

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

March 15, 2011

The Honorable Tony West, Esq.
Assistant Attorney General
Civil Division
United States Department of Justice
950 Pennsylvania Ave. N.W.
Washington D.C. 20530

Re: Ahmed v. Magan, Case No. 2:10-cv-342 (S.D. Ohio)

Dear Assistant Attorney General West:

I write to request that the Department of Justice convey to the United States District Court for the Southern District of Ohio in the above-referenced case the determination of the Department of State that Defendant Abdi Aden Magan does not enjoy immunity from the jurisdiction of U.S. courts with respect to this action. The Court invited the views of the Department on this matter and the U.S. Government indicated they would be provided by March 15, 2011.

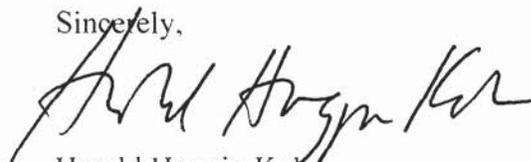
The Department of State has reviewed this matter carefully and has concluded that Defendant Abdi Aden Magan is not immune from the Court's jurisdiction in the circumstances of this case. Defendant Magan, a U.S. resident, is being sued by a U.K. citizen in the United States District Court for the Southern District of Ohio under the Torture Victim Protection Act (TVPA) and the Alien Tort Claims Act (ATCA) for alleged responsibility for torture, arbitrary detention, and cruel, inhuman or degrading treatment. Among other things, Plaintiff alleges that Defendant Magan directly ordered his torture. Magan is a former official of a state with no current government formally recognized by the United States, who generally would enjoy only residual immunity, unless waived, and even then only for actions taken in an official capacity.

Defendant Magan served as a Colonel in the National Security Service of Somalia (NSS) and as Chief of the NSS Department of Investigations - National Level for the now-defunct Somali government of Mohamed Siad Barre from approximately 1988-1990. In January 1991, armed opposition factions drove the Barre regime from power, resulting in the complete collapse of Somalia's central government. Thereafter, Magan fled Somalia, and has been living in Ohio since 2000. Following the collapse of the Barre regime, reconciliation conferences among warring Somali factions have resulted in the creation of a transitional Somali government, the Transitional Federal Government (TFG). Although the United States recognized the Barre regime, since the fall of that government, the United States has not recognized any entity as the government of Somalia. The United States continues to recognize the State of Somalia, and supports the efforts of the TFG to establish a viable central government, but does not recognize

the TFG or any other entity as the government of Somalia. No recognized foreign government is thus available either to assert or waive any immunity Magan may enjoy.

In light of these circumstances, taking into account the relevant principles of customary international law, and considering the overall impact of this matter on the foreign policy of the United States, the Department of State has determined that Defendant Magan does not enjoy immunity from the jurisdiction of U.S. courts with respect to this action. Accordingly, the Department of State requests that the Department of Justice submit to the district court an appropriate filing setting forth this immunity determination.

Sincerely,

A handwritten signature in black ink, appearing to read "Harold Hongju Koh". The signature is fluid and cursive, with the first name "Harold" being the most prominent.

Harold Hongju Koh
The Legal Adviser