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

***In re*:** :

JANE DOE, *et alii*, :

Plaintiffs, :

versus **Civil Action No. 05-701**

:

YUSUF ABDI ALI,

:

Defendant.

PRAECIPE AND NOTICE OF MOTION AND MOTION OF DEFENDANT YUSUF ABDI ALI TO DISMISS WITH PREJUDICE THE COMPLAINT

Dear Madam Clerk:

KINDLY TAKE NOTICE that, on Friday, 5 August 2005, at Ten o' Clock in the forenoon (Eastern Daylight Time), or as soon thereafter as he may be heard, your defendant in respect of the above-encaptioned cause, *viz.*, YUSUF ABDI ALI, intends to be heard in respect of the Motion to Dismiss set forth *infra*.

Thank you for your attention and courtesies.

Respectfully submitted,

/s/Joseph Peter Drennan

JOSEPH PETER DRENNAN
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Third Floor
Alexandria, Virginia 22314
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Virginia State Bar No. 023894

ATTORNEY AND
COUNSELLOR,
IN PRAESENTI,
FOR YUSUF ABDI ALI

MOTION OF DEFENDANT YUSUF ABDIALI TO DISMISS WITH PREJUDICE THE COMPLAINT

COMES NOW, before this Honorable Court, your defendant in respect of the above-encaptioned cause, *viz.*, YUSUF ABDI ALI, by and through his undersigned attorney and counsellor at bar, *in praesenti*, *viz.*, Joseph Peter Drennan, and, pursuant to the provisions of, *inter alia*, F. R. Civ. P. 10 (a), F.R. Civ. P. 12 (b) (1), and F. R. Civ. P. 12 (b) (6), and hereby moves this Honorable Court to dismiss with prejudice the Complaint, and, in support whereof, your plaintiff would direct the attention of this Honorable Court to the accompanying Memorandum of Points and Authorities in Support of the instant Motion. Pursuant to the provisions of Local Rule 7(E), the undersigned did confer with counsel for your plaintiffs regarding the subject Motion, and regrets reports to this Honorable Court that your plaintiffs do not consent to the instant Motion.

WHEREFORE, upon the foregoing articulated circumstances, spelt out with great particularity in the accompanying Memorandum of Points and Authorities in Support of the instant Motion, your defendant ever prays that the Complaint, filed herein by your plaintiffs, be dismissed with prejudice, and that he be awarded his costs hereby expended, together with such other and further relief as may be just and fitting under the existent circumstances.

Respectfully submitted,

/s/Joseph Peter Drennan
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ATTORNEY AND COUNSELLOR
FOR THE DEFENDANT,
YUSUF ABDI ALI

CERTIFICATE OF SERVICE

I, Joseph Peter Drennan, undersigned, hereby and herewith certify that, on the 20th of July, 2005, a true cyclostyled facsimile of the foregoing was despatched by carriage of First Class Post, through the United States Postal Service, with adequate postage prepaid thereon, enshrouded in a suitable wrapper, unto:

Robert R. Vieth, Esquire
Scott Johnson, Esquire
Daniel J. Wadley, Esquire
Tara M. Lee, Esquire
Cooley Godward, L.L.P.
One Freedom Square
11951 Freedom Drive
Reston, Virginia 20190-5656; &

Matthew Eisenbrandt, Esquire
Helene Silverberg, Esquire
Center for Justice & Accountability
870 Market Street
Suite 684
San Francisco, California 94102.; and, moreover, that, on even date, Robert R. Vieth, Esquire,Scott Johnson, Esquire, Tara Lee, Esquire, and Helene Silverberg, Esquire, were also served, electronically, with a true copy of the foregoing at the respective *e-mail* address of each.

Respectfully submitted,

/s/Joseph Peter Drennan
Joseph Peter Drennan

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

2005 JUL 28 P 4:55

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

***In re*:**	:	
JANE DOE, *et alii*,	:	
Plaintiffs,	:	
versus	:	**Civil Action No. 05-701 (LMB/BRP)**
	:	**:Judge Brinkema**
YUSUF ABDI ALI,	:	
Defendant.	:	

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS
WITH PREJUDICE THE COMPLAINT

COMES NOW, before this Honorable Court, your defendant in respect of the above-encaptioned cause, *viz.*, YUSUF ABDI ALI, by and through his undersigned attorney and counsellor, *viz.*, Joseph Peter Drennan, and herewith sets forth his Memorandum of Points and Authorities in Support of his accompanying Motion to Dismiss With Prejudice the Complaint filed herein by your anonymous plaintiffs, *viz*

I. SOME INITIAL CONSIDERATIONS

The instant cause, filed on the 13th of June 2005, represents, essentially, a recommencement of an earlier, eponymous case, brought in this Honorable Court on 10 November 2004, and docketed as Civil Action No. 04-1361. wherein your defendant, *viz.,* Yusuf Abdi Ali, a Virginia domiciliary and Legal Permanent Resident Alien of the United States of America, has been sued by two *anonymous* plaintiffs who each claim to be adult Somali individuals affiliated with the *Issaq* clan, said to reside in the territory of historic Somalia, which, significantly, has no government that has been recognized by the Government of the United States of America.

The putative jurisdictional basis for your plaintiffs' subject action is asserted to be the Torture Victims Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (hereinafter: "TVPA"), and the Alien Tort Claims Act (hereinafter: "ATCA"), both codified at 28 U.S.C., § 1350. In the both of the respective Complaints[1] filed in the subject antecedent action, your plaintiffs purported to assert and make actionable a veritable litany of odious wrongdoing, all of which is said to have been perpetrated in Somalia, during the 1980s, which your plaintiffs have characterized, variously, as, *inter alia,* "torture", "war crimes" and "crimes against humanity". The alleged occurrences all date back *over fifteen years,* with some aspect of the subject allegations dating back *over twenty years*[2]!

Before we segue to a discussion of the manifold legal grounds for granting the instant *Motion to Dismiss*, it is important first to highlight several important matters that were not known to this Honorable Court, or else your defendant, as of 28 January 2005, when this Honorable Court denied, *without prejudice*, your defendant's Motion to Dismiss in respect of the said antecedent case, and, concomitantly, allowed your plaintiffs leave to proceed anonymously[3]. Upon information and belief, such matters, whether considered individually of collectively, all compel a dismissal of the instant case.

Here is a ramified listing of several such critical factors, which your defendant respectfully submits operate so as require dismissal with prejudice of the instant action, *viz.*:

i.) The recent decision of the United States Court of Appeals for the Eleventh Circuit in the case of *Arce, et alii v. Garcia and Cassanova,* 400 F. 3d 1340 (11th Cir. 2005) (decided 28 February 2005), which persuasive authority essentially puts paid to the premise of your plaintiffs' plea for equitable

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1 To be sure, the Complaint initially filed in the subject, antecedent action (Civil Action No. 04-1361) contained a curious heralding of the true name of "Jane Doe", under the rubric: "***SECOND CLAIM FOR RELIEF***" (Complaint at 15) (emphasis in original), with your plaintiffs subsequently moving, on 14 January 2005, to place said initial Complaint under seal, which motion was granted on 21 January 2005, whereupon your plaintiffs, on 2 February 2005, filed a "redacted" Complaint, essentially,the original Complaint, with the alleged name of "Jane Doe" purged.

2 *See, e.g.*: "*COMPLAINT FOR TORTURE; ATTEMPTED EXTRAJUDICAL (sic.) KILLING; CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT; ARBITRARY DETENTION; CRIMES AGAINST HUMANITY; AND WAR CRIMES.*" at Page 5, ¶ 18, *et seq.*, which references alleged instances of wrongdoing, supposedly attributable to your defendant, said to have occurred as far back as "[o]n or about an evening in *early October, 1984* . . .".(emphasis added).

3 In their Re-filed Complaint, your plaintiffs incorrectly reference the date of said Order as "January 31, 2005 (*sic.*)" (Complaint at 2).

tolling, *viz.,* that your plaintiffs somehow should be excused from compliance with the applicable Statute of Limitations because they allegedly lived under tyranny, under the regime of Siad Barre, and, likewise, in the aftermath of the fall of the said regime, because of turbulent conditions in Somalia;

ii.) The 30 March 2005, expert witness report of Gerald D. Chipeur, Esquire, of Calgary, Alberta, Canada, a true, xerographic copy of which is annexed hereunto, and incorporated herewith by reference thereto, as if set out in full, *qua* "Exhibit 1", which expert report, *inter alia*, supports the conclusion that your plaintiffs could, had they been so inclined, brought suit against your defendant, in Canada, during the period in which he was residing in Ontario, Canada, in respect of the wrongs alleged in the Complaint[4], thus making inapposite, in any event, any claim of putative equitable tolling on account of your defendant's period of residence in Canada between December of 1990, and October of 1992;

iii.) The significant shift, *back in time*, heralded in the Re-filed Complaint, *by one year,* of the alleged end date of "Jane Doe's" supposed spate of imprisonment at the hands of, or upon the instigation of, your defendant –whereas the Complaint in the subject antecedent action stated that "Jane Doe was released from prison in September 1990 [,]" (Complaint at p. 7, ¶ 26), the Re-filed Complaint in the instant action now advises, incongruously, that "Jane Doe was released from prison in or around September of 1989." (Re-filed Complaint at p. 7, ¶ 26), thereby fashioning, by implication, a commensurate retrograding of the vintage of all five of Jane Doe's putative cause(s) of action[5];

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[4] Although Mr. Chipeur only reviewed the original Complaint, which was filed on 10 November 2005, in the subject antecedent action, and has not, as yet, been called upon to review the Re-filed Complaint, the striking similarity between the allegations contained in the said original Complaint and those *ingravidated* in the Re-filed Complaint render Mr. Chipeur's said 30 March 2005 expert witness report applicable vis-a-vis the Re-filed Complaint as well.

[5] Given the overall imprecise, complecting of the putative causes of action framed, correspondingly, in both the original Complaint and the Re-filed Complaint, such inversion of the *year* of "Jane Doe's" alleged release from prison operates, *inter alia*, to make the accrual date of *all* of Jane Doe's putative causes of action (*id est,* the "*FIRST CLAIM FOR RELIEF*" (Re-filed Complaint at pp. 14-15, ¶¶ 54-62); "SECOND *CLAIM FOR RELIEF*" (Re-filed Complaint at pp. 15-16, ¶¶ 63-71); "*THIRD CLAIM FOR RELIEF*" (Re-filed Complaint at pp. 16-17, ¶¶ 72-79); "*FOURTH CLAIM FOR RELIEF*" (Re-filed Complaint at pp. 17-18, ¶¶ 80-87); & "*FIFTH CLAIM FOR RELIEF*" (Re-filed Complaint at p. 19, ¶¶ 88-94)) one year *older*, and, for that matter, more stale, than was disclosed in the subject, antecedent case. Moreover, at the risk, as it were, of picking nits, it bears mention herein that such accelerated aging of "Jane Doe's" alleged claims is accompanied, in the Re-filed Complaint, by a disturbing pattern of fishy fuzzing of significant other key alleged dates and times: for instance, in the original Complaint, "[f]rom approximately 1984 through 1989" (Complaint at p. 5, ¶ 16) (*id est*, the period of time in which your defendant was said to have been a commander of the Fifth Brigade), metamorphoses into "[b]etween approximately 1984 through 1989 (*sic.*)" (Re-filed Complaint at p. 5, ¶ 16) ; "[o]n or about the night of October 3, 1984," (Complaint at p. 5, ¶ 18) (when "Jane Doe" alleges that soldiers burned the hut occupied by her and her husband and looted their livestock) lapses into ". . .an evening in early October, 1984" (Re-filed

iv.) The unequivocal and implacable objection to the instant litigation, before this Honorable Court, expressed by the Transitional Government of the Somali Republic (hereinafter: "Transitional Government"), communicated first, per the 29 March 2005, letter addressed to the undersigned, from the Honorable Ibrahim Sheikh Ali (Jebbo), Minister of State of the Transitional Government a true, xerographic copy of which is annexed hereunto, and incorporated herewith, by reference thereto, as if set out in full, *qua* "Exhibit 2", in the context of the subject antecedent action, and, essentially, reiterated, in the context of this, re-filed, action, just last week, per the 13 July 2005, *Declaration of Dahir Mire Jebreel, Permanent Secretary to the Honorable Abdullah Yusuf Ahmed, President of the Transitional Federal Government of the Somalia Republic*, a true, xerographic copy of which is annexed hereunto, and incorporated herewith by reference thereto, as if set out in full, *qua* "Exhibit 3";

v.) The palpable potential for the subject litigation's playing into political motivations and intrigue among rival factions, both within historic Somalia, as well as in neighboring Ethiopia, as suggested by, *inter alia,* the esteemed overviews of Somalia and Ethiopia supplied to this Honorable Court by Ambassador Trusten Frank Crigler[6], of Durham, North Carolina, and Professor Charles George Herbert Schaefer[7], of Valparaiso, Indiana, respectively; annexed hereunto, and incorporated herewith by reference thereto, as if set out in full, *qua* "Exhibit 4", is a true, xerographic copy of the 28 April 2005

Complaint at p. 5, ¶ 18); "[o]n or about November 1, 1984" (Complaint at p. 6, ¶ 24) (when "Jane Doe" claims to have been brought before a military court in Arabsiyo), wafts into "[o]n or about early November, 1984" (Re-filed Complaint at p. 7, ¶ 24); "[o]n or about December 12, 1987," (Complaint at p. 7, ¶ 28) (when "Jane Doe" alleges that your defendant ". . . threatened to execute everyone in Fifo Uray. . ." (*Ibid.*), evolves into "[o]n or about mid-December, 1987" (Re-filed Complaint at p. 7, ¶ 28); "[o]n or about the night of December 17, 1987, (where) Plaintiff John Doe was sleeping near his family's hut in Fif Uray (when) [a]t approximately 5:00 a.m., two army soldiers from the Fifth Battalion carrying AK-47 machine guns woke him up [,]" (Complaint at p. 7, ¶ 29) (when "John Doe" claims to have been seized by soldiers in a round-up), is transmuted to "[o]n or about a night a few days later (*sic.*) in December of 1987, (where) Plaintiff John Doe was sleeping near his family's hut in Fifo Uray (when) [v]ery early in the morning, two army soldiers from the Fifth Battalion carrying AK-47 machine guns woke him up [,]" (Re-filed Complaint at p. 8, ¶ 29); & "('John Doe') and the other men were then forced to march for thirty days to the village of Xaurshalalay, where an army truck was waiting for them [,]" (Complaint at p. 8, ¶ 30), becomes " ('John Doe') and the other men were then forced to march for approximately thirty days to the village of Xaurshalalay, where an army truck was waiting for them (*sic.*) [,]" (Re-filed Complaint at p. 8, ¶ 30).

[6] Former Ambassador of the United States to Somalia (1987-1990).

[7] Associate Professor of African History & Chairman, Department of History, Valparaiso University (1999-present).

Declaration of Ambassador Crigler, which focuses upon the historical perspective in Somalia vis-a-vis the subject lawsuit, and, annexed hereunto and incorporated herewith by reference thereto, *qua* "Exhibit 5," is a true, xerographic copy of the 13 July 2005 Declaration of Ambassador Crigler, the latter of which declarations submitted by Ambassador Crigler focuses upon recent, troubling events within the boundaries of historic Somalia and the potential implications of the continued pendency of the instant action, especially, in the context of the specter of proceedings in respect of this action taking place in neighboring Ethiopia; and, annexed hereunto, and incorporated herewith by reference thereto, as if set out in full, *qua* "Exhibit 6" is the 13 July 2005 Declaration of Professor Schaefer, which latter declaration concentrates on current political and social climate within Ethiopia, including , and the potential, *inter alia,* for political intrigue as regards the Ethiopian Government's supposed solicitude for opening itself as a forum for discovery in respect of the instant action, even as Ethiopia, itself, is beset by political difficulty, in holding historic elections, with the ethnic Somalis in the Ogaden region, who are slated to vote within the next month, likely to hold the balance of power for the *Ethiopian* polity;

vi.) The actual effort on the part of your plaintiffs to use the instant action as a vehicle to secure some sort of implicit recognition the rump "state" of "Somaliland", which has been characterized, derisively, by none other that the United States Department of State, as being " . . . the self-declared 'Republic of Somaliland' in northern Somalia"[8], as evinced by, *inter alia*, by your *"PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR NON-PARTY VIDEOCONFERENCE DEPOSITIONS AND ISSUANCE OF COMMISSION"* [Document No. 4, filed on 24 June 2005], which pleading of your plaintiffs is suffused with references to "Somaliland", and includes a representation that ". . . the Foreign Minister of Somaliland has informed Plaintiffs that the deposiitons do not violate the laws of Somaliland and that the Somaliland government (*sic.*) has expressly permitted the

[8] *See, e.g.:* the United States Department of State's "Travel Warning" respecting Somalia, which may be found posted on the Internet at the following URL, *viz.*: http:/travel.state.gov/travel/cis_pa_tw/tw/tw.933.html.

deposiitons to go forward." (Mot. at p.3); &

vii.) The foregoing signification by your plaintiffs of their working, apparently, as it were, hand-in-glove with the so-called "government of Somaliland (*sic.*) , if nothing else, utterly belies the corresponding assertions set forth, *ipse dixit,* in the Re-filed Complaint, that each plaintiff " . . . seeks to proceed under a pseudonym because (she/he) fears reprisals against (herself or her family/himself or his family) as a result of (her/his) participation in this lawsuit" (Re-filed Complaint at pp. 3-4, ¶¶ 9,10, respectively), which revelation, *inter alia,* removes any excuse for your plaintiffs' manifest non-compliance with the provisions of F. R. Civ. P. 10 (a).

II. INTRODUCTION TO ARGUMENT

All of your plaintiffs' elaborate efforts, as it were, to string together an indictment of the long-gone regime of Major Mohamed Siad Barre, which collapsed in January of 1991, with a welter of supposed wrongdoing and "command" responsibility for the wrongdoing of others notwithstanding, all of your plaintiffs' respective discrete claims must fail for they all are simply too old, and are thus barred by the applicable ten (10) year Statute of Limitations. Accordingly, under the provisions of F. R. Civ. P. 12 (b) (6), the Re-filed Complaint must be dismissed. Alternatively, even if any aspect of your plaintiffs' subject putative claims are not deemed to be time-barred, for whatever reason, the fact that the instant dispute appears, manifestly, a non-justiciable political question over which this Honorable Court lacks subject-matter jurisdiction, perforce, requires that the instant cause be dismissed under the provisions of F. R. Civ. P. 12 (b) (1). A further basis for dismissal may be found upon your plaintiffs' manifest non-compliance with F. R. Civ. 10 (a), in that they have, without just cause, sued under pseudonyms.

III. ARGUMENT

A. Your Plaintiffs' Claims must be Dismissed, In Toto, as All Such Putative Claims Are Barred by the Applicable Statute of Limitations

1. Introduction

It should be abundantly clear upon a review of, *inter alia,* the 7 January 2005 "*DECLARATION OF YUSUF ABDI ALI*", a true copy of which is annexed hereunto and incorporated herewith by referenced, as if set out in full, *qua* "Exhibit 7", to say nothing of the Answer filed by your defendant in respect of the subject, antecedent action[9] many, if not most, of the allegations lain in the Re-filed Complaint are disputed. However, for purposes of the present motion, your defendant assumes, *arguendo,* that all such allegations, however, implausible, could be proven. *See: Conley v. Gibson*, 355 U.S. 41, 45-46; *see also*: *Gilven v. Fire,* 259 F. 3d 749, 756 (D.C. Cir. 2001).

Lending a most charitable interpretation to the respective, manifold claims contained in the Re-filed Complaint, the last tortious event that "Jane Doe" is stated to have sustained was her alleged arbitrary imprisonment, which, we are now told, ended at some point "in or around September of 1989[10], the last alleged discrete tortious action said to have been perpetrated vis-a-vis "John Doe" is stated to have occurred over a year before that, *id est,* " [o]ne evening in early March 1988", when he claims to have been shot and left for dead by your defendant[11]. Thus, at the time of the filing of their original Complaint in this Honorable Court, on 10 November 2004,[12] "Jane Doe's" putative claims were at least fifteen (15) years and a month or two old, and "John Doe's" putative claims were even older --at least sixteen (16) years and seven (7) months old!

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9 Document No. 16, filed in Civil Action No. 04-1361, on 12 January 2005.

10 *See:* Re-filed Complaint, at p. 7, ¶ 26.

11 *See:* Re-filed Complaint, at p. 9, ¶ 37.

12 "In consideration of the court-ordered tolling of the running of the applicable statute(s) of limitations contained in this Honorable Court's 29 April 2005 Order in the subject, antecedent action, this analysis focuses upon the untimeliness of the subject, original filing of this action, on 10 November 2004.

2. The Applicable Period Allotted by Statute and Stare Decisis is Ten (10) Years

One of the two federal statues cited by your plaintiffs as constituting the basis for their alleged causes of action is the TVPA, 28 U.S.C. § 1350; the TVPA contains, *inter alia*, an explicit ten (10) year limitations period (28 U.S.C. § 1350 note, § 2 (c)). Thus, any cause of action to have been asserted by "Jane Doe" under the TVPA would have had to have been filed no later than September of 1999, *viz., over five years before* she brought her original action herein. Accordingly, there can be no gainsaying that "Jane Doe's" subject suit is time-barred under the TVPA. Correspondingly, "John Doe's" case would have had to have been commenced even earlier, *viz.*, by March of 1998 *–id est, over six years before it actually was filed*!

To be sure, the ATCA, likewise codified at 28 U.S.C., § 1350, does not specify any limitations period for bringing such claims. However, in the case, of *Papa v. United States*, 281 F.3d 1004 (9th Cir. 2002), incidentally, upon information and belief, the first reported decision by an appellate court on the length of the ATCA's limitations period, the *Papa* court stated, *inter alia,* that, taking into account "the federal policies at stake and the practicalities of litigation, " *Id.* at 1012, which analysis included a number of points of comparison between the TVPA and the ATCA, including, *inter alia,* the fact that the Congress enacted the TVPA as an addition to the ATCA rather than as a free-standing statute, the ten year limitations period delimiting claims brought under the TVPA applied to corresponding ATCA claims as well. *Id.; accord: Arce, et alii v. Garcia and Cassanova,* 400 F. 3d 1340 (11th Cir. 2005) (decided 28 February 2005). Thus, just as the parties' respective claims under the TVPA are manifestly time-barred, so are their related claims purportedly brought under the ATCA. Therefore, the entire putative case contained in the Re-filed Complaint is time-barred and stale, and must be dismissed, as per the provisions of F. R. Civ. P. 12 (b) (6).

The holding, in *Papa, supra,* thus operates to nix any effort to impose a longer limitations period that might obtain under international law, for, under "international law," there is no fixed limitations period; instead, the governing principle,under such *Zeitgeist,* is the equitable doctrine of laches, which operates to bar claims that, in light of the circumstances of the case, are determined to have been brought after an unreasonable delay. *See, e.g.*:Ashraf R. Ibrahim, *Note: The Doctrine of Laches in International Law,* 83 Va. L. Rev. 647, 664 (1997)*; Iran National Airlines Co. v. United States*, Case No. B8, Award 333-B8-2 11-13 (Iran-U.S. Cl. Trib. Nov. 30, 1987) (applying laches because it would be "fair in the circumstances," taking into account defendant's policy of destroying records, plaintiff's diligence in bringing suit, and the period within which plaintiff could have brought its claim in U.S. courts). The reason that a laches analysis, if only it were applicable to to the instant cause, might tend to be more forgiving of delay than the TVPA limitations period is because, overall, international tribunals have tended not to apply laches to dismiss claims brought less than 10 years after the injury alleged. *See, e.g., Williams Case, in* 4 Moore, International Arbitrations to Which the United States Has Been a Party 4181, 4199 (U.S.-Venez. Comm'n 1890) (laches applied to claim brought 26 years after injury); *Gentini Case*, J. Ralston, Venezuelan Arbitrations of 1903, 720, 730 (Italy-Venez. Comm'n 1904) (laches applied because of a 30-year delay).

3. Your Plaintiffs are not Entitled to Equitable Tolling

As mentioned, *supra,* on 28 February 2005, the United States Court of Appeals for the Eleventh Circuit issued an opinion in *Arce, et alii v. Garcia and Cassanova, supra,* addressed, in pertinent part, issues relating to the availability of equitable tolling of the statute of limitations in the context of claims brought under the TVPA and the ATCA. For ready reference, a copy of the slip opinion in *Arce, supra,* is attached hereto *qua* "Exhibit 8." Your defendant respectfully submits that the *ratio decidendi* contained in *Arce, supra,* in denying equitable tolling to plaintiffs in remarkably similar circumstances to those said to exist in the instant case, supplies highly persuasive, indeed, compellingly persuasive

precedent to assist this Honorable Court in its decision on the subject Motion to Dismiss, especially, given that, upon information and belief, no panel of the Fourth Circuit has yet addressed the issue of equitable tolling in the context of an action brought under the ATCA and/or the TVPA.

The *Arce, supra,* case concerned three Salvadoran refugee plaintiffs who alleged that they were tortured by soldiers in El Savador between 1979 and 1983. *Id.* at pp. 1-2, who are said to have arrived in the United States in 1983 and 1997. *Id.* The defendants in said case are former officials of El Salvador who served in their country's defense establishment from 1979 to 1983. Both defendants arrived in the United States in 1989 and remain as permanent residents. *Id.* at pp. 2-3.

On 22 February 2000, the plaintiffs in *Arce* filed their lawsuit in the United States District Court for the Southern District of Florida, alleging violations of the TVPA and ATCA. *Id.* at p. 3. The defendants filed an answer, asserting various defenses, including the running of the statute of limitations. *Id.*

The district court decided in favor of the plaintiffs on the issue of the statute of limitations. *Id.* However, on appeal, the Court of Appeals for the Eleventh Circuit reversed, holding that the statute of limitations had run on the plaintiffs' claims pursuant to the TVPA and ATCA, and that equitable tolling was not available. *Id. at p. 6.*

In its *ratio decidendi,* the Eleventh Circuit, in *Arce, supra,* clarified the following points, *inter alia, viz.*:

1. That " . . . the ATCA and the TVPA "share the same ten-year statue of limitations." *Id.* at p. 9;
2. That "[e]quitable tolling is appropriate only under 'extraordinary circumstances.'" *Id.* at p. 11, *quoting Sandvik v. United States*, 177 F.3d 1269, 1271 (11th Cir. 1999).
3. That such extraordinary circumstances often involve defendant misconduct. *Arce, supra,* at p. 12, *quoting Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 157 ("permitting

tolling if 'affirmative misconduct on the part of the defendant lulled the plaintiff into inaction'");

4. That, in order to qualify for equitable tolling under the TVPA and the ATCA , "'[t]he burden is on the plaintiff.'" Arce, supra, at p. 13, *quoting Justice v. United States,* 6 F. 3d 1474, 1479 (11th Cir. 1993) (certain further Eleventh Circuit citations omitted);
5. That equitable tolling " . . .applies when 'the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been *induced or tricked* by his adversary's misconduct into allowing the filing deadline to pass'"), *quoting Irwin v. Dep't of Veteran Affairs,* 498 U.S. 89, 96 (1990) (emphasis contained in quoted passage);
6. That turmoil in the country where plaintiffs allege that violations of the TVPA and ATCA took place does not alone constitute extraordinary circumstances. *Id.* at p. 18;
7. That a defendant's mere denial of personal responsibility is insufficient to warrant equitable tolling. *Id.* at pp. 16-18;
8. That the statute of limitations does not toll during the time a plaintiff is resident outside the United States, "in large part because a plaintiff's residence is largely within [his/]her control." *Id.* at p. 18 –hence, although not pleaded in the Re-filed Complaint, the presence of your plaintiffs in refugee camps in Ethiopia would not trigger equitable tolling in any event[13];

[13] At ¶ 26, on p. 7 of the Re-filed Complaint, "Jane Doe" contends that, upon her release from prison " . . .in or around September of 1989 [,] [s]he fled Somalia and joined her family in a refugee camp in Harta-Sheikh, Ethiopia."Although the Re-filed Complaint, and, for that matter, the Original Complaint, are both silent as to whether, *vel non,* "John Doe" ventured outside of historic Somalia during the relevant period, *id est,* from the accrual of his supposed claims against your defendant until 10 November 2004, *viz.,* the filing date of the Original Complaint, it bears mention here that, your defendant learned in discovery from "John Doe," specifically, interrogatory answers received from said plaintiff, said to have been executed on 26 March 2005, that "[i]n 1990 and 1991, (he) spent time in a refugee camp in Ethiopia to avoid the violence in Somalia." (*see: "PLAINTIFF JOHN DOE'S RESPONSE TO DEFENDANT'S FIRST ARRAY OF INTERROGATORIES AND REQUEST FOR THE PRODUCTION OF DOCUMENTS AND OTHER THINGS,"* an unexpurgated copy of which (with limited redactions to comply with this Honorable Court's 29 January 2005 Order, in the subject antecedent action, granting the plaintiffs leave to proceed anonymously) was annexed, *qua* Exhibit 2" to your *DEFENDANT'S OPPOSIITON TO PLAINTIFFS' MOTION FOR ENTRY OF A PROTECTIVE ORDER,"* [Document No. 53, in Civil Action No. 04-1361, filed on 30 March 2005]. Thus, we are informed that each of your

9. "[T]he fact that a foreign country's courts were unavailable does not explain why a suit could not have been brought in this country." *Id.* at p. 19; &
10. The statute of limitations does not necessarily toll during the time a defendant is resident outside the United States. *Id.*at p. 20;

Although not highlighted in *Arce, supra,* it is important to bear in mind that the Congress has made no express provision for invoking equitable tolling as regards either the TVPA or the ATCA. *Compare, e.g.: Peterson, et alii, v. Islamic Republic of Iran,* 264 F. Supp. 2d 46 (D.D.C. 2003)[14]where the applicable 10-year limitations of action in the statutory framework that created a cause of action for suit for U.S. servicemen who were victims of the 1983 bombing of the U.S. Marine Barracks, in Beirut, Lebanon, under the Foreign Sovereign Immunity Act of 1996 ("FSIA"), was deemed equitably tolled until 1996, *id est,* during the period in which the foreign state sponsor of state-sponsored terrorism (Iran) enjoyed traditional immunity from suit, that is, until the passage by the Congress of Pub. Law 104-132, which was made effective on April 24, 1996, effectively stripping Iran of its immunity for its perpetration of acts of state-sponsored terrorism against American nationals, as per the express provisions of 28 U.S.C., Sec. 1605 (f), which, in pertinent part, provide for "equitable tolling" during "the period in which the foreign state was immune from suit." *Peterson, supra.*[15]

plaintiffs was present in Ethiopia *after* the accrual of their putative claims, only, as it were, to turn around, and return to historic Somalia, evidently, without having endeavored to bring suit either in the United States or else in Canada.

[14] The undersigned is co-counsel for the plaintiffs in *Peterson, supra.*

[15]One of the few exceptions to FSIA immunity was created when Congress promulgated 28 U.S.C. § 1605 (a)(7)(A) (2004) (permitting jurisdiction over states and officials from states that sponsor terrorism) and the 1996 Flatow Amendment, P.L. 104-208, Div A, Title I, § 101(c) [Title V], 110 Stat. 3009-172 (creating a cause of action for victims of torture, extrajudicial killing, and terrorism). In enacting these Congress intended to "expand the scope of monetary damage awards available to American victims of international terrorism." H.R. Conf. Rep. No. 104-863, 987 (1996). In other words, by allowing victims of state-sponsored terrorism to bring actions against the responsible states or officials, Congress sought to increase the breadth of available remedies for acts such as torture and extra judicial killing. Conversely, it follows that by specifically delimiting the reach of these provisions to state sponsors of terrorism, states not deemed by the Executive Branch to be sponsoring terrorism (and their officials) should be accorded FSIA immunity. As referenced above, the former Government of Somalia was never implicated in state-sponsored terrorism, whatever its other failings.

The Fourth Circuit has determined that whether, *vel non,* to apply equitable tolling according to the "extraordinary circumstances" test, requires the petitioner to present: (1) extraordinary circumstances; (2) beyond his control or external to his own conduct; (3) that prevented him from filing on time. *Rouse v. Lee*, 339 F.3d 238 (4th Cir. 2003), *citing Harris v. Hutchinson,* 209 F.3d 325, 330 (4th Cir. 2000).

Moreover, the Eastern District of Virginia very recently underscored that plaintiffs bear the burden of adducing facts that warrant application of equitable tolling, in the context of an untimely *habeas corpus* action. *See: Hall v. Johnson, 332 F. Supp. 2d 904, U.S. Dist. LEXIS 17175 (E.D. Va. August 24, 2004).* In the instant action, your plaintiffs offer nary a scintilla of evidence in support of their conclusory, anticipatory claim for equitable tolling, just dollops of disparagement and demonization of the Siad Barre regime[16] Instead, the broad brush, largely inaccurate and simplistic general statements about recent Somali history suffused in the Complaint appear, implicitly, if unintentionally, to implicate the following stated concern of the Eleventh Circuit, in *Arce, supra,* about the dangerous precedent of a United States District Court's failing to apply rigorously the statute of limitations in TVPA actions, *viz.*

> From a United States perspective, there are many countries that oppress their citizens today, and many countries that have oppressed their citizens in decades and centuries past. A lenient approach toward equitable tolling would mean that United States courts would hear claims dating back decades, if not centuries. In enacting a statute of limitations for the TVPA, Congress surely did not intend to permit such trial-by-excavation, at least not absent extraordinary circumstances. Courts would wind up with cases that are based not on witnesses with personal knowledge, but instead on the generalized testimony of human-rights workers, diplomats, and assorted experts. Much of the evidence would pertain not to the

[16] Given the discourse, *passim,* in the subject antecedent action and the instant, re-filed action, one certainly has to wonder how your plaintiffs can remain oblivious to the current wretched state of affairs in historic Somalia, and of the concerns voiced by Ambassador Crigler and the Transitional Government as to the counter-productive and corrosive potential of a continuation of the instant cause for the long-suffering Somali people as a whole, both in historic Somalia, as well as in the Somali *diaspora.*

particular incidents at issue, but to the illegitimacy of an overall regime.

Id. at p. 22.

The foregoing specter envisaged by the *Arce, supra,* court is, your defendant respectfully submits, precisely what your plaintiffs propose to present if the instant case is allowed to continue, if the adage of past is prologue were to presage the future course of the instant action –all the more reason, we submit, to end the instant cause now, there having been no meritorious basis advanced by your plaintiffs for equitable tolling.

B. The Instant Cause Presnts a Non-Justiciable Political Question

If nothing else, your defendant would respectfully submit that it is becoming increasingly apparent that your plaintiffs' subject suit presents a non-justiciable political question over which this Honorable Court lacks subject matter jurisdiction. Under *Baker v. Carr*, 369 U.S. 186, 217 (1962):

> "Prominent on the surface of any case held to involve a political question is found [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; [2] or a lack of judicially discoverable and manageable standards for resolving it; [3] or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; [4] or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; [5] or an unusual need for unquestioning adherence to a political decision already made; [6] or the potentiality of embarrassment from multifarious pronouncements by various departments on one question."

Whenever even one of these factors is "inextricable from the case at bar," the suit must be dismissed because its judicial resolution can be obtained only by the resolution of an otherwise non-justiciable question. *See: id.* We respectfully submit that all of the foregoing *Baker* factors are

implicated here, especially in light of the current state-of-affairs between the United States and historic Somalia, where, at least at present, upon information and belief, the Executive Branch's evident forbearance from making a formal declaration to this Honorable Court on the Somalia question ought not to be construed as a lack of interest of the Executive Branch in the politically volatile and dangerous Horn of Africa, but, rather, reflective of a delicate and deliberative approach by the Executive Branch, which is not to be questioned by the Judicial Branch.

C. Your Plaintiffs Should Not be Allowed to Proceed Anonymously

Although in the subject, antecedent action, this Honorable Court ultimately granted leave to your plaintiffs to proceed anonymously, your defendant respectfully submits that there exist at least two compelling reasons for this Honorable Court, as it were, to revisit the issue, neither of which were evident at the time of this Honorble Court's initial ruling on the issue, back on the 29th of January 2005. First, it is quite evident that your plaintiffs will never grace this Honorable Court, much less the undersigned, with their presence in Virginia, owing to alleged visa problems; and, second, the above-referenced cosiness between your plaintiffs and their *Issaq* clan-based, *de facto* government in "Somaliland" certainly belie any claims of fear or retribution in their homeland for having brought this action. *Au contraire,* appearances suggest that the "Somaliland" administration endorses and supports the plaintiffs' efforts. In a sense, by bringing this palpably political action, they would presumably enjoy a measure of popularity, if not outright celebrity status, in their *Issaq* redoubt of "Somaliland," just as Illian Gonzales is reportedly feted in Havana, for his *cause celebre* in Florida several years ago. Even the very nuance of language to be found in the warp and woof of the Re-filed Complaint suggest a clan grievance mindset rather than any notion of traditional American individual justice. standoff with

the courts. In sum, plainly, the circumstances presented herein do not satisfy the necessary emergency or exigent requirements for a party or parties to proceed anonymously.

That said, F. R. Civ. P. Rule 10(a) provides, in pertinent part, that "every pleading shall contain a caption setting forth. . . the names of all the parties." F. R. Civ. P. 10 (a). Thus, this Honorable Court lacks subject matter jurisdiction with respect to the claims of your plaintiffs, which, accordingly, must be dismissed, as they, maifestly, have not complied with said provision in the Re-filed Complaint. *See: Nat'l Commodity & Barker Ass'n v. Gibbs*, 886 F.2d 1240, 1245 (10th Cir. 1989). Even if your plaintiffs had sought prior permission to proceed through fictitious names, your defendant respectfully asserts that no such leave would have been granted,

Judge Ellis of this Honorable Court recently highlighted the limited conditions under which a plaintiff may be allowed the "rare dispensation" of anonymity. *Jane Doe I v. Merten*, 219 F.R.D. 387, 391 (E.D. Va. 2004) ("*Doe I*") (quoting *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993) ("*James*")). As a preamble to its decision in *Doe I,* Judge Ellis noted, *inter alia,* that Rule 10 (a) embodies the presumption, firmly rooted in American law, of openness in judicial proceedings [,]" Id., and went on to note that ". . . this presumption harks back to the English common law, where there existed a rule of openness in both criminal trials ***and civil proceedings.*** *" Id., citing: Gannett Co. v. DePasqualle,* 443 U.S. 368, 384-9, 386, nt. 15 (1979) (emphasis added). The primary considerations identified by this Honorable Court in *Doe I,* in ascertaining whether, *vel non,* such "stringent standards" had been met, include the following factors, as well as others to be considered, where appropriate, in judging the appropriateness of a party's proceeding anonymously, *viz.*:

> (1) whether the justification asserted by the requesting party to proceed anonymously is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of sensitive and highly personal nature;
>
> (2) whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties;
>
> (3) the ages of the persons whose privacy interests are sought to be protected;

(4) whether the action is against a governmental or private party; and relatedly; &

(5) the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

Doe 1, 219 F.R.D. at 391-92 (quoting *James*, 6 F.3d at 238). This Honorable Court in *Doe I, supra,* applied these factors to determine that alien students challenging a policy of considering immigration status in college admissions were not entitled to proceed anonymously even though the avowed consequence would be to cause them to withdraw their Complaint.

We respectfully submit that an application of the *Doe I* factors, set forth in ramified fashion above, to the circumstances presented in respect of the instant case, should lead to the same outcome. Four of the five enumerated *Doe I* factors either have no application here or weigh unequivocally against anonymity. Only the second factor, risk of retaliation, could, theoretically, at least, have any arguable relevance to the instant case; however, as the Re-filed Complaint contains no factually compelling basis for your plaintiffs', *ipse dixit,* contention that exposure of their respective identities would reasonably cause either of them to apprehend reprisal, to say nothing of your plaintiffs' actions which appear to be inconsistent with any credible fear, the Re-filed Complaint must be dismissed.

Federal courts allow plaintiffs to remain nameless on the basis of fear of reprisal only when there is a genuine, demonstrated need , as ascertained by the following factors: (1) the severity of the threatened harm; (2) the reasonableness of the anonymous party's fears; and (3) the anonymous party's vulnerability to retaliation. *Does I through XXIII*, 214 F.3d 1058 (9th Cir. 2000). The court also must also consider the "prejudice at each stage of the proceeding to the opposing party." *Id.* at 1068.

Your plaintiffs have utterly failed to offer any specific description of the type and severity of the alleged potential harm that they each maintain justifies shielding their respective identities. Moreover, neither plaintiff has alleged *any* discrete facts averred to be supportive of their collective and respective, conclusory assertions that identification could pose a risk of retaliatory physical or mental

harm either to them or to non-parties. The Re-filed Complaint only states generally, "Plaintiff . . . seeks to proceed under a pseudonym because (s)he fears reprisals against himself or his family as a result of participation in this lawsuit." Re-filed Complaint at pp. 2-3, ¶¶ 9, 10. Nowhere in the Re-filed Complaint does either of your plaintiffs deign to supply any facts which could possibly be supportive of the reasonableness of their fears or of their specific degree or measure of vulnerability. *Au contraire,* the Complaint implicitly suggests that, since 1997, your plaintiffs have felt reasonably safe from reprisal by your defendant, as exemplified by the following passage, *viz.*:

> Until approximately 1997, victims' reasonable fear of reprisals against themselves or members of their families still residing in Somalia served as an insurmountable deterrent to such action. Also, until approximately 1997, it would not have been possible to conduct safely investigation and discovery in Somalia in support of such a case.
>
> Re-filed Complaint at p. 11, ¶ 47.

Your plaintiffs simply cannot establish any credible risk that your defendant could take revenge upon any of them or close family members, even if he were inclined to do so, as both plaintiffs, each a member of the *Issaq* clan, and, presumably, their respective families as well, reside in the redoubt of *Issaq* ruled and dominated "Somaliland," where, according to the most recent United States Department of State Report on Somalia, Somaliland is a region of historic Somalia where conditions of calm prevail. Department of State 2003 Country Report on Human Rights Practices in Somalia (Feb. 25, 2004).

Hearkening back to the first factor articulated by this Honorable Court in *Doe 1* – a need to preserve privacy in a highly personal matter – being an alleged victim or having a close relative who is an alleged victim of torture or other heinous act does not represent the kind of "'personal information of the utmost intimacy' that warrants abandoning the presumption of openness in judicial proceedings." *Doe 1*, 219 F.R.D. at 392 (quoting *S. Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707, 713 (5th Cir. 1979)). "[T]he types of personal intimate information justifying anonymity for litigating parties have typically involved such intimate personal matters as birth control, abortion,

homosexuality, or the welfare rights of illegitimate children or abandoned families." *Id.* (citations omitted). Being a victim of a crime, especially an alleged "war crime", or "crime against humanity," is more likely to engender sympathy rather than the potential for salacious attention, opprobrium or revilement that has been held to warrant anonymity.

The third factor, which protects the privacy of minors, is inapposite. Similarly irrelevant is the fourth factor, which considers whether the action is against a governmental party, for your defendant is a private party. Thus, there should be no concern that disclosure might lead to official retaliation. If anything, as mentioned above, at lease the "Somaliland" administration, by your plaintiffs' own reckoning, approves and endorses the instant action.

Finally, the fifth factor, the risk of unfairness to your defendant, militates mightily against anonymity, for at least two reasons. First, given the many years that have passed since the events alleged in the Complaint, it would appear likely that much of the evidence against your defendant would come from the oral testimony of your plaintiffs. Accordingly, in order to prevail against the infamous and loathsome charges lodged against him in the Complaint, your defendant may well be required to impeach the credibility of your plaintiffs' *solivagant* accusations against him. Your defendant would invariably be prejudiced in this effort if he could not be free to examine every relevant detail of your plaintiffs' lives, an effort that would likely be stymied if your plaintiffs were permitted to proceed anonymously. *See generally: James*, 6 F.3d at 240-41. For instance, query as to how your defendant and his undersigned counsel could vet the *bona fides* of your plaintiffs absent knowledge of their respective true names, as individuals in the Somalia diaspora who may be following the subject case may, unwittingly, possess relevant information that would become known to them if only they knew the names of the parties.

Respectfully, your defendant also asserts that, If this Honorable Court were to allow your to avoid naming themselves on account of their claimed fear of "reprisal" against themselves or their families (Re-filed Complaint, at p. 3, ¶¶ 9-10), it would confer unfair and unsupported judicial credence to the suggestion in the Complaint that your defendant, somehow, retains a mysterious power to wreak vengeance on your plaintiffs for mounting a civil challenge against him in a United States court. It is unsupported and illogical for your plaintiffs to insinuate that your defendant, who has been living in the United States for many years, could possibly visit vengeance upon your plaintiffs, in Somaliland, or, for that matter, anywhere else.

Thus, these two categories of prejudice – impeding a defendant's ability to cross-examine the plaintiffs effectively and lending *de facto* judicial support to a central feature of your plaintiffs' case – are precisely the kinds of prejudice that the appellate court in *James, supra,* found to weigh against allowing a plaintiff to proceed anonymously. *James*, *supra,* 6 F.3d at 240-41. Unlike the circumstances in the *James* case (where the court ultimately permitted the anonymous plaintiffs to proceed), here, the second kind of prejudice cannot be cured by giving your defendant and his counsel confidential access to the plaintiffs' true identities, or else through any of the other ameliorating devices suggested by the *James* court, as the imposition of such confidentiality would preclude the specter of your plaintiff's being offered potential information to discredit or impeach the plaintiffs by members of the Somali diaspora, or else, inside of historic Somalia.

In addition to the factors set forth above, another factor that your plaintiff respectfully submits tends to abnegate any notion that either of your plaintiffs harbors genuine concern about retribution from your defendant is that your plaintiffs' counsel have been courting the attention of the public by prominently featuring details of the instant *pending l*itigation on their respective websites. *See:* http://cja.org/cases/Tokeh.shtml ; & http://cooley.com/news/pressreleases.aspx?ID=000038754020 .

Given the ubiquity of the World Wide Web overlay to the Internet, and the wonderments of search engines, such as *Google* ©, such crowing on the Internet over an unproven case, suffused with all sorts of gratuitous calumnies concerning your plaintiff, coupled with an open solicitation for putative witnesses (*See, e.g.:* the excerpt from the web-posting from Sandra Toliver, Executive Director of the Center for Justice and Responsibility set forth at Footnote No. 1, *supra,* which reads as if it were a clarion call from the counsel for the Issaqs for the recruitment of imagined witnesses against your defendant: "We hope that survivors from other clans will come forward."), make your plaintiffs' maintainment of anonymity, manifestly, prejudicial and untenable. As Tim Berners-Lee, the British physicist who is generally recognized as the father of the World Wide Web poignantly observed: "You affect the world by what you browse." Your plaintiffs, having unleashed publicity engendered by the Internet against your defendant ought not to escape a like measure of reciprocal scrutiny by remaining in the shadows under an unsupportable claim imagined "fear" or "retribution."

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, your defendant ever prays that his *Motion to Dismiss* be granted, and that he he afforded such other and further relief as may be deemed by this Honorable Court to be just and fitting.

Respectfully submitted,

/s/ Joseph Peter Drennan
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ATTORNEY AND
COUNSELLOR
FOR YUSUF ABDI ALI

V. CERTIFICATE OF SERVICE

I, Joseph Peter Drennan, undersigned, hereby and herewith certify that, on this 20th of July 2005, a true xerographic facsimile of the foregoing was despatched by First Class post, through the United States Postal Service, with adequate postage prepaid thereon, enshrouded in a suitable wrapper, unto:

Robert R. Vieth, Esquire
Daniel J. Wadley, Esquire
Scott Johnson, Esquire
Tara M. Lee, Esquire
Cooley Godward, L.L.P.
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Matthew Eisenbrandt, Esquire
Helene Silverberg, Esquire
Center for Justice & Accountability
870 Market Street
Suite 684
San Francisco, California 94102.; and that, on even date, Robert R. Vieth, Esquire, Scott Johnson, Esquire, Tara Lee, Esquire, and Helene Silverberg, Esquire, were also served, electronically, with a true copy of the foregoing at the respective *e-mail* address of each, *viz.*: rvieth@cooley.com scottjohnson@colley.com . tlee@cooley.com &hsilverberg@cja.org .

Respectfully submitted,

/s/Joseph Peter Drennan
Joseph Peter Drennan

Exhibit 1

CHIPEUR ADVOCATES
BARRISTERS SOLICITORS

March 30, 2005

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Attention: Joseph Peter Drennan, Esq.
Attorney-at-Law

218 North Lee Street, Third Floor
Alexandria, Virginia 22314-2660

Dear Mr. Drennan:

Re: Jane Doe and John Doe v. Yusuf Abdi Ali
Civil Action No. 1:04 cv 1361 (LMB/BRP), before the
United States District Court for the
Eastern District of Virginia (Alexandria Division) ("Action")

We write in response to your request for an expert opinion regarding a discrete question of Canadian law.

During the course of preparing this opinion, we have reviewed the following documents:

1. the Declaration of Yusef Abdi Ali declared on January 7, 2005;
2. the Complaint of Jane Doe and John Doe ("Plaintiffs"), against Mr. Ali in the Action, dated November 10, 2004;
3. a copy of the provisions of Rule 26 of the Federal Rules of Civil Procedure, which contain, *inter alia*, the requisite disclosures for an expert witness in federal court and the protocols governing depositions by an expert witness.

We accept the contents of the documents referred to above as written, with the reservation that we are unable to verify the truthfulness of their contents and make no comment with respect to the same.

Question Presented

Would it have been possible for the Plaintiffs to have brought an action in Canada against Mr. Ali, in respect of their alleged sustained harms, during the period in which Mr. Ali was living openly in Toronto, Ontario between December, 1990 and October, 1992?

Brief Answer

It is our opinion that it would have been possible for the Plaintiffs to bring an action for assault and battery in Toronto, Ontario during the time period in question. Furthermore, it is our opinion that the courts of the Province of Ontario would have accepted jurisdiction over the action, notwithstanding that the alleged torts were wholly committed in Somalia and the Plaintiffs reside in Somaliland.

Discussion

In Ontario, Canada, a person may bring an action in civil court for the torts of assault and battery, and negligence. A battery may be committed intentionally, where the defendant acts voluntarily, being substantially certain of the consequences of his act; or negligently, where the defendant acts with an unreasonable disregard for the consequences. A plaintiff may avail himself of the procedural advantage of an action in trespass by pleading and proving that he has been injured by the application of direct force by the defendant, i.e., a battery, and the onus falls upon the defendant to establish the absence of either intention or negligence on his part.

The Supreme Court of Canada confirmed in 2000 that this principle remains a part of Canadian tort law. In the case of *Sansalone v. Wawanesa Mutual Insurance Co.*,[1] the Supreme Court affirmed that the traditional approach to trespass and battery should not be set aside, but remains appropriate in modern Canada. A plaintiff in an action for trespass to the person need only prove direct interference with his or her person. Such interference would be considered direct if it is the immediate consequence of the force set in motion by an act of the defendant. The onus then shifts to the defendant to allege and prove his defence.

Both assault and battery are actionable without proof of damage. Once liability is established, the defendant is liable for the entire damage resulting from his act. By comparison, in negligence recovery is governed by the principles relating to foreseeability and remoteness of damage.

In the materials provided, Jane Doe was allegedly assaulted and battered, *inter alia*, from the period of October 3, 1984 to September 1990. John Doe was

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[1] *Sansalone v. Wawanesa Mutual Insurance Co.*, [2000] S.C.R. 551, 2000 SCC 24, 75 B.C.L.R. (3d) 1, 18 C.C.L.I. (3d) 1, 185 D.L.R. (4th) 1, 50 C.C.L.T. (2nd) 1, [2000] 5 W.W.R. 465.

allegedly assaulted and battered up to and including March 1988. The *Limitations Act* of Ontario[2] provides a four-year limitation period for assault and battery and a six-year limitation period for actions upon the case, such as trespass. Had Jane Doe and John Doe instituted an action against Mr. Ali before he left Canada, they would have started such an action within the prescribed limitation periods.

Assault and battery are crimes as well as torts. In addition to the *Criminal Code*, Canada passed a federal law entitled the *Crimes Against Humanity and War Crimes Act, 2000, c. 24 ("War Crimes Act")*. Section 6 of the *War Crimes Act* provides that every person who commits a crime against humanity or a war crime outside of Canada is guilty of an indictable offence and may be prosecuted for that offence in accordance with section 8. This section applies to every person who conspires, or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, such offences. According to section 8, a person who is alleged to have committed such offences may be prosecuted for those offences if after the time of the offences the person is present in Canada.

With respect to a civil action for assault and battery, and negligence, it is our opinion that the courts of the Province of Ontario would have accepted jurisdiction for such an action served by the Plaintiffs upon Mr. Ali in Ontario. In tort or contract actions, an Ontario court has jurisdiction to try an action, wherever it arose, if the defendant is served within its territorial jurisdiction.[3]

A Canadian court is not bound to accept jurisdiction if the province is a *forum non conveniens* and the selection of that forum is vexatious and would submit the defendant to undue hardship. Before addressing the question of *forum conveniens*, the court would consider the issue of jurisdiction *simpliciter*. The Court could decline jurisdiction if the Defendant's residence in Ontario was the only connection the case had with Ontario.

The factors affecting the doctrine of *forum conveniens* include: the balance of convenience to all parties concerned; the undesirability of trespassing on the jurisdiction of a foreign state; impropriety and inconvenience to a party; the inconvenience of trying a case in one country when the cause of action arose in another, where the laws are different; and the cost of assembling foreign witnesses.

If an action had been commenced by the Plaintiffs in Ontario, the court would have taken into consideration the state of affairs in Somalia in determining whether Somalia ought to be declared *forum conveniens*. This case is similar to an Alberta case decided in 2001, *Somji v.Somji*.[4] In the *Somji* case a daughter brought an action against her parents alleging a constructive trust over

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[2] *Limitations Act*, R.S.O. 1990, c. L. 15, s. 45 (1) (j), and s. 45 (1) (g)
[3] *Simmental Farms (N.B.) Ltd. v. Maritime Beef Testing Society* (1977), 18 N.B.R. (2nd) 343 (Q.B.)
[4] *Somji v.Somji*, (2001), 21 R.F.L. (5th) 223 (Alta. Q.B.)

matrimonial property. The court found that Canada had a well-developed common law jurisprudence respecting constructive trust and unjust enrichment as compared to Tanzania, which has corruption, human rights' violations and an overloaded, inefficient legal system. The daughter's action was possibly not even conceivable in the context of Tanzanian society, where children were expected to work for family without expectation of remuneration. To declare Tanzania to be *forum conveniens* would be to effectively dismiss the daughter's action, given the patriarchal nature of Tanzanian society and the state of their legal system. The court declared Alberta to be the *forum conveniens*.

We are of the opinion that an Ontario court would have been persuaded by the same reasoning to declare Ontario to be the *forum conveniens* in any action against Mr. Ali, given the state of disarray of Somalian society and the complete absence of a form of legal system, as depicted in the materials you provided to us. To declare Somalia or Somaliland to be *forum conveniens* would have been tantamount to dismissing the Plaintiffs' action against Mr. Ali, which a Canadian judge would have been reluctant to effect, given the serious nature of the allegations.

Conclusion

Provided that the facts can be accepted as set out in the documents we have reviewed, we opine that there would have been no reasonable impediment in law preventing the Plaintiffs from bringing an action in tort, for assault and battery, and negligence, against Mr. Ali in Ontario while he was resident in that province from December 1990 to October 1992 and that an Ontario court would have accepted for disposition an action commenced by the Plaintiffs against the Defendant with respect to the allegations set forth in the Action.

I, Gerald Chipeur, hereby certify under the penalties of perjury that the foregoing is true and correct to the best of my belief, information and knowledge.

GERALD D. CHIPEUR

CURRICULUM VITAE
GERALD D. CHIPEUR

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Faculty of Law, LL.M.

University of Alberta, 1981 – 84
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Concordia College, 1979 – 81
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Canadian Union College,
High School Division, 1977 – 79

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Principal, Chipeur Advocates, 2001 – Present

Member, Canadian Bar Association

Contributing Editor, *Charter and Human Rights Litigation Quarterly*

Fellow, International Academy for Freedom of Religion and Belief

Member, The International Commission of Jurists (Canadian Section)

Member, American Health Lawyers Association

Leading Practitioner, *Lexpert Canadian Legal Directory for Workplace Human Rights*

International Who's Who of Professionals

Federated Press Directory of Professionals

Associate/Partner, Fraser Milner Casgrain, Barristers and Solicitors, 1984 – 01

Member, Advisory Board, *Canadian Journal of Clinical Medicine* 1997 – 00

Co–Chair, Canadian Bar Association, Southern Alberta Branch, Constitutional and Human Rights Section 1998 – 00

Member of the Calgary Board of Education System Committee on Parents' Rights in Education, 1999

Volunteer, Law Now, Legal Studies Program, University of Alberta, 1996 – 99

Co–Chair, Canada for Tomorrow Committee of the Canadian Bar Association, Alberta Branch, 1997 – 99

Member of the Working Group on the Future of Canada of the Canadian Bar Association, 1997 – 99

Member of the Legislation and Law Reform Committee of the Canadian Bar Association, 1997 – 98

Member of the National Council of the Canadian Bar Association, 1995 – 98

Columnist, Family Practice, *The Canadian Newspaper of Primary Care* 1994 – 98

Adjunct Professor, Canadian University College, 1993 – 97

Past Chair, Canadian Bar Association, National Constitutional and Human Rights Law Section, 1995 – 97

Member of the Communications Committee of the Law Society of Alberta, 1994 – 96

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Secretary, Canadian Bar Association, National Constitutional Law Section, 1991 – 93

Lecturer, Canadian University College, 1989 – 92

Chair, Canadian Bar Association, Northern Alberta Branch, Constitutional and International Law Section, 1988 – 90

Community Service

Member, Board of Directors, Sherwood Park Care Centre and The Gimbel Eye Foundation

Member, Board of Directors, Center for Public Policy (Washington, D.C.)

Member, Board of Directors, Canadian Anti-Slavery Centre

Member of the Corporate Council of the Canadian Diabetes Association Alberta/NWT Division

Chair, Canadian Diabetes Association Denim and Diamonds Event, 1999 – 02

Member, Board of Trustees, Canadian University College, 1985 – 01

Member, Board of Directors, Calgary Distress Centre, 2000 – 01

Member, Health Committee of the Calgary Chamber of Commerce, 1998 – 00

Presiding Officer, Non–profit Private Colleges Foundation, 1996 – 99

Member of the Health and Social Services Committee of the Alberta Chamber of Commerce, 1993 – 98

Member, Board of Directors of New Home Immigration Service, 1994 – 95

Advisory Member, Board of Directors of the Greater Edmonton Foundation, 1992 – 94

Member, Edmonton Regional Mental Health Planning Committee, 1991 – 93

Member, Edmonton Chamber of Commerce Constitutional Reform Task Force, 1992

Counsel in Reported Cases

Re Dennis, 78 A.R. 81 (Q.B. 1987) – Constitutional challenge to the *Dependent Adults Act* and order made there under.

Association of Professional Engineers, Geologists and Geophysicists of Alberta v. *Interprovincial Pipe Line Limited*, 56 Alta. L.R. 434 (C.A. 1988) – Challenge to registration requirements for federally regulated corporations under provincial legislation regulating the engineering profession.

Central Western Railway v. *United Transportation Union*, [1989] 2 F.C. 186, 47 D.L.R. 4th 161, 84 N.R. 321 (C.A. 1988) – Challenge to federal jurisdiction over shortline railway in Alberta.

London Drugs Ltd. v. *Red Deer*, [1988] 6 W.W.R. 173, 89 N.R. 173, 52 D.L.R. 4th 203 (Alta. C.A.) – Challenge to validity of hours of business by-law.

Alberta Human Rights Commission v. *Central Alberta Dairy Pool*, S.C.C. Bull. Proc. 1988, p. 2023 (Dec. 2, 1988) – Application for leave to intervene in Supreme Court of Canada granted.

Statnyk v. *Sevcik*, [1989] A.W.L.D. 649 (Q.B.) – Determination of validity of municipal plebiscite.

Richardson v. *United Nurses of Alberta*, [1989] A.L.R.B.R. 296; 4 C.L.R.B.R. 2d 314 – Application under *Labour Relations Code* for religious exemption from payment of union dues.

Swift Current Nursing Home Inc. v. *Saskatchewan Union of Nurses*, 3 C.L.R.B.R. 2d 45 (Sask.) (1989) – Constitutional challenge to jurisdiction of labour board to certify union.

Super Sam v. *Lethbridge*, 104 A.R. 291, 73 Alta. L.R. 2d 85 (Q.B. 1990) – Pre-trial injunction in action challenging constitutional validity of municipal by-law.

Super Sam v. *Lethbridge*, 112 A.R. 45, 75 Alta. L.R. 2d 99 (Q.B. 1990) – Constitutional challenge to hours of business by-law.

Alberta Human Rights Commission v. *Central Alberta Dairy Pool*, [1990] 2 S.C.R. 489; [1990] 6 W.W.R. 193, 113 N.R. 161, 111 A.R. 241, 72 D.L.R. 4th 417 – Claim of adverse effect discrimination under *Individual's Rights Protection Act*.

Central Western Railway v. *United Transportation Union*, [1990] 3 S.C.R. 1112; 119 N.R. 1 – Constitutional challenge to federal jurisdiction over shortline railway in Alberta.

Montreal Trust v. *Tottrup*, 82 Alta. L.R. 2d 340 and 363; 9 C.B.R. 3d 195 (Q.B. 1990) – Constitutional challenge to the Crown's prerogative of priority in the collection of tax debts.

Alberta v. Canada, [1991] 3 F.C. 114, 46 F.T.R. 40 (T.D. 1991) – Application for injunction preventing environmental assessment panel from reviewing provincial aspects of Oldman River Dam project.

Rossler v. *The National Automobile, Aerospace and Agriculture Implement Workers of Canada*, [1991] Alta. L.R.B.R. 485 – Application under *Labour Relations Code* for religious exemption from payment of union dues.

Friends of the Oldman River Society v. *Canada*, [1992] 1 S.C.R. 3, [1992] 2 W.W.R. 193, 132 N.R. 321 – Constitutional challenge to the environmental jurisdiction of the federal government.

Renaud v. *Central Okanagan School District No. 23*, [1992] 2 S.C.R. 970, 141 N.R. 185, [1992] 6 W.W.R. 193 – Claim of discrimination against employer and union under the *Human Rights Act*.

Jacobi v. *County of Newell*, 136 A.R. 165, 13 C.R.R. 2d D–3 (Q.B. 1992) – Right to mobility under *Charter* raised in context of application to strike Statement of Claim.

Reform Party of Canada v. Canada, [1993] 3 W.W.R. 139, 136 A.R. 1, 13 C.R.R. 2d 107, 7 Alta. L.R. 3d 1 (Q.B. 1992) – Constitutional challenge to restrictions on television and radio advertising in the *Canada Elections Act*.

Reform Party of Canada v. *Canada*, [1993] 3 W.W.R. 171, 137 A.R. 123, 13 C.R.R. 2d 137, 7 Alta. L.R. 3d 34 (Q.B.) – Application for costs.

Epilepsy Canada v. *Alberta*, 11 Alta. L.R. 3d 120, 142 A.R. 30 (Q.B. 1993) – Constitutional challenge to validity of the *Alberta Public Contributions Act*.

National Party of Canada v. *Canadian Broadcasting Corp.*, 13 Alta. L.R. 3d 20, 144 A.R. 50, 106 D.L.R. 4th 568, [1994] 1 W.W.R. 352 (Q.B. 1993) – Application for injunction in connection with broadcasts of federal political party leaders debates.

National Party of Canada v. *Canadian Broadcasting Corp.*, 13 Alta. L.R. 3d 29, 145 A.R. 267, 106 D.L.R. 4th 575, [1994] 1 W.W.R. 361 (C.A. 1993) – Appeal from denial of application for injunction in connection with broadcasts of federal political party leaders debates.

Natural Law Party of Canada v. *Canadian Broadcasting Corp.*, [1994] F.C. 580, 77 F.T.R. 73, 52 C.P.R. 3d 97, 21 Admin. L.R. 2d 161 (T.D. 1993) – Application for injunction in connection with broadcasts of federal political party leaders debates.

National Party of Canada v. *Canadian Broadcasting Corp.*, [1993] 3 S.C.R. 651 – Application for abridgment of time for Notice of Application for leave to appeal dismissal of application for injunction in connection with broadcasts of federal political party leaders debates.

P. (D.) v. *S. (C.)*, [1993] 4 S.C.R. 141, 108 D.L.R. 4th 287, 18 C.R.R. 2d 1, 159 N.R. 241, 58 Q.A.C. 1 – Constitutional challenge to provisions of the *Quebec Civil Code* governing custody orders where religious beliefs of parents come into conflict.

Young v. *Young*, [1993] 4 S.C.R. 3, [1993] 8 W.W.R. 513, 18 C.R.R. 2d 41 160 N.R. 1, 34 B.C.A.C. 161, 56 W.A.C. 161 – Appeal concerning application of the *Charter* to custody orders in the context of conflicting religious beliefs of parents.

Alberta Sports and Recreation Association for the Blind v. *Edmonton*, 14 Alta. L.R. 3d 301, 146 A.R. 117, [1994] 2 W.W.R. 659 (Q.B. 1993) – Application for intervener status in action challenging restrictions on freedom of expression of charitable solicitors.

Jacobi v. *County of Newell*, [1994] 5 W.W.R. 93, 16 Alta. L.R. 3d 373, 150 A.R. 34, 112 D.L.R. 4th 229 (Q.B.) – Constitutional challenge to the *Alberta School Act* under sections 2(a) and 15 of the *Charter*.

Jacobi v. *County of Newell*, 19 Alta. L.R. 3d 394, 153 A.R. 241 (Q.B. 1994) – application for costs where indemnity involved.

Epilepsy Canada v. *Alberta*, 20 Alta. L.R. 3d 44, 115 D.L.R. 4th 501, 155 A.R. 212, 73 W.A.C. 212 (C.A. 1994) – Constitutional challenge to validity of the *Public Contributions Act*.

Epilepsy Canada v. *Alberta*, 155 A.R. 259 (C.A. 1994) – Costs order.

Epilepsy Canada v. *Alberta*, 157 A.R. 268, 77 W.A.C. 268 (C.A. 1994) – Costs order.

Epilepsy Canada v. *Alberta*, [1994] A.W.L.D. 708 (C.A.) – Application to reverse order of costs against interveners.

Reform Party of Canada v. *Canada*, [1995] 4 W.W.R. 609, 123 D.L.R. 4th 366, 165 A.R. 161, 89 W.A.C. 161 (C.A.) – Constitutional challenge to restrictions on television and radio advertising in the *Canada Elections Act*.

Reform Party of Canada v. *Canada*, (C.A. 1995) – Costs order.

Reform Party of Canada v. *Canada*, [1995] 10 W.W.R. 764, 123 D.L.R. 4th 366, 32 Alta. L.R. 3d 430, 174 A.R. 169, 102 W.A.C. 169 (C.A.) – Costs of appeals: factors affecting entitlement to or quantum of costs.

Crow v. *Blood Band*, [1997] 3 C.N.L.R. 76, 107 F.T.R. 270, 34 C.R.R. 3d D–3 (T.D. 1996) – Constitutional challenge to decision of Indian band council

depriving councilor of seat and denying the right to run for council again in subsequent election.

Vriend v. *Alberta*, [1996] 5 W.W.R. 617, 181 A.R. 16, 132 D.L.R. 4th 595, 37 Alta. L.R. 3d 364 (C.A.) – Constitutional challenge to the exclusion of sexual orientation as a ground of prohibited discrimination in the *Individual Rights Protection Act*.

Vriend v. *Alberta*, [1996] 8 W.W.R. 405, 184 A.R. 351, 141 D.L.R. 4th 44, 40 Alta. L.R. 3d 364 (C.A.) – Costs order.

Byatt v. *Alberta*, 47 Alta. L.R. 3d 285 (Q.B. 1997) – Defense against application for declaration that the *Alberta Election Act* ban on prisoner voting rights is unconstitutional.

Byatt v. *Alberta*, 144 D.L.R. 4th 436, 196 A.R. 51, 48 Alta. L.R. 3d 137 (C.A. 1997) – Application for stay of declaration that the *Alberta Election Act* ban on prisoner voting is unconstitutional.

Vriend v. *Alberta*, S.C.C. Docket Case 25285 – Application for leave to intervene in human rights case Supreme Court of Canada on behalf of three interveners granted (Feb. 12, 1997).

Vriend v. *Alberta*, S.C.C. Bull. Proc. 1997, p. 926 – Application for leave to file a joint factum in Supreme Court of Canada on behalf of three interveners (May 13, 1997).

St-Laurent v. *Soucy*, S.C.C. Bull. Proc. 1997, – Application for leave to intervene in child custody case in the Supreme Court of Canada granted (Sept. 24, 1997).

St-Laurent v. *Soucy*, [1997] 2 S.C.R. 714, 154 D.L.R. 4th 1 – Appeal of Quebec Court of Appeal order interfering with the right of a custodial parent to take child to church, weddings or funerals, etc.

Vriend v. *Alberta*, [1998] 1 S.C.R. 493, 156 D.L.R. 4th 385, 212 A.R. 237 – Constitutional challenge to failure to include sexual orientation in human rights legislation)

Byatt v. *Alberta*, [1998] A.J. No. 399, 158 D.L.R. 4th 644, 53 C.R.R. 2d 123 (C.A.) – Constitutional challenge to the ban on prison voting in the *Alberta's Election Act*.

Alberta Provincial Judges' Association v. *Alberta*, [1999] A.J. No. 561 (C.A.) – Application for stay of trial decision ordering Alberta to pay judges at the level recommended by a judicial compensation commission.

Re: C, [1999] A.J. No. 587 (Q.B.) – Application for amicus curiae status in constitutional question regarding adoption.

Alberta Provincial Judges' Association v. *Alberta*, [1999] A.J. No. 863, 177 D.L.R. 4th 418 (C.A.) – Appeal of trial decision ordering Alberta to pay judges at the level recommended by a judicial compensation commission.

Sauvé v. *Canada*, [1999] F.C.J. No. 1577, [2000] 2 F.C. 117, 180 D.L.R. 4th 385 (C.A.1999) – Appeal of trial decision striking down the federal ban on voting by prisoners.

Re: A, [1999] A.J. No. 1349, 181 D.L.R. 4th 300 (Q.B.) – Application by same sex couple for adoption order under the *Child Welfare Act*.

Alberta Provincial Judges' Association v. *Alberta*, [1999] A.J. 1426, 177 D.L.R. 4th 418 (C.A.) – Costs order in judicial compensation litigation.

The B.C. College of Teachers v. *Trinity Western University* (B.C.) (27168) (April 28, 2000 S.C.C.) – Applications for leave to intervene in Supreme Court of Canada on behalf of two applicants.

The B.C. College of Teachers v. *Trinity Western University* [2001] S.C.J. No 32, 199 D.L.R. 4th 1 – Judicial review of denial of accreditation to private university education program on improper grounds (B.C.) (27168) (April 28, 2000 S.C.C.).

Park v. *Ponoka (County) Subdivision and Development Appeal Board*, [2001] A.J. No. 762 – Application for leave to appeal to the Court of Appeal of Alberta.

Sulphur Corporation of Canada Ltd. v. *Proprietary Industries Inc.* [2002] A.J. No. 636 – Interlocutory injunction application on behalf of minority shareholders against hostile corporate takeover.

Richard Sauvé, et al. v. Chief *Electoral Officer of Canada, et al.* [2002] S.C.J. No. 66 – Prisoner's granted the right to vote under section 3 of the Charter.

Gibb v. *Nigeria* [2003] A.J. No. 245 – Stay of Proceedings Application in Court of Appeal.

L'Action des Nouvelles Conjointes du Québec v. *Her Majesty the Queen*, [2003] FC 1360 – Application for a declaration that the *Divorce Act* and the Child Support Guidelines are unconstitutional.

The League for Human Rights of B'Nai Brith Canada v. *Syndicate Northcrest*, [2004] S.C.J. No. 46 – Intervention on behalf of the Seventh-day Adventist Church.

La Congrégation des Témoins de Jéhovah de St-Jérôme Lafontaine, Roberto Biagoini and Denis Léveillé v. *Municiplité du Village de Lafontaine, Harold Larente and Attorney General of Quebec*, [2004] S.C.J. No. 45 – Intervention on behalf of the Seventh-day Adventist Church.

L'Action des Nouvelles Conjointes du Québec v. *Her Majesty the Queen*; *L'Après-Rupture, Fathers are Capable Too: Parenting Association, Legal Kids* v. *Her Majesty the Queen*, [2004] FC 797 – Motion appealing an Order of the Prothonotary striking the Statement of Claim in both actions.

LEGAL MATERIAL

Publications

G.D. Chipeur, "Section 15 of the Charter Provides Equal Protection to Corporations," 2 *Business & the Law* 85 (1985).

G.D. Chipeur, "Section 15 of the Charter Protects People and Corporations – Equally," 11 *Can. Bus. L.J.* 304 (1986).

G.D. Chipeur and T.W. Wakeling, "An Analysis of Section 15 of the Charter After the First Two Years or How Section 15 Has Survived the Terrible Twos," 25 *Alta. L. Rev.* 407 (1987).

G.D. Chipeur, "The Impact of the Charter upon Administrative Tribunals," Canadian Institute for the Administration of Justice Seminar for Administrative Tribunals (June 23, 1989).

G.D. Chipeur, *The Abolition of the Crown Prerogative of Priority by Section 15 of the Charter* (Aug. 24, 1990) (LL.M. thesis, available in University of Alberta Library).

G.D. Chipeur, "Intervener on Behalf of Human Rights," *JD* 24 (1991).

G.D. Chipeur, "The Royal Prerogative and Equality Rights: Can Medieval Classism Coexist with Section 15 of the Charter?" 30 *Alta. L. Rev.* 625 (1992).

G.D. Chipeur, "Who's Got the Patient? The Pitfalls of Working with Another Dentist," 58 *J. Can. Dental Assoc.* 806 (1992).

G.D. Chipeur, "Mahe Part Deux: Reference re: Public Schools Act (Manitoba)," 3 *N.J.C.L.* 149 (1993).

G.D. Chipeur, "Caveat Medicus: Practicing With Another Dentist May be Hazardous to Your Financial Health," 31 *Alta. L. Rev.* 292 (1993).

G.D. Chipeur and N.E. Palmer, "Provincial Regulation of Fundraising Under Charter Attack," *Network*, Vol. 10, No. 4 (1993), 1.

G.D. Chipeur and H.L. Treacy, "A Very Public Relationship: Berg v. University of British Columbia," 3 *N.J.C.L.* 276 (1993).

G.D. Chipeur, "Blood Testing without Consent: The Right to Privacy versus the Right to Know (Part 1)," 12 *Med. & Law* 521 (1993), hivinsite.ucsf.edu.

G.D. Chipeur and T.M. Bailey, "Honey, I Proselytized the Kids: Religion as a Factor in Child Custody and Access Disputes," 4 *N.J.C.L.* 101 (1993).

G.D. Chipeur and D.M. Maxwell, "Rodriguez v. British Columbia (Attorney General): Where Judges Fear to Tread," 4 *N.J.C.L.* 123 (1993).

G.D. Chipeur, "Blood Testing Without Consent: The Right to Privacy Versus the Right to Know (Part 2)," 13 *Med. & Law* 55 (1994), hivinsite.ucsf.edu.

G.D. Chipeur, L.R. Birkett and J. Sasaki, "Delivery of Health Services in Canada," *Health Law Review* (Spring 1994).

G.D. Chipeur, "Medical Errors: The Medical Professional's Duty to Disclose," *Proceedings of the Tenth World Congress on Medical Law*, Vol. A (August 28 – September 1, 1994), 147.

G.D. Chipeur, "Cutbacks don't lower the standard of care," *Family Practice*, Vol. 6, No. 23 (September 19, 1994), 12.

G.D. Chipeur, "New Wine and Old Wineskins," *Alberta Healthcare Association Newspaper* (November 1994).

Canadian Bar Association, Submission on Bill C-22, an Act respecting certain agreements concerning the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport, to the Standing Committee on Legal and Constitutional Affairs (December 1, 1994).

G.D. Chipeur, "The dangers of partial healthcare reform," *Family Practice*, Vol. 6, No. 31 (December 19, 1994), 10.

G.D. Chipeur, "Religion in Canadian Child Custody Disputes: The Church in Canada Speaks Up," *JD* 15 (1995).

G.D. Chipeur, "The Rule of Law and Bill C-22," *Charter and Human Rights Litigation Quarterly*, Vol. 2, No. 2 (1995), 74.

G.D. Chipeur, "Feds planning health-care rationing," Guest Column, *Calgary Herald* (April 6, 1995).

G.D. Chipeur, "Court of Appeal of Alberta Strikes Down Parts of Canada Election Act," *Charter and Human Rights Litigation Quarterly*, Vol. 2, No. 3 (1995), 104.

G.D. Chipeur, "It's not about facility fees," *Family Practice*, Vol. 7, No. 13 (May 8, 1995), 14.

G.D. Chipeur, "Alberta health-care revolution just begun," *Family Practice*, Vol. 7, No. 23 (September 11, 1995), 22.

G.D. Chipeur and B.B. Johnston, "Employee's Liability for Harassment in the Workplace: A Costly Conundrum – Balancing the Rights of Accuser and Accused," Proceedings of Federated Press Human Resource Executives Conference (September 13 and 14, 1995).

G.D. Chipeur and P.J. Forrester, "Charitable Fund-Raising Regulations: Subject to Charter Scrutiny," 13 *The Philanthropist* 29 (1995).

G.D. Chipeur, "Sask. Ignoring Free Trade Rules," *Family Practice*, Vol. 7, No. 32 (December 18, 1995), 16.

G.D. Chipeur and B.B. Johnston, "Employer's Liability for Harassment in the Workplace: Balancing the Rights of Accuser and Accused," *HR Intelligence*, Vol. 1, No. 14 (1996).

G.D. Chipeur, "When your patient's nothing but trouble," *Family Practice*, Vol. 8, No. 14 (May 20, 1996), 14.

G.D. Chipeur, "Canadian Bar Highlights Human Rights," *JD* 18 (1996).

G.D. Chipeur and B.B. Johnston, "Sexual Orientation and the Law: The Court of Appeal of Alberta Keeps Out of Alberta Bedrooms," *Christian Legal Journal*, Spring (1996), 3.

G.D. Chipeur, "Step by step alternative care gains acceptance," *Family Practice*, Vol. 9, No. 5 (1997), 10.

G.D. Chipeur and H.S. McCaffery "Clash of Conscience: Ethical and Legal Duties of Healthcare Providers," *Canadian Journal of Clinical Medicine*, Vol. 4, No. 4 (1997), 10.

G.D. Chipeur, "Reform of Healthcare in Canada", Proceedings of the II Reunion of International Experts in Social Security: "Serious Reflections on Reforms ...," (May 7, 8, and 9, 1997).

G.D. Chipeur and D.M. Maxwell, "Euthanasia in Canada," *Canadian Journal of Clinical Medicine*, Vol. 4, No. 7 (1997), 12.

G.D. Chipeur, "Complementary practice becomes an alternative," *Health Law News*, Vol. 2, No. 1 (June 1997), 4.

G.D. Chipeur, "Las Reformas Del Sistema De Salud En Canada," *Reflexiones Sobre Las Reformas - En La Seguridad Social* (Serie Estudios 34) (1997), 119.

G.D. Chipeur and B.B. Johnston, "Constitutionality of Bans on Prisoner Voting: Suspended Sentence," *Charter and Human Rights Quarterly*, Vol. V, No. 1 (1998), 275.

G.D. Chipeur, "Participation in the process of law-making," *Law Now*, Vol. 23, Issue 2 (Oct./Nov. 1998), 26.

G.D. Chipeur, "Supreme Court of Canada Begins Historic Dialogue with the Alberta Legislature," www.conservativeforum.org.

G.D. Chipeur, "Supreme Court of Canada Begins Historic Dialogue With the Alberta Legislature," *Charter and Human Rights Quarterly*, Vol. V, No. 2 (1998), 286.

G.D. Chipeur, "Judging the Judges," *Law Now*, Vol. 23, Issue 3 (Dec 1998/Jan 1999), 11.

G.D. Chipeur, "Legal Issues Now And In The 21st Century: New Obligations To Disclose Health Care Errors," *Canadian Journal of Clinical Medicine*, Vol. 6, No. 4 (1999), 74.

G.D. Chipeur, T.W. Wakeling and B.B. Johnston, "Practical Advice for Employers Contemplating the Wisdom of Alcohol and Drug Policies," *Charter and Human Rights Quarterly*, Vol. VI, No. 2 (1999), 356.

G.D. Chipeur, "Guest Opinion", *Check Up*, Issue 1, Vol. 1 (1999), 36.

G.D. Chipeur, "The Courts Look for a Friend When the Government Fails to Show Up for the Dance," *Charter and Human Rights Quarterly*, Vol. VII, No. 3 (2000), 459.

G.D. Chipeur and I. Bernardo, "McCarthyism Revisited - Trinity Western University at the Supreme Court," *Charter and Human Rights Quarterly*, Vol. VII, No. 4 (2000), 466.

G.D. Chipeur and Ezra Levant, "Separation of Church and State: the Liebmann Decision," *Charter and Human Rights Litigation Quarterly*, Vol. V, No. 4 (2001).

G.D. Chipeur, "Family Ties: Individual Rights Under Canada's Charter of Rights and Freedoms," accepted for publication by the *University of New Brunswick Law Journal*.

G.D. Chipeur and J.W. Eslinger, "Tort Actions for Intentional Discrimination Under British Columbia's Civil Rights Protection Act," *Charter and Human Rights Litigation Quarterly*, Vol. X, No. 1 (2003), 672 – 674.

Ezra Levant, *Fight Kyoto: The Plan to Protect our Economic Future* (JMCK Communications Inc.: Calgary, 2002) – G.D. Chipeur – Legal Editor.

G.D. Chipeur, "The Secular and Democratic Case for Marriage," August 2003.

G.D. Chipeur, "Family Ties: Individual and Family Rights Under Canada's *Charter of Rights and Freedoms*," *UNB Law Journal*, Vol. 52 (2003), 217 – 225.

G.D. Chipeur, "The State of Canada's First Freedom: Freedom of Religion," *Charter and Human Rights Litigation Quarterly*, Vol. XI, No. 2 (2004).

Legislative Drafting

Consolidation and revision of private act of the Alberta Legislature to, inter alia, exempt registered charity from certain provisions of the *Insurance Act* (Alberta) respecting the sale of life annuities (S.A. 1988, c. 46).

Amendment to private act of the Alberta Legislature to exempt private college from certain provisions of the *Insurance Act* (Alberta) respecting the sale of life annuities (S.A. 1989, c. 24).

Amendment to private act of the Alberta Legislature to enlarge land area of private College exempt from property taxation (S.A. 1993, c. 30).

Incorporation of health insurance corporation pursuant to *Insurance Act* (Alberta) (S.A. 1993, c. 29).

Private bill to establish not-for-profit medical professional corporation (Bill Pr 6, 1994).

Private bill to allow the University of Calgary and the University of Alberta to issue charitable gift annuities (Bill Pr 9, 1995).

Private act to empower Calgary Regional Health Authority to issue charitable gift annuities (S.A. 1995, c. 40).

Incorporation of health insurance corporation pursuant to *Insurance Act* (Alberta) (S.A. 1997, c. 28).

Incorporation of general insurance corporation pursuant to *Insurance Act* (Alberta) (S.A. 1997, c. 33).

Amendments to private act of the Alberta Legislature to change name of university college under Universities Act (Alberta) (S.A. 1997, c. 30).

Incorporation of life insurance corporation pursuant to *Insurance Act* (Alberta) (S.A. 1997, c. 34).

Legislative Committee Testimony

November 30, 1994 – Senate Special Committee on Euthanasia and Assisted Suicide.

December 1, 1994 – Standing Senate Committee on Legal and Constitutional Affairs – Bill C–22, An Act respecting certain agreements concerning the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport.

January 17, 1995 – Standing Senate Committee on Legal and Constitutional Affairs – Bill C–22, An Act respecting certain agreements concerning the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport.

June 14, 1995 – Standing Senate Committee on Legal and Constitutional Affairs – Bill C–22, An Act respecting certain agreements concerning the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport.

June 5, 1996 – Standing Senate Committee on Legal and Constitutional Affairs – Bill C–28, An Act respecting certain agreements concerning the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport.

April 21, 1997 – Standing Senate Committee on Social Affairs, Science and Technology Bill C–66, An Act to amend the Canada Labour Code (Part I) and the Corporations and Labour Unions Returns Act.

April 21, 1998 – Standing House of Commons Committee on Human Resources Development – Bill C–19, An Act to amend the *Canada Labour Code* (Part I) and the *Corporations and Labour Unions Returns Act.*

May 20, 1998 – Special Joint Committee on Child Custody and Access.

June 12, 1998 – Standing Senate Committee on Social Affairs, Science and Technology – Bill C–19, An Act to amend the *Canada Labour Code* (Part I) and the *Corporations and Labour Unions Returns Act* and to make consequential amendments to other Acts.

December 1, 1998 – Standing House of Commons Committee on Justice and Human Rights – Bill C–251, An Act to amend the *Criminal Code* and the *Corrections and Conditional Release Act.*

November 23, 1999 – Standing House of Commons Committee on Procedure and House Affairs – Bill C–2, An Act respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts.

June 8, 2000 – Standing Senate Committee on Legal and Constitutional Affairs – Bill C–247, An Act to amend the *Criminal Code* and the *Corrections and Conditional Release Act* (cumulative sentences).

June 14, 2000 – Standing House of Commons Committee on Justice and Human Rights – Bill C–244, An Act to provide for the taking of samples of blood for the benefit of persons administering and enforcing the law and good Samaritans and to amend the *Criminal Code*.

November 22, 2001 – Standing House of Commons Committee on Health – Proposed Assisted Human Reproduction Act.

February 26, 2003 – The Standing Senate Committee on Legal and Constitutional Affairs –Bill C–10B, An Act to amend the Criminal Code (cruelty to animals).

April 10, 2003 – The Standing Committee on Justice and Human Rights – Bill S-15, An Act to remove certain doubts regarding the meaning of marriage.

March 17, 2004 – The Standing Senate Committee on Legal and Constitutional Affairs - Bill C-250, An Act to amend the Criminal Code (hate propaganda).

Speeches and Presentations

Canadian Institute for the Administration of Justice Seminar for Administrative Tribunals, Edmonton, Alberta, June 23, 1989, "The Impact of the *Charter* Upon Administrative Tribunals" – Panel discussion on legal and ethical issues in abortion, euthanasia and artificial conception, Fort McMurray, Alberta, November 11, 1989.

Canadian Bar Association, Mid–Winter Meeting of Council, Regina, Saskatchewan, February 26, 1991: "Lessons to be Learned from Oldman" – Panel discussion on environmental impact assessment and sustainable development.

Canadian Bar Association, Alberta Branch, Edmonton Constitutional Law Section, Edmonton, Alberta, April 18, 1991: "Environmental Jurisdiction under the Constitution."

Convocation address, Canadian University College, College Heights, Alberta, August 1, 1991.

Alberta Healthcare Association and Financial Executives and Managers Association in Health Care, Financial Managers Conference, Edmonton, Alberta, October 11, 1991: "New Sources of Hospital Revenue – Collaborative Ventures with the Private Sector."

Third Congress on Human Rights in Medicine and Law, Mmabatho, Bophuthatswana (South Africa), August 26, 1992: "Blood Testing Without Consent: The Right to Privacy vs. The Right to Know."

Alberta Healthcare Association Northwest Regional Conference, Drayton Valley, Alberta, February 11, 1993: "Wrongful Dismissal of Medical Staff."

Alberta Healthcare Association Ambulatory Care Conference, Edmonton, Alberta, September 24, 1993: "Ambulatory Care Funding: Should Public Funding be Extended to Private Facilities."

University of Alberta Hospitals, Edmonton, Alberta, February 10, 1994: "Patient Choice is Paramount in Health Care: A Formal Debate."

Calgary Medical Society & Calgary Bar Association panel discussion, Calgary, Alberta, February 22, 1994: "The Ethicality of Genetic Therapy & Reproductive Technologies."

Touch Tone Town Hall, panel discussion, Calgary, Alberta, April 17, 1994: "Physician Assisted Suicide – Parliament's Response."

Informed Consent Seminars, Holy Cross, Rockyview and Calgary General Hospitals, Calgary, Alberta, May 11 and 16 and June 2, 1994.

Canadian Union College Alumni Association Seminar, College Heights, Alberta, June 11, 1994: "Human Rights in the '90's."

Tenth World Congress on Medical Law, Jerusalem, Israel, August 2, 1994: "Medical Errors: The Medical Professional's Duty to Disclose."

Williamsburg Religious Liberty Seminar, Williamsburg, Virginia, September 11, 1994: "Legal and Administrative Systems: The History of a Lawsuit."

Alberta Regional Health Care Management Conference, Red Deer, Alberta, September 30, 1994: "Perspectives on Restructuring the Alberta Health Care System."

Panel discussion of healthcare reforms under the Regional Health Authorities Act, Morningside, Canadian Broadcasting Corporation, Calgary, Alberta, December 7, 1994.

Banff School of Management, conference on Cost Containment Innovations in Health, Safety and Wellness, Banff, Alberta, December 9, 1994: "Management of Employee Relations Issues to Achieve Maximal Cost Savings."

Chair, Canadian Bar Association Continuing Legal Education Conference, Calgary, Alberta, April 7, 1995: "Human Rights in the Work Place: The Duty to Accommodate."

Liberty Magazine Program on Religious Freedom, Calgary, Alberta, April 8, 1995: "Update on the Duty to Accommodate and the *Renaud* decision of the Supreme Court of Canada."

Alberta Eyecare, Calgary, Alberta, May 24, 1995: "Enhancing the Product and Serving the Patient."

Network on Health, Calgary, Alberta, July 20, 1995: "Medical Malpractice Liability Risk and Reform."

Human Resource Executives Conference – In the Eye of a Storm: The HR Decision–Maker in Turbulent Times, Toronto, Ontario, September 13 and 14, 1995: "Employer's Liability for Harassment in the Workplace: A Costly Conundrum – Balancing the Rights of Accuser and Accused."

Health Care Expo '95 – Rebuild, Refocus, Remotivate: An Update on Health Reform in Alberta, Edmonton, Alberta, November 22, 1995: "The Changing Role of the Health Care Institution."

Canadian Bar Association Constitutional Section, Edmonton, Alberta, November 22, 1995: "*Vriend* v. *Alberta*: The Inclusion of Sexual Orientation in the *Individual's Rights Protection Act*."

Friends of the Faculty of Law Dinner Lecture Series, Commentator, Edmonton, Alberta, November 22, 1995: "Constitutional and Other Implications of Privatization of Governmental Functions."

Shaw Community Cable Television, Panel Discussion and Debate, Calgary, Alberta, February 27, 1996: "Are the Cuts to Health Care Justified?"

University of Alberta Law School, Edmonton, Alberta, February 29, 1996: Health Care Debate: "What Should be the Role of Private Medicine in Alberta."

Alberta Association of Optometrists, 1996 Continuing Education Seminar, Calgary, Alberta, May 3, 1996 "The Role of Optometry in a Regional Health Authority System."

Alberta Long Term Care Association, Edmonton, Alberta, June 11, 1996, "The Mechanism for Integration of Diverse Providers into the Health System."

Canadian College of Health Service Executives, Northern Alberta Chapter, Edmonton, Alberta, September 17, 1996, "Private and Public Participation in the Health Care System."

Keeweetinok Lakes Regional Health Authority, Slave Lake, Alberta, October 28, 1996, "Informed Consent and the Use of Restraints."

Olin Distinguished Lecture Series in Constitutionalism, Panelist, University of Calgary, Calgary, Alberta, September 25, 1996, "A Symposium on Constitutionalism."

Strathcona County Seniors Board Health Series, Sherwood Park, Alberta, November 19, 1996, "Public and Private Financing of Canada's Health System."

Centre for Renewal in Public Policy, Calgary, Alberta, November 21, 1996, "Pluralism, Health Care, and Conscience."

Centro De Desarrollo Estrategico Para La Seguridad Social and Conferencia Interamericana de Seguridad Social, II Reunion of International Experts in Social Security: "Serious Reflexions on Reform ..." Mexico City, Mexico, May 8, 1997, "Reform of Healthcare in Canada."

Telemedicine Canada, Operating under the Joint Auspices of the Toronto Hospital and the Faculty of Medicine, University of Toronto, June 17, 1997, "The Changing Role of Regional Health Authorities in Alberta."

Three ABN, June 24, 1997, "Religious Freedom and the Courts in Canada."

Calgary West Mini Growth Summit, McDougall Centre, Calgary, Alberta, August 19, 1997, "Calgary Chamber of Commerce Health Reform Principles."

CLF Conference – Persuading Caesar, Kananaskis, Alberta, September 26, 1997, "*Rodriguez* Demonstration Hearing."

CLF Conference – Persuading Caesar, Kananaskis, Alberta, September 27, 1997, "*Vriend* Update."

Rocky Mountain College, Assembly, Calgary, Alberta, September 30, 1997, "*Vriend* v. *Alberta*: Religious, Philosophical and Legal Principles."

Canadian Bar Association Health Law Section, Edmonton, Alberta, October 7, 1997: "The Law Governing the Establishment of Private Hospitals in Alberta."

International Health Business Opportunities Conference, Calgary, Alberta, October 29, 1997: "Identifying and Securing International Health Projects," Panel Discussion

Calgary West Consultation on the Calgary Accord, Calgary, Alberta, November 13, 1997: "Introduction to the Calgary Accord and Constitutional Background."

Team Canada 1998, Health, Financial and Legal Services Seminar, Mexico City, Mexico, January 12, 1998: "The Canadian and Alberta Health Systems."

Nosehill Parliament – Diane Albonczy M.P., Calgary, Alberta, April 8, 1998: "Decriminalization of Euthanasia under the Criminal Code."

Canadian Bar Association Constitutional, Human Rights and Labour Law Sections, Calgary, Alberta, May 13, 1998: "The Implications of the Supreme Court's decision in *Vriend*."

Federation for International Cooperation of Health Services and Systems Research Centers, The Fourth FICOSSER General Conference, Instituto National de Salud Publica Centro de Investigaciones en Siztemas de Salud, Cuernavaca, Mexico, July 29, 1998: "The Health Workforce and the Changing Global Socioeconomic Forces."

ASI Annual Conference, Palm Springs, California, August 8, 1998: "Standing Outside of the Fire."

Infonex Conference: Meeting Your Duty to Accommodate, Calgary, Alberta, October 30, 1998: "Accommodation in the Context of Agreements: Rights of Seniority vs. the Legal Right to be Accommodated."

Wound Care in the 21st Century: Are You Ready? 2nd Western Canadian Association of Wound Care Conference & 6th Biennial Foot and Lower Extremity Conference, Calgary, Alberta, April 30, 1999: Panel Discussion of "Legal Issues Now and in the 21st Century."

Canadian University College, Alumni Meeting, College Heights, Alberta, June 5, 1999: "Casey at the Bat."

Second Roundtable and Seminar on Regulatory Healthcare in Mexico, Institute of the Americas, Mexico City, November 4, 1999: "Limits and restraints of a socialized system. Pending reforms."

Conference on Religious Liberty, Washington, D.C., November 5, 1999: "Religious Freedom from a Canadian Perspective."

Conference on Religious Liberty, Washington, D.C., November 6, 1999: "Panel Discussion on Religious Liberty."

Canadian Bar Association Constitutional/Civil Liberties Section, Edmonton, Alberta, November 16, 1999: "Prisoner Voting and the Charter."

University of Alberta Law School, Edmonton, Alberta, November 16, 1999: "Perspectives '99 – Moot of *M.* v. *H.*"

Counter Spin, CBC TV, Toronto, Ontario, December 14, 1999, "Parents' rights and responsibilities to make healthcare decisions regarding experimental treatment for their children."

Chair, Conference on "A Conscience Clause for Healthcare Professionals," Canadian University College, College Heights, Alberta, February 12, 2000.

Civitas, Fourth Annual National Conference, Kananaskis, Alberta, April 30, 2000 "New Wine in Old Wine Skins: Why the Alberta Health Reforms Failed."

Co–Chair, "Human Rights and Persecution: How Can Developed and Developing Nations Co–operate?" Center for Law and Public Policy, Toronto, Ontario, July 5, 2000.

University of Alberta Law School, Edmonton, Alberta, September 22, 2000: "Perspectives on Human Rights, the *Charter* and Sexual Orientation."

Arquitectura Para Nuestro Sistema Nacional de Salud, "El Hospital Del Futuro 2000," VII Congreso Internacional: "The Canadian Health Network and Infoway," Mexico City, Mexico, November 10, 2000.

Alberta Public Charities Seminar, November 30, 2000, Calgary, Alberta, "Regulation of Fundraising."

Centre for Cultural Renewal, French Legal Symposium, May 1, 2001 Lourdes, France "Human Rights Legislation in Canada."

Contributor to the Canadian Council of Christian Charities Annual Conference in Mississauga September 26 – 28, 2001.

Co-Chair and Speaker at the Infonex Conference: Meeting Your Duty to Accommodate, Calgary, Alberta, June 25, 2002: "Accommodation in the Context of Collective Agreements/Contracts."

Appeared on "The Big Picture" and on "On–Line with Doug Kooy" of the NOWTV network in November, 2002.

Appeared on "Insight," a program on *The Miracle Channel*, on December 10, 2002 and March 5, 2003.

Centre for Law and Public Policy, Annual Conference for Adventist Attorneys and Public Policy Makers – International Human Rights, April 11 – 12, 2003 "Advocating Human Rights in Canada."

Same-sex Marriage Conference, October 4, 2003 in Toronto, Ontario "The Secular and Democratic Case for Marriage."

Adventist Lawyers' Convention, October 23 – 26, 2003 in Palm Springs, California: Gerald Chipeur and Barry Bussey, "The Assault on Marriage – Canadian Perspective" and Gerald Chipeur, "Canadian Constitutional Developments."

Williamsburg Religious Liberty Seminar, August 25 – 28, 2003 in Williamsburg, Virginia "The Secular and Democratic Case for Marriage."

Marriage on the Rock Event (Zion Evangelical Missionary Church), March 7, 2004 in Didsbury, Alberta "The Secular and Democratic Case for Marriage."

Canadian Family Challenge, June 7, 2004 in Red Deer, Alberta "The Secular and Democratic Case for Marriage."

Awards and Recognition

April 2, 2003: recognized for contributions to religious freedom by International Religious Liberty Association and the United States Ambassador-at-Large for International Religious Freedom.

Xukuumadda Federaaliga
KMG ah ee Jamhuuriyadda
Soomaaliya

Exhibit 2

الحكومة الانتقالية الفيدرالية
لجمهورية الصومال

Transitional Federal Government of Somali Republic

MINISTRY OF STATE FOR FOREIGN AFFAIRS

Joseph Peter Drennan,
Attorney-at-Law,
218 North Lee Street,
Third floor,
Alexandria, Virginia 22314-2660

Tuesday, March 29, 2005

Subject: JANE DOE, et alii v. YUSUF ABDI ALI
Civil Action No, 04-1361, before the
United States District court for the
Eastern District of Virginia (Alexandria Division)

Dear Drennan,

Having seen the subject litigation, the Somali National Transitional Feferal Government be known that it has set up Somali National Reconciliation Commission, with a responsibility to undertake all reconciliation efforts in Somalia, in accordance with new National Transitional Charter (constitution). The litigation of this kind and other similar ones in the American courts or elsewhere will interfere with the policy, embodied of the Somali Reconciliation Commission to engage itself with truth and reconciliation efforts.

According to the Commander of the 26th Sector of the Somali National Army Gen. Mohamed Said Hersi (Morgan) Col. Yusuf Abdi Ali was not the Commander of 5th BDE, CDR in 1984, but its commander was Col. Omar Haji Mohamoud. Furthermore the areas the plaintiffs mentioned in their litigation were not under the responsibility of 5th BDE, CDR, kindly see the Map in their locations.

In view of this, the allegations made by these two anonymous Issaq plaintiffs has no foundations other than to make obstacles for the Somali reconciliation mission.

The Somali National Transitional Government calls for the courts of the United States of America not to give any consideration for this case and similar ones by allowing the Somali Reconciliation efforts take its course.

Yours truly,

Hon. Ibrahim Sheikh Ali (Jebbo)
Minister of State

TRANSITIONAL FEDERAL GOVERNMENT
MINISTRY OF FOREIGN AFFAIRS
THE SOMALI REPUBLIC

Exhibit 3

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

JANE DOE,	:	
and	:	
JOHN DOE,	:	
Plaintiffs,	:	
versus	:	**Civil Action No. 05-701**
YUSUF ABDI ALI,	:	
Defendant.	:	

DECLARATION OF DAHIR MIRE JEBREEL,
PERMANENT SECRETARY TO THE
HONORABLE ABDULLAHI YUSUF AHMED, PRESIDENT OF
THE TRANSITIONAL FEDERAL GOVERNMENT OF THE SOMALIA REPUBLIC

I, Dahir Mire Jebreel, of Somalia, hereby depose and say as follows:

1. I am the Permanent Secretary to the Honorable Abdullahi Yusuf Ahmed, President of the Transitional Federal Government of the Somalia Republic ("TFG"), and, by reason of such position, I am the President's emissary, currently on a visit to the United States.

2. At the date of my making this Declaration, namely, the 13th of July 2005, I am in the Washington, D.C. Metropolitan Area, for the purpose of meeting with Congressional leaders, on Capitol Hill, including, among others, United States Senator Norm Coleman, of Minnesota, in connection with a certain proposed resolution to be introduced by Senator Coleman, in the United States Senate, in connection with the current plight of the Somali people in Somalia.

3. In the course of my current visit to Washington, D.C., namely, yesterday, the 12th of July 2005, I met with Joseph Peter Drennan, Esquire, whom I understand is the attorney representing Yusuf Abdi Ali in the above-refernced civil court case that I further understand to be currently pendning before this court. Among other matters, Mr. Drennan informed me that, on Friday, the 8th of July 2005, the plaintiffs in this case, who are said to be members of the Issaq clan, residing in or near Gebiley, Somalia, filed a motion with the court, requesting that this court allow them, together with several of their alleged "witnesses", to give live video link testimony, to this court, from Addas Ababa, Ethiopia. It is my further understanding from Mr. Drennan that this court will consider this request at a hearing this afternoon, while I am currently slated to be engaged in meetings with Congressional leaders, as mentioned above.

4. As a personal represntative of the President of the TFG, I hereby convey the strong displeasure of the TFG about the pendency of this case before this court, and, especially, of any effort on the part of the plaintiffs who are said to be bringing this case to have this court conduct proceedings in Ethiopia. The TFG has already conveyed to this court its displeasure and objections to the earlier filing of this case, and, certainly, also objects to this refiled case.

[redacted]

I hereby certify under the penalties of perjury that the foregoing is true and correct.

Dated: 13 July 2005

DAHIR MIRE JEBREEL

Exhibit 4

Trusten Frank Crigler

Consultant in International Relations

703 Watts Street • Durham NC 27701

DECLARATION

I, Trusten Frank Crigler, a resident of Durham County, North Carolina, do hereby make the following statements in connection with the case of JANE DOE, *et alii*, v. YUSUF ABDI ALI, Civil Action No. 04-1361, before the United States District Court for the Eastern District of Virginia (Alexandria Division).

1. I served as a career Foreign Service Officer of the United States from 1961 to 1990, assigned to posts in Africa and Latin America and to the Department of State in Washington. My last assignment before retiring was a presidential appointment as American Ambassador to Somalia from September 1987 to April 1990. I afterward returned briefly to Somalia three times as a private consultant, first with ABC television's "Nightline" (December 1992) and, subsequently, at the invitation of individual Somali faction leaders who sought my help as an advisor and mediator (in September 1993 and August 1994).

2. Following my return visits to Somalia, I prepared descriptive analyses of developments in Somalia that were published on the op-ed pages of the *Christian Science Monitor, The Baltimore Sun,* and *The Washington Post.* I also contributed a critical essay examining U.S. policies and United Nations peace-enforcement actions in Somalia to the Autumn 1993 issue of *Joint Force Quarterly,* a professional military journal published by the National Defense University and approved by the Secretary of Defense. (The same issue contained articles on our intervention in Somalia by Prof. Sam Huntington of Harvard, former ambassador Robert Oakley, and Marine General Joseph P. Hoar.) For two years (1993-95), I occupied the endowed chair of Warburg Professor of International Relations at Simmons College in Boston, where I taught courses and lectured on human rights, U.N. peacekeeping missions, and ethnic conflict in Somalia, Bosnia, Rwanda, the Congo, southern Africa, Central America, and elsewhere.

3. During 1996-2000, I was cofounder and publisher of the online journal *American Diplomacy,* under the auspices of the Triangle Institute of Security Studies and the University of North Carolina at Chapel Hill. Under my direction and that of the editor, Dr. Henry Mattox, the journal published numerous scholarly articles and analyses of developments and armed conflicts in Africa and elsewhere, including one of my own dealing with tribal violence and genocide in Rwanda, where I had also served as U.S. Ambassador. (The journal continues to publish and may be found at http://americandiplomacy.org.) During the same period and thereafter, I lectured on conflicts in Africa and taught classes at the John F. Kennedy School at Fort Bragg, NC, and at the Joint Forces Staff College at Norfolk, VA.

4. During September 1998, in the wake of rather tendentious media coverage of remarks I made in connection with a Canadian immigration case involving the defendant, I was asked by his attorney to draft an affidavit setting forth what I knew of the charges against him and the

political context in which his alleged actions took place. A copy of that draft is attached as Exhibit 1 in the hope that it might further inform the present deliberations; I do not know whether it was finally entered in the earlier proceedings. For the record, I have not testified as a witness in any courtroom, on this or any other case, during the past four years.

5. Throughout the period since my retirement from the Federal Government in 1990, I have remained intensely interested and occasionally involved in developments in Somalia, and I have regularly participated in meetings of members of the Somali community, and of others, here and in Canada, concerned about that country's future. In all of these, I have tried to maintain an open mind and an impartial position on controversial issues (some Somalis, not least of all members of the Isaak clan, but others as well, would disagree).

6. With respect to the present litigation involving the defendant Yusuf Abdi Ali,

(a) I have been retained by Mr. Joseph Peter Drennan, Attorney-at-Law, with law offices located in Alexandria VA, to provide my personal opinions (at the agreed-upon rate of $225.00 per hour) regarding the case against the defendant from the standpoint of one who served professionally as a diplomat in Somalia during the time frame encompassed by the charges;

(b) I have studied the Redacted Complaint against Colonel Ali, and although I disagree with many of its sweeping indictments of the Siad régime and its broad-brush condemnation of its policies, I am unqualified to judge its specific charges against the defendant;

(c) I have also carefully read and considered the April 11, 2005, expert report of my former Foreign Service colleague Robert Gosende, and while I respect his interpretation of the major events that occurred in Somalia prior to his arrival there, I question how pertinent his overview of those events may be to the specific charges leveled against the defendant; and,

(d) I have read with particular interest the March 29, 2005, letter of the Minister of State for Foreign Affairs of the so-called interim Somali government with its startling appeal to United States courts "not to give consideration for this case and similar ones by allowing the Somali Reconciliation to take its course." In my opinion as a former diplomat, the Minister's letter, despite its awkward style and unorthodox procedural character, deserves special consideration both by the court and by our own foreign affairs experts, as it may serve as a useful cautionary signal about the unintended impact such actions as this one may have upon efforts to bring about national reconciliation and restore authentic government in Somalia.

7. With respect to the defendant himself: To the best of my recollection, I have never met Colonel Ali, either in Somalia or in the United States, nor do I recall ever seeing his name either on relevant intelligence reports about the conflict in northern Somalia or on the list of "undesirables" that my embassy carefully maintained for purposes of screening visa applicants. My assumption, based on established procedures at my embassy, is that he was thoughtfully and carefully selected by my military staff from among dozens of possible Somali officers as a suitable candidate for the prestigious military training grant (or grants) he received; that he was approved as a nominee by my Country Team, which included civilian intelligence and consular

specialists as well as military officers, after further debate and scrutiny; and that he was awarded an appropriate visa (or visas) to enter the United States *only* after passing the rigorous review process that I regularly required of candidates for this program.

8. Nevertheless, on its face Colonel Ali's case strikes me as a microcosm of the larger civil conflict in which his misdeeds are alleged to have occurred, wherein norms of kinship crumbled in the face of fratricidal enmity. Unlike recent conflicts elsewhere in Africa, in the former Yugoslavia, and even in Iraq, nearly all the parties to the fighting in Somalia — like the litigants in this case — claim a common familial identity as Somalis and thus have close cultural and kinship ties with one another. It was my view at the time and remains so today that none of the parties to the civil war was innocent of the suffering, destruction, and death that resulted from the resort to violence, neither the dictator-president Mohammed Siad Barre and his minions nor the insurgent "warlord" faction leaders and their lieutenants. All committed gross human rights violations; all refused to explore peaceful alternatives and spurned offers of mediation; and all disregarded the tragic consequences of their actions for the masses of Somalis who had no voice in decision making.

9. In a small but very important way, this case also dramatizes the enormous difficulties Somalis face today in reconciling their differences, rebuilding mutual confidence, and restoring a semblance of government to their homeland. For it occurs precisely at the moment when, after two years of the most difficult and arduous negotiations, rival Somali faction leaders are attempting at last to begin the process of reconciliation and establish an authentic, broadly-based federal government on Somali soil. Sponsored by Somalia's closest neighbors and supported by the United States government, those negotiations have been marked by bitter acrimony and deep skepticism on all sides. At the end of last year, however, delegates elected an "interim federal government" that is just now grappling with how and where that government should be seated, in the face of very real security dangers within Somalia and the absence of any peacekeeping authority. Only this week, during a rather daring exploratory visit by the newly elected "interim president" Abdullahi Yusuf Ahmed, factional fighting erupted into bloodshed over whether the government should be located in Mogadishu or in some other Somali city.

10. It is remarkable, therefore, but hardly surprising, that the Minister of State for Foreign Affairs of the fragile interim authority has personally registered his government's discomfort with the litigation of the present case, arguing that it intrudes upon the mandate of the newly-formed Somali Reconciliation Commission to "engage itself with truth and reconciliation efforts," and calling upon U.S. courts "not to give any consideration for this case and similar ones" but rather to allow the Somali reconciliation effort "to take its course."

11. There is yet one more way in which the present case mirrors the larger issues facing Somalis today, in that it reflects the deep-running feud between two branches of the Somali family: the Isaak clan that traditionally dominated the northern portion of the country, the part governed separately under British rule as "Somaliland"; and the Darod clan, whose homelands lie in central and southern Somalia, and which has largely dominated Somali politics since independence. For the past half-century of combined government, the northerners have chafed at what they regarded (often justly) as unfair or discriminatory treatment by the southerners, while the latter have suspected the northerners (also with some justice) of harboring secessionist

tendencies. When the Isaak-led SNM launched its insurgency against the Siad Barre regime in the mid-'eighties, it tacitly signaled its aim of separating the northern region from Siad's south and forming a separate "Somaliland" nation. And when Siad's government collapsed, the SNM did just that, ultimately setting up a government that successfully isolated the region from the turmoil in the rest of Somalia. It has since organized and managed its own affairs reasonably well, convened a parliament, held its own elections, and sought — so far unsuccessfully — diplomatic recognition by the U.S. and the United Nations.

12. Somaliland's leaders have kept a close eye on the recent negotiations in Kenya but have declined up to now to take part, instead reaffirming their intention to remain independent. However, a common theme among faction leaders' rhetoric in Nairobi has been the goal of reuniting all of Somalia under a single flag, possibly through some form of federation but certainly as one nation. A major task facing the "transitional federal government," therefore, will be to figure out how to achieve this reconciliation — by peaceful means, one hopes. But the weight and magnitude of the problem are clearly indicated by the forceful appeal of the Minister of State of the transitional government, warning that litigation of the present sort could adversely affect national reconciliation prospects.

13. If it is indeed true, as northerners allege, that officers of the Somali National Army and of the President's own security guard were guilty of torture and extra-judicial killings of Isaak clan members in the North, it is also true that leaders of the Isaak insurgency placed their own clan and family members at mortal risk of such reprisals by attacking army installations in the heavily populated areas of Hargeisa, Burao, and Berbera, knowing full well what the consequences would be for "innocent" civilians. And if it is indeed true that President Siad Barre sought to use his military forces throughout the country to maintain political control and deter domestic opposition and civil unrest, often by brutal means, it is also true that his opponents fomented that unrest and financed their rebellion by appealing to clan loyalties and jealousies— so successfully, in fact, that they finally drove Siad from power and left Somalia in shambles as they scrambled for the spoils of "victory."

14. Some have blamed the United States for fueling the conflict by rewarding Siad Barre with military aid in exchange for his cooperation in our own Cold War contest with the Soviet Union, while turning a blind eye upon his use of US-supplied weapons against his own people. It is true, and lamentable, that a final shipment of small arms and ammunition reached the port of Berbera just before the regime launched its most intensive attack on rebel-held Hargeisa (I was present at the port when it arrived), and much of that weaponry doubtless contributed to the city's destruction and the toll of human lives there. It is also true, however, that the Isaak rebellion was itself amply supplied with weaponry and ammunition by its supporters outside Somalia and smuggled across borders with Ethiopia and Djibouti. But much more significant is the fact that the "infamous" shipment to Berbera marked the end of all U.S. military aid to Somalia and of significant U.S. support for the regime itself because of its unacceptable human rights record — a signal, in effect, to both Siad Barre and his opponents that he could no longer look to the United States to keep him in power.

15. During my three years as the president's representative in Somalia, I appealed repeatedly, on Washington's behalf, for moderation, restraint, and compromise on the part of

everyone, both despotic government and terror-sowing rebels. In two successive Fourth of July speeches (1998 and 1999) carried on Somali radio and television, I recited my own country's bloody experience with civil war and quoted President Lincoln's aim of "binding up the wounds" of that conflict. To no avail. Not even U.S. humanitarian intervention nor U.N. peacekeeping could halt the killing or head off disaster. The drama of civil war wound on like Greek tragedy until nothing remained of the Somali state but rubble. There were no winners, only losers. An entire nation of eight million people had been deprived of its "human rights" and left to starve.

16. After hitting bottom, however, Somalia has begun to bounce back. Without a central government of any sort for fourteen years, Somalis have looked inward, to their own clans, communities and traditions, for keys to their survival. In many ways, economic activity is flourishing, thanks in no small part to currency remittances from Somalis who have found refuge and employment abroad (one banker estimated these at a level of nearly one billion dollars a year). Exports of camels and goats to Middle East customers have risen nearly to prewar levels. Medical services are again available in most urban areas. Small industries are gradually recovering. Primary schools are proliferating (most of them Sharia religious schools funded and staffed by Saudi Arabia); some secular secondary schools are now operating as well. Mogadishu University, a newly created private institution now in its eighth year housed mainly in an abandoned luxury hotel, has a current enrollment of some 750 students, has graduated over 300 with B.A. degrees plus almost 50 nurses, and is building a new campus on the city's outskirts with the help of Sudan and Kuwait.

16. In summary, Somalia's recovery as a nation (if not a nation-state) is within sight, and its prospects have improved in large part because Somalis have been "abandoned" to their own devices and allowed gradually to rediscover their own strengths and cope with their weaknesses. They are doing just what is needed to put their country back on its feet: finding ways of living together, joining forces and resources, and resolving differences peacefully. While the country remains desperately poor in economic terms and is indeed suffering severely from the prolonged drought affecting much of east Africa, it would not be well served by another international rescue effort. Modest material support is now being channeled by non-governmental relief agencies to those most in need and should certainly be continued and increased by friendly nations, including our own. But its recovery can most be aided by thoughtful understanding, steady moral support, and a firm resolve not to tell or show Somalis how to solve their problems. The case involving the plaintiffs and the defendant should be weighed not only on its own merits but also in terms of its likely impact on the search for peace in their homeland.

Upon the penalties of perjury, I declare that the foregoing statements are accurate, true, and correct to the best of my belief, information, and knowledge.

Trusten Frank Crigler - April 28, 2005

Attachments:

Exhibit 1 – Draft Affidavit of Trusten Frank Crigler, dated September 1998

Exhibit 2 – Biographic summary for Trusten Frank Crigler

Exhibit 3 – Letter of the Somali Minister of State for Foreign Affairs Ibrahim Sheikh Ali to Joseph Peter Drennan, dated March 29, 2005

02186

DRAFT AFFIDAVIT

I, Trusten Frank Crigler, a resident of Durham Country, North Carolina, do hereby make the following statements in connection with the immigration case of YUSUF ABDI ALI, described to me as a former colonel in the Somali National Army now residing in the United States:

1. I served as a career U.S. Foreign Service Officer from 1961 to 1990, assigned to posts in Africa and Latin America and to the Department of State in Washington. My last assignment before retiring was a presidential appointment as American Ambassador to Somalia from September 1987 to April 1990. I have since returned briefly three times to Somalia as a private consultant, first with ABC television's "Nightline" (December 1992) and subsequently at the invitation of individual Somali faction leaders who sought my help as an advisor and mediator (in September 1993 and August 1994 [***check dates***]).

Background: U.S. interest in northern Somalia

2. When I arrived in Mogadishu in 1987, Somalia was the recipient of the largest single U.S. military assistance program in Africa [***amount??***]. US-Somali relations had never been close, however, and they were especially cool after the military *coup d'état* that brought Gen. Mohamed Siad Barre to power in 1965 [***date??***]. Declaring himself a "scientific socialist," General Siad successfully won generous support from the Soviet Union until 1977, when he became embroiled in a bitter border war with Ethiopia (the "Ogaden War"). Seeing a better opportunity next door, the Soviets switched sides suddenly and backed Ethiopia's new marxist dictator, Colonel Haile Mengistu Mariam, at Somalia's expense. The United States, expelled from its privileged position in Ethiopia by Mengistu's radical revolution, very reluctantly chose to switch sides as well, in hopes of neutralizing Soviet influence in the region and keeping a strategic foothold on the margins of the Indian Ocean.

3. U.S. military aid to Somalia never reached the levels the Somalis hoped for or President Siad believed he had been promised. Moreover, it consisted largely of light-weight weapons and ammunition, unarmed vehicles, communications equipment, uniforms, and boots — never the tanks, artillery, and aircraft that Siad Barre begged for. Accordingly, a large part of each subsequent American ambassador's task (including my own) consisted of attempting to mollify the President and maintain our Indian Ocean foothold without succumbing to his demands for increased military aid levels and more sophisticated firepower. (By the time of my arrival in 1987, practically no U.S. aid funds were being budgeted for any other than non-lethal supplies and technical assistance, although some quantity of weapons and ammunition were still in the pipeline

from previous years—*see below*. The largest single MAP item was a flashy, costly, but essentially harmless hi-tech command-and-control center dubbed "Peace Cube.")

4. In exchange for its military aid, the United States received certain military rights and advantages in Somalia that were important to U.S. strategic plans and military operations in the Middle East and southwest Asia. These consisted mainly of access to airports and seaports built or enlarged by the Soviets, at significant cost, during their earlier period of friendship with Somalia. The United States, in its turn, modified or developed these facilities for its own purposes, maintained some of them with skeletal crews of contractors, and utilized them from time to time for reconnaissance purposes. Most notable among these were the seaport and airport at Berbera in northern Somalia, situated near the mouth of the Red Sea, the Persian Gulf, and the Soviet-fortified island of Socotra, and whose runway was the longest in subsaharan Africa. (Significantly, however, these facilities were practically unutilized during the "first" Gulf War between Iran and Iraq in 1988-1989 [*check dates!!*], and as a result their value to U.S. military planners declined precipitously thereafter.)

Somali-Ethiopian border conflict

5. As the foregoing suggests, U.S. policy interest in Somalia at the beginning of my tenure as ambassador centered upon preserving our military access rights as part of a broader strategy for countering Soviet military and political influence in the region. In this connection, some amount of attention was paid to continuing cross-border friction between Somali and Ethiopian armed forces, largely because Siad Barre used that conflict to justify his perennial claim for lethal military aid from the United States. For our own part, we pressed the Somalis instead to work out a peaceful accommodation with Ethiopia, whose own post-Mengistu government had taken a more moderate turn.

6. Meanwhile, relatively little U.S. policy interest was devoted Somalia's own internal dissidence problems in 1987, as Siad's iron-fisted regime seemed to have its potential opponents neutralized and intimidated. We were generally aware that the "Ethiopian" forces with whom the Somali army was trading border raids included groups of left-leaning, disaffected Somali nationals from the North, mostly members of the Isaak clans that comprise a majority there; but we did not consider them a significant security threat to the régime. We were also aware that the Somali army was supporting similar groups of dissident Ethiopians that were carrying out raids from the Somali side of the border. This low-level war between "proxy" guerrilla forces seemed relatively insignificant.

7. In early 1988 [*check date*], however, an remarkable diplomatic maneuver altered the

landscape: just as we had urged him to do, President Siad reached agreement with his Ethiopian counterpart to "end" the Ogaden War, provisionally delineate and demilitarize their disputed border, and suppress cross-border raids by their respective "proxy" guerrilla forces. Although we were initially skeptical that the agreement would be implemented after so many years of conflict, we praised both sides for their statesmanship and watched to see whether actions matched their hopeful words. To our surprise, the two leaders generally held to their commitments. One bit of U.S. encouragement to do so was our decision to proceed with delivery of a last, long-delayed shipment of small arms and ammunition destined for the Somali army, and I traveled to Berbera to preside over its delivery in early 1988, making a speech that stressed the importance of defending Somali territory while bringing the Ogaden War an honorable end. Sadly, these same weapons were later used by the Somali army against the populace of Hargeisa.)

8. We were especially surprised that the Ethiopian government seriously carried out its commitment to suppress cross-border raiding by Somali dissidents and close down their camps on the Ethiopian side of the border. What we — and probably Siad Barre — failed to anticipate was that the chief dissident group inside Ethiopia, the Somali National Movement (SNM), would move its insurgent operation onto Somali territory and intensify its campaign against the dictatorship. It did so by infiltrating the home region of most SNM members, the traditional Isaak homelands of northern Somalia, centered on the region's capital, Hargeisa. There the movement was met with snowballing support among clan kinsmen, most of whom despised the President and the Darod clans and subclans from whom Siad drew his support; and within just a few months the SNM grew from a minor nuisance along the border into a major security threat to the régime throughout the North.

The "Battle of Hargeisa" - June 1988

9. By mid-May 1988, SNM forces had rallied sufficient strength and support in the North that they were able not only to harry isolated military posts but also to seize control of numerous villages and key cities and towns around the region. Momentum continued growing, and by early June SNM forces effectively controlled much of the city of Hargeisa itself. Moral and material support flowed generously from the population in general; members of both the majority Isaak clan and most of the smaller minority clans resented the Army's presence, particularly as it assumed increasing responsibility for civil affairs under "state of emergency" conditions, and they welcomed the SNM bid to drive "Siad Barre's army" off their homeland.

10. The army's sector commander, Gen. Mohamed Hersi "Morgan" (with whom I was well acquainted), functioned as military Governor of the region during early 1988 but failed to win acceptance among its populace. Married to a daughter of President Siad and a Darod himself,

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"Morgan" was inevitably regarded by northerners as a tool of the President and was said to be responsible for all manner of crimes and abuses of power. He impressed me, my predecessors, and my U.S. military associates quite differently, however. He had been selected earlier as a military exchange student and graduated with highest marks from warfare psychology courses at Ft. Leavenworth, Kansas. When I visited his civilian headquarters or walked the streets of Hargeisa, even while it was under SNM attack, I saw evidence of Gen. "Morgan's" efforts to apply the post-Vietnam lessons he learned in the United States to winning the "hearts and minds" of the Somaliland population—public works and employment programs, food distributions to poor communities and medicines to hospitals, nonstop meetings with local political and religious leaders, businessmen, elders, etc. What was not at all clear to me, however, was whether he was successful at preventing his subordinate officers from conducting "business as usual."

11. General "Morgan" is widely blamed among Northerners today for the destruction of Hargeisa in early June 1988, when army forces launched a powerful sustained attack against the rebellious city from their surrounded base on its outskirts. Ironically, "Morgan" was in fact far removed from the battle scene, having been stripped of his command by the President some weeks earlier on grounds that he had been too soft in dealing with the SNM and its followers. When it appeared that SNM forces might soon overwhelm the Hargeisa military base itself, President Siad shifted direct command responsibility to his Minister of Defense, Gen. Abdullahi Nur "Gabiyow," and then sent his Vice President, Gen. Mohamed Samantar, to co-direct punitive action to "save" Hargeisa.

12. I visited the Somaliland capital some ten days after the one-sided "battle." It was clear that punishment had been ruthless: the city was swept practically empty, the surviving population having fled deep into the desert, and most buildings (houses, shops, factories, public offices) were destroyed. Hospitals, filled with wounded, were barely functioning. Shell casings were everywhere, and it was evident from the pattern of destruction that the army's tanks had passed down one city street after another, blasting at buildings with their heavy guns. (Similarities to scenes of bombed-out European cities in World War II gave rise to reports that Hargeisa had been subjected to a bombing raid by Somali Air Force planes, but this was untrue. The Air Force had only two or three flyable aircraft at the time, and none was capable of doing damage of this magnitude.)

Col. Abdi Yusuf Ali

13. Some four years after the Hargeisa battle (and well after my own departure from Somalia), I learned of allegations that Col. Abdi Yusuf Ali had committed serious violations of human rights while assigned to the sector commanded by General "Morgan." The allegations

were brought to my attention in the course of a television interview I gave in Canada, and the interviewer explained to me that the charges arose in the context of a feud in Toronto between Isaak and Darod clan factions whose members had carried their acrimonious dispute with them into their Canadian refuge.

14. I can neither confirm nor deny these allegations. I do not recall having ever met Col. Yusuf Ali personally, nor do I remember whether a person by that name ever commanded the military post at Gabiley. Nor do I recall ever hearing or seeing his name mentioned, either by my embassy's officers or by any of our Somali contacts, as someone responsible for committing such acts. However, I do recall that the village and military post at Gabiley, among many others, were mentioned in several unconfirmed intelligence reports as the scene of alleged extrajudicial killings by Somalia army personnel.

15. I have been advised that Col. Yusuf Ali (like General "Morgan" and numerous other mid-level Somali military officers) had been selected for advanced military training in the United States and granted a diplomatic visa (A-2) for that purpose by Embassy Mogadishu. Selection of persons to receive this prestigious training assignment were made by the commissioned officer heading the embassy's Office of Military Cooperation (OMC), in close consultation with the embassy's intelligence, political, and consular offices and with the final approval of the ambassador. A check of the so-called visa "lookout book," supplied electronically by the Immigration and Naturalization Service and maintained up-to-date by the chief of the consular section in coordination with embassy intelligence offices, was a routine step in this consultation process. The purpose of the "lookout book" was precisely that of ensuring that visa applications by such persons, legally excludable from admission under terms of U.S. immigration law, were systematically refused.

16. Given the great care with which these training candidates were screened and selected, I consider it highly unlikely that any Somali military officer (or any other prominent visa applicant, for that matter) could have received a category A-2 visa if there were any record—anywhere in the embassy or in Washington—of that person's having been credibly charged with a serious human rights violation. Issuance of a second visa to such a person would have been even more improbable in the wake of the Hargeisa tragedy, when all of our sensitivities were heightened and when our policy mandate from Washington was to make dramatically clear to the Somali government, army, and citizenry in general our overriding concern for human rights .

Insurgency spreads southward

17. The army's attack on Hargeisa, along with simultaneous punitive attacks on SNM

strongholds in Berbera, Borama, and Burao, succeeded halting the momentum of the rebellion and driving SNM leadership temporarily into hiding. Tens of thousands of Northerners (Isaak and others) fled into Ethiopia and swelled UNHCR refugee camps along the b order, creating an almost unmanageable humanitarian crisis. Within the northern towns themselves, many of the refugees' homes and businesses were occupied by "outsiders," many themselves former refugees from the earlier Ogaden fighting with Ethiopia and often close tribal kin of the President's Darod clan family. Ethnic tensions rose sharply as a result, and it became increasingly difficult for foreigners to sort out the players and understand the conflicts.

18. During ensuing months, efforts were made by international agencies, relief organizations, foreign embassies, and the government itself to repair the damage and regain some measure of confidence between the population of the North and Somali governing authorities. As American Ambassador, I made repeated appeals to President Siad Barre, his army commanders, and senior members of his government on behalf of known prisoners of conscience we knew were being held, and in many cases tortured, in Somali jails or military detention centers. (I kept a pocket list with over 300 names of such persons, nearly all of them Issaks, and reviewed it regularly in my increasingly awkward meetings with top Somalia officials.) Some genuine concessions—including, finally, the release of every prisoner on my list—were made by the régime, and some degree of calm was restored for a time. But the insurgency soon spread beyond the borders of the North, engaging other clans with fresh manpower, newly acquired weapons, and enmities of their own toward Siad Barre. By mid-1990 it had reached the outskirts of Mogadishu itself.

19. Despite our own warnings and those of other embassies, the government's repressive measures grew sharper and more desperate as the Siad Barre régime fought for control and finally for survival. While punishment and abuses were first directed at the SNM and its Isaak sympathizers in the North, these become lost in the turmoil as more clan factions joined the rebellion and engaged the government's dwindling security forces. Some individuals were probably responsible for more human rights abuse than others, but violence, counter-violence, and human rights abuses by all parties became so widespread and generalized that any attempt to identify responsible individuals short of the President himself became a futile exercise.

20. Foreign diplomats (with the American, Italian, and German ambassadors taking the lead) repeatedly warned President Siad that he should rein in his security forces, punish human rights violations, and undertake political reforms that would respond to popular demands, or else face termination of all foreign aid programs (all U.S. military assistance and most economic aid had been cut off as of mid-1989). But Siad Barre either would not or could not. His régime fell at the end of December 1990, his own clan supporters fled the capital and became just one more ethnic faction fighting for survival, and Somalia descended into a nightmare of feuding and anarchy

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from which it has not yet emerged.

Subscribed to and sworn this _____th day of September, 1998.

Trusten Frank Crigler

Trusten Frank Crigler

Consultant in International Relations

Ambassador Crigler served for thirty years as a career diplomat in the US Foreign Service, mostly in so-called "hardship" posts, and enjoyed each one. He retired in 1990 at the end of his most challenging appointment, as President Reagan's ambassador to Somalia, a nation just then on the verge of collapse. He subsequently returned to Mogadishu as a consultant to ABC's "Nightline," wrote opinion pieces for the Washington Post *and* Christian Science Monitor, *and lobbied Congress for changes in policy that might have averted the failure of American military intervention there. He subsequently consulted for the World Bank and private investors in Latin America. He now lives with his wife Bettie in Durham, North Carolina.*

Born and raised in Phoenix, Arizona, Frank Crigler earned a bachelor's degree *magna cum laude* from Harvard College in 1957. He entered the Foreign Service in 1961 and was assigned to the State Department's bureau of intelligence and research. He next served in Guadalajara, Mexico, and at the US embassy in Mexico City. From 1966 to 1971, he was posted in Africa: first in the Congo, as political officer at Embassy Kinshasa and then as consular officer in the interior cities of Bukavu and Kisangani; and later in Gabon, as economic officer and chargé d'affaires at Embassy Libreville.

After a Washington assignment as political advisor to the US ambassador to the Organization of American States and a second assignment to Mexico, Frank was appointed Ambassador to Rwanda by President Gerald Ford. In 1979-1981, he was deputy chief of mission and later chargé d'affaires at the US embassy in Bogota, Colombia, receiving awards there for his management of the crisis that erupted when Ambassador Diego Acensio was kidnapped and held hostage by terrorists.

The incoming Reagan administration recalled him to Washington in 1981 to serve as Director of Mexican Affairs at the State Department, during a period of growing bilateral difficulties in our bilateral relations. He was subsequently appointed senior Foreign Service inspector, examining US diplomatic operations in Europe, Africa, and Latin America. Then, in 1987, he received the most challenging assignment of his career, when President Reagan appointed him Ambassador to Somalia.

Since retiring from government service in 1990, Crigler has presented his views on foreign policy issues before the Congress, in the press, and on national network television. In 1992, he traveled to Somalia with Ted Koppel of ABC's *Nightline* and helped cover the arrival of US troops sent there by President George H.W. Bush to suppress tribal fighting and relieve suffering and hunger. During 1993-1995, he taught international affairs at Simmons College in Boston. He has also served as a writer and editor for the World Bank, as an advisor to the president of the Central Bank of Honduras, and as a consultant to a private Italian firm growing bananas in Central America.

In 1996, Frank and his wife of fifty years, Bettie Morris, settled in Durham, North Carolina, where for five years he published a monthly online journal, *American Diplomacy,* one of the first of its kind on the Web. Currently, he lectures and helps train US Army Special Forces troops at Fort Bragg and mid-career military officers at the Joint Forces Staff College in Norfolk, Virginia. When not pronouncing on foreign affairs, Frank bicycles, reads history, studies piano, and maintains a 90-year old four-square bungalow that "requires lots of tender loving care." The Criglers have three children and three grandchildren.

Xukuumadda Federaaliga KMG ah ee Jamhuuriyadda Soomaaliya

الحكومة الانتقالية الفيدرالية
لجمهورية الصومال

Transitional Federal Government of Somali Republic

MINISTRY OF STATE FOR FOREIGN AFFAIRS

Joseph Peter Drennan,
Attorney-at-Law,
218 North Lee Street,
Third floor,
Alexandria, Virginia 22314-2660

Tuesday, March 29, 2005

Subject: JANE DOE, et alii v. YUSUF ABDI ALI
Civil Action No, 04-1361, before the
United States District court for the
Eastern District of Virginia (Alexandria Division)

Dear Drennan,

Having seen the subject litigation, the Somali National Transitional Feferal Government be known that it has set up Somali National Reconciliation Commission, with a responsibility to undertake all reconciliation efforts in Somalia, in accordance with new National Transitional Charter (constitution). The litigation of this kind and other similar ones in the American courts or elsewhere will interfere with the policy, embodied of the Somali Reconciliation Commission to engage itself with truth and reconciliation efforts.

According to the Commander of the 26th Sector of the Somali National Army Gen. Mohamed Said Hersi (Morgan) Col. Yusuf Abdi Ali was not the Commander of 5th BDE, CDR in 1984, but its commander was Col. Omar Haji Mohamoud. Furthermore the areas the plaintiffs mentioned in their litigation were not under the responsibility of 5th BDE, CDR, kindly see the Map in their locations.

In view of this, the allegations made by these two anonymous Issaq plaintiffs has no foundations other than to make obstacles for the Somali reconciliation mission.

The Somali National Transitional Government calls for the courts of the United States of America not to give any consideration for this case and similar ones by allowing the Somali Reconciliation efforts take its course.

Yours truly,

Hon. Ibrahim Sheikh Ali (Jebbo)
Minister of State

TRANSITIONAL FEDERAL GOVERNMENT MINISTRY OF FOREIGN AFFAIRS THE SOMALI REPUBLIC

"Exhibit 5"

Trusten Frank Crigler
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13 JULY 2005 DECLARATION OF TRUSTEN FRANK CRIGLER

I, Trusten Frank Crigler, a citizen of the United States and a resident of Durham County, North Carolina, do hereby make the following statements in connection with the case of JANE DOE, *et alii, v.* YUSUF ABDI ALI, Civil Action No. 05-701, before the United States District Court for the Eastern District of Virginia (Alexandria Division).

1. I served as a career Foreign Service Officer of the United States from 1961 to 1990, assigned to posts in Africa and Latin America and in the Department of State in Washington. My last assignment before retiring was a presidential appointment as American Ambassador to Somalia from September 1987 to April 1990. I afterward returned briefly to Somalia three times as a private consultant, and I have since written, spoken, consulted, appeared on television, and testified before the U.S. Congress regarding developments in Somalia and United States policy toward that country.

2. In my capacity as a private consultant, I was recently asked by the attorney for the defense to inquire into the present case and its procedures and to summarize my personal opinions as to their significance in terms of present and future US-Somali relations. I was asked in particular to consider the implications of the case in the light of current efforts by many Somalis and friendly nations, including our own, to restore a semblance of civil order to that territory which, since the fall of its dictator-president in January 1992, has lacked any recognizable government and has declined into a state of anarchy and misery. It was quite rightly pointed out to me that, in today's uncertain and volatile electronic world, actions in this very courtroom might have the unintended consequences of undermining such faraway peacemaking efforts and could thus serve to perpetuate the violence, lawlessness, and generalized human suffering that presently make Somalia a fertile breeding ground for international terrorism.

3. I am especially gratified by the opportunity to address the Somalia situation just now,

since those friendly efforts to restore accountable government there have reached a critical stage. For the past year and more, Somalia's neighbors, with the support of other members of the African Union, the United Nations, and friendly powers such as the United States, have sponsored a nearly nonstop peace conference in the Kenyan capital of Nairobi among representatives of most of the country's leading clans, factions, and rival militias. After months of intensive discussion and acrimonious debate, and at considerable cost to its hosts and sponsors, the conference at last agreed to establish a Transitional Federal Government, elected a transitional parliament, and chose Colonel Abdullahi Yusuf, a leading figure from the northeastern region of Puntland, to serve as transitional president. Major questions were left unresolved, however: notably, how — and where — was the new government to establish itself on Somali soil, given the continuing lawlessness and anarchy prevailing there.

4. Finding an answer to those questions has plagued the newborn government and deeply divided its members from the very start. Some argue that it should be seated in Mogadishu, Somalia's historic capital; others, including Interim President Abdullahi Yusuf, respond that conditions in Mogadishu are too dangerous and chaotic and insist that a large peacekeeping force of troops must first be assured by neighboring nations in order to guarantee the government's security. Mogadishu's partisans adamantly oppose introduction of such a force, since Somalia has historically had rather rocky relations with its three neighbors, and especially with Ethiopia. The Mogadishu group (which includes several important "warlords" who bitterly recall Somalia's defeat by Ethiopian forces in 1974) are thus suspicious of the interim president's friendly relations with Ethiopian President Zenawi and evidently fear that such a peacekeeping force might serve the interests of the new president and his home region to the detriment of their own. Their fears have not been eased by President Abdullahi Yusuf's exasperated declaration only a few days ago that he was prepared to march south toward Mogadishu from his regional capital in northwest Somalia, recruiting friendly troops along the way, and seat the new government where he chose (Col. Abdullahi is himself a powerful "warlord" in his own right.) Needless to say, a clash of forces on such a scale would almost surely doom the interim government just when hopes for an end to anarchy were brightening.

5. Another prickly question left unresolved bears directly upon the case before this Court, as it concerns the future of the so-called "Republic of Somaliland." That portion of the country took

advantage of the civil war's anarchy to declare its independence, and it has since declined to take part in the Nairobi peace process or have anything to do with the interim federal government that resulted from those negotiations. Somaliland leaders point to their own relatively stable history of self-government since 1992 in support of their quest for recognition, so far unsuccessful, by other nations. They are disappointed that the United States (like others) has refused to grant formal recognition to the "Republic" on the grounds that recognizing a change of international boundaries would open Pandora's box to unlimited border disputes and hostilities in a region carved arbitrarily across tribal and ethnic lines into "nation-states." Indeed, "Somaliland" officials are very likely to point to the present case's judicial process as an indication that at least some United States officials regard the territories' assertion of its independence as valid.

6. There is unquestionably much sympathy between the citizens and leaders of "Somaliland" and the Ethiopians who welcomed them as refugees during the civil war. And there is certainly a history of collaboration and support between Ethiopia and Interim President Abdullahi Yusuf, who himself obtained refuge across the border during his own insurrection against Siad Barre's dictatorship. Little wonder, therefore, that there is deep-seated suspicion among many non-northern Somali "legislators" (a) toward the Somalilanders, with their long-standing separatist tendencies; (b) toward interim president Abdullahi Yusuf, with his longtime pro-Ethiopian connections; as well as (c) toward the Ethiopians who afforded them both refuge when the chips were down. (Ethiopia itself, it should be noted, is just now experiencing an unusual period of tense unrest, following the shooting deaths of some thirty-four demonstrators protesting irregularities in last month's parliamentary elections there. *It happens that my daughter was present on business in Addis Ababa during the shootings and described the experience by telephone as "very frightening" — a sentiment her father back home most assuredly shared.*) It is hardly surprising, therefore, that many Somalis from the southern areas oppose allowing a "peacekeeping" force from neighboring countries to enter Somalia and play the role of arbiter while the interim authorities attempt to reach agreement on setting up a governmental apparatus in Mogadishu.

7. It is my understanding that at least one senior foreign relations official of the new transitional government has formally registered objection to the judicial proceedings now underway in this Court. His intervention is hardly surprising to me, since these proceedings tend

in a substantial way to affect the sometimes violent political contests unfolding among rival Somali leaders, contests that will ultimately determine whether the "transitional government" machinery is successfully installed and made to operate or whether it falls into disuse and abandon as earlier attempts have. The Court's actions might conceivably affect this outcome in several ways:

(a) This Court's direct dealings with judicial authorities in Hargeisa may well be seen by some to validate the "Somaliland" claim to independence from the rest of Somalia; as some northerners will certainly interpret them, and could thus significantly prejudice the eventual reincorporation of "Somaliland" into a united Somalia;

(b) the Court's dealings with Ethiopian judicial authorities with respect to the guilt or innocence of a Somali national might well imply to some that the new interim government is incapable of exercising such authority and, at least tacitly, would seem to recognize some superior judicial authority on the part of Ethiopian courts to intervene in such matters in place of Somali courts; ,

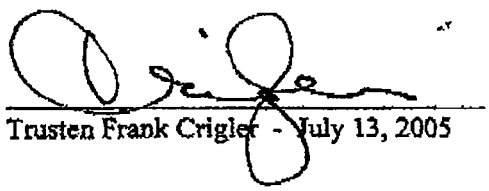
(c) the Court's undertaking to adjudicate this case over the objections of one entity within the transitional government hierarchy (*viz.*, the express objections of the interim Minister of State for Foreign Affairs) would in effect suggest that the United States has officially taken the side of one or another competing element within the fragile bureaucracy now being negotiated, with exquisite difficulty, among the various competing factions of the interim government and its parliament.; and,

(d) under any of the foregoing circumstances, the Court's proceeding against the defendant solely or principally on the basis of testimony taken either in a third country or in a territory historically claimed by the Somali government, without the express permission or even tacit agreement of, or any reference to, the sovereign authority of the interim Somali government, would surely undercut the claims of the new interim government to sovereign jurisdiction in matters relating to its own citizens and, specifically, crimes allegedly committed by members of its own national army against those citizens.

9. In a word, were the Court to proceed to assert its authority in adjudicating the present case in the face of the fragile and highly uncertain political circumstances that now prevail in Somalia, it would, at a minimum, prejudice the chances for success of the present attempt to rebuild an authentic national government in that country and, most likely, undermine the strength and authority of whatever new government emerges, regardless of which contending group were to succeed in achieving leadership. If the United States is to be helpful to Somalis in restoring law and civil order to their broken nation, American authorities should carefully encourage the peacemaking efforts now in train and assiduously avoid any action, unintended or otherwise, that would tend to prolong its present nightmare of violence.

If my personal views in this regard seem overstated, it may be attributable to my having learned, only two days ago, of the murder in his Mogadishu home of a dear Somali friend and loyal former member of my Embassy staff, a brilliant young man who most recently has been intensively engaged in the peace process described above. I have no doubt whatever that his death is a direct consequence of those peacemaking efforts and, most likely, of his well-known friendship toward the United States.

I, Trusten Frank Crigler, do hereby declare, under the penalties of perjury, that the foregoing is accurate, true, and correct, to the best of my belief, information and knowledge.



Trusten Frank Crigler - July 13, 2005

"Exhibit 6"

DECLARATION OF CHARLES SCHAEFER

1. I, Charles Schaefer, of Valparaiso, Indiana, do depose and state as follows. I have been asked by the attorney, Joseph Peter Drennan representing, Yusuf Abdi Ali, to comment on country conditions in Ethiopia as they relate to Somali relations. To accomplish this I will address three issues under the section ETHIOPIAN SOMALI RELATIONS: (A) a brief historical background; (B) current conditions between the two countries, and (C) implications for the Ethiopian elections in Somali State (province of Ethiopia) in August 2005. I have agreed to provide my expert opinion for $500. In regards to this case I have spoken with the attorney and reviewed three documents: a) copy of the Complaint filed on 13 June 2005; b) copy of Plaintiffs' Motion for, inter alia, Issuance of Commissions to Take Depositions in Ethiopia; and c) copy of the Re-notice of the hearing on the aforesaid Motion for 13 June 2005. I should emphasize that my duty is to the court, not to Yusuf Abdi Ali whom I have not met.

2. I am an American citizen. I was born on 7 December 1957 in Addis Ababa, Ethiopia. I reside at 1458 Salamonie Ct., Valparaiso, Indiana, 46385. I am presently Chair of the Department of History and Associate Professor of African History at Valparaiso University, Valparaiso, Indiana. I have made the Horn of Africa, specifically Ethiopia and Eritrea the focus of both my academic career and my vocation to serve humankind. In these capacities I have traveled to both countries frequently. Cumulatively I have resided

in Ethiopia/Eritrea for approximately fifteen years. My most recent trip to Ethiopia was in February 2005 where I had the opportunity to discuss political, economic and human rights issues with representatives of the Ethiopian Human Rights Council, other activists, many university professors and students, church leaders and other businessmen and acquaintances. I will be spending the month in the Oromo region of Ethiopia researching a writing a post-election evaluation of the May 2005 national elections which will be published in *Contested Power: Negotiating traditional authority in modern elections in Ethiopia.*

3. I also have written articles and scholarly papers about the present situation in the Horn of Africa a few of which I will mention here (others are detailed in my C.V.): "Free and Fair in Ethiopia." *The Cresset*, LVII:9 (Oct. 1994): 19-23; "Clemency after the Battle of Adwa: What Ethiopia Can Learn from its History," paper presented at the Adwa Victory Centenary Conference, Michigan State University, East Lansing, March 1-2, 1996; "Elections and the Reconstruction of Identity as Imposed by the Ethiopian Polity," paper presented at conference on *Transnationalism, Nationalism & Cultural Identity*, American Ethnological Society, San Juan, Puerto Rico, April 18-20, 1996; and "Rhetoric and Praxis during the Political Spring of 1992 in Southern Ethiopia," paper presented at the African Studies Association meeting, Chicago, November 1998. Recently I have had two articles published on the political processes in Ethiopia, see "Population Rendered Quiescent: the elections in Dembi Dolo, Oromia" in *The Ethiopian 2000 Elections: Democracy Advanced or Restricted*, eds. Siegfried Pausewang and Kjetil Tronvoll (Oslo: Norwegian

Institute for Human Rights, 2000), and revised as "Dutiful Voters and Non-participants: Campaigns and Elections in Dembi Dollo, Oromiya." *Ten Years of Democratisation in Ethiopia*, eds. Siegfried Pausewang, et. al. (London: Zed Press, 2002). I was awarded a position for Summer 2001 as a Visiting Fellow with the Norwegian Institute Of Human Right: Horn of Africa Program to begin the initial phases of a long term research project on "Clemency and Magnanimity in Ethiopian Political Rhetoric: a historical analysis." Recently I have written three soon to be published articles titled, "The Derg Trial versus Traditions of Restorative Justice in Ethiopia"; "Reexamining the Ethiopian Historical Record on the Continuum between Vengeance and Forgiveness" in Proceedings of the XVth International Conference of Ethiopian Studies, Hamburg, 21B25 July, 2003; "Scriptures, *qené* and traditions of restorative justice in nineteenth century Ethiopia: Forgiveness with consequences" a paper presented at the conference on Religion in African Conflicts and Peacebuilding Initiatives: Problems and Prospects for a Globalizing Africa, Entebbe, Uganda 1-3 April, 2004. Currently I am co-editing a book with Kjetil Tronvoll titled *The Ethiopian Red Terror Trials: Africa's Forgotten Human Rights Tribunal*, in progress.

4. Since 1997 I have written over eighty affidavits for Ethiopians and Eritrean seeking political asylum. I have testified in Immigration Counts twenty six times and have been granted the distinction of "expert witness" in courts in Baltimore, Arlington, Boston, Cleveland, Chicago, Minneapolis, Denver, Seattle, and Yakima, Washington. On occasions I have been contacted for expert advise by the immigration services of the

United States, Canada and Australia to offer my opinions on political conditions in Ethiopia and Eritrea.

ETHIOPIAN SOMALI RELATIONS

A brief historical background.

5. Ethiopian Somali relations can be captured in the word: irredentism. Historically the state of Ethiopia and Somali clansmen has always fought over the Ogaden and especially the lowlands of the Afar Desert, the Awash River basin, and the region between ports along the Red Sea and the trading city of Harar. Ethiopia conquest of most of the Ogaden took place under the reign of Emperor Menilek in the late nineteenth century. So successful were his imperialist campaigns that the Somalis both in Somalia proper and in the Ogaden have been on the defensive ever since. Concurrent with Menilek's conquest was the partitioning of Somalia into French (known as Djibouti), Italian and British colonies. After World War II the British took control of Italian Somaliland as a Protectorate and incorporated it into the own empire.

6. To an extent Ethiopian Somali relations reactivated itself only after Somalia was granted independence in 1960. Prior to and immediately following independence Somalia sent in troops to take over the Ogaden region of Ethiopia and even the Northeast region of Kenya. Firefights ensued for approximately two to three years, though I would hesitate to define it as war. In very short order the Somalis were repulsed leaving a bitter taste and a

desire for revenge. Since then the idea of incorporating all Somalis under one political unit has been the ambition of all Somali leaders. Irredentism was the rallying call during the Haile Sellassie regime, to circa 1974, for Somalis living both in Somalia and in Ethiopia. On various occasions there were revolts initiated by Somalis within the sovereign borders of Ethiopia to unite with Somalia. These acts were often referred to in Somalia as justification for their own ambition to reunite the Ogaden to Somalia. This instability in eastern Ethiopia essentially resulted in the Ogaden being put under a defacto military administration under Haile Sellassie. On the other hand, the emperor was the quintessential politician and was always interested in curing favor with one or another group or clan of Somalis. The emperor was the master of "divide and rule" and used the policy to bifurcate Somali initiatives with significant success. One of the measures he allowed and even promoted was the migration of Somali businessmen to Addis Ababa. This was sought after by the Somalis as Ethiopia was the largest market in the Horn of Africa and was encouraged by Haile Sellassie because he could exert some control over certain wealthy and influential Somalis. As a result Somalis have had a long sojourn in Addis Ababa and almost all factions and/or clans are present there. Somalis from the Ogaden were also given representation in Haile Sellassie's constitutional parliament–for all that was worth.

7. During the Marxist military dictatorship (the Derg), circa 1974-1991, the hostilities grew into war. During the Ethiopian revolution the Somalis determined that it was an opportune time to invade the Ogaden and fulfill their irredentist ambition while Ethiopia

was in turmoil. Prior to this time Ethiopia, during the Haile Sellassie regime, had been a loyal US ally. However, in a complex and tragic manner the US decided to deny the Derg's request supply military armaments, so the Derg went to the Soviet Union who was only to glad to supply them. Procurement of Soviet armaments angered the Somalis, for they had been in the Soviet orbit for years. Thus the Ogaden War was fought between Somalia and Ethiopia, both of whom were beholden to Moscow for arms and aid. After initial successes the Somali advance stalled because more Soviet arms were Ethiopia bound. In the late 1970s the Somalis under the leadership of Siad Barre approached the Carter Administration and Carter determined that it was in US strategic interest to support Somalia and countermand the Soviet Union in Ethiopia. Essentially relations between the two countries were non-existent through the 1980s. In the early 1980s the Isaaq clan established an opposition party known as the Somali National Movement (SNM) with reputedly some support from Derg, although this continues to be hotly debated. A policy option of the SNM was secession from Somalia and the reestablishment of Somaliland along the borders of the former British Somaliland colony. Understandably this was not acceptable to Siad Barre's regime and hostilities ensued between the government and the SNM through much of the 1980s.

8. When the Derg was overthrown in 1991 a new party, known as the Ethiopian People's Revolutionary Democratic Front (EPRDF), came into power, which was favorably disposed to the United States. Again, for a brief period, it appeared that both Somalia and Ethiopia would have the same patron and both were to be pawns of the United States.

And then Somalia imploded. The costs of the anarchy in Somalia to the United States and United Nations, as well as the Somali people, were extreme.

9. Since Somalia's dismemberment political relations with Ethiopia have stalled for there appears to be no government to negotiate with. However, this has not meant the Somalia and its scions–Puntland and Somaliland–have vanished from Ethiopia's radar screen. Just the opposite, Ethiopia remains anxious about its hold over Ogaden and the EPRDF has reverted to many of Haile Sellassie's techniques of divide and rule, or more accurately under the present circumstances, invite and incorporate.

Current conditions between the two countries.

10. Again many Somali businessmen of all clans have been invited to Addis Ababa and other Ethiopian cities to conduct business. The borders are exceptionally porous and movement between the two countries goes on continuously. Much of the movement has to do with trade. The question that all analysts would like to know is how much of this trade is conducted through formal circles and how much is black market. Through the 1990s it was assumed that most was black market and that most was carried through northwestern Somalia, after 1993 the area known as Somaliland, dominated by the Isaaqs. The question remains why was a significant amount of smuggling allowed to take place through Somaliland to Jijjiga, Dire Dawa and Harar? Although it is speculation on my part, I believe the Somali businessmen, mostly Isaaq, worked with and through Tigrian/Ethiopian parastatals dominated by family and friends of the EPRDF. The economic relationship

between the Tigrian/Ethiopian parastatals and the Isaaq became far more formalized after the Eritrean-Ethiopian War in 2000. Since Ethiopia was locked out of using the Eritrean port of Assab, they have redirected their trade through Djibouti; however, recent signs appear to indicate that Ethiopia is trying to formalize its trade routes with the Isaaq-dominated Somaliland. Between July 2004 and July 2005, according to an official Ethiopian press release, "over 459.6 million birr has been obtained in foreign currency by exporting agricultural products via the town of Jijjiga in eastern Ethiopia ...to Somaliland"(www.waltainfo.com/EnNews/2005/Jul/11Jul05). Moreover, "legal merchants" are responsible for this trade. In short, it appears that it is in Ethiopia's economic interest to curry favor with Isaaq-dominated Somaliland.

11. Politically the situation in the Ogaden remains potentially unstable; however, the EPRDF has gone to great lengths to increase its control over the region. Certainly the EPRDF has learned its lesson after granting the secession of Eritrea and will never submit itself to relinquishing other territories within its borders. That would be political suicide for the EPRDF; hence, Somali irredentism is a no-go for the Ethiopian government. The Ethiopian administrative unit for the Ogaden and area around Jijjiga is know as the "Somali State" in which Ethiopian Somalis control the administration and exert local administrative control. The problems, however, are legion as Somali identity is bound up in clan identity. Representation within the Somali State administration is thus a constant balancing act between the Isaaq, Ogadeni, Marekan, and Dulbahante to name a few of the different clans.

12. Another political issue for the EPRDF is the non-existence of a government in Mogadishu. As the seat of the African Union (AU) is in Addis Ababa, the Ethiopian government has been intricately involved, bilaterally and multilaterally, in trying to create a government in Mogadishu. Working with the warlords has not been to Addis Ababa's liking. In October 2004 the AU brokered an election in Kenya of a Somali, Abdullahi Yusuf Ahmed, to be President of a Transitional Federal Assembly of Somalia and Puntland, yet it should be noted that this attempt is the fourteenth attempt to seat a government and the other thirteen have failed. The rationale is sound; the realities in Somalia bode poorly for this brokered solution. Currently President Abdullahi Yusuf has not been allowed into Mogadishu by the warlords who still control the capital. According to the BBC on 6 July 2005, "he is to head south through Somalia form his northern stronghold [in Puntland] collecting troops and militia as he goes" (news.bbc.co.uk/go/pr/fr/-/hi/world/africa/4655959.stm). The title of the article says it all: "Somali march triggers war fears." One of the reasons President Abdullahi Yusuf is criticized and disliked by many Somalis is because of his close links to Ethiopia. This indicates that Ethiopia remains actively involved in all Somali politics, yet from the Ethiopian perspective Puntland and Somalia remain highly unstable, which leaves Isaaq-dominated Somaliland.

13. Isaaq-dominated Somaliland is the stable region of Somalia. The former British colony developed infrastructure, education and administrative institutions that appear to put it ahead of the other regions of Somalia. Moreover, political and economic relations between it and Ethiopia, according to reports I have heard, are quite good.

Implications for the Ethiopian elections in Somali State (province of Ethiopia) in August 2005.

14. Ethiopia, itself, is in political turmoil since the May 15th, 2005 elections. On June 8th the election results were announced which essentially gave the EPRDF a 3/5 majority. The population in Addis Ababa was so incensed that it took to the streets in protest. In the riots 36 Ethiopian citizens were shot and killed. This was a huge political blow to the EPRDF as it was trying to gain more international legitimacy. In order to redeem itself, the Ethiopian National Election Board (NEB) is looking into all allegations of vote tampering and electoral misconduct. On July 8th the NEB reissued "tentative" results, which indicate that the EPRDF and its puppet-parties have 159 seats, while the opposition has 148 seats with another 217 seats in the 547-seat parliament still being investigated. The relevant issue to this case, however, is that the vote for the 23 seats in the Somali State has not been conducted yet. They are scheduled to vote in August sometime. The election documents and materials were still being put together at the end of June. Part of the delay has to do with how remote the region is, the instability in the region and, perhaps more importantly, how contested the Somali State elections are. According to the Ethiopia news agency 609 party and independent candidates are competing for state and national seats–this far surpasses the political engagement in other parts of Ethiopia.

15. Consideration for the Plaintiff's Motion for Depositions in Addis Ababa in the court case of Yusuf Abdi Ali are difficult to determine, but certainly internal Somali politics within

Ethiopia should not be discounted. The EPRDF is running scared. The whole election–and their survival–may hinge on the 23 seats for the national parliament from the Somali State. If the plaintiff's were giving their depositions in Addis Ababa without the knowledge of the Ethiopian government I would not be surprised. Ethiopia does have the infrastructure to teleconference. That the Ethiopian government gave its approval for this deposition indicates to me that politics are involved. The exact nature of their calculations I cannot determine, but the elections should not be discounted. With the fear of war in the rest of Somalia and knowing as well as they do how unrest in Somalia spills over into the Ogaden, the EPRDF is making great efforts to cement good relations with the Isaaq. In a country that hardly thinks of peasants, the EPRDF has paid 3.2 million birr to 257 Isaaq farmers as relocation compensation for the construction of a new airport in March 2005. As an economic historian of Ethiopia, I have never heard of this before. Again according to the Ethiopian news agency, in April 2005, the Ethiopian government paid for the relocation of Somali refugees in Ethiopia back to, mostly, Somaliland. The EPRDF seems to be going to extreme lengths to gain the favor of Somalis, especially the Isaaqs who have been most successfully wooed by the Ethiopian government. This court case may fit into the complex matrix of Ethiopian-Issaq relations.

I, Charles G. H. Schaefer, undersigned, hereby and herewith declare under the penalties of perjury that the foregoing is accurate, true and correct, to the best of my belief, information and knowledge.

Signature: Date:

Charles G. H. Schaefer 13 July 2005

Curriculum Vitae

Charles George Herbert Schaefer

Born: 7 December 1957 in Addis Ababa, Ethiopia
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Employment History:

Associate Professor of African History & Chair, Department of History, Valparaiso University, 1999 to present.
Acting Chair, Department of History, Valparaiso University. 1998/99.
Assistant Professor, Department of History, Valparaiso University. 1994-1998.
Fulbright Lecturer, Department of History & Institute of Ethiopian Studies, Addis Ababa University, Ethiopia, 1992-93 and 1993-94.
Election Observer--Ethiopia, with African-American Institute, June 1992; as an independent observer, June 1994; with the Norwegian Institute for Human Rights, April-May 2000.
Visiting Assistant Professor, Department of History, Concordia College, Moorhead, 1991-92.

Education:

Ph.D. 1990, University of Chicago, History Department. Thesis title, "Enclavistic Capitalism in Ethiopia, 1906-1936: a Study of Currency, Banking, and Informal Credit Networks."
M.A. 1982, University of Chicago, History Department.
B.A. 1981, Pacific Lutheran University, History and Political Science Major.

Fellowships, Awards, and Editorialships:

Research Grant, Horn of Africa Programme, Norwegian Center for Human Rights, University of Oslo, December 2005.
Research Grant, Horn of Africa Programme, Norwegian Center for Human Rights, University of Oslo, February 2005.
Com. on Teaching and Learning: Expense Grant, Valparaiso University, Uganda. Spring 2004.

Com. on Teaching and Learning: Expense Grant, Valparaiso University, Germany. Sum. 2003.
Visiting Fellow, Horn of Africa Programme, Norwegian Institute Of Human Rights, University of Oslo, Sum. 2001.
Norwegian Marshall Fellowship, for research at Chr. Michelsen Institute, Bergen, Sum. 2001.
Research Grant, Int'l Commission for the Study of Media, Culture and Religion, Sum. 1999.
Summer Research Grant, Valparaiso University, Ethiopia, Sum. 1999.
Alumni Award, Valparaiso University, Yemen & Ethiopia, Sum. 1997.
General Post-Doc Grant, American Institute for Yemeni Studies, Yemen, 1996 & 1997.
Creative Work and Research: Expense Grant, Valparaiso University, Yemen, Sum.1996.
Faculty Development Grant, Indiana Consortium for International Programs,Yemen, 1996.
Book Review Editor, *Northeast African Studies*, 1994 to 1998.
Creative Work and Research: Expense Grant, Valparaiso University, Ethiopia, Sum. 1994.
Fulbright Fellowship, Lecturer, Addis Ababa University, 1992-93 renewed 1993-1/1994.
Research Associate, U. of C., Committee on African and African-American Studies, 1990-92.
Dissertation Grant, University of Chicago, Division of the Social Sciences, 1989-90.
Fulbright Fellowship, Dissertation Research, Great Britain and Ethiopia, 1986-87.
Title VI National Resource Fellowship, Amharic Language Study, Summers 1983,1984, & 1986.
Future Faculty Fellowship, American Lutheran Church, 1982-84.
Departmental Award, University of Chicago, History Department, 1981-82.

Publications:

"Scriptures, *genē* and traditions of restorative justice in nineteenth century Ethiopia: Forgiveness with consequences" in Religion in African Conflicts and Peacebuilding Initiatives: Problems and Prospects for a Globalizing Africa edited by James Smith, Sakah Mahmud and Rosalind Hackett (South Bend: Notre Dame Press) forthcoming.

"The Derg Trial versus Traditions of Restorative Justice in Ethiopia" in The Ethiopian *Red Terror* Trials: Africa's Forgotten Human Rights Tribunal, eds. Kjetil Tronvoll and Charles Schaefer, forthcoming.

"Reexamining the Ethiopian Historical Record on the Continuum between Vengeance and Forgiveness" in Proceedings of the 15th International Conference on Ethiopian Studies, ed. Siegbert Uhlig (Wiesbaden: Harrassowitz, 2005), in press.

"Dutiful Voters and Non-participants: Campaigns and Elections in Dembi Dollo, Oromiya." Ten Years of Democratisation in Ethiopia, eds. Siegfried Pausewang, et. al. (London: Zed Press, 2002).

"Reflecting a Far Greater Struggle: Lutheran Presence in the Middle East." The Cresset, LXV:2&3 (Dec. 2001): 20-22.

"'Selling at a wash": Competition and the Indian merchant community in Aden Crown Colony." Comparative Studies in South Asia, Africa, and the Middle East, 20:1 (2000): 16-23.

"A Population Rendered Quiescent: the elections in Dembi Dolo, Oromia" in The Ethiopian 2000 Elections: Democracy Advanced or Restricted? eds. Siegfried Pausewang and Kjetil Tronvoll (Oslo: Norwegian Institute for Human Rights, 2000).

Entries on "Banks, Banking system," "*Eqqub*," "*Iddir*," "*Mahbär*," "Mohamedally & Co." in Encyclopaedia Aethiopica.

"Embodying adaptability and sustainability: the history of *idir*, *meredaja mahaber*, and *equb* in Ethiopia" in More Than Money Matters: African Financial Institution in Political Perspective, ed. Endre Stiansen, (Bergen: Nordic Africa Institute), in press.

"Coffee Unobserved: Consumption and Commoditiztion of Coffee in Ethiopia before the Eighteenth Century" in Le Café avant l'ère de plantations coloniales: espaces, réseaux, sociétés (Xve-XVIIIe siècles), ed. Michel Tuchscherer (Cairo: Institut français d'Etudes orientales , December 2000).

"Ethiopia." Year Book: Collier Encyclopedia 1996 & 1997.

"Letter from Yemen." The Cresset, LIX:7 (Sept. 1996): 18-21.

"Review Essay on 'Ethiopia: Traditions of Creativity.'" African Arts, 28:3 (Summer 1995) 70-72.

"Free and Fair in Ethiopia." The Cresset, LVII:9 (Oct. 1994): 19-23.

"Serendipitous Resistance in Fascist Occupied Ethiopia 1936-1941." Northeast African Studies, n.s. 3:1 (1996) 87-115.

"Competitors yet Partners: the Bank of Ethiopia and Informal Creditors, 1931-1936." Journal of Ethiopian Studies, 17:2 (1994) 45-68.

"Politics of Banking: the Bank of Abyssinia, 1906-1931." International Journal of African Historical Studies, 25:2 (1992) 361-89.

"An Inquiry into the Development of Banking Institutions as a Gauge of Urban Growth in Ethiopia: 1916-1936." In Proceedings of the Fourth Seminar of the Department of History (Awasa, 8-12 July 1987) Addis Ababa: Addis Ababa University Press, 1989, pp. 48-63.

Publications at various stages of completion.

Kjetil Tronvoll and Charles Schaefer, eds. The Ethiopian *Red Terror* Trials: Africa's Forgotten Human Rights Tribunal, in progress.

"Georg Simmel and Money in 19th Century Ethiopia: Cultural Perspectives on Valuation." Annales d'Ethiopie, submitted.

"Where the Ruler's Writ does not Reign": an economic history of Ethiopia 1896-1936, in progress.

Book Reviews:

Ethiopia Engraved, by Richard Pankhurst and Leila Ingrams. In African Studies Review 32:2 (1989).

Antonin Besse of Aden: The Founder of St Antony's College Oxford, by David Footman. In Northeast African Studies, 11:3 (1989).

State Transformation and National Integration: Gedeo and the Ethiopian Empire, 1885-1935, by Charles W. McClellan. In African Studies Review 35:1 (1992).

A History of Modern Ethiopia, 1855-1974, by Bahru Zewde. In International Journal of African Historical Studies, 26:3 (1993).

The Flight from Ambiguity: Essays in Social and Cultural Theory, by Donald N. Levine. In Journal of Ethiopian Studies, 16:1 (1993).

Ethiopia: Failure of Land Reform and Agricultural Crisis, by Kidane Mengisteab; and

The Political Economy of Ethiopia, edited by Marina Ottaway. In International Journal of African Historical Studies, 27:3 (1994).

Prutky's Travels to Ethiopia and Other Countries, edited by J.H. Arrowsmith-Brown. In Journal of World History, 5:2 (1994).

The Myth of Wild Africa: Conservation without Illusion, by Jonathan S. Adams and Thomas O. McShane. In Walia: Journal of the Ethiopian Wildlife and Natural History Society, 15 (1994).

Captain Sir Richard Francis Burton, by Edward Rice. In Northeast African Studies, n.s., 2:2 (1995).

Fishing in Africa: a Guide to War and Corruption, by Andrew Buckoke; and Small Wars, Small Mercies: Journey's in Africa's Disputed Nations, by Jeremy Harding. In Northeast African Studies, n.s., 2:3 (1995).

Ethiopia in Change: Peasantry, Nationalism and Democracy, edited by Abebe Zegeye & Siegfried Pausewang. In The International Journal of African Historical Studies, 30:1 (1997).

Brothers at War: Making Sense of the Eritrean-Ethiopian War by Tekeste Negash & Kjetil Tronvoll. In African Studies Review, 44:3 (Dec. 2001).

A History of Modern Ethiopia, 1855-1974, by Bahru Zewde. Second Edition. In Journal of Asian and African Studies.

The Cross and the River: Ethiopia, Egypt, and the Nile by Haggai Erlich. In African Studies Review, forthcoming.

Conference Papers:

"Credit Lenders in Ethiopia: Attitudes towards Currency and Credit in the Nineteenth and early Twentieth Centuries." African Studies Workshop, University of Chicago, February 1986.

"Credit Networks in Ethiopia 1889-1936: Integration into the World Economy." Fourth Conference of Northeast African Studies, East Lansing, May 1986.

"Historical Precedents to the Informal Economy in Ethiopia: A Discussion Paper." African Studies Workshop, University of Chicago, February 1988.

"Informal Economy a Stabilizing Factor in Central and Southern Ethiopia." Fifth Conference of Northeast African Studies, East Lansing, April 27-29, 1989.

"Silver, Thalers, and Valuation: Money in Early Twentieth Century Ethiopia." African Studies Association, Baltimore, November 1-4, 1990.

"Double-Dependency: Historical Roots of Poverty in Ethiopia." African Issues Group, Moorhead State University, January 16, 1991.

"Fractured Environment & Factional Politics: Ethiopia in the 1990s." Luce National and Global Environment Program Speaker, Grinnell College, February 17, 1991.

"The Politics of Desertification and Famine." Guest Lecturer, Grinnell College, February 18, 1991.

"Population Growth in Africa: a Reassessment of `Demographic Transition Theory.'" African Issues Group, Moorhead State University, March 20, 1991.

"Environment in Ethiopia's New Political Agenda." Luce National and Global

Environment Program Speaker, Grinnell College, October 8, 1991.

"Georg Simmel's Valuation Taxonomy: Money in Nineteenth Century Ethiopia." Conference on *Money: Lure, Lore, and Liquidity*, Hofstra University, November 21, 1991

"'Structure and History' the rapprochement between historical and anthropological methods for studying cultures," Graduate Seminar, Department of Anthropology & Sociology, Addis Ababa University, November 5, 1992.

"Population Growth in Ethiopia: Another look at Elrick's 'The Population Bomb.'" Presentation for the International Interest Group, Addis Ababa, February 12, 1993; and as guest speaker at the Ethiopian Evangelical Church Mekane Yesus seminary, May 1, 1993.

"Aleu Amba: Menilek's Market and Today's Melting Pot." Guest Lecturer at the Institute of Ethiopian Studies, Addis Ababa, April 22, 1993; and to the International Interest Group, Addis Ababa, November 5, 1993.

"Coinage-barter: Serendipitous Resistence in Fascist Occupied Ethiopia, 1936-1941." Presented at the Twelfth International Conference on Ethiopian Studies, Michigan State University, East Lansing, September 5-10, 1994.

"Drought and Starvation in Ethiopia: What does the Future Hold?" Presented at the Department of History Symposium for High School Students, Valparaiso University, Valparaiso, March 21, 1995.

"Clemency after the Battle of Adwa: What Ethiopia Can Learn from its History." Paper presented at the Adwa Victory Centenary Conference, Michigan State University, East Lansing, March 1-2, 1996.

"Elections and the Reconstruction of Identity as Imposed by the Ethiopian Polity." Paper presented at conference on *Transnationalism, Nationalism & Cultural Identity*, American Ethnological Society, San Juan, Puerto Rico, April 18-20, 1996.

"Peasants, Money, and the Moral Economy of the Red Sea Littoral." Paper presented at the African Studies Association Conference, San Francisco, November 23-26, 1996.

"Review of *Undaunted Courage* by Stephen E. Ambrose." Books and Coffee, Valparaiso University, January 23, 1997.

"Silver, Arms, and Coffee: Global Dimensions to Trade between Aden and Ethiopia." Paper presented at the American Institute for Yemeni Studies, Sana'a, Yemen, June 1, 1997.

"Coffee Unobserved: The Consumption and Commoditization of Coffee in Ethiopia before the Twentieth Century." Paper presented at the Symposium on *Coffee Trade before the Colonial Plantations*, Intitut de Recherches et d'Études sur le Monde Arabe et Musulman, Université de Provence (Aix-Marseille I), France, October 8-10, 1997.

"*Idir & Equb*: transmutation of voluntary credit associations in Ethiopia since 1984." Paper presented at the African Studies Association Conference, Columbus, November 23-26, 1997.

"*Idir, Meredaja Mahaber, & Equb*: the mutation of voluntary credit associations in Ethiopia since 1984." Paper presented at the conference on "Financial Institution and the Political Economy in Africa" in Rosendal, Norway in June 1998.

"Capitalism Repelled: the commoditization of coffee in Ethiopia in the early twentieth century (1900-1936)." Paper presented at the conference on "Coffee Production and Economic Development, 1700-1960" at St. Anthony's College, Oxford, Sept. 1998.

"Rhetoric and Praxis during the Political Spring of 1992 in Southern Ethiopia."

Paper presented at the African Studies Association annual meeting in Chicago, Nov. 1998.

"'Selling at a wash': Competition and the Gujarati merchant community in Aden Crown Colony." Paper presented at African Studies Association annual meeting in Philadelphia, Nov. 1999.

"Visual Representation in the Mekane Yesus Church: Is it iconography?" Paper presented at The 14th International Conference of Ethiopia Studies, Addis Ababa, 6-11 November 2000.

"Oh, To Give Peace a Try! The issues behind the Eritrean-Ethiopian Peace Agreement." Presentation for VOLTS, Valparaiso, 18 January 2001.

"Beneath the Rhetoric of Transparency." Paper presented at the Norwegian Institute for Human Rights, Oslo, 14 June, 2001.

"The Derg Trial versus Traditions of Restorative Justice in Ethiopia." Paper presented at the Workshop on The Derg Trial a Ten Year Assessment at the Norwegian Institute for Human Rights, Oslo, 20-22 September, 2001.

"The Global Landscape of the Human Rights Industry." Presentation for VOLTS, Valparaiso, 28 February 2002.

"Looking for Osama." Presentation for VOLTS, Valparaiso, 27 February 2003.

"Reexamining the Ethiopian Historical Record on the Continuum between Vengeance and Forgiveness." Paper presented at the XVth International Conference of Ethiopian Studies, Hamburg, 21–25 July, 2003.

"Who's peace is it? The reconstruction of Liberia after genocide and civil war." Presentation for VOLTS, Valparaiso, 28 February 2004.

"Scriptures, *genē* and traditions of restorative justice in nineteenth century Ethiopia: Forgiveness with consequences." Paper presented at the conference on Religion in African Conflicts and Peacebuilding Initiatives: Problems and Prospects for a Globalizing Africa, Entebbe, Uganda 1-3 April, 2004.

Professional Memberships & Affiliations:

American Historical Association.
African Studies Association.
American Institute for Yemeni Studies.
Eritrean Studies Association.
World History Association.
Institute of Ethiopian Studies, Addis Ababa, Ethiopia.
Indiana Consortium for International Programs.

Languages:

French, fluent.
Amharic, proficient.

Exhibit 7

IN THE EASTERN DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

~~**JANE DOE and**~~ **JOHN DOE,**	*	
Plaintiffs,	*	**Civil Action No. 1:04 cv 1361 (LMB/BRP)**
v.	*	
YUSEF ABDI ALI,	*	
Defendant.	*	

DECLARATION OF YUSEF ABDI ALI

I, Yusuf Abdi Ali, of Alexandria, Virginia, do, hereby and herewith, depose and say as follows, *viz.:*

1. That I am over eighteen years of age, and am otherwise competent and qualified to testify to the facts and opinions set forth below. All of the facts and opinions rendered herein are based on my actual personal knowledge;

2. That I received my primary and secondary education in the country of my birth, *viz.,* the erstwhile Somali Democratic Republic, and successfully completed my course of study at the primary, intermediate and secondary level, at corresponding public schools in Widwid, Lasanod, and Sheikh, all of which cities are located in the Northern Region of Somaliland, formerly British Somaliland;

3. That, upon my matriculation from secondary school, in 1973, I volunteered to pursue a career with the Somali National Army, whereupon, from 1973 to 1975, I attended General Daoud Military Academy, in Kismanyo, Somalia;

4. That, from 1975-1977, my Government, the Somali Democratic Republic, sent me to Odessa, Ukraine, in the Former Soviet Union, where I pursued further military schooling under the tutelage of the Soviet Army;
5. That, in 1977, holding the rank of lieutenant, I returned to Somalia, I was a company commander for a time with the Somali National Army, before being promoted to a military academy instructor, in Mogadishu, Somalia, where I taught for a period of five (5) years, *id est,* to 1982;
6. That, in 1983, the Somali National Army assigned me to Hargesia, Somalia, where I was a battalion commander of the Twenty-fourth brigade;
7. That, at the end of 1983, I was reassigned to a civilian job, in the municipality of Burao, Somalia, where I worked as a coordinator of a national student service programme, for graduating high school students;
8. That, in July of 1984, I went to Mogadishu, Somalia, upon my transfer by the Somali Nation Army, to work at Army Headquarters, upon my request, as I wanted to become engaged to my then future wife, who was set to return to Mogadishu, from study at St. Louis University, and, concomitantly, to prepare for my own travel to the United States for special military training with the Officers' Advanced Military Course, offered by the U.S. Army, at Fort Benning, Georgia;
9. That, on 2 September 1984, I became engaged to my wife, at a gala party held in Mogadishu;
10. That, around Christmastime of 1984, I traveled to Fort Benning, Georgia, to begin six months of intensive military training; upon completing such course, in June of 1985, I traveled to Washington, D.C., whereupon I was invited by a representative from the

Defense Intelligence Agency, who invited me to pursue further military training at Fort Leavenworth, Kansas; with the accession of the Somali Government, I agreed, and spent a one year course of study, at Fort Leavenworth, *id est,* until June of 1986, whereupon I returned to Somalia, in approximately July of 1986;

11. That, from July through October of 1986, or thereabouts, I stayed in Mogadishu, awaiting a posting assignment from the Somali National Army;
12. That, in November of 1986, I was transferred to the 26th Sector, *id est,* Hargesia, Somalia, to assist the then Sector Commander in training and recruitment tasks, at a military school, in Mandera, Somalia, where I worked until April of 1987;
13. That, in May of 1987, I became the Fifth Brigade Commander, in Gebiley, Somalia, in which post I served until July of 1988;
14. That, in July of 1988, I finished my aforesaid command in Gebiley, and went to stay with my family, in Lasanod, Somalia, where I lived, openly, for approximately three months, until October of 1988, where I was transferred back to Hargesia, Somalia, where I spent about three months with the Second Division, *id est,* until February of 1989, awaiting a new duty assignment, whereupon, I was ordered to Mogadishu, where I stayed with family as I awaited receipt of a new assignment, which did not not come until August of 1990, where I was detailed to Keesler Air Force Base, in Biloxi, Mississippi, where I attended further schooling under the tutelage of the United States Air Force, in management studies;
15. That, in December of 1990, realizing that the Barre regime was about to fall, back in Somalia, and that, due to the buildup for Gulf War, one of my then remaining course was canceled, I traveled to Canada, where I sought refugee status;

16.That, while resident in Canada, and at all times in my life, I lived openly;

17.That, while resident in Canada, I lived openly in Toronto;

18.That, in or about October of 1992, I was deported from Canada, to the United States, ~~because of the fact that I was associated with the Barre regime, and had entered~~ Canada from the United States;

19.That, upon my entry to the United States in October of 1992, I was placed in deportation proceedings by what was then known as the Immigration and Naturalization Service, of the United States Department of Justice ("INS");

20.That, while I was in the above-referenced initial removal proceeding before the INS, I lived, openly, in Arlington, Virginia;

21.That, in July of 1994, the INS granted me Voluntary Departure from the United States, as I was then desirous of returning to Africa, to assist in from a new Somalian Government , in exile, in Ethiopia;

22. That I thereupon lived openly in Addis Abba, Ethiopia, for approximately two years, *id est,* until December of 1996, whereupon I returned to the United States on a spousal visa, to rejoin my wife, in Alexandria, Virginia, where I have lived, and continued to live, openly, with my full name and address listed in the local telephone directory at all periods;

23.That, in 1997, I was again placed in removal proceedings by the INS; however, upon a trial before Immigration Judge Iskra, the Immigration Court ruled on 26 January 1998, essentially, that my my Second Motion to Terminate Removal Proceedings be Granted –the Government did not appeal;

24.That, in all of my aforesaid travels abroad from Somalia, with the exception of my

above-referenced return to America, from Ethiopia, in 1996, where I traveled on an immigrant visa, with a special travel document issued by the American Embassy, in Ethiopia, I entered the United States on a diplomatic visa (A-2), even though, on my first trip to the United States, I carried an ordinary Somali Passport, on all other trips, I carried a red Somali Diplomatic Passport, excepting my last entry, as referenced above; and

4. That many of the witnesses and most of the documents relevant to the preparation of my defense are located either in what is now known as Somaliland or historic Somalia.

I hereby declare under the penalties of perjury that the foregoing is accurate, true and correct.

Dated: 7 January 2005

YUSUF ABDI ALI

Exhibit 8

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
FEBRUARY 28, 2005
THOMAS K. KAHN
CLERK

No. 02-14427

D.C. Docket No. 99-08364 CV-DTKH

JUAN ROMAGOZA ARCE,
NERIS GONZALEZ,
and CARLOS MAURICIO,

Plaintiffs-Appellees,

versus

JOSE GUILLERMO GARCIA,
an individual, and
CARLOS EUGENIO VIDES-CASANOVA,
an individual,

Defendants-Appellants.

Appeal from the United States District Court
Southern District of Florida

(February 28, 2005)

Before TJOFLAT and CARNES, Circuit Judges, and CONWAY*, District Judge.

* Honorable Anne C. Conway, United States District Judge for the Middle District of Florida, sitting by designation.

TJOFLAT, Circuit Judge:

I.

The three plaintiffs in this case are Salvadoran refugees who claim that they were tortured by soldiers in El Salvador during the course of a campaign of human-rights violations by the Salvadoran military from 1979 to 1983.

The first plaintiff, Juan Romagoza Arce, claims that he was kidnaped by government soldiers on or about December 12, 1980 and that he was tortured until January 5, 1981, when he was released. Specifically, Arce alleges that he was shot in the foot and hand, hung from ropes made of sharp material, forced to undergo electric shocks, pushed to the edge of the open door of a helicopter with threats that he would be thrown out, and severely beaten for failing to answer questions to his captor's satisfaction. Arce arrived in the United States in 1983.

The second plaintiff, Neris Gonzalez, claims that she was abducted by Salvadoran soldiers on December 26, 1979 and detained for two weeks. Gonzalez alleges that she was burned with cigarettes, stuck with needles under her fingernails, asphyxiated with a powder-filled rubber mask while she received electric shocks, repeatedly raped, had a bed frame balanced on her stomach when she was eight months pregnant, forced to drink the blood from an open wound in a man's stomach, and severely beaten. She arrived in the United States in 1997.

The third plaintiff, Carlos Mauricio, claims that he was kidnaped on June 13, 1983 and held for one and a half weeks at the National Police Headquarters. Mauricio alleges that he was interrogated while he had his hands strung up behind his back. He also claims that during his interrogation he was severely beaten with a metal bar covered with rubber. It appears that he arrived in the United States in 1983.

The defendants in this case are Jose Garcia, the minister of defense of El Salvador from 1979 to 1983, and Carlos Vides-Casanova (Casanova), the director-general of El Salvador's National Guard during the same period. Both defendants moved to the United States in August 1989 and have since been residing in this country as permanent residents.

On February 22, 2000, the plaintiffs brought this action against Garcia and Casanova in the United States District Court for the Southern District of Florida. Their complaint sought relief based on two general theories.[1] One count relies on the Torture Victim Protection Act of 1991 (TVPA), 28 U.S.C. § 1350 note (2000).

[1] The plaintiffs describe the defendants' acts with different terms, ranging from crimes against humanity to arbitrary detention, and from torture to cruel, inhuman, and degrading treatment. We focus on the gravamen on the plaintiffs' claims and not the different ways in which they are styled.

The others rely on the Alien Tort Claims Act (ATCA), 28 U.S.C. § 1350 (2000), and its connection with corresponding causes of action.

The defendants filed an answer asserting several defenses, including lack of subject-matter jurisdiction and the running of the statute of limitations. On April 27, 2001, the defendants filed a "motion for judgment on the pleadings" on statute-of-limitations grounds, contending that the acts of which the plaintiffs complained occurred more than ten years prior to the lawsuit. In a sparse one-page order, the district court rejected this motion, holding that the plaintiffs' claims "were [equitably] tolled at least until the Salvadoran civil war ended on January 16, 1992, which is the date the Salvadoran Peace Accords were negotiated under the auspices of the United Nations, and the independence of the judiciary was restored in El Salvador." The defendants immediately filed a "motion for amendment of judgment," arguing that the court should not have tolled the statute of limitations because the defendants were subject to service of process for more than ten years following the last alleged act of torture. The court rejected this motion without explanation.

On October 23, 2001, the defendants filed a "motion to dismiss [for lack of] subject matter jurisdiction." They argued that the plaintiffs had failed to state a cause of action under the ATCA. Three days later, they filed a motion for

"judgment on the pleadings [for] failure to state a claim," raising similar arguments. At that time, they also filed a "motion to dismiss [due to the] statute of limitations" and a "motion for judgment on the pleadings [due to the] statute of limitations," which were virtually identical to each other. The plaintiffs responded that these motions were redundant and untimely. The district court issued an omnibus order denying, without explanation, all of the motions except the last two.

At trial, the jury awarded the three plaintiffs $54.6 million in compensatory and punitive damages. The defendants filed a motion styled "Motion for Judgment as a Matter of Law and/or Motion for New Trial/Statute of Limitations," arguing that the verdicts should be overturned because the plaintiffs' claims were time-barred. The court denied this motion without written explanation. The defendants now appeal, contending that the district court should have dismissed the plaintiffs' ATCA and TVPA claims under the relevant statutes of limitations.

This opinion focuses on two issues. First, in Part II, we discuss whether we have subject-matter jurisdiction. Second, in Part III, we discuss whether the plaintiffs asserted a cause of action within the relevant statute of limitations. We conclude that although we have jurisdiction, the plaintiffs failed to assert a cause

of action within the statute of limitations. Accordingly, we reverse the district court's judgment.

II.

As stated above, the plaintiffs bring claims based on the TVPA and the ATCA. Before we evaluate these claims, we must determine whether we have jurisdiction because courts have a duty to consider their subject-matter jurisdiction sua sponte. TVA v. Whitman, 336 F.3d 1236, 1257 n.34 (11th Cir. 2003).

One potential basis for jurisdiction is federal-question jurisdiction under section 1331: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331 (2000). Here, federal-question jurisdiction applies because the plaintiffs' first claim for relief is brought under the TVPA, which provides a federal cause of action against "[a]n individual who, under actual or apparent authority, or color of law, of any foreign nation" subjects another to torture or extrajudicial killing. 28 U.S.C. § 1350 note (2000).

In turn, this federal-question jurisdiction predicated upon the TVPA also provides jurisdiction for the remainder of the plaintiffs' claims—including those causes of action relying on the ATCA—based on the same underlying acts of torture under principles of supplemental jurisdiction. See 28 U.S.C. § 1367(a)

(2000) (giving district courts "supplemental jurisdiction over all claims . . . that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution"). Accordingly, this court has jurisdiction to hear all of the plaintiffs claims.[2] Having established jurisdiction, we will now address whether the plaintiffs pursued their claims too late.

III.

In this Part, we focus on the statute of limitations. Part III.A defines the relevant statute of limitations for both the ATCA and the TVPA. Part III.B addresses whether the ATCA and the TVPA are potentially subject to equitable tolling, which is the "doctrine under which plaintiffs may sue after the statutory time period has expired if they have been prevented from doing so due to inequitable circumstances." Ellis v. Gen. Motors Acceptance Corp., 160 F.3d 703, 706 (11th Cir. 1998) (citations omitted). Part III.C applies these rules and concludes that the plaintiffs failed to present sufficient evidence to qualify for equitable tolling.

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[2] The conclusion that we have federal-question jurisdiction says nothing about other potential bases of jurisdiction, such as jurisdiction under the ATCA for torts in violation of the law of nations. 28 U.S.C. § 1350 (2000); see also Sosa v. Alvarez-Machain, __ U.S. __, 124 S. Ct. 2739, 2754, 159 L. Ed. 2d 718 (2004) (stressing that the ATCA is jurisdictional only).

A.

The TVPA contains an express ten-year statute of limitations. 28 U.S.C. § 1350, historical and statutory notes § 2(c) ("No action shall be maintained under this section unless it is commenced within 10 years after the cause of action arose.").

The ATCA, however, does not contain an express statute of limitations. When confronted with a federal statute that does not contain a limitations period, we look to the statute's closest state-law analogue to determine the limitations period that the statute implicitly contains. See Reed v. United Transp. Union, 488 U.S. 319, 324, 109 S. Ct. 621, 625, 102 L. Ed. 2d 665 (1989) (noting the "general rule that statutes of limitation are to be borrowed from state law"). However, "when a rule from elsewhere in federal law clearly provides a closer analogy than available state statutes, and when the federal policies at stake and the practicalities of litigation make that rule a significantly more appropriate vehicle for interstitial lawmaking, we have not hesitated to turn away from state law." DelCostello v. Int'l Bhd. of Teamsters, 462 U.S. 151, 172, 103 S. Ct. 2281, 2294, 76 L. Ed. 2d 476 (1983).

Several courts have held that the ATCA's implicit limitations period should be based on the TVPA because the statutes—and the policies behind the

statutes—are similar. E.g., Papa v. United States, 281 F.3d 1004, 1012-13 (9th Cir. 2002); Doe v. Islamic Salvation Front, 257 F. Supp. 2d 115, 119 (D.D.C. 2003); Estate of Cabello v. Fernandez-Larios, 157 F. Supp. 2d 1345, 1363 (S.D. Fla. 2001); Cabiri v. Assasie-Gyimah, 921 F. Supp. 1189, 1194-96 (S.D.N.Y. 1996). These courts point to many similarities between the statutes: purpose (protecting human rights), mechanism (civil suits to protect human rights), and location within the United States Code (provisions of the TVPA were added to the ATCA). See Papa, 281 F.3d at 1012 (chronicling these and other reasons). We join this consensus and adopt the TVPA's ten-year statute of limitations for claims brought under the ATCA.

In sum, the ATCA and the TVPA share the same ten-year statute of limitations. Accordingly, my analysis of the statute of limitations under the ATCA and the TVPA is the same because the underlying statute of limitations is the same.

B.

As stated in Part III.A, the TVPA and the ATCA contain the same ten-year statute of limitations. The general rule is that statute of limitations are subject to equitable tolling. See United States v. Locke, 471 U.S. 84, 94 n.10, 105 S. Ct. 1785, 1792 n.10, 85 L. Ed. 2d 64 (1985) ("Statutory filing deadlines are generally

subject to the defenses of waiver, estoppel, and equitable tolling."); Young v. United States, 535 U.S. 43, 49, 122 S. Ct. 1036, 1040, 152 L. Ed. 2d 79 (2002) ("It is hornbook law that limitations periods are customarily subject to equitable tolling unless tolling would be inconsistent with the text of the relevant statute." (quotation marks and citations omitted)).

Here, there is nothing in the text, structure, or legislative history of the TVPA that changes this general rule. To the contrary, the TVPA's legislative history demonstrates that Congress affirmatively intended that equitable tolling be available. For example, the House Report accompanying the TVPA states that "[i]n some instances, such as where a defendant fraudulently conceals his or her identification or whereabouts from the claimant, equitable tolling remedies may apply to preserve a claimant's rights." H.R. Rep. No. 102-367(I), at 5 (1991), reprinted in 1992 U.S.C.C.A.N. 84, 88. The Senate Report similarly declares:

> The statute of limitations should be tolled during the time the defendant was absent from the United States or from 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. Excluded also from calculation of the statute of limitations would be the period in which the plaintiff is imprisoned or otherwise incapacitated. It should also be tolled where the defendant has concealed his or her whereabouts or the plaintiff has been unable to discover the identity of the offender.

S. Rep. No. 102-249, at 11 (1991) (footnotes omitted).

Because of the general rule in favor of equitable tolling, as well as the unambiguous legislative history, the TVPA's—and accordingly the ATCA's—statute of limitations is potentially subject to equitable tolling. Other courts have reached this same conclusion. E.g., Estate of Cabello, 157 F. Supp. 2d at 1368.

C.

The district court held that the plaintiffs were entitled to equitable tolling until the Salvadoran civil war ended on January 16, 1992. We review these types of equitable-tolling holdings de novo.[3] Drew v. Dep't of Corr., 297 F.3d 1278, 1283 (11th Cir. 2002); Helton v. Sec'y for the Dep't of Corr., 259 F.3d 1310, 1312 (11th Cir. 2001).

Equitable tolling is appropriate only in "extraordinary circumstances." Sandvik v. United States, 177 F.3d 1269, 1271 (11th Cir. 1999). To illustrate, "extraordinary circumstances" can be those "that are both beyond [the plaintiff's] control and unavoidable even with diligence." Id. For more examples, equitable tolling may be appropriate if a "claimant has received inadequate notice; or where

[3] As noted earlier, the defendants repeatedly moved both for dismissal and for judgment as a matter of law on statute-of-limitations grounds. There is thus no basis for the plaintiffs' argument that the defendants failed to preserve their statute-of-limitations defenses. We therefore reject the plaintiffs' contention that we must review some of the defendants' arguments under a "plain error" standard.

a motion for appointment of counsel is pending and equity would justify tolling the statutory period until the motion is acted upon; or where the court has led the plaintiff to believe that she had done everything required of her." Baldwin County Welcome Ctr. v. Brown, 466 U.S. 147, 151, 104 S. Ct. 1723, 1725-26, 80 L. Ed. 2d 196 (1984) (citations omitted).

The most common example of an extraordinary circumstance is when the defendant's misconduct induced the plaintiff into allowing the filing deadline to pass. See Irwin v. Dep't of Veteran Affairs, 498 U.S. 89, 96, 111 S. Ct. 453, 458, 112 L. Ed. 2d 435 (1990) (stating that equitable tolling applies when "the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass" (emphasis added)); Baldwin City Welcome Ctr., 466 U.S. at 157, 104 S. Ct. at 1726 (permitting tolling if "affirmative misconduct on the part of a defendant lulled the plaintiff into inaction"); Ott v. Johnson, 192 F.3d 510, 513 (5th Cir. 1999) ("We recently explained that equitable tolling applies principally where the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his rights."). Indeed, without defendant misconduct, courts have "generally been much less forgiving in receiving late

filings where the claimant failed to exercise due diligence in preserving his legal rights." Irwin, 498 U.S. at 96, 111 S. Ct. at 458; Wakefield v. R.R. Ret. Bd., 131 F.3d 967, 969 (11th Cir. 1997). Thus, there are many types of extraordinary circumstances, but they often involve defendant misconduct.

To qualify for equitable tolling, "[t]he burden is on the plaintiff." Justice v. United States, 6 F.3d 1474, 1479 (11th Cir. 1993); accord Bost v. Fed. Express Corp., 372 F.3d 1233, 1242 (11th Cir. 2004) ("[T]he plaintiffs must establish that tolling is warranted."). The plaintiff bears this burden because equitable tolling is an exception to the rule of the statute of limitations, not the rule itself. Pac. Harbor Capital, Inc. v. Barnett Bank, N.A., 252 F.3d 1246, 1252 (11th Cir. 2001); see also Irwin. 498 U.S. at 96, 111 S. Ct. at 457 ("Federal courts have typically extended equitable relief only sparingly."). Placing this burden on the plaintiff serves important social functions: "Statutes of limitations are not arbitrary obstacles to the vindication of just claims, and therefore, should not be given grudging application. They protect important social interests in certainty, accuracy, and repose." Cada v. Baxter Healthcare Corp., 920 F.2d 446, 452-53

(7th Cir. 1990). Here, the plaintiffs seek to satisfy their burden by proving that their circumstances are extraordinary in four ways.[4] We consider each in turn.

First, the plaintiffs argue that the civil war in El Salvador, combined with the power of the Salvadoran military, qualifies as an "extraordinary circumstance." The plaintiffs make this argument by citing several decisions, including Hilao v. Estate of Marcos, 103 F.3d 767, 773 (9th Cir. 1996), Estate of Cabello, 157 F. Supp. 2d at 1368, and Doe v. Unocal, 963 F. Supp. 880, 896-97 (C.D. Cal. 1997). However, these cases, and the plaintiffs' arguments, are insufficient to toll the statute of limitations for a combination of reasons.

Initially, the situation in El Salvador seems irrelevant because most of the plaintiffs and all of the defendants were in the United States in the 1980s. Moreover, the plaintiffs fail to muster sufficient evidence of the defendants' involvement.[5] Instead, the plaintiffs focus on the ambient situation in El Salvador.

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[4] The four-fold division is ours. We subdivided the plaintiffs' arguments to give each argument due consideration. Nevertheless, we consider all of the circumstances. So while we discuss each particular argument separately, we consider the plaintiffs' arguments as a whole. As a result, each reason for rejecting a particular argument applies to all of the plaintiffs' other arguments.

[5] We recognize that defendant misconduct is not formally or always required for the application of equitable tolling. E.g., Haekal v. Refco, Inc., 198 F.3d 37, 43 (2d Cir. 1999); Hentosh v. Herman M. Finch Univ. of Health Servs./The Chicago Med. Sch., 167 F.3d 1170, 1174 (7th Cir. 1999); Browing v. AT&T Paradyne, 120 F.3d 222, 226 (11th Cir. 1997). Nevertheless, we look at this factor in combination with other factors. The resulting totality of circumstances suggests that the plaintiffs have failed to marshal sufficient evidence to justify equitable tolling.

But given the particular facts in this case, the fact that other people or entities may have hindered the plaintiff is by itself insufficient to trigger equitable tolling. Therefore, the lack of cooperation from the Salvadoran government from 1983 (when the defendants left office) to 2000 (when the plaintiffs filed suit) is not sufficient to toll the statute of limitations. Cf. Bodner v. Banque Paribas, 114 F. Supp. 2d 117, 135 (E.D.N.Y. 2000) (holding that "[t]here is no reason that plaintiffs should be denied a forum for addressing their claims as a result of deceitful practices by the defendants which have kept them from knowing or proving the extent of these claims") (emphasis added); Iwanowa v. Ford Motor Co., 67 F. Supp. 2d 424, 467 (D.N.J. 1999) ("To avoid dismissal, a complaint asserting equitable tolling must contain particularized allegations that the defendant actively misled the plaintiff." (emphasis added) (quotation marks and citation omitted)).

Finally, we are not persuaded by the cases cited by the plaintiffs. None is binding on this court. More importantly, none stands for the premise that domestic turmoil alone constitutes "extraordinary circumstances." Take Rosner v. United States, 231 F. Supp. 2d 1202 (S.D. Fla. 2002), for example. In that case, Hungarian Jews sought to have the Federal Tort Claims Act's statute of limitations tolled so that they could seek the return of property seized by the federal

government during World War II. They argued in part that equitable tolling was justified due to "the brutal reality of the Holocaust." Id. at 1208. While the district court granted their request, the core of its decision rested on the fact that the plaintiffs "were induced or tricked by the Government's misconduct into allowing the filing deadline to pass." Id. at 1209 (emphasis added); see also Cabello Barrueto v. Fernandez Larios, 205 F. Supp. 2d 1325, 1331 (S.D. Fla. 2002) (tolling that statute of limitations, not because of General Pinochet's death squads, but rather because "the pre-1990 Chilean government's concealment of the decedent's burial location and the accurate cause of death prevented Plaintiffs from bringing this action until 1990"). While we recognize that some Ninth Circuit cases have been more lenient, see, e.g., Hilao, 103 F.3d at 773, we decline to follow their lead.

Second, the plaintiffs argue that they are entitled to equitable tolling because the defendants "engaged in a pattern of denial about their personal responsibility for human rights abuses in El Salvador." Given the totality of circumstances, we disagree.

To begin, denial does not rise to the level of misconduct usually required for equitable tolling. As stated above, courts usually require some affirmative misconduct, such as deliberate concealment. See, e.g., Estate of Cabello, 157 F.

Supp. 2d at 1368 ("Equitable tolling of the TVPA is appropriate in this case because Chilean military authorities deliberately concealed the decedent's burial location from Plaintiffs . . . ."); Rosner, 231 F. Supp. 2d at 1209 (tolling the statute of limitations because the plaintiffs "were induced or tricked by the Government's misconduct into allowing the filing deadline to pass"). Moreover, it is common for people to deny wrongdoing, particularly when they are not under oath or when they have no duty to disclose. Indeed, to accept the plaintiffs' argument would be to impose upon litigants an affirmative duty to disclose information before litigation begins.

The plaintiffs finally fail to show how these denials prevented them from proving their claims. Instead, the plaintiffs admit in their briefs that their claims did not rest on much "direct" evidence beyond their own testimony, but was instead based on testimony of

> a medical expert, evidence from diplomatic observers who met frequently with defendants (including Robert White, U.S. Ambassador to El Salvador from 1979-80), political, legal, and military experts, human rights workers who personally witnesses [sic] or monitored the abuses of the Salvadorean military, and an investigator from the U.N.-sponsored Commission on the Truth for El Salvador (the U.N. "Truth Commission"). Plaintiffs also introduced into evidence numerous declassified cables of the U.S. State Department on political and military topics pertaining to El Salvador.

"The essence of the doctrine of equitable tolling of a statute of limitations is that a statute of limitations does not run against a plaintiff who is unaware of his cause of action." Bodner, 114 F. Supp. 2d at 135 (citing Long v. Abbott Mortgage Corp., 459 F. Supp. 108, 113 (D. Conn. 1978)). Here, the plaintiffs were aware of their own experiences, and the lion's share of their other evidence is from the testimony of experts. It is therefore unclear how the defendants hindered the plaintiffs from accessing any of this evidence. In sum, the defendants' mere denials are insufficient to warrant equitable tolling. See e.g., Deutsch v. Turner Corp., 324 F.3d 692, 718 (9th Cir. 2003) (upholding the district court's decision that an allegation "that the defendants had kept the plaintiffs ignorant of essential facts in the defendants' possession" was "insufficient to trigger tolling").

Third, Plaintiff Neriz Gonzalez argues that the statute of limitations should be equitably tolled for her until 1997, when she left El Salvador and arrived in the United States. This does not constitute an extraordinary circumstance, in large part because a plaintiff's residency is largely within her control. Indeed, nothing in the record suggests that anyone prevented Gonzalez from coming to the United States earlier, as her two co-plaintiffs did in 1983. Furthermore, although it would have involved logistical difficulties, it is quite possible that Gonzalez could have commenced her suit in a United States court despite being in El Salvador. Indeed,

from El Salvador she could have contacted an attorney in the United States, any of the public-interest organizations involved in this litigation, other nongovernmental organizations, or other entities.

Gonzalez counters by arguing that Salvadoran courts were unavailable to hear her case. This argument misses the point: the fact that a foreign country's courts were unavailable does not explain why a suit could not have been brought in this country. See In re World War II Era Japanese Forced Labor Litig., 164 F. Supp. 2d 1160, 1181 (N.D. Cal. 2001) ("[The plaintiff's] reference to the Japanese government's alleged suppression of similar claims brought by Korean forced laborers in Japan shortly after the war does not explain why the same claims could not have been alleged in a United States Court."). Indeed, even the cases that Gonzalez cites speak to the availability of a United States court, not a foreign court. See, e.g., Hanger v. Abbott, 73 U.S. (6 Wall.) 532, 541, 18 L. Ed. 939 (1868) (tolling a statute of limitations for a diversity-based suit in federal district court because the courts were closed during the United States Civil War).[6]

[6] The Ninth Circuit has reached the opposite conclusion. See Hilao, 103 F.3d at 773 (equitably tolling the statute of limitations during years in which the writ of habeas corpus was suspended in the Philippines and Philippine courts were unavailable). We do not follow the Ninth Circuit's lead because there are several factual differences between Hilao and our case, and because the Ninth Circuit's lenient approach toward equitable tolling softens the rigors of what constitutes extraordinary circumstances.

Fourth, the plaintiffs argue that the statute of limitations should be equitably tolled until the defendants took up residency in the United States. The plaintiffs make this argument by citing the legislative history of the TVPA and one case on point, Hilao. The legislative history suggests that tolling could apply in many circumstances, including if "the defendant was absent from the United States or from 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. 102-249 at 11 (1991). Preceding this statement, however, are reminders that the Senate's examples are "[i]llustrative, but not exhaustive," and that courts must consider "all equitable tolling principles." Id. at 10-11. These tolling principles include the affirmative role of the court to consider the equitable circumstances. Cf. Baldwin County Welcome Ctr., 466 U.S. at 151-52, 104 S. Ct. 1725-26 (discussing different types of cases and factors that courts consider in deciding equitable-tolling cases). It is not clear from this history that a defendant's absence from a jurisdiction is alone sufficient to toll the statute. Moreover, the legislative history does not dispose of our consideration; rather, it provides guidance. Our consideration is also guided by our case law, which stresses the role of the plaintiff's diligence in pursuing a cause of action and the defendant's efforts to thwart that diligence. See generally

Drew, 297 F.3d at 1286-87. Here, the defendant's absence is not enough to toll the statute, especially given the lack of affirmative misconduct from the defendants, the lack of diligence by the plaintiffs, and the litany of other factors discussed in this subpart.

The plaintiffs cite Hilao to support their argument. It is true that Hilao cites the legislative history quoted above, but it is not true that Hilao stands for the monolithic proposition that the defendant's absence is alone sufficient to require tolling. Instead, Hilao focuses on a confluence of factors, such as a constitutional amendment granting the defendant "immunity from suit during his term in office," "fear of reprisals," and other factors. Moreover, the plaintiffs do not argue that a court would not have equitably tolled the statute if their claims had been timely filed (even if the defendants could not have been served), an option that plaintiffs should have pursued. Thus, the facts in this case, including the defendants' absence, do not constitute an extraordinary circumstance that warrants equitable tolling. Rather, the facts are more similar to cases in which the plaintiffs failed to diligently exercise their rights. See e.g., id. at 1286-87 ("In order to be entitled to the benefit of equitable tolling, a petitioner must act with diligence, and the untimeliness of the filing must be the result of circumstances beyond his control."); Sandvik, 177 F.3d at 1272 (holding that a late-filed motion did not

constitute an extraordinary circumstances because "[w]hile the inefficiencies of the United States Postal Service may be a circumstance beyond [the plaintiff's] control, the problem was one that . . . could have avoided by mailing the motion earlier or by using a private delivery service or even a private courier").

After dismissing each of the plaintiffs' arguments for equitable tolling, we conclude by noting the dangerous precedent that this case could set if those arguments were accepted. From a United States perspective, there are many countries that oppress their citizens today, and many countries that have oppressed their citizens in decades and centuries past. A lenient approach toward equitable tolling would mean that United States courts would hear claims dating back decades, if not centuries. In enacting a statute of limitations for the TVPA, Congress surely did not intend to permit such trial-by-excavation, at least not absent extraordinary circumstances. Courts would wind up with cases that are based not on witnesses with personal knowledge, but instead on the generalized testimony of human-rights workers, diplomats, and assorted experts. Much of the evidence would pertain not to the particular incidents at issue, but to the illegitimacy of an overall regime. Nevertheless, the plaintiffs' failure in this case to qualify for equitable tolling is not a death knell for future claimants. Instead, it

is merely a recognition that "extraordinary circumstances" is reserved for extraordinary facts, and not for a plaintiff's failure to timely assert her rights.

For these reasons, we conclude that the plaintiffs failed to satisfy the requirements for equitable tolling, that their claims were time-barred, and that the jury verdict should be vacated and the plaintiffs' claims dismissed.

The district court's judgement is

REVERSED.