UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JANE DOE, ET AL.,	
Plaintiffs,	
v.	Case No. 00-674 GK
MAJOR GENERAL JOHNY LUMINTANG	
Defendant.	

REPLY MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO SET ASIDE DEFAULT JUDGMENT AND ORDER AND JUDGMENT ON DAMAGES

Defendant, by his attorneys, files this Memorandum in reply to Plaintiffs' Opposition to Defendant's Motion to Set Aside Default Judgment and Order and Judgment on Damages.

I. Introduction

Despite the overzealous efforts of plaintiffs' attorneys in their Memorandum in Opposition to Defendant's Motion, this case is not about a trial of the Indonesian Government, its military and police for their conduct in East Timor. Plaintiffs' Opp. at 4, Ex. 7. Nor is it a trial about the U.S. Government's training of foreign military officers at Fort Benning. Id. at 14-16. Nor is it about the U.S. Government's policy of providing military assistance to Indonesia. Id.

This case is about the Constitutional due process standards required for personal jurisdiction over foreign citizens sued in United States courts. The basic test of "minimal contacts" has simply not been met. None of the allegations in the complaint arise from or are related to any of the defendant's contacts with the United States. Therefore, as a matter of law, the Court has no specific personal jurisdiction over the defendant. As a matter of law, there can also be no general personal jurisdiction over the defendant, because General Lumintang's sporadic contacts with the United States over a twenty-four year period come nowhere near the Constitution's requirement for "continuous and systematic contacts" with the jurisdiction to enable a court to assert general jurisdiction over a foreign

person. Finally, plaintiffs' claim that defendant's training at Ft. Benning, Georgia in 1978 somehow established jurisdiction in the United States is unsupported in fact and law and should be peremptorily rejected by this Court. Therefore, the Court had no personal jurisdiction over the defendant, all judgments entered against him are void, and they should be set aside in accordance with Rule 60(b)(4) of the Federal Rules of Civil Procedure.

Plaintiffs have also attacked the defendant's declarations supporting his claim that he was never properly served with process in this case. They offer contradictory affidavits by an East Timor activist and a process server. Plaintiff's Opp. at 6-11. Contrary to plaintiffs' assertion that the process server's declaration prevails, the case law states that when there is a credible "battle of affidavits" on the issue of service, the court should require an evidentiary hearing.

Plaintiffs' claim that the defendant is barred from moving for Rule 60(b)(6) relief because he moved for Rule 60(b)(4) relief is a misreading of the law. If Rule 60(b)(4) is applicable, then there is no reason to move to Rule 60(b)(6) because the judgments are void as matters of law. If Rule 60(b)(4) is inapplicable, because the Court has personal and subject matter jurisdiction, then it is appropriate to turn to Rule 60(b)(6). This is the process specifically endorsed by the Supreme Court in Klapprott v. United States, 335 U.S. 601, 613 (1949).

Plaintiffs claim that defendant has shown lack of respect for the Court by not appearing, and therefore, Rule 60(b)(6) relief is inappropriate. Contrary to plaintiffs' contentions, because General Lumintang was sued in his official capacity, the lawsuit was first referred to and handled by the Indonesian Ministry of Defense and then by the Ministry of Foreign Affairs. The Ministry was requested to take the appropriate "legal measures" in accordance with the laws of the United States. At most, General Lumintang's failure to appear and defend himself is attributable to his and his Government's lack of understanding of the U.S. judicial process, and not lack of respect for the Court.

Examining the merits of the judgment, a $66 million judgment against General Lumintang, in which he was not present to defend himself, cross-examine witnesses or present evidence, can be described as nothing other than manifestly unjust. Plaintiffs' attorneys, in their zeal to publicize human rights violations in East Timor, have simply sued the wrong General. They seek to deny him the due process afforded by the U.S. Constitution, by smearing him with every crime allegedly committed by anyone in the Indonesian Government from Aceh to West Timor. Plaintiffs' Opp. at 4 and Ex. 7.

However, plaintiffs admit that the only basis for judgment against General Lumintang are a telegram and a manual that he allegedly wrote prior to any of the occurrences in East Timor. Plaintiffs' Opp. at 27 and Findings of Fact and Conclusions of Law (Docket Entry #40) at 29-30. The telegram at issue is wholly innocuous. More importantly, plaintiffs' interpretation of the telegram is based on an erroneous translation from the Indonesian. The telegram was merely an administrative order to prepare for the eventuality of civil war and evacuation of the Indonesian Armed Forces from East Timor currently stationed there, together with their families and property, in the event that pro-independence and pro-integration East Timorese factions engaged in violence. Furthermore, plaintiffs did not refute defendant's evidence that he had no control over operational authority for planning, commanding, supervising or controlling military operations in East Timor or anywhere else. A recent decision of the U.S. Court of Appeals for the Eleventh Circuit, relying on well-established international law, has held that an individual cannot be held liable under the Alien Tort Claims Act or the Torture Victims Protection Act unless it can be established that he had "effective command," defined as the legal authority and the practical ability to control the guilty troops. Effective command is necessary to establish command responsibility. Ford v. Garcia, 2002 U.S. App. LEXIS 7866 (11th Cir. Apr. 20, 2002). Neither Magistrate Judge Kay in his Findings of Fact and Conclusions of Law

nor the plaintiffs have pointed to any effective command by the defendant over the guilty troops. Thus, despite the horrific acts which were committed against the plaintiffs, it is simply unconscionable to hold Gen. Lumintang responsible for them. Therefore, the extraordinary circumstances of this case and the substantial interests of justice warrant setting aside the judgments pursuant to Rule 60(b)(6).

II. Argument

A. The Court Had No Personal Jurisdiction Over General Lumintang.

1. The Test For Whether an Assertion of Jurisdiction Over an Individual Comports with Constitutional Due Process.

The crucial and determinative issue in this case is the extent of contacts by General Lumintang with the relevant forum. The Due Process Clause of the United States Constitution protects an individual from being subjected to the binding judgments of a forum with which he has established no meaningful "contacts, ties or relations." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471-472 (1985), quoting, International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945). The Due Process Clause provides an important measure of protection for out-of-state defendants, especially foreigners. American Dredging Company v. Miller, 510 U.S. 443, 462 (1994)(Stevens concur), citing, Asahi Metal Industry Co. v. Superior Court of Cal., 480 U.S. 102, (1987).

Due process requirements are satisfied when personal jurisdiction is asserted over a nonresident defendant that has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408, 414 (1984), quoting, International Shoe Co., 326 U.S. at 316, quoting, Milliken v. Meyer, 311 U.S. 457, 463 (1940). To determine this there is a four part test: (1) whether there is an appropriate forum; (2) whether defendant has had "minimum contacts" with that forum; (3) whether those contacts demonstrate a purposeful availment of the defendant of the privilege of conducting activities in that forum; and (4) whether maintenance of the suit does not offend

traditional notions of fair play and substantial justice. Koteen v. Bermuda Cablevision, LTD., 913 F.2d 973, 975 (D.C. Cir. 1990)(citations omitted).

The minimum contacts analysis depends on whether the plaintiffs assert the court has personal jurisdiction based on specific jurisdiction or general jurisdiction. Helicopteros Nacionales, 466 U.S. at 414. Sufficient minimum contacts exist for specific jurisdiction when the claim underlying the litigation arises out of or is related to the defendant's forum activities. Id.; Dooley v. United Technologies Corp., 803 F. Supp. 428, 433-434 (D.D.C. 1992)(citations omitted). In contrast, for general jurisdiction to exist, the litigation need not arise out of or be related to the defendant's contacts with the forum. Rather, general jurisdiction may exist if the defendant's contacts with the forum have been "continuous and systematic," even though they are unrelated to the lawsuit. Helicopteros Nacionales, 466 U.S. at 414-416; In re: Baan Co. Securities Litigation, 81 F. Supp.2d 75, 82 (D.D.C. 2000).

To satisfy the purposeful availment test, the court must scrutinize the defendant's contacts with the forum to determine whether those forum contacts represent a purposeful availment of the privilege of conducting activities in the forum, thus invoking the benefits and protections of its laws. The question is whether those contacts constituted purposeful activity such that being haled into court there would be forseeable. Dooley, 803 F. Supp. at 433-434; United States of America v. Swiss American Bank, LTD., 191 F.3d 30, 36 (1st Cir. 1999).

Finally, even if minimum contacts between the defendant and the forum is established, the Court must still determine whether maintenance of the suit does not offend traditional notions of fair play and substantial justice. Under this test, the assertion of personal jurisdiction will still be denied if its assertion is, nevertheless, unreasonable and unfair. In re: Baan Co., 81 F. Supp.2d at 83, citing, Asahi, 480 U.S. at 114 and Burger King, 471 U.S. at 478.

As shown below, plaintiffs have not satisfied any of these four tests.

2. The Appropriate Forum

The plaintiffs allege that under FRCP 4(k)(2), the appropriate forum is the United States not the District of Columbia. Plaintiffs' Opp. at 11-12.[1] The rule provides for what amounts to a federal longarm statute in a narrow band of cases in which the United States serves as the relevant forum for a minimum contacts analysis. Id.

Plaintiffs have certified that defendant is not subject to suit in the courts of general jurisdiction in any State. Plaintiffs Opp. at 12, footnote 2. However, that satisfies only the second condition of the test originally set forth in Swiss American Bank. As shown below, personal jurisdiction fails because General Lumintang's contacts with the United States are constitutionally insufficient. Therefore, no United States court's exercise of personal jurisdiction over the defendant could comport with due process. Swiss American Bank, 191 F.3d at 41; see also, Comsat Corporation v. Finshipyards S.A.M., 900 F. Supp. 515, 525 (D.D.C. 1995)("Rule 4(k)(2) only provides federal courts with personal jurisdiction over a foreign defendant . . . only if the foreign defendant has sufficient contacts with the United States to satisfy due process requirements.").[2]

3. Specific Jurisdiction Is Lacking Because No Allegations In the Complaint Arose Out of Any Contacts with the Forum.

"A 'relationship among the defendant, the forum, and the litigation' is the essential foundation

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[1] Rule 4(k)(2) operates when three conditions are met: (1) the cause of action must arise under federal law; (2) the defendant must not be subject to the personal jurisdiction of any state court of general jurisdiction; and (3) the federal court's exercise of personal jurisdiction must comport with due process. Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co., 284 F.3d 1114, 1126 (9th Cir. 2002), citing, Swiss American Bank, 191 F.3d at 36.

[2] The same due process analysis applies irrespective of whether the forum is a State or the entire United States. United States of America v. Swiss American Bank, LTD., 274 F.3d 610, 617 (1st Cir. 2001); Submersible Systems, Inc. v. Perforadora Central, S.A. de C.V., 249 F.3d 413, 420-421 (5th Cir. 2001), cert. denied, 122 S. Ct. 646 (2001).

of [specific] jurisdiction." Dooley, 803 F. Supp. at 433, quoting, Helicopteros Nacionales, 466 U.S. at 414, quoting, Shaffer v. Heitner, 433 U.S. 186, 204 (1977). A court may exercise specific jurisdiction over a defendant only when his contacts with the forum give rise to the suit. Reese v. Geneva Enterprises, Inc., 1997 U.S. Dist. LEXIS 5727, *9 (D.D.C. April 16, 1997). The United States Court of Appeals for the Ninth Circuit applies a "but for" test to assess whether plaintiffs' claims "arise out of" defendant's forum conduct: plaintiffs must show that they would not have been injured "but for" defendant's contacts with the United States. Glencore Grain, 284 F.3d at 1123. Other courts have held that there must be a "nexus" between defendant's contacts and the plaintiffs' cause of action. Swiss American Bank, LTD., 274 F.3d at 621; Intel Corp. v. Broadcom Corp., 167 F. Supp. 2d 692, 700-01 (D. Del. 2001); Paulucci v. William Morris Agency, Inc., 952 F. Supp. 1335, 1341 (D. Minn. 1997); see also, Rusty Eck Ford-Mercury Corp. v. American Custom Coachworks, 184 F. Supp. 2d 1138, 1142 (D. Kan. 2002), citing, Kuenzle v. HTM Sport-Und Freizeitgerate AG, 102 F.3d 453, 455-56 (10th Cir. 1996)("Specific jurisdiction exists where . . . the cause of action results from the defendant's specific activities within the state.").

In this case, none of the plaintiffs' allegations relate to the defendant's contacts with the United States. Plaintiffs' Complaint alleges that defendant's conduct and actions while he was an Indonesian military officer in Indonesia make him liable for the summary execution, torture, cruel, inhuman or degrading treatment, crimes against humanity, wrongful death, assault and battery and intentional infliction of emotional distress of East Timorese nationals in East Timor. The alleged conduct of General Lumintang and the causes of action set forth by the plaintiffs have absolutely nothing to do with General Lumintang's sporadic contacts with the United States over the last twenty-four years.[3]

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[3] Over a twenty-four year period, General Lumintang has been in the United States approximately 9 months in 1978, 4 months in 1989, three days in February 1995, approximately 11 days in September 1995, approximately 2 days in January 2000 and 5 days in March 2000.

The allegations of human rights violations in East Timor in 1999 set forth in the Complaint do not arise out of any of General Lumintang's contacts in the United States. From January until September 1978, he attended an infantry officer training course and an infantry mortar platoon course at Ft. Benning, Georgia. Second Declaration of Johny Lumintang ("2nd Lumintang Dec.") at ¶ 2. From September until December 1989, he attended an International Defense Management Course at Monterey, California. Id. at ¶ 3. He attended a Special Forces Seminar, in Honolulu, Hawaii for 3 days in February 1995. Id. at ¶ 4.

General Lumintang has been to the District of Columbia only three times for a total of approximately 20 days over a 7 year period. He first participated in a study tour of the National Defense Institute in Washington, D.C. from September 15-26, 1995. Id. at ¶ 5. That tour consisted of visits to the Pentagon and other military establishments, the U.S. Congress and the U.S. Supreme Court. Id. The second instance occurred in January 2000 when he attended the Roundtable Dialogue on Justice and Reconciliation at The Madison Hotel on January 24. Id. at ¶ 6. On January 25, together with the Indonesian Minister of Justice and the Minister for Human Rights, and the Indonesian Attorney General, he met with then U.S. Secretary of State Madeline Albright, Attorney General Janet Reno and National Security Advisor Samuel R. Berger. Id. And as set forth in his first Declaration, from March 26 to March 30, 2000, he was in Washington, D.C. to attend a panel discussion of the U.S. Indonesian Society which took place at The Cosmos Club, on March 28, 2000. Declaration of Johny Lumintang (submitted on March 25, 2002) at ¶¶ 4-6. Other than these trips, he has not been anywhere else in the U.S. at any other time. Id. at ¶ 7. Obviously, none of these contacts had anything to do with allegations of human rights violations in East Timor in 1999. Nor do they even come close to establishing the "minimum contacts with [the forum] such that the maintenance of the suit does not

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Second Declaration of General Johny Lumintang ("2nd Lumintang Dec.") at ¶¶ 2-6.

offend 'traditional notions of fair play and substantial justice.' " Helicopteros Nacionales, 466 U.S. at 414.

Plaintiffs, apparently recognizing the futility of trying to meet the clear constitutional standard of due process, have fashioned an unusual argument , totally unsupported by any facts or law. Their theory is that because General Lumintang trained at Fort Benning, Georgia in 1978, he learned how to commit gross violations of human rights in the United States which he applied in East Timor in 1999. Thus, in their view, the tortious conduct that occurred in East Timor arose out of General Lumintang's contacts with the United States, and therefore specific personal jurisdiction lies. There are three main flaws with this far fetched theory: first, there is no evidence that General Lumintang learned to commit the human rights violations alleged in the Complaint in the United States; second, there is no evidence that the training General Lumintang received in the United States was related to the tortious conduct allegedly committed in East Timor twenty years later; third, there is no legal support that training in one forum offers sufficient contacts with that forum to be haled into court there when a tort using or misusing that training occurs in another forum.

Plaintiffs seek to try and convict the Ft. Benning instructors and brand the training system as the incubator for human rights violators from foreign military units who pass through the facility. Plaintiffs have offered no evidence that the United States Government is training foreign nationals is the ways of torture, summary execution or other human rights violations. As there is no evidence that the training General Lumintang received in the United States involved any training in human rights violations, plaintiffs cannot use those contacts as the basis for specific jurisdiction.

Also, the military training General Lumintang received in the U.S. is too attenuated both in quality and time, to the allegations of human rights violations in East Timor. Military training that General Lumintang may have received in the U.S. over ten and twenty years ago when he was a low-

level officer in the Indonesian Army, simply has no rational connection to the occurrences in the Complaint allegedly committed by General Lumintang in 1999. Plaintiffs cannot establish that the alleged atrocities in East Timor would not have occurred "but for" General Lumintang's military training in the United States in 1978 and 1989. Such a conclusion is absurd.[4] There simply is no nexus between the defendant's contacts in the United States and the allegations in the Complaint.

Plaintiffs' theory of training in the United States as the basis for establishing constitutionally sufficient contacts when foreign nationals commit torts abroad is unsupported by a single court in the United States. Such an expansive view of personal jurisdiction is frowned upon by the Supreme Court. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) and Asahi Metal Industry Co. v. Superior Court of Cal., 480 U.S. 102 (1987). Simply put, no United States court has found such a direct relationship for the purpose of establishing specific personal jurisdiction over a foreign defendant. This Court should peremptorily reject this argument.[5]

4. General Jurisdiction Is Lacking Because General Lumintang Did Not Have Continuous and Systematic Contacts with the Forum.

It is well established that the due process requirements for general personal jurisdiction are more stringent than for specific personal jurisdiction.[6] The "continuous and systematic" contacts

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[4] Of course, numerous individuals attend the training programs offered by the United States attended by the defendant and do not engage in the conduct alleged in the Complaint. Under plaintiffs' theory, an individual who took drivers education in Illinois at age 16, and as an adult resident of the District of Columbia 20 years later was involved in a tortious car accident outside of Illinois, could be haled into court in Illinois, solely because that was where the person had learned to drive.

[5] Not surprisingly, plaintiffs do not address the personal jurisdiction case most similar to the circumstances in this case, cited in Defendant's initial Memorandum, p. 17, An v. Chun, 1998 U.S. App. LEXIS 1303 (9th Cir. Jan. 28, 1998).

[6] See, Glater v. Eli Lilly & Co., 744 F.2d 213, (1st Cir.); Metropolitan Life Insurance v. Robertson-Ceco Corp., 84 F.3d 560, 568 (2d Cir. 1996); People's Insurance Company of China v. M/V Damodar Tanabe, 903 F.2d 675, 679 (9th Cir. 1990); OMI Holdings,

requirement requires that the defendant's contacts with the forum be substantial in order to warrant the exercise of general personal jurisdiction.[7] Broad constructions of general jurisdiction are disfavored. Nichols v. G. D. Searle & Company, 991 F.2d 1195, 1200 (4th Cir. 1993). In fact, several courts, including the Supreme Court, have expressed reservations as to whether general jurisdiction may extend to non-resident individuals.[8]

Nevertheless, when this Court examines the defendant's contacts with the forum, it is clear that General Lumintang's sporadic contacts with the United States over the past twenty-four years have not been "continuous and systematic." See, Metropolitan Life Insurance v. Robertson-Ceco Corp., 84 F.3d 560, 569-70 (2d Cir. 1996), cert. denied, 519 U.S. 1006 (1996). As set forth above, over twenty-four years, General Lumintang has been in the United States only 6 times. Supra, pp. 8-9; 2nd Lumintang Dec. at ¶¶ 2-6. Other than these trips, he has not been anywhere else in the U.S. at any other time. Id. at ¶ 7. The quantity of these contacts falls well short of the requisite showing necessary

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Inc. v. Royal Insurance Company of Canada, 149 F.3d 1086, 1091 (10th Cir. 1998); Meier v. Sun International Hotels, 2002 U.S. App. LEXIS 7239, *25 (11th Cir. 2002); Northlake Cardiology Assoc. v. Alpha Gulf Coast, 1995 U.S. Dist. LEXIS 18640, *7 (E.D. La. Dec. 11, 1995); Medtronic, Inc. v. Camp, 2002 U.S. Dist. LEXIS 6587, *7 (D. Minn. April 1, 2002)(general jurisdiction standard is exacting and difficult to meet); Provident National Bank v. California Federal Savings & Loan Assoc., 624 F. Supp. 858, 862, (E.D. Pa. 1985), aff'd., 819 F.2d 434 (3d Cir. 1987), citing, Reliance Steel Products v. Watson, Ess, Marshall, 675 F.2d 587, 588-89 (3d Cir. 1982).

[7] See, Reliance Steel Products v. Watson, Ess, Marshall, 675 F.2d 587, 588-89 (3d Cir. 1982)(contacts must be extensive and persuasive); Consolidated Development Corporation v. Sherritt, Inc., 216 F.3d 1286, 1292 (11th Cir. 2000), cert. denied, 122 S. Ct. 68 (2001); Meier v. Sun International Hotels, 2002 U.S. App. LEXIS 7239, *25 (11th Cir. 2002); Powell v. Purcell, 1990 U.S. Dist. LEXIS 20988, *6 (E.D. Va. May 17, 1990).

[8] See, Burnham v. Superior Court of California, 495 U.S. 604, 610 n. 1 (1990)(declining to address the issue in detail, but recognizing that "it may be that [general jurisdiction] applies only to corporations. . ."); In re: Daimlerchrysler AG Securities Litigation, 2002 U.S. Dist. LEXIS 6460, *28 (D. Del. March 22, 2002); Hoechst Celanese Corp. v. Nylon Engineering Resins, 896 F. Supp. 1190, 1193, n. 4 (M.D. Fla. 1995)("Nor is it clear that general jurisdiction can ever be held over a private, non-resident defendant.").

for an assertion of general jurisdiction.

5. General Lumintang Did Not Purposely Avail Himself of the Forum

Even if minimum contacts are found, the contacts between the defendant and the forum cannot satisfy due process concerns unless activities of the defendant were purposefully directed toward the residents of the forum. Burger King, 471 U.S. at 472, citing, Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 774 (1984). Purposeful availment of a forum has an element of voluntariness and an element of forseeability. Id. at 474 ("the forseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there."). Neither element is present in this case.

With respect to the military training General Lumintang received in the U.S., which the plaintiffs assert is the basis for personal jurisdiction, General Lumintang did not attend that training voluntarily. He was selected to attend by the Indonesian Army and ordered to attend by his superiors. Second Declaration of Lt. Col. Nastri Anshari ("2nd Anshari Dec.") at ¶¶ . Furthermore, it strains credulity to assert that it was forseeable that military training General Lumintang received in the United States in 1978, 1989 and 1995 could serve as the basis for him being haled into court by East Timorese nationals for torts that occurred in East Timor while General Lumintang was in Indonesia. There is a palpable absence of evidence that General Lumintang directed any of his activities towards the United States in a manner that it should have been forseeable to him that he could be haled into a U.S. court based on occurrences in East Timor. And, certainly participating in discussion groups and meeting with the U.S. Secretary of State, the Attorney General and the National Security Advisor cannot constitute activities which could foreseeably lead to General Lumintang being subject to U.S. jurisdiction.

6. It Is Unreasonable for the Court to Assert Jurisdiction Over General Lumintang.

Even if the plaintiffs could establish contacts sufficient to comport with constitutional due process, the Court should find an absence of personal jurisdiction because exercising jurisdiction over the defendant would not be fair or reasonable. Once a plaintiff has demonstrated the requisite minimum contacts between the defendant and the forum, a court is required to continue to the "reasonableness" stage of the inquiry and apply the Asahi test to assess whether the exercise of jurisdiction comports with "traditional notions of fair play and substantial justice." Metropolitan Life Insurance Co., 84 F.3d at 573, citing, Asahi, 480 U.S. at 113. Making this determination requires a balancing of factors which include (1) the burden upon the defendant if compelled to litigate in the forum, (2) the interests of the forum in resolution of the controversy, (3) the most efficient resolution of the controversy, and (4) the availability of relief in another forum. In re: Baan Co., 81 F. Supp.2d at 83, citing, Asahi, 480 U.S. at 113-14 and Burger King, 471 U.S. at 478.

With respect to the first factor, the burden on General Lumintang to litigate in the United States is severe. General Lumintang is a citizen and resident of Indonesia. He rarely traveled to the United States. All of his records, files and witnesses are located in Indonesia. He is unfamiliar with American law and the American legal system. According to the Supreme Court, "the unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." Asahi, 480 U.S. at 114; see also, Glencore Grain, 284 F.3d at 1125-26.

Under the second factor, because plaintiffs are not United States residents and none of the alleged torts occurred in the United States, the United States' legitimate interests in the case are considerably diminished. Asahi, 480 U.S. at 114. The underlying dispute involves foreign parties concerning activities that occurred in foreign lands. "Where, as here, the defendant is from a foreign

nation rather than another state, the sovereignty barrier is high and undermines the reasonableness of personal jurisdiction." Glencore Grain, 284 F.3d at 1126 (citations omitted).

As for the third and final factor, the most efficient resolution of the controversy is by taking advantage of the relief afforded in other forums. Id. As detailed in the initial memorandum, there are several forums available to the plaintiffs to redress their claims, including the District Court in Dili, East Timor; the human rights tribunal established by the United Nations Transitional Administration in East Timor; civil court in Indonesia; or the Human Rights Court in Indonesia.

The Supreme Court has sounded a cautious note about U.S. courts determining what would be unfair and unreasonable under the circumstances of this case:

> In the present case, this advice calls for a court to consider the procedural and substantive policies of other *nations* whose interests are affected by the assertion of jurisdiction by the [United States] court. . . . In every case, however, those interests, as well as the Federal Government's interest in its foreign relations policies, will be best served by a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case, and an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State. "Great care and reserve should be exercised when extending our notions of personal jurisdiction into the international field." United States v. First National City Bank, 379 U.S. 378, 404 (1965).

Asahi, 480 U.S. at 115.

As an assertion of personal jurisdiction over defendant would not comport with constitutional due process, the Court had no authority to enter judgments against him. Therefore, the judgments are void. Under Rule 60(b)(4), setting aside the judgments entered against General Lumintang is mandatory.[9]

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[9] In their Opposition, plaintiffs claim that default judgments should not be set aside based on jurisdictional defects unless the court's assertion of jurisdiction is frivolous. Plaintiff's Opp. at 18-19. As recognized by plaintiffs, and the cases they cite, this only applies to subject matter jurisdiction, not personal jurisdiction. See, Government Employees Insurance Co. v. Jackson, 1995 U.S. Dist. LEXIS 16814, *1-4 (E.D. Pa. Nov. 6, 1995). This makes sense as it is likely that a court, in entering default judgment, does its own assessment of subject matter

7. Discovery on the Issue of Personal Jurisdiction.

Although General Lumintang is not opposed to discovery on the issue of whether the Court has personal jurisdiction over him, such discovery is not appropriate. This Circuit permits limited discovery on the jurisdictional issue only if the party has made allegations specific enough to permit the conclusion that discovery may enable them to establish that assertion of jurisdiction over the defendant meets the requirements of the Due Process Clause. In re: Baan, 81 F. Supp.2d at 76-77 (citations omitted); Formica v. Cascade Candle Co., 125 F. Supp.2d 552, 556 (D.D.C. 2001)("To merit further jurisdictional discovery, a plaintiff 'must have at least a good faith belief that such discovery will enable it to show that the court has personal jurisdiction over the defendant.'"), quoting, Carribean Broadcast Sys., Ltd. v. Cable & Wireless PLC, 148 F.3d 1080, 1090 (D.C. Cir. 1998). Plaintiffs have made no such showing as to how this Court could assert personal jurisdiction over the defendant. Nevertheless, if the Court does order discovery, it should be limited in scope solely to the issue of whether plaintiffs can establish an assertion of jurisdiction by this Court that meets the requirements of the Due Process Clause. In re: Baan, 81 F. Supp.2d at 76-77.

B. The Conflicting Affidavits on the Issue of Service Require an Evidentiary Hearing.[10]

In their Opposition, plaintiffs submitted declarations from an employee of the East Timor Action Network and the process server it hired, alleging that defendant was properly served at Dulles International Airport. The statements in these declarations directly contradicted those of General Lumintang and Brig. Gen. Dadi Susanto. Plaintiffs claim that their declarations are unchallengeable

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jurisdiction to ensure that it has the authority to enter default judgment on the claims asserted. In any case, the Court did no assessment of personal jurisdiction over the defendant. Thus, it is proper for the Court to engage in that inquiry at this stage to ascertain whether it had authority to enter judgments against the defendant.

[10] If the Court finds that it did not have personal jurisdiction, analysis of the sufficiency of service of process and Rule 60(b)(6) arguments is unnecessary.

and the declarations of the Indonesians are false.[11] The proper course of action for the Court to follow in this situation is to allow discovery on the issue and conduct an evidentiary hearing so that the witnesses can be cross-examined and their credibility and veracity can be ascertained in open court.

This is exactly the course of action that was pursued in a case virtually identical to the circumstances herein, Weiss v. Glemp, 792 F. Supp. 215 (S.D.N.Y. 1992). In Weiss, defendant, Cardinal Josef Glemp, sought to dismiss a complaint filed by Rabbi Avi Weiss based on insufficiency of service of process. Id. at 218. On September 25, 1991, a process server, attempted to serve the Cardinal with a summons and complaint. Id. at 217. In an affidavit, the Cardinal claimed that although he saw a hand extending papers toward him, at no time did papers ever touch him and he never knew that someone was attempting to give him official court papers. Id. at 218. Two affidavits substantially supported Cardinal Glemp's version. Id. In an opposing affidavit, the process server, stated that she announced to Cardinal Glemp that she was an officer of the court, she had legal papers for him, she placed the papers under the Cardinal's arm, and that another priest knocked them to the ground and picked them up. Id. Another plaintiff witness, who accompanied the process server, essentially corroborated the process server's version of the events. Id. at 219.

Contrary to plaintiffs' preferred manner to resolve this dispute by disregarding defendants' affidavits and adopting plaintiffs' uncontested, the court in Weiss conducted an evidentiary hearing in which all of the witnesses were examined and cross-examined in open court to ascertain credibility and veracity. Id. at 220-223. The court found that the process server and her witness lied in their testimony and discredited both of them as witnesses. Id. at 223. As a result, the court concluded that

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[11] In a fit of self-righteous indignation, plaintiffs' attorneys reach the morally dubious conclusion that the affidavits of two Indonesian Generals are inherently less credible than the affidavits of a U.S. East Timorese activist and her paid process server. Defendant, in further support of his contention that he was not properly served, offers the Declaration of Mr. Wakidi Wadji, who observed but did not hear the exchange when service was attempted.

the attempted service on Cardinal Glemp was not effected by the plaintiff. Id. at 225.

As in Weiss, the proper way to resolve this "battle of the affidavits" is to allow discovery and hold an evidentiary hearing. At this stage, there simply is no way to ascertain which version of the facts is true. Courts have endorsed the conducting of an evidentiary hearing, as opposed to engaging in a "battle of affidavits," in order to obtain a more complete understanding of the underlying events prior to rendering a ruling. See, Reneer v. Wall, 916 F.2d 713, 1990 U.S. App. LEXIS 18213, *10-11 (6th Cir. 1990), cert. denied, 498 U.S. 1101 (1991); Virgin Enterprises Limited v. American Longevity, 2001 U.S. Dist LEXIS 11456, *43 (S.D.N.Y August 7, 2001). In fact, in the seminal case cited by plaintiffs, the appellate court remanded the case back to the lower court to conduct a trial on whether the defendant's version or the process server's version of the facts surrounding service of process was correct. Hicklin v. Edwards, 226 F.2d 410, 414 (8th Cir. 1955). Finally, the majority of the cases cited by plaintiffs involve service by federal marshals prior to the amendment of the rule that allows service by anyone over the age of eighteen. Allowing plaintiffs to hire their process server opens the door to more claims of improper service. Therefore, if this Court reaches the issue of service, it should allow limited discovery and an evidentiary hearing to ascertain whether defendant can establish the strong and convincing evidence to refute plaintiffs' claims that he was properly served.

C. Alternatively, Rule 60(b)(6) Affords Defendant Relief from the Judgments Based on the Extraordinary Circumstances of the Case and the Substantial Interests of Justice.

1. The Court May Analyze the Defendant's Motion to Set Aside Under Rule 60(b)(6) If It Determines that Rule 60(b)(4) Is Inapplicable.

Plaintiffs' claim that the defendant is barred from moving under Rule 60(b)(6) because he moved under Rule 60(b)(4) is a misreading of the applicable Rule 60(b) law. A motion for relief from judgment based on clauses (1), (2) and (3) or Rule 60(b), mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, misrepresentation or misconduct, must be made within one

year of the entry of judgment. Goland v. Central Intellegence Agency, 607 F.2d 339, 372-73 (D.C. Cir. 1979), cert. denied, 445 U.S. 927 (1980). In contrast, a motion for relief brought under Rule 60(b)(6) need only be made within a reasonable time after the entry of judgment. Id. In order to prevent circumvention of the one-year time limitation applicable to motions for relief from judgment made under clauses (1), (2), and (3), of Rule 60(b), courts have interpreted the clauses of Rule 60(b) to be mutually exclusive. Id. This means that relief under Rule 60(b) is not available "unless the other clauses, (1) through (5), are inapplicable." Id. It does not mean that moving under one clause bars a party from moving under another clause.

Defendant moving under both clause (4) and (6) is entirely consistent with the rule. Because there is no time limit on the filing of a clause (4) motion, only two options are available. Either clause (4) is applicable, because the judgment is void either due to lack of personal or subject matter jurisdiction, and therefore clause (6) is irrelevant or clause (4) is inapplicable, because the judgment is not void due to the presence of personal and subject matter jurisdiction, and therefore clause (6) applies so long as the motion was filed within a reasonable time after judgment was entered.

This is exactly the standard adopted by the Supreme Court in Klapprott v. United States, 335 U.S. 601 (1949). In Klapprott, the Court first examined whether the judgment that was entered was void as a matter of law. Id. at 609-613. The Court then held that even if the judgment was not treated as void, it still could be set aside under clause (6) of Rule 60(b). Id. at 613. The Court determined that a clause (6) motion could be brought because the claims went beyond mere excusable neglect. Id. Similarly, in this case, the Court can examine whether the judgments against defendant are void under clause (4). If the Court determines that clause (4) is inapplicable, because the Court had personal and subject matter jurisdiction, then the Court can determine whether relief is justified under the catch-all provision of clause (6).

2. Defendant's Failure to Appear Before the Court Was Not Due to Disrespect of the Court.

Plaintiffs claim that General Lumintang chose to not appear before the Court and that this strategic choice and knowing disrespect of the Court renders him unable to obtain Rule 60(b)(6) relief. Plaintiffs' description of events of defendant's failure to appear is inaccurate. Plaintiffs tie their attack on the credibility of defendant to claims that defendant has shown lack of respect for the court by not appearing. Contrary to plaintiffs' contentions, General Lumintang had no control over his ability to appear before this Court at the time. The first time he became aware of the suit was, after he returned to Jakarta after his March 2000 Washington, D.C. trip, when he received a copy of the summons and complaint sent by the Military Attache, General Dadi Susanto, from the Indonesian Embassy in Washington, D.C. 2nd Lumintang Dec. at ¶ 9. As General Lumintang was sued in his official capacity, he first referred the lawsuit to the Indonesian Ministry of Defense which in turn referred it to the Ministry of Foreign Affairs with the request that the Ministry of Foreign Affairs undertake the appropriate "legal measures" in accordance with the laws of the United States. Id. at ¶¶ 9-10. General Lumintang never received any response from the Ministry of Foreign Affairs. Id. at ¶ 10. Under applicable Ministry of Defense Regulations, he was not able to travel to the United States to appear and defend himself, absent permission from the appropriate authorities and no such permission was granted. Id. at ¶ 11. Second Declaration of Lt. Col. Anshari at ¶ 8; Exhibits B and C. At most, his failure to appear and defend himself is attributable to a foreign citizen's and his Government's lack of understanding of United States laws and the United States judicial process, and not a strategic choice or lack of respect for the Court.[12]

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[12] Plaintiffs have attached as Exhibit 6 an article, in English, from a magazine identified only as Tempo Magazine, written by a Mr. Arif A. Kuswardono, quoting defendant as stating, "I am an Indonesian citizen, I only bow to Indonesian law." It is illogical to assume that General Lumintang, would be interviewed in English in Indonesia, by a reporter who is apparently Indonesian himself. Unlike defendant's Exhibits, plaintiffs have failed to certify that

3. Extraordinary Circumstances Are Present Which Compel a Setting Aside of the Judgments As in the Interests of Justice.

As shown below, under the facts and well established case law, General Lumintang did not have any command responsibility over the troops guilty of committing the atrocities in East Timor. Therefore, it is likely that a $66 million judgment has been entered against the wrong person, unfamiliar with the laws of the United States and prevented from defending himself at the time by his Government.[13] Plaintiffs' attorneys, in their zeal to publicize human rights violations and seek vindication for the wrongs committed upon their clients, found an Indonesian General who traveled to the United States after the occurrences in East Timor and filed a lawsuit against him, regardless of whether he had any hand in the operations or authority to prevent, control or discipline the troops in East Timor. They now seek to deny this individual the due process afforded by the United States courts and the ability to defend himself and establish his innocence.

Magistrate Judge Kay found General Lumintang liable on a theory of command responsibility. Findings of Fact and Conclusions of Law at 30-33. It is now well established that an essential element of command responsibility is "effective control," defined as the legal authority and the practical ability

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the translation of General Lumintang's interview is accurate. Therefore, to the extent that plaintiffs have introduced it to show the defendant's purported disrespect for the court, it should be given no weight at all.

[13] To the extent that it is necessary to state in this proceeding, the Government of Indonesia recognizes that elements of the Indonesian military, police and para-military forces committed gross violations of human rights in East Timor. The Government has created a special Human Rights Court, investigated allegations of human rights violations, indicted certain individuals, including high ranking officers in the Indonesian Army and Police, and is proceeding with trials of such individuals. (Defendant's Memorandum in Support of Motion to Set Aside at pp. 27-29). Plaintiffs' reliance on the U.S. Department of State's Report on Human Rights Practices in Indonesia is misplaced. The report is for the year 2001 and indicates, in the first sentence, that Indonesia is in "transition from a long-entrenched authoritarian regime to a more pluralistic, representative democracy." As the well respected New York Times columnist and author Thomas L. Friedman has more recently observed, Indonesia is a "messy, but real democracy." Defendant's Reply Memorandum, Exhibit 1.

of the defendant to control the guilty troops. Ford v. Garcia, 2002 U.S. App. LEXIS 7866, *5 (11th Cir. April 30, 2002). A second essential element is that the defendant failed to take all reasonable steps to prevent or repress the atrocities. Id. The Eleventh Circuit cited several recent international cases which consistently found that "effective control of a commander over his troops is required before liability will be imposed under the command responsibility doctrine. The consensus is that 'the concept of effective *control* over a subordinate--in the sense of a material ability to prevent or punish criminal conduct, however that control is exercised--is the threshold to be reached in establishing a superior-subordinate relationship. . . ." Id. at *14. (citations omitted).

In his initial memorandum, defendant set forth compelling evidence that as Army Deputy Chief of Staff, he had no operational authority for planning, commanding, supervising or controlling military operations in East Timor at the time of the atrocities set forth in the Complaint. Defendant's Memorandum at 29-36. General Lumintang had no *de jure* or *de facto* command or control over the troops alleged to have committed the gross violations of human rights in East Timor. As Deputy Chief of Staff he had no command authority over Army units operating in East Timor. He was not a member of the Armed Forces chain of command responsible for the planning and design and directing the military operation in East Timor. Furthermore, he had no power or authority to punish or take corrective action in response to any of the occurrences by the military in East Timor. General Lumintang also set forth evidence concerning his own nation's recent investigation of individuals alleged to be involved in the atrocities that occurred in East Timor cleared him of any improprieties, but indicted nineteen other individuals. Defendant's Memorandum at 26-28.

Plaintiffs' offer no evidence to refute defendant's evidence that Gen. Lumintang had no "effective command" over the troops who committed the atrocities in East Timor. In fact, the Findings of Fact and Conclusions of Law do not find that Gen. Lumintang had "effective command" over the

troops carrying out operations in East Timor, in the sense that he had the legal authority and practical ability to control those troops. Instead, both the Court and the plaintiffs relied on a telegram and a manual purportedly drafted by the defendant. A closer review of these documents show that reliance on them to find defendant guilty of the atrocities in East Time is inappropriate.

The telegram at issue was incorrectly translated by the plaintiffs. The telegram does not state "prepare for a security plan with the aim of preventing the outbreak of civil war. . .," but in actuality, it states, "prepare for a campaign plan with the aim of preventing the outbreak of civil war. . . ." 2nd Anshari Dec. at ¶ 2-3.

The telegram was administrative in character and directed the Commander of the Udayana 9th Military Area Command to prepare a campaign plan in "the framework of preventing civil war" and be ready to respond to any plan issued by the Commander of the Armed Forces/TNI, that is, the operational commander of troops in East Timor. Id. at ¶ 4. A campaign plan should not be confused with a security plan. A campaign plan, in keeping with the administrative nature of General Lumintang's then-duties, consists of preventative action including the development of an evacuation plan to withdraw the Army, families of personnel and property in the event civil war broke out between the pro-independence and pro-integration East Timorese factions. Id. at ¶ 4. The campaign plan set forth in the telegram had nothing to do with the civilian population in East Timor. The telegram was issued by the Army Chief of Staff and signed by his subordinate, General Lumintang, on his behalf as an administrative function. 2nd Anshari Dec. at ¶ 5. [14]

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[14] The manual at issue has no relationship to the occurrences in East Timor. The manual was developed in the beginning of 1998, well before East Timor was given the right to vote for its independence. The manual was an administrative manual, not a field manual, and was not intended or directed to be used in any operations in East Timor. It was not distributed to any individual soldiers. Anshari Dec.at ¶ 9. There is no connection between the issuance of the manual with the conduct of the operation and behavior of the troops in the field in East Timor. It is improper to hold General Lumintang responsible under a theory of command responsibility

The unique circumstances of this case compel the setting aside of the judgments entered against General Lumintang. This case presents a substantial judgment against a foreign resident unfamiliar with the laws of the United States who was prevented from coming to defend himself and has presented evidence indicating that he is not responsible for the atrocities that occurred in East Timor. In the interests of justice and based on the circumstances of this case, General Lumintang should have the opportunity to explain the procedures and policies of his country and cross-examine the witnesses against him. Therefore, the strict criteria set forth under Rule 60(b)(6) has been met and the Court should set aside the judgments entered against the defendant.

D. The Interests of Justice Do Not Compel the Issuance of a Bond or Attorney's Fees.

Plaintiffs demand that, should the Court vacate the default judgment, the Court order attorney's fees for the default as well as set a bond equal to the $66 million judgment against Defendant. Plaintiffs' demand is excessive and unconstitutional.

In exercising its discretion to condition the vacatur of a default judgment, the Court should set such conditions only where the non-defaulting party can demonstrate that the conditions will cure prejudice caused to it by the default. Moreover, the Court is required to specifically justify any condition it sets beyond vacatur to demonstrate the reasonableness of those conditions. See, Thorpe v. Thorpe, 364 F.2d 692, 695 (D.C. Cir. 1966). Here, the plaintiffs have failed to elucidate how they have been prejudiced, and instead seek to use the Court to extract from the Defendant a bond that, in addition to the fees demanded, is so excessive as to be certain to "shock the conscience of a reviewing court." Sales v. Republic of Uganda, 828 F. Supp. 1032, 1035 (S.D.N.Y. 1993).

The purpose of a bond or any other condition of vacatur is to prevent undue prejudice to the

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based solely on his signing the manual, without proof that he instructed officers to follow the manual in the field or that the manual was used in the field.

opposing party. Powerserve Int'l v. Lavi, 239 F.3d 508, 515 (2d Cir. 2001). In this respect, Thorpe, the other cases cited by the plaintiffs, and general authority on bonds for vacating default judgments is distinguishable from the instant case because those bonds were intended to preserve or secure the defaulting parties' assets should the plaintiffs ultimately prevail. For example, courts noted as justification for bonds they ordered that the evidence of record demonstrated that the defaulting parties had a history of avoiding or ignoring their financial obligations. Sales v. Rupublic of Uganda, 828 F.Supp. 1032 (S.D.N.Y. 1993)(noting Uganda's "demonstrated propensity to disregard process issued by United States Courts, and its refusal to pay lawful judgments"); Powerserve, 239 F.3d at 516 (noting defendants transferring of assets to family members and outstanding legal bills of two prior lawyers in the case). No such concern has been demonstrated here. Rather, like the defendant in Orion Industries, Inc. v. Hamg Shing Industry Co., Ltd., 1991 U.S. Dist. LEXIS 791, *14-15 (N.D.Il. 1991), there has been no showing that the defendant's interest in the litigation turns on his assets being put in jeopardy. Instead, the defendant sincerely believed the case was being dealt with by the Indonesian Government. Moreover, given that there is absolutely no evidence that the defendant's assets are any more inaccessible now than they will be upon the Court's resolution of this case, a bond serves no purpose to secure such assets, if any.

There are two reasons why attorney's fees are not appropriate in this case. First, General Lumintang's failure to appear was due to no fault of his own. He needed permission from his Government to come to the United States to defend himself, and that permission was never forthcoming. 2nd Lumintang Dec. at ¶ 11; 2nd Anshari Dec. at ¶ 8. Second, attorney's fees are inappropriate because attorney's fees are entered as a sanction, not as a condition for overturning default. Harris v. District of Columbia, 159 F.R.D. 315 (D.D.C. 1995). Therefore, if a sanction is not warranted, attorney's fees should not be entered. Plaintiffs' counsel could have ascertained with little

inquiry that this Court did not have personal jurisdiction over General Lumintang. Their current claim for jurisdiction boils down to a novel and unsupported legal theory based on defendant having trained at Ft. Benning 24 years ago. The defendant should not have to bear the expenses of an improperly brought lawsuit. Therefore, it is in the interests of justice to deny plaintiffs' request for attorney's fees.[15]

III. Conclusion

The irrefutable point, which plaintiffs' attorneys have attempted to obfuscate by accounts of atrocities in East Timor, is that under well-established case law, General Lumintang did not have the necessary contacts with either this Court or the United States to satisfy due process and therefore, this Court lacks jurisdiction over him.

For all of the above reasons, and for the reasons set forth in defendant's initial memorandum, the Court should set aside the orders and judgments entered in this case under Rule 60(b)(4) as they are void as a matter of law. Alternatively, the Court should set aside those orders and judgments under Rule 60(b)(6) based on the extraordinary circumstances present and the substantial demands of justice. Finally, the Court should deny plaintiffs' request for a bond and attorney's fees.

Dated: 5/20/02

Respectfully submitted,

O'DONNELL, SCHWARTZ & ANDERSON, P.C.

By: Peter J. Leff

Martin R. Ganzglass DC Bar No. 414174
Peter J. Leff DC Bar No. 457476

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[15] If the Court enters attorney's fees, they should be limited to the costs incurred in connection with the default itself. Garberg & Assoc. v. Pack-Tech Intl., 115 F.3d 767, n.6 (10th Cir. 1997); Orion Industries, 1991 U.S. Dist. LEXIS 791 at *14; see also, Powerserve, 239 F.3d at 511-512 (fees ordered from the date of pre-trial conference where court warned defendants that it would authorize plaintiffs to move for default).

1900 L Street, N.W., Suite 707
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Tel (202) 898-1824/ Fax (202) 429-8928

Attorneys for Defendant

Certificate of Service

I hereby certify that I have this day caused the following people to be served by first class mail postage pre-paid with a copy of the foregoing Reply Memorandum in Support of the Motion to Set Aside Default Judgment and Order and Judgment on Damages with attached Exhibits and the Second Declarations of Lt. Gen. Lumintang and Lieutenant Colonel Natsri Anshari and the Declaration of Wakidi Wadji:

Jennifer Green
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2550 M Street, NW
Washington, DC 20037

Dated: 5/20/02

Peter J. Leff

o an I.N.S. Job

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local police might be forced to let illegal immigrants they suspect of terrorism go because the I.N.S., even after the restructuring being debated now in Congress, will be too shorthanded to come get them.

But it is doubtful that turning state and local police loose on illegal immigrants will do much to stop terrorism. An estimated eight million people live in the United States illegally; the number who intend harm is small. State and local police probably would not have prevented Sept. 11 even if they had been empowered to enforce immigration laws. The 19 hijackers all entered the United States legally, and 17 of them still had valid visas on Sept. 11.

With so few visa-violating terrorists to find, the temptation to target ordinary illegal immigrants would be great. That would do more harm than good. Arresting otherwise law-abiding people will divert police resources away from other duties. Should the police begin arresting every suspected illegal immigrant they detain at a traffic stop, they would overwhelm the immigration system.

There is also a grave risk of racial profiling and civil rights abuses, not just against noncitizens but also against citizens deemed not to look "American." Such practices would undercut the progress police have made around the country to earn trust within immigrant communities. Last fall some local officials objected on just these grounds to the Justice Department's efforts to question thousands of Arab-Americans as part of the early response to Sept. 11. Police have learned that people worried about their immigration status will shun cops, not cooperate with them. They are also reluctant to ask for police protection when they truly need it.

The proposed change in policy would intensify the divide between immigrants — most of whom are here legally — and everyone else at precisely the moment when the country should be coming together.

Rewriting immigration enforcement policy isn't needed, anyway, to fight terrorism. Hiring more I.N.S. agents, which the Senate border security bill does, sufficiently addresses fears that police might one day find themselves forced to let Qaeda operatives go. That increase in staffing would preserve the traditional — and sensible — division of labor between federal and state and local authorities on immigration. It would also ensure that our law enforcement efforts remain target
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EXHIBIT
1
Bloomberg No. 5119

THOMAS L. FRIEDMAN

The War on What?

JAKARTA, Indonesia

Spend a few days in Indonesia and you'll find many people asking you a question you weren't prepared for: Is America's war on terrorism going to become a war against democracy?

As Indonesians see it, for decades after World War II America sided with dictators, like their own President Suharto, because of its war on Communism. With the fall of the Berlin Wall, America began to press more vigorously for democracy and human rights in countries like Indonesia, as the U.S. shifted from containing Communism to enlarging the sphere of democratic states. Indonesians were listening, and in 1998 they toppled Mr. Suharto and erected their first electoral democracy.

Today Indonesians are still listening, and they're worried they're hearing America shift again — from a war for democracy to a war on terrorism, in which the U.S. will judge which nations are with it or against it not by the integrity of their elections or the justice of their courts, but by the vigor with which their army and police combat Al Qaeda. For Indonesia, where democracy is still a fragile flower, anything that encourages a comeback by the long-feared, but now slightly defanged, army and police — the tools of Mr. Suharto's long repression — is not good news.

"Indonesian democrats have always depended on America as a point of reference that we could count on to support us," said the prominent Indonesian commentator Wimar Witoelar. "If we see you waffling, whom do we turn to? It is like the sun disappearing from the sky and everything starts to freeze here again."

There is a broad feeling among Indonesian elites that while some of their more authoritarian neighbors, like Malaysia or Pakistan, have suddenly become the new darlings of Washington as a result of the war on terrorism, Indonesia is being orphaned because it is a messy, but real, democracy.

"We sometimes fear that America's democratization agenda also got blown up with the World Trade Center," says the Indonesian writer Andreas Harsono. "Since Sept. 11 there have been so many free riders on this American antiterrorism campaign, countries that want to use it to suppress their media and press freedom and turn back the clock. Indonesia, instead of being seen as a weak democracy that needs support, gets looked at as a weak country that protects terrorists, and Malaysia is seen as superior because it arrests more terrorists than we do."

Indeed, many people here believe that retrograde elements in the army and police have helped stir up recent sectarian clashes in Aceh and the Maluku islands to spur Parliament to give the security services some of their old powers back.

Says Jusuf Wanandi, who heads a key strategic studies center here: "I just spoke with some senior military people who said to me: 'Why doesn't the government give up all this human rights stuff and leave [the problem] to us?' They said the Americans should normalize relations again [with the Indonesian Army] 'and

Is democracy a wallflower?

we'll do the job for them.' That is not the right approach, because we do not trust yet that the reforms of the military here have been adequate."

In fairness, the Bush team has kept aid for Indonesia at $130 million and made it the official policy in all diplomatic contacts that Indonesia should continue fighting its war for democracy, while contributing what it can to the war on terrorism. (It's not clear if there are any Qaeda cells here.)

Nevertheless, some top Pentagon officials are definitely pushing to let the Indonesian military make a comeback and to restore ties with the Indonesian military that were suspended after the army ran amok in East Timor in 1999. Indonesia is just beginning to try military officers involved in those killings. If there is any hope of senior army officers being held accountable for East Timor, it will certainly be lost if America signals that all it cares about now is that the new antiterrorism laws being debated by the Indonesian Parliament give the army anything it wants.

America needs to be aware of how its war on terrorism is read in other countries, especially those in transition. Indonesia is the world's biggest Muslim country. Its greatest contribution to us would be to show the Arab Muslim states that it is possible to develop a successful Muslim democracy, with a modern economy and a moderate religious outlook. Setting that example is a lot more in America's long-term interest than arresting a few stray Qaeda fighters in the jungles of Borneo.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JANE DOE, ET AL., Plaintiffs, V. MAJOR GENERAL JOHNY LUMINTANG, Defendant,	Case Number : No. 00-674 (GK)

SECOND DECLARATION OF LIEUTENANT GENERAL JOHNY LUMINTANG

I, Lieutenant General Johny Lumintang, in lieu of an affidavit as permitted by 28 U.S.C. Section 1746, declare as follows :

1. The following supplements the facts set forth in my original Declaration submitted to the Court, dated March 19, 2002.

2. From January until September 1978, I attended the Infantry Officer Advanced Course and the Infantry Mortar Platoon Course (IMPAC) at. Ft. Benning, Georgia. I flew from Jakarta to the United States to attend this course and did not go anywhere else in the U.S., except for a transit stop, before attending the course, and did not stay in the U.S. after completing the course. My travel and expenses for attending the course were paid for by the U.S. Government.

3. From September until Desember 1989, I attended the International Defense Management Course (IDMC) at Monterey, California. I flew from Jakarta to the United States to attend this course and did not go anywhere else in the United States before attending the course and did not stay in the U.S. after completing the course. My travel and expenses for attending the course were paid for by the U.S. Government.

4. In February 1995, for three days, I attended a Special Forces Seminar in Honolulu, Hawaii. I flew from Jakarta to Honolulu to attend this course and did not go anywhere else in the United States before attending the course and did not stay in the U.S. after completing the course. My travel and expenses for attending the course were paid for by the U.S. Government.

5. From September 15 to September 26, 1995 I participated in a study tour of the National Defense Institute, in Washington D.C. The study tour consisted of visits to military establishments such as the Pentagon and to U.S. Government buildings such as the Congress and the U.S. Supreme Court. I flew from Jakarta to the United States to attend this tour and did not go anywhere else in the United States before attending the tour, other than a transit stop, and did not stay in the U.S. after completing the tour. My travel and expenses for attending the tour were paid for by the Indonesian Government.

6. On January 24, 2000, I attended the Roundtable Dialogue on Justice and Reconciliation at The Madison Hotel, in Washington, D.C. On January 25, 2000,

together with the Minister for Justice, Mr. Yusril Ihza Mahendra, and the Minister for Human Rights, Mr. Hasballah Saad, and the Attorney General, Mr. Marzuki Darusman, I met with the United States Secretary of State, Madeline Albright, Attorney General, Janet Reno and the National Security Advisor, Samuel R. Berger. I flew from Jakarta to the United States to attend this Roundtable and meeting and did not go anywhere else in the United States, other than a transit stop before attending the Roundtable and meeting, and did not stay in the U.S. after completing the meeting. My travel and expenses for attending the Roundtable were paid for by the U.S. Government.

7. Outside of these visits and my trip to Washington, D.C. from March 26, to March 30, 2000, I have never been in the United States. It is possible that in connection with my visits in 1978, 1989, and 1995 I made a transit stop solely to change planes either in coming or in departing from the United States, but I don't recall whether or not this happened.

8. I have been in East Timor from 1979 to 1980 as a Battalion Vice Commander and held the rank of Captain. From June 1993 until August 1994 I was Military Resort Commander. I was stationed in Dili, and at the time, held the rank of Colonel.

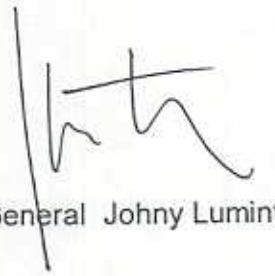
9. I first learned of the suit filed against me in the United States District Court for the District of Columbia when General Dadi Susanto sent me a copy of the summons and complaint. Since I was sued in my official capacity, and at the time

was the Governor of the National Defense Institute, the Deputy Governor, on April 7, 2000, referred the case to the Minister of Defense. A copy of this referral is attached as Exhibit "A".

10. The Minister of Defense in turn referred it, on April, 27, 2000, to the Ministry of Foreign Affairs with a request that the Ministry of Foreign Affairs undertake the appropriate "legal measures" in accordance with the laws of the United States. A copy of this referral is attached as Exhibit "B". I never received any response from the Ministry of Foregin Affairs.

11. Under applicable Ministry of Defense Regulations, I was not able to travel to the United States to appear and defend myself, absent permission from the approriate authorities and no such permission was forthcoming.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May ....., 2002, in Jakarta, Indonesia.



Lieutenant General Johny Lumintang

TRANSLATION

THE MINISTRY OF DEFENSE OF
THE REPUBLIC OF INDONESIA
THE NATIONAL DEFENSE
INSTITUTE
Jl. Merdeka Selatan 10, Jakarta 10110

Jakarta, 7 April 2000

Number : B/473/13/25/5/SET
Classification : ORDINARY
Enclosure : 1(one) bundle
Subject : Report on USDC Summons to Lt. Gen. *TNI* Johny Lumintang

THE MINISTER FOR
DEFENSE OF
THE REPUBLIC OF
INDONESIA
in
JAKARTA

1. With reference to :

a. The Decree of the Minister for Defense No. : 189/III/2000 dated 22 March 2000 regarding Assignment Visit Abroad in the name of Lt.Gen. of the *TNI* Johny Lumintang cs. 1 person.

Lemhan/Exh
080202

JESSIE NOERMATTIAS, B.A. (Hons.)
Sworn & Authorised Translator
By virtue of the Decision of the
Governor of the Special Territory of the
Capital City of Jakarta no. 937/1993
English / Indonesian

EXHIBIT
A

b. Letter of summons from the United States District Court (USDC), District of Columbia dated 28 March 2000.

2. In connection with the above matter, we wish to report that the Governor of the National Defense Institute is obliged to answer the Letter of Summons from the USDC, District of Columbia within 20 days as of the issuance of the letter of summons.
Requesting your directives for follow-up.

3. Please accept for your examination.

(Seal of the NATIONAL DEFENCE INSTITUTE, THE MINISTRY OF DEFENCE OF THE REPUBLIC OF INDONESIA)

For THE GOVERNOR
THE NATIONAL DEFENSE INSTITUTE,
THE DEPUTY-GOVERNOR,
(signed)
DR. PURNOMO YUSGIANTORO, MSC. MA.
Senior Official IV/d

Cc.
1. The Minister for Foreign Affairs of the Republic of Indonesia
2. The Commander of the Indonesian Armed Forces
3. The Chief-of-Staff of the Army
4. The Secretary-General of the Ministry of Defence
5. The Governor of the National Defense Institute, as report.

Translated from the Indonesian language into English by JESSIE NOERMATTIAS, sworn and authorized translator.
Jakarta, 8 February 2002.

JESSIE NOERMATTIAS, B.A. (Hons.)
Sworn & Authorised Translator
By virtue of the Decision of the
Governor of the Special Territory of the
Capital City of Jakarta no. 937/1991
English - French - Indonesian

Lemhan/Exh
080202

TRANSLATION

(Coat-of-Arms)
THE MINISTER FOR DEFENSE
THE REPUBLIC OF INDONESIA

Jakarta, 27 April 2000

Number : B/776/M/IV/2000
Classification : ORDINARY
Enclosure : One bundle
Subject : USDC Summons to Lt.-Gen. *TNI* Johny Lumintang.

THE MINISTER FOR

FOREIGN AFFAIRS

in

JAKARTA

1. In reference to the letter of summons of the District Court of Columbia (United States District Court, District of Columbia) to Lieutenant-General of the *TNI* Johny Lumintang (the Governor of the National Defense Institute) dated 27 March 2000 regarding the lawsuit for violation of human rights in East Timor.

2. In connection with the above reference, it is hereby deemed necessary to clarify that :

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080202

EXHIBIT
B

a. The Plaintiff Jane Doe I, acting in her own name as well as in representation of other persons has filed a lawsuit against Lt.-Gen. of the *TNI* Johny Lumintang for human rights violations in East Timor.

b. The lawsuit is filed before the District Court of Columbia at the time when Lt.-Gen. of the *TNI* Johny Lumintang went on a working assignment to Washington DC on 27 March 2000.

c. Lt.-Gen. of the *TNI* Johny Lumintang is being sued in his capacity as Deputy Chief-of-Staff of the Indonesian Army.

d. The lawsuit is filed for claims in the amount of USD 150,000.

3. In relation to the said lawsuit (enclosed), the assistance of the Minister for Foreign Affairs is hereby requested to settle the matter by way of undertaking legal measures in compliance with the laws applicable in the United States of America.

4. Thank you for your attention and cooperation.

Menhan/ExhMO
080202

THE MINISTER FOR DEFENCE

(signed)

JUWONO SUDARSONO

Initials :

The Secretary-General : (Init.) 24/4

Cc.
1. The Commander of the Indonesian Armed Forces.
2. The Army Chief-of-Staff.
3. H.E. The Indonesian Ambassador in Washington, DC.
4. The Governor of the National Defence Institute.
5. The Indonesian Military Attache in Washington, DC.

Translated from the Indonesian language into English by JESSIE NOERMATTIAS, sworn and authorized translator.
Jakarta, 8 February 2002.

JESSIE NOERMATTIAS, B.A. (Hons.)
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English – French – Indonesian

Menhan/ExhMO
080202

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JANE DOE, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	Case Number: No. 00-674 (GK)
	)	
MAJOR GENERAL JOHNY LUMINTANG,	)	
	)	
Defendant.	)	
	)	
	)	

SECOND DECLARATION OF LIEUTENANT COLONEL NASTRI ANSHARI

I, Lieutenant Colonel Nastri Anshari, in lieu of an affidavit as permitted by 28 U.S.C. Section 1746, declare as follows:

1. The following supplements the facts set forth in my original Declaration submitted to the Court, dated March 20, 2002.

2. The reference to the May 5 1999 telegram in the trial on damages that it instructs the responsible local Indonesian Army Commander to anticipate situations which may arise from the vote and to "prepare a security plan with the aim of preventing the outbreak of civil war. . ." is incorrect.

3. The word which Plaintiffs have interpreted to mean security plan "Renkam" stands for Rencana Kampanye, meaning campaign plan, not Rencana Keamanan, which means security plan.

4. The telegram was administrative in character from the Army Chief of Staff and directed the Commander of the Udayana 9th Military Area Command to prepare a campaign plan in order to be ready to respond to any operational planning issued by the Commander of the Armed

Forces/TNI in responding to any situation which may occur. Such a campaign plan is in keeping with the other instruction in the telegram of developing an evacuation plan to withdraw the Army, families of personnel and property in the event fighting broke out between the pro-independence and pro-integration factions.

5. The telegram was issued by the Army Chief of Staff and signed by General Lumintang on his behalf as an administrative function. Plaintiffs are confusing the Indonesian Armed Forces/ TNI with Army Headquarters. Armed Forces Headquarters directs the Operational Command, which in turn directs the Tactical Command, which in turn directs Battalions and other units in the field. Army Headquarters, as is true for Navy Headquarters and Air Force Headquarters, have administrative and not operational responsibilities. General Lumintang, as Deputy Chief of Staff of the Army had administrative and not operational responsibilities. Any troops deployed in East Timor were deployed by the Commander of the Armed Forces, not the Army Chief of Staff, or his Deputy. The Army Chief of Staff and his Deputy is not in the operational chain of command over troops.

6. In the Indonesian Army, young officers were selected for military training in the United States based first upon a test of their English language ability, conducted by both the Indonesian Army and the U.S. Embassy in Jakarta, and second a decision of the Indonesian Army of whom to send abroad. Officers selected are issued orders to attend training in the United States at a specified facility.

7. With respect to General Lumintang, when he was assigned to training at Ft. Benning, Georgia, the International Defense Management Course in Monterey, California, and the Special Forces Seminar, his assignment would have been accompanied by orders directing him to attend these courses.

8. Under current military regulations, General Lumintang was not free to travel abroad but required permission. Attached as Exhibit A is a certified translation of an extract of Instruction No. INS/12/VI/1978 of the Ministry of Defence and Security regarding The Procedure for the Grant of Permission to Travel Abroad to Members of the Armed Forces of the Republic of Indonesia and Civil Servants Within the Ministry of Defence and Security and Their Families. Attached as Exhibit B is a certified translation of an extract of Skep/651/III/1989 of Regulations on the Costs of Travels Undertaken on Duty Assignment Abroad.

9. The manual referred to in the Findings of Fact at pages 30-33 was developed by a study group, in 1998, prior to the vote for independence in East Timor in May of 1999. It was an administrative manual not a field manual. That means it was not intended to be used or directed to be used for any operations in East Timor or elsewhere. It was not distributed to individual soldiers in the field in East Timor or elsewhere. The current prosecution of individual Officers of the Indonesian Armed Forces and the Police is not based upon the manual, but upon their having acted contrary to authority and direction by committing gross violations of human rights in East Timor.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 17, 2002.

Lieutenant Colonel Nastri Anshari

TRANSLATION

(Extract)

THE MINISTRY OF DEFENCE AND SECURITY

(Emblem)

INSTRUCTION

Number : INS / 12 / VI / 1978

regarding

THE PROCEDURE FOR THE GRANT OF PERMISSION TO TRAVEL ABROAD TO MEMBERS OF THE ARMED FORCES OF THE REPUBLIC OF INDONESIA AND CIVIL SERVANTS WITHIN THE MINISTRY OF DEFENCE AND SECURITY AND THEIR FAMILIES

THE MINISTER FOR DEFENCE AND SECURITY /

COMMANDER OF THE ARMED FORCES

(.....)

INSTRUCTS

1. The Chiefs-of-Staff of the Services/Civilians.
2. The Commanders of the Major Commands of Operations of the Ministry of Defence and Security.

EXHIBIT

A

3. The Chiefs-of-Staff of the Ministry of Defence and Security.
4. The Governors/Commandants-General, General Prosecutor, Heads of the Central Executive Units of the Ministry of Defence and Security.

The following : 1. To observe and to execute the provisions regarding the procedure on the grant of permission to travel abroad as follows :

a. Permission to go abroad.

1) To members of the Indonesian Armed Forces of the Republic of Indonesia and organic Civil Servants of the Services/the Indonesian National Police and their families, the permission to go abroad is granted by the Chiefs-of-Staff of the Services/Chief of the Indonesian National Police on behalf of the Minister for Defence and Security / Commander of the Armed Forces.

2) To members of the Armed Forces of the Republic of Indonesia and organic Civil Servants employees of the Ministry of Defence and Security (staff of the Ministry of Defence and Security, Central Executives of the Ministry

of Defence and Security, Major Commands for Operations of the Ministry of Defence and Security) and their families, permission to go abroad is granted by the Minister for Defence and Security / Commander of the Armed Forces, in this matter the Deputy Commander of the Armed Forces/Chief-of-Staff for Administration.

3) For those members of the Armed Forces of the Republic of Indonesia assigned to Ministries outside the Ministry of Defence and Security and to non-ministerial institutions and their families, letters of permission are issued in accordance with the regulations of the Ministries and institutions concerned.

4) Copy of each and every letter of permission to go abroad issued by the Chiefs-of-Staff of the Services / Chief of the Indonesian Police on behalf of the Minister for Defence and Security / Commander of the Armed Forces shall be conveyed to the Chief-of-Staff for

Administration of the Ministry of Defence and Security, in this matter the Assistant Personnel Manager.

(.....)

Issued in : Jakarta

On : 23 June 1978

On behalf of the MINISTER FOR DEFENCE

AND SECURITY /

COMMANDER OF THE ARMED FORCES,

THE DEPUTY OF THE COMMANDER OF

THE ARMED FORCES,

Seal/signature

S U D O M O

ADMIRAL OF THE

INDONESIAN ARMED FORCES

Translated from the Indonesian language into English by JESSIE NOERMATTIAS, sworn and authorized translator.
Jakarta, 15 January 2002

TRANSLATION

(Extract)

THE MINISTRY OF DEFENCE AND SECURITY

ATTACHMENT TO THE LETTER OF DECREE OF

THE MINISTER FOR DEFENCE AND SECURITY

NUMBER : Skep/651/III/1989

DATED : 31 – 3 - 1989

REGULATIONS ON THE COSTS OF TRAVELS UNDERTAKEN ON DUTY ASSIGNMENT ABROAD

CHAPTER – I

GENERAL PROVISIONS

(.....)

EXH2-MO-Skep651
150102

JESSIE NOERMATTIAS, B.A. (Hons.)
Sworn & Authorised Translator
By virtue of the Decision of the
Governor of the Special Territory of
Capital City of Jakarta no. 937/1-911
English – Indonesian

EXHIBIT
B

3. The officials authorized to issue Letters of Decrees and Written Orders.

a. Officials authorized to issue Letters of Decree :

1) The President or an official appointed thereto for travels of the Minister for Defence and Security and or of the Commander of the Armed Forces.

2) The Minister for Defence and Security for travels of the Chiefs-of-Staff of the Forces / Chief of the Indonesian National Police, the Head of the General Chief-of-Staff of the Armed Forces of the Republic of Indonesia and the Secretary-General of the Ministry of Defence and Security.

3) The Secretary-General of the Ministry for Defence and Security on behalf of the Minister for Defence and Security for travels of officials outside of those stipulated in points 1) and 2) above.

4) The Armed Forces Commander and the Minister for Foreign Affairs or the official appointed thereto for transfers.

b. Officials authorized to issue Written Orders :

1) The Secretary-General of the Minister for Defence and Seceurity or an official appointed thereto for travellers whose costs are covered by the budget allocated at the Organizational Unit of the Ministry of Defence and Security.

2) The General Chief-of-Staff of the Armed Forces of the Republic of Indonesia or an official appointed thereto for travellers whose costs are covered by the budget allocated at the Organizational Unit of the Headquarters of the Armed Forces of the Republic of Indonesia.

3) The Chiefs-of-Staff of the Forces / Chief of the Indonesian National Police or an official appointed thereto for travellers whose costs are covered by the budget allocated at the Organizational Unit of the Forces / Indonesian National Police.

(.....)

THE MINISTER FOR DEFENCE AND SECURITY
(signed)
L.B. MOERDANI

Translated from the Indonesian language into English by JESSIE NOERMATTIAS, sworn and authorized translator.
Jakarta, 15 January 2002

EXH2-MO-Skep651
150102

Sworn Authorized Translator
by virtue of the Decision of the
Governor of the Special Territory of
Capital City of Jakarta no. 937/1993
English – French – Indonesian

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JANE DOE, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case Number: No. 00-674 GK
	)	
MAJOR GENERAL JOHNY LUMINTANG,	)	
	)	
Defendant,	)	
	)	

DECLARATION OF MR. WAKIDI WADJI

I, Mr. Wakidi Wadji in lieu of an affidavit as permitted by 28 U.S.C Section 1746, declare as follows:

1. I am an Indonesian citizen and I have been a civilian driver at the Embassy of the Republic of Indonesia from year 1995 to present time.

2. In March 2000 I was the driver for the Office of the Defense Attache at the Embassy.

3. On March 30, 2000 I was assigned by the Military Attache , General Dadi Susanto to drive him and General Johny Lumintang to Dulles International Air port. I drove them to the terminal, left them and went to park the Embassy car.

4. I went into terminal and went to the general boarding area for General Johny Lumintang,s Air France Flight. General Dadi Susanto and General Johny

Lumintang were engaged in discussion and I stood nearby, but not close enough to hear what they were saying. While there were talking, the Naval Attache, Colonel Anthony Noorbandy also came to the boarding area. I was about 5 meters away from the two Generals and I saw a Caucasian man try to hand some papers toward General Lumintang. I saw General Susanto prevent the man from doing so by hitting the papers to the floors. The Caucasian man left and General Dadi Susanto told me to pick up the papers and take them to the car.

5. When General Susanto came out of the Dulles terminal and got into the car, I gave him the papers and drove him back to Washington D.C.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 17 , 2002, in Washington D.C.

Wakidi Wadji

No: 311/KL/V/02
Seen by the Embassy of the
Republic of Indonesia
in Washington, D.C. on
May 17, 2002
For the Ambassador

KEDUTAAN BESAR REPUBLIK INDONESIA
WASHINGTON

SUKANTO
MINISTER COUNSELOR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JANE DOE, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case Number: No. 00-674 GK
	)	
MAJOR GENERAL JOHNY LUMINTANG,	)	
	)	
Defendant,	)	
	)	

PERNYATAAN SDR. WAKIDI WADJI

Saya, Wakidi Wadji berdasarkan suatu affidavit seperti dijinkan menurut 28 U.S.C Section 1746, menyatakan sebagai berikut:

1. Saya adalah seorang warga negara Indonesia dan saya telah menjadi seorang pegawai sipil pengemudi pada Kedutaan Besar Republik Indonesia dari tahun 1995 sampai dengan sekarang.

2. Pada bulan Maret 2000 saya adalah pengemudi untuk Atase Militer pada Kedutaan Besar.

3. Pada tanggal 30 Maret 2000 saya ditugasi oleh Atase Militer, Jenderal Dadi Susanto untuk membawa dia dan Jenderal Johny Lumintang ke Lapangan Terbang Internasional Dulles. Saya membawa mereka ke terminal, meninggalkan mereka dan pergi untuk memarkir kendaraan Kedutaan.

4. Saya masuk kedalam terminal dan pergi ke tempat naik pesawat Air France untuk penerbangan Jenderal Johny Lumintang. Jenderal Dadi Susanto dan Jenderal Johny Lumintang sedang berbicara dan saya berdiri di dekat mereka, tetapi tidak cukup dekat untuk mendengar apa yang dibicarakan oleh mereka. Sementara mereka berbicara, juga datang Atase Laut, Kolonel Anthony Noorbandy ke tempat naik pesawat. Saya berada sekitar 5 meter dari kedua Jenderal tersebut dan saya melihat seorang lelaki kulit putih mencoba menyerahkan sejumlah kertas kepada Jenderal Lumintang. Saya melihat Jenderal Susanto mencegah lelaki itu untuk melakukan hal itu dengan menjatuhkan kertas-kertas tersebut ke lantai. Orang kulit putih tersebut pergi dan Jenderal Dadi Susanto memerintahkan saya untuk mengambil kertas-kertas tersebut dan membawanya ke mobil.

5. Ketika Jenderal Susanto keluar dari terminal Dulles dan masuk ke dalam mobil, saya memberikan kertas-kertas tersebut kepadanya dan membawa dia kembali ke Washington D.C.

Saya menyatakan dibawah sanksi atas sumpah palsu menurut hukum Amerika Serikat bahwa yang saya nyatakan adalah benar dan tepat. Dibuat pada tanggal 17 Mei 2002 di Washington D.C.

Wakidi Wadji