

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**AKBAR MOHAMMADI,  
MANOUCHEHR MOHAMMADI,  
NASRIN MOHAMMADI,  
SIMIN MOHAMMADI,**

Plaintiffs,

v.

**AYATOLLAH SAYID ALI HOSEYNI  
KHAMENEI, et. al.,**

Defendants.

**Civil Action No. 09-1289 (BAH)**

**SUPPLEMENTAL LEGAL MEMORANDUM ON JURISDICTION AND RELATED  
ISSUES**

Plaintiffs, Akbar, Manouchehr, Nasrin, and Simin Mohammadi hereby present the following memorandum of points of authorities demonstrating jurisdiction over the Defendants in the above style case.

**INTRODUCTION**

Plaintiffs have collectively filed suit against the Defendants for continuing acts of brutal and barbaric torture, extrajudicial killing, and other crimes against humanity. Plaintiffs have brought this action in accordance with the Alien Tort Claims Act, 28 U.S.C. § 1350, the Torture Victim Protection Act, 28 U.S.C. § 1350, and the Foreign Sovereign Immunity Act, 28 U.S.C. §§ 1602 *et seq.*

This is a case of great importance not just for the Plaintiffs, the Mohammadi family, but the United States and the world.

For too long the political establishment has chosen to overlook the brutal and barbaric oppression of the Defendants, who are the rulers and executioners of the Islamic Republic of Iran. Instead, politicians of western governments, frightened of the prospect of a nuclear Iran, have, much like Neville Chamberlain in the years leading up to World War II with the Third Reich, sought to reason with and appease this Neo-Nazi regime, which not only imprisons, tortures and murders its own people to stay in power, but threatens a second Holocaust as part of its Islamic revolution against Israel, the United States, the west and Jews and Christians in general. Indeed, given this virtual green light by the political establishment to allow Defendants to continue with their crimes against humanity, as this brief is being written, a Christian pastor, taken prison in Tehran and sent to the same notorious Evin prison as Akbar and Manouchehr Mohammadi, is being tortured and likely then murdered in the same fashion - to send a message to other non-Muslims and secular Muslims that freedom of religion and free thought will not be tolerated. *American Pastor Jailed in Iran Says He Was Beaten, Refused Treatment Because of His Faith*, (March 22, 2013), <http://www.foxnews.com/politics/2013/03/22/american-pastor-jailed-in-iran-says-was-beaten-refused-treatment-because-his/>; Perry Chiaramonte, *American Christian Pastor Imprisoned In Iran Fears Supporters Have Abandoned Him*, (February 5, 2013), <http://www.foxnews.com/world/2013/02/05/american-pastor-saeed-abedini-fears-supporters-have-dropped-efforts-for-his/> ("It is no surprise that the Iranian prison guards are engaging in this kind of psychological abuse. We know that Pastor Saeed is undergoing physical beatings and torture."). Even this morning, April 30, 2013, it was revealed that a 32-year-old Christian and American citizen, Saeed Abedini, now suffers organ failure as a result of the beatings he endured in solitary confinement. "Abedini has been suffering for months from serious injuries that have not yet been treated, including severe internal bleeding from beatings at

the prison . . ." Executive director of the American Center for Law and Justice says, "The latest developments underscore the brutality of Iran's continued violation of human rights - imprisoning, torturing ,and refusing medical care for Pastor Saeed merely because of his faith. This treatment not only violates international law, but is abhorrent . . ." Lisa Daftari, *Iran Moves American Christian into Solitary Confinement Over Prayer Protest*, (April 29. 2013), <http://www.foxnews.com/world/2013/04/29/iran-moves-american-christian-into-solitary-confinement-over-prayer-protest/>. What is happening to Pastor Saeed is precisely what happened to Akbar and Manouchehr Mohammadi and is continuing to happen to tens if not hundreds of thousands of others.

This is the horrific story of the Plaintiffs, Akbar and Manouchehr, who just sought to express themselves freely and further a secular, non-violent, westernized state in Iran. For their noble and heroic efforts, as the testimony at trial and submitted through sworn affidavits shows, they were for over seven years imprisoned, sentenced to death, brutally tortured, and in the case of Akbar, barbarically mutilated and then finally put to death. They, and the rest of their freedom-loving family, were and continue to be terrorized to send a fierce message to other freedom loving dissidents and their families that Islamic rule in Iran was and is not to be questioned.

Thus, the significance of this case goes far beyond just obtaining justice for the brave Mohammadi family, which continues to this very day to have its human rights violated and terrorized by this evil regime. This court, unlike the silently pliant political establishment, must not and cannot forsake the issue of human rights and crimes against humanity that were and continue to be committed at the direction and with the full authority of the Supreme Leader and the President of Iran. This court, a judicial tribunal that is encharged to enforce the rule of law, is

thus the only hope that some justice will be done for the heinous continuing acts of the Defendants. This court should thus enter a strong, forceful ruling not only to make the Mohammadi family whole to the extent possible under these horrible circumstances, but also to send a strong message that these crimes against humanity will not be tolerated by the American system of justice. The Supreme Leader, President and the other Neo-Nazi executioner Defendants of the Islamic Republic of Iran are not above the law.

**I. ALIEN TORT CLAIMS ACT**

**A. Federal Jurisdiction**

Jurisdiction over claims against Defendants lies in the Alien Tort Claims Act ("ATCA"), which provides federal jurisdiction for "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350. Those claiming jurisdiction under the ATCA need only allege facts that: 1) a plaintiff is an alien; 2) suing for a tort; and 3) the tort in question has been committed in violation of the law of nations or a treaty of the United States. *See Kadic v. Karadzic*, 70 F.3d 232, 238 (2d Cir. 1996) (holding that the district court had subject matter jurisdiction pursuant to the ATCA over tort claims brought by citizens of Bosnia-Herzegovina for torts committed in connection with genocide).

An analysis of the Second Amended Complaint<sup>1</sup> reveals that Plaintiffs' claims for relief sound in tort, and that Akbar Mohammadi, before his death, was an alien. His sister, Nasrin Mohammadi, a co-plaintiff who has his power of attorney, represents Akbar. Here, analyzing the fecundity of Plaintiffs' assertion of subject matter jurisdiction requires only an examination of their claims under the law of nations or a treaty of the United States.

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<sup>1</sup> Plaintiffs have contemporaneously filed a Motion to File Third Amended Complaint, which conforms to supplemental evidence presented at trial on April 4, 2013, and also certain stipulations.

The kind of torts that qualify as violations of the law of nations are widely condemned and are egregious acts of wrongdoing. The ATCA claims “rest on a norm of international character accepted by the civilized world and defined with a specificity.” *Sosa v. Alvarez-Machain*, 542 U.S. 692, 725 (2004). Crimes against humanity (and torture contributing to these crimes) are paradigmatic violations of the law of nations under the ATCA and are designed to serve as benchmarks for gauging the acceptability of individual claims under it. *Id.* at 762. See *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244, 256 (2d Cir. 2009) (stating that the torts of genocide, war crimes, and crimes against humanity may be asserted under the ATCA). In addition, Article VII of the Rome Statute Treaty, a treaty in which the United States is a signatory, also provides a legal definition of crimes against humanity, including but not limited to: 1) murder; 2) extermination; 3) enslavement; 4) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of law; 5) torture; and, 6) persecution against any identifiable group or collectively on political, racial, national ethnic, cultural, religious, gender. Rome Statute of the International Criminal Court. United Nations Treaty Collection. See *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 137 (holding that “[t]reaties are proper evidence of customary international law because . . . they create legal obligation akin to contractual obligations on the States parties to them”).

In *Filartiga*, the plaintiffs were citizens of Paraguay and filed an action in the United States against defendant, also a citizen of Paraguay, for wrongfully causing the death of a family member. *Filartiga v. Pena-Irala*, 630 F. 2d 876, 877 (2d Cir. 1980). The court held that the ATCA affords victims of torture both a forum and a right to compensation under United States law. In subsequent cases, courts have confirmed that the ATCA grants jurisdiction to federal courts to consider claims of aliens for torts committed in violation of fundamental norms of

international law. (See *Demjanjuk*, stating that international law has long recognized universal jurisdiction over certain matters, no matter where they occur because these offenses “are so universally condemned that the perpetrators are the enemies of all people.” *Demjanjuk v. Petrovsky*, 776 F. 2d 571, 582 (6th Cir. 1985)). As the court in *Filartiga* found, “for the purposes of civil liability, the torturer has become . . . an enemy of all mankind.” *Filartiga*, 630 F. 2d at 890.

The specificity of the torture Plaintiffs endured at the hands of the Defendants will be described in the Torture Victim Protection Act (“TVPA”) section of this brief, but, in the present case, when Defendants brutalized, tortured, and killed Plaintiff(s), they violated the norms of international law. When Akbar and his brother, Manouchehr were originally arrested, Defendants blindfolded them and beat them with cables. They threatened them with death daily. Plaintiffs were hung by a wire cable from the ceiling with their hands and feet tied behind their backs. Defendants would “pull[ing] us up to the ceiling and then bring[ing] us down again. You would feel that your both arms are being separated from your body.” Trial Transcript April 4, 2013. (“Tr.”) at 52; Findings of Fact (“F.F.”) at 10:94. Akbar was tortured so brutally for so long that his ears and nose constantly bled. Tr. at 56; F.F. at 11:100. Akbar writes in his journal that was published after his death that his body was “always warm from the continuous torture . . .” and that he was tortured so severely that he had constant pain in his lower back and heart. Sometimes he would moan so much he “didn’t know what to do.” F.F. at 4:25, 36. Manouchehr recalls the Iranian regime torturing his brother: “[t]he guards beat Akbar while he was chained at the clinic until he was bleeding from all over his body. Blood was coming out of his ears so they plugged his ears with cotton.” F.F. at 11:100. Defendants enslaved Plaintiffs, severely depriving them of physical liberty in violation of fundamental rules of law. Defendants tortured Plaintiffs

and persecuted them based on political, cultural and national ethnic issues. The aforementioned treaty precisely outlines these brutal and barbaric torments as crimes against humanity, the Defendants are liable for violating it, and are therefore liable for violating international law.

### **B. Personal Jurisdiction**

Plaintiffs may assert personal jurisdiction over Defendants Ahmadinejad and Khamenei, the President and Supreme leader, respectively, as prescribed by the Federal Rules of Civil Procedure: “if the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons . . . is also effective, with respect to claims arising under federal law, to establish personal jurisdiction over the person of any defendant who is not subject to the jurisdiction of the courts of general jurisdiction of any state.” Fed. R. Civ. P. 4(k)(2). This rule thus permits this court to exercise personal jurisdiction over a defendant 1) for a claim arising under federal law; 2) where a summons has been served; 3) if the defendant is not subject to the jurisdiction of any single state court; 4) provided that the exercise of federal jurisdiction is consistent with the Constitution of the United States. *Mwani v. Bin Laden*, 417 F. 3d 1, 10 (D.C. 2005).

In the instant case, the claims arise under federal law (the ATCA), and the summons and Second Amended Complaint were duly served. *See* Order and Default, Exhibits A and B. In addition to the summons and Second Amended Complaint being properly served, there is a copy of the complaint published on Plaintiff’s website ([www.freedomwatchusa.org](http://www.freedomwatchusa.org)). Whether the exercise of jurisdiction is consistent with the Constitution turns on whether a defendant has sufficient contacts with the nation as a whole to satisfy due process. In *World-Wide*, the Supreme Court held that the foreseeability of causing injury in the forum can establish such “minimum contacts” where the “defendant’s conduct and connection with the forum . . . are such that he

should reasonably anticipate being haled into court there.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980).

In *Mwani*, plaintiffs were harmed in a truck bombing outside an American embassy in Kenya. Kenyan victims and relatives of victims sued the terrorist organization and its leader, Osama Bin Laden, for orchestrating the bombing and sued Afghanistan for providing logistical support. The U.S. Court of Appeals for the District of Columbia Circuit held that personal jurisdiction existed over the terrorist organizations and Bin Laden under the ATCA because there was a constitutionally sufficient relationship between them and the forum because defendants’ aimed to “cause pain and sow terror . . . in the United States.” *Mwani*, 417 F. 3d at 13.

The facts in this case are even more compelling than *Mwani*’s facts. After Plaintiffs Akbar and Manouchehr Mohammadi formed a political student organization that fought against the tyrannical and terrorist nature of the Iranian regime, they gained the attention of interests promoting freedom in the United States and were subsequently invited to lecture at American universities. Manouchehr took a three-month trip to the United States and lectured at Columbia University, UC Berkeley, and also spoke to several Iranian political activist organizations. Tr. at 32; F.F. at 7:60. The Islamic regime did not welcome and in fact loathed this notoriety and, at the direct orders of the Defendants, the regime started taping Manouchehr’s telephone and recording his interviews broadcast on American radio stations. It was shortly after his return to Iran that the Defendants had Akbar, Manouchehr and hundreds of their followers arrested. Tr. at 33; F.F. at 8:64. In essence, it was because Plaintiff ventured to the United States to promote freedom for Iranians that the Supreme Leader and President had them arrested, and ultimately tortured and murdered.

The Iranian regime reacted "personally" towards the United States. "Jurisdiction may attach if the defendant's conduct is aimed at or has an effect in the forum state," *Panavision Int'l, LP v. Toeppen*, 141 F.3d 1316, 1321 (9th Cir. 1998), and in this case, there is no doubt that Defendants engaged in activities directed at and felt in this forum. When Defendants tortured Plaintiffs Akbar and Manouchehr, they specifically told them they were required to give interviews telling the media that they were ordered by the U.S. Central Intelligence Agency ("CIA") to create a movement in Iran to overthrow the body of the Iranian government. Tr. at 34-35; F.F. at 8:68. The Defendants told Plaintiffs that if they did not memorize this and state it to the newspaper and television media, they would be executed. Tr. at 35; F.F. at 7:68. The Iranian regime deceived its people by broadcasting that Akbar was an American agent, brainwashed by the CIA that implanted in him the plan to overthrow the regime, and was then sent back to Iran to implement the plan.

In addition to satisfying the effects test as set forth in *Panavision Int'l*, the "minimum contacts" test for personal jurisdiction is also satisfied based on the Defendants operation of an office in the forum. *Doe v. Islamic Salvation Front*, 993, F. Supp. 3, 4 (D.D.C. 1998). (holding that the U.S. District Court of the District of Columbia had personal jurisdiction of a Sudanese political group who allegedly brutalized Algerian women based on the group's operation of an office in the United States). Defendants not only operate an office in this forum, but have a continued presence in the United States which also satisfies the minimum contacts test. Here, the Interests Section of the Islamic Republic of Iran in the United States is located in the Embassy of Pakistan in Washington D.C. and is the diplomatic representation of Iran in the United States. This Interests Section looks after its Iranian interest in promoting anti-western ideologies by projecting its power to continue terrorist acts against its own people in the United States, as well

as conducting espionage and furthering covert terrorist acts in the United States, such as the planned but exposed terrorist plot to kill the Saudi ambassador in Washington, D.C. And, there are more Iranians, including covert operatives, agents, and the Iranian regime, living in Los Angeles than in any other city in Iran, other than its capitol, Teheran – coining the city's Persian nickname “Tehrangeles.” Tr. at 137; F.F. at 30:300.

Many Iranian intelligence and other operatives exist and operate in this forum and are under the direct orders of the Supreme Leader and President of Iran. These people are placed here in order to effectively control, monitor, influence, and coerce, intimidate and control the activities of Iranian-Americans. James Woosley, an expert witness in this case and past Director of Central Intelligence Agency specializing in intelligence matters, testified that the Iranian regime works and projects its power and control through foundations whose real purpose is to “influence American public opinion and to keep track of those who disagree with the Iranian government.” Tr. at 119; F.F. at 23:237. Again, in October of 2011, U.S. agents thwarted an Iranian plot to kill Saudi Arabia’s ambassador to the United States. The execution was to occur with a bomb in a major restaurant in downtown Washington, D.C., potentially killing a number of Americans as well as the Saudi ambassador. Recently, a terrorist plot, financed by Iran, to place bombs on Amtrak trains bound from Canada to New York City was reported: Ian Johnson, *Muslims helped foil alleged Canada train bomb plot*, (April 22, 2013), [<http://worldnews.nbcnews.com/news/2013/04/23/17873250-muslims-helped-foil-alleged-canada-train-bomb-plot?lite>] Woosley continued by testifying that he is aware of the Iranian government, the Supreme Leader and the President carrying out operations to harm Iranians overseas and in the United States. Tr. at 120; F.F. at 24:240.

Mr. Kenneth Timmerman, also an expert witness in this case who published a book on the U.S.-Iranian relationship and the Iranian government's use of terrorism as a tool of foreign policy, supports Woosley's testimony and elaborates on the Iranian regime's presence in the United States even further. Timmerman served as an expert witness in several cases involving terrorism and is cited as an expert on Iranian terrorism and Iranian government based on his knowledge and experience. Timmerman personally visited some of the agencies in Los Angeles that the Iranian regime used and continues to use as covers in order to keep track of, control, and terrorize local Iranian-Americans. Tr. at 127; F.F. at 26:269. These storefront agencies "perform[ing] services for the Iranian regime – notarial services, documentation services for the Iranian regime . . . [t]he Iranian regime have [sic], surprisingly, an extensive media presence in this country. They have an outfit called Press TV, which broadcasts in English. They have two production companies in Washington D.C. They have an office up in New York. They have correspondents in Los Angeles." Tr. at 128-129; F.F. at 26:271, 27:274.

The facts here are even more compelling than the facts in *Doe*, where the court found personal jurisdiction by the operation of only one office. Here, we have expert witnesses testifying under oath that they have experienced and have first-hand knowledge of the Iranian presence in the United States. The regime has radio stations, television programs, and other broadcasts on satellite television in both English and Persian.<sup>2</sup> The regime's objective is to "target individuals living in this country . . . and then go after their family members in Teheran. They will round them up, throw them in jail, torture them, and then word would go back [to the United States] and they're supposed to change what they're doing or change their activities." Tr. at 131; F.F. at 27-28:281. Moreover, after this case was filed, Plaintiffs' legal counsel, Mr. Larry

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<sup>2</sup> Persian and Farsi are used interchangeably and refer to the same language. Persian is the academic term yet native speakers of the language still refer to it as Farsi.

Klayman, has been personally threatened by the Iranian regime: “. . . I opened a Facebook message sent by someone who I learned was and is an agent of the Iranian regime,” and “I have over the last several years also received death threats which upon information and belief are from the Iranian regime.” Klayman Aff. ¶ 2-3; F.F. at 37:376. After the case was filed, Mr. Klayman's Dell computer became infected with thirteen computer viruses, destroying the computer. Mr. Klayman has reason to believe that the "hacking" was a retaliatory attempt by Defendants for filing the case. Klayman Aff. ¶ 2; F.F. at 37:375 The Defendants decision to purposefully direct their terror at the United States and their own people living in the United States, and the fact that the Plaintiffs' injuries arise out of one of those activities, should have sufficed to cause the Defendants to “reasonably anticipate being haled into” an American court. *World-Wide Volkswagen*, 444 U.S. at 297.

## **II. TORTURE VICTIM PROTECTION ACT**

Plaintiffs also bring their claims under the TVPA which authorizes federal courts to entertain civil damage actions against any person who “under actual or apparent authority, or color of law, of any foreign nation either “subjects an individual to torture” or “subjects an individual to extrajudicial killing shall . . . be liable for damages to that individual’s legal representative, or to any person who may be a claimant in an action for wrongful death.” Pub. L. No. 102-256, 106 Stat. 78 (1992) (codified at 28 U.S.C. § 1350 (1994)). Torture is defined as:

“any act, directed against an individual in the offender’s custody or physical control, by which severe pain or suffering . . . whether physical or mental, is intentionally inflicted on that individual for such purposes as obtaining from that individual or a third person information or a confession, punishing that individual for an act that individual or third person has committed or is suspected of having committed, intimidating or coercing that individual or a third person, for any reason based on discrimination of any kind.”

*Id.* at § 3(a). Section 3(b) defines extrajudicial killing as “a deliberate killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized people.”

In *Arce*, Salvadoran citizens sued the Minister of Defense of El Salvador and the Director General of the El Salvador National Guard in the U.S. Court of Appeals for the Eleventh Circuit for torture they suffered at the hands of Salvadoran military personnel under the defendants’ command. They invoked the court’s jurisdiction under the ATCA, by claiming that the “torture had been administered in violation of the law of nations and treaties of the United States, and by claiming that the torture was actionable under the TVPA.” *Arce v. Garcia*, 434 F. 3d 1254, 1257 (11th Cir. 2006). The court ruled in favor of the plaintiffs.

Defendants Khamenei and Ahmadinejad are individuals acting with apparent authority over Plaintiffs. *See Mohamad v. Palestinian Authority*, 132 S. Ct. 1702, 1705 (2012) (holding that the TVPA authorizes a cause of action against “an individual” for acts of torture and extrajudicial killing while the term “individual” encompasses persons and not organizations). Congress explained that the TVPA reaches not only the perpetrators of state-sanctioned abuse but also their superiors, incorporating the doctrine of command responsibility:

A higher official need not have personally performed or ordered the abuses in order to be held liable. Under international law, responsibility for torture, summary execution, or disappearances extends beyond the person or persons who actually committed those acts – anyone with higher authority who authorized, tolerated or knowingly ignored those acts is liable for them.

S. Rep. No. 102-249, at 9 (1991). *See Xuncax v. Gramajo*, 886 F. Supp. 162, 171-172 (D. Mass. 1995). Kenneth Timmerman testifies that the orders of torture and killing must have come from the orders of Khamenei and Ahmadinejad. Akbar and the other Plaintiffs were considered to be high-level dissidents. “He was a high-profile dissident and orders to kill high-profile dissidents

come from the very top. This is a regime that does not freelance . . . This is done at a very, very high level. Tr. at 143-144; F.F. at 31-32:318. Manouchehr’s testimony supports Timmerman’s conclusion by affirming that that torture orders were issued at a direction of the Supreme Leader and President. Tr. at 34; F.F. at 8:65. He states, “Ayatollah Khamenei, the Supreme Leader of Iran, is the commander-in-chief of the Iranian armed forces . . . the one with the ultimate rule of the country and ordered the soldiers and the police to put an end to the protests that were occurring.” “The president of Iran is responsible for the day to day conduct of affairs in Iran and is also the one who directly ordered the police and the military to carry out punishment against those who were protesting the fascist and brutal actions of the Iranian regime.” Manouchehr Aff. ¶ 20, 23; F.F. at 8:66.

The Defendants undeniably physically and mentally tortured Plaintiffs within the definition of torture the TVPA sets forth. Plaintiffs Akbar and Manouchehr were lashed with cables, beaten with rods, had their arms suspended from the ceiling, had cold water thrown on their bodies, and were exposed to deafening sounds. Manouchehr had nine of his teeth pulled out by the Defendants. Manouchehr Aff. ¶ 42; F.F. at 11:96. Plaintiffs were hung from the ceilings and whipped on their bodies and feet – an area with more nerve endings than the chest, arms, back or legs. The upside-down hanging forced the blood to rush down to their heads and cause an intolerable amount of pain, as if “our heads were about to explode.” Manouchehr Aff. ¶ 44; F.F. at 10:94. The Islamic regime threw plaintiffs into coffins, tied them up and said that this is where they would end up. “The effects of this torture were maddening.” Manouchehr Aff. ¶ 46; F.F. at 11:95. Defendants also used hot metals to burn sensitive parts of their bodies. “I have burn marks on my penis from where these metals were placed.” Manouchehr Aff. ¶ 47; F.F. at 10:92. Akbar lost his hearing, Plaintiffs had their teeth knocked out, had their fingers mangled,

had bruises and cuts all over their bodies, had suffered multiple broken bones, and were dramatically malnourished.<sup>3</sup> The mental torture in addition to the physical torture Plaintiffs endured has left them emotionally crippled. Manouchehr and Nasrin broke down in tears uncontrollably while testifying on the witness stand. Manouchehr Aff. ¶ 48; F.F. at 20:195. On July 24, 2008, even President George W. Bush “. . . honored and praised me by name in his speech and recognized what I had gone through and said we ‘were viciously tortured by the Iranian authorities’ and welcome [sic] me to America.” Manouchehr Aff. ¶ 11; F.F. at 13:117.

Defendants tried to kill Nasrin by poisoning her after she escaped to Germany with the help of the German President. In Germany, Nasrin acted as a political and human rights activist and gave many speeches in various European countries. F.F. at 13:127. During her time there, Nasrin remembers a phone call she received from her parents. They told her someone from the regime contacted them and told them that they would kill their daughter just like they killed their son, Akbar. F.F. at 13-14:128. Because of severe stress and lack of sleep, Nasrin developed a serious cough that required treatment. A man who acted as her friend told Nasrin he was a friend of her parents and he prescribed her twenty drops of medication in addition to a pill he told her she had to take before bed. F.F. at 14:130-131. The results were disastrous. In the morning, Nasrin discovered her face was swollen and red. She barely recognized herself. F.F. at 14:132. Nasrin immediately rushed to a doctor and the he told her the medicine she took was stronger

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<sup>3</sup> Akbar weighed 209 lbs. before imprisonment and died weighing 99 lbs. Upon seeing Akbar’s dead body, Akbar’s uncle stated: “His eyes and mouth were open. His forehead had swollen, and his teeth were projecting out of his mouth. His skull was broken. They had cut him from below his throat down to his stomach and then sewed it up. The same had been done to Akbar’s back. His shoulder blade, arm, back, stomach, and soles were blue, his stomach was drawn in, and his ribs projected outward. When he was washed, blood spurted from the back of his head and inside his ear, and we had to use cotton wool. His fingers had contracted inward. There were bruises around his wrists and ankles, and there was a blue circle around his eye.” Exhibit 3, “Ideas and Lashes.” Pg. 178. There is also a video taken of Akbar’s casket being opened. His body was so brutally mutilated and horrific that he was unrecognizable to his family. Exhibit 1, “Video of Opening of Casket of Akbar Mohammadi.”

than morphine and she was lucky to be alive. F.F. at 14:134. When Nasrin's sister, Simin was originally arrested, she was threatened with gang rape by the prison authorities. F.F. at 20:201. Even now, Simin has a deep-rooted fear of intimacy and is unable to have any sort of relationship with male. F.F. at 20:201.

Plaintiffs will never recover from the brutal and barbaric torture they were subjected to. Manouchehr testifies in his affidavit, “[w]hen it gets cold, the site of where my ribs were broken start to hurt and sometimes I can barely walk.” Manouchehr Aff. ¶ 49; F.F. at 13:118. He is fearful and has reason to believe that the Iranian regime will try to harm him while he is in the United States and has severe problems focusing and continuing his studies. Manouchehr Aff. ¶ 50-51; F.F. at 13:119. These constant bouts of torture Plaintiffs’ suffered convincingly fall within the definition of torture pursuant to the TVPA.

Defendants deliberately killed Akbar Mohammadi without the authorization of a judgment recognized as indispensable by civilized people and thereby stand liable under the TVPA for extrajudicial killing. Simply put, Defendants tortured students that in one case led to death, for participating in non-violent rallies that promoted freedom for the Iranian people. The criminal proceedings the Plaintiffs undertook were inherently unfair, prejudiced, and predetermined, to put it directly. According to Akbar Mohammadi’s journal – published by his sister as she promised her brother to voice the truth of the brutality of the Iranian regime – the judge who ultimately sentenced Akbar threatened him with death before the proceedings even began. Ex. 3, Ideas and Lashes, (“I.L.”) pg. 48; F.F. at 4:31. After he was sentenced to death, Akbar pointed out to the judge that by ordering him to death, he was denouncing his own laws, as the Iranian constitution allows any type of peaceful demonstrations or marches. Ex. 3, I.L. at 65; F.F. at 5:43.

Aside from sentencing a man to death for peaceful demonstrations, there is also the fact that Akbar did not die by hanging – which was his original sentence. Instead, the Iranian regime slowly, viciously tortured him to death over the course of over seven years and two months. By the time the regime finished with him, his body was unrecognizable to his family.

### **III. THE FOREIGN SOVEREIGN IMMUNITY ACT**

The provisions of 28 USC § 1605A create both subject matter jurisdiction and a private cause of action. Since the court has only requested a discussion of subject matter jurisdiction, the Plaintiffs will limit the discussion to that portion.

28 USC § 1605A, in pertinent part, creates subject matter jurisdiction whenever:

(i) the foreign state was designated as a state sponsor of terrorism at the time the act described in paragraph (1) occurred, or was so designated as a result of such act, and, subject to subclause (II), either remains so designated when the claim is filed under this section or was so designated within the 6-month period before the claim is filed under this section;

and

(ii) the claimant or the victim was, at the time the act described in paragraph (1) occurred—

(I) a national of the United States;

and

(iii) in a case in which the act occurred in the foreign state against which the claim has been brought, the claimant has afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration.

There are thus three requirements: 1) a state sponsor of terrorism, 2) the claimant is a "national of the United States" and 3) the foreign state is afforded the opportunity to arbitrate.

#### **A. Iran Is A State Sponsor Of Terrorism**

Under the FSIA, Iran is state sponsor of terrorism. The definition is provided in 28 USC § 1605A(g)(6) as follows:

The term “state sponsor of terrorism” means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 App. U.S.C. 2405 (j)), section 620A of the

Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22U.S.C. 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism.

"The Islamic Republic of Iran has been designated a "state sponsor" of terrorism pursuant to these provisions of the Export Administration Act continuously since January 1984." *Elahi v. Islamic Republic of Iran*, 124 F. Supp. 2d 97, 108 (D.D.C. 2000) citing *Cicippio v. Islamic Republic of Iran*, 18 F. Supp. 2d 62 (D.D.C. 1998). Iran is still designated a state sponsor of terrorism, and this designation has not been rescinded. *See, i.e. O'Brien, supra*, 853 F.Supp.2d 49 ("... the Court finds that defendant is responsible for plaintiffs' injuries and thus liable under the FSIA's state-sponsored terrorism exception . . .").

**B. Plaintiffs Are Nationals of the United States.**

Plaintiffs are nationals of the United States. The definition for national of the United States is provided in 28 USC § 1605A(g)(5) as follows:

The term "national of the United States" has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(22));

The referenced provision of the Immigration and Nationality Act provides the following:

The term "national of the United States" means

(A) a citizen of the United States, or

(B) a person who, though not a citizen of the United States, owes permanent allegiance<sup>4</sup> to the United States.

8 U.S.C. § 1101 (a)(22).

Evidence of nationality "may be accomplished either through direct testimony of any competent witness, or through the submission of relevant documentation." *Peterson v. Islamic Republic of Iran*, 264 F.Supp.2d 46 n. 1 (D.D.C. 2002).

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<sup>4</sup> Merriam-Webster defines "allegiance" as: "(1): the fidelity owed by a subject or citizen to a sovereign or government." "allegiance" Merriam-Webster Online Dictionary. 2013. <http://www.merriam-webster.com> (3 April 2013).

In interpreting "permanent allegiance to the United States" for the purposes of the FSIA, the U.S. District Court for the District of Columbia has expanded the definition to include those who have taken the steps necessary to become permanent residents or citizens and thus have shown their intention of severing ties with their former countries. *Asemani v. Islamic Republic of Iran*, 266 F. Supp. 2d 24, 26-27 (D.D.C. 2003). In *Asemani*, the plaintiff was similarly tortured by the Islamic Republic of Iran and had sued under the Foreign Sovereign Immunity Act, 28 U.S.C. §§ 1602 *et seq.* The court, with the Honorable John D. Bates presiding, held that the plaintiff, who had first visited the United States on student visa but had later applied for permanent residency and citizenship, had satisfied the requirements for FSIA, ruling that "under the current interpretation of the term "national," plaintiff has demonstrated his permanent allegiance to the United States sufficient to constitute him a "national" within the meaning of the FSIA." *Id.* at 27. See also *Peterson v. Islamic Republic of Iran*, 515 F. Supp. 2d 25, 40 n. 4. (D.D.C. 2007) (holding that even a citizen of another country can satisfy the "national of the United States" requirement of FSIA by simply demonstrating his allegiance).

Plaintiffs, Akbar, Manouchehr, Nasrin, and Simin Mohammadi fled Iran as refugees because they were all severely persecuted by the regime. Manouchehr, Nasrin and Akbar through Manouchehr and Nasrin, have given direct sworn testimony, under oath and penalty of perjury, that they owed their permanent allegiance to the United States and no longer had any loyalty to Iran after the first signs of persecution, including their initial imprisonment. From the moment of Manouchehr's first trip to the United States in 1999, he pledged his permanent allegiance to the United States. He "became for the freedom in the United States, and [I] made a decision to stay here, to become a citizen and go to school here." Tr. at 36; F.F. at 8:71. Manouchehr was imprisoned again after returning from the United States and accused of being a CIA agent.

Akbar was imprisoned and tortured for years before his mutilated dead body was released for the world to see. He too pledged his allegiance to the United States upon his initial imprisonment.

F.F. at 9:80.

From the point of imprisonment, until the present time, Defendants have continued to harass and torture the Plaintiffs and threaten them with death. After being released the final time from prison, Manouchehr and the other survivors fled Iran and immigrated into the United States, where Nasrin and Simin are now citizens and Manouchehr is a permanent resident. Plaintiffs continue to be harassed, threatened, and terrorized by the regime even after they became citizens. Manouchehr has received three or four threatening phone calls from Iran since January 2013 and he believes that if the media announces or reports this, the threats will be more frequent and more threatening. F.F. at 12:114. Aside from the phone calls from the Iranian regime threatening death and the email and Facebook accounts that Defendants hacked and used to defame Plaintiffs, Plaintiffs feel they cannot escape the ceaseless, barbaric grip of the Defendants. Because of all this, there is no conceivable way that the Plaintiffs could have any allegiance to the Islamic Republic; they ever go back to Iran, they will be imprisoned, tortured, and killed, just like their brother, Akbar. Yet more to the point, consistent with her permanent allegiance to the United States, Plaintiff Simin served in the U.S. Armed Forces as a part of the U.S. Army from January 4, 2011 to September 29, 2011. F.F. at 21:206. Because of their demonstrated permanent allegiance to the United States, and their severed ties with the Islamic Republic, it is clear that the Plaintiffs are nationals of the United States, as required under the FSIA.

**C. The Claimant Has Afforded The Foreign State A Reasonable Opportunity To Arbitrate The Claim.**

Having been served with the Second Amended Complaint, Defendants refused to acknowledge or even participate in these proceedings and thus have defaulted. In fact, the Honorable Judge Howell issued a Default Order on December 8, 2011, declaring Defendants in default because of their failure to plead or otherwise defend this action. *See* Order and Default Exhibits A and B. This has not been the first time Defendants have defaulted. *See Peterson v. Islamic Republic of Iran*, 264 F.Supp.2d 46 (2002) ("Although defendants were served with the two complaints on May 6 and July 17, 2002, defendants failed to file any response to either complaint, and on December 18, 2002, this Court entered defaults against defendants in both cases."); *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 6 (D.D.C. 1998) ("This is an action for wrongful death resulting from an act of state-sponsored terrorism. Defendants have not entered an appearance in this matter."). When served, Defendants had their opportunity to invoke arbitration. They chose not to respond and instead defaulted on the Second Amended Complaint and any collateral legal action. There is no further duty requiring Plaintiffs to notify Defendants. Since the Defendants have not entered an appearance and refuse to participate in these proceedings, it is clear that they have refused any and all opportunities to arbitrate the claims.

#### **IV. CLAIMS UNDER ATCA AND TVPA RUN CONCURRENTLY WITH FSIA**

In the recent decision of *Samantar v. Yousuf*, 130 S. Ct. 2278 (2010), the U.S. Supreme Court held that the Foreign Sovereign Immunity Act does not preclude actions brought under the Alien Tort Claims Act, 28 U.S.C. 1350 nor the Torture Victim Protection Act of 1991, 28 U.S.C. 1350 note. In *Samantar*, the plaintiffs were Somalian victims of torture and extrajudicial killings and sued the former prime minister of Somalia. Plaintiffs "sought damages from [defendant] pursuant to the Torture Victim Protection Act of 1991, 106 Stat. 73, note following 28 U.S.C. § 1350, and the Alien Tort Statute, 28 U.S.C. § 1350." *Id.* at 2282. The U.S. Supreme Court held

that the FSIA did not provide immunity for the prime minister or any other government official because "Reading the FSIA as a whole, there is nothing to suggest we should read 'foreign state' in § 1603(a) to include an official acting on behalf of the foreign state, and much to indicate that this meaning was not what Congress enacted." *Id.* at 2289.

Here, the actions of Defendant Ahmadinejad and Defendant Supreme Leader Khamenei are at issue. These officials, acting in their official capacity, authorized the torture and murder of Akbar Mohammadi as well as the torture of his brother Manouchehr. Defendants continue to terrorize the Mohammadi family by their repeated life-threatening phone calls to Manouchehr, Nasrin in the United States and their parents and their parents in Iran. As the Court held in *Samantar*, they are not immune to the Alien Tort Claim Act and the Torture Victim Protection Act. Thus, the case proceeds independently on these alternative grounds as well.

### CONCLUSION

For the forgoing reasons, jurisdiction for this case is proper pursuant to the Alien Tort Claims Act, 28 U.S.C. § 1350, the Torture Victim Protection Act, 28 U.S.C. § 1350, and the Foreign Sovereign Immunity Act, 28 U.S.C. §§ 1602 *et seq.*

Respectfully submitted,

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