

August 19, 2008

**BY PDF AND HAND**

Hon. Catherine O'Hagan Wolfe  
Clerk of the United States Court of Appeals  
for the Second Circuit  
United States Courthouse  
40 Foley Square  
New York, NY 10007

Re: *Matar v. Dichter*, No. 07-2579-cv -- Notice of  
Supplemental Authority under Fed. R. App. P. 28(j).

Dear Ms. Wolfe:

Appellee Avraham Dichter files this Notice of Supplemental Authority because this Court in *In re Terrorist Attacks on September 11, 2001*, No. 06-0319-cv(L) (2d Cir. Aug. 14, 2008), resolved a central issue in this appeal.

Appellants sued Mr. Dichter, former head of Israel's General Security Service, for allegedly participating in the chain of command in an Israeli military action against a terrorist leader, which caused civilian casualties. The District Court found that the claim challenged official acts protected under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-11 ("FSIA"). On appeal, Appellants framed as their first issue whether "Defendant, sued as a former official of a foreign government, is entitled to immunity" under the FSIA. Br. at 1. Appellants contended that the "language, legislative history and intended purpose of the FSIA all indicate that the statute does not apply to individuals." *Id.* at 7. Subsequently, Appellants attempted to distinguish *Belhas v. Ya'alon*, 515 F.3d 1279 (D.C. Cir. 2008) -- applying the FSIA to parallel claims against another Israeli official -- on the ground that Second Circuit law was different. Rule 28(j) response letter (Feb. 26, 2008).

In *In re Terrorist Attacks*, this Court held "that the FSIA grants immunity to individual officials of a foreign government for their official-capacity acts." Op. at 29. The FSIA covers any "agency or instrumentality of a foreign state," 28 U.S.C. § 1603(a). An "agency," the Court found, "is any thing or person through which action is accomplished," a definition "easily open enough to include senior members of a foreign state's government and secretariat." Op. at 30. Moreover, applying the FSIA to individual officials was necessary to protect foreign governments, because "a claim against an agency of state power, including a state officer acting

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Hon. Catherine O'Hagan Wolfe  
August 19, 2008  
Page 2

in his official capacity, can be in effect a claim against the state.” *Id.* at 31. Indeed, the Court found that “the immunity of a principal does not amount to much without the extension of that immunity to its agents.” *Id.*

As this Court has now ruled that the FSIA covers individuals, Appellants’ principal argument is no longer debatable.

Respectfully submitted,



Robert N. Weiner

cc: Counsel of Record