

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

_____	)	
AMIR MESHAL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 09-cv-2178 (EGS)
	)	
CHRIS HIGGENBOTHAM, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**PLAINTIFF’S MOTION FOR LEAVE TO FILE  
SECOND AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 15(a), Plaintiff Amir Meshal hereby moves for leave to file a Second Amended Complaint. Pursuant to Local Rule 7(m), counsel for the Plaintiff has conferred with counsel for the Defendants. Defendants are still reviewing the proposed Second Amended Complaint and will inform the Court of their position separately.

The grounds for this motion are as follows:

1) Following the filing of Plaintiff’s Amended Complaint, which alleges that Defendants violated his rights under the United States Constitution and the Torture Victim Protection Act of 1991, the Defendants moved to dismiss the Amended Complaint on June 23, 2010. Briefing of that motion was completed on October 10, 2010. This Court heard oral argument on the motion to dismiss on July 12, 2011.

2) Plaintiff Meshal respectfully requests permission to file a Second Amended Complaint in this action to reflect information recently obtained that bolsters his allegations that his detention without due process was at the behest or with the active and substantial participation of the Defendant U.S. government officials and for the express purpose of enabling

coercive interrogation of Plaintiff by the Defendants. Pursuant to Local Civil Rule 15.1.

Plaintiff attaches to this motion the proposed pleading as amended. *See* Exhibit A. For the convenience of the Court and the Defendants, Plaintiff also attaches a “redline” version of the proposed pleading showing the changes between the Amended Complaint and the proposed Second Amended Complaint. *See* Exhibit B. (The proposed changes are on pages 40, 49, 51, 53-54 of the “redline” version.)

3) Briefly, the allegations Plaintiff seeks to add in the Second Amended Complaint are as follows:

a) Prior to Mr. Meshal’s arrival in Ethiopia, officials of the U.S. embassy in Addis Ababa were informed that Mr. Meshal was being transferred to Ethiopia to further interrogations by U.S. officials. After his arrival in Ethiopia, U.S. consular officials did not seek access to Mr. Meshal until on or around March 21, 2007, after the fact of Mr. Meshal’s detention in Ethiopia became public, although these officials had been fully informed for approximately one month that FBI agents were regularly interrogating Mr. Meshal in Ethiopia. At no point during Mr. Meshal’s detention in Ethiopia did any official of the U.S. embassy in Addis Ababa attempt to assist him in obtaining counsel, although these officials were aware of U.S. interrogations of Mr. Meshal.

b) On October 16, 2011, a U.S. government official wrote to Mr. Meshal’s counsel by email: “As a US government official posted to Addis Ababa during Amir Meshal’s detainment and interrogation in Ethiopia, I feel a responsibility to point out an incorrect allegation in Mr. Meshal’s complaint dated May 10<sup>th</sup>, 2010. Mr. Meshal’s complaint alleges that Department of State Consular officials were not informed of his circumstances and presence in

Ethiopia until March 21, 2007. This is wholly inaccurate. Prior to Mr. Meshal's arrival in Ethiopia in February 2007, most of the senior embassy staff were briefed on the situation. Most notably, Dan Gershator, chief of the Consular Section, was fully informed that a US citizen was being transferred to the custody of the Ethiopians to further US interrogations of this US citizen."

c) On December 7, 2011, the same U.S. government official again wrote to Mr. Meshal's counsel by email: "Your assertion that U.S. officials used foreign proxies to detain Mr. Meshal when said foreign governments would not normally have detained your client is absolutely correct." The U.S. official also wrote that U.S. consular officials in Addis Ababa did not seek access to Mr. Meshal upon his arrival in Ethiopia, as they have done for every other U.S. citizen arrested in that country for the last seven years, and that the "FBI/JTTF was given carte blanche to do as they pleased with Mr. Meshal."

4) Under Federal Rule of Civil Procedure 15(a), the Amended Complaint may be further amended "only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2).

5) Motions to amend the complaint are liberally granted by this Court. *See Adams v. Quattlebaum*, 219 F.R.D. 195, 197 (D.D.C. 2004) ("[C]ourt[s] must . . . heed Rule 15's mandate that leave is to be 'freely given when justice so requires.'"). The D.C. Circuit has adopted a liberal approach to the amendment of pleadings to ensure that claims will be decided on the merits rather than on technicalities. *Belizan v. Hershon*, 434 F.3d 579, 582 (D.C. Cir. 2006). Leave should be denied only upon a showing of "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of

amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962); *see also Belizan*, 434 F.3d at 582; *Richardson v. United States*, 193 F.3d 545, 548-49 (D.C. Cir. 1999). Moreover, prejudice to the party opposing the amendment must be substantial in that the amendment must cause a serious impairment of the non-movant’s ability to present its case. *Cf. Djourabchi v. Self*, 240 F.R.D. 5, 13-14 (D.D.C. 2006). The party opposing the amendment bears the burden of showing such substantial or undue prejudice. *Atlantic Bulk Carrier Corp. v. Milan Express Co., Inc.*, No. 3:10cv103, 2010 WL 2929612, at \*4 (E.D. Va. 2010). Pertinent considerations in analyzing whether “undue prejudice” exists include: whether the proposed amendment (1) “substantially changes the theory on which the case has been proceeding and is proposed late enough so that the opponent would be required to engage in significant new preparation,” (2) requires the defendant to expend significant additional resources to conduct discovery and prepare for trial; and (3) will significantly delay the resolution of the dispute. *See Djourabchi*, 240 F.R.D. at 13.

6) There has been no undue delay in filing this motion, as Plaintiff filed it soon after receiving new information that provided good-faith grounds to assert additional allegations regarding the knowledge and involvement of U.S. officials in Mr. Meshal’s detention in Ethiopia and rendition to that country from Kenya.

7) The filing of the proposed Second Amended Complaint will not cause the Defendants to suffer undue prejudice. When considering whether an amended pleading would impose undue prejudice on a party, the inquiry centers on whether the amendment will put a litigant at some litigation disadvantage (*e.g.*, by denying a litigant an opportunity to participate in discovery or motion practice). *See Teltschik v. Williams & Jensen*, 683 F. Supp. 2d 33, 42 (D.D.C. 2010) (denying leave where proposed amendment came “years after [plaintiff] filed his

original complaint and after the parties [] conducted extensive discovery”). Here, Defendants will not be deprived of any discovery or any other rights in connection with the presentation of their defense to Plaintiff’s claims. The additional allegations do not alter Plaintiff’s legal theories, involve new claims, or raise new legal issues. They address the plausibility of Plaintiff’s claims that he was detained and rendered at the behest of the United States, which Defendants briefed in their motion to dismiss the Amended Complaint. Defendants will not have to engage in significant new preparation or expend significant additional resources as a result of the proposed amendments.

8) Plaintiff respectfully suggests that the filing of the Second Amended Complaint should not result in an entirely new motion to dismiss and related briefing, with all the delay that would entail. The proposed amendment presents no new legal claims. It simply puts forth narrow—albeit significant—additional factual allegations in support of the existing claims. Should leave to amend be granted, Plaintiff requests the Court to direct the Defendants to file only a short supplemental memorandum in support of their pending motion to dismiss, with the Plaintiff’s response to be equally limited and equally short. Plaintiff does not believe that additional oral argument is necessary.

WHEREFORE, Plaintiff respectfully requests that the Court permit the requested amendment and establish the requested briefing schedule. A Proposed Order is attached.

Respectfully submitted,

/s/ Nusrat J. Choudhury

Nusrat J. Choudhury

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*Counsel for Plaintiff Amir Meshal*

January 18, 2012

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

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Plaintiff,	)	
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CHRIS HIGGENBOTHAM, <i>et al.</i> ,	)	
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_____	)	

**[Proposed] ORDER**

Upon consideration of Plaintiff’s motion for leave to file a Second Amended Complaint, Defendants’ response thereto, and the entire record herein, it is

ORDERED that the motion is granted and Plaintiff’s proposed Second Amended Complaint shall be filed. It is further

ORDERED that Defendants may file a supplemental memorandum in support of their pending motion to dismiss, not to exceed ten pages, within ten calendar days of the date of this order. It is further

ORDERED that Plaintiffs may file a response to Defendants’ supplemental memorandum, not to exceed ten pages, within ten calendar days of the date Defendants’ supplemental memorandum is filed.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Emmet G. Sullivan  
United States District Judge