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August 26, 2008

Catherine O'Hagan Wolfe
Clerk of the Court
U.S. Court of Appeals for the Second Circuit
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

Re: *Matar v. Dichter*, No. 07-2579-cv

Dear Ms. Wolfe:

Pursuant to F.R.A.P. 28(j), Plaintiffs/Appellants respond to Defendant/Appellee's submission of *In re Terrorist Attacks on September 11, 2001*, No. 06-0319-cv(L), (2d Cir. Aug. 14, 2008).

Terrorist Attacks found that the FSIA applied to four Saudi princes sued as sitting government officials in their official capacities, but not in their personal capacities. *Id.* at *4-*5, *10. By deciding that an individual official of a foreign state is an "agency or instrumentality" of the state, *Terrorist Attacks* (at *27) foreclosed Dichter's argument that he should be immune because he is equivalent to a foreign state, rather than an "agency or instrumentality" thereof. DB:12, 15, 20. *Dole Food Co. v. Patrickson*, 538 U.S. 468, 480 (2003) held that whether a defendant is an agency or instrumentality under the FSIA is determined when the complaint is filed. Dichter was not a government official when sued (by personal service, in his personal capacity), and therefore is not immune under the FSIA. AOB:13-16.

Moreover, *Terrorist Attacks* (at *28-*29) adopted the reasoning of *Chuidian v. Philippine Nat'l Bank*, which found that government officials are not immune for acts outside their "official capacity," or "beyond the scope of [their] authority." 912 F.2d 1095, 1101-03 (9th Cir. 1990). *Terrorist Attacks* found *Chuidian's* reasoning consistent with the act-of-state doctrine, which precludes adjudication of foreign officials' acts when "done within [the state's] own territory," and "when exercised within the scope of their delegated powers." *Id.* at *29. Unlike funding charities, Dichter's decision to bomb a residential building full of civilians outside of Israel's sovereign territory was beyond the scope of his authority and a *jus cogens* violation, and is currently being criminally investigated in Israel. AOB:4;16-28; RB:7-9.

Terrorist Attacks reasoned that the FSIA "remove[d] the role of the State Department in determining immunity," and rectified a system that was "leaving immunity



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decisions subject to diplomatic pressures rather than the rule of law.” *Id.* at *24 (quoting *Chuidian* at 1100). Dichter’s attempt to turn the FSIA on its head by permitting foreign governments to arbitrarily provide former officials with immunity by asserting they acted in their official capacity must be rejected.

Respectfully submitted,

A handwritten signature in cursive script that reads "Maria LaHood" followed by a stylized flourish or symbol.

Maria C. LaHood

Counsel for Plaintiffs/Appellants

cc: See attached Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2008, I served true and correct copies of Plaintiffs/Appellants' August, 26, 2008 F.R.A.P 28(j) Response in *Matar v. Dichter*, 07-2579-cv, via U.S.P.S First Class Mail, postage pre-paid, and electronic mailing to Counsel for Defendant/Appellee:

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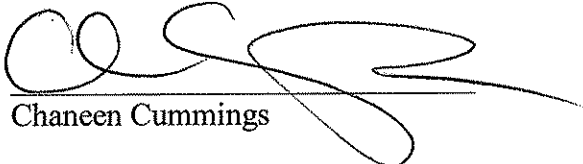
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I also sent courtesy copies of Plaintiffs/Appellants' August 26, 2008 F.R.A.P 28(j) Response via electronic mail to Counsel for Amicus Curiae:

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