

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CLERK'S CERTIFICATE AND APPEALS COVER SHEET

ABBREVIATED ELECTRONIC RECORD

Case Caption: Sexual Minorities Uganda v. Lively

District Court Number: 12cv30051-MAP

Fee: Paid? Yes  No  Government filer  In Forma Pauperis Yes  No

Motions Pending Yes  No  Sealed documents Yes  No   
If yes, document # \_\_\_\_\_ If yes, document # \_\_\_\_\_

Ex parte documents Yes  No  Transcripts Yes  No   
If yes, document # \_\_\_\_\_ If yes, document # 176,194,328

Notice of Appeal filed by: Plaintiff/Petitioner  Defendant/Respondent  Other:

Appeal from:

#59 Memorandum and Order, #350 Memorandum Order, #351 Judgment

Other information:

I, Robert M. Farrell, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed electronic documents:

**#59, #350, #351, and #353**

with the electronic docket sheet, constitute the abbreviated record on appeal in the above entitled case for the Notice of Appeal # 353 filed on June 8, 2017.

In testimony whereof, I hereunto set my hand and affix the seal of this Court on June 8, 2017.

**ROBERT M. FARRELL**  
Clerk of Court

/s/Matthew A. Paine  
Deputy Clerk

COURT OF APPEALS DOCKET NUMBER ASSIGNED: \_\_\_\_\_

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APPEAL

**United States District Court  
District of Massachusetts (Springfield)  
CIVIL DOCKET FOR CASE #: 3:12-cv-30051-MAP**

Sexual Minorities Uganda v. Lively  
Assigned to: Judge Michael A. Ponsor  
Cause: 28:1331 Fed. Question: Personal Injury

Date Filed: 03/14/2012  
Date Terminated: 06/05/2017  
Jury Demand: Both  
Nature of Suit: 360 P.I.: Other  
Jurisdiction: Federal Question

**Plaintiff**

**Sexual Minorities Uganda**

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V.

**Defendant**

**Scott Lively**  
*Individually and as President of Abiding  
Truth Ministries*

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Date Filed	#	Page	Docket Text
03/14/2012	<u>1</u>		COMPLAINT against Scott Lively Filing fee: \$ 350, receipt number 0101-3853172 (Fee Status: Filing Fee paid), filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> category sheet)(Ryan, Luke) (Entered: 03/14/2012)
03/14/2012	<u>2</u>		NOTICE of Appearance by Luke S. Ryan on behalf of Sexual Minorities Uganda (Ryan, Luke) (Entered: 03/14/2012)
03/14/2012	<u>3</u>		NOTICE of Case Assignment. Magistrate Judge Kenneth P. Neiman assigned to case. <b>Plaintiff's counsel, or defendant's counsel if this case was initiated by the filing of a Notice of Removal, are directed to the Notice and Procedures regarding Consent to Proceed before the Magistrate Judge which can be downloaded <a href="#">here</a>. These documents will be mailed to counsel not receiving notice electronically.</b> (Abaid, Kimberly) (Finn, Mary). (Added documents 3/14/2012) (Finn, Mary). Modified on 3/14/2012 to add the consent procedures package. (Finn, Mary). (Entered: 03/14/2012)
03/14/2012	<u>4</u>		MOTION for Leave to Appear Pro Hac Vice for admission of Pamela C. Spees Filing fee: \$ 50, receipt number 0101-3853694 by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit Affidavit)(Ryan, Luke) (Entered: 03/14/2012)
03/14/2012	<u>5</u>		MOTION for Leave to Appear Pro Hac Vice for admission of Baher Azmy Filing fee: \$ 50, receipt number 0101-3853742 by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit Affidavit)(Ryan, Luke) (Entered: 03/14/2012)
03/14/2012			Magistrate Judge Kenneth P. Neiman: ELECTRONIC ORDER entered granting <u>4</u> Motion for Leave to Appear Pro Hac Vice Added Pamela C. Spees. <b>Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at <a href="http://www.mad.uscourts.gov">www.mad.uscourts.gov</a>. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.</b> ; granting <u>5</u> Motion for Leave to Appear Pro Hac Vice Added Baher Azmy. <b>Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at <a href="http://www.mad.uscourts.gov">www.mad.uscourts.gov</a>. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.</b> (Finn, Mary) (Entered: 03/14/2012)
03/14/2012	<u>6</u>		NOTICE issued to Attorney Pamela C. Spees and Baher Azmy. regarding mandatory registration and use with ECF in compliance with the Standing Order entered by Judge Ponsor and Magistrate Judge Neiman. (Finn, Mary) (Entered: 03/14/2012)
03/15/2012	<u>7</u>		Summons Issued as to Scott Lively. <b>Counsel receiving this notice electronically should download this summons, complete one for each defendant and serve it in accordance with Fed.R.Civ.P. 4 and LR 4.1. Summons will be mailed to plaintiff(s) not receiving notice electronically for completion of service.</b> (Stuckenbruck, John) (Entered: 03/15/2012)
04/02/2012	<u>8</u>		SUMMONS Returned Executed Scott Lively served on 3/23/2012, answer due 4/13/2012. (Spees, Pamela) (Entered: 04/02/2012)

04/11/2012	<u>9</u>	NOTICE of Appearance by Philip D. Moran on behalf of Scott Lively (Moran, Philip) (Entered: 04/11/2012)
04/11/2012	<u>10</u>	MOTION for Leave to Appear Pro Hac Vice for admission of Mathew Staver Filing fee: \$ 100, receipt number 0101-3896422 by Scott Lively.(Moran, Philip) (Entered: 04/11/2012)
04/11/2012	<u>11</u>	MOTION for Leave to Appear Pro Hac Vice for admission of Horatio Mihet Filing fee: \$ 100, receipt number 0101-3896460 by Scott Lively.(Moran, Philip) (Entered: 04/11/2012)
04/11/2012	<u>12</u>	Assented to MOTION for Extension of Time to 05/14/2012 to To Move, Plead or Otherwise Respond to Complaint by Scott Lively.(Moran, Philip) (Entered: 04/11/2012)
04/11/2012		Magistrate Judge Kenneth P. Neiman: ELECTRONIC ORDER entered granting <u>12</u> Motion for Extension of Time to Answer re <u>1</u> Complaint Scott Lively answer due 5/14/2012. (Finn, Mary) (Entered: 04/11/2012)
04/11/2012		Magistrate Judge Kenneth P. Neiman: ELECTRONIC ORDER entered granting <u>10</u> Motion for Leave to Appear Pro Hac Vice Added Horatio G. Mihet and Matthew D. Staver. <b>Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at <a href="http://www.mad.uscourts.gov">www.mad.uscourts.gov</a>. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.</b> ; granting <u>11</u> Motion for Leave to Appear Pro Hac Vice Added Horatio G. Mihet and Matthew D. Staver. <b>Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at <a href="http://www.mad.uscourts.gov">www.mad.uscourts.gov</a>. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.</b> (Finn, Mary) (Entered: 04/11/2012)
04/11/2012	<u>13</u>	NOTICE issued to Attorney Horatio G. Mihet and Matthew D. Staver regarding mandatory registration and use with ECF in compliance with the Standing Order entered by Judge Ponsor and Magistrate Judge Neiman. (Finn, Mary) (Entered: 04/11/2012)
05/11/2012	<u>14</u>	MOTION to Stay <i>Action Pending Supreme Court's Decision in Kiobel v. Royal Dutch Petroleum</i> and MOTION for Oral Argument by Scott Lively.(Mihet, Horatio) (Main Document 14 replaced on 5/14/2012) (Finn, Mary). Modified on 5/14/2012 to separate the memorandum from the main document and to docket it separately. (Finn, Mary). Added an additional relief – MOTION for Hearing on 5/14/2012 (Finn, Mary). Modified on 5/14/2012 See certificate of consultation and certificate of service on document <u>17</u> . (Finn, Mary). (Entered: 05/11/2012)
05/11/2012	<u>15</u>	Not all parties consented to assignment of case to Magistrate Judge Neiman. Case to be reassigned to Judge Michael A. Ponsor. . (Spees, Pamela) (Entered: 05/11/2012)
05/11/2012	<u>16</u>	MOTION for Extension of Time to Move, Plead or Otherwise Respond to Plaintiff's Complaint to After Adjudication of Defendant's Motion to Stay ( <i>with incorporated Memorandum in Support</i> ) by Scott Lively.(Mihet, Horatio)). (Entered: 05/11/2012)

05/11/2012	<u>17</u>		MEMORANDUM in Support re <u>14</u> MOTION to Stay <i>Action Pending Supreme Court's Decision in Kiobel v. Royal Dutch Petroleum</i> filed by Scott Lively. (Finn, Mary) (Entered: 05/14/2012)
05/14/2012			ELECTRONIC NOTICE of Reassignment. Judge Michael A. Ponsor added. (Abaid, Kimberly) (Entered: 05/14/2012)
05/15/2012			Judge Michael A. Ponsor: ELECTRONIC ORDER entered granting <u>16</u> Motion for Extension of Time to Answer. ALLOWED. The motion for stay (Dkt. 14) will be set promptly for hearing as soon as the opposition is filed. So ordered. (Lindsay, Maurice) (Entered: 05/15/2012)
05/25/2012	<u>18</u>		Opposition re <u>14</u> MOTION to Stay <i>Action Pending Supreme Court's Decision in Kiobel v. Royal Dutch Petroleum (with Request for Oral Argument and Memorandum of Law in Support)</i> MOTION for Hearing filed by Sexual Minorities Uganda. (Spees, Pamela) (Entered: 05/25/2012)
06/01/2012			Judge Michael A. Ponsor: ENDORSED ORDER entered denying <u>14</u> Motion to Stay and for Hearing. DENIED. Answer or Responsive pleading by June 18, 2012. So ordered. (Lindsay, Maurice) (Entered: 06/01/2012)
06/04/2012			Set/Reset Answer or Responsive Pleading Deadlines for Scott Lively for 6/18/2012. (Finn, Mary) (Entered: 06/04/2012)
06/13/2012	<u>19</u>		Assented to MOTION for Extension of Time to June 22, 2012 to Move, Plead or Otherwise Respond to Plaintiff's Complaint by Scott Lively.(Mihet, Horatio) (Entered: 06/13/2012)
06/14/2012			Judge Michael A. Ponsor: ELECTRONIC ORDER entered granting <u>19</u> Motion for Extension of Time to Answer or file a resp. re <u>1</u> Complaint. Scott Lively answer due 6/22/2012. (Finn, Mary) (Entered: 06/14/2012)
06/22/2012	<u>20</u>		Assented to MOTION for Leave to File Excess Pages <i>in Memorandum of Law Supporting Motion to Dismiss</i> by Scott Lively.(Mihet, Horatio) (Entered: 06/22/2012)
06/22/2012	<u>21</u>		MOTION to Dismiss for Lack of Jurisdiction ( Responses due by 7/6/2012), MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Scott Lively.(Mihet, Horatio) (Entered: 06/22/2012)
06/22/2012	<u>22</u>		MEMORANDUM in Support re <u>21</u> MOTION to Dismiss for Lack of Jurisdiction MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Scott Lively. (Mihet, Horatio) (Entered: 06/22/2012)
06/25/2012			Judge Michael A. Ponsor: ELECTRONIC ORDER entered granting <u>20</u> Motion for Leave to File Excess Pages Memorandum in excess of twenty pages. (Finn, Mary) (Entered: 06/25/2012)
07/03/2012	<u>23</u>		Assented to MOTION for Extension of Time to September 1, 2012 to File Opposition to Motion to Dismiss by Sexual Minorities Uganda.(Spees, Pamela) (Entered: 07/03/2012)
07/03/2012	<u>24</u>		MOTION for Leave to File Excess Pages by Sexual Minorities Uganda.(Spees, Pamela) (Entered: 07/03/2012)
07/06/2012	25		Judge Michael A. Ponsor: ELECTRONIC ORDER entered granting <u>23</u> Motion for Extension of Time to September 1, 2012 to File Opposition to

		Motion to Dismiss by Sexual Minorities Uganda. (Pelegano, Theresa) (Entered: 07/06/2012)
07/06/2012	26	Judge Michael A. Ponsor: ELECTRONIC ORDER entered granting <u>24</u> Motion for Leave to File Excess Pages ; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include – Leave to file granted on (date of order)– in the caption of the document. (Pelegano, Theresa) (Entered: 07/06/2012)
07/13/2012	<u>27</u>	AMENDED COMPLAINT against Scott Lively, filed by Sexual Minorities Uganda.(Spees, Pamela) (Entered: 07/13/2012)
07/26/2012	<u>28</u>	Assented to MOTION for Extension of Time to August 9, 2012 to File Answer re <u>27</u> Amended Complaint by Scott Lively.(Mihet, Horatio) (Entered: 07/26/2012)
07/27/2012	29	Judge Michael A. Ponsor: ELECTRONIC ORDER entered granting <u>28</u> Motion for Extension of Time to Answer re <u>27</u> Amended Complaint Scott Lively answer due 8/9/2012. (Finn, Mary) Modified on 7/27/2012 to give this entry a document number. (Finn, Mary). (Entered: 07/27/2012)
08/09/2012	<u>30</u>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>and</i> , MOTION to Dismiss for Lack of Jurisdiction <i>Plaintiff's First Amended Complaint (Oral Argument Requested)</i> ( Responses due by 8/23/2012) by Scott Lively.(Mihet, Horatio) (Entered: 08/09/2012)
08/09/2012	<u>31</u>	MOTION for Leave to File Excess Pages <i>in Defendant's Memorandum in Support of Motion to Dismiss Plaintiff's Amended Complaint</i> by Scott Lively. (Attachments: # <u>1</u> Exhibit Memorandum in Support of Motion to Dismiss Amended Complaint)(Mihet, Horatio) (Entered: 08/09/2012)
08/10/2012	32	Judge Michael A. Ponsor: ELECTRONIC ORDER entered granting <u>31</u> Motion for Leave to File Excess Pages in Defendant's Memorandum in Support of Motion to Dismiss Plaintiff's Amended Complaint by Scott Lively. (Attachments: # <u>1</u> Exhibit Memorandum in Support of Motion to Dismiss Amended Complaint); Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include – Leave to file granted on (date of order)– in the caption of the document. (Pelegano, Theresa) (Entered: 08/10/2012)
08/10/2012	<u>33</u>	MEMORANDUM in Support re <u>30</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>and</i> MOTION to Dismiss for Lack of Jurisdiction <i>Plaintiff's First Amended Complaint (Oral Argument Requested)</i> ( <i>Leave to File Granted 8/10/2012</i> ) filed by Scott Lively. (Mihet, Horatio) (Entered: 08/10/2012)
08/21/2012	<u>34</u>	Assented to MOTION for Extension of Time to September 20, 2012 to File Opposition to Defendant's Motion to Dismiss by Sexual Minorities Uganda.(Spees, Pamela) Modified on 8/21/2012 to correct the relief type of the motion to motion to ext. time to file resp./reply. (Finn, Mary). (Entered: 08/21/2012)
08/21/2012	35	

		Judge Michael A. Ponsor: ELECTRONIC ORDER entered granting <u>34</u> Motion for Extension of Time to File Response/Reply re <u>30</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>and</i> MOTION to Dismiss for Lack of Jurisdiction <i>Plaintiff's First Amended Complaint (Oral Argument Requested)</i> . Responses due by 9/20/2012. (Finn, Mary) (Entered: 08/21/2012)
09/20/2012	<u>36</u>	MEMORANDUM in Opposition re <u>30</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>and</i> MOTION to Dismiss for Lack of Jurisdiction <i>Plaintiff's First Amended Complaint (Oral Argument Requested)</i> filed by Sexual Minorities Uganda. (Spees, Pamela) (Entered: 09/20/2012)
09/21/2012	<u>37</u>	Errata by Sexual Minorities Uganda to <u>36</u> Memorandum in Opposition to Motion, . (Spees, Pamela) (Entered: 09/21/2012)
09/21/2012	<u>38</u>	MEMORANDUM in Opposition re <u>30</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>and</i> MOTION to Dismiss for Lack of Jurisdiction <i>Plaintiff's First Amended Complaint (Oral Argument Requested) Corrected</i> filed by Sexual Minorities Uganda. (Spees, Pamela) (Entered: 09/21/2012)
11/20/2012	39	ELECTRONIC NOTICE Setting Hearing on Motion <u>30</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>and</i> MOTION to Dismiss for Lack of Jurisdiction <i>Plaintiff's First Amended Complaint (Oral Argument Requested)</i> , <u>21</u> MOTION to Dismiss for Lack of Jurisdiction MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM : Motion Hearing set for 1/7/2013 11:00 AM in Hampden Courtroom before Judge Michael A. Ponsor. (Pelegano, Theresa) (Entered: 11/20/2012)
12/18/2012	<u>40</u>	Judge Michael A. Ponsor: ORDER entered. ORDER RE: POSSIBLE VIDEO RECORDING OF HEARING. If either party, or the judge, declines to consent, no recording will occur. Counsel are hereby ordered to notify this court, no later than December 21, 2012, as to whether their client consents to the requested video recording. See the attached order for complete details. (Lindsay, Maurice) (Entered: 12/18/2012)
12/18/2012	<u>41</u>	MOTION for Leave to Appear Pro Hac Vice for admission of Jeena D. Shah Filing fee: \$ 100, receipt number 0101-4249006 by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit)(Ryan, Luke) (Entered: 12/18/2012)
12/18/2012	42	Judge Michael A. Ponsor: ELECTRONIC ORDER entered granting <u>41</u> Motion for Leave to Appear Pro Hac Vice Added Jeena D. Shah. <b>Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at <a href="http://www.mad.uscourts.gov">www.mad.uscourts.gov</a>. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.</b> (Finn, Mary) (Entered: 12/18/2012)
12/18/2012	<u>43</u>	NOTICE issued to Attorney Jeena D. Shah regarding mandatory registration and use with ECF in compliance with the Standing Order entered by Judge Ponsor and Magistrate Judge Neiman. (Finn, Mary) (Entered: 12/18/2012)
12/21/2012	<u>44</u>	RESPONSE TO COURT ORDER by Sexual Minorities Uganda re <u>40</u> Order, <i>Plaintiff Consent</i> . (Spees, Pamela) (Entered: 12/21/2012)
12/28/2012	<u>45</u>	

		Letter/request (non-motion) from Kyle A. Burns, SJC Approved Journalist – Massachusetts re: requesting to record by audio., video, and photographs the court hearing set for 1/7/2012 in its entirety. (Finn, Mary) (Entered: 12/28/2012)
01/02/2013	<u>46</u>	NOTICE Re: Video Recording Hearing on January 7, 2013. (Pelegano, Theresa) (Entered: 01/02/2013)
01/03/2013	<u>47</u>	First MOTION <i>for leave to appear pro hac vice</i> by Scott Lively.(Moran, Philip) Modified on 1/3/2013 to change the relief type of the motion to MOTION for leave to appear pro hac vice. (Finn, Mary). (Entered: 01/03/2013)
01/03/2013	<u>48</u>	MOTION for Leave to Appear Pro Hac Vice for admission of Stephen M. Crampton Filing fee: \$ 100, receipt number 0101-4265214 by Scott Lively.(Moran, Philip) (Additional attachment(s) added on 1/3/2013: # <u>1</u> Main Document, # <u>2</u> Exhibit A) (Finn, Mary). Modified on 1/3/2013 to separate exhibit A from the main document and to add it as an attachment. (Finn, Mary). (Entered: 01/03/2013)
01/03/2013	49	Judge Michael A. Ponsor: ELECTRONIC ORDER entered granting <u>48</u> Motion for Leave to Appear Pro Hac Vice Added Stephen M. Crampton. <b>Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at <a href="http://www.mad.uscourts.gov">www.mad.uscourts.gov</a>. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.</b> (Finn, Mary) (Entered: 01/03/2013)
01/03/2013	<u>50</u>	NOTICE issued to Attorney Stephen M. Crampton. regarding mandatory registration and use with ECF in compliance with the Standing Order entered by Judge Ponsor and Magistrate Judge Neiman. (Finn, Mary) (Entered: 01/03/2013)
01/03/2013	<u>51</u>	NOTICE by Scott Lively <i>of Intent to Rely Upon Additional Authorities at Hearing on Motion to Dismiss</i> (Mihet, Horatio) (Entered: 01/03/2013)
01/07/2013	52	ELECTRONIC Clerk's Notes for proceedings held before Judge Michael A. Ponsor: Motion Hearing held on 1/7/2013 re <u>30</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>and</i> MOTION to Dismiss for Lack of Jurisdiction <i>Plaintiff's First Amended Complaint (Oral Argument Requested)</i> filed by Scott Lively, <u>21</u> MOTION to Dismiss for Lack of Jurisdiction MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Scott Lively. Oral Argument complete. Court takes matter under advisement. (Court Reporter: Alice Moran at 413-731-0086.)(Attorneys present: Azmy, Ryan, Shah, Spees, Crampton, Mihet, Moran) (Pelegano, Theresa) (Entered: 01/07/2013)
01/25/2013	53	Judge Michael A. Ponsor: ENDORSED ORDER entered granting <u>47</u> Motion for Leave to Appear Pro Hac Vice Added Stephen M. Crampton. <b>Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at <a href="http://www.mad.uscourts.gov">www.mad.uscourts.gov</a>. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.</b> (Lindsay, Maurice) (Entered: 01/25/2013)

04/17/2013	<u>54</u>		Notice of Supplemental Authorities re <u>30</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>and</i> MOTION to Dismiss for Lack of Jurisdiction <i>Plaintiff's First Amended Complaint (Oral Argument Requested)</i> (Attachments: # <u>1</u> Exhibit A – Kiobel Slip Opinion)(Mihet, Horatio) (Entered: 04/17/2013)
04/18/2013	<u>55</u>		MOTION Leave to File Response to Defendant's Notice of Supplemental Authority by Sexual Minorities Uganda.(Spees, Pamela) (Entered: 04/18/2013)
04/19/2013	56		Judge Michael A. Ponsor: ELECTRONIC ORDER entered granting <u>55</u> Motion for leave to file a resp. [54] – Deft's Suppl. Authority. Resp. due 5/7/2013. (Finn, Mary) (Entered: 04/19/2013)
04/19/2013	57		Set/Reset Deadlines as to <u>54</u> Suppl. Authority. Pltf's Responses due by 5/7/2013. (Finn, Mary) (Entered: 04/19/2013)
05/07/2013	<u>58</u>		Response by Sexual Minorities Uganda <i>to Defendant's Notice of Supplemental Authority Requiring Dismissal of Plaintiff's Federal Law Claims.</i> (Spees, Pamela) (Entered: 05/07/2013)
08/14/2013	<u>59</u>	46	Judge Michael A. Ponsor: MEMORANDUM AND ORDER entered. As follows: For the reasons stated in the attached memo and order. Defendants motions to dismiss (Dkt. Nos. <u>21</u> and <u>30</u> ) are hereby DENIED. The case is hereby referred to Magistrate Judge Kenneth P. Neiman for a pretrial scheduling conference pursuant to Fed. R. Civ. P. 16. It is So Ordered. See the attached memo and order for complete details. (Lindsay, Maurice) (Entered: 08/14/2013)
08/14/2013	60		Judge Michael A. Ponsor: ELECTRONIC ORDER entered. REFERRING CASE to Magistrate Judge Kenneth P. Neiman Referred for: Full Pretrial, No Dispositive Motions (ptn). Further information: for full pretrial case management, a rule 16 scheduling conference, no dispositive motions..(Lindsay, Maurice) (Entered: 08/14/2013)
08/16/2013	<u>61</u>		NOTICE of Scheduling Conference ISSUED, cc:cl. Scheduling Conference set for 9/24/2013 at 10:00 AM in Hampshire Courtroom before Magistrate Judge Kenneth P. Neiman. Joint statement and LR 16.1 certs due by 9/18/13. (Healy, Bethaney) (Entered: 08/16/2013)
08/28/2013	<u>62</u>		Consent MOTION for Extension of Time to September 27, 2013 to Respond to First Amended Complaint by Scott Lively.(Mihet, Horatio) (Entered: 08/28/2013)
08/29/2013	63		Magistrate Judge Kenneth P. Neiman: ELECTRONIC ORDER entered granting in part only <u>62</u> Defendant's unopposed Motion for Thirty Day Extension of Time to Answer First Amended Complaint. Given the fact that a Rule 16 scheduling conference has been set for September 24, 2013, with a joint statement due on September 18, 2013, Defendant's answer to the complaint shall be filed by September 17, 2013. So ordered. (Neiman, Kenneth) (Entered: 08/29/2013)
09/06/2013	<u>64</u>		MOTION to Amend <u>59</u> Order on Motion to Dismiss for Failure to State a Claim, Order on Motion to Dismiss/Lack of Jurisdiction,,,,, , MOTION for Certificate of Appealability of <i>Non-Final Order</i> ( Responses due by

		9/20/2013) by Scott Lively.(Mihet, Horatio) (Entered: 09/06/2013)
09/06/2013	<u>65</u>	MEMORANDUM in Support re <u>64</u> MOTION to Amend <u>59</u> Order on Motion to Dismiss for Failure to State a Claim, Order on Motion to Dismiss/Lack of Jurisdiction,,,,, MOTION for Certificate of Appealability of <i>Non-Final Order</i> filed by Scott Lively. (Mihet, Horatio) (Entered: 09/06/2013)
09/10/2013	<u>66</u>	MOTION to Stay <i>Proceedings Pending Adjudication of Defendant's Motion to Amend and Certify Non-Final Order for Interlocutory Appeal</i> by Scott Lively.(Mihet, Horatio) (Entered: 09/10/2013)
09/11/2013	67	Judge Michael A. Ponsor: ENDORSED ORDER entered granting <u>66</u> Motion to Stay Proceedings Pending Adjudication of Defendant's Motion to Amend and Certify Non-Final Order for Interlocutory Appeal. ALLOWED. The court will rule promptly upon receipt of Plaintiff's response to the motion to amend and certify. So ordered. (Lindsay, Maurice) (Entered: 09/11/2013)
09/11/2013	68	Magistrate Judge Kenneth P. Neiman: ELECTRONIC ORDER entered canceling the scheduling conference set for September 24, 2013. So ordered. (Neiman, Kenneth) (Entered: 09/11/2013)
09/20/2013	<u>69</u>	Opposition re <u>64</u> MOTION to Amend <u>59</u> Order on Motion to Dismiss for Failure to State a Claim, Order on Motion to Dismiss/Lack of Jurisdiction,,,,, MOTION for Certificate of Appealability of <i>Non-Final Order</i> filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Affidavit Declaration of Pam Spees, # <u>2</u> Exhibit A – Proposed Joint Discovery Plan)(Spees, Pamela) (Entered: 09/20/2013)
09/23/2013	<u>70</u>	Letter/request (non-motion) from Tim Cripps re: Scott Lively. (Pelegano, Theresa) (Entered: 09/23/2013)
09/23/2013	71	Judge Michael A. Ponsor: ENDORSED ORDER entered denying <u>64</u> Motion to Amend and Certify non-final order for Interlocutory Appeal. DENIED. No substantial question of law exists justifying an interlocutory appeal. Moreover, the need for discovery would make such an appeal improper, and a needless burden on the court of appeals. So ordered. (Lindsay, Maurice) (Entered: 09/23/2013)
09/24/2013	<u>72</u>	MOTION for Reconsideration re 71 Order on Motion to Amend, Order on Motion for Certificate of Appealability,, by Scott Lively.(Mihet, Horatio) (Entered: 09/24/2013)
09/24/2013	<u>73</u>	MEMORANDUM in Support re <u>72</u> MOTION for Reconsideration re 71 Order on Motion to Amend, Order on Motion for Certificate of Appealability,, filed by Scott Lively. (Mihet, Horatio) (Entered: 09/24/2013)
10/08/2013	<u>74</u>	Opposition re <u>72</u> MOTION for Reconsideration re 71 Order on Motion to Amend, Order on Motion for Certificate of Appealability,, filed by Sexual Minorities Uganda. (Spees, Pamela) (Entered: 10/08/2013)
10/09/2013	75	Judge Michael A. Ponsor: ENDORSED ORDER entered denying <u>72</u> Motion for Reconsideration of order denying certification for interlocutory appeal. DENIED. (Lindsay, Maurice) (Entered: 10/09/2013)
10/17/2013	<u>76</u>	NOTICE of Scheduling Conference ISSUED, cc:cl. Scheduling Conference set for 11/6/2013 at 11:00 AM in Hampshire Courtroom before Magistrate

		Judge Kenneth P. Neiman. (Healy, Bethaney) (Entered: 10/17/2013)
11/01/2013	<u>77</u>	CERTIFICATION pursuant to Local Rule 16.1 by Sexual Minorities Uganda.(Spees, Pamela) (Entered: 11/01/2013)
11/01/2013	<u>78</u>	JOINT SUBMISSION pursuant to Local Rule 16.1 by Sexual Minorities Uganda.(Spees, Pamela) (Entered: 11/01/2013)
11/01/2013	<u>79</u>	CERTIFICATION pursuant to Local Rule 16.1 . (Mihet, Horatio) (Entered: 11/01/2013)
11/06/2013	<u>80</u>	Magistrate Judge Kenneth P. Neiman: SCHEDULING ORDER entered. As follows: Defendant's answer due by 11/20/13, Any motion regarding a proposed protective order is due by 11/22/13, The parties automatic disclosures due by 12/3/13, Written discovery due by 12/17/13, Dft's shall designate and disclose info. re: his rebuttal experts as required by 12/15/14, All expert depositions to be completed by 1/30/15, Dft. shall file his SJ motion, if any, by 3/2/15, and a hearing on any motions for summary judgment shall take place on 5/6/2015 at 2:00 PM in Hampden Courtroom before Judge Michael A. Ponsor. See the attached scheduling order for complete details. (Lindsay, Maurice) (Entered: 11/06/2013)
11/06/2013	81	Set/Reset Answer Deadlines: to 11/20/2013 for Scott Lively (Lindsay, Maurice) (Entered: 11/06/2013)
11/06/2013	82	ELECTRONIC Clerk's Notes for proceedings held before Magistrate Judge Kenneth P. Neiman: Counsel appear for Scheduling Conference held on 11/6/2013. Colloquy re: status of case. Scheduling Order to issue. (Court Reporter: Digital Recording – For transcripts or CDs contact Deborah Scalfani by email at deborah_scalfani@mad.uscourts.gov.) (Healy, Bethaney) (Entered: 11/06/2013)
11/18/2013	<u>84</u>	Letter received from Julia Gasper re: decision. (Pelegano, Theresa) (Entered: 11/22/2013)
11/20/2013	<u>83</u>	ANSWER to <u>27</u> Amended Complaint by Scott Lively.(Mihet, Horatio) (Entered: 11/20/2013)
11/22/2013	<u>85</u>	MOTION for Protective Order by Sexual Minorities Uganda.(Spees, Pamela) (Entered: 11/22/2013)
11/22/2013	<u>86</u>	MEMORANDUM in Support re <u>85</u> MOTION for Protective Order filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Affidavit of Pepe Onziema, # <u>2</u> Exhibit Exhibits Annexed to Onziema Declaration, # <u>3</u> Text of Proposed Order)(Spees, Pamela) (Entered: 11/22/2013)
12/04/2013	<u>87</u>	Consent MOTION for Extension of Time to December 9, 2013 to File Response/Reply as to <u>85</u> MOTION for Protective Order by Scott Lively.(Mihet, Horatio) (Entered: 12/04/2013)
12/05/2013	88	Magistrate Judge Kenneth P. Neiman: ELECTRONIC ORDER entered granting <u>87</u> Defendant's assented-to Motion for Extension of Time to December 9, 2013, to File Response to <u>85</u> Plaintiffs' Motion for Protective Order. So ordered. (Neiman, Kenneth) (Entered: 12/05/2013)
12/06/2013	<u>89</u>	

		MOTION to Stay <i>Case Pending Adjudication of Petition for Writ of Mandamus, and Request for Expedited Consideration</i> by Scott Lively. (Attachments: # <u>1</u> Exhibit A – Mandamus Petition)(Mihet, Horatio) (Entered: 12/06/2013)
12/09/2013	<u>90</u>	RESPONSE to Motion re <u>85</u> MOTION for Protective Order filed by Scott Lively. (Attachments: # <u>1</u> Exhibit A – Declaration of Scott Lively)(Mihet, Horatio) (Entered: 12/09/2013)
12/09/2013	<u>91</u>	Opposition re <u>89</u> MOTION to Stay <i>Case Pending Adjudication of Petition for Writ of Mandamus, and Request for Expedited Consideration</i> filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Exhibit)(Spees, Pamela) (Entered: 12/09/2013)
12/10/2013	<u>92</u>	Judge Michael A. Ponsor: ENDORSED ORDER entered denying <u>89</u> Motion to Stay Proceedings Pending Adjudication of Petition for Writ of Mandamus, and Request for Expedited Consideration. DENIED. Disagreement with a court's ruling, however sincere, is not a plausible basis for a mandamus petition. Moreover, the harm alleged is no greater than the usual burden on a party to a complex lawsuit. So ordered. (Lindsay, Maurice) (Entered: 12/10/2013)
12/11/2013	93	Magistrate Judge Kenneth P. Neiman: ELECTRONIC ORDER entered denying without prejudice <u>85</u> Plaintiff's Motion for Protective Order. First, the court is not inclined to adopt the attorney's eyes only provision (as set forth in Paragraphs 7 through 11 of the proposed order) for many of the reasons raised by Defendant in his opposition; given that Defendant, as the sole defendant in this action and as uniquely positioned to assist in his defense with regard to the events at issue, his counsel will no doubt need to communicate with him without the strictures proposed by Plaintiff. Second, among other matters, the court is also concerned with the proposed order to the extent it could be interpreted as shackling Defendant's investigation of facts and witnesses in Uganda. Third, the court agrees with Defendant that the obligation to seek relief from the court, addressed in paragraph 12 of the proposed order, should be borne by the designating not the objecting party. Fourth, the court is also concerned that Defendant's Declaration in Opposition to Plaintiff's motion, particularly when viewed in the context of his statement that he intends to continue "to lawfully speak and to engage in public and political advocacy on civil and political matters of public importance," may betray an insufficient understanding of how he could run afoul of his avowed compliance with even a more carefully crafted protective order. That said, the court ORDERS the parties to take steps to resolve their differences and, if unable to do so, to provide a joint document to the court by January 7, 2014, which sets forth the provisions of a proposed protective order with which they agree as well as the provisions with which they do not agree and their countervailing proposals for those provisions. Of course, if the parties come to an agreement with regard to a protective order, they shall file that proposed order with the court by January 7, 2014. So ordered. (Neiman, Kenneth) (Entered: 12/11/2013)
01/07/2014	<u>94</u>	STIPULATION ( <i>JOINT</i> ) Regarding <i>Non-party Status of Abiding Truth Ministries</i> by Scott Lively. (Mihet, Horatio) (Entered: 01/07/2014)
01/07/2014	<u>95</u>	Joint MOTION for Extension of Time by Sexual Minorities Uganda.(Spees, Pamela) (Main Document 95 replaced on 1/8/2014 with correct signed motion

		with a certificate of service) (Finn, Mary). Modified on 1/8/2014 (Finn, Mary). (Entered: 01/07/2014)
01/07/2014	<u>96</u>	Proposed Document(s) submitted by Sexual Minorities Uganda. Document received: Joint Submission re Protective Order. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Exhibit)(Spees, Pamela) (Main Document 96 replaced on 1/8/2014) (Finn, Mary). (Attachment 1 replaced on 1/8/2014) (Finn, Mary). (Attachment 2 replaced on 1/8/2014) (Finn, Mary). Modified on 1/8/2014 all documents replaced with correct signed joint submission, affidavit and exhibit. (Finn, Mary). (Entered: 01/07/2014)
01/08/2014	97	Magistrate Judge Kenneth P. Neiman: ELECTRONIC ORDER entered granting <u>95</u> Joint Motion for Extension of Time. So ordered. (Neiman, Kenneth) (Entered: 01/08/2014)
01/09/2014	<u>98</u>	<i>Supplemental Response</i> by Scott Lively to <u>96</u> Proposed Document(s) submitted, <i>Regarding Proposed Protective Order</i> . (Attachments: # <u>1</u> Exhibit A – SMUG's Initial Disclosures, # <u>2</u> Exhibit B – Blackwater Protective Order)(Mihet, Horatio) (Entered: 01/09/2014)
01/10/2014	<u>99</u>	MOTION for Leave to File <i>Reply</i> by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit)(Spees, Pamela) (Entered: 01/10/2014)
01/11/2014	100	Magistrate Judge Kenneth P. Neiman: ELECTRONIC ORDER entered granting <u>99</u> Plaintiff's Motion for Leave to File Document. The parties shall file no further documents with the court with respect to the protective order under consideration unless specifically requested by the court. So ordered. (Neiman, Kenneth) (Entered: 01/11/2014)
02/14/2014	<u>102</u>	Magistrate Judge Kenneth P. Neiman: MEMORANDUM AND ORDER with regard to the parties' countervailing submissions regarding a proposed protective order (Dkt. No. 96) entered. As follows: The parties shall revise the Protective Order in accord herewith, execute it and provide it to the court for its endorsement no later than February 28, 2014. IT IS SO ORDERED. See the attached memo and order for complete details. (Lindsay, Maurice) (Entered: 02/14/2014)
02/28/2014	<u>103</u>	Proposed Document(s) submitted by Sexual Minorities Uganda. Document received: Proposed Protective Order. (Spees, Pamela) (Entered: 02/28/2014)
02/28/2014	<u>104</u>	Objection to <u>102</u> Memorandum & ORDER, by Scott Lively . (Mihet, Horatio) (Entered: 02/28/2014)
03/03/2014	105	Magistrate Judge Kenneth P. Neiman: ELECTRONIC ORDER entered endorsing <u>103</u> Order Regarding Confidentiality of Certain Discovery Material, subject to one minor correction in Paragraph 5 thereof. In issuing the Order, the court acknowledges <u>104</u> Defendant's Objection, which echoes arguments previously made by him, most of which were considered by the court in its February 14, 2014 Memorandum and Order (Document No. 102). To be sure, Defendant still maintains that the protective order would be grounded, at least in part, on "unsubstantiated allegations." What Defendant fails to recognize, however, is that Judge Ponsor previously found that "Plaintiff has set out plausibly that Defendant worked with associates within Uganda to coordinate, implement, and legitimate 'strategies to dehumanize, demonize, silence, and further criminalize the {Ugandan} LGBTI community.'" (August 14, 2013

		Memorandum and Order Regarding Defendant's Motions to Dismiss (Document No. 59), at 34–35 (quoting Plaintiff's Amended Complaint (Document No. 27) at par. 27).) While, as this court indicated in its February 14, 2014 Memorandum and Order, these allegations still need to be proven at trial, they are of significant enough concern, on balance, to make certain protections necessary even at the discovery stage. Order to issue. (Neiman, Kenneth) (Entered: 03/03/2014)
03/03/2014	<u>106</u>	Magistrate Judge Kenneth P. Neiman: ORDER re: Confidentiality of Certain Discovery Material entered. re <u>103</u> Proposed Document(s) submitted filed by Sexual Minorities Uganda (Finn, Mary) (Entered: 03/03/2014)
03/05/2014	<u>107</u>	Response by Sexual Minorities Uganda to <u>104</u> Objection by <i>DEFENDANT TO MEMORANDUM AND ORDER REGARDING PROPOSED PROTECTIVE ORDER</i> . (Spees, Pamela) (Entered: 03/05/2014)
03/05/2014	<u>108</u>	Letter/request (non–motion) from Counsel for Sexual Minorities Uganda . (Attachments: # <u>1</u> Appendix Anti–Homosexuality Act of 2014)(Spees, Pamela) (Entered: 03/05/2014)
03/05/2014	<u>109</u>	MOTION for Leave to Appear Pro Hac Vice for admission of Joshua Colangelo–Bryan Filing fee: \$ 100, receipt number 0101–4892400 by Sexual Minorities Uganda. (Attachments: # <u>1</u> Affidavit)(Ryan, Luke) (Entered: 03/05/2014)
03/05/2014	<u>110</u>	MOTION for Leave to Appear Pro Hac Vice for admission of Mark S. Sullivan Filing fee: \$ 100, receipt number 0101–4892420 by Sexual Minorities Uganda. (Attachments: # <u>1</u> Affidavit Certificate of Mark S. Sullivan in Support of Mtn for Admission Pro Hac Vice)(Ryan, Luke) (Entered: 03/05/2014)
03/05/2014	<u>111</u>	MOTION for Leave to Appear Pro Hac Vice for admission of Scott Skinner–Thompson Filing fee: \$ 100, receipt number 0101–4892427 by Sexual Minorities Uganda. (Attachments: # <u>1</u> Affidavit Certificate of Scott Skinner–Thompson in Support of Motion for Admission Pro Hac Vice)(Ryan, Luke) (Entered: 03/05/2014)
03/06/2014	112	Magistrate Judge Kenneth P. Neiman: ELECTRONIC ORDER entered granting <u>109</u> Motion for Leave to Appear Pro Hac Vice Added Joshua Colangelo–Bryan. <b>Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at <a href="http://www.mad.uscourts.gov">www.mad.uscourts.gov</a>. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.</b> (Finn, Mary) (Entered: 03/06/2014)
03/06/2014	113	Magistrate Judge Kenneth P. Neiman: ELECTRONIC ORDER entered granting <u>110</u> Motion for Leave to Appear Pro Hac Vice Added Scott S. Sullivan. <b>Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at <a href="http://www.mad.uscourts.gov">www.mad.uscourts.gov</a>. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.</b> (Finn, Mary) (Entered: 03/06/2014)
03/06/2014	114	

		Magistrate Judge Kenneth P. Neiman: ELECTRONIC ORDER entered granting <u>111</u> Motion for Leave to Appear Pro Hac Vice Added Scott Skinner–Thompson. <b>Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at <a href="http://www.mad.uscourts.gov">www.mad.uscourts.gov</a>. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.</b> (Finn, Mary) (Entered: 03/06/2014)
03/06/2014	<u>115</u>	NOTICE issued to Attorney Scott Skinner–Thompson, Mark S. Sullivan and Joshue Colangelo–Bryan regarding mandatory registration and use with ECF in compliance with the Standing Order entered by Judge Ponsor and Magistrate Judge Neiman. (Finn, Mary) (Entered: 03/06/2014)
03/06/2014	<u>116</u>	Response by Scott Lively to <u>108</u> Letter/request (non–motion) . (Mihet, Horatio) (Entered: 03/06/2014)
03/11/2014	<u>117</u>	Judge Michael A. Ponsor: ENDORSED ORDER entered. re <u>104</u> Objection. OVERRULED. Judge Neiman's ruling addresses a complex and unusual discovery scenario fairly and with sensitivity to the interests of both sides. His disposition is neither clearly erroneous nor contrary to law. So ordered. (Lindsay, Maurice) (Entered: 03/11/2014)
03/17/2014	<u>118</u>	Objection to <u>106</u> Order by Scott Lively . (Mihet, Horatio) (Entered: 03/17/2014)
05/09/2014	<u>119</u>	MOTION to Withdraw as Attorney ( <i>Scott Skinner–Thompson</i> ) by Sexual Minorities Uganda.(Shah, Jeena) (Entered: 05/09/2014)
05/12/2014	120	Magistrate Judge Kenneth P. Neiman: ELECTRONIC ORDER entered granting <u>119</u> Motion to Withdraw as Attorney by Scott Skinner–Thompson. So ordered. (Neiman, Kenneth) (Entered: 05/12/2014)
06/05/2014	<u>121</u>	MOTION for Leave to Appear Pro Hac Vice for admission of Gina S. Spiegelman Filing fee: \$ 100, receipt number 0101–5041581 by Sexual Minorities Uganda. (Attachments: # <u>1</u> Certificate of Gina S. Spiegelman in Support of Mtn for Admission Pro Hac Vice)(Ryan, Luke) (Entered: 06/05/2014)
06/09/2014	122	Magistrate Judge Kenneth P. Neiman: ELECTRONIC ORDER entered granting <u>121</u> Motion for Leave to Appear Pro Hac Vice Added Gina S. Spiegelman. <b>Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at <a href="http://www.mad.uscourts.gov">www.mad.uscourts.gov</a>. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.</b> (Calderon, Melissa) (Entered: 06/09/2014)
09/04/2014	<u>123</u>	Joint MOTION for Extension of Time to Complete Discovery <i>Non–Expert</i> by Sexual Minorities Uganda.(Spiegelman, Gina) (Main Document 123 replaced on 9/5/2014 with correct signed main document) (Finn, Mary). Modified on 9/5/2014 (Finn, Mary). (Entered: 09/04/2014)
09/08/2014	124	ELECTRONIC NOTICE of Hearing on <u>123</u> Joint Motion for Extension of Time to Complete Non–Expert Discovery ISSUED: A Telephone Conference is set for 9/11/2014 at 10:00 AM before Magistrate Judge Kenneth P. Neiman.

		(Calderon, Melissa) (Entered: 09/08/2014)
09/11/2014	125	Magistrate Judge Kenneth P. Neiman: ELECTRONIC ORDER entered granting <u>123</u> Joint Motion for Extension of Time to Complete Discovery. Revised schedule to issue. So ordered. (Neiman, Kenneth) (Entered: 09/11/2014)
09/11/2014	126	ELECTRONIC Clerk's Notes for proceedings held before Magistrate Judge Kenneth P. Neiman: Telephone Conference was held on 9/11/2014. Attorneys Present: Gina S. Spiegelman, Pamela C. Spees and Horatio G. Mihet. Colloquy re: status of the case and <u>123</u> Joint Motion for Extension of Time to Complete Non-Expert Discovery. The Court allowed the Motion. A schedule was established. A Revised Scheduling Order to issue. (Court Reporter: Digital Recording – For transcripts or CDs contact Deborah Scalfani by email at deborah_scalfani@mad.uscourts.gov.) (Calderon, Melissa) (Entered: 09/11/2014)
09/11/2014	<u>127</u>	Magistrate Judge Kenneth P. Neiman: ORDER entered. REVISED SCHEDULING ORDER ISSUED: A hearing on any motions for summary judgment shall take place on September 10, 2015, at 2:00 p.m. before District Judge Michael A. Ponsor. The May 10, 2015 hearing is hereby canceled. See attached scheduling order for complete details. (Calderon, Melissa) (Main Document 127 replaced on 9/17/2014) (Calderon, Melissa). (Entered: 09/12/2014)
09/11/2014	128	Set/Reset Deadlines as to Motion Hearing is set for 9/10/2015 at 2:00 PM in Hampden Courtroom before Judge Michael A. Ponsor. (Calderon, Melissa) (Entered: 09/12/2014)
12/04/2014	<u>129</u>	JUDGMENT of USCA on Petition for Mandamus. The petition is denied. (Paine, Matthew) (Entered: 12/05/2014)
12/18/2014	<u>130</u>	Joint MOTION for Extension of Time to March 31, 2015 to Complete Discovery ( <i>Fact</i> ), <i>While Leaving the Revised Scheduling Order Otherwise Intact</i> by Scott Lively.(Mihet, Horatio) (Entered: 12/18/2014)
12/19/2014	131	Magistrate Judge Kenneth P. Neiman: ELECTRONIC ORDER entered granting <u>130</u> Joint Motion for Extension of Fact Discovery Deadline (to March 31, 2015) While Leaving The Revised Scheduling Order (of September 11, 2014) Otherwise Intact. So ordered. (Neiman, Kenneth) (Entered: 12/19/2014)
12/30/2014	132	Case no longer referred to Magistrate Judge Kenneth P. Neiman. (Calderon, Melissa) (Entered: 12/30/2014)
01/12/2015	133	If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Katherine A. Robertson. (Abaid, Kimberly) (Entered: 01/12/2015)
01/13/2015	134	Judge Michael A. Ponsor: ELECTRONIC ORDER entered REFERRING CASE to Magistrate Judge Katherine A. Robertson. Referred for: Full Pretrial, No Dispositive Motions (ptn). (Healy, Bethaney) (Entered: 01/13/2015)
02/19/2015	<u>135</u>	Joint MOTION for Extension of Time to June 30, 2015 to Complete Discovery <i>and Amend Litigation Schedule</i> by Scott Lively.(Mihet, Horatio) (Entered: 02/19/2015)

02/24/2015	136	Judge Michael A. Ponsor: ENDORSED ORDER entered granting <u>135</u> Motion for Extension of Fact Discovery and Litigation Deadlines. ALLOWED, by agreement. (Lindsay, Maurice) (Entered: 02/24/2015)
03/03/2015	<u>137</u>	MOTION for Leave to Appear Pro Hac Vice for admission of Kaleb McNeely Filing fee: \$ 100, receipt number 0101-5436110 by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit Affidavit of Kaleb McNeely)(Ryan, Luke) (Entered: 03/03/2015)
03/03/2015	<u>138</u>	MOTION for Leave to Appear Pro Hac Vice Filing fee: \$ 100, receipt number 0101-5436136 by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit Affidavit of Daniel Beebe)(Ryan, Luke) (Entered: 03/03/2015)
03/03/2015	139	Judge Michael A. Ponsor: ELECTRONIC ORDER entered granting <u>137</u> Motion for Leave to Appear Pro Hac Vice Added Kaleb McNeely. <b>Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.</b> (Finn, Mary) (Entered: 03/03/2015)
03/03/2015	140	Judge Michael A. Ponsor: ELECTRONIC ORDER entered granting <u>138</u> Motion for Leave to Appear Pro Hac Vice Added Daniel W. Beebe. <b>Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.</b> (Finn, Mary) (Entered: 03/03/2015)
04/09/2015	<u>141</u>	MOTION for Issuance of a Subpoena Pursuant to 28 U.S.C. Section 1783(a) by Sexual Minorities Uganda.(McNeely, Kaleb) Modified on 5/5/2015 to delete the attachment, attachment added in error. (Finn, Mary). (Entered: 04/09/2015)
04/09/2015	<u>142</u>	MEMORANDUM in Support re <u>141</u> MOTION for Issuance of a Subpoena Pursuant to 28 U.S.C. Section 1783(a) filed by Sexual Minorities Uganda. (McNeely, Kaleb) (Entered: 04/09/2015)
04/09/2015	<u>143</u>	DECLARATION re <u>141</u> MOTION for Issuance of a Subpoena Pursuant to 28 U.S.C. Section 1783(a) by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(McNeely, Kaleb) (Attachment 1 replaced on 4/9/2015 due to containing confidential material) (Finn, Mary). Modified on 4/9/2015 (Finn, Mary). (Entered: 04/09/2015)
04/23/2015	<u>144</u>	MOTION for Leave to Appear Pro Hac Vice for admission of Roger K. Gannam Filing fee: \$ 100, receipt number 0101-5525223 by Scott Lively.(Mihet, Horatio) (Additional attachment(s) added on 4/23/2015: # <u>1</u> Correct Main Document, # <u>2</u> Exhibit A) (Finn, Mary). Modified on 4/23/2015 to separate exhibit A from the main docuemnt and to add it as an attachment. (Finn, Mary). (Entered: 04/23/2015)
04/23/2015	145	Judge Michael A. Ponsor: ELECTRONIC ORDER entered granting <u>144</u> Motion for Leave to Appear Pro Hac Vice Added Roger K. Gannam. <b>Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register</b>

			<b>go to the Court website at <a href="http://www.mad.uscourts.gov">www.mad.uscourts.gov</a>. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.</b> (Finn, Mary) (Entered: 04/23/2015)
04/24/2015	<u>146</u>		Magistrate Judge Katherine A. Robertson: ORDER entered granting <u>141</u> Motion for Issuance of a Subpeona Pursuant to 28 U.S.C. §1783(a), there being no opposition and the court being otherwise duly advised, hereby finds that the requested subpoena is in the interest of justice and that the witness testimony cannot practicably be obtained in admissible form otherwise, therefore GRANTS such motion. (Finn, Mary) (Entered: 04/24/2015)
04/27/2015	<u>147</u>		Proposed Document(s) submitted by Sexual Minorities Uganda. Document received: Subpoena to Testify at a Deposition in a Civil Action. (McNeely, Kaleb) (Entered: 04/27/2015)
04/27/2015	<u>148</u>		Subpoena Issued as to for Martin Ssempe by the Court. Original to counsel. (Attachments: # <u>1</u> Exhibit A)(Finn, Mary) (Main Document 148 replaced on 4/27/2015 with correct main document) (Finn, Mary). Modified on 4/27/2015 (Finn, Mary). (Entered: 04/27/2015)
05/04/2015	<u>149</u>		MOTION to Amend <i>the Order Regarding Confidentiality of Certain Discovery Material</i> by Sexual Minorities Uganda. (Beebe, Daniel) Modified on 5/5/2015 to delete the attachment, attachment added in error. (Finn, Mary). (Entered: 05/04/2015)
05/04/2015	<u>150</u>		MEMORANDUM in Support re <u>149</u> MOTION to Amend <i>the Order Regarding Confidentiality of Certain Discovery Material</i> filed by Sexual Minorities Uganda. (Beebe, Daniel) (Main Document 150 replaced on 5/5/2015 with corrected main document – typo corrected.) (Finn, Mary). Modified on 5/5/2015 (Finn, Mary). (Entered: 05/04/2015)
05/04/2015	<u>151</u>		DECLARATION re <u>149</u> MOTION to Amend <i>the Order Regarding Confidentiality of Certain Discovery Material</i> by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Beebe, Daniel) (Entered: 05/04/2015)
05/04/2015	<u>152</u>		DECLARATION re <u>149</u> MOTION to Amend <i>the Order Regarding Confidentiality of Certain Discovery Material</i> by Sexual Minorities Uganda. (Beebe, Daniel) (Main Document 152 replaced on 5/5/2015 with correct main document – typo corrected) (Finn, Mary). Modified on 5/5/2015 (Finn, Mary). (Entered: 05/04/2015)
05/04/2015	<u>153</u>		Proposed Document(s) submitted by Sexual Minorities Uganda. Document received: Text of Proposed Order. (Beebe, Daniel) (Entered: 05/04/2015)
05/06/2015	<u>154</u>		MOTION for Leave to Appear Pro Hac Vice for admission of Vikram Kumar Filing fee: \$ 100, receipt number 0101–5545768 by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit Certificate of Vikram Kumar in Support of Motion for Admission Pro Hac Vice)(Ryan, Luke) (Entered: 05/06/2015)
05/06/2015	155		Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered granting <u>154</u> Motion for Leave to Appear Pro Hac Vice Added Vikram Kumar. <b>Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at <a href="http://www.mad.uscourts.gov">www.mad.uscourts.gov</a>. Select Case</b>

		<b>Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.</b> (Finn, Mary) (Entered: 05/06/2015)
05/18/2015	<u>156</u>	Assented to MOTION for Extension of Time to 05/22/2015 to File Response/Reply as to <u>149</u> MOTION to Amend <i>the Order Regarding Confidentiality of Certain Discovery Material</i> by Scott Lively.(Gannam, Roger) (Entered: 05/18/2015)
05/18/2015	157	Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered granting <u>156</u> Motion for Extension of Time to File Response/Reply re <u>149</u> MOTION to Amend <i>the Order Regarding Confidentiality of Certain Discovery Material</i> . Deft's Response due by 5/22/2015. (Finn, Mary) (Entered: 05/18/2015)
05/21/2015	<u>158</u>	NOTICE of Withdrawal of Appearance by Stephen M. Crampton (Crampton, Stephen) (Entered: 05/21/2015)
05/22/2015	<u>159</u>	MEMORANDUM in Opposition re <u>149</u> MOTION to Amend <i>the Order Regarding Confidentiality of Certain Discovery Material</i> filed by Scott Lively. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Gannam, Roger) (Entered: 05/22/2015)
05/28/2015	160	ELECTRONIC NOTICE Setting Hearing on <u>149</u> Plaintiff's MOTION to Amend the Order Regarding Confidentiality of Certain Discovery Material ISSUED: A Motion Hearing is set for 6/16/2015 at 10:00 AM in Hampshire Courtroom before Magistrate Judge Katherine A. Robertson. (Calderon, Melissa) (Entered: 05/28/2015)
06/11/2015	<u>161</u>	MOTION to Compel by Sexual Minorities Uganda.(Shah, Jeena) (Entered: 06/11/2015)
06/11/2015	<u>162</u>	MEMORANDUM in Support re <u>161</u> MOTION to Compel filed by Sexual Minorities Uganda. (Shah, Jeena) (Entered: 06/11/2015)
06/11/2015	<u>163</u>	AFFIDAVIT in Support re <u>161</u> MOTION to Compel filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A–N)(Shah, Jeena) (Entered: 06/11/2015)
06/12/2015	<u>164</u>	MOTION for Leave to Appear Pro Hac Vice for admission of Judith Chomsky Filing fee: \$ 100, receipt number 0101–5606343 by Sexual Minorities Uganda. (Attachments: # <u>1</u> Affidavit Certificate of Judith Chomsky)(Ryan, Luke) (Entered: 06/12/2015)
06/12/2015	165	Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered granting <u>164</u> Motion for Leave to Appear Pro Hac Vice Added Judith Brown Chomsky. <b>Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at <a href="http://www.mad.uscourts.gov">www.mad.uscourts.gov</a>. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.</b> (Finn, Mary) (Entered: 06/12/2015)
06/15/2015	<u>166</u>	MOTION for Protective Order <i>limiting the Deposition of Sam Ganafa and for Expedited Consideration</i> by Sexual Minorities Uganda.(Shah, Jeena) (Entered: 06/15/2015)
06/15/2015	<u>167</u>	

		MEMORANDUM in Support re <u>166</u> MOTION for Protective Order <i>limiting the Deposition of Sam Ganafa and for Expedited Consideration</i> filed by Sexual Minorities Uganda. (Shah, Jeena) (Entered: 06/15/2015)
06/15/2015	<u>168</u>	AFFIDAVIT in Support re <u>166</u> MOTION for Protective Order <i>limiting the Deposition of Sam Ganafa and for Expedited Consideration</i> by Gina Spiegelman filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A–D)(Shah, Jeena) (Entered: 06/15/2015)
06/15/2015	<u>169</u>	AFFIDAVIT in Support re <u>166</u> MOTION for Protective Order <i>limiting the Deposition of Sam Ganafa and for Expedited Consideration</i> by Sam Ganafa filed by Sexual Minorities Uganda. (Shah, Jeena) (Entered: 06/15/2015)
06/16/2015	171	ELECTRONIC Clerk's Notes for proceedings held before Magistrate Judge Katherine A. Robertson: A Motion Hearing was held on 6/16/2015. Attorneys Present: Jeena D. Shah, Luke F. Ryan, Horatio G. Mihet, Roger Gannam. Arguments were heard re <u>149</u> Plaintiff's MOTION to Amend the Order Regarding Confidentiality of Certain Discovery Material. This matter is taken under advisement. The parties were heard as to <u>166</u> Plaintiff's MOTION for Protective Order limiting the Deposition of Sam Ganafa and for Expedited Consideration. Defendant intends to file an opposition. The Court informed the parties that <u>161</u> Plaintiff's MOTION to Compel Production of Documents and Responses to Interrogatories is not ripe for consideration. (Court Reporter: Digital Recording – For transcripts or CDs contact Deborah Scalfani by email at deborah_scalfani@mad.uscourts.gov.) (Calderon, Melissa) (Entered: 06/18/2015)
06/17/2015	<u>170</u>	CERTIFICATE OF SERVICE re <u>166</u> MOTION for Protective Order <i>limiting the Deposition of Sam Ganafa and for Expedited Consideration Certificate of Service for Memorandum of Law in Support of Motion</i> filed by Sexual Minorities Uganda. (Shah, Jeena) Modified on 6/17/2015 to correct the text to reflect the document that is being filed. (Finn, Mary). (Entered: 06/17/2015)
06/18/2015	172	Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered. The Plaintiff is requested to submit for <i>In Camera</i> review (under seal) the documents that Plaintiff proposes to designate for "Attorneys' Eyes Only" protection on or before the close of business on 6/22/2015. (Calderon, Melissa) (Entered: 06/18/2015)
06/18/2015	<u>173</u>	MOTION to Compel <i>Plaintiff to Produce Unredacted Documents</i> by Scott Lively. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G)(Gannam, Roger) (Entered: 06/18/2015)
06/18/2015	<u>174</u>	MEMORANDUM in Support re <u>173</u> MOTION to Compel <i>Plaintiff to Produce Unredacted Documents and for Expedited Consideration</i> filed by Scott Lively. (Gannam, Roger) (Entered: 06/18/2015)
06/18/2015	175	ELECTRONIC NOTICE issued requesting courtesy copy for <u>173</u> MOTION to Compel and supporting exhibits. <i>Plaintiff to Produce Unredacted Documents</i> . Counsel who filed this document are requested to submit a courtesy copy of this document (or documents) to the Clerk's Office by June 23, 2015. <b>These documents must be clearly marked as a Courtesy Copy and reflect the document number assigned by CM/ECF.</b> (Finn, Mary) (Entered: 06/18/2015)

06/18/2015	<u>176</u>	Transcript of Motion Hearing held on June 16, 2015, before Magistrate Judge Katherine A. Robertson. The Transcript may be purchased through Maryann Young at 508-384-2003, viewed at the public terminal, or viewed through PACER after it is released. Court Reporter Name and Contact Information: No Reporter Used. Digital Recording transcribed by Maryann Young. Redaction Request due 7/9/2015. Redacted Transcript Deadline set for 7/20/2015. Release of Transcript Restriction set for 9/16/2015. (Scalfani, Deborah) (Entered: 06/18/2015)
06/18/2015	177	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, available on the court website at <a href="http://www.mad.uscourts.gov/attorneys/general-info.htm">http://www.mad.uscourts.gov/attorneys/general-info.htm</a> (Scalfani, Deborah) (Entered: 06/18/2015)
06/18/2015	<u>178</u>	MOTION for Extension of Time to October 15, 2015 to Submit Expert Disclosures <i>and to Extend Other Litigation Deadlines</i> by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A)(McNeely, Kaleb) (Entered: 06/18/2015)
06/18/2015	<u>179</u>	MEMORANDUM in Support re <u>178</u> MOTION for Extension of Time to October 15, 2015 to Submit Expert Disclosures <i>and to Extend Other Litigation Deadlines</i> filed by Sexual Minorities Uganda. (McNeely, Kaleb) (Entered: 06/18/2015)
06/18/2015	<u>180</u>	AFFIDAVIT in Support re <u>178</u> MOTION for Extension of Time to October 15, 2015 to Submit Expert Disclosures <i>and to Extend Other Litigation Deadlines</i> filed by Sexual Minorities Uganda. (McNeely, Kaleb) (Entered: 06/18/2015)
06/18/2015	<u>181</u>	MOTION for Extension of Time to July or August 2015 to Take the Deposition of SMUG , <i>and Request for Expedited Consideration</i> by Scott Lively. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H)(Mihet, Horatio) (Entered: 06/18/2015)
06/21/2015	<u>182</u>	Opposition re <u>181</u> MOTION for Extension of Time to July or August 2015 to Take the Deposition of SMUG , <i>and Request for Expedited Consideration</i> filed by Sexual Minorities Uganda. (McNeely, Kaleb) (Entered: 06/21/2015)
06/21/2015	<u>183</u>	AFFIDAVIT of Pamela C. Spees in Opposition re <u>181</u> MOTION for Extension of Time to July or August 2015 to Take the Deposition of SMUG , <i>and Request for Expedited Consideration</i> filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(McNeely, Kaleb) (Entered: 06/21/2015)
06/21/2015	<u>184</u>	AFFIDAVIT of Pepe Julian Onziema in Opposition re <u>181</u> MOTION for Extension of Time to July or August 2015 to Take the Deposition of SMUG , <i>and Request for Expedited Consideration</i> filed by Sexual Minorities Uganda. (McNeely, Kaleb) (Entered: 06/21/2015)
06/22/2015	<u>185</u>	RESPONSE to Motion re <u>178</u> MOTION for Extension of Time to October 15, 2015 to Submit Expert Disclosures <i>and to Extend Other Litigation Deadlines</i> filed by Scott Lively. (Mihet, Horatio) (Entered: 06/22/2015)
06/22/2015	<u>186</u>	

		NOTICE OF MANUAL FILING / Documents for In Camera Review filed under seal by Plaintiff Sexual Minorities Uganda pursuant to the Court's 172 Order. (Lindsay, Maurice) (Entered: 06/22/2015)
06/22/2015	187	ELECTRONIC NOTICE of Hearing ISSUED: A Telephone Conference is set for 6/24/2015 at 2:30 PM in Hampshire Courtroom before Magistrate Judge Katherine A. Robertson. The Clerk shall inform counsel of the procedures to follow in order to participate by telephone. (Calderon, Melissa) (Entered: 06/22/2015)
06/22/2015	188	Remark: call-in instructions emailed to the parties. (Calderon, Melissa) (Entered: 06/22/2015)
06/23/2015	<u>189</u>	NOTICE of Appearance by Christopher G. Betke on behalf of Sexual Minorities Uganda (Betke, Christopher) (Entered: 06/23/2015)
06/24/2015	190	Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered granting <u>178</u> Motion for Extension of Deadlines for Expert Disclosures and Other Litigation Deadlines. A revised scheduling order will issue. (Robertson, Katherine) (Entered: 06/24/2015)
06/24/2015	191	Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered granting <u>181</u> motion for extension of time to take the rule 30(b)(6) deposition of plaintiff and the deposition of Pepe Onziema. For reasons stated at the hearing held today, the court has extended the deadline for completion of fact discovery for limited and stated purposes. A separate scheduling order shall issue. (Robertson, Katherine) (Entered: 06/24/2015)
06/24/2015	192	ELECTRONIC Clerk's Notes for proceedings held before Magistrate Judge Katherine A. Robertson: A Telephone Conference was held on 6/24/2015. Attorneys Present: Jeena D. Shah, Horatio G. Mihet and Roger Gannam. Colloquy re: status of the case and pending motions. Further schedule established. Orders to issue. (Court Reporter: Digital Recording – For transcripts or CDs contact Deborah Scalfani by email at deborah_scalfani@mad.uscourts.gov.) (Calderon, Melissa) (Entered: 06/24/2015)
06/24/2015	193	Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered. Order Extending Deadlines for Filing Oppositions to Pending Motions. For the reasons stated at the hearing held on June 24, 2015, the deadlines for the filing of oppositions to certain pending discovery motions are extended, as follows: the defendant's opposition to Docket No. <u>161</u> (Motion to Compel by Sexual Minorities of Uganda) shall be filed by <b>July 2, 2015</b> ; the defendant's opposition to Docket No. <u>166</u> (plaintiff's Motion for Protective Order limiting the Deposition of Sam Ganafa) shall be filed by <b>July 6, 2015</b> ; and plaintiff's opposition to Docket No. <u>173</u> (defendant's Motion to Compel Plaintiff to Produce Unredacted Documents) shall be filed by <b>July 9, 2015</b> . It is so ordered. (Calderon, Melissa) (Entered: 06/24/2015)
06/29/2015	<u>194</u>	Transcript of Telephone Status Conference held on June 24, 2015, before Magistrate Judge Katherine A. Robertson. The Transcript may be purchased through Maryann Young at 508-384-2003, viewed at the public terminal, or viewed through PACER after it is released. Court Reporter Name: No Reporter Used. Digital Recording transcribed by Maryann Young. Redaction Request due 7/20/2015. Redacted Transcript Deadline set for 7/30/2015.

		Release of Transcript Restriction set for 9/28/2015. (Scalfani, Deborah) (Entered: 06/29/2015)
06/29/2015	195	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, available on the court website at <a href="http://www.mad.uscourts.gov/attorneys/general-info.htm">http://www.mad.uscourts.gov/attorneys/general-info.htm</a> (Scalfani, Deborah) (Entered: 06/29/2015)
07/02/2015	<u>196</u>	MEMORANDUM in Opposition re <u>161</u> MOTION to Compel filed by Scott Lively. (Attachments: # <u>1</u> Exhibit A)(Mihet, Horatio) (Entered: 07/02/2015)
07/06/2015	<u>197</u>	MEMORANDUM in Opposition re <u>166</u> MOTION for Protective Order <i>limiting the Deposition of Sam Ganafa and for Expedited Consideration</i> filed by Scott Lively. (Attachments: # <u>1</u> Exhibit A)(Mihet, Horatio) (Entered: 07/06/2015)
07/09/2015	<u>198</u>	MEMORANDUM in Opposition re <u>173</u> MOTION to Compel <i>Plaintiff to Produce Unredacted Documents</i> filed by Sexual Minorities Uganda. (Spees, Pamela) (Entered: 07/09/2015)
07/09/2015	<u>199</u>	AFFIDAVIT in Opposition re <u>173</u> MOTION to Compel <i>Plaintiff to Produce Unredacted Documents</i> filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J)(Spees, Pamela) (Entered: 07/09/2015)
07/09/2015	<u>200</u>	AFFIDAVIT in Opposition re <u>173</u> MOTION to Compel <i>Plaintiff to Produce Unredacted Documents</i> filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit H, # <u>8</u> Exhibit I, # <u>9</u> Exhibit G)(Spees, Pamela) (Entered: 07/09/2015)
07/25/2015	<u>201</u>	MOTION for Hearing re <u>173</u> MOTION to Compel <i>Plaintiff to Produce Unredacted Documents</i> by Scott Lively.(Gannam, Roger) (Entered: 07/25/2015)
07/31/2015	202	Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered denying <u>161</u> Motion to Compel. In one of a series of discovery motions filed by the parties, before the court is a motion by plaintiff, Sexual Minorities of Uganda ("Plaintiff"), to compel the defendant, Scott Lively ("Defendant"), to produce documents responsive to Plaintiff's document requests 4, 22, 23, 24 and 25, and to supplement his answers to plaintiff's interrogatories 16, 19, 20 and 21 (Dkt. No. <u>162</u> ). Plaintiff contends that Defendant has improperly narrowed the scope of its discovery requests by refusing to provide documents or information regarding his allegedly persecutory efforts against LGBTI individuals in countries other than Uganda. Defendant argues that requests for information about his activities in countries other than Uganda seek information that is not relevant to Plaintiff's claims of persecution of LGBTI individuals in Uganda.  The scope of discovery is governed by Federal Rule of Civil Procedure 26(b)(1), which provides that "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense... For good cause, the court may order discovery of any matter relevant to the subject

		<p>matter involved in the action." Discovery is subject to limitations set forth in the rule, "such as proportionality and duplication." <i>TG Plastics Trading Co. v. Toray Plastics</i>, No. C.A. 09-336S, 2010 WL 936221, at *1 (D.R.I. Mar. 12, 2010). "The party seeking information in discovery over an adversary's objection has the burden of showing its relevance." <i>Id.</i> at *2 (quoting <i>Caouette v. Officemax, Inc.</i>, 352 F. Supp. 2d 134, 136 (D.N.H. 2005)).</p> <p>In the court's view, Plaintiff has failed to meet that burden. Information about Defendant's activities in countries other than the United States and Uganda is not directly relevant to Plaintiff's claims and any relevance it may have in this case is, at best, attenuated. For purposes of establishing Defendant's liability, Plaintiff will be required to show that Defendant's alleged "offensive conduct... occurred in substantial part, within this country." <i>Sexual Minorities of Uganda v. Lively</i>, 960 F. Supp. 2d 304, 310 (D. Mass. 2013). Thus, Plaintiff plainly is entitled to discovery of information regarding Defendant's activities in the United States that have a connection to the claimed injuries of its members in Uganda and, more broadly, to the LGBTI community in Uganda. As to activities in countries other than the United States, Plaintiff's claims are that Defendant, individually and in a joint enterprise or conspiracy with others, has committed the crime against humanity of persecution of LGBTI individuals in Uganda; that he participated in a civil conspiracy with four Ugandan nationals for an unlawful purpose; and that, through his acts and omissions, he negligently created a virulently hostile environment for Plaintiff and the LGBTI community in Uganda (Dkt. No. <u>27</u> at 55-59). According to the amended complaint, Defendant's goals and purposes and his recommended tactics were communicated at conferences in Uganda that he attended and at which he spoke and in books he has authored (<i>id.</i> at, e.g., 16-18, 22-23). Activities by Defendant in countries other than the United States and Uganda perhaps have some relevance to the subject matter of this action. Where, however, Plaintiff already has substantial evidence of Defendant's intentions regarding LGBTI individuals, and Defendant has produced thousands of pages of documents, Plaintiff has not shown good cause to overcome the limits on discovery imposed by the concepts of proportionality and duplication. (Calderon, Melissa) (Entered: 07/31/2015)</p>
07/31/2015	203	<p>Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered denying <u>166</u> Motion for Protective Order. Before the court is the motion of plaintiff Sexual Minorities of Uganda ("Plaintiff") for a protective order ordering that the deposition of Sam Ganafa, a member, and possibly chair, of its board of directors, be taken by video-conference and that the deposition be limited to questions about certain specific events alleged in the amended complaint about which Mr. Ganafa has personal knowledge (Dkt. No. <u>166</u> ). In support of its motion, Plaintiff states that it does not intend to rely on Mr. Ganafa's testimony at trial; that he has limited first-hand knowledge of the facts recited in the amended complaint; and that it would be unduly burdensome for him to travel to the United States to sit for a deposition in person. In opposition to the motion, defendant Scott Lively ("Defendant") argues against limitations set in advance on the questions he can ask of Mr. Ganafa because, as a prominent civil rights activist in Uganda, Mr. Ganafa has extensive knowledge of facts relevant to this litigation. Defendant has set forth in some detail difficulties he claims would be presented by a deposition by video-conference. For the following reasons, the court DENIES Plaintiff's</p>

		<p>motion (Dkt. No. <u>197</u>).</p> <p>In requesting limits on the subjects on which Defendant can question Mr. Ganafa, Plaintiff is, in essence, seeking in advance to place most questions to him off limits on the basis that Plaintiff does not intend to call him as a witness and therefore sees his testimony as irrelevant. Prohibiting the taking of deposition testimony is highly unusual. <i>See Prozina Shipping Co., Ltd. v. Thirty-Four Automobiles</i>, 179 F.R.D. 41, 48 (D. Mass. 1998). This is not a case in which a party seeks to depose a high level executive who lacks any knowledge relevant to the claims asserted by that party. <i>See generally WebSideStory, Inc. v. NetRatings, Inc.</i>, Civil No. 06cv408 WQH(AJB), 2007 WL 1120567 (S.D. Ca. April 6, 2007). To the contrary, it appears that Mr. Ganafa has personal experience of persecution and repression in Uganda of the very kind of which Plaintiff complains. While Plaintiff may not intend to call Mr. Ganafa as a witness, Plaintiff is not authorized to decide "what may or may not be relevant for Defendants purposes." <i>Atchison Casting Corp. v. Marsh, Inc.</i>, 216 F.R.D. 225, 227 (D. Mass. 2003). Plaintiff's motion for a protective order is denied inasmuch as it seeks to place limits in advance on the questions that can be asked of Mr. Ganafa.</p> <p>As to the location of the deposition, Plaintiff having chosen to bring suit in Massachusetts, it "cannot now argue that it would be too burdensome for it to appear for discovery here." <i>Prozina Shipping Co., Ltd.</i>, 179 F.R.D. at 48; <i>see also Aerocrine AB v. Apieron, Inc.</i>, 267 F.R.D. 105, 108 (D. Del. 2010) (general rule is that plaintiff must produce witnesses in district in which plaintiff instituted action); <i>MPD Accessories B.V. v. Target Corp.</i>, No. 12-7259, 2013 WL 1200359, *1 (S.D.N.Y Mar. 1, 2013) (same). Defendant has set out in detail barriers that he claims exist to taking Mr. Ganafa's deposition by video-conference, including an inability to comply with Federal Rule of Civil Procedure 28(b), which governs the taking of deposition testimony in a foreign country, and a time difference that would inconvenience counsel and the witness and make it impracticable for the court to resolve disputes that might arise in the course of the deposition. Plaintiff has not rebutted these contentions. Pursuant to Federal Rule of Civil Procedure 29 ("Rule 29"), the parties would be free to stipulate to a deposition by video-conference of Mr. Ganafa that could be used for purposes of trial, but Defendant has refused to do so. In these circumstances, the court is unable to conclude that a deposition of Mr. Ganafa by video-conference is a viable alternative to his appearance in Massachusetts (or New York, where, it appears, most depositions in this case have been taken). The parties remain free to stipulate, pursuant to Rule 29, to mutually satisfactory arrangements for Mr. Ganafa's deposition either in this country or in Uganda.</p> <p>For the foregoing reasons, Plaintiff's motion for a protective order limiting the deposition of Sam Ganafa is DENIED. It is so ordered. (Calderon, Melissa) (Entered: 07/31/2015)</p>
08/10/2015	<u>204</u>	<p>Magistrate Judge Katherine A. Robertson: ORDER entered. MEMORANDUM AND ORDER Regarding Plaintiff's <u>149</u> Motion to Amend Existing Protective Order and Defendant's <u>173</u> Motion to Compel Plaintiff to Produce Unredacted Documents. For the reasons stated, Defendant's Motion to Compel Plaintiff to Produce Unredacted Documents is GRANTED in part and</p>

		DENIED in part and Plaintiff's Motion to Amend the Order Regarding Confidentiality of Certain Discovery Material is DENIED. See attached memorandum and order for complete details. (Calderon, Melissa) (Entered: 08/10/2015)
08/10/2015	205	Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered finding as moot <u>201</u> Request for Oral Argument on Defendant Scott Lively's Motion to Compel Plaintiff to Produce Unredacted Documents and for Expedited Consideration. See Memo & Order (Dkt. No. <u>204</u> for complete details. (Calderon, Melissa) (Entered: 08/10/2015)
08/13/2015	<u>206</u>	MOTION for Extension of Time to October 30, 2015 to Complete Three Fact Depositions <i>and Request for Expedited Consideration</i> by Scott Lively. (Attachments: # <u>1</u> Exhibit A)(Mihet, Horatio) (Entered: 08/13/2015)
08/14/2015	207	Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered granting in part and denying in part <u>206</u> Motion for Extension of Time to Complete Fact Discovery. The court finds there is good cause for an extension of the time for taking non-expert depositions that have already been noticed. The deadline for completion of fact discovery is therefore extended to October 2, 2015. The deadline for plaintiff to make its expert disclosures is extended to November 2, 2015. Defendant shall make its expert disclosures by no later than December 2, 2015. Expert depositions shall be completed by January 6, 2016. The defendant shall file his motion for summary judgment by no later than February 8, 2016; plaintiff shall file its opposition thereto, and any cross-motion for summary judgment by no later than March 7, 2016. Defendant's opposition to any summary judgment motion by plaintiff shall be filed by March 28, 2016. A hearing on the parties' summary judgment motion(s) shall be held on April 21, 2016 at 11:00 a.m. The parties should not anticipate any further extensions to these deadlines. (Robertson, Katherine) (Entered: 08/14/2015)
08/17/2015	208	Set/Reset Deadlines as to: Plft's expet discl. extended to 11/2/2015, Def't's to 12/2/2015. Expert depos. to be compl. by 1/6/2016. Def't's Moton for S/J due 2/8/2016, Pltf's resp. and cross motion for S/J due 3/7/2016. Def't's opp. 3/28/2016. Motion Hearing set for 4/21/2016 11:00 AM in Hampden Courtroom before Judge Michael A. Ponsor(Finn, Mary) (Entered: 08/17/2015)
08/24/2015	<u>209</u>	Objection to <u>204</u> Memorandum & ORDER., by Sexual Minorities Uganda . (Attachments: # <u>1</u> Affidavit)(Shah, Jeena) (Entered: 08/24/2015)
08/24/2015	<u>210</u>	Objection to <u>204</u> Memorandum & ORDER., by Scott Lively . (Attachments: # <u>1</u> Exhibit A. Excerpts from Plaintiffs Supplemental Responses to Defendant Scott Lively's First Set of Interrogatories)(Gannam, Roger) (Entered: 08/24/2015)
09/04/2015	<u>211</u>	MOTION Retain Confidential Designations by Sexual Minorities Uganda.(Beebe, Daniel) (Entered: 09/04/2015)
09/04/2015	<u>212</u>	MEMORANDUM in Support re <u>211</u> MOTION Retain Confidential Designations filed by Sexual Minorities Uganda. (Beebe, Daniel) (Entered: 09/04/2015)
09/04/2015	<u>213</u>	

		DECLARATION re <u>211</u> MOTION Retain Confidential Designations of <i>Frank Mugisha</i> by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Beebe, Daniel) (Entered: 09/04/2015)
09/04/2015	<u>214</u>	DECLARATION re <u>211</u> MOTION Retain Confidential Designations of <i>Daniel W. Beebe</i> by Sexual Minorities Uganda. (Beebe, Daniel) (Entered: 09/04/2015)
09/04/2015	<u>215</u>	Proposed Document(s) submitted by Sexual Minorities Uganda. Document received: Proposed Order. (Beebe, Daniel) (Entered: 09/04/2015)
09/08/2015	<u>216</u>	Response by Sexual Minorities Uganda to <u>210</u> <i>Objection to Memorandum and Order dated August 10, 2015</i> . (Shah, Jeena) (Entered: 09/08/2015)
09/15/2015	<u>217</u>	Response by Scott Lively to <u>209</u> <i>Objection to Memorandum and Order dated August 10, 2015</i> . (Gannam, Roger) (Entered: 09/15/2015)
09/16/2015	<u>218</u>	MOTION for Extension of Time to Week of October 26, 2015 to Complete the Ganafa, Onziema and SMUG Depositions <i>while Leaving the Litigation Schedule Otherwise Intact; and Renewed MOTION to Compel SMUG to Produce Documents it has been Ordered but Failed to Produce; MOTION for Fees and Costs and MOTION for Expedited Consideration</i> by Scott Lively. (Attachments: # <u>1</u> Exhibit A – SMUG–Lively Email Communications)(Mihet, Horatio). Added 3 additional reliefs – MOTION to Compel, MOTION for Costs, MOTION for Expedited Consideration on 9/16/2015 (Finn, Mary). (Entered: 09/16/2015)
09/16/2015	<u>219</u>	Letter/request (non–motion) from D. Beebe to <i>Hon. Michael A. Ponsor to object to Defendant's untimely filing (Dkt. No. 217)</i> . (Beebe, Daniel) (Entered: 09/16/2015)
09/17/2015	<u>220</u>	Letter/request (non–motion) from Defendant Scott Lively <i>Responding to Plaintiff's Improper Letter to Judge Michael A. Ponsor of September 16, 2015 (dkt. 219)</i> . (Mihet, Horatio) (Entered: 09/17/2015)
09/18/2015	<u>221</u>	MEMORANDUM in Opposition re <u>211</u> MOTION Retain Confidential Designations filed by Scott Lively. (Mihet, Horatio) (Entered: 09/18/2015)
09/21/2015	<u>222</u>	RESPONSE to Motion re <u>218</u> MOTION for Extension of Time to Week of October 26, 2015 to Complete the Ganafa, Onziema and SMUG Depositions <i>while Leaving the Litigation Schedule Otherwise Intact; and Renewed Motion to Compel SMUG to Produce Documents it has been Ordered but MOTION to Compel MOTION for Costs filed by Sexual Minorities Uganda</i> . (Spiegelman, Gina) (Entered: 09/21/2015)
09/22/2015	<u>223</u>	MOTION for Leave to File <i>Reply in Support of Motion for Extension of Time to Take the Ganafa, Onziema and SMUG Depositions, OR, Alternatively, MOTION for Telephonic Hearing</i> by Scott Lively. (Attachments: # <u>1</u> Exhibit A – SMUG Production Emails)(Mihet, Horatio). Added an additional relief – MOTION for Hearing on 9/22/2015 (Finn, Mary). (Entered: 09/22/2015)
09/22/2015	<u>224</u>	CERTIFICATE OF SERVICE pursuant to LR 5.2 by Sexual Minorities Uganda re <u>222</u> Response to Motion, . (Spiegelman, Gina) (Entered: 09/22/2015)
09/23/2015	225	

		Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered granting <u>223</u> Motion for Leave to File Document; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include – Leave to file granted on (date of order)– in the caption of the document. The request for a hearing is denied. (Robertson, Katherine) (Entered: 09/23/2015)
09/23/2015	<u>226</u>	REPLY to Response to <u>218</u> MOTION for Extension of Time to Week of October 26, 2015 to Complete the Ganafa, Onziema and SMUG Depositions <i>while Leaving the Litigation Schedule Otherwise Intact; and Renewed Motion to Compel SMUG to Produce Documents it has been Ordered but MOTION to Compel MOTION for Costs filed by Scott Lively. (Attachments: # <u>1</u> Exhibit A – SMUG Production Emails)(Mihet, Horatio) (Entered: 09/23/2015)</i>
09/23/2015	227	<p>Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered granting in part and denying part Defendant's <u>218</u> Motion for Leave to Take the Ganafa, Onziema and SMUG Depositions during the week of October 26, 2016, while leaving the litigation schedule otherwise intact; Renewed Motion to Compel SMUG to Produce Documents it has been ordered but failed to produce AND Request for Expedited Consideration.</p> <p>In another of a series of discovery motions filed by the parties, before the court is a motion by defendant Scott Lively ("Defendant") to extend to the week of October 26, 2015 the time for Defendant to take the depositions of Messrs. Ganafa and Onziema, the latter individually and as the Rule 30(b)(6) deponent for plaintiff Sexual Minorities of Uganda ("Plaintiff"). The motion is GRANTED for the following reasons. In or around late July and early August 2015, the undersigned issued a series of rulings on discovery motions by both parties (Dkt. Nos. 202 , 203 , <u>204</u> ) and extended certain deadlines in the existing scheduling order. One or more of those rulings required Plaintiff to produce in unredacted form a significant number of pages of the documents that it had previously produced in redacted form. The court also declined to amend the existing protective order to permit the production by Plaintiff of additional documents subject to an "attorneys eyes only" ("AEO") designation. Plaintiff timely objected to that aspect of the court's rulings (as it was entitled to do). Because the dispute about AEO designation remains unresolved, Plaintiff has not produced the documents that, in its view, warrant an AEO designation. Defendant argues that, because Plaintiff produced more than 4,800 pages of unredacted material this week and has not produced the documents which it seeks to produce subject to an AEO designation, he lacks adequate time to review documents in advance of taking the depositions of Messrs. Ganafa and Onziema and the Rule 30(b)(6) deposition of Plaintiff under the existing scheduling order, which sets an October 2, 2015 deadline for the completion of fact depositions.</p> <p>The court does not accept as accurate the aspersions cast on Plaintiff's counsel by defense counsel. Nonetheless although these are points Plaintiff appears unwilling to acknowledge Defendant is entitled to take depositions based on as complete as possible a record and the delay in Plaintiff's document production has interfered with this reasonable expectation. To the extent Plaintiff unilaterally made travel arrangements for its deponents knowing that the</p>

		<p>timing of their depositions was a subject of dispute, that is not a good reason to accept Plaintiff's alternative scheduling proposal, which would not, for the reasons stated by Defendant, allow adequate time to prepare. Accordingly, Defendant will have to the week of October 26, 2015 to take the depositions of Messrs. Ganafa and Onziema, the latter individually and as the Rule 30(b)(6) deponent for Plaintiff.</p> <p>No other changes to the scheduling order are warranted. Messrs. Ganafa and Onziema are associated with Plaintiff and therefore available for consultation with Plaintiff's expert(s) for purposes of the preparation of Plaintiff's expert disclosure(s), which must be made by November 2, 2015 in compliance with the existing scheduling order. Defendant's request for sanctions pursuant to Federal Rule of Civil Procedure 37 in the form of fees and costs is DENIED. (Calderon, Melissa) (Entered: 09/23/2015)</p>
09/23/2015	<u>228</u>	<p>Judge Michael A. Ponsor: ORDER entered. MEMORANDUM AND ORDER Regarding Objections to Magistrate Judge's Rulings on Non-Dispositive Motions. See the attached memo and order for details. (Lindsay, Maurice) (Entered: 09/23/2015)</p>
09/23/2015	229	<p>Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered granting Plaintiff's <u>211</u> Motion to Retain Confidential Designations. Before the court is a motion by plaintiff, Sexual Minorities of Uganda ("Plaintiff"), to retain confidential designations it has placed on information about its finances to which Frank Muguisha testified during his recent deposition (Dkt. No. <u>211</u> ). The defendant, Scott Lively ("Defendant"), opposes the motion, asserting that he has the right to rely on this financial information to respond publicly to the allegations against him (Dkt. No. <u>221</u> at 4). The positions of the parties here are strikingly similar to the positions of the parties who were before the court in <i>Seattle Times Co. v. Rhinehart</i>, 467 U.S. 20 (1984). That case, in which the Court affirmed the terms of a protective order that prohibited the disclosure by the defendants of financial information produced by a non-profit entity in discovery, is controlling. Accordingly, Plaintiff's motion is GRANTED.</p> <p>In <i>Seattle Times Co.</i>, the plaintiffs (respondents on appeal), the spiritual leader and other members of a religious group suing the defendants for defamation, were required to produce information about the group's finances, including its donors' identities, in discovery. In connection with the production of this financial information, the plaintiffs sought and ultimately obtained a protective order prohibiting the defendants from "publishing, disseminating, or using the [financial] information in any way except where necessary to prepare for and try the case." <i>Id.</i> at 27. Plaintiffs sought the protective order because the defendants had stated their intention to use the information gained through discovery in future articles about the plaintiffs. <i>See id.</i> at 26. The Supreme Court rejected the defendants' claim that the protective order was a violation of their First Amendment rights. <i>See id.</i> at 31-34. The Court observed that there is an opportunity in discovery "for litigants to obtain incidentally or purposefully information that... if publicly released could be damaging to reputation and privacy." <i>Id.</i> at 35. The Court held that "[t]he prevention of the abuse that can attend the coerced production of information under [the] discovery rule[s] is sufficient justification for the authorization of protective</p>

		<p>orders," <i>id.</i> at 35–36, thereby affirming the confidentiality of the plaintiffs' financial information under the terms of the protective order entered by the state trial court. Subsequently, other courts have held that there is no right to publicly disseminate discovery that has not been filed with a court. <i>See, e.g., Bond v. Utreras</i>, 585 F.3d 1061, 1073 (7th Cir. 2009).</p> <p>Under the terms of the protective order entered in this case, a party may designate discovery material as confidential if there is a good faith basis for the belief that it contains information that may subject a person or organization to a risk of imminent harm or undue harassment (Dkt. No. <u>106</u> at 1, &amp;para 1(b)). Plaintiff alleges that, with others, Defendant "has attempted to foment, and to a substantial degree has succeeded in fomenting, an atmosphere of harsh and frightening repression against [lesbian, gay, bisexual, transgender and intersex ("LGBTI")] people in Uganda." <i>Sexual Minorities of Uganda v. Lively</i>, 960 F. Supp. 2d 304, 309 (D. Mass. 2013). While Defendant's liability for the repression and persecution of LGBTI individuals in Uganda remains at issue, the fact of the repression and persecution is well–established. Plaintiff has sufficiently demonstrated that public disclosure of the financial information about which Mr. Muguisha testified could result in imminent harm to, or undue harassment of, Plaintiff and LGBTI persons in Uganda (Dkt. Nos. <u>213</u> , <u>213</u> –1, <u>213</u> –2). Accordingly, and for the foregoing reasons, Plaintiff's motion is GRANTED. (Calderon, Melissa) (Entered: 09/23/2015)</p>
10/09/2015	<u>230</u>	MOTION for Extension of Time to the Week of November 9, 2015 to Take the Onziema and SMUG depositions <i>and Extension of Time to December 16, 2015 for Defendant's Expert Disclosures, and Request for Expedited Consideration</i> by Sexual Minorities Uganda.(McNeely, Kaleb) (Entered: 10/09/2015)
10/13/2015	231	Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered granting <u>230</u> defendant's unopposed motion to extend the time for taking the depositions of Messrs. Ganafa and Onziema (and including a Rule 30(b)(6) deposition of plaintiff Sexual Minorities of Uganda) to November 9, 2016 to accommodate the schedules of the witnesses, and to extend to December 16, 2015 the time for defendant to make his expert disclosures. In all other respects, the current scheduling order remains in effect. (Robertson, Katherine) (Entered: 10/13/2015)
12/08/2015	<u>232</u>	MOTION for Extension of Time to March 15, 2016 to Provide Rebuttal Expert Reports <i>and Request for Expedited Consideration (Partial Consent)</i> by Scott Lively. (Attachments: # <u>1</u> Exhibit A – Leaning Report, # <u>2</u> Exhibit B – Meyer Report, # <u>3</u> Exhibit C – Bassiouni Report)(Mihet, Horatio) (Entered: 12/08/2015)
12/22/2015	<u>233</u>	Opposition re <u>232</u> MOTION for Extension of Time to March 15, 2016 to Provide Rebuttal Expert Reports <i>and Request for Expedited Consideration (Partial Consent)</i> filed by Sexual Minorities Uganda. (McNeely, Kaleb) (Entered: 12/22/2015)
01/05/2016	234	Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered granting <u>232</u> defendant's motion for an extension of time to March 15, 2016 for defendant to identify his rebuttal experts and provide his associated Rule 26(a)(2) expert disclosures. The deadline for completion of expert depositions

		is extended to April 15, 2016. The parties are to file dispositive motions, if any, by no later than May 16, 2016; oppositions thereto shall be filed by June 15, 2016; and replies, if any, shall be filed by July 6, 2016. A hearing on dispositive motions is scheduled for September 14, 2016 at 11:00 a.m. in the Hampden Courtroom. (Robertson, Katherine) (Entered: 01/05/2016)
01/07/2016	235	Set/Reset Deadlines: Expert disclosures to be completed by 3/15/2016; completion of expert depositions by 4/15/2016; dispositive motions due by 5/16/2016; oppositions due by 6/15/2016; and replies, if any, due by 7/6/2016. A hearing on dispositive motions is set for 9/14/2016 at 11:00 AM in Hampden Courtroom before Judge Michael A. Ponsor. (Calderon, Melissa) (Entered: 01/07/2016)
03/22/2016	<u>236</u>	<i>Joint Letter/request (non-motion) from Kaleb McNeely request for leave to take one expert deposition after the deadline for completion of expert depositions.</i> (McNeely, Kaleb) (Entered: 03/22/2016)
03/22/2016	237	Remark re <u>236</u> Joint Letter. To the extent the parties request leave of court to take depositions three days beyond the deadline for expert depositions, leave is granted. (Calderon, Melissa) (Entered: 03/22/2016)
05/05/2016	<u>238</u>	Joint MOTION for Extension of Time to July 1, 2016 to File Dispositive Motions <i>and MOTION for Leave to Complete Expert Deposition on May 19, 2016, and for Expedited Consideration</i> by Scott Lively.(Gannam, Roger). Added an additional relief – MOTION on 5/5/2016 (Finn, Mary). (Entered: 05/05/2016)
05/05/2016	239	Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered granting <u>238</u> for good cause the parties' joint motion for an extension of time to complete one expert deposition and to file and respond to dispositive motions. The final expert deposition shall be completed by no later than May 19, 2016. Dispositive motion(s) shall be filed by July 1, 2016; opposition(s) thereto shall be filed by August 1, 2016, and replies, if any, by August 22, 2016. The hearing on dispositive motions shall remain as scheduled on September 14, 2016. (Robertson, Katherine) (Entered: 05/05/2016)
05/06/2016	240	Set/Reset Deadlines: Discovery re: final expert depo. to be completed by 5/19/2016. Dispositive Motions due by 7/1/2016. Responses due by 8/1/2016, Replies due by 8/22/2016. Motion Hearing to remain on 9/14/2016 11:00 AM in Hampden Courtroom before Judge Michael A. Ponsor.) (Finn, Mary) (Entered: 05/06/2016)
06/07/2016	<u>241</u>	NOTICE of Withdrawal of Appearance Attorney Vikram Kumar terminated. (Lindsay, Maurice) (Entered: 06/07/2016)
06/24/2016	<u>242</u>	MOTION for Extension of Time to July 18, 2016 or August 12, 2016 to File Dispositive Motions by Scott Lively.(Mihet, Horatio) (Entered: 06/24/2016)
06/24/2016	243	Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered denying <u>242</u> the defendant's Motion for Extension of Time to file his dispositive motion. The court has repeatedly agreed to the parties' requests for extensions to accommodate counsels' schedules, including as to the filing of defendant's dispositive motion. Granting this motion would in any event require rescheduling the dispositive motion hearing because the court will require adequate time to prepare. There should not be any further delay in

		resolution of this case. (Robertson, Katherine) (Entered: 06/24/2016)
06/29/2016	<u>244</u>	Consent MOTION for Extension of Time to One Business Day to and Including July 5, 2016 to File Dispositive Motions by Scott Lively.(Mihet, Horatio) (Entered: 06/29/2016)
06/29/2016	245	Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered granting <u>244</u> Motion for Extension of Time to 7/5/2016 to file dispositive motions, to 8/4/2016 for oppositions and to 8/25/2016 for replies. (Finn, Mary) (Entered: 06/29/2016)
06/29/2016	246	Set/Reset Deadlines: Dispositive Motions due by 7/5/2016. Responses due by 8/4/2016. Replies due by 8/25/2016. (Finn, Mary) (Entered: 06/29/2016)
07/05/2016	<u>247</u>	MOTION for Leave to File Excess Pages in <i>Defendant's Brief in Support of Motion for Summary Judgment</i> by Scott Lively.(Mihet, Horatio) (Entered: 07/05/2016)
07/05/2016	<u>248</u>	MOTION for Summary Judgment and MOTION for a Hearing by Scott Lively.(Mihet, Horatio). Added an additional relief – MOTION for Hearing on 7/6/2016 (Finn, Mary). (Entered: 07/05/2016)
07/05/2016	<u>249</u>	MEMORANDUM in Support re <u>248</u> MOTION for Summary Judgment filed by Scott Lively. (Attachments: # <u>1</u> Exhibit A – Lively Declaration, # <u>2</u> Exhibit B – Langa Declaration, # <u>3</u> Exhibit C – Tuhaise Declaration, # <u>4</u> Exhibit D – SMUG 2nd Supp. Rog. Resp., # <u>5</u> Exhibit E – SMUG 5th Supp. Rog. Resp., # <u>6</u> Exhibit F – SMUG Initial Disclosures, # <u>7</u> Exhibit G – SMUG 1st Supp. Initial Disclosures)(Mihet, Horatio) (Attachment 5 replaced on 7/7/2016 with correct Exhibit E.) (Finn, Mary). Modified on 7/7/2016 (Finn, Mary). (Entered: 07/05/2016)
07/05/2016	<u>250</u>	NOTICE by Scott Lively re <u>248</u> MOTION for Summary Judgment of <i>Filing Deposition Transcripts in Support</i> (Attachments: # <u>1</u> Exhibit Deposition of Samuel Ganafa, # <u>2</u> Exhibit Deposition of Richard Lusimbo, # <u>3</u> Exhibit Deposition of Frank Mugisha, # <u>4</u> Exhibit Deposition of Victor Mukasa (Vol. 1), # <u>5</u> Exhibit Deposition of Victor Mukasa (Vol. 2), # <u>6</u> Exhibit Deposition of Plaintiff, SMUG, through designee Pepe Onziema (Vol. 1), # <u>7</u> Exhibit Deposition of Plaintiff, SMUG, through designee Pepe Onziema (Vol. 2))(Gannam, Roger) (Entered: 07/05/2016)
07/05/2016	<u>251</u>	NOTICE by Scott Lively re <u>248</u> MOTION for Summary Judgment of <i>Filing Deposition Exhibits in Support</i> (Attachments: # <u>1</u> Exhibit Defendant's Exhibit F, # <u>2</u> Exhibit Defendant's Exhibit I, # <u>3</u> Exhibit Defendant's Exhibit W, # <u>4</u> Exhibit Defendant's Exhibit XX (CONFIDENTIAL), # <u>5</u> Exhibit Defendant's Exhibit ZZZ, # <u>6</u> Exhibit Defendant's Exhibit 5G (CONFIDENTIAL))(Gannam, Roger) (Entered: 07/05/2016)
07/05/2016	<u>252</u>	NOTICE by Scott Lively re <u>248</u> MOTION for Summary Judgment of <i>Filing Digital Media in Support</i> (Gannam, Roger) (Entered: 07/05/2016)
07/05/2016	<u>253</u>	NOTICE by Scott Lively re <u>248</u> MOTION for Summary Judgment ( <i>Second</i> ) of <i>Filing Deposition Exhibit in Support</i> (Attachments: # <u>1</u> Exhibit Defendant's Exhibit 5G)(Gannam, Roger) (Entered: 07/05/2016)
07/06/2016	254	Set/Reset Deadlines as to <u>248</u> MOTION for Summary Judgment . Pltf's Response due by 8/4/2016. Deft's Reply due by 8/25/2016. Motion Hearing set

		for 9/14/2016 11:00 AM in Hampden Courtroom before Judge Michael A. Ponsor. (Finn, Mary) (Entered: 07/06/2016)
07/06/2016	255	ELECTRONIC NOTICE issued requesting courtesy copy for <u>250</u> Notice (Other) and supporting exhibits, <u>249</u> Memorandum in Support of Motion and supporting exhibits. Counsel who filed this document are requested to submit a courtesy copy of this document (or documents) to the Clerk's Office by Tuesday, July 12, 2016. <b>These documents must be clearly marked as a Courtesy Copy and reflect the document number assigned by CM/ECF.</b> (Finn, Mary) (Entered: 07/06/2016)
07/06/2016	256	Judge Michael A. Ponsor: ELECTRONIC ORDER entered. Defendant's Motion for Leave to File Excess Pages (Dkt. No. 247) is ALLOWED. Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include – Leave to file granted on (date of order)– in the caption of the document. (Kaplan, Jennifer) (Entered: 07/06/2016)
07/06/2016	<u>257</u>	MEMORANDUM in Support re <u>248</u> MOTION for Summary Judgment MOTION for Hearing – <i>Leave to file granted on 7/6/2016 (Dkt. 256)</i> filed by Scott Lively. (Attachments: # <u>1</u> Exhibit A – Lively Declaration, # <u>2</u> Exhibit B – Langa Declaration, # <u>3</u> Exhibit C – Tuhaise Declaration, # <u>4</u> Exhibit D – SMUG 2d Supp. Interrog. Resps., # <u>5</u> Exhibit E – SMUG 5th Supp. Interrog. Resps., # <u>6</u> Exhibit F – SMUG Initial Disclosures, # <u>7</u> Exhibit G – SMUG 1st Supp. Initial Disclosures)(Gannam, Roger) (Main Document 257 replaced on 7/6/2016 with correct signed main document) (Finn, Mary). Modified on 7/6/2016 (Finn, Mary). (Attachment 5 replaced on 7/7/2016 with correct Exhibit E) (Finn, Mary). Modified on 7/7/2016 (Finn, Mary). (Entered: 07/06/2016)
07/11/2016		Remark – Courtesy copies of documents <u>250</u> and <u>257</u> received and placed in the file. Document <u>257</u> is a duplicate of document <u>249</u> . (Finn, Mary) (Entered: 07/11/2016)
07/11/2016	<u>259</u>	EXHIBIT 6 – (CD Disc Not Scanned) in support of Scott Lively Declaration to his <u>257</u> Memorandum in Support of Motion, by Scott Lively. (Lindsay, Maurice) (Entered: 07/11/2016)
07/11/2016	<u>260</u>	MOTION for Extension of Time to August 18, 2016 to File Response/Reply to <i>Plaintiff's Motion for Summary Judgment and MOTION for Leave to Exceed Page Limit</i> by Sexual Minorities Uganda.(McNeely, Kaleb). Added an additional relief – MOTION for Leave to File on 7/12/2016 (Finn, Mary). (Entered: 07/11/2016)
07/11/2016	<u>261</u>	MEMORANDUM in Opposition re <u>260</u> MOTION for Extension of Time to August 18, 2016 to File Response/Reply to <i>Plaintiff's Motion for Summary Judgment and for Leave to Exceed Page Limit</i> filed by Scott Lively. (Gannam, Roger) (Entered: 07/11/2016)
07/12/2016	262	Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered denying <u>260</u> so much of plaintiff's motion as seeks an additional two weeks to file a memorandum in opposition to defendant's summary judgment motion and denying without prejudice so much of <u>260</u> plaintiff's motion as seeks leave to file a memorandum in excess of the established page limit. A motion for

		leave to exceed the page limit should be filed in conjunction with the proposed memorandum. (Robertson, Katherine) (Entered: 07/12/2016)
07/25/2016	<u>263</u>	NOTICE by Scott Lively re <u>257</u> Memorandum in Support of Motion,, <u>248</u> MOTION for Summary Judgment MOTION for Hearing of <i>Filing Previously Confidential Exhibit in Support</i> (Attachments: # <u>1</u> Exhibit SMUG 5th Supp. Interrog. Resps.)(Gannam, Roger) (Entered: 07/25/2016)
08/01/2016	<u>264</u>	MOTION for Extension of Time to August 8, 2016 to File Response/Reply to <i>Defendant's Motion for Summary Judgment</i> by Sexual Minorities Uganda.(McNeely, Kaleb) (Entered: 08/01/2016)
08/02/2016	<u>265</u>	Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered granting <u>264</u> Motion for Extension of Time to File Response re <u>248</u> MOTION for Summary Judgment MOTION for Hearing Responses due by 8/8/2016. Order allowed as to plaintiff's deadline only. All other deadlines remain as previously set. (Hohler, Daniel) (Entered: 08/02/2016)
08/08/2016	<u>266</u>	MOTION to Retain Confidentiality Designation by Sexual Minorities Uganda.(Beebe, Daniel) (Entered: 08/08/2016)
08/08/2016	<u>267</u>	MEMORANDUM in Support re <u>266</u> MOTION to Retain Confidentiality Designation filed by Sexual Minorities Uganda. (Beebe, Daniel) (Entered: 08/08/2016)
08/08/2016	<u>268</u>	Proposed Document(s) submitted by Sexual Minorities Uganda. Document received: Proposed Order for Motion to Retain Confidentiality Designation (Dkt. No. 266). (Beebe, Daniel) (Entered: 08/08/2016)
08/08/2016	<u>269</u>	Consent MOTION for Leave to File Excess Pages in <i>Brief in Response to Plaintiff's Summary Judgment Motion</i> by Sexual Minorities Uganda.(Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>270</u>	Counter Statement of Material Facts L.R. 56.1 re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>271</u>	AFFIDAVIT of Patricia Ackerman in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A)(Sullivan, Mark) (Main Document 271 replaced on 8/9/2016 with an uprighted affidavit) (Finn, Mary). Modified on 8/9/2016 (Finn, Mary). (Entered: 08/08/2016)
08/08/2016	<u>272</u>	AFFIDAVIT of Diane Bakuraira in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>273</u>	AFFIDAVIT of Brian Nkoyooyo in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>274</u>	AFFIDAVIT of Claire Byarugaba in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Sullivan, Mark) (Entered: 08/08/2016)

08/08/2016	<u>275</u>		AFFIDAVIT of Chris Dolan in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>276</u>		AFFIDAVIT of Samuel Ganafa in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A)(Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>277</u>		AFFIDAVIT of Adrian Jjuuko in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A)(Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>278</u>		AFFIDAVIT of Gaetano Kagwa in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>279</u>		AFFIDAVIT of Kapyka Kaoma in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A)(Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>280</u>		AFFIDAVIT of Richard Lusimbo in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>281</u>		AFFIDAVIT of Frank Mugisha in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>282</u>		AFFIDAVIT of Jackson Mukasa in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>283</u>		AFFIDAVIT of Kim Mukisa in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>284</u>		AFFIDAVIT of Jay Mulucha in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Sullivan, Mark) (Main Document 284 replaced on 8/9/2016 with a darker image of the affidavit) (Finn, Mary). Modified on 8/9/2016 (Finn, Mary). (Entered: 08/08/2016)
08/08/2016	<u>285</u>		AFFIDAVIT of Brian Nkoyooyo in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>286</u>		AFFIDAVIT of Sandra Ntebi in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>287</u>		AFFIDAVIT of Katherine Roubos in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A)(Sullivan, Mark) (Entered: 08/08/2016)

08/08/2016	<u>288</u>	AFFIDAVIT of Warry Ssenfuka in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>289</u>	AFFIDAVIT of Sylvia Tamale in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>290</u>	AFFIDAVIT of Witness X in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>291</u>	AFFIDAVIT of Pepe Onziema in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G)(Sullivan, Mark) (Entered: 08/08/2016)
08/08/2016	<u>292</u>	MEMORANDUM in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Sullivan, Mark) (Main Document 292 replaced on 8/9/2016 with correct captioned document – re: leave granted on 8/9/2016 added) (Finn, Mary). Modified on 8/9/2016 (Finn, Mary). (Entered: 08/08/2016)
08/08/2016	<u>293</u>	AFFIDAVIT of Mark S. Sullivan in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13, # <u>14</u> Exhibit 14, # <u>15</u> Exhibit 15, # <u>16</u> Exhibit 16, # <u>17</u> Exhibit 17, # <u>18</u> Exhibit 18, # <u>19</u> Exhibit 19, # <u>20</u> Exhibit 20, # <u>21</u> Exhibit 21, # <u>22</u> Exhibit 22, # <u>23</u> Exhibit 23, # <u>24</u> Exhibit 24 Part 1, # <u>25</u> Exhibit 24 Part 2, # <u>26</u> Exhibit 24 Part 3, # <u>27</u> Exhibit 24 Part 4, # <u>28</u> Exhibit 24 Part 5, # <u>29</u> Exhibit 25, # <u>30</u> Exhibit 26, # <u>31</u> Exhibit 27, # <u>32</u> Exhibit 28, # <u>33</u> Exhibit 29, # <u>34</u> Exhibit 30, # <u>35</u> Exhibit 31, # <u>36</u> Exhibit 32, # <u>37</u> Exhibit 33, # <u>38</u> Exhibit 34, # <u>39</u> Exhibit 35, # <u>40</u> Exhibit 36, # <u>41</u> Exhibit 37, # <u>42</u> Exhibit 38, # <u>43</u> Exhibit 39, # <u>44</u> Exhibit 40, # <u>45</u> Exhibit 41, # <u>46</u> Exhibit 42, # <u>47</u> Exhibit 43, # <u>48</u> Exhibit 44, # <u>49</u> Exhibit 45, # <u>50</u> Exhibit 46, # <u>51</u> Exhibit 47, # <u>52</u> Exhibit 48, # <u>53</u> Exhibit 49, # <u>54</u> Exhibit 50, # <u>55</u> Exhibit 51, # <u>56</u> Exhibit 52, # <u>57</u> Exhibit 53, # <u>58</u> Exhibit 54, # <u>59</u> Exhibit 55 Part 1, # <u>60</u> Exhibit 55 Part 2, # <u>61</u> Exhibit 55 Part 3, # <u>62</u> Exhibit 56, # <u>63</u> Exhibit 57, # <u>64</u> Exhibit 58, # <u>65</u> Exhibit 59, # <u>66</u> Exhibit 60, # <u>67</u> Exhibit 61, # <u>68</u> Exhibit 62, # <u>69</u> Exhibit 63, # <u>70</u> Exhibit 64, # <u>71</u> Exhibit 65, # <u>72</u> Exhibit 66, # <u>73</u> Exhibit 67, # <u>74</u> Exhibit 68, # <u>75</u> Exhibit 69, # <u>76</u> Exhibit 70 Part 1, # <u>77</u> Exhibit 70 Part 2, # <u>78</u> Exhibit 70 Part 3, # <u>79</u> Exhibit 71, # <u>80</u> Exhibit 72, # <u>81</u> Exhibit 73, # <u>82</u> Exhibit 74, # <u>83</u> Exhibit 75, # <u>84</u> Exhibit 76, # <u>85</u> Exhibit 77, # <u>86</u> Exhibit 78, # <u>87</u> Exhibit 79, # <u>88</u> Exhibit 80, # <u>89</u> Exhibit 81, # <u>90</u> Exhibit 82, # <u>91</u> Exhibit 83, # <u>92</u> Exhibit 84, # <u>93</u> Exhibit 85, # <u>94</u> Exhibit 86, # <u>95</u> Exhibit 87, # <u>96</u> Exhibit 88, # <u>97</u> Exhibit 89 Part 1, # <u>98</u> Exhibit 89 Part 2, # <u>99</u> Exhibit 90, # <u>100</u> Exhibit 91, # <u>101</u> Exhibit 92, # <u>102</u> Exhibit 93, # <u>103</u> Exhibit 94, # <u>104</u> Exhibit 95, # <u>105</u> Exhibit 96, # <u>106</u> Exhibit 97, # <u>107</u> Exhibit 98, # <u>108</u> Exhibit 99, # <u>109</u> Exhibit 100, # <u>110</u> Exhibit 101, # <u>111</u> Exhibit 102, # <u>112</u> Exhibit 103, # <u>113</u> Exhibit 104, # <u>114</u> Exhibit 105, # <u>115</u> Exhibit 106, # <u>116</u> Exhibit 107, # <u>117</u> Exhibit 108, # <u>118</u> Exhibit 109, # <u>119</u> Exhibit 110, # <u>120</u> Exhibit 111, # <u>121</u>

		<p>Exhibit 112, # <u>122</u> Exhibit 113, # <u>123</u> Exhibit 114, # <u>124</u> Exhibit 115, # <u>125</u> Exhibit 116, # <u>126</u> Exhibit 117, # <u>127</u> Exhibit 118, # <u>128</u> Exhibit 119, # <u>129</u> Exhibit 120, # <u>130</u> Exhibit 121, # <u>131</u> Exhibit 122, # <u>132</u> Exhibit 123, # <u>133</u> Exhibit 124, # <u>134</u> Exhibit 125, # <u>135</u> Exhibit 126, # <u>136</u> Exhibit 127, # <u>137</u> Exhibit 128, # <u>138</u> Exhibit 129, # <u>139</u> Exhibit 130, # <u>140</u> Exhibit 131, # <u>141</u> Exhibit 132, # <u>142</u> Exhibit 133, # <u>143</u> Exhibit 134, # <u>144</u> Exhibit 135, # <u>145</u> Exhibit 136, # <u>146</u> Exhibit 137 Part 1, # <u>147</u> Exhibit 137 Part 2, # <u>148</u> Exhibit 137 Part 3, # <u>149</u> Exhibit 137 Part 4, # <u>150</u> Exhibit 138, # <u>151</u> Exhibit 139, # <u>152</u> Exhibit 140, # <u>153</u> Exhibit 141, # <u>154</u> Exhibit 142, # <u>155</u> Exhibit 143, # <u>156</u> Exhibit 144, # <u>157</u> Exhibit 145, # <u>158</u> Exhibit 146, # <u>159</u> Exhibit 147, # <u>160</u> Exhibit 148, # <u>161</u> Exhibit 149, # <u>162</u> Exhibit 150, # <u>163</u> Exhibit 151, # <u>164</u> Exhibit 152, # <u>165</u> Exhibit 153, # <u>166</u> Exhibit 154, # <u>167</u> Exhibit 155, # <u>168</u> Exhibit 156, # <u>169</u> Exhibit 157, # <u>170</u> Exhibit 158, # <u>171</u> Exhibit 159, # <u>172</u> Exhibit 160, # <u>173</u> Exhibit 161, # <u>174</u> Exhibit 162, # <u>175</u> Exhibit 163, # <u>176</u> Exhibit 164, # <u>177</u> Exhibit 165, # <u>178</u> Exhibit 166, # <u>179</u> Exhibit 167, # <u>180</u> Exhibit 168, # <u>181</u> Exhibit 169, # <u>182</u> Exhibit 170, # <u>183</u> Exhibit 171, # <u>184</u> Exhibit 172, # <u>185</u> Exhibit 173, # <u>186</u> Exhibit 174, # <u>187</u> Exhibit 175, # <u>188</u> Exhibit 176, # <u>189</u> Exhibit 177, # <u>190</u> Exhibit 178, # <u>191</u> Exhibit 179, # <u>192</u> Exhibit 180, # <u>193</u> Exhibit 181, # <u>194</u> Exhibit 182, # <u>195</u> Exhibit 183, # <u>196</u> Exhibit 184, # <u>197</u> Exhibit 185, # <u>198</u> Exhibit 186, # <u>199</u> Exhibit 187, # <u>200</u> Exhibit 188, # <u>201</u> Exhibit 189, # <u>202</u> Exhibit 190, # <u>203</u> Exhibit 191, # <u>204</u> Exhibit 192, # <u>205</u> Exhibit 193, # <u>206</u> Exhibit 194, # <u>207</u> Exhibit 195 Part 1, # <u>208</u> Exhibit 195 Part 2, # <u>209</u> Exhibit 195 Part 3, # <u>210</u> Exhibit 196 Part 1, # <u>211</u> Exhibit 196 Part 2, # <u>212</u> Exhibit 197, # <u>213</u> Exhibit 198, # <u>214</u> Exhibit 199, # <u>215</u> Exhibit 200, # <u>216</u> Exhibit 201, # <u>217</u> Exhibit 202, # <u>218</u> Exhibit 203, # <u>219</u> Exhibit 204, # <u>220</u> Exhibit 205, # <u>221</u> Exhibit 206, # <u>222</u> Exhibit 207, # <u>223</u> Exhibit 208, # <u>224</u> Exhibit 209, # <u>225</u> Exhibit 210, # <u>226</u> Exhibit 211, # <u>227</u> Exhibit 212)(Sullivan, Mark) (Entered: 08/08/2016)</p>
08/09/2016	294	<p>ELECTRONIC NOTICE issued requesting courtesy copy for <u>293</u> Affidavit in Opposition to Motion for S/J and supporting exhibits. Counsel who filed this document are requested to submit a courtesy copy of this document (or documents) to the Clerk's Office by Monday, August 15, 2016. <b>These documents must be clearly marked as a Courtesy Copy and reflect the document number assigned by CM/ECF.</b> (Finn, Mary) (Entered: 08/09/2016)</p>
08/09/2016	295	<p>Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered granting <u>269</u> Motion for Leave to File Memorandum With Excess Pages. Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include – Leave to file granted on (date of order)– in the caption of the document. (Robertson, Katherine) (Entered: 08/09/2016)</p>
08/09/2016	<u>296</u>	<p>CERTIFICATE OF SERVICE pursuant to LR 5.2 by Sexual Minorities Uganda re <u>280</u> Affidavit in Opposition to Motion, <u>279</u> Affidavit in Opposition to Motion, <u>285</u> Affidavit in Opposition to Motion, <u>282</u> Affidavit in Opposition to Motion, <u>274</u> Affidavit in Opposition to Motion, <u>271</u> Affidavit in Opposition to Motion, <u>275</u> Affidavit in Opposition to Motion, <u>270</u> Statement of Material Facts L.R. 56.1, <u>276</u> Affidavit in Opposition to Motion, <u>288</u> Affidavit in Opposition to Motion, <u>283</u> Affidavit in Opposition to Motion, <u>293</u> Affidavit in Opposition to Motion,,,,,,,,,,,,,,,,,,,,, <u>272</u> Affidavit in Opposition to Motion, <u>289</u></p>

		Affidavit in Opposition to Motion, <u>292</u> Memorandum in Opposition to Motion, <u>286</u> Affidavit in Opposition to Motion, <u>290</u> Affidavit in Opposition to Motion, <u>277</u> Affidavit in Opposition to Motion, <u>281</u> Affidavit in Opposition to Motion, <u>273</u> Affidavit in Opposition to Motion, <u>287</u> Affidavit in Opposition to Motion, <u>278</u> Affidavit in Opposition to Motion, <u>291</u> Affidavit in Opposition to Motion, <u>284</u> Affidavit in Opposition to Motion . (Sullivan, Mark) (Entered: 08/09/2016)
08/12/2016	<u>297</u>	Remark: Courtesy copy received this date. Stored in Clerks Office file room. (Figueroa, Tamara) (Entered: 08/12/2016)
08/16/2016	298	ELECTRONIC NOTICE Resetting Hearing on <u>248</u> MOTION for Summary Judgment ISSUED. <b>The Motion Hearing originally set for September 14, 2016 is moved to October 5, 2016 at 11:00 AM in Hampden Courtroom before Judge Michael A. Ponsor.</b> (Healy, Bethaney) (Entered: 08/16/2016)
08/22/2016	<u>299</u>	RESPONSE to Motion re <u>266</u> MOTION to Retain Confidentiality Designation filed by Scott Lively. (Gannam, Roger) (Entered: 08/22/2016)
08/24/2016	<u>300</u>	MOTION for Extension of Time to August 31, 2016 to File Response/Reply <i>on Summary Judgment</i> by Scott Lively.(Mihet, Horatio) (Entered: 08/24/2016)
08/25/2016	301	Judge Michael A. Ponsor: ELECTRONIC ORDER entered granting <u>300</u> Motion for Extension of Time to August 31, 2016 to File Summary Judgment Reply Brief and Request for Expedited Consideration. ALLOWED. Reply Brief due by 8/31/2016. (Lindsay, Maurice) (Entered: 08/25/2016)
08/31/2016	<u>302</u>	Final MOTION for Extension of Time to (24–hours) September 1, 2016 to File Response/Reply <i>on Summary Judgment</i> by Scott Lively.(Mihet, Horatio) (Entered: 08/31/2016)
08/31/2016	303	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting <u>302</u> Motion for 24 hours Extension of Time to File Response/Reply. ALLOWED. Responses due by 9/1/2016. (Lindsay, Maurice) (Entered: 08/31/2016)
09/01/2016	<u>304</u>	MOTION for Leave to File Excess Pages <i>for Reply Memorandum of Law in Support of Motion for Summary Judgment</i> by Scott Lively.(Gannam, Roger) (Entered: 09/01/2016)
09/01/2016	<u>305</u>	REPLY to Response to <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Scott Lively. (Gannam, Roger) (Entered: 09/01/2016)
09/01/2016	<u>306</u>	DECLARATION re <u>248</u> MOTION for Summary Judgment MOTION for Hearing <i>of Roger K. Gannam</i> by Scott Lively. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6 Part 1 of 4, # <u>7</u> Exhibit 6 Part 2 of 4, # <u>8</u> Exhibit 6 Part 3 of 4, # <u>9</u> Exhibit 6 Part 4 of 4, # <u>10</u> Exhibit 7, # <u>11</u> Exhibit 8, # <u>12</u> Exhibit 9)(Gannam, Roger) (Entered: 09/01/2016)
09/02/2016	307	Judge Michael A. Ponsor: ELECTRONIC ORDER entered granting <u>304</u> Motion for Leave to File Excess Pages; ALLOWED. Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include – Leave to file granted on (date of order)– in the caption of the document. (Lindsay, Maurice) (Entered: 09/02/2016)

09/02/2016	308		Notice of correction to docket made by Court staff. The reply to response (Dkt. No. 305) was filed prematurely without approval of the motion for leave to file it (Dkt. No. 304). The CM/ECF procedures requires that the documents for which leave to file is requested should only be filed after leave to file is granted. (Lindsay, Maurice) (Entered: 09/02/2016)
09/02/2016	309		ELECTRONIC NOTICE issued requesting courtesy copy for <u>305</u> Reply to Response to Motion, <u>306</u> Declaration and supporting exhibits. Counsel who filed this document are requested to submit a courtesy copy of this document (or documents) to the Clerk's Office by Thursday, September 8, 2016. <b>These documents must be clearly marked as a Courtesy Copy and reflect the document number assigned by CM/ECF.</b> . (Finn, Mary) (Entered: 09/02/2016)
09/08/2016	310		Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered finding as moot <u>266</u> Plaintiff's Motion to Retain Confidentiality Designation as to Exhibit A-1 to Plaintiff's Sixth Supplemental Responses to Defendant's First Set of Interrogatories in view of defendant's agreement to withdraw at this time his objection to plaintiff's confidentiality designation of the exhibit at issue. (Robertson, Katherine) (Entered: 09/08/2016)
09/09/2016	<u>311</u>		MOTION for Leave to File <i>a Sur-Reply in Further Opposition to Defendant's Motion for Summary Judgment</i> by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A)(Spees, Pamela) (Entered: 09/09/2016)
09/13/2016	312		ELECTRONIC NOTICE Resetting Hearing on <u>248</u> MOTION for Summary Judgment, ISSUED. <b>The Motion Hearing originally set for October 5, 2016 is moved to November 9, 2016 at 11:00 AM in Hampden Courtroom before Judge Michael A. Ponsor.</b> (Healy, Bethaney) (Entered: 09/13/2016)
09/14/2016	<u>313</u>		MEMORANDUM in Opposition re <u>311</u> MOTION for Leave to File <i>a Sur-Reply in Further Opposition to Defendant's Motion for Summary Judgment</i> filed by Scott Lively. (Gannam, Roger) (Entered: 09/14/2016)
09/15/2016	314		Judge Michael A. Ponsor: ELECTRONIC ORDER entered granting <u>311</u> Plaintiff's Motion for Leave to File <i>Sur-Reply</i> . Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include – Leave to file granted on (date of order)– in the caption of the document. (Healy, Bethaney) (Entered: 09/15/2016)
09/15/2016	<u>315</u>		SUR-REPLY to Motion re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Affidavit of Pamela Spees w Exhibit 1)(Spees, Pamela) (Entered: 09/15/2016)
10/25/2016	<u>316</u>		MOTION for Leave to File <i>Omitted Exhibits Referenced in its Rule 56.1 Statement and an Errata Correcting Citations in its Rule 56.1 Statement</i> by Sexual Minorities Uganda.(McNeely, Kaleb) (Entered: 10/25/2016)
10/25/2016	<u>317</u>		DECLARATION re <u>316</u> MOTION for Leave to File <i>Omitted Exhibits Referenced in its Rule 56.1 Statement and an Errata Correcting Citations in its Rule 56.1 Statement</i> by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F)(McNeely, Kaleb) (Entered: 10/25/2016)

10/26/2016	<u>318</u>		MEMORANDUM in Opposition re <u>316</u> MOTION for Leave to File <i>Omitted Exhibits Referenced in its Rule 56.1 Statement and an Errata Correcting Citations in its Rule 56.1 Statement</i> filed by Scott Lively. (Gannam, Roger) (Entered: 10/26/2016)
10/27/2016	<u>319</u>		Judge Michael A. Ponsor: ENDORSED ORDER entered granting <u>316</u> Motion for Leave to File <i>Omitted Exhibits Referenced in its Rule 56.1 Statement and an Errata Correcting Citations in its Rule 56.1 Statement</i> ; ALLOWED. If this ruling prejudices Defendant significantly, Defendant may move to file a limited supplemental opposition. So ordered. Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include – Leave to file granted on (date of order)– in the caption of the document. (Lindsay, Maurice) (Entered: 10/27/2016)
10/27/2016	<u>320</u>		AFFIDAVIT in Opposition re <u>248</u> MOTION for Summary Judgment MOTION for Hearing filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F – Errata)(Spees, Pamela) (Entered: 10/27/2016)
11/07/2016	<u>321</u>		Judge Michael A. Ponsor: ORDER entered. ORDER REGARDING ORAL ARGUMENT. See the attached order for details. (Lindsay, Maurice) (Entered: 11/07/2016)
11/09/2016	322		Electronic Clerk's Notes for proceedings held before Judge Michael A. Ponsor: Counsel appear for Motion Hearing held on 11/9/2016 re <u>248</u> MOTION for Summary Judgment filed by Scott Lively. Arguments heard. Matter taken under advisement. (Court Reporter: Alice Moran atalice.moran@verizon.net.) (Healy, Bethaney) (Entered: 11/09/2016)
11/15/2016	<u>323</u>		Emergency MOTION for Hearing <i>ON PLAINTIFFS FORTHCOMING MOTION FOR LEAVE TO FILE POST-HEARING BRIEF</i> by Scott Lively. (Attachments: # <u>1</u> Exhibit A)(Gannam, Roger) (Entered: 11/15/2016)
11/15/2016	<u>324</u>		Opposition re <u>323</u> Emergency MOTION for Hearing <i>ON PLAINTIFFS FORTHCOMING MOTION FOR LEAVE TO FILE POST-HEARING BRIEF and Cross-Motion for Leave to File</i> filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A)(Spees, Pamela) (Entered: 11/15/2016)
11/17/2016	<u>325</u>		Opposition re <u>323</u> Emergency MOTION for Hearing <i>ON PLAINTIFFS FORTHCOMING MOTION FOR LEAVE TO FILE POST-HEARING BRIEF (Opposition to Plaintiff's Cross-Motion for Leave to File <u>324</u> )</i> filed by Scott Lively. (Gannam, Roger) (Entered: 11/17/2016)
11/17/2016	<u>326</u>		Judge Michael A. Ponsor: ENDORSED ORDER entered. granting <u>324</u> Opposition to Emergency Motion and Cross-Motion for leave to file post-hearing Memo. ALLOWED. The court will consider Exhibit A & B. (Lindsay, Maurice) (Entered: 11/17/2016)
11/17/2016	<u>327</u>		Judge Michael A. Ponsor: ENDORSED ORDER entered denying <u>323</u> Emergency Motion for Telephone Hearing. DENIED. However, Defendant may submit a response of no more than 10 pages, plus exhibits, on or before Dec. 2, 2016, if he wishes. So ordered. (Lindsay, Maurice) (Entered: 11/17/2016)

11/29/2016	<u>328</u>		Transcript of Motion for Summary Judgment Hearing held on November 9, 2016, before Judge Michael A. Ponsor. The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Court Reporter Name and Contact Information: Alice Moran at alice.moran@verizon.net Redaction Request due 12/20/2016. Redacted Transcript Deadline set for 12/30/2016. Release of Transcript Restriction set for 2/27/2017. (Scalfani, Deborah) (Entered: 11/29/2016)
11/29/2016	329		NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, available on the court website at <a href="http://www.mad.uscourts.gov/attorneys/general-info.htm">http://www.mad.uscourts.gov/attorneys/general-info.htm</a> (Scalfani, Deborah) (Entered: 11/29/2016)
12/01/2016	<u>330</u>		Consent MOTION for Extension of Time to December 8, 2016 to File Response/Reply to <i>Post-hearing Brief</i> by Scott Lively.(Mihet, Horatio) (Entered: 12/01/2016)
12/02/2016	331		Judge Michael A. Ponsor: ELECTRONIC ORDER entered granting <u>330</u> Motion for Extension of Time to File Response to Plaintiff's Post-Hearing Brief and Request for Expedited Consideration. ALLOWED. Responses due by 12/8/2016. (Lindsay, Maurice) Modified on 12/5/2016 to correct Judge's name. (Healy, Bethaney). (Entered: 12/02/2016)
12/08/2016	<u>332</u>		Supplemental MEMORANDUM in Support re <u>248</u> MOTION for Summary Judgment MOTION for Hearing ( <i>Response to Plaintiff's Post-Hearing Memorandum on Summary Judgment</i> ) filed by Scott Lively. (Mihet, Horatio) (Entered: 12/08/2016)
03/31/2017	<u>333</u>		MOTION to Dismiss <i>SMUG'S STATE LAW CLAIMS PURSUANT TO THE MASSACHUSETTS ANTI-SLAPP STATUTE</i> by Scott Lively.(Gannam, Roger) (Entered: 03/31/2017)
03/31/2017	<u>334</u>		MEMORANDUM in Support re <u>333</u> MOTION to Dismiss <i>SMUG'S STATE LAW CLAIMS PURSUANT TO THE MASSACHUSETTS ANTI-SLAPP STATUTE</i> filed by Scott Lively. (Gannam, Roger) (Entered: 03/31/2017)
04/10/2017	<u>335</u>		Consent MOTION for Extension of Time to April 24, 2017 to File Response/Reply as to <u>333</u> MOTION to Dismiss <i>SMUG'S STATE LAW CLAIMS PURSUANT TO THE MASSACHUSETTS ANTI-SLAPP STATUTE</i> by Sexual Minorities Uganda.(McNeely, Kaleb) (Entered: 04/10/2017)
04/11/2017	<u>336</u>		Judge Michael A. Ponsor: ENDORSED ORDER entered granting <u>335</u> Motion for Extension of Time to April 24, 2017 to File Response/Reply. ALLOWED. Responses due by 4/24/2017. (Lindsay, Maurice) (Entered: 04/11/2017)
04/24/2017	<u>337</u>		RESPONSE to Motion re <u>333</u> MOTION to Dismiss <i>SMUG'S STATE LAW CLAIMS PURSUANT TO THE MASSACHUSETTS ANTI-SLAPP STATUTE</i> filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit)(Spees, Pamela) (Entered: 04/24/2017)
04/26/2017	<u>338</u>		MOTION for Leave to File <i>Corrected Memorandum</i> by Sexual Minorities Uganda. (Attachments: # <u>1</u> Exhibit A)(Spees, Pamela) (Entered: 04/26/2017)
04/27/2017	<u>339</u>		Judge Michael A. Ponsor: ENDORSED ORDER entered granting <u>338</u> Motion for Leave to File Corrected Memorandum; ALLOWED. Counsel using the

			Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include – Leave to file granted on (date of order)– in the caption of the document. (Lindsay, Maurice) (Entered: 04/27/2017)
04/27/2017	<u>340</u>		MEMORANDUM in Opposition re <u>333</u> MOTION to Dismiss <i>SMUG'S STATE LAW CLAIMS PURSUANT TO THE MASSACHUSETTS ANTI-SLAPP STATUTE</i> filed by Sexual Minorities Uganda. (Attachments: # <u>1</u> Affidavit of Pamela C. Spees)(Spees, Pamela) (Entered: 04/27/2017)
05/12/2017	<u>341</u>		MOTION for Leave to File <i>Reply Memorandum of Law in Support of Special Motion to Dismiss SMUGs State Law Claims Pursuant to the Massachusetts Anti-SLAPP Statute</i> by Scott Lively. (Attachments: # <u>1</u> Proposed Reply Memorandum)(Gannam, Roger) (Entered: 05/12/2017)
05/12/2017	<u>342</u>		Amended MOTION for Leave to File <i>Reply Memorandum of Law in Support of Special Motion to Dismiss SMUGs State Law Claims Pursuant to the Massachusetts Anti-SLAPP Statute</i> by Scott Lively. (Attachments: # <u>1</u> Proposed Reply Memorandum)(Gannam, Roger) (Entered: 05/12/2017)
05/17/2017	343		Judge Michael A. Ponsor: ELECTRONIC ORDER entered denying as moot <u>341</u> Motion for Leave to File Reply Memorandum. Docket 342 has been substituted. (Healy, Bethaney) (Entered: 05/17/2017)
05/18/2017	<u>344</u>		NOTICE of Withdrawal of Appearance Attorney Gina S. Spiegelman terminatedas counsel for the Pltf.. (Finn, Mary) (Entered: 05/18/2017)
05/18/2017	<u>345</u>		NOTICE of Withdrawal of Appearance Attorney Daniel W. Beebe terminated as consel for the Pltf.. (Finn, Mary) (Entered: 05/18/2017)
05/18/2017	<u>346</u>		CERTIFICATE OF SERVICE pursuant to LR 5.2 by Sexual Minorities Uganda re <u>345</u> Notice of Withdrawal of Appearance, <u>344</u> Notice of Withdrawal of Appearance . (McNeely, Kaleb) (Entered: 05/18/2017)
05/30/2017	347		Judge Michael A. Ponsor: ELECTRONIC ORDER entered. Defendant's Motion for Leave to File Document (Dkt. No. 342) is hereby ALLOWED, with reluctance. There is no shortage of paper in this case. (Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include – Leave to file granted on (date of order)– in the caption of the document.) (Kaplan, Jennifer) (Entered: 05/30/2017)
05/30/2017	<u>348</u>		REPLY to Response to <u>333</u> MOTION to Dismiss <i>SMUG'S STATE LAW CLAIMS PURSUANT TO THE MASSACHUSETTS ANTI-SLAPP STATUTE</i> filed by Scott Lively. (Gannam, Roger) (Entered: 05/30/2017)
06/05/2017	<u>349</u>		Judge Michael A. Ponsor: ORDER entered denying <u>333</u> Motion to Dismiss. DENIED, as moot. (Lindsay, Maurice) (Entered: 06/05/2017)
06/05/2017	<u>350</u>	125	Judge Michael A. Ponsor: MEMORANDUM AND ORDER entered. As follows: For the reasons stated, Defendant's motion for summary judgment (Dkt. No. <u>248</u> ) based on lack of jurisdiction is hereby ALLOWED. As noted, the court will decline to exercise supplemental jurisdiction over the two purely state.law claims. As to. them, the motion for summary judgment is ALLOWED, without prejudice to re-filing in state court if Plaintiff desires. The clerk will enter judgmentof dismissal. This case may now be closed. It is

			so ordered. See the attached memo and order for complete details. (Lindsay, Maurice) (Entered: 06/05/2017)
06/05/2017	<u>351</u>	150	Judge Michael A. Ponsor: ORDER entered. JUDGMENT of dismissal. (Lindsay, Maurice) (Entered: 06/07/2017)
06/07/2017	352		Case no longer referred to Magistrate Judge Katherine A. Robertson. (Lindsay, Maurice) (Entered: 06/07/2017)
06/08/2017	<u>353</u>	151	NOTICE OF APPEAL as to <u>59</u> Order on Motion to Dismiss for Failure to State a Claim,, Order on Motion to Dismiss/Lack of Jurisdiction,,,, <u>350</u> Order on Motion for Summary Judgment,, Order on Motion for Hearing,, by Scott Lively Filing fee: \$ 505, receipt number 0101-6663137 Fee Status: Not Exempt. NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at <a href="http://www.ca1.uscourts.gov">http://www.ca1.uscourts.gov</a> MUST be completed and submitted to the Court of Appeals. <b>Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at <a href="http://pacer.psc.uscourts.gov/cmecf">http://pacer.psc.uscourts.gov/cmecf</a>. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at <a href="http://www.ca1.uscourts.gov/cmecf">http://www.ca1.uscourts.gov/cmecf</a>. US District Court Clerk to deliver official record to Court of Appeals by 6/28/2017. (Mihet, Horatio) (Entered: 06/08/2017)</b>

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

SEXUAL MINORITIES UGANDA,	)	
Plaintiff	)	
	)	
v.	)	C.A. No. 12-cv-30051-MAP
	)	
SCOTT LIVELY,	)	
Defendant	)	

MEMORANDUM AND ORDER REGARDING  
DEFENDANT'S MOTIONS TO DISMISS  
(Dkt. Nos. 21 & 30)

August 14, 2013

PONSOR, U.S.D.J.

I. INTRODUCTION

Plaintiff Sexual Minorities Uganda is an umbrella organization located in Kampala, Uganda, comprising member organizations that advocate for the fair and equal treatment of lesbian, gay, bisexual, transgender, and intersex (LGBTI) people in that east African country. Defendant Scott Lively is an American citizen residing in Springfield, Massachusetts who, according to the complaint, holds himself out to be an expert on what he terms the "gay movement." (Dkt. No. 27, Am. Compl. ¶ 1.) Lively is also alleged to be

an attorney, author, and evangelical minister.

Plaintiff alleges that in concert with others Defendant -- through actions taken both within the United States and in Uganda -- has attempted to foment, and to a substantial degree has succeeded in fomenting, an atmosphere of harsh and frightening repression against LGBTI people in Uganda. The complaint asserts five counts, three invoking the jurisdiction of the federal Alien Tort Statute, 28 U.S.C. § 1350 ("ATS"), and two under state law. Plaintiff seeks compensatory, punitive, and exemplary damages; declaratory relief holding that Defendant's conduct has been in violation of the law of nations; and injunctive relief enjoining Defendant from undertaking further actions, and from plotting and conspiring with others, to persecute Plaintiff and the LGBTI community in Uganda.

Defendant has filed two motions to dismiss, offering in essence five arguments.<sup>1</sup> First, the court lacks

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<sup>1</sup> Defendant filed his first motion to dismiss (Dkt. No. 21) based on Plaintiff's original complaint (Dkt. No. 1). Subsequently, Plaintiff filed a First Amended Complaint. (Dkt. No. 27.) Defendant has now moved to dismiss the Amended Complaint. (Dkt. No. 30.) Because the Amended Complaint is now the operative pleading, the court will focus on the arguments raised in Defendant's second motion to dismiss.

jurisdiction because international norms do not bar persecution based on sexual orientation or gender identity with sufficient clarity and historical lineage to make it one of the narrow set of claims for which the ATS furnishes jurisdiction. Second, the court cannot recognize a claim under the ATS for actions taken outside the United States, as the Supreme Court has recently held in Kiobel v. Royal Dutch Petroleum, 133 S. Ct. 1659 (2013). Third, Plaintiff lacks standing to bring this case either on behalf of itself as an organization or on behalf of members of the LGBTI community in Uganda. Fourth, the right of free speech described in the First Amendment to the United States Constitution prohibits any attempt by Plaintiff to restrict expression, however distasteful, through court action. Finally, the two claims asserted under Massachusetts state law lack any adequate legal foundation.

For the reasons set forth at length below, none of these arguments is persuasive. As to the first argument, many authorities implicitly support the principle that widespread, systematic persecution of individuals based on their sexual orientation and gender identity constitutes a

crime against humanity that violates international norms. It is a somewhat closer question whether this crime constitutes what Justice Souter has termed one of the "relatively modest set of actions alleging violations of the law of nations" for which the ATS furnishes jurisdiction. Sosa v. Alvarez-Machain, 542 U.S. 692, 720 (2004). However, aiding and abetting a crime against humanity is a well-established offense under customary international law, and actions for redress of this crime have frequently been recognized by American courts as part of the subclass of lawsuits for which the ATS furnishes jurisdiction. Given this, the allegations set forth in the Amended Complaint are more than adequate at this stage to require denial of Defendant's motion to dismiss. Moreover, given the elasticity of the legal standard for ATS jurisdiction, it is fairer and more prudent to address the Sosa issue on a fully developed record, following discovery.

Second, the restrictions established in Kiobel on extraterritorial application of the ATS do not apply to the facts as alleged in this case, where Defendant is a citizen of the United States and where his offensive conduct is

alleged to have occurred, in substantial part, within this country. Indeed, Defendant, according to the Amended Complaint, is alleged to have maintained what amounts to a kind of "Homophobia Central" in Springfield, Massachusetts. He has allegedly supported and actively participated in worldwide initiatives, with a substantial focus on Uganda, aimed at repressing free expression by LGBTI groups, destroying the organizations that support them, intimidating LGBTI individuals, and even criminalizing the very status of being lesbian or gay.<sup>2</sup> Kiobel makes clear that its restrictions on extraterritorial application of American law do not apply where a defendant and his or her conduct are based in this country.

Third, clear authority supports Plaintiff's standing here. Fourth, the argument that Defendant's actions have constituted mere expression protected under the First Amendment is, again, premature. Accepting the allegations of the complaint, as the court must at this stage,

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<sup>2</sup> It is important to emphasize that the court at this stage is drawing its summary of facts from the allegations of the Amended Complaint, some of which describe despicable opinions and conduct by Defendant. Defendant denies a number of these claims; Plaintiff will bear the burden of proving them at trial.

sufficient facts are alleged, with specific names, dates, and actions, to support the claim that Defendant's behavior crossed well over any protective boundary established by the First Amendment. Fifth, and finally, the arguments attacking the claims under Massachusetts state law have not been convincingly developed. Having denied the motions to dismiss the federal claims, the court will retain the state law claims pending discovery and, if appropriate, reconsider them on a fuller record in connection with a motion for summary judgment.

## II. FACTS<sup>3</sup>

The essence of the claims before the court, expatiated in the Amended Complaint's detailed recitation of allegations, is that Defendant Scott Lively along with others in Uganda devised and carried out a program of persecution aimed at Plaintiff's organization and its

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<sup>3</sup> The factual background is drawn from the allegations contained in Plaintiff's Amended Complaint (Dkt. No. 27). Because this is a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the court "accept[s] as true all well-pleaded facts, analyz[es] those facts in the light most hospitable to the plaintiff's theory, and draw[s] all reasonable inferences for the plaintiff." See United States ex rel. Hutcheson v. Blackstone Med., Inc., 647 F.3d 377, 383 (1st Cir. 2011), cert. denied 132 S. Ct. 815 (2011).

members based on their sexual orientation and gender identity. The Amended Complaint describes a campaign of harassment and intimidation, and a resulting atmosphere of fear, that Defendant is alleged, in active concert with others, to have directed at the LGBTI community in Uganda. According to Plaintiff, Defendant helped coordinate, implement, and justify "strategies to dehumanize, demonize, silence, and further criminalize the LGBTI community" in Uganda. (Dkt. No. 27, Am. Compl. ¶ 7.)

The Amended Complaint identifies a group of Ugandans with whom Defendant is alleged to have worked closely to carry out his "decade-long persecutory campaign." (Dkt. No. 27, Am. Compl. ¶ 25.) These individuals allegedly include:

- Stephen Langa, the Executive Director of the Family Life Network and the Director of the Ugandan branch of the Arizona-based Disciple Nations Alliance;
- Martin Ssempe, Ugandan pastor, involved in implementing Uganda's HIV/AIDS policy from as early as 2003;
- James Buturo, Ugandan Minister of Information and Broadcasting for the President (2001-2006) and Minister of Ethics and Integrity in the Office of the Vice-

President (2006-2011);

- David Bahati, member of Parliament and sponsor of legislation entitled the Anti-Homosexuality Bill; and
- Simon Lokodo, current Minister of Ethics and Integrity.

According to the Amended Complaint, Defendant came to Uganda in 2002 when he participated in the country's first anti-LGBTI conference. In March 2002, Defendant spoke at a gathering organized by Langa about the supposed links between pornography and homosexuality. Several months later in June 2002, Defendant returned to Uganda to participate in additional speaking events and media appearances organized by Langa. These appearances were designed, again, to headline the purported link between pornography and homosexuality.

During this trip, Defendant and Langa also held an all-day invitation-only pastors' conference. Defendant later wrote that the pastors in attendance "were very grateful for the insights I was able to give them about the way in which America was brought low by homosexual activism." (Dkt. No. 27, Am. Compl. ¶ 50.) Defendant also addressed students at several universities and high schools where he blamed the

so-called "gay movement" for the dangerous effects of a "porn culture." (Dkt. No. 27, Am. Compl. ¶ 51.) Defendant also met with the Kampala City Council.

Defendant has stated, according to the Amended Complaint, that these appearances and meetings in 2002 made him instrumental in the efforts by Langa and Ssempe, not only to create a rhetorical platform for Uganda's anti-LGBTI campaign of persecution, but to craft specific initiatives designed to repress and intimidate LGBTI people and organizations advocating on their behalf. (Dkt. No. 27, Am. Compl. ¶ 56.)

Plaintiff alleges that between 2002 and 2009 Defendant continued to work from the United States with Langa and Ssempe to assist, encourage, and consult with them to design and then carry out specific actions to deny fundamental rights to the LGBTI community in Uganda. During this time, Ssempe was involved in formulating the Ugandan HIV/AIDS policy. In this role, he took action to exclude LGBTI persons from the program's assistance. Ssempe also publicly posted the names of LGBTI rights advocates -- labeled as "homosexual promoters" -- as well as pictures of them with

their contact information, as part of a campaign of intimidation.

For his part, Defendant began developing and disseminating strategies to be used to discriminate against and persecute LGBTI communities in Uganda and elsewhere. In pursuit of this, he published two books, Defend the Family: Activist Handbook and Redeeming the Rainbow. The books presented a comprehensive plan of action designed to repress the so-called "gay movement," which he described as "the most dangerous social and political movement of our time." (Dkt. No. 27, Am. Compl. ¶¶ 57-60.) The two primary tactics advocated by Defendant were criminalizing advocacy -- that is, subjecting any public expressions of support for the LGBTI community to criminal prosecution -- and attributing to LGBTI individuals a compulsion to sexually abuse children.

In July 2005, the police unlawfully raided the home of Victor Mukasa, a transgender LGBTI advocate and founder of Plaintiff Sexual Minorities Uganda, seized a number of documents as well as hard-copy and electronic files, and arrested Mukasa's guest, Yvonne Oyo. Oyo was taken to the

police station where she was forced to remove her clothing in front of male officials to "prove her sex." (Dkt. No. 27, Am. Compl. ¶ 30.) Police then sexually assaulted Oyo by touching and fondling her breasts.

Over three years following the raid, in December 2008, the High Court of Uganda issued a well-publicized ruling arising out of the raid of Mukasa's home and the arrest and abuse of Oyo. The High Court held that gays and lesbians, like anyone else, could challenge the unlawful conduct of authorities. The High Court also awarded damages to Oyo for the violation of her right to protection from torture and cruel, inhuman, and degrading treatment under Article 24 of the Ugandan Constitution. The High Court also awarded damages to Mukasa for the violation of his right to privacy of person, home, and property guaranteed by Article 27 of the Ugandan Constitution.

Plaintiff alleges that this High Court decision had the effect of spurring Defendant, in coordination with his co-conspirators in Uganda, to intensify the campaign of persecution against members of the LGBTI community. Less than three months after the High Court decision, in March

2009, Langa hosted an anti-gay conference entitled, "Seminar on Exposing the Homosexual Agenda." The conference was attended by a number of Ugandan religious and government leaders, parliamentarians, police officers, and teachers. Defendant traveled to Uganda to speak as one of the headliners at this conference. During this visit, Defendant met with parliamentarians and government officials including Buturo, made media appearances, and spoke at seminars at schools and churches.

According to the Amended Complaint, Defendant continued his attacks on gay and lesbian people, some of them bordering on ludicrous. Defendant charged, for example, that homosexuals were behind the rise of Nazism and the genocide in Rwanda. (Dkt. No. 27, Am. Compl. ¶¶ 8, 24, 54, 82, 93.)<sup>4</sup> Other accusations were aimed at playing on parents' fears, such as the bogus claims that gay and

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<sup>4</sup> In his book The Pink Swastika: Homosexuality in the Nazi Party, Defendant argued that the rise of Nazism, with its resultant horrors, was engineered and driven by a violent and fascistic gay movement in Germany. In other works, he has blamed homosexuals for other historical atrocities including the Spanish Inquisition, the French Reign of Terror, South African apartheid, American slavery, and the Rwandan genocide. (Dkt. No. 27, Am. Compl. ¶ 24.)

lesbian people had a compulsion to sexually abuse children and that they were engaged in a campaign to "recruit" Ugandan children as homosexuals. (Dkt. No. 27, Am. Compl. ¶¶ 36-39, 65, 72-74, 81, 82, 93.)

Defendant also allegedly formulated and promoted specific strategies to further deprive the LGBTI community of its basic human rights, including freedom of expression and protection of life, liberty, and property. Defendant, according to Plaintiff, has acknowledged that his 2009 efforts in Uganda were based on his book Redeeming the Rainbow, which advocates criminalizing advocacy on behalf of LGBTI people and attributing acts of sexual violence against children to LGBTI individuals' purported obsession with pedophilia. Nor were Defendant's efforts without effect. Defendant boasted that an associate was told "that our campaign was like a nuclear bomb against the 'gay' agenda in Uganda." (Dkt. No. 27, Am. Compl. ¶ 88.)

According to the Amended Complaint, partly as a result of Defendant's efforts to incite fear and hatred against LGBTI people, on April 29, 2009, an Anti-Homosexuality Bill was introduced in the Ugandan Parliament. The bill proposed

the death penalty for crimes of "aggravated homosexuality," including execution for "repeat offenders" of "homosexuality." (Dkt. No. 27, Am. Compl. ¶ 37.) The bill also proposed to criminalize any advocacy on behalf of the LGBTI community as the "promotion of homosexuality." This type of repression of any public support for equal treatment of gays and lesbians was precisely what Defendant advocated in his speeches and writings and the strategy he was helping his co-conspirators in Uganda to promulgate.

The bill was revised and expanded in October 2009 by co-conspirator and member of Parliament, David Bahati. The revised bill left the death penalty provisions and expanded the criminalization of association with or advocacy for LGBTI individuals. The adoption of this legislation would have turned Uganda into a virtual anti-gay police state, making it a crime punishable by imprisonment, for example, for a Ugandan to fail to report to the police any person whom he or she suspects is a "homosexual" or involved in advocacy related to homosexuality. (Dkt. No. 27, Am. Compl. ¶ 9.)

The Amended Complaint alleges that Defendant has



persons whose photos were depicted. Nevertheless, in the wake of public disclosures and police harassment, a number of activists, including Plaintiff's current Executive Director, were forced to leave Uganda or go into hiding.

Despite the High Court rulings, Ugandan police and government officials have more recently continued efforts to repress any advocacy on behalf of LGBTI people, as Defendant's writings urge. In 2012, at least two gatherings of LGBTI advocates were raided and disbanded. Both raids were ordered by Simon Lokodo, the current Minister of Ethics and Integrity. Lokodo has threatened advocates with arrest for "promotion of homosexuality." After the February 2012 raid, Lokodo referred to the advocates as "terrorists." Lokodo has stated that the raids and arrests were ordered so that "everybody else will know that at least in Uganda we have no room here for homosexuals and lesbians." (Dkt. No. 27, Am. Compl. ¶ 41, 165-85.) Subsequently, Plaintiff has not been permitted to register as a non-governmental organization.

The five-count Amended Complaint asserts jurisdiction under the Alien Tort Statute, 28 U.S.C. § 1350 ("ATS"), as

well as federal question jurisdiction (§ 1331), diversity jurisdiction (§ 1332), and supplemental jurisdiction (§ 1367). The five counts allege: (I) crimes against humanity of persecution, based on individual responsibility under the ATS; (II) crimes against humanity of persecution, based on a joint criminal enterprise under the ATS; (III) crimes against humanity of persecution, based on conspiracy under the ATS; (IV) civil conspiracy under Massachusetts state law; and (V) negligence under Massachusetts state law. Plaintiff seeks compensatory, punitive, and exemplary damages; declaratory relief holding that Defendant's conduct was in violation of the law of nations; and injunctive relief enjoining Defendant from undertaking further actions, and from plotting and conspiring with others, to persecute Plaintiff and the LGBTI community in Uganda.

### III. DISCUSSION

As noted, Plaintiff has invoked jurisdiction for this lawsuit, in part, under the Alien Tort Statute. This statute, passed as part of the Judiciary Act of 1789, is terse, stating simply: "The district courts shall have original jurisdiction of 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. Defendant has raised two independent challenges to the court’s ability to recognize a cause of action under the ATS in his motion to dismiss.

First, Defendant points out that the ATS furnishes jurisdiction only where the international law norm is sufficiently definite and historically rooted to support the asserted cause of action. Sosa v. Alvarez-Machain, 542 U.S. 692, 732 (2004). In other words, even where a colorable claim for a violation of current international norms is adequately set forth, a further question must be confronted: is this cause of action among “the modest number of international law violations with a potential for personal liability” for which jurisdiction adheres under the ATS? Sosa, 542 U.S. at 724. Defendant argues, in essence, that the Amended Complaint sets out no adequate claim for a violation of any international norm, and, even if it does, the alleged violation does not fall within the small group of claims for which the ATS furnishes jurisdiction.

Second, Defendant cites Kiobel v. Royal Dutch

Petroleum, 133 S. Ct. 1659 (2013), as support for the argument that Plaintiff has no claim under the ATS in any event, given the presumption against extraterritoriality described by Chief Justice Roberts in his majority opinion.

In addition to the two arguments specifically directed at the court's ability to recognize a claim under the ATS, Defendant contends that Plaintiff lacks standing to bring this suit. He further takes the position that all of the allegations set forth in the Amended Complaint target speech protected by the First Amendment and therefore cannot form the basis of any lawsuit against him. Finally, Defendant challenges the application of Massachusetts state law, based on the statute of limitations and the sufficiency of the pleadings. The discussion below will begin by addressing the ATS-related arguments, then move to Defendant's other contentions.

A. "Persecution" Under the Alien Tort Statute.

Plaintiff alleges that Defendant aided and abetted in the persecution of the LGBTI community in Uganda and that this persecution amounted to a crime against humanity. The Supreme Court has held that a federal court can only

recognize a claim under the ATS if the claim seeks to enforce an underlying norm of international law that is as clearly defined and accepted as the international law norms familiar to Congress in 1789 when the ATS was enacted. Sosa, 542 U.S. at 732. The analysis, therefore, must proceed in two steps: first, was there a violation of an international norm -- in this case, as Plaintiff alleges, a recognized crime against humanity committed by Defendant? Second, if so, is the crime against humanity within the limited group of claims for which the ATS furnishes jurisdiction?

The answer to the first question is straightforward and clear. Widespread, systematic persecution of LGBTI people constitutes a crime against humanity that unquestionably violates international norms. A review of applicable authorities makes the answer to the second question easily discernible as well. Aiding and abetting in the commission of a crime against humanity is one of the limited group of international law violations for which the ATS furnishes jurisdiction.

A variety of sources can be used to determine the

content of international law: treaties, judicial decisions of the "courts of justice of appropriate jurisdictions," and controlling legislative or executive decisions. The Paquete Habana, 175 U.S. 677, 700 (1900); see also Sosa, 542 U.S. at 734. In the absence of these controlling authorities, the Supreme Court has counseled that the existence and content of international law may be derived by reference to:

the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who by years of labor, research and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is.

Sosa, 542 U.S. at 734 (citing The Paquete Habana, 175 U.S. at 700).

In analyzing the existence of the international legal norm proffered by Plaintiff in this case, it is helpful to begin by differentiating among three terms: discrimination, persecution, and crimes against humanity. These three concepts measure the increasing severity of the discriminatory activity against a targeted group.

The Human Rights Committee of the United Nations has

defined discrimination as:

[A]ny distinction, exclusion, restriction, or preference based on certain motives . . . that seeks to annul or diminish the acknowledgment, enjoyment, or exercise, in conditions of equality, of the human rights and fundamental freedoms to which every person is entitled.

UN Human Rights Comm., CCPR Gen. Comment 18, Non-

Discrimination (1989), available at

<http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/3888b0541f8501c9c12563ed004b8d0e?Opendocument>.

Persecution is a harsher subset of discrimination, comprising "intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity." Rome Statute on the International Criminal Court art. 7(2)(g), July 1, 2002, 2187 U.N.T.S. 38544. Persecution can be a crime against humanity, but it may not always rise to that level.

For persecution to amount to a crime against humanity, it must be "part of a widespread or systematic attack directed against any civilian population." Rome Statute art. 7(1)(h).

It is doubtful whether the ATS would furnish jurisdiction for a claim of persecution alone; this claim

under the common law would appear to lack the "definite content and acceptance among civilized nations" within the "historical paradigms familiar when § 1350 was enacted." See Sosa, 542 U.S. at 732 (citation omitted). On the other hand, persecution that rises to the level of a crime against humanity has repeatedly been held to be actionable under the ATS. See Presbyterian Church of Sudan v. Talisman Energy, Inc., 582 F.3d 244, 256 (2d Cir. 2009); Cabello v. Fernandez-Larios, 402 F.3d 1148, 1154 (11th Cir. 2005) (noting that crimes against humanity have been recognized as actionable under United States and international law since long before the 1970's); Flores v. Southern Peru Copper Corp., 414 F.3d 233, 244 n.18 (2d Cir. 2003) (noting that "customary international law rules proscribing crimes against humanity . . . have been enforceable against individuals since World War II"); Kadić v. Karadžić, 70 F.3d 232, 236 (2d Cir. 1995); In re Chiquita Brands Int'l, Inc., 792 F. Supp. 2d 1301, 1344 (S.D. Fla. 2011); Doe v. Saravia, 348 F. Supp. 2d 1112, 1156-57 (E.D. Cal. 2004) (holding that persecution that constitutes a crime against humanity is actionable under the ATS); Mehinovic v. Vuckovic, 198 F.

Supp. 2d 1322, 1352 (N.D. Ga. 2002) ("Crimes against humanity have been recognized as a violation of customary international law since the Nuremberg trials and therefore are actionable under the ATCA."), abrogated in part Aldana v. Del Monte Fresh Produce, N.A., Inc., 416 F.3d 1242, 1247 (11th Cir. 2005).

For persecution to reach the level of a crime against humanity, it typically must involve more than the "intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity." Rome Statute art. 7(2)(g). It must be demonstrated, in addition, that the persecution has been "part of a widespread or systematic attack" to qualify as a crime against humanity. Saravia, 348 F. Supp. 2d at 1156; see also Rome Statute art. 7(1)(h).

To properly plead persecution as a crime against humanity, Plaintiff must allege both the proper actus reus -- denial of fundamental rights -- and mens rea -- the intentional targeting of an identifiable group. The allegations set forth in the Amended Complaint offer evidence of both aspects of criminal intent. It has been

noted that "the crime of persecution encompasses a variety of acts, including, inter alia, those of a physical, economic or judicial nature, that violate an individual's right to the equal enjoyment of his basic rights."

Prosecutor v. Tadić, Trial Judgment, IT-94-1-T ¶ 710 (May 7, 1997). In determining what constitutes a basic right, international courts have looked to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Id. at 703; Prosecutor v. Kupreškić, Judgment, IT-95-16-T, ¶ 621 (Jan. 14, 2000).

Persecution on the level of a crime against humanity must be based on the identity of a specific targeted group. Defendant argues that persecution based on sexual orientation or gender identity has not been sufficiently recognized under international law to be actionable under the ATS. It is true that many of the international treaties and instruments that provide jurisdiction over crimes against humanity list particular protected groups without specifying LGBTI people. See, e.g., Nuremberg Charter art. 6(c) (encompassing "persecutions on political, racial or religious grounds"); Rome Statute art. 7(1)(h) (defining an





the argument that international norms do not bar systematic persecution of LGBTI people, because -- in contrast to racial, ethnic or religious minorities -- they are not explicitly mentioned is unpersuasive. It is enough that Plaintiff alleges that the denial of fundamental rights it suffered was based on an "unjustifiable discriminatory criterion." Id. at ¶ 697.

One argument offered by Defendant in this regard may be dismissed out of hand. Defendant appears to contend that because LGBTI people suffer discrimination in many countries, acts of persecution committed by him against this community cannot be viewed as violating international norms. (Dkt. No. 33, Def.'s Mem. 31-34.) This argument is utterly specious. First, Defendant concedes that the highest court in Uganda has itself recognized the entitlement of gay and lesbian people to fair and equal treatment under the law, including protection of their basic rights to free expression, life, liberty, and property. More importantly, even a glance at the history of treatment of gays and lesbians makes it clear that the discrimination suffered by them is on a par with the treatment meted out to other





property.

Plaintiff rests its claim of individual liability in large part on Defendant's accessory role in aiding and abetting the persecutory campaign amounting to a crime against humanity. (Dkt. No. 27, Am. Compl. ¶¶ 237-38; Dkt. No. 38, Pl.'s Mem. 44.) Aiding and abetting is a well-established basis for liability in international customary law. Numerous authorities confirm that a cause of action exists under international law for aiding and abetting a crime against humanity. Indeed, aiding and abetting liability was accepted as part of the customary international law that was applied by the war tribunals after World War II. Khulumani v. Barclay Nat'l Bank Ltd., 504 F.3d 254, 270-75 (2d Cir. 2007) (Katzmann, J. concurring), adopted in Presbyterian Church of Sudan, 582 F.3d at 258.

Aiding and abetting has been subsequently recognized as an established basis for liability in international law instruments including the Rome Statute and the statutes creating the ICTY and the ICTR. Id.

Beyond current customary international law, the United

States Congress itself in 1789 appeared to recognize a cause of action for aiding and abetting violations of international law. Doe v. Exxon Mobil Corp., 654 F.3d 11, 29 (D.C. Cir. 2011). The year after the passage of the Judiciary Act, Congress passed a piracy law providing for aiding and abetting liability. Crimes Act of 1790, ch. 9, § 10, 1 Stat. 112, 114 (1790) (deeming "an accessory [sic] to ... piracies" anyone who shall "knowingly and willingly aid and assist, procure, command, counsel, advise" any person to commit piracy). An early federal circuit court case acknowledged that U.S. citizens could be liable for aiding and abetting a violation of U.S. treaties or the law of nations. Henfield's Case, 11 F. Cas. 1099 (C.C. Pa. 1793) (No. 6360) (noting that "they who commit, aid, or abet hostilities against these powers, or either of them, offend against the laws of the United States, and ought to be punished; and consequently, that it is your duty, gentlemen, to inquire into and present all such of these offences, as you shall find to have been committed within this district"); see also Talbot v. Jensen, 3 U.S. 133, 167-68 (1795).

Aiding and abetting liability under the ATS has been accepted by every circuit court that has considered the issue. Exxon Mobil Corp., 654 F.3d at 29-30; Presbyterian Church of Sudan, 582 F.3d at 259; Khulumani, 504 F.3d at 260 (per curiam); Cabello, 402 F.3d at 1157-58.

To obtain a verdict based on a theory of aiding and abetting, a plaintiff must prove that a defendant provided "practical assistance to the principal which has a substantial effect on the perpetration of the crime." Exxon Mobil Corp., 654 F.3d at 39; Presbyterian Church of Sudan, 582 F.3d at 259. The circuits are currently divided as to whether a plaintiff must show that a defendant acted only with knowledge of the criminal enterprise or that his explicit purpose was to facilitate the criminal activity. Compare Exxon Mobil Corp., 654 F.3d at 39 (requiring that plaintiff commit the act with knowledge of the criminal purpose); Presbyterian Church of Sudan, 582 F.3d at 259 (requiring that plaintiff show that defendant committed the act with "the purpose of facilitating the commission of the crime"); Cabello, 402 F.3d at 1157-58 (adopting the federal common law standard of knowledge). Because Plaintiff has

pleaded the more stringent "purpose" standard, it is unnecessary for the court to resolve the "knowledge/purpose" controversy.

The Amended Complaint sets forth detailed factual allegations supporting Count One's claim that Defendant bears individual liability for aiding and abetting the commission of a crime against humanity. Essentially, Defendant's role is alleged to be analogous to that of an upper-level manager or leader of a criminal enterprise. He participated in formulating the enterprise's policies and strategies. He advised other participants on what actions might be most effective in achieving the enterprise's goals, such as criminalizing any expressions of support for the LGBTI community and intimidating its members through threats and violence. He generated and distributed propaganda that falsely vilified the targeted community to inflame public hatred against it.

In particular, Plaintiff has set out plausibly that Defendant worked with associates within Uganda to coordinate, implement, and legitimate "strategies to dehumanize, demonize, silence, and further criminalize the

[Ugandan] LGBTI community." (Dkt. No. 27, Am. Compl. ¶ 27.) In both 2002 and 2009, as part of this alleged campaign, Defendant met with Ugandan governmental leaders. (Dkt. No. 27, Am. Compl. ¶¶ 36, 52, 77, 78.) Defendant's intentional activities, according to the Amended Complaint, succeeded in intimidating, oppressing, and victimizing the LGBTI community. Indeed, as noted, according to the Amended Complaint Defendant acknowledged that his efforts made him instrumental in detonating "a nuclear bomb against the 'gay' agenda in Uganda." (Dkt. No. 27, Am. Compl. ¶¶ 56 & 88.)

Of course, all these allegations will need to be proved at trial to entitle Plaintiff to a verdict, and they may not be. But, as this lengthy discussion demonstrates, they are sufficient, as allegations, to state a claim for the commission of a crime against humanity against Defendant.

Similarly, the overwhelming weight of authority establishes that this crime against humanity is one of the relatively few violations of international norms for which the ATS furnishes jurisdiction.<sup>5</sup> It is true, as Sosa makes

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<sup>5</sup> Defendant argues that he cannot be liable for persecution because he is not a state actor. However, there is no requirement that aiding and abetting be done by a state

clear, that not all violations of international norms, even if properly alleged, can be pursued under the ATS. The further question is whether, as Justice Souter put it, Plaintiff's claim rests "on a norm of international character accepted by the civilized world and defined with specificity comparable to the features of the 18th-century paradigms [the Court has] recognized." 542 U.S. at 725 (emphasis added).

Put more concretely, is aiding and abetting a crime against humanity tantamount to piracy, or one of the other narrowly defined crimes for which the ATS provided jurisdiction in 1789?

Again, the weight of authority confirms that it is. As noted, both crimes against humanity and aiding and abetting liability are well-established and accepted in customary international law. Moreover, an ATS cause of action for this type of international law violation has been widely recognized in the lower courts. As Sosa noted, "the door is still ajar," to federal common law claims for some violations of customary law, if only because "[i]t would

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actor.

take some explaining to say now that federal courts must avert their gaze entirely from any international norm intended to protect individuals." Id. at 728, 732.

In sum, then, for the reasons stated Plaintiff has adequately pled both that a crime against humanity has been committed by Defendant and that this crime rests among the relatively small group of violations of international norms for which the ATS provides jurisdiction.<sup>6</sup>

B. Claims Related to Extraterritorial Conduct Under the Alien Tort Statute.

Defendant argues that this court cannot recognize Plaintiff's ATS claims because Plaintiff cannot overcome the presumption that causes of action recognized under the ATS do not extend to extraterritorial conduct. Subsequent to oral argument, the Supreme Court clarified an aspect of this issue in Kiobel v. Royal Dutch Petroleum, 133 S. Ct. 1659

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<sup>6</sup> It is important to note that, in addition to Count I, Counts II and III of the Amended Complaint have, apparently in the alternative, charged Defendant as a participant in a joint criminal enterprise and as a co-conspirator respectively. Because Plaintiff has clearly set forth its claim in Count I against Defendant based on his individual responsibility, it is unnecessary, at least at this stage, to address the sufficiency of the legal and factual support for these two counts.

(2013). The Court's decision addressed whether a federal court could recognize a cause of action for claims by Nigerian citizens living in the United States against Dutch and British corporations. Neither corporation had more than a negligible presence in the United States, and all the tortious conduct alleged to have been committed by them occurred outside the United States, in Nigeria. The Supreme Court held that in this context, the plaintiffs did not have a cause of action, based on the presumption against extraterritorial application. 133 S. Ct. at 1669.

Two facts alleged in this case distinguish it from Kiobel. First, unlike the British and Dutch corporations, Defendant is an American citizen residing within the venue of this court in Springfield, Massachusetts. Second, read fairly, the Amended Complaint alleges that the tortious acts committed by Defendant took place to a substantial degree within the United States, over many years, with only infrequent actual visits to Uganda.

The fact that the impact of Defendant's conduct was felt in Uganda cannot deprive Plaintiff of a claim. Defendant's alleged actions in planning and managing a

campaign of repression in Uganda from the United States are analogous to a terrorist designing and manufacturing a bomb in this country, which he then mails to Uganda with the intent that it explode there. The Supreme Court has made clear that the presumption against the extraterritorial application of a statute comes into play only where a defendant's conduct lacks sufficient connection to the United States. See Morrison v. Nat'l Australia Bank Ltd., 130 S. Ct. 2869, 2884 (2010); Pasquantino v. United States, 544 U.S. 349 (2005).

Kiobel elaborated on this theme. As Chief Justice Roberts stated in his opinion, the issue in that case was "whether a claim may reach conduct occurring in the territory of a foreign sovereign." Kiobel, 133 S. Ct. at 1664. In the final paragraph of his decision, he emphasized that the Court's holding applied to a factual scenario where "all the relevant conduct took place outside the United States." Id. at 1669. Where conduct occurred solely abroad, "mere corporate presence," he concluded, did not touch and concern the United States "with sufficient force to displace the presumption against extraterritorial application." Id.

The separate concurrence of Justice Kennedy made the limited reach of Kiobel manifest. "Other cases," he noted, "may arise with allegations of serious violations of international law principles protecting persons . . . ; and in those disputes the proper implementation of the presumption against extraterritorial application may require some further elaboration and explanation." 133 S. Ct. at 1669.

Even the narrowest construction of the Kiobel holding, set forth in the separate concurrence of Justice Alito on behalf of himself and Justice Thomas, made clear that an ATS cause of action will lie where the "domestic conduct is sufficient to violate an international law norm that satisfies Sosa's requirements of definiteness and acceptance among civilized nations." Kiobel, 133 S. Ct. at 1670 (emphasis added).

This is not a case where a foreign national is being hailed into an unfamiliar court to defend himself. Defendant is an American citizen located in the same city as this court. The presumption against extraterritoriality is based, in large part, on foreign policy concerns that tend

to arise when domestic statutes are applied to foreign nationals engaging in conduct in foreign countries. Kiobel, 133 S. Ct. at 1664-65; Morrison, 130 S. Ct. at 2885-86 (noting the obvious "probability of incompatibility with the applicable laws of other countries" and concluding that the defendants' connection to the United States was insufficient); EEOC v. Arabian American Oil Co., 499 U.S. 244, 248 (1991) (noting that presumption "serves to protect against unintended clashes between our laws and those of other nations which could result").<sup>7</sup>

An exercise of jurisdiction under the ATS over claims against an American citizen who has allegedly violated the law of nations in large part through actions committed within this country fits comfortably within the limits described in Kiobel.

Indeed, the failure of the United States to make its courts available for claims against its citizens for actions taken within this country that injure persons abroad would

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<sup>7</sup> In extreme cases, piracy for example, Kiobel noted that the ATS would provide jurisdiction over claims against foreign nationals for tortious conduct committed wholly in a foreign country, on the ground that it carried "less direct foreign policy consequences." Id. at 1667.

itself create the potential for just the sort of foreign policy complications that the limitations on federal common law claims recognized under the ATS are aimed at avoiding. Under the law of nations, states are obliged to make civil courts of justice accessible for claims of foreign subjects against individuals within the state's territory. "If the court's decision constitutes a denial of justice, or if it appears to condone the original wrongful act, under the law of nations the United States would become responsible for the failure of its courts and be answerable not to the injured alien but to his home state." Tel Oren v. Libyan Arab Republic, 726 F.2d 774, 783 (D.C. Cir. 1984) (Edwards, J. concurring), cert. denied, 470 U.S. 1003 (1985).

One such episode, occurring shortly after the passage of the ATS, underlines the role of United States courts in precisely this situation. In 1794, several U.S. citizens joined a French privateer fleet to aid the French in the war on Great Britain despite the official American policy of neutrality. These Americans formed part of a force that attacked and plundered the British colony of Sierra Leone. When the British Ambassador protested and demanded that the

Americans be punished, then Attorney General William Bradford responded that it was unlikely that the Americans could be criminally prosecuted for actions abroad or on the high seas. But, he noted, "[t]here can be no doubt that the company or individuals who have been injured by these acts of hostility have a remedy by a civil suit in the courts of the United States; jurisdiction being expressly given to these courts in all cases where an alien sues for a tort only, in violation of the laws of nations, or a treaty of the United States." Kiobel, 133 S. Ct. at 1668 (quoting Breach of Neutrality, 1 Op. Atty. Gen. 57 (1795)).

It is true, as Defendant points out, that the Amended Complaint, which was filed prior to Kiobel, highlights actions taken by Defendant in Uganda. Defendant's contention that all his alleged misconduct took place in Uganda, however, offers a distorted picture of the pleading. As noted, Plaintiff alleges that Defendant's tortious behavior unfolded over at least a decade, during which time he was actually present in Uganda only a few times. The actual claim of individual responsibility against Defendant is rooted in a contention that Defendant aided and abetted

the tortious conduct. The relevant question therefore is whether Plaintiff has alleged that substantial "practical assistance" was afforded to the commission of the crime against humanity from the United States.

The Amended Complaint adequately sets out actionable conduct undertaken by Defendant in the United States to provide assistance in the campaign of persecution in Uganda. To review these allegations, and at the risk of repetition, the Amended Complaint alleges that Defendant resides and operates out of Springfield, Massachusetts. (Dkt. No. 27, Am. Compl. ¶ 8.) It describes how, after Defendant traveled to Uganda in 2002, he continued to assist, manage, and advise associates in Uganda on methods to deprive the Ugandan LGBTI community of its basic rights. (Id. at ¶¶ 47, 55-56.) Defendant's Ugandan co-conspirators then contacted him in the United States in 2009 to craft tactics to counter the Ugandan High Court ruling confirming that LGBTI persons enjoyed basic protections of the law. (Id. at ¶ 36.) After going to Uganda in 2009, Defendant continued to communicate from the United States through Martin Ssempe to members of the Ugandan Parliament about the legislation proposing the

death penalty for homosexuality. From his home in the United States, he reviewed a draft of the legislation and provided advice on its content. (Id. at ¶¶ 140, 161.) Given that Defendant is a United States citizen living in this country and that the claims against him “touch and concern the territory of the United States . . . with sufficient force to displace the presumption against extraterritoriality,” a cause of action is appropriate under the ATS. Kiobel, 133 S. Ct. at 1669.<sup>8</sup>

C. Standing.

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<sup>8</sup> This conclusion is in line with most of the cases that have considered the presumption against extraterritoriality post-Kiobel. See Muntslag v. Dieteren, S.A., 2013 WL 2150686, at \*2 (S.D.N.Y. May 17, 2013) (holding that jurisdiction did not exist over foreign defendants when allegedly tortious acts all occurred abroad); Mohammadi v. Islamic Republic of Iran, -- F. Supp. 2d ----, 2013 WL 2370594, at \*15 (D.D.C. May 31, 2013) (holding that there was an insufficient nexus to the territory or interests of the United States when the defendants were leaders of Iran and activities occurred in the sovereign territory of Iran); Mwani v. bin Laden, -- F. Supp. 2d ----, 2013 WL 2325166, at \*4 (D.D.C. May 29, 2013) (holding that presumption against extraterritoriality displaced when a foreign defendant bombed an American embassy abroad and overt acts in furtherance of the conspiracy took place in the United States). In one case, a district court has dismissed a claim against an American corporation based on alleged torture and war crimes occurring in Iraq. al Shimari v. CACI Int’l, Inc., -- F. Supp. 2d ----, 2013 WL 3228720, at \*7-10 (E.D. Va. June 25, 2013). Arguably, a different rationale may apply to a natural U.S. citizen than an American corporation. If not, this court finds the reasoning in al Shimari unpersuasive.

Defendant argues that Plaintiff, as an umbrella organization, lacks standing to bring this suit either in its own right or as a representative of its members. The argument will not withstand scrutiny. Plaintiff has standing to seek monetary and equitable relief for Defendant's actions that have caused direct damage to it. Moreover, it also has associational standing to bring claims on behalf of its members and the LGBTI community for injunctive relief to prevent Plaintiff from continued actions "to strip away and/or deprive Plaintiff and LGBTI community in Uganda of their fundamental rights." (Dkt. No. 27, Am. Compl. ¶ 13.)

1. Organizational Standing.

It is well-established that an organization can sue to obtain compensation for injuries it sustains. Warth v. Seldin, 422 U.S. 490, 511 (1975); Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 n.19 (1982); Mass. Delivery Ass'n v. Coakley, 671 F.3d 33, 44-45 (1st Cir. 2012). Article III standing exists where three criteria are satisfied: (1) an injury in fact, which is (2) fairly traceable to the defendant's misconduct, and which can be (3) redressed

through a favorable decision of the court. Lujan v. Defenders of Wildlife, 560 U.S. 555, 560-61 (1992).

Defendant does not argue that Plaintiff has failed to meet the first prong -- injury in fact. The Amended Complaint sets forth two distinct harms to Plaintiff's organization. First, Plaintiff's operations, conferences, and staff have allegedly been targeted as part of the persecutory campaign. Plaintiff alleges that, as a result, it has had to retain the services of security personnel, take additional security measures for its premises, and relocate its offices and operations. All this has obviously cost money. Second, Plaintiff has had to expend considerable resources and efforts to counteract Defendant's campaign of repression; the need for these efforts has impaired Plaintiff's ability to carry out its own organizational objectives. Defendant correctly concedes that the allegations of injury in fact are sufficient.

Defendant does challenge the sufficiency of the evidence to satisfy the second element, the connections between the injury and Defendant's conduct. For the court to find that Plaintiff has standing, "there must be a causal

connection between the injury and conduct complained of -- the injury has to be 'fairly trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Lujan, 504 U.S. at 560 (quoting Simon v. Eastern Ky. Welfare Rights Org., 526 U.S. 26, 41-42 (1976)).

In addressing this factor, it is important to bear in mind that Defendant's actions need not be "the very last step in the chain of causation for the injury. It suffices if the plaintiff can show injury produced by determinative or coercive effect upon the action of someone else." Weaver's Cove Energy, LLC v. R.I. Coastal Res. Mgmt. Council, 589 F.3d 458, 467 (1st Cir. 2009) (internal quotation and citation omitted).<sup>9</sup>

At this stage, Plaintiff has adequately pled that Defendant was one of the "principal strategists and actors behind this decade-long persecutory campaign." (Dkt. No.

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<sup>9</sup> Defendant contends that the "fairly traceable" element is only met if Plaintiff can show that his speech was directed at producing or inciting imminent lawless action and is likely to produce or incite such action. However, this is a substantive test for whether speech is protected by the First Amendment and not a test for standing. See NAACP v. Claiborne Hardware Co., 458 U.S. 886, 928 (1982).

27, Am. Compl. ¶ 25.) While some of the actions that Plaintiff describes in the Amended Complaint may not be directly traceable to Defendant, Defendant may nevertheless be held liable, as the previous discussion notes, for his conduct as an aider and abettor. According to the Amended Complaint, Defendant himself has acknowledged that he has been instrumental in launching the anti-LGBTI movement in Uganda and developing strategies for its ongoing operation -- the "nuclear bomb" previously noted. Given all this, the allegations of the complaint sufficiently support a finding that Plaintiff's injury is directly traceable to Defendant's conduct.

Finally, Plaintiff has met its burden to plead plausibly that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." Lujan, 504 U.S. at 561. To a substantial extent the injuries to Plaintiff as an organization are quantifiable and may be remedied by an award of monetary damages.

## 2. Associational Standing.

While Plaintiff may seek monetary damages for the

injuries it has suffered to itself as an organization, Defendant argues that Plaintiff cannot seek monetary damages for its members, based on its associational standing. Defendant contends that proof of these claims, and particularly the determination of monetary damages, will require participation by individuals whose interests the organization does not have standing to assert. The simple answer to this is that Plaintiff seeks monetary damages only for injury to itself as an organization, not for its individual members, as to whom only equitable relief is requested.

Associational standing allows an organization to bring suit "solely as the representative of its members" "[e]ven in the absence of injury to itself." Warth, 422 U.S. at 511. To assert associational standing, a plaintiff must show: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977).

Defendant does not directly argue that Plaintiff fails to meet the first two requirements. Plaintiff is "an umbrella organization that was founded in 2004 by a coalition of Ugandan organizations advocating on behalf of lesbian, gay, bisexual, transgender, and intersex ('LGBTI') communities, to unify and support sexual minority groups in Uganda." (Dkt. No. 27, Am. Compl. ¶ 18.) Plaintiff asserts that "individual members of its constituent organizations" have suffered persecution and associated harms as a result of Defendant's actions. (Dkt. No. 27, Am. Compl. ¶ 21.) Plaintiff also asserts that the interests it seeks to protect in this case -- preventing persecution of the LGBTI community in Uganda -- are germane to its agenda to advocate, unify, and support this community.

While not contesting either of these points directly, Defendant does argue that Sexual Minorities Uganda has not adequately alleged associational authority. To support the need to show associational authority, Defendant cites an ATS case where a defendant, Unocal, Inc., argued that "an organization only has associational standing when it has a clear mandate from its membership to take the position

asserted in the litigation.” Nat’l Coal. Gov’t Union Burma v. Unocal, Inc., 176 F.R.D. 329, 344 n.16 (C.D. Cal. 1997). Here, Defendant argues, no such clear mandate has been alleged.

Defendant has misread the Unocal decision. In that case, the district court denied the Federated Trade Unions of Burma standing based on the fact that all of the tort claims were based on harm to individual plaintiffs, and none to the organization itself. The court’s holding on the standing issue was not anchored on whether the organization had a clear mandate from its membership. Authority from the District of Massachusetts makes clear that an organization represents a “defined and discrete constituency” even if that constituency is different from the formal members of the organization. NAACP v. Harris, 567 F. Supp. 637, 640 (D. Mass. 1983).

It is true that authorities generally reject associational standing where an organization seeks monetary relief on behalf of its members, on the ground that these claims require individualized proof of claims. See Bano v. Union Carbide Corp., 361 F.3d 696, 714 (2d Cir. 2004).

However, Plaintiff here seeks to assert associational standing solely to obtain injunctive relief on behalf of its members. Because Plaintiff is not requesting monetary damages for its members, there is normally "no need . . . for the members to participate as parties." Pharm. Care Mgmt. Ass'n v. Rowe, 429 F.3d 294, 307 (1st Cir. 2005).

Admittedly, all requests for injunctive relief do not automatically grant a plaintiff associational standing. Courts have rejected claims for injunctive relief that seek, in effect, remedies applicable only to specific individuals. Bano, 361 F.3d at 716 (rejecting associational standing where the group sought an injunction ordering remediation of individual private properties).

Here, however, Plaintiff is not requesting injunctive relief that is particular to any individual in Uganda. Instead, the injunctive relief in this case only requests that the Defendant cease certain general activities. This equitable relief will not require participation of Plaintiff's members. "[The] relief, if granted, would inure to the benefit of all the affected [members] equally, regardless of their individual circumstances." Coll.

Dental Surgeons P.R. v. Conn. Gen. Life Ins. Co., 585 F.3d 33, 41 (1st Cir. 2009).

Defendant points to two district court opinions purportedly supporting the proposition that associational representation is not suitable for civil tort claims because those claims "can only be adjudicated by considering the testimony and other evidence of the people allegedly [injured]." Nat'l Coal. Gov't Union Burma, 176 F.R.D. at 344; see also Presbyterian Church of Sudan v. Talisman Energy, Inc., 2005 WL 1060353 (S.D.N.Y. May 6, 2005). These decisions are, of course, not binding on this court. More importantly, the language of these decisions describing the limits of associational standing for tort claims appears to be overbroad.

The fact that a claim requires individual proof does not necessarily defeat associational standing. See Playboy Entm't v. Public Service Comm'n Puerto Rico, 906 F.2d 25, 35 (1st Cir. 1990) (holding that the need for individual proof does not necessitate that members be parties); Coll. Dental Surgeons P.R., 585 F.3d at 41 (noting that even though some fraudulent practice claims may require evidence from

individual members those claims are not a "fact-intensive-individual inquiry"). "Even though [a claim] is intensely fact specific and [plaintiff] will be required to introduce proof of specific [member] practices and effects [] on specific [members], we see no reason that [plaintiff's members] would be required to participate as parties."

Pharm. Care Mgmt. Ass'n, 429 F.3d at 306. Because the claim here -- persecution -- is a group-based claim, it is well-suited to be brought by a representative association like Plaintiff, even though some of the evidence will come from individual testimony. Plaintiff has associational standing to bring its claims for injunctive relief.

Plaintiff also meets the Article III requirements for standing as a representative of its members. The analysis for injury and causation in this context is virtually the same as the analysis applicable to determine an organization's entitlement to bring a suit in its own right. Defendant contends, however, that even if Plaintiff has adequately pled injury and causation, the allegations of the Amended Complaint fail to satisfy the third requirement -- redressability -- when the only relief it seeks for its

members is an injunction. No injunctive or declaratory relief that this court could issue, Defendant says, could possibly provide Plaintiff's members any remedy, since the initiatives against the LGBTI community in Uganda have an independent momentum beyond any control by Defendant.

This argument has force but, at least at this stage, is unpersuasive. It is well-established that, while Plaintiff must show that a favorable resolution would likely redress the injury, "[r]edressability is a matter of degree" and Plaintiff need not show that the potential remedies within the court's power would completely alleviate its members' injuries. Katz v. Pershing, LLC, 672 F.3d 64, 72 (1st Cir. 2012).

Certainly there is no doubt that Defendant is only one of several actors allegedly persecuting the LGBTI community in Uganda. As Defendant notes, enjoining Defendant does not guarantee that his co-conspirators will cease their repression against Plaintiff and its members. It is quite true that this court does not have either the jurisdiction or power to stop all possible harm against Plaintiff in Uganda. Nevertheless, Plaintiff has sufficiently alleged

that Defendant played a crucial role in developing strategies to deny basic rights to Plaintiff's members over the last decade. With the failure (so far) of the Anti-Homosexuality Bill, Plaintiff has a justified fear that Defendant will be called upon to help devise new strategies to deny the rights of Plaintiff's members. Plaintiff has shown that "a favorable ruling could potentially lessen its injury; it need not definitively demonstrate that a victory would completely remedy the harm." Antilles Cement Corp. v. Fortuño, 670 F.3d 310, 318 (1st Cir. 2012).

For all the foregoing reasons, the Amended Complaint contains sufficient allegations to support both organizational and associational standing.

D. First Amendment Concerns.

Defendant has vigorously argued that all his actions are protected by the First Amendment to the United States Constitution. Discovery may, or may not, reveal that the argument is correct, and this issue will almost certainly be front and center at the summary judgment stage of this case. What is quite clear now, however, is that the Amended Complaint adequately alleges that Defendant's actions have

fallen well outside the protections of the First Amendment.

Defendant is correct that the First Amendment places limits on the imposition of tort liability linked to offensive speech, and that the protection of free expression, including the protection of "thought we hate," is a centerpiece of our democracy.<sup>10</sup> Snyder v. Phelps, 131 S. Ct. 1207, 1215 (2011); Hustler Magazine v. Falwell, 485 U.S. 46, 50-51 (1988).

For example, intentional infliction of emotional distress claims -- which ask a jury to consider whether speech was "outrageous" -- are too subjective to meet the requirements of the First Amendment when applied to public figures or topics of public concern. Snyder, 131 S. Ct. at 1219; Hustler, 485 U.S. at 55. "[H]urtful speech" is protected when it "address[es] matters of public import on public property, in a peaceful manner, in full compliance with the guidance of local officials." Snyder, 131 S. Ct. at 1220.

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<sup>10</sup> An ardent exposition of all the reasons why protection of "thought we hate" is so central to the genius of our Constitution is contained in the late Anthony Lewis's superb book, Freedom for the Thought We Hate: A Biography of the First Amendment (2010).

In the criminal context, even if speech advocates for the use of force or for violations of law, it receives First Amendment protection "except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." Brandenburg v. Ohio, 395 U.S. 444, 447-48 (1969).

On the other hand, when noxious words become part of a criminal enterprise, the First Amendment provides limited protection. As Justice Black, an unsurpassed supporter of the First Amendment, wrote:

It rarely has been suggested that the constitutional freedom for speech and press extends its immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute. We reject the contention now. . . .  
. . . [I]t has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written or printed. Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society.

Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 498, 502 (1949) (internal citations omitted).

It is well-established that speech that constitutes criminal aiding and abetting is not protected by the First Amendment. See, e.g., United States v. Bell, 414 F.3d 474, 483-84 (3d Cir. 2005); Nat'l Org. for Women v. Operation Rescue, 37 F.3d 646, 656 (D.C. Cir. 1994); United States v. Freeman, 761 F.2d 549, 552 (9th Cir. 1985) (Kennedy, J.) (noting that "[c]ounseling is but a variant of the crime of solicitation, and the First Amendment is quite irrelevant if the intent of the actor and the objective meaning of the words used are so close in time and purpose to a substantive evil as to become part of the ultimate crime itself"); United States v. Kelley, 769 F.2d 215, 217 (4th Cir. 1985); United States v. Barnett, 667 F.2d 835, 842-43 (9th Cir. 1982) ("The first amendment does not provide a defense to a criminal charge simply because the actor uses words to carry out his illegal purpose. Crimes including that of aiding and abetting, frequently involve the use of speech as part of the criminal transaction."); cf. Giboney, 336 U.S. at 498 (holding that speech integral to criminal conduct is not protected). It is equally well supported that the same logic extends to civil actions for aiding and abetting.

Rice v. Palladin Enterprises, Inc., 128 F.3d 233, 242-43 (4th Cir. 1997).

In determining whether speech that is related to political advocacy receives First Amendment protection, the Supreme Court has distinguished between "theoretical advocacy," Scales v. United States, 367 U.S. 203, 235 (1961), meaning advocacy of "principles divorced from action," Yates v. United States, 354 U.S. 298, 320 (1957), and speech that is meant to induce or precipitate illegal activity. See also United States v. Williams, 553 U.S. 285, 298-99 (2008). As the court in Brandenburg recognized, "[T]he mere abstract teaching . . . of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action." 395 U.S. at 448 (quoting Noto v. United States, 367 U.S. 290, 297-98 (1961)). Merely advocating for reform is quite different constitutionally from preparing for criminal activity.

Based on these authorities it is clear that the Amended Complaint sets forth sufficient allegations to support a claim for activity outside the protection of the First

Amendment. Plaintiff contends that Defendant's conduct has gone far beyond mere expression into the realm not only of advocacy of imminent criminal conduct, in this case advocacy of a crime against humanity, but management of actual crimes -- repression of free expression through intimidation, false arrests, assaults, and criminalization of peaceful activity and even the status of being gay or lesbian -- that no jury could find to enjoy the protection of the First Amendment.

Apart from his right to free expression, Defendant also contends that his actions are protected by the Petition Clause of the First Amendment. Generally, Defendant points out, "there is no remedy against private persons who urge the enactment of laws, regardless of their motives."

Tomaiolo v. Mallinoff, 281 F.3d 1, 11 (1st Cir. 2002). It is well-established, however, that the Petition Clause does not immunize a defendant's interactions with foreign governments. Australia/Eastern U.S.A. v. United States, 557 F. Supp. 807, 812 (D.D.C. 1982); Occidental Petroleum Corp. v. Buttes Gas & Oil Co., 331 F. Supp. 92 (C.D. Cal. 1971),

aff'd 461 F.2d 1261 (9th Cir. 1972).<sup>11</sup> In other words, the Petition Clause protects the right of Americans to seek legislation by the United States government, not by governments of foreign countries.

Even if the Petition Clause applied, the court could not dismiss the action as a matter of law, given that the petition clause cannot protect activities taken for unlawful purposes or toward unlawful ends. Cal. Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 514 (1972) (quoting Giboney, 336 U.S. at 502) (recognizing that activity that is an integral part of illegal conduct does not receive petitioning clause protection). Here, the Amended Complaint makes precisely that allegation.

Speech can undoubtedly sometimes fall within grey areas. When this occurs, and where a jury needs to resolve contested factual issues to determine whether speech or

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<sup>11</sup> Defendant cites cases which grant companies Noerr-Pennington immunity from prosecution for their petitioning activity even if they are aimed at foreign governments. However, those cases rest their conclusions on the scope of the Sherman Act itself and not on the First Amendment petition clause. Coastal States Mktg., Inc. v. Hunt, 694 F.2d 1358 (5th Cir. 1983); Carpet Group Int'l v. Oriental Rug Importers Ass'n, Inc., 256 F. Supp. 2d 249 (D.N.J. 2003); Luxpro Corp. v. Apple Inc., 2011 WL 1086027 (N.D. Cal. Mar. 24, 2001).

conduct is constitutionally protected, the court is well equipped to provided the jury appropriate instructions to handle this task. Freeman, 761 F.2d at 551, 552-53; United States v. White, 610 F.3d 956, 962 (7th Cir. 2010) ("Based on the full factual record, the court may decide to instruct the jury on the distinction between solicitation and advocacy, and the legal requirements imposed by the First Amendment."). Courts have regularly found it preferable to tackle a First Amendment defense with a more complete evidentiary record at the summary judgment stage or at trial, rather than at the motion to dismiss stage. Curley v. North Am. Man Boy Love Ass'n, 2001 WL 1822730, at \*2 (D. Mass. Sept. 27, 2001); cf. White, 610 F.3d at 962 ("Based on the full factual record, the court may decide to instruct the jury on the distinction between solicitation and advocacy, and the legal requirements imposed by the First Amendment."). At this stage, it is far from clear that the First Amendment will foreclose liability on any set of facts that Plaintiff might show.

In making this decision, the court is mindful of the chilling effect that can occur when potential tort liability

is extended to unpopular opinions that are expressed as part of a public debate on policy. However, at this stage, the Amended Complaint sets out plausible claims to hold Defendant liable for his role in systematic persecution, rather than merely for opinions that Plaintiff finds abhorrent. The complexion of the case at this stage entitles Plaintiff to discovery and requires the court to deny Defendant's motion to dismiss.

E. State Law Claims.

Counts IV and V of the Amended Complaint assert Massachusetts common law claims for civil conspiracy and negligence. Defendant seeks dismissal of these counts on several grounds. First, he contends that under a proper choice of law analysis, Massachusetts law simply does not apply to the facts alleged. Ugandan law, if any, should govern. Second, he argues that both the civil conspiracy and negligence claims are barred by the three-year statute of limitations. Finally, he takes the position that the facts as set forth in the Amended Complaint are insufficient to make out claims under either theory. The court will deny the motion to dismiss because (1) Massachusetts law governs

this litigation and (2) the arguments asserting violation of the statute of limitations and failure to state a claim require development through discovery and may be re-assessed at the summary judgment stage on a fuller record.

1. Choice of Laws.

It is well-settled that district courts hearing state law claims apply the substantive law of the state in which the court sits, including that state's choice-of-law rules.

Servicios Comerciales Andinos, S.A. v. General Elec. Del Caribe, Inc., 145 F.3d 463, 478 (1st Cir. 1998); Erie Railroad Co. v. Tompkins, 304 U.S. 64, 78 (1938).

Massachusetts employs a functional choice of laws approach that is guided by the Restatement (Second) of Conflict of Laws (1971). Clarendon Nat'l Ins. Co. v. Arbella Mut. Ins. Co., 803 N.E.2d 750, 752 (Mass. App. Ct. 2004).

The Restatement instructs courts to apply the law of the state with the "most significant relationship to the occurrence and the parties under the principles stated in § 6." Restatement (Second) of Conflict of Laws § 145 (1971). Section 6 of the Restatement cites the following factors as relevant to choice of law decisions:

- (a) the needs of the interstate and international systems,
- (b) the relevant policies of the forum,
- (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
- (d) the protection of justified expectations,
- (e) the basic policies underlying the particular field of law,
- (f) certainty, predictability and uniformity of result, and
- (g) ease in the determination and application of the law to be applied.

Id. at § 6.

In the tort context, the Restatement also sets out four factors to help determine which jurisdiction has the most significant relationship:

- (a) the place where the injury occurred,
- (b) the place where the conduct causing the injury occurred,
- (c) the domicil, residence, nationality, place of incorporation and place of business of the parties, and
- (d) the place where the relationship, if any, between the parties is centered.

Id. at § 145.

Defendant is correct to note that the jurisdiction where the injury occurred normally has a significant interest in having its law apply because "persons who cause injury in a state should not ordinarily escape liabilities

imposed by the local law of that state on account of the injury." Restatement (Second) of Conflict of Laws § 145(2), cmt. 2. However, even when the injury (and, indeed, even the conduct that caused the injury) occurs in a foreign location, Massachusetts choice-of-laws doctrine does not automatically apply foreign law. See, e.g., Robidoux v. Muholland, 642 F.3d 20, 28 (1st Cir. 2011); Lou v. Otis Elevator Co., 933 N.E.2d 140, 150-51 (Mass. App. Ct. 2010). The court must weigh all the Restatement factors to determine the proper law to apply.

Several factors other than the place of injury tip the balance in favor of Massachusetts law. First, Defendant is a Massachusetts resident and an American citizen. Plaintiff is not asking the court to apply a law that is foreign to Defendant, but rather the rules prevailing in his home country and Commonwealth. Second, as noted previously, Plaintiff alleges that much of the actionable conduct occurred in Massachusetts.

On the civil conspiracy claim particularly, a powerful, independent consideration supports application of Massachusetts law. Plaintiff, as Defendant concedes, would

have no forum for this claim in Uganda. Ugandan law apparently does not recognize a cause of action for civil conspiracy. (Dkt. No. 33, Def.'s Mem. 69.) In the absence of any remedy for Plaintiff in Uganda, the interest of the Commonwealth of Massachusetts in adjudicating Plaintiff's civil conspiracy claim, recognized under its law, becomes more prominent. As the Supreme Judicial Court has recognized, the state has an interest in maintaining a cause of action for this type of civil conspiracy which ensures that "influence and power" are not combined to interfere with individual rights. See Willett v. Herrick, 136 N.E. 366, 370 (Mass. 1922). This is particularly true when a substantial part of the conduct supporting the conspiracy is alleged to have occurred within the Commonwealth.

Problems in applying Ugandan law also plague the adjudication of the negligence claim, not because no Ugandan law is applicable, as with the civil conspiracy claims, but because the Ugandan law is unclear. One of the factors the court can consider in determining the proper choice of law is the "ease in the determination and application of the law to be applied." Restatement (Second) of Conflict of Laws §

6. For this reason, the party seeking to apply foreign law, here Defendant, must outline the substance of that law with reasonable certainty. See In re Avantel, S.A., 343 F.3d 311, 321-22 (5th Cir. 2003); cf. Carey v. Bahama Cruise Lines, 864 F.2d 201, 205 (1st Cir. 1988) (holding that parties who fail to give the court requisite notice of foreign law have waived their right to have foreign law applied).

Defendant has done little to meet that burden here. In the one paragraph in his memorandum describing Ugandan negligence law, Defendant notes only that "Uganda law may recognize traditional negligence as a cause of action" but that there is no indication that any "novel duty of care principles apply." (Dkt. No. 33, Def.'s Mem. 70.) Because Defendant has not described the substance of Ugandan negligence law in any detail, the court cannot take the first step in any choice of laws analysis; it cannot determine whether any actual conflict exists between the laws. See Cohen v. McDonnell Douglas Corp., 450 N.E.2d 581, 584 n.7 (Mass. 1983).

In sum, although arguments exist on both sides, the

functional choice of law approach counsels applying Massachusetts law to Counts IV and V. This conclusion leaves Defendant's arguments regarding statute of limitations and failure to state a claim. The discussion below will address these contentions as they apply, first, to civil conspiracy and then to negligence.

2. Civil Conspiracy.

a. Statute of Limitations.

Massachusetts applies a three-year statute of limitations to civil conspiracy claims. Mass. Gen. Laws ch. 260, § 2A; Pagliuca v. City of Boston, 626 N.E.2d 625, 627-28 (Mass. App. Ct. 1994). Defendant argues that the limitations period begins to run with the first overt act. However, this accrual rule only applies to federal and state statutory civil rights claims, which are not asserted here. Pagliuca, 626 N.E.2d at 627-28 (distinguishing between the time-of-first-wrongful-act standard applicable to federal and state civil rights statutes and time-of-injury standard applicable to common law civil conspiracy).

For a common law civil conspiracy claim, the cause of action accrues at the time the plaintiff is injured, or when

he discovers or reasonably should have discovered the cause of the injury. Genereux, 577 F.3d at 359-63; Pagliuca, 626 N.E.2d at 627-28. Plaintiff filed its complaint on March 14, 2012. To obtain dismissal of a complaint based on the statute of limitations, an affirmative defense, Defendant must point to sufficient facts offered in the complaint, or in other allowable sources of information, to show with certitude that Plaintiff knew or could have reasonably discovered the source of its injury before March 14, 2009. Cf. Gray v. Evercore Restructuring L.L.C., 544 F.3d 320, 324 (1st Cir. 2008); see also LaChapelle v. Berkshire Life Ins. Co., 142 F.3d 507, 509 (1st Cir. 1998) (noting that "a motion to dismiss based on a limitations defense is entirely appropriate when the pleader's allegations leave no doubt that an asserted claim is time-barred").

To prevail on his statute of limitations affirmative defense, Defendant must show that Plaintiff had "(1) knowledge or sufficient notice that she was harmed and (2) knowledge or sufficient notice of what the cause of the harm was." Bowen v. Eli Lilly & Co., 557 N.E.2d 739, 742 (Mass. 1990). While Plaintiff was undoubtedly aware that some

injuries occurred prior to 2009, Defendant has not adequately shown that Plaintiff had adequate notice before March 14, 2009, that Defendant contributed to these harms. As Plaintiff has noted in the Amended Complaint, Defendant did not publicly acknowledge his pivotal role in the anti-LGBTI efforts in Uganda until after the March 2009 conference.

Plaintiff has also alleged several harmful incidents that occurred within the last three years. The most recent incidents, including the deliberately intimidating, mass disclosures of the identities of LGBTI peoples, as well as the arrests and raids targeted at Plaintiff and its activities, all occurred after March 2009. Given these allegations, any assessment of the statute of limitations defense must await full discovery and possibly trial.

b. Failure to State a Claim.

Massachusetts recognizes two types of civil conspiracy. The more typical kind is akin to a theory of joint liability in tort. Aetna Cas. Sur. Co. v. P & B Autobody, 43 F.3d 1546, 1564 (1st Cir. 1994). However, Plaintiff argues that the second, more exceptional, type of civil conspiracy

applies to Defendant. With the second type, a plaintiff need not allege an underlying tort, because the mere force of numbers acting in unison to injure a plaintiff constitutes a wrong. Weiner v. Lowenstein, 51 N.E.2d 241, 243 (Mass. 1943). However, a plaintiff must show "that there was some peculiar power of coercion" used by a combination of individuals on the plaintiff "which any individual [alone,] standing in a like relation to the plaintiff would not have had." DesLauries v. Shea, 13 N.E.2d 932, 935 (Mass. 1938) (internal quotation omitted).

In other words, the injury to a plaintiff must be the result of the combination of the defendants and not just the product of actions taken by more than one individual. In one of the few successful civil conspiracy actions of this sort, the Massachusetts Supreme Judicial Court held that the plaintiffs had properly pled the claim when they alleged that the defendants had worked together to manipulate the plaintiffs' business holdings to acquire certain obligations for themselves. Willett, 136 N.E. at 368-70. None of the defendants could have accomplished the injurious result by themselves. Additionally, even if each of the individual

actions were benign, the defendants were able to use their combined power and influence to destroy the plaintiffs' credit and holdings. Id.

In successful claims offered under this theory, the plaintiff has shown that defendants had a "peculiar commanding influence" either through some type of unique power or fiduciary relationship or even "mere numbers acting simultaneously" that injured a plaintiff and lacked "an excuse or justification." Johnson v. East Boston Savings Bank, 195 N.E. 727, 729-30 (Mass. 1930). In Johnson, for example, it was not enough to allege that several board members had worked together to defame the plaintiff after his termination. The court held that the reputational import of termination was the same whether it was done by a board with many members or by one person. Johnson, 195 N.E. at 730. The court must determine here if Plaintiff has alleged that there was "added force due to combination"; that is, that the injury is greater specifically because of the combined force. Johnson, 195 N.E. at 730.

One decision has pointed out that the most common form of this kind of conspiracy "is to be found in the combined

action of groups of employers or employees, where through the power of combination pressure is created and results brought about different in kind from anything that could have been accomplished by separate individuals." Fleming v. Dane, 22 N.E.2d 609, 611 (Mass. 1939).

Defendant argues that this sort of civil conspiracy is limited to the kind of direct economic coercion described in Fleming. It is true that some sort of economic coercion is typically the goal of this type of civil conspiracy. See Mass. Laborers' Health & Welfare Fund v. Philip Morris, Inc., 62 F. Supp. 2d 236, 244 (D. Mass. 1999). At the same time, nothing in the case law suggests that a plaintiff is limited to pleading purely economic coercion. Participation in the kind of widespread, systematic campaign alleged in the Amended Complaint appears to fall within the possible boundaries of this cause of action.

Alternatively, Defendant argues that Plaintiff has not adequately alleged that the coercive force exhibited by the conspiracy was "peculiarly focused against" Plaintiff. See Mass. Laborers', 62 F. Supp. 2d at 245. This contention flies in the face of the allegations of the Amended

Complaint, which charges that Defendant and his co-conspirators took actions that deliberately singled out Plaintiff and its members for persecution. If the Amended Complaint is accepted, the public in general was never the target; Plaintiff and the LGBTI community in Uganda were. This conspiracy-based coercion obviously had far more power than anything any one individual could have wielded, particularly in light of coordinated governmental and media initiatives associated with the conspiracy. At this motion to dismiss phase, Plaintiff's Amended Complaint has sufficiently alleged that Defendant and his co-conspirators were exploiting a "peculiar coercive power" with the goal of injuring Plaintiff and its members.

3. Negligence.

a. Statute of Limitations.

Massachusetts also applies a three-year statute of limitations to negligence claims. Mass. Gen. Laws ch. 260, § 2A; Genereux v. Am. Beryllia Corp., 577 F.3d 350, 359 (1st Cir. 2009) (citing Olsen v. Bell Tel. Labs, Inc., 445 N.E.2d 609 (Mass. 1983)). Like the civil conspiracy claim, this cause of action accrues at the time the plaintiff is

injured, or reasonably discovers the cause of an injury. Genereux, 577 F.3d at 359-63; John Beaudette, Inc. v. Sentry Ins. A Mut. Co., 94 F. Supp. 2d 77, 108 (D. Mass. 1999). As discussed in the civil conspiracy section, the Amended Complaint sets out that Plaintiff has been injured in the last three years and may not have had sufficient notice of Defendant's involvement in the earlier alleged injurious actions until three years before the filing of the complaint. The facts of record are insufficient to permit the court to allow the motion to dismiss based on this affirmative defense at this stage.

b. Failure to State a Claim.

Defendant argues that there is no duty of care to avoid creating a "virulently hostile environment." (Dkt. No. 33, Def.'s Mem. 70 (quoting Dkt. No. 27, Am. Compl. ¶ 258).) This argument certainly has force, and the state law negligence claim appears to be substantively the most fragile of Plaintiff's asserted causes of action. It will be difficult for Plaintiff to assemble facts during discovery to justify a finding of liability based on the negligent creation of a "dangerous situation." (Dkt. No.

27, Am. Compl. ¶ 259.) Nevertheless, for now, the Amended Complaint has offered the standard articulation of a negligence claim, alleging that Defendant failed to act with reasonable care, with resulting harm to Plaintiff. Onofrio v. Dep't of Mental Health, 562 N.E.2d 1341, 1344-45 (Mass. 1990). The protection of free speech set forth in the First Amendment may make this count particularly difficult to defend at the summary judgment stage. That, however, is a decision for another day.

#### IV. CONCLUSION

For the foregoing reasons, Defendant's motions to dismiss (Dkt. Nos. 21 and 30) are hereby DENIED. The case is hereby referred to Magistrate Judge Kenneth P. Neiman for a pretrial scheduling conference pursuant to Fed. R. Civ. P. 16.

It is So Ordered.

/s/ Michael A. Ponsor  
MICHAEL A. PONSOR  
U. S. District Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

SEXUAL MINORITIES UGANDA,            )  
    Plaintiff,                            )  
  )  
  )    C.A. No. 12-cv-30051-MAP  
  )  
  )  
SCOTT LIVELY,                            )  
    Defendant.                            )

MEMORANDUM AND ORDER REGARDING  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT  
(Dkt. No. 248)

June 5, 2017

PONSOR, U.S.D.J.

I. INTRODUCTION

Plaintiff Sexual Minorities Uganda, which uses the acronym "SMUG," is headquartered in Kampala, Uganda. It comprises member organizations seeking fair and equal treatment of lesbian, gay, bisexual, transgender, and intersex (LGBTI) people in that east African country. Defendant Scott Lively is an American citizen who has aided and abetted a vicious and frightening campaign of repression against LGBTI persons in Uganda.

Defendant's positions on LGBTI people range from the

ludicrous to the abhorrent. He has asserted that "Nazism was in large part an outgrowth of the German homosexual movement,"<sup>1</sup> and that "[i]n seeking the roots of fascism we once again find a high correlation between homosexuality and a mode of thinking which we identify with Nazism."<sup>2</sup> He has tried to make gay people scapegoats for practically all of humanity's ills, finding "through various leads, a dark and powerful homosexual presence in . . . the Spanish Inquisition, the French 'Reign of Terror,' the era of South African apartheid, and the two centuries of American slavery."<sup>3</sup>

This crackpot bigotry could be brushed aside as pathetic, except for the terrible harm it can cause. The record in this case demonstrates that Defendant has worked with elements in Uganda who share some of his views to try to repress freedom of expression by LGBTI people in Uganda,

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<sup>1</sup> Scott Lively, My Life in His Hands: A Testimony of God's Grace and Goodness (Ex. 24), Dkt. No. 293, Attach. 26 at 10.

<sup>2</sup> Scott Lively, The Pink Swastika 129 (4th ed.) (Ex. 177), Dkt. No. 293, Attach. 189.

<sup>3</sup> Scott Lively, The Poisoned Stream: "Gay" Influence in Human History (Ex. 71), Dkt. No. 293, Attach. 79.

deprive them of the protection of the law, and render their very existence illegal. He has, for example, proposed twenty-year prison sentences for gay couples in Uganda who simply lead open, law-abiding lives.

Plaintiff has filed this lawsuit under the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350, seeking monetary damages and injunctive relief based on Defendant's crimes against humanity. Defendant now seeks summary judgment in his favor arguing that, on the facts of record, the ATS provides no jurisdiction over a claim for injuries -- however grievous -- occurring entirely in a foreign country such as Uganda. Because the court has concluded that Defendant's jurisdictional argument is correct, the motion will be allowed.

Anyone reading this memorandum should make no mistake. The question before the court is not whether Defendant's actions in aiding and abetting efforts to demonize, intimidate, and injure LGBTI people in Uganda constitute violations of international law. They do. The much narrower and more technical question posed by Defendant's motion is whether the limited actions taken by Defendant on

American soil in pursuit of his odious campaign are sufficient to give this court jurisdiction over Plaintiff's claims. Since they are not sufficient, summary judgment is appropriate for this, and only this, reason.<sup>4</sup>

## II. FACTUAL BACKGROUND

The facts will be viewed in the light most favorable to Plaintiff, as required by Fed. R. Civ. P. 56. Few facts are actually in dispute.<sup>5</sup> The summary below will concentrate mainly on actions allegedly taken by Defendant within the United States, since that is the focus of the ATS analysis.

It is undisputed that Defendant strongly opposes what he calls the "gay movement" and has spoken in numerous venues to express his view that "homosexual activism" is a "very fast-growing social cancer" that has harmed America. ("Letter to the Russian People" (Ex. 3), Dkt. No. 293,

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<sup>4</sup> Defendant has offered several satellite arguments in support of judgment in his favor in addition to lack of jurisdiction. Because the jurisdictional argument prevails and judgment must enter for Defendant on that basis, it is not necessary to address any of Defendant's peripheral contentions.

<sup>5</sup> The facts are drawn from Defendant's Memorandum of Law in Support of Summary Judgment (Dkt. No. 257) and the exhibits relied on therein, as well as Plaintiff's Counter Statement of Material Facts (Dkt. No. 270) and its exhibits in support (Dkt. No. 293).

Attach. 3.) He has, in addition, published several books on this topic, including Defend the Family: Activist Handbook (Ex. 9, Dkt. No. 293, Attach. 9) and Redeeming the Rainbow (Ex. 20, id. at Attach. 20), which expand on this theme. As noted above, in his book, The Pink Swastika: Homosexuality in the Nazi Party, he offers the bizarre argument that a fascistic and violent gay movement in pre-war Germany propelled the rise of Nazism. (Excerpts in Ex. 177, Dkt. No. 293, Attach. 189.) Some of his suggestions sink to bizarre depths, such as the following:

We can see that the roots of Nazism are fundamentally interrelated with the homosexuality of its philosophers.... (Although it may be mere coincidence, we are reminded that the Latin root of fascism is *fascis*, "a bundle of rods." A diminutive of *fascis* is "faggot," a common pejorative for homosexuals.)

(The Pink Swastika 141 (Ex. 177), Dkt. No. 293, Attach. 189 141.)

More chillingly, he has stated, "[T]he Bible treats homosexuality as a form of rebellion against God even worse (from God's perspective) than mass murder." (Scott Lively, "Is Homosexuality Worse than Mass Murder in the Bible?" (posted Dec. 9, 2014) (Ex. 2), Dkt. No. 293, Attach. 2).

Defendant's first contact with Uganda, so far as the

record reveals, occurred in 2002, when he traveled there twice to participate in a conference, to give speeches, and to make media appearances in which he forcefully presented his execrable views about the supposed evils of homosexuality. No evidence suggests that the two appearances in Uganda in 2002 involved any significant activity in the United States, beyond -- it may be inferred -- receipt of the invitations and arrangements for travel.

In the years that followed these first trips to Uganda, Defendant traveled to other foreign countries attending meetings and making speeches to encourage persecution of LGBTI people. He eventually built somewhat of an international reputation for his virulently hateful rhetoric. During this period the record contains negligible evidence of actions taken by Defendant from the territory of the United States directed specifically at Uganda or the LGBTI community there.

In October of 2007, Defendant and Stephen Langa, Executive Director of the Family Life Network in Uganda, exchanged emails discussing another possible trip to Uganda by Defendant to attend a contemplated conference -- again,

on the supposed dangers of homosexuality. In December of 2007, they exchanged views on who should be invited to the conference, and Defendant sent Langa a copy of his book, Defend the Family: Activist Handbook.

At the end of 2008, the Ugandan High Court issued an opinion awarding monetary damages to victims of police violence that occurred at the home of the SMUG founder, Victor Mukasa. The opinion also confirmed the right of LGBTI people in Uganda to seek redress in the courts for violations of their civil liberties. Plaintiff alleges that as a result of this court decision, Defendant's associates in Uganda became alarmed. An exchange of emails ensued in December 2008, through which Defendant communicated with Martin Ssempe, a United States citizen and Ugandan pastor who, to some extent, shared Defendant's views. Ssempe sought permission to make copies of Defendant's book Seven Steps to Recruit Proof Your Child. The book laid out Defendant's baseless and contemptible claim that gay people present special risks to minors.<sup>6</sup> Ssempe also requested

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<sup>6</sup> The United States Supreme Court itself has recognized the dignified and proper status of "tens of thousands of children now being raised by same-sex couples."

additional resource materials from Defendant regarding the dangers supposedly posed by gay persons generally.

In 2009, Langa organized the conference in Uganda discussed by Defendant and him back in 2007. The event was billed as a "Seminar on Exposing the Homosexual Agenda," and Defendant again appeared and spoke. After his return, Defendant had further email exchanges with Ssemu, as well as with James Buturo, a Ugandan cabinet minister, and David Bahati, a member of the Ugandan parliament. These internet communications discussed a draft piece of legislation being placed before the Ugandan parliament, called the "Anti-Homosexuality Bill" ("AHB"), proposing the death penalty for homosexuality. Defendant reviewed and offered suggestions regarding the draft, recommending certain modifications to soften public backlash, including a reduction of the penalty from death to twenty years imprisonment.<sup>7</sup>

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United States v. Windsor, 133 S. Ct. 2675, 2694 (2013). As the Court noted, these children do not deserve to be told by anyone that their parents' "marriage is less worthy than the marriages of others." Id. at 2696.

<sup>7</sup> The Anti-Homosexual Bill (AHB) was first introduced into Uganda's parliament in 2009. The earliest version included the penalty of death for certain "aggravated" acts of homosexuality. During the four years that the legislation was under consideration, that provision was

The record thereafter contains evidence of a dozen or so substantive emails in the 2009-2014 time frame between Defendant and individuals in Uganda discussing ways to move the AHB forward, to draft modified legislation aimed at repressing LGBTI people in Uganda, and to deter advocacy on behalf of LGBTI people and exercise by them of their civil rights. So far as the record indicates, these substantive emails were not numerous or frequent. A larger number of social, non-substantive emails were also exchanged, as well as emails communicating internet links to articles or attaching copies of written material. Plaintiff's counsel has identified specific emails sent by Defendant in aid of the Ugandan campaign in December 2009; July and August 2010; February, July, August, and December 2012; August 2013; and April 2014.<sup>8</sup>

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modified to life imprisonment. The revised bill ultimately passed the Ugandan parliament on December 20, 2013, and was signed into law the following February, upon which it became the Anti-Homosexuality Act of 2014 (AHA). However, on August 1, 2014, the Constitutional Court of Uganda ruled the AHA invalid on the ground that it was not passed by a sufficient quorum of legislators. (Tuhaise Decl. ¶¶ 9-12, Dkt. No. 249, Attach. 3.)

<sup>8</sup> As Defendant's counsel points out, it is unclear exactly where Defendant was when he sent these emails.

To summarize now that discovery has closed, the evidence that the actions of the Defendant have "touched and concerned" the territory of the United States is that Defendant is a citizen of the United States living in Massachusetts, that he traveled from the United States to Uganda twice in 2002 and once in 2009, that he sent copies of his writings and other material to Uganda on a few occasions, and that over twelve years he transmitted emails, probably from the United States, to various people in Uganda. Of these perhaps a score, at most, included encouragement, advice, and guidance regarding the campaign to intimidate and repress the Ugandan LGBTI community.

### III. DISCUSSION

As noted above, Plaintiff relies for jurisdiction entirely on the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350. After the complaint was filed in March of 2012, Defendant responded with threshold motions to dismiss

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Plaintiff points to contextual details in some emails that suggest that Defendant hit the "SEND" button while he was physically within the territory of the United States. As to others, Defendant's location cannot be discerned. Defendant notes that during this time he was frequently traveling outside the United States for various reasons.

pursuant to Fed. R. Civ. P 12(b) (Dkt. Nos. 21 and 30), attacking this court's jurisdiction under the ATS on two grounds.

First, Defendant argued that aiding and abetting persecution of LGBTI people, no matter how unhinged and malignant, simply did not violate international norms with sufficient clarity to place it within the narrow class of claims subject to ATS jurisdiction. This court emphatically rejected that argument, holding that "[w]idespread, systematic persecution of LGBTI people constitutes a crime against humanity that unquestionably violates international norms." Sexual Minorities of Uganda v. Lively, 960 F.Supp.2d 304, 316 (D. Mass. 2013). Aiding and abetting the commission of this crime, this court held, "is one of the limited group of international law violations for which the ATS furnishes jurisdiction." Id. at 316-321 (discussing persecution of LGBTI people as a crime against humanity).

Second, Defendant argued that, even if his conduct fell substantively under the ATS umbrella, the exercise of jurisdiction by this American court when the injury occurred in a foreign country was improper under the ATS as construed

by the Supreme Court in Kiobel v. Royal Dutch Petroleum Co., 133 S. Ct. 1659 (2013). In other words, the argument ran, even if a crime against humanity may have been committed, this court could not exercise jurisdiction under the ATS where the crime occurred in Uganda. In denying Defendant's motions to dismiss on this ground, the court found that the allegations of the complaint were sufficient at that preliminary stage to clear the relatively low Rule 12 hurdle. 960 F.Supp.2d at 310-311. The court emphasized, however, that it was reaching this conclusion based on the summary of facts as alleged in the complaint. 960 F.Supp.2d at 311 n.2.

With discovery now completed, the court is in a position to weigh this second argument on a fully developed record. The parties agree that the jumping-off place for this analysis is the Supreme Court's Kiobel decision, which came down after the complaint was filed.

The petitioners in Kiobel were residents of Ogoniland in Nigeria, where the respondents Royal Dutch Petroleum and Shell Transport and Trading Company -- incorporated in the Netherlands and England respectively -- were conducting oil

exploration and production. After local residents began protesting the destruction of the environment caused by a joint subsidiary of the respondents, the respondents enlisted the help of the Nigerian government to violently suppress this opposition. For years, the two respondent corporations, acting outside the United States, aided and abetted the Nigerian military and police -- providing supplies, transportation, and compensation -- in carrying out beatings, rapes, murders, and arbitrary arrests of residents, including the four petitioners. Suit was filed in the Southern District of New York, asserting jurisdiction under the Alien Tort Statute and alleging crimes against humanity aided and abetted by the respondent corporations.

Chief Justice Roberts's majority opinion began by noting the brief text of the ATS, passed as part of the Judiciary Act of 1789, which simply states that "[t]he district courts shall have original jurisdiction of 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. He noted that the statute did not provide any substantive cause of action but was "enacted

on the understanding that the common law would provide a cause of action for [a] modest number of international law violations." Kiobel, 133 S. Ct. at 1663 (citing Sosa v. Alvarez-Machain, 542 U.S. 692, 714 (2004)) (quotations omitted and alterations in original).

As in the case now before this court, the question in Kiobel was not whether petitioners stated a substantive cause of action under the ATS. A claim for aiding and abetting a crime against humanity, both in this case and in Kiobel, could potentially state a proper substantive cause of action under the ATS. The question -- again, here as well as in Kiobel -- was whether the ATS provided a court with jurisdiction over such a claim when the offensive conduct and the injury occurred "in the territory of a foreign sovereign." Id. at 1664.

Chief Justice Roberts held that the ATS did not provide such jurisdiction. His analysis began with the recognition of "a canon of statutory interpretation known as the presumption against extraterritorial application." Id. Under this canon, unless a particular law contains a "clear indication of an extraterritorial application, it has none."

Id. (citing Morrison v. National Australia Bank Ltd., 561 U.S. 247, 255 (2010)) (quotations omitted). The Chief Justice found that there was "no indication that the ATS was passed to make the United States a uniquely hospitable forum for the enforcement of international norms." Id. at 1668. Where neither respondent was an American citizen and where neither was alleged to have taken any action in the United States directed at Nigeria, the mere fact that the respondents had a corporate presence in this country was insufficient to provide a jurisdictional foundation under the ATS.

It must be recognized that Kiobel presents, in some ways, a weaker case for extraterritorial application of the ATS than the case now before this court. Neither respondent corporation in Kiobel was a citizen of the United States, whereas Defendant here is. Moreover, beyond "mere corporate presence," id. at 1669, neither corporation had any connection to the United States, and neither committed acts in this country related to the outrages in Nigeria. In contrast, Defendant in this case resides in Springfield, Massachusetts, and at least some of the emails he sent to

Uganda to aid and abet the campaign of repression against LGBTI people in that country originated in the United States.

It is important to note, however, that even where a plaintiff's claims "touch and concern the territory of the United States," Kiobel holds that jurisdiction under the ATS will not lie unless this contact has "sufficient force to displace the presumption against extraterritorial application." Id. (citing Morrison, 561 U.S. at 266-74). As the Court noted in Morrison, "the presumption against extraterritorial application would be a craven watchdog indeed if it retreated to its kennel whenever some domestic activity is involved in the case." Morrison, 561 U.S. at 266 (emphasis in original). The question before the court now is whether the sporadic emails sent by Defendant from the United States offering encouragement, guidance, and advice to a cohort of Ugandans prosecuting a campaign of repression against the LGBTI community in their country constitutes the sort of forceful contact with the United States that would overcome the presumption against extraterritoriality.

The clear import of Kiobel is that the level of contact presented in this case is not enough. Justice Alito offered a concurrence for himself and Justice Thomas suggesting a stricter view of the ATS than the majority opinion describes. Justice Alito would permit an action to escape the presumption against extraterritorial application "only if the event or relationship that was the "focus" of congressional concern under the relevant statute takes place within the United States." Kiobel, 133 S. Ct. at 1670 (internal quotations omitted). While it is difficult to discern exactly how this "focus" test might be applied, it is equally hard to see how the scenario revealed here, no matter how disturbing, could pass muster.

Justice Breyer's separate concurrence on behalf of himself and three other justices is also very unhelpful to Plaintiff here. He agreed that jurisdiction under the ATS did not lie in Kiobel.

The plaintiffs are not United States nationals but nationals of other nations. The conduct at issue took place abroad. And the plaintiffs allege, not that the defendants directly engaged in acts of torture, genocide, or the equivalent, but that they helped others (who are not American nationals) to do so.

Id. at 1678.

All three of the factors identified by Justice Breyer's concurrence as deterrents to the exercise of ATS jurisdiction are present in this case. Thus, at least six of the nine justices in Kiobel seem to line up against Plaintiff.

Circuit court opinions subsequent to Kiobel, while not precisely on point, support the conclusion that no ATS jurisdiction adheres in this case. The most instructive are Al Shimari v. CACI Premier Technology, Inc., 758 F.3d 516 (4th Cir. 2014); Mastafa v. Chevron Corp., 770 F.3d 170 (2d Cir. 2014); and Adhikari v. Kellogg Brown & Root, Inc., 845 F.3d 184 (5th Cir. 2017).

Al Shimari involved a corporate defendant that trained and supervised the non-military, contract employees who committed acts of torture at the Abu Ghraib detention facility during the Iraq war. 758 F.3d 516. Extensive relevant conduct within the United States included that the defendant (an American corporation based in the United States) actually hired the employees who directly perpetrated the acts of torture, received substantial payments based on contracts issued by the U.S. government in

the United States, was aware of its employees' misconduct, encouraged the misconduct, and attempted to cover it up when it was discovered. Based on this, the Fourth Circuit found that the plaintiffs' claims touched and concerned the territory of the United States with sufficient force to rebut the presumption against extraterritorial application of the ATS. Defendants' conduct in Al Shimari went far beyond simply aiding and abetting; they had direct responsibility through actions taken in the United States for the crimes against humanity committed by their employees. Nothing approaching this level of conduct based in the United States can be found in the record of the case now before this court.

In Mastafa, the plaintiffs were victims of human rights abuses committed by the regime of Saddam Hussein. 770 F.3d 170. They brought suit against American corporations who aided Hussein in obtaining illegal payments in violation of the United Nations Oil-for-Food program. Chevron's conduct included "multiple domestic purchases and financing transactions" in the United States that facilitated kickbacks and surcharge payments to the Hussein regime. Id.

at 191. This conduct, the Second Circuit found, touched and concerned the United States with sufficient force to displace the presumption against extraterritorial application of the ATS.<sup>9</sup> Again, no domestic conduct by Defendant here approaches the level found on the part of the defendants in Mastafa.

In Adhikari, the plaintiffs accused the defendant, a U.S. military contractor, of aiding and abetting in unlawful human trafficking to obtain cheap labor to work at the Al Asad Air Base, a U.S. military installation near Ramadi, Iraq. 845 F.3d 184. The plaintiffs were family members of Nepali workers who were dragooned and forced against their will to work in Iraq. Tragically, most were eventually murdered by Iraqi insurgents. The record reflected payments by the defendant from the United States to middlemen who arranged the illegal trafficking, as well as knowledge on the part of the defendant of the trafficking. Nevertheless, the Fifth Circuit upheld the ban against the exercise of

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<sup>9</sup> Despite this finding, the court ultimately concluded that the allegations of the complaint were insufficient to demonstrate that the defendants acted with the purpose of violating international law and therefore affirmed the dismissal of the complaint. Mastafa, 770 F.3d at 194.

extraterritorial jurisdiction, finding that "all the conduct comprising the alleged international law violations occurred in a foreign country." Id. at 197. The financial transactions, the court held, were insufficient to displace the presumption against extraterritoriality, and the actual knowledge of trafficking was limited to the defendant's overseas employees. Id. at 198.

In this case, now that discovery is complete, the record reveals that Defendant supplied no financial backing to the detestable campaign in Uganda, he directed no physical violence, he hired no employees, and he provided no supplies or other material support. His most significant efforts on behalf of the campaign occurred within Uganda itself, when he appeared at conferences, meetings, and media events. The emails sent from the United States providing advice, guidance, and rhetorical support for the campaign on the part of others in Uganda simply do not rise to the level of "force" sufficient to displace the presumption against extraterritorial application.

The world is now wrapped in a vast network of internet communications. If emails -- or at least emails of the

number and type disclosed on the record here -- were enough to supply the "force" sufficient to justify the exercise by American courts of jurisdiction over wrongs committed in foreign countries, the presumption against extraterritoriality described in Kiobel would be a fiction.

Moreover, the record reveals that in this case serious potential "foreign policy concerns" exist -- a problem explicitly identified in Kiobel. 133 S. Ct. at 1664.

Plaintiff's complaint accuses highly placed members of the Ugandan legislative and executive branches of complicity with Defendant. Moreover, the Ugandan judicial system has weighed in vigorously on the local issues that Plaintiff wishes to have this court adjudicate here in the United States. More than in Al Shimari, Mastafa, Adhikari -- and even, perhaps in Kiobel -- this case presents the potential for conflict with the sovereignty of a foreign nation. This counsels a "need for judicial caution." Kiobel, 133 S. Ct. at 1664.

For the reasons described above, the court will allow Defendant's motion to dismiss, finding no jurisdiction under the Alien Tort Statute over Plaintiff's federal claims.

Given the absence of jurisdiction over the federal law claims, the court will decline to exercise supplemental jurisdiction over the state law claims. 28 U.S.C. § 1367(c) (3). See United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966). While the court has the discretion to address these claims, the sensitivity of the issues raised makes it more prudent to allow a court of the Commonwealth of Massachusetts to take the lead. The state law claims will therefore be dismissed, without prejudice to their refiling in state court, if Plaintiff wishes to take this route.

#### IV. CONCLUSION

Several features emerge from the discussion above.

First, the allegations in the complaint fully supported the court's 2013 denial of Defendant's threshold motion to dismiss. Concrete averments set forth the extremity of Defendant's homophobia and his determination to vilify, repress, and injure the LGBTI community, both generally and in Uganda particularly. Specific allegations confirmed that Defendant took some action from inside the United States in pursuit of his goal. The ruling that the complaint passed

muster under Fed. R. Civ. P. 12, however, "d[id] not obviate the district court's continuing obligation to ensure its own jurisdiction as the case proceed[ed] to discovery."

Mustafa, 770 F.3d at 187. Where the record as it evolved during discovery cast doubt on the court's jurisdiction, the court had an obligation to revisit the issue.

Second, discovery confirmed the nature of Defendant's, on the one hand, vicious and, on the other hand, ludicrously extreme animus against LGBTI people and his determination to assist in persecuting them wherever they are, including Uganda. The evidence of record demonstrates that Defendant aided and abetted efforts (1) to restrict freedom of expression by members of the LGBTI community in Uganda, (2) to suppress their civil rights, and (3) to make the very existence of LGBTI people in Uganda a crime. The record also confirms that these efforts to intimidate and injure the LGBTI community in Uganda were, unfortunately, to some extent successful.

Third, Defendant's status as an American citizen and his physical presence in the United States is clearly not enough under controlling authority to support ATS

extraterritorial jurisdiction. The sporadic trail of emails sent by Defendant to Uganda does not add enough to the record to demonstrate that Plaintiff's claims "touch and concern the territory of the United States . . . with sufficient force to displace the presumption against extraterritorial application." Kiobel, 133 S. Ct. at 1669.

For the foregoing reasons, Defendant's motion for summary judgment (Dkt. No. 248) based on lack of jurisdiction is hereby ALLOWED. As noted, the court will decline to exercise supplemental jurisdiction over the two purely state law claims. As to them, the motion for summary judgment is ALLOWED, without prejudice to re-filing in state court if Plaintiff desires. The clerk will enter judgment of dismissal. This case may now be closed.

It is so ordered.

  
MICHAEL A. PONSOR  
U. S. District Judge

**UNITED STATES DISTRICT COURT**  
DISTRICT OF MASSACHUSETTS

SEXUAL MINORITIES UGANDA,  
Plaintiff,

v.

SCOTT LIVELY,  
Defendant.

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)  
)  
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)  
)

CIVIL ACTION NO. 3:12-cv-30051-MAP

**JUDGMENT IN A CIVIL CASE**

Michael A. Ponsor, D.J.

**Jury Verdict.** This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

**Decision by the Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

**IT IS ORDERED AND ADJUDGED**

**JUDGMENT** of dismissal pursuant to the court’s memorandum and order entered this date, granting defendant’s motion for summary judgment.

**ROBERT M. FARRELL,**  
CLERK OF COURT

Dated: June 5, 2017

By /s/ Maurice G. Lindsay  
Maurice G. Lindsay  
Deputy Clerk

(Civil Judgment of Dismissal -8 - MGM.wpd - 11/98)  
[jgm.]

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
SPRINGFIELD DIVISION**

<b>SEXUAL MINORITIES UGANDA,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>Plaintiff,</b>	:	<b>3:12-CV-30051-MAP</b>
	:	
<b>v.</b>	:	<b>JUDGE MICHAEL A. PONSOR</b>
	:	
<b>SCOTT LIVELY, individually and as president of Abiding Truth Ministries,</b>	:	
	:	
<b>Defendant.</b>	:	

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**NOTICE OF APPEAL**

Defendant, Scott Lively, hereby notices his appeal to the United States Court of Appeals for the First Circuit from the following Orders of this Court:

- 1) Order Granting Defendant Scott Lively’s Motion for Summary Judgment<sup>1</sup> (dkt. 350); and
- 2) Memorandum and Order denying Defendant Scott Lively’s Motion to Dismiss (dkt. 59).

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<sup>1</sup> Although this Order granted summary judgment in favor of Defendant-Appellant Lively, multiple jurisdictional grounds exist for its review by the First Circuit, including: (1) to reform the Order and eliminate from it certain extraneous but prejudicial language immaterial to the disposition of the case and which the district court had no jurisdiction to entertain or enter; *see, e.g., Elec. Fittings Corp. v. Thomas & Betts*, 307 U.S. 241, 242 (1939); *Camreta v. Greene*, 563 U.S. 692, 702-703 (2011); *Conwill v. Greenber Taurig, L.L.P.*, 448 F. App’x 434, 436-37 (5th Cir. 2011); and (2) to correct the district court’s error in failing to dismiss Plaintiff’s state law claims with prejudice, such that they cannot be re-filed in state court. *See e.g., LaBuhn v. Bulkmatic Transport Co.*, 865 F.2d 119, 121-122 (7th Cir. 1988); *Briscoe v. Fine*, 444 F.3d 478, 495-96 (6th Cir. 2006).

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically with the Court on June 8, 2017. Service will be effectuated by the Court's electronic notification system upon all counsel or parties of record.

/s/ Horatio G. Mihet  
Horatio G. Mihet  
Attorney for Defendant Scott Lively

# United States Court of Appeals For the First Circuit

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No. 17-1593

SEXUAL MINORITIES UGANDA

Plaintiff - Appellee

v.

SCOTT LIVELY, individually and as President of Abiding Truth Ministries

Defendant - Appellant

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## CASE OPENING NOTICE

Issued: June 14, 2017

The above-captioned appeal was docketed in this court today pursuant to Rule 12 of the Federal Rules of Appellate Procedure. The above case number and caption (unless modified or amended as reflected in the heading of future court notices or orders) should be used on all papers subsequently submitted to this court. If any party disagrees with the clerk's office's designation of the parties on appeal, it must file a motion to amend the caption with any supporting documentation attached. Absent an order granting such a motion, the parties are directed to use the above caption on all pleadings related to this case.

Appellant must complete and return the following forms to the clerk's office by **June 28, 2017** to be deemed timely filed:

- [Appearance Form](#)
- [Transcript Report/Order Form](#) (Please carefully read the instructions for completing and filing this form.)
- [Docketing Statement](#)

These forms are available on the court's website at [www.ca1.uscourts.gov](http://www.ca1.uscourts.gov), under "Forms & Notices." Failure to comply with the deadlines set by the court may result in dismissal of the appeal for lack of diligent prosecution. See 1st Cir. R. 3.0, 10.0, and 45.0.

Upon confirmation by the circuit clerk that the record is complete either because no hearing was held, no transcript is necessary, or the transcript is on file, the clerk's office will set the briefing schedule and forward a scheduling notice to the parties.

Within seven days of filing the notice of appeal, appellant must pay the filing fee to the district court clerk. An indigent appellant who seeks to appeal in forma pauperis must file a motion and financial affidavit in the district court in compliance with Fed. R. App. P. 24. Unless this court is provided with notice of paying the filing fee to the clerk of the district court or filing a motion seeking in forma pauperis status within fourteen days of the date of this notice, this appeal may be dismissed for lack of prosecution. 1st Cir. R. 3.0(b).

An appearance form should be completed and returned immediately by any attorney who wishes to file pleadings in this court. 1st Cir. R. 12.0(a) and 46.0(a)(2). Any attorney who has not been admitted to practice before the First Circuit Court of Appeals must submit an application and fee for admission using the court's Case Management/Electronic Case Files ("CM/ECF") system prior to filing an appearance form. 1st Cir. R. 46.0(a). *Pro se* parties are not required to file an appearance form.

Dockets, opinions, rules, forms, attorney admission applications, the court calendar and general notices can be obtained from the court's website at [www.ca1.uscourts.gov](http://www.ca1.uscourts.gov). Your attention is called specifically to the notice(s) listed below:

- [Notice to Counsel and Pro Se Litigants](#)
- [Transcript Notice](#)

If you wish to inquire about your case by telephone, please contact the case manager at the direct extension listed below.

Margaret Carter, Clerk

UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT  
John Joseph Moakley  
United States Courthouse  
1 Courthouse Way, Suite 2500  
Boston, MA 02210  
Case Manager: Gerry Claude - (617) 748-4275

# United States Court of Appeals For the First Circuit

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## NOTICE OF ELECTRONIC AVAILABILITY OF CASE INFORMATION

The First Circuit has implemented the Federal Judiciary's Case Management/Electronic Case Files System ("CM/ECF") which permits documents to be filed electronically. In addition, most documents filed in paper are scanned and attached to the docket. In social security and immigration cases, members of the general public have remote electronic access through PACER only to opinions, orders, judgments or other dispositions of the court. Otherwise, public filings on the court's docket are remotely available to the general public through PACER. Accordingly, parties should not include in their public filings (including attachments or appendices) information that is too private or sensitive to be posted on the internet.

Specifically, Fed. R. App. P. 25(a)(5), Fed. R. Bank. P. 9037, Fed. R. Civ. P. 5.2 and Fed. R. Cr. P. 49.1 require that parties not include, or partially redact where inclusion is necessary, the following personal data identifiers from documents filed with the court unless an exemption applies:

- **Social Security or Taxpayer Identification Numbers.** If an individual's social security or taxpayer identification number must be included, only the last four digits of that number should be used.
- **Names of Minor Children.** If the involvement of a minor child must be mentioned, only the initials of that child should be used.
- **Dates of Birth.** If an individual's date of birth must be included, only the year should be used.
- **Financial Account Numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.
- **Home Addresses in Criminal Cases.** If a home address must be included, only the city and state should be listed.

See also Rule 12 of this court's Administrative Order Regarding Case Management/Electronic Case Files System.

If the caption of the case contains any of the personal data identifiers listed above, the parties should file a motion to amend caption to redact the identifier.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, national security information, and sensitive security information as described in 49 U.S.C. § 114.

Attorneys are urged to share this notice with their clients so that an informed decision can be made about inclusion of sensitive information. The clerk will not review filings for redaction. Filers are advised that it is the experience of this court that failure to comply with redaction requirements is most apt to occur in attachments, addenda, or appendices, and, thus, special attention should be given to them. For further information, including a list of exemptions from the redaction requirement, see <http://www.privacy.uscourts.gov/>.

# United States Court of Appeals For the First Circuit

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## NOTICE TO COUNSEL REGARDING MANDATORY REGISTRATION AND TRAINING FOR ELECTRONIC FILING (CM/ECF)

Beginning January 1, 2010, CM/ECF is mandatory for all attorneys filing in this court. Therefore, we strongly encourage all attorneys who practice in this court to register as an ECF Filer as soon as possible and become familiar with the system. Before you may file documents electronically in the CM/ECF system, you must complete the following steps.

- **Complete both of the **mandatory** Electronic Learning Modules (ELMs) located at [www.ca1.uscourts.gov](http://www.ca1.uscourts.gov)** on the CM/ECF (Electronic Filing) page. The lessons provide a step-by-step overview of how to file various types of documents, as well as how to avoid common filing errors.
- **Apply for admission if you are not a member of this court's bar.** In order to register as an ECF Filer, attorneys must be admitted to the bar of this court. For information on attorney admission, go to the Forms & Instructions page on the First Circuit's website at [www.ca1.uscourts.gov](http://www.ca1.uscourts.gov).
- **Register for a PACER account at <http://www.pacer.psc.uscourts.gov>** if you or your law firm have not previously done so. A PACER account is required to view docket reports and electronically filed documents.
- **Register with PACER for a First Circuit Appellate ECF Filer account at <http://www.pacer.psc.uscourts.gov>.** You must register for an ECF Filer account with this court order to electronically file documents through the court's CM/ECF system. If you previously registered through PACER for electronic noticing in the First Circuit, and you are a member of the bar of the First Circuit Court of Appeals, you do not have to re-register for an appellate CM/ECF account.
- **Review the Administrative Order Regarding CM/ECF (which sets forth rules governing electronic filing) and the CM/ECF User's Guide.** Complete information about CM/ECF is available on the First Circuit's website at [www.ca1.uscourts.gov](http://www.ca1.uscourts.gov).

cc:

Baher Azmy, Christopher Gerard Betke, Judith Brown Chomsky, Joshua Colangelo-Bryan, Roger Gannam, Kaleb McNeely, Horatio Gabriel Mihet, Philip D. Moran, Luke S. Ryan, Jeena D. Shah, Pamela C. Spees, Mathew D. Staver, Mark S. Sullivan

# United States Court of Appeals For the First Circuit

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## NOTICE TO ALL CM/ECF USERS REGARDING "NATIVE" PDF REQUIREMENT

All documents filed electronically with the court must be submitted as "native" Portable Document ("PDF") files. See Rule 1 of the [Administrative Order](#) Regarding Case Management/Electronic Case Files System ("CM/ECF"). A **native PDF file** is created by electronically converting a word processing document to PDF using Adobe Acrobat or similar software. A **scanned PDF file** is created by putting a paper document through an optical scanner. Use a scanner ONLY if you do not have access to an electronic version of the document that would enable you to prepare a native PDF file.

If you fail to file a document in the correct format, you will be asked to resubmit it. Instructions for converting Word or WordPerfect documents to PDF are available on the court's website at [http://www.ca1.uscourts.gov/sites/ca1/files/WP\\_Conversion.pdf](http://www.ca1.uscourts.gov/sites/ca1/files/WP_Conversion.pdf).