS, 28 U.S.C. § 1350. For suits brought upon either basis, the federal courts have uniformly held the TVPA's ten-year statute of limitations governs questions of timeliness. See Van Tu v. Koster, 364 F.3d 1196, 1199 (10th Cir. 2004); Deutsch v. Turner Corp., 317 F.3d 1005 (9th Cir. 2003); Hilao v. Marcos, 103 F.3d 767, 773 (9th Cir. 1996).

Plaintiff alleges that he suffered injuries no later than 1989. According to the TVPA and cases interpreting the ATS, these actions should have been brought no later than 1999. Plaintiff maintains, however, that equitable tolling should extend the limitations period for an additional eleven years. The facts alleged do not satisfy the requirements for equitable tolling.

Under traditional equitable tolling analysis, courts in this Circuit consider the following factors: "(1) the petitioner's lack of notice of the filing requirement; (2) the petitioner's lack of constructive knowledge of the filing requirement; (3) diligence in pursuing one's rights; (4) absence of prejudice to the respondent; and (5) the petitioner's reasonableness in remaining ignorant of the legal requirement for filing his claim." Andrews, 851 F.2d at 151; Dunlap, 250 F.3d at 1008. These five factors are not exhaustive, however. Griffin, 399 F.3d at 635 (citing Cook v. Stegall, 295 F.3d 517, 521

(6th Cir. 2002)). Nor is each of the five factors relevant in all cases. Id. (citing King v. Bell, 378 F.3d 550, 553 (6th Cir. 2004)). Indeed, this Court has frequently found traditional equitable tolling appropriate based primarily on consideration of the petitioner's lack of constructive knowledge or actual notice of the tolling requirement and the petitioner's diligence in pursuing his rights. See, e.g., id., at 636-37 (finding equitable tolling was appropriate for a petitioner who lacked notice of the relevant deadline and had acted reasonably diligently); Miller v. Collins, 305 F.3d 491, 496 (6th Cir. 2002) (applying equitable tolling in light of petitioner's lack of notice and diligence in pursuing his claims).

Mr. Magan disagrees with Plaintiffs' assertion that the statute of limitations is tolled until the defendant entered the United States. This simply is not the case, if outside of the United States there exists "any jurisdiction in which 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." S. Rep. No. 249, 102d Cong., 1st Sess., at 11.

Mr. Magan could have brought suit in Somaliland's judicial system as early as 1991. See argument above.

In addition, Mr. Magan lived openly in Kenya from 1991 to 2000. If anyone wanted to find him it would not have been hard to do so. Magan Affidavit Paragraph 14. Kenya's basic legal system and body of law is very similar to that found in western or European countries. This is mainly a result of Kenya being a part of the British empire for many decades until 1963.

Furthermore, Plaintiff's delay only makes discovery more difficult; with the passage of time, paperwork is lost or destroyed and witnesses' memories fade.

In sum, the Plaintiff's victimization allegedly took place at the latest in 1989. The ten-year statute of limitations expired in 1999 or, at the latest, assuming the availability of equitable tolling, in 2001, ten years after the Barre administration collapsed, thereby ending any legitimate fear of reprisal. Plaintiffs' claims now are time barred and must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

IV. CONCLUSION

Defendant Abdi Magan ("Defendant" or "Mr. Magan") is immune from suit in the United States courts for the claims asserted. The common law doctrine of official act immunity bars the courts of the United States from exercising personal jurisdiction over the officials of foreign countries for non-commercial actions taken in their official capacities. Accordingly, these principles require dismissal of this action pursuant to Federal Rule of Civil Procedure 12(b)(1).

Plaintiff's claims are time barred. The alleged events took place no later than 1989. The Torture Victims Protection Act ("TVPA"), 28 U.S.C. § 1350, requires that actions be brought within a ten-year limitations period. 28 U.S.C. § 1350 § 2(c). The same limitations period applies to human rights claims made under the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350, the alternative basis for jurisdiction in this action.

Finally, because Plaintiff could have brought an action in the functioning court system of Northern Somalia (Somaliland) or Kenya, this Court should dismiss the Complaint for failure to exhaust judicial remedies, as required by the TVPA, 28 U.S.C. § 1350, § 2 (b) and the ATS.

Respectfully submitted,

/s/Jeffrey Donnellon
Jeffrey Donnellon (0079472)
Peter Ezanidis (0079372)
DONNELLON & EZANIDIS, LLC
5 E. Long St., Ste. 605
Columbus, Ohio 43215
jrd@columbuslegalhelp.com
Attorneys for Abdi Magan

I hereby certify that on June 11, 2010, a copy of the foregoing Plaintiff's Motion to Dismiss was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Jeff Donnellon

IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

ABUKAR HASSAN AHMED,	:	CASE NO. 2:10cv00342
Plaintiff,	:	
		JUDGE SMITH
v.	:	MAGISTRATE ABEL
ABDI ADEN MAGAN.	:	
Defendant.	:	

AFFIDAVIT OF NAME OF ABDI MAGAN

STATE OF OHIO)
)SS:
COUNTY OF FRANKLIN)

Now comes Abdi Magan, and for his affidavit states as follows:

1. I am an adult over the age of 18 and competent to give sworn testimony. I have personal knowledge of the facts set forth below.
2. I am a member of the Marehan sub-clan of the Darod clan.
3. In 1980, I married Raha Nor. Raha Nor is a member of the Abgaal sub-clan of the Hawiye clan. That is the same clan and sub-clan as the Plaintiff in this case.
4. I absolutely deny having ever mistreated the Plaintiff.
5. If any of the acts of torture mentioned in Plaintiff's complaint are true I knew nothing about it and certainly did not authorize it.
6. I was a member of the Barre government. The Barre government included members of the Plaintiff's clan. (Abgaal sub-clan of the Hawiye clan).

7. I was forced to resign from my position in the Barre government in approximately November of 1990. I refused to detain Osman Hassan Ali Atto without taking him in front of the National Security Court. Osman Hassan Ali Atto is a member of the same clan as the Plaintiff. I would have been put in prison if the Barre government had not collapsed.
8. In 1991, the Barre government collapsed.
9. In 1991, it was no longer safe for members of my clan (Marehan sub-clan of the Darod clan) to stay in Somalia. It was safe for members of the Plaintiff's clan (Abgaal sub-clan of the Hawiye clan) to remain in Somalia. They were in control.
10. In 1991, I fled to Kenya as a refugee.
11. Both of my children were killed in Somalia by members of the Plaintiff's clan (Abgaal sub-clan of the Hawiye).
12. If the Plaintiff had instituted court proceedings in Somalia in 1991, he would have had no fear of reprisal or retaliation in Somalia. His clan and sub-clan had power. My clan and sub-clan were forced to leave Somalia or risk death or rape.
13. If the Plaintiff was detained for three months in 1988 and 1989 I would not have had authority to detained him. To the best of my knowledge Colonel Nor Hussein would have had that authority. Colonel Nor Hussein was a member of the Barre government and was in charge of prosecuting cases at the National Security Court. Colonel Nor Hussein was a member of the same clan and sub-clan as the Plaintiff.

14. In Kenya I lived openly. If anyone wanted to find me it would not have been hard to do.

15. I moved to the United States in May of 2000. I have lived peacefully in Columbus, Ohio. I have re-married and have a child.

16. Many of the witnesses and documents relevant to the preparation of my defense are located in Somalia.

FURTHER AFFIANT SAYETH NAUGHT.

06-11-10
Date

Abdi A. Magan
Abdi Magan

Sworn to and subscribed by me this 6 day of June, 2010.

Notary Public

NOTARIAL SEAL
STATE OF OHIO

PETER C. EZANIDIS
ATTORNEY AT LAW
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

IN THE EASTERN DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

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

AFFIDAVIT OF ALESSANDRO CAMPO

I, Alessandro Campo, 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 of the facts and opinions rendered herein are based upon my personal knowledge.

2. I am a graduate of the University of Rome 'La Sapienza' and hold a M.A. degree in law.

3. From March 1999 to December 2001, I served as the Legal Expert for the United Nations and the Italian Embassy to Somalia. I currently am employed as short-term expert (justice and home affairs sector) with an EC project in Albania.

4. Between September 23 to October 9, 1999, I participated in a mission of the United Nations Development Office for Somalia ("UNDOS") to assess the courts and judicial authorities in Somaliland. My trip resulted in the publication of "Assessment of the Judiciary System of Somaliland" for UNDOS.

5. I also am the co-author of a paper entitled "The Evolution and Integration of Different Legal Systems in the Horn of Africa: The Case of Somaliland" published in Global Jurist

Topics.

6. From my assessment of Somaliland's judiciary, and based upon information generated by the Somaliland Government that I deem to be reliable, there has been a relatively independent and functioning judiciary within Somaliland since 1991. This judiciary also receives international support, as do other of Somaliland's institutions.

7. Somaliland's judiciary is competent to hear claims such as these, for torture and crimes against humanity, and could do so relatively independent of political influence.

8. A Somali bringing a claim for victimization against a former member of the Barre administration could bring such a claim in Somaliland for events that took place in Somaliland,in 'Puntland' for the events that took place in North East Somalia, and in Mogadishu for the events that took place in Benadir Region that is the district around Mogadishu. Somalia is to be considered as a de facto federal State with three national authorities (including their own judicial systems and law enforcement agencies) that control different areas of the country, i.e. Somaliland for NW Somalia, Puntland for NE Somalia and the Transitional National Government for Benadir Region.

9. Somaliland's law provides causes of action for damages to victims of torture, prisoner abuse, and crimes against humanity.

10. In the event of a judgment, Somaliland's judicial system provides adequate mechanisms for enforcement.

11. After the fall of the Barre administration in 1991, a Somali bringing a claim for victimization against a former official of the Barre administration would have had little or no fear of reprisal for himself or family members still residing in Somaliland, the rest of Somalia, or outside of the area. The remnants of the Barre Administration do not exist in

Somalia, or outside of the area. The remnants of the Barre Administration do not exist in an organized fashion and would be incapable of taking retaliatory action against Plaintiffs or their families.

12. A Somali bringing a claim for victimization in the U.S. or elsewhere against a former member of the Barre administration would have no appreciably greater difficulty collecting information for that claim in 1991 than today.

13. The year 1997 marks no particular change in the situation outside of Somaliland (as chaotic conditions continue to exist to date) or in Somaliland (where relatively stable conditions have existed since 1991).

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

Alessandro Campo

IN THE EASTERN DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

BASHI ABDI YOUSUF, et al.	*	
Plaintiffs,	*	Civil Action No 1:04 CV 1360
v.	*	
MOHAMED ALI SAMANTAR	*	
Defendant.	*	

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I, Alessandro Campo, 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 of the facts and opinions rendered herein are based upon my personal knowledge.

2. I am a graduate of the University of Rome 'La Sapienza' and hold a M.A. degree in law.

3. From March 1999 to December 2001, I served as the Legal Expert for the United Nations ("UN") and the Italian Embassy to Somalia. I also served as program officer for the UN 'Oil-for-Food' Program for Iraq from March to November 2003. I am currently working as short-term expert (justice and home affairs sector) with several European Community projects in the Balkans.

4. Between September 23 to October 9, 1999, I participated in a mission of the United Nations Development Office for Somalia ("UNDOS") to assess the courts and judicial authorities in Somaliland. My trip resulted in the publication of "Assessment of the

Judiciary System of Somaliland" for UNDOS.

5. I also am the co-author of a paper entitled "The Evolution and Integration of Different Legal Systems in the Horn of Africa: The Case of Somaliland" published in Global Jurist Topics.

6. In addition to my previous affidavit dated December 1, 2004 concerning the case Bashi Abdi Yousuf v. Mohamed Ali Samantar, I wish to outline the following issues relating to Somaliland's legal system and supplement my previous testimony:

(a) Somaliland's Charter (Constitution) recognizes all UN Conventions, Treaties and international human rights instruments (including the UN Convention against torture, cruel or inhuman punishment or treatment) and Somaliland law provides causes of action for damages to victims of torture, prisoner abuse, and crimes against humanity.

(b) Since 1991, in Somaliland there is a relatively stable, independent and functioning judiciary that receives international support from several donors including USAID, EC, UN, and UN Office of the High Commissioner for Human Rights (UNOHCHR).

(c) Somaliland's judiciary is competent to hear claims such as these, for torture and crimes against humanity, and could do so relatively independent of political influence. In this regard, the UNOHCHR has been established in Somaliland to monitor the human rights situation in the country and to support the judicial authorities to be compliant with their human rights obligations.

(d) Numerous human rights abuse cases have been brought in Somaliland's courts. Although I do not have access to Somali case law at the moment (as I am currently stationed elsewhere), the UNOHCHR for Somalia and the UN independent expert of the UN Office of the High Commissioner for Human Rights closely monitored a case

with which I am familiar and which illustrates the competency and independence of Somaliland's courts to hear human rights abuse cases.

(e) The case involves three 'Somalilanders' (plaintiffs) and the Total Oil Plant in Barbera (Somaliland) that took place in 1991 and was brought to the court of Berbera and the Supreme Court in Hargeisa (Somaliland). The plaintiffs were recognized to be victims of inhuman treatment because they were forced to work in oil containers, painting them with toxic colors without having any protection (gloves, masks, uniforms, etc). The Somaliland Supreme Court found the Total Oil Plant responsible for the illnesses that the plaintiffs suffered and for the violation of their civil and human rights and awarded about US$ 500,000 to the three Somalilanders.

(f) After the fall of the Barre administration in 1991, a Somali bringing a claim for victimization against a former official of the Barre administration would have had little or no fear of reprisal for himself or family members still residing in Somaliland, the rest of Somalia, or outside of the area. The remnants of the Barre Administration do not exist in an organized fashion and would be incapable of taking retaliatory action against Plaintiffs or their families.

(g) The clan system of Somalia assures protection to its clan members. As Mr. Samantar belongs to a minor clan, which has no significant power in any part of the country, after his forcible departure from Somalia, he would have had no power to exact acts of revenge upon Plaintiffs or anyone in Somalia and particularly in Somaliland.

(h) A Somali bringing a claim for victimization in the U.S. or elsewhere against a former member of the Barre administration would have no appreciably greater difficulty conducting an investigation of his/her claim in 1991 than today. It should also be noted

that risks of retaliation against him/her or his/her family would not have been substantially greater than it is today.

(i) The year 1997 marks no particular change in the situation outside of Somaliland (as chaotic conditions continue to exist to date) or in Somaliland (where relatively stable conditions have existed since 1991).

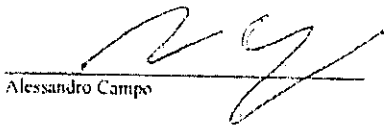
(j) My direct work experience with the UN in Somalia/Somaliland and Iraq allow me to compare the judicial systems of these countries and to note that the international community recognizes the possibility of bringing a human rights case in a court in Iraq (a notoriously war torn country), and similarly, that a Somali could have brought a human rights case to the court in Somaliland. Considering the far superior level of peace and stability in Somaliland and that it has had a functioning judicial system since 1991, it is clear that Somaliland presents an available and adequate forum for Plaintiffs' claims.

7. With regard to the status of Italian law, I wish also to add that according to Art. 5 of the UN Convention against torture, cruel or inhuman punishment or treatment (which Italy has ratified), a Somali could have brought an action against Mr. Samantar in an Italian court at a time during the period from February 20, 1991 (when Mr. Samantar moved to Italy) to November 9, 1997 (when Mr. Samantar left Italy).

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

_____

Alessandro Campo



Alessandro Campo

IN THE EASTERN DISTRICT COURT FOR THE EASTER DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

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

AFFIDAVIT OF MAHMOUD HAJI NUR

I, Mahmoud Haji Nur under oath, do herby 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 of the opinions rendered herein are based on my personal knowledge, information, or belief.
2. From 1973-1978, and again in 1980, I represented Somalia as the Somali Ambassador to the Sudan.
3. From 1978-1980, I represented Somalia as the Somali Ambassador to Kenya.
4. From 1981-1986, I represented Somalia as the Somali Ambassador to the United States.
5. From 1987-1990, I served as the Chairman of the Somali Ports Authority.
6. From 1991 through the present I have resided in the United States.
7. I am originally from an area now forming part of Somaliland, which was formed from the northern part of Somalia after the fall of the Barre administration in 1991.

8. I closely follow the developments in Somaliland and the rest of Somalia, and I am knowledgeable about Somaliland's government and judiciary and the general state of affairs in the rest of Somalia.
9. A Somali bringing a claim for victimization against a former member of the Barre administration could have brought such a claim in Somaliland for events that took place in Somaliland or the rest of Somalia.
10. Somaliland's law provides cause of action for damages to victims of torture, prisoner abuse, and crimes against humanity.
11. After the fall of the Barre administration in 1991, a Somali bringing a claim for victimization against a former official of the Barre administration would have had no fear of reprisal for himself or family members still residing in Somaliland, the rest of Somalia, or outside of Somalia.
12. Conditions in Somalia, outside of Somaliland, since 1991 have been chaotic and characterized by tribal warfare. However, this situation should have no impact on the Plaintiff's ability to bring a claim against former Barre officials. The remnants of the Barre Administration do not exist in an organize fashion and would be incapable of taking retaliatory action against Plaintiffs or their families.
13. The year 1997 marks no particular change in Somalia's situation outside of Somaliland, as chaotic conditions continue to exist to date.
14. A Somali bringing a claim for victimization in the U.S. or elsewhere against a former member of the administration would have been able to collect information about his case since 1991.

I solemnly affirm under the penalties of perjury that the contents of the foregoing Affidavit are true to the best of my knowledge, information and belief.

Mahmoud Haji Nur

I, Anise Amri, a Notary Public in and for the State of VA, do hereby certify that Mahmoud Haji Nur subscribed his name to the foregoing document and made oath that the statements contained therein are true and correct to the best of his knowledge, before me on this 1st day December 2004.

My commission expires:
05/31/08

Notary Public

IN THE EASTERN DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

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

AFFIDAVIT OF MOHAMED ABDIRIZAK

I, Mohamed Abdirizak, 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 of the facts and opinions rendered herein are based on my personal knowledge.

2. I was born and raised in Mogadishu, Somalia.

3. I left Somalia in 1986 to pursue higher education in the Pakistan, but I returned to Somalia in the summers of 1987 and 1988.

4. In 2000, I obtained a Masters Degree from the Johns Hopkins School of Advanced International Studies in Washington, DC.

5. In 2001-2002 I served with the United Nations Development Program for Somalia, operating out of Nairobi, Kenya.

6. During my tenure with the United Nations Development Program for Somalia, I made several missions into the Northwest region of Somalia, referred to as Somaliland.

7. Following the collapse of the Somali government in 1991, Somaliland unilaterally proclaimed its secession from the rest of Somalia and formed its own government and judiciary system over the following years. Somaliland has enjoyed stability from 1991 until the present, except for a brief period in 1994.

8. From my tenure with the United Nations Development Program's Somalia Country Office, I am aware that the United Nations funded and implemented a Rule of Law program with several components, including strengthening the Somaliland judiciary system and law enforcement.

9. Since 1991, Somaliland has been the only consistently stable region in Somalia. There have been brief periods of stability in other parts of Somalia since 1991, except perhaps Mogadishu, which experienced clan warfare. However, for over ten years, a Somali living in Somaliland, or another stable area of Somalia, would have been able to gather the necessary information to bring a claim against a former government official no differently than today.

10. I do not believe that a Somali would have a reasonable fear of reprisal for bringing claims against a former government official because the former members of the government did not have a unified political interest. The government was comprised of individuals from various clans with different political beliefs. Today, the remaining members of the government do not exist in an organized fashion and would be incapable of taking retaliatory action against Plaintiffs or their families.

11. The year 1997 marks no particular change in Somalia's situation.

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

Mohamed Abdirizak