

No. 08-1555

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IN THE  
**Supreme Court of the United States**

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MOHAMED ALI SAMANTAR,

*Petitioner,*

*v.*

BASHE ABDI YOUSUF, *et al.*,

*Respondents.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FOURTH CIRCUIT

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**BRIEF OF THE FOREIGN MINISTER FOR THE  
REPUBLIC OF SOMALILAND, ABDILLAHI  
MOHAMED DUALE, AS *AMICUS CURIAE*  
SUPPORTING RESPONDENTS**

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**STATEMENT OF INTEREST OF  
*AMICUS CURIAE***

*Amicus curiae* Abdillahi Mohamed Duale is the Minister of Foreign Affairs for the Republic of Somaliland. Mr. Duale has served the government of Somaliland almost since its formation in 1991, first as Minister of Finance and later as Minister of Information. Mr. Duale was appointed Minister of Foreign Affairs in 2006. As Foreign Minister, Mr. Duale manages Somaliland's relations with other nations and works to establish foreign policy. Foreign Minister Duale respectfully submits this brief in support of Respondents, and urges the Court to affirm the decision of the U.S. Court of Appeals for the Fourth Circuit.<sup>1</sup>

Somaliland was declared an autonomous democracy after the fall of the Siad Barre regime, and the collapse of the central government of Somalia, an unfortunate union imposed upon disparate clans and provinces after the withdrawal of the colonial powers of Britain and Italy. The Isaaq clan is an ethnic majority in Somaliland. However, the Isaaq were a disfavored minority in greater Somalia, where they were the particular targets of torture and other human-rights abuses under the dictatorship of Siad Barre. The people of Somaliland opposed those abuses, prompting a forceful reaction by the Barre regime. When the government of Somalia

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<sup>1</sup> Counsel for both parties have consented to the filing of this brief, and their consents have been filed with the Clerk of this Court. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus curiae*, or his counsel made a monetary contribution to its preparation or submission.

later collapsed, Somaliland did not secede. Somaliland simply reverted to the colonial boundaries defining the protectorate originally drawn by Britain. In an internationally-monitored referendum held in Somaliland in 2001, 66% of the qualified votes were cast in favor of a sovereign Somaliland and 97% approved the Somaliland constitution. Somaliland has its own currency and its own rule of law.

Somaliland, however, still awaits recognition as an independent state by the international community. While Somaliland is committed to peaceful and open relations with Somalia, its bid for international recognition is hindered by the ongoing chaos that marks Somali society.

Meanwhile, the flagrant crimes of the Siad Barre regime against the people of Somaliland have not been addressed in a court of law. Petitioner and his cohorts have fled to the United States and other foreign nations. While their crimes violated Somali and international law—indeed, are condemned in every known articulation of the law—there is no treaty enabling Petitioner's extradition to face trial in Somaliland. Moreover, there is no mechanism for the victims of his human-rights abuses to obtain a civil remedy from a United States resident in a Somaliland court. If they do not receive a measure of justice in the United States courts, they will receive no justice at all.

## SUMMARY OF ARGUMENT

Torture, extrajudicial killings and the arbitrary detention of Somali citizens were all expressly forbidden by the constitution that created the government of the Democratic Republic of Somalia. Such acts therefore could not possibly have been perpetrated under any legitimate authority granted to the sovereign government of Somalia or its public officials. Under these circumstances, the doctrine of sovereign immunity does not apply.

The United States Congress has enacted statutes providing the victims of human-rights abuses a remedy when the perpetrators of those abuses are found within the confines of this country's borders. It is essential that the judicial process envisioned by the United States Congress be permitted to go forward so the efforts to achieve peace and reconciliation in Somaliland and throughout the region can be realized. More importantly, it is essential that the rule of law be applied to the perpetrators of international human-rights abuses when they are found within the borders of the United States.

## ARGUMENT

The Foreign Minister of the Republic of Somaliland respectfully appears in this Court to express the ardent support of the government and people of Somaliland for the United States judicial system's legal authority to hold a former official of the Somali government, now a resident of Virginia, financially responsible for the arbitrary detention, extrajudicial killings and torture he inflicted on others, in violation of United States,

Somali and international law. The critical importance of a judicial remedy for these human-rights abuses cannot be overstated. Indeed, the process of reconciliation and prospects for peace in eastern Africa and throughout the world depend upon the knowledge of our fellow citizens that no one is above the law and there is no refuge in the United States, or anywhere else, for those who flagrantly violate the basic human rights established by the international community and guaranteed by the Constitutions of the United States, the Republic of Somaliland and the Somali Democratic Republic. The ability of a society that was traumatized by years of human-rights abuses to move forward constructively into the future depends upon the confidence that all will be held accountable under the rule of law no matter what their former official status may have been.

Somaliland has consistently supported the efforts of Somali torture victims to seek legal redress from any former government official now living beyond the reach of Somali law but within the jurisdiction of the United States courts. On June 2, 2007, *amicus curiae* Duale wrote to U.S. Secretary of State Condoleezza Rice on behalf of the people and government of Somaliland in support of these legal proceedings which were then going forward in the United States District Court for the Eastern District of Virginia. J.A. 109. On March 3, 2005, Mr. Duale's predecessor, Mrs. Edna Adan Ismail, wrote to another official in the U.S. State Department to express Somaliland's view that no other feasible means existed for Petitioner's victims to secure redress for their suffering other than through legal proceedings in the United States, where Petitioner now resides. J.A. 53-54.

Respect for the sovereignty of foreign nations is an important legal principle and the Somali people accept the doctrine of sovereign immunity. However, conduct by a former government official that was forbidden by the law of his own nation must be deemed inherently unauthorized and cannot be shielded by any rational notion of sovereign immunity. In particular, conduct that is explicitly condemned by the nation's constitution cannot possibly be authorized by the government formed by that very same constitution.

During the period that Petitioner served as a government official in the Somali Democratic Republic and perpetrated the acts of torture, extrajudicial killings and arbitrary detentions alleged in this case, the executive and legislative branches of the country were the creation of a constitution that expressly forbade such conduct. Constitution of the Somali Democratic Republic (reproduced at Pltfs. Opp. To Motion To Dismiss, Exh. 2). Therefore, it is not possible that Petitioner's illegal activities were authorized by the State. To the contrary, they were prohibited. Conduct that is condemned by the Somali Constitution is inherently *ultra vires* – a legal reality that cannot be reversed by the current pronouncements of Petitioner's political allies, even if they served in a bygone Transitional Federal Government.

Article 27 of the Somali Democratic Republic's Constitution, entitled "Security Of The Person Under Detention," expressly forbade torture of individuals detained by government authorities. Section 1 clearly stated that, "A detained person shall not be subjected



to physical or mental torture.” *Id.* at Art. 27, § 1. Section 2 simply declared that, “Corporal punishment shall be prohibited.” *Id.* at Art. 27, § 2. With these straightforward prohibitions, the Somali Constitution made it clear that any physical or mental torture inflicted upon a detained person under color of law could not be an authorized act of the Somali government. Indeed, the Constitution forbade corporal punishment of any sort, whether or not it amounted to torture.

Similarly, the Somali Constitution explicitly prohibited extrajudicial killings. Section 2 of the Constitution’s Article 25 declared that only “the law shall determine the conditions in which the death sentence may be passed.” *Id.* at Art. 25, § 2. In light of that clear constitutional proscription, there is simply no basis for any Somali government official to claim that a killing without any legal process can be cloaked with the authority of the sovereign Somali government.

Article 26 of the Somali Constitution forbade arbitrary detention of Somali residents by the government’s security forces. Section 2 stated,

No person shall be liable to any form of detention or other restrictions of personal liberty, except when apprehended in *flagrante delicto* or pursuant to an act of the competent judicial authority in the cases and in the manner prescribed by the law.

*Id.* at Art. 26, § 2. Section 3 stated,

Any person who shall be detained on grounds of security shall without delay be brought before the judicial authority which has competence over the offence for which he is detained within the time limit prescribed by law.

*Id.* at Art. 26, § 3.

Finally, Somali government officials would have lacked any authority to act outside the bounds of international human-rights law, even if torture, extrajudicial killings and arbitrary detentions had not been explicitly condemned by the Somali Constitution. Article 19 of the same Constitution made this principle clear:

The Somali Democratic Republic shall recognize the Universal Declaration of Human Rights and generally accepted rules of international law.

*Id.* at Art. 19. By directing the recognition of generally accepted rules of international law, the Somali Constitution also approved the well established international rule of command responsibility that renders Petitioner individually liable for any acts of torture or killing that he orchestrated and directed. *See, e.g., In re Yamashita*, 327 U.S. 1, 15-16 (1946).

The simple truth is that Somali public officials under Siad Barre were acting outside of any conceivable

sovereign authority if they engaged in human-rights abuses condemned by the Somali Constitution or the Universal Declaration of Human Rights. Because Petitioner has lived in the United States for over a decade, the Somali people have no present ability to hold him accountable, even though human-rights abuses committed under color of law were illegal in the Somali Democratic Republic. The Somali people and the victims of these crimes are now entirely dependent upon the United States courts to enforce the United States statutes that were specifically enacted for the protection of torture victims.

Mr. Duale, the official representative of the Republic of Somaliland, does not appear as an *amicus curiae* to seek any kind of extraordinary relief. The United States Congress enacted specific statutes expressly designed to provide a remedy to torture victims whose oppressors seek to avoid the judicial process of their own countries by hiding within the confines of the United States. With the enactment of these laws, the United States joined with the community of nations worldwide in condemning the abuse of basic human rights and declaring that there will be no refuge for the perpetrators of such abuses within their borders.

**CONCLUSION**

A decision stating that universally condemned conduct could possibly be the authorized act of a civilized sovereign authority would eviscerate the basic principles that underlie the foundations of all modern societies. The Republic of Somaliland and its people respectfully urge the Court to allow the judicial process envisioned by the United States Congress to proceed to its lawful conclusion.

Respectfully submitted,

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