



1           THESE MATTERS came before the court on August 8, 2002, for hearing  
2 of defendant Commonwealth's motion to strike or dismiss the fifth amended  
3 complaint and on September 26, 2002, for hearing of defendant United States'  
4 motion to strike or dismiss the fifth amended complaint. Plaintiffs appeared by  
5 and through their attorney, Bruce L. Jorgensen; defendant Commonwealth  
6 appeared by and through Assistant Attorneys General Andrew Clayton and  
7 Karen M. Klaver; and, defendant United States appeared by and through Cindy  
8 S. Ferrier of the United States Department of Justice, Office of Immigration  
9 Litigation - Civil Division, and Assistant United States Attorney Gregory Baka.

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14           THE COURT, having considered the written arguments of defendants<sup>1</sup>  
15 and the oral arguments of plaintiffs and defendants, rules as follows:

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17           Federal Rule of Civil Procedure 8 requires only a "short and plain  
18 statement of the claim showing that the pleader is entitled to relief." A motion  
19 to dismiss for failure to state a claim upon which relief can be granted will  
20 succeed only if from the complaint it appears beyond doubt that plaintiffs can  
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          The court denied plaintiffs' motion to extend the time in which to file  
their opposition to defendant Commonwealth's motion to dismiss. Plaintiffs  
filed no opposition to defendant United States' motion to dismiss. Nevertheless,  
the court allowed plaintiffs' attorney to be heard at oral argument.

1 prove no set of facts in support of their claim that would entitle them to relief.  
2 Morley v. Walker, 175 F.3d 756, 759 (9th Cir. 1999). All allegations of material  
3 fact are taken as true and construed in the light most favorable to the non-  
4 moving party. Lipton v. Pathogenesis Corp., 284 F.3d 1027, 1035 (9th Cir.  
5 2002). In reviewing the sufficiency of the complaint, the “issue is not whether a  
6 plaintiff will ultimately prevail but whether the claimant is entitled to offer  
7 evidence to support the claims.” Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct.  
8 1683, 1686 (1974). Dismissal without leave to amend is improper unless it is  
9 clear that the complaint could not be saved by any amendment. Lee v. City of  
10 Los Angeles, 250 F.3d 668, 692 (9th Cir. 2001). However, the court also has  
11 discretion to refuse to allow another attempt to properly plead claims for relief  
12 where it concludes there has been undue delay, bad faith or a dilatory motive,  
13 that to allow amendment would be futile, that there would be prejudice to the  
14 opposing party, or if there has been repeated failure to cure deficiencies by  
15 previous amendments. Schwarzer, Tashima, and Wagstaffe *Federal Civil*  
16 *Procedure Before Trial* ¶ 8:416 (2001), see also e.g. Steckman v. Hart Brewing, 143  
17 F.3d 1293, 1298 (9th Cir. 1998); Sisseton-Wahpeton Sioux Tribe v. United States,  
18 90 F.3d 351, 355 (9th Cir. 1996).

1                                    Summary of Rulings on the Fourth Amended Complaint

2                                    By orders dated April 11 and April 19, 2002, the court granted in part and  
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4 denied in part defendant Commonwealth's motion to dismiss the fourth  
5 amended complaint.<sup>2</sup>

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7                                    The substantive claims for relief in the fourth amended complaint can be  
8 characterized as follows. Count 1<sup>3</sup> alleged a common law claim for unlawful  
9 imprisonment, in violation of the Alien Tort Claims Act ("ATCA") and  
10 unspecified sections of the *Restatement (Third) of the Foreign Relations Law of the*  
11 *United States*. Count 2 alleged a policy and practice by defendants Zachares,  
12 Goldberg, and the Commonwealth of violating the ATCA and unspecified  
13 sections of the *Restatement (Third) of the Foreign Relations Law of the United*  
14 *States*. Count 3 alleged violations of plaintiffs' substantive and procedural due  
15 process rights and sought injunctive relief. Count 4 alleged a conspiracy by  
16 defendant Zachares and others. Count 5 alleged violations of the  
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23                                    Defendant United States chose to answer the fourth amended complaint.

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25                                    In the interests of uniformity and clarity, the court adopts the format, e.g.  
26 "count 1," used by plaintiffs to designate their claims in the fourth amended  
claim for relief."

1 misrepresentation, concealment, and nondisclosure sections of *Restatement*  
2 (*Second*) of *Torts*, said sections applicable to the Commonwealth through 7  
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4 N.Mar.I. Code § 3401. The sixth count alleged estoppel based on the foregoing  
5 alleged acts of misrepresentation. The final count, count 7, alleged a violation of  
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7 Article X, § 9 of the Commonwealth Constitution, which allows taxpayer  
8 lawsuits.

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10 The court denied the motion to dismiss as to counts 1, 2, and 6, *except* as  
11 to defendants Goldberg and Zachares, who were dismissed with prejudice in the  
12 orders of April 11 and 19, 2002, respectively. The court ruled that those three  
13 counts otherwise survived. The motion to dismiss count 3, which alleged  
14 violations of plaintiffs' substantive and procedural due process rights, was also  
15 denied. Count 4, a conspiracy claim against defendant Zachares and others  
16 unnamed, was dismissed with prejudice as to Zachares in the court's order of  
17 April 11, 2002. Count 5 was dismissed with prejudice, *except* as to the claim  
18 based on *Restatement (Second) of Torts* § 557A. Count 7, alleging violations of  
19 Article X, § 9 of the Commonwealth Constitution, was dismissed with  
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21 prejudice.  
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1 Claims in the Fifth Amended Complaint

2 The principal issue that the court will ultimately be asked to decide is not  
3 one of plaintiffs' right to asylum or entry into the United States.<sup>4</sup> Rather, it is  
4 simply if they are entitled to submit for consideration their applications for  
5 asylum, which applications will be based on their allegations of torture and  
6 persecution.<sup>5</sup>  
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12 As the court stated at oral argument of the United States' motion:

13 THE COURT: See, we're not talking about granting asylum. We're talking  
14 about review of an application. So that doesn't "open the  
15 floodgates" to the United States. \* \* \* Just because  
16 somebody makes an application doesn't mean that they have  
17 entry.

18 MS. FERRIER: That is correct. However, you know, we would also point  
19 out that there is no right for, for these persons to even be able  
20 to apply for asylum or for discretionary relief within the  
21 United States.

22 Unofficial Transcript of Hearing on United States' Motion to Dismiss, Ahmed,  
23 et al. v. United States, et al., Civil Action No. 00-0005 (Sept. 26, 2002).

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25 For example, plaintiff Ahmed, a citizen of Bangladesh, claims that  
26 minions of the Bangladesh government beat him with wood and metal batons  
(which beating resulted in a broken left hip), sliced the soles of his feet with a  
straight razor, and forced boiling water into his nose and mouth. Plaintiff  
Hossain alleges that he and his family have been threatened with reprisals as a  
result of his testimony in a criminal case in his homeland, Bangladesh. Plaintiff

1           The court characterizes the claims for relief in the fifth amended  
2 complaint as follows:  
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4           The first claim is for declaratory and injunctive relief. Plaintiffs allege that  
5 defendants United States and the Commonwealth have a duty to determine their  
6 refugee status under § 207 of the Immigration and Naturalization Act (“INA”), 8  
7 U.S.C. § 1157.  
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9           In their second claim for relief, plaintiffs claim a right to be free from  
10 torture and cruel and inhuman treatment. The claim is made against both the  
11 United States and the Commonwealth and rests on the Foreign Affairs Reform  
12 and Restructuring Act (“FARRA”) and numerous statutory remedies.  
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15           Plaintiffs’ third claim for relief is based on the Alien Tort Claims Act and  
16 *Restatement (Third) of the Foreign Relations Law of the United States* § 702,  
17 International Law of Human Rights: Customary Law of International Human  
18 Rights. See Fifth Amended Complaint, ¶ 142. The claim seeks relief only  
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22           Roe, a citizen of the People’s Republic of China, claims that she and her family  
23 in China have been threatened with physical violence as a result of her  
24 complaints about her garment factory employer. Other plaintiffs are Sri  
25 Lankans, who allege the threat of persecution if they are returned, and Chinese  
26 citizens who claim religious persecution and the possibility of state-decreed  
infanticide should female plaintiffs give birth to more than one child.

1 against defendant Commonwealth.

2 The fourth claim for relief alleges a 42 U.S.C. § 1985 conspiracy to deny  
3 plaintiffs their civil and constitutional rights. Only the Commonwealth, acting  
4 through its officials, is named specifically.  
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6 The fifth and final claim for relief is a claim against both the United States  
7 and the Commonwealth for misrepresentation, concealment, and/or  
8 nondisclosure. It is predicated on *Restatement (Second) of Torts* § 557A, Fraudu-  
9 lent Misrepresentation and Nondisclosure in Miscellaneous Transactions.  
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### 13 The Commonwealth's Motion to Dismiss

14 In the April 19th order, the court ruled<sup>6</sup> that count 2, unlawful policy or  
15 practice as to Ahmed, Liang, and Nian, count 3, violation of due process, and  
16 count 5 survived the motion to dismiss, in whole or in part.  
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21 In its order of April 19, 2002, granting in part and denying in part  
22 defendant Commonwealth's motion to dismiss plaintiffs' fourth amended  
23 complaint, the court ruled that counts 1, 2, and 6 survived the motion to  
24 dismiss, but only as to defendant Commonwealth. However, in their fifth  
25 amended complaint, plaintiffs abandoned their count 1 unlawful imprisonment  
26 claim; it does not appear. Similarly, count 6, estoppel, was not re-pleaded in the  
fifth amended complaint although the court ruled it had survived the motion to  
dismiss. Counts 1 and 6 of the fourth amended complaint, having been  
abandoned, may not now be re-pleaded.



1           The court will consider defendant Commonwealth's motion to dismiss all  
2 five counts in the fifth amended complaint with the above rulings in mind.  
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4           Defendant Commonwealth first moves to dismiss the first through fourth  
5 claims for relief for two interrelated reasons. First, because the four claims  
6 violate the court's two orders on the motion to dismiss the fourth amended  
7 complaint because they add new claims and parties and, second, because no  
8 motion to amend or add parties was made prior to their inclusion in the new  
9 complaint.  
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12           The April 19, 2002, order stated that plaintiffs' counsel "should insure that  
13 only the remaining claims for relief and defendants are included" in the fifth  
14 amended complaint. Order Granting in Part and Denying in Part Defendant  
15 Commonwealth's Motion to Dismiss Fourth Amended Complaint, at p. 5.  
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17 This order was intended, as were the court's previous orders on motions to  
18 dismiss the various complaints, to narrow and clarify the issues and the parties  
19 against whom relief was being sought. Defendant Commonwealth argues that  
20 plaintiffs violated the order by including new causes of action and new  
21 defendants and that dismissal of the first, second, and fourth claims for relief is  
22 justified on this ground.  
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1           The Commonwealth also argues that, in addition, dismissal of the first,  
2 second, and fourth claims for relief is warranted by plaintiffs' failure to seek  
3 leave to amend to add new claims and new parties defendant. *See* Fed.R.Civ.P.  
4 15.

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6           Claims one and two of the fifth amended complaint are merely count 3  
7 from the fourth amended complaint, now separated for clarity. The court has  
8 reviewed the first two claims and finds that they are sufficient to put defendant  
9 Commonwealth on notice as to the nature of the claims against it and the relief  
10 sought. In part because of the unique relationship between defendants United  
11 States and Commonwealth of the Northern Mariana Islands, the court cannot  
12 say that "it appears beyond doubt that plaintiffs can prove no set of facts in  
13 support of their claim that would entitle them to relief." Morley v. Walker, 175  
14 F.3d at 759. However, the Commonwealth's argument is well-taken as to any  
15 claims alleged against now former Commonwealth Attorney General Robert T.  
16 Torres and Acting Secretary of the Commonwealth Department of Labor and  
17 Immigration Joaquin A. Tenorio. Allegations against them are dismissed with  
18 prejudice for failure to abide by the court's order of April 19, 2002, and to seek  
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1 leave to add new parties defendant.<sup>7</sup> Accordingly, defendant Commonwealth's  
2 motion to dismiss the first and second claims for relief in the fifth amended  
3 complaint is denied, except as ordered above.  
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5 The third claim for relief, based on the ATCA and *Restatement (Third) of*  
6 *the Foreign Relations Law of the United States* § 702, survives, but only as to  
7 plaintiffs Ahmed, Liang, and Nian. No motion to amend was made to add the  
8 other plaintiffs to the third claim for relief. In any event, the fifth amended  
9 complaint does not allege any tortious conduct by defendant Commonwealth  
10 toward other named plaintiffs.  
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12 The fourth claim for relief alleges a 42 U.S.C. § 1985 conspiracy to deny  
13 plaintiffs their civil and constitutional rights. Only the Commonwealth, acting  
14 through its officials, is named specifically. As to any claims alleged against now  
15 former Commonwealth Attorney General Robert T. Torres and Acting  
16 Secretary of the Commonwealth Department of Labor and Immigration  
17 Tenorio, those claims are dismissed with prejudice for violation of the court's  
18 April 19, 2002, order and for failure to seek leave to add parties. However, the  
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25 Plaintiffs' assertion that Torres, Tenorio, Powell, and Ashcroft are  
26 formerly unknown "Doe" defendants whom they have now been able to  
identify is unpersuasive. See Fifth Amended Complaint, p. 5, n.1.

1 conspiracy claim itself remains, since it flows from and is consistent with the  
2 allegations of claims one and two.

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4 Count 5 from the fourth amended complaint---misrepresentation,  
5 concealment, and nondisclosure under *Restatement (Second) of Torts* § 557A---re-  
6 appears in the fifth amended complaint as the fifth claim for relief.

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8 The Commonwealth moves to dismiss the fifth claim for relief on the ground of  
9 sovereign immunity. It argues that 7 N.Mar.I. Code § 2204 insulates the  
10 Commonwealth from common law tort claims based on any form of  
11 misrepresentation; thus, *Restatement (Second) of Torts* § 557A, Fraudulent  
12 Misrepresentation and Nondisclosure in Miscellaneous Transactions, necessarily  
13 encompasses a claim based on “nondisclosure” because that is merely a form of  
14 misrepresentation. The court is not prepared, on the record<sup>8</sup> as it now stands, to  
15 rule that “it appears beyond doubt that plaintiffs can prove no set of facts in  
16 support of their claim that would entitle them to relief.” Morley v. Walker, 175  
17 F.3d at 759. The Commonwealth’s motion to dismiss the fifth claim for relief in  
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24 The court’s order of October 26, 2001, held that the Commonwealth has  
25 sovereign immunity for “any intentional and/or negligent misrepresentations  
26 made to” plaintiffs, but the court has not yet fully addressed the question of  
nondisclosure under *Restatement* § 557A.

1 the fifth amended complaint is denied.

2 In summary, as to defendant Commonwealth, all claims for relief survive  
3 (claim three survives only as to Ahmed, Liang, and Nian), with the exceptions  
4 noted above. Given the several opportunities plaintiffs have had to amend their  
5 complaint, and their repeated failures to comply with the court's orders when  
6 amending, the court will not entertain another motion to again file an amended  
7 complaint to add new claims and/or parties. The court has discretion to *not*  
8 allow another attempt to properly plead claims for relief where there has been  
9 repeated failure to cure deficiencies by previous amendments. Schwarzer,  
10 Tashima, and Wagstaffe *Federal Civil Procedure Before Trial* ¶ 8:416 (2001), *see*  
11 *also e.g. Steckman v. Hart Brewing*, 143 F.3d 1293, 1298 (9th Cir. 1998); Sisseton-  
12 Wahpeton Sioux Tribe v. United States, 90 F.3d 351, 355 (9th Cir. 1996).  
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19 The United States' Motion to Dismiss

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21 As an initial matter, all purported claims against Secretary of State Colin  
22 Powell and Attorney General John Ashcroft are dismissed with prejudice as  
23 untimely and in violation of the Federal Rules of Procedure and the court's  
24 previous orders. *See supra*.  
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1 Any purported claim against federal defendants based on 42 U.S.C. § 1983  
2 is dismissed with prejudice. The United States cannot be a defendant under that  
3 statute. See Cannon v. University of Chicago, 441 U.S. 677, 700 n.27, 99 S.Ct.  
4 1946 (1979).  
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7 In their first and second claims for relief, plaintiffs allege that both  
8 defendant United States and defendant Commonwealth have certain obligations,  
9 based on United States law and/or international law and agreements to which  
10 the United States, as a signatory, and, consequently, the Commonwealth, as a  
11 U.S. Territory, are bound and that they are entitled to a determination of their  
12 status as refugees.  
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15 Defendant United States utterly disavows any control over immigration  
16 into the Commonwealth of the Northern Mariana Islands. See e.g.  
17 “Memorandum of Points and Authorities in Support of Federal Defendants’  
18 Motion to Strike the Fifth Amended Complaint,” at 16, 29, respectively (July 9,  
19 2002) (“Aside from the limited exceptions set forth above, the CNMI exercises  
20 plenary authority over its own immigration pursuant to CNMI domestic law.”  
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22 “Moreover, because the CNMI exercises authority over its immigration  
23 pursuant to CNMI domestic law, the Executive Branch of the federal  
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1 government is prohibited from regulating in this area.”)

2           However, at the same time, defendant United States maintains that the  
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4 federal government, acting through the INS, has “discretion” to operate within  
5 the Commonwealth on matters dealing with illegal immigrants:  
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7 THE COURT: Well, there seems to be a little bit of inconsistency. The INS  
8 comes into this courtroom and petitions this court to  
9 naturalize citizens. And the INS...has sent people from  
10 Washington to interview plaintiffs in this case. And the INS  
11 set up and paid for a tent city on Tinian for aliens, and then  
12 accepted their applications for asylum and then chartered a  
13 Hawaiian Airlines jet liner for \$600,000 and transported them  
14 to Chicago. And so, if the INS has no authority here and the  
15 CNMI has plenary authority, what are they doing all these  
16 things for?

17 MS. FERRIER: Well, with regard to the naturalization authority, I believe  
18 that the Covenant provides actually that those particular  
19 provisions of the INA do apply within the CNMI. With  
20 regard to the INS sending representatives here to interview  
21 potential asylum applicants, that is something that they, that  
22 the INS--I mean, we're not denying certainly that the U.S. is  
23 sovereign over the CNMI. However, they are not asserting  
24 their authority; instead, they are coming in and they are  
25 interviewing where it appears, if it appears, and within their  
26 discretion, that persons may be eligible for asylum or there  
may be some sort of, I guess, remedy that needs to be effected  
for a particular alien. But, it's not required and indeed it's not  
authorized by the, by the INA. As we said, it's not  
something that the...the INA does not allow for persons to  
apply for asylum within the CNMI. That is, indeed, the  
CNMI's responsibility.

1 THE COURT: Well, so you're saying that it's totally discretionary with the  
2 INA to interview, accept applications, and grant asylum?

3 MS. FERRIER: Well, again, the...I'm not saying that the INS could accept  
4 and grant asylum applications for persons that are located,  
5 aliens that are located within the CNMI. They would need  
6 to be, first, taken to Guam or to the United States proper...

7 \* \* \*

8 THE COURT: But that's within their discretion?

9 MS. FERRIER: Yes. It's a discretionary form of relief, though. It is  
10 something that's within their discretion. I'm not...but, again,  
11 I'm not saying that they have the statute, the way the  
12 Covenant is set out and the way that the INA is set out, we  
13 don't have authority here to act and grant asylum.

14 Unofficial Transcript of Hearing on United States' Motion to Dismiss, Ahmed,  
15 et al. v. United States, et al., Civil Action No. 00-0005 (Sept. 26, 2002).

16 And defendant United States, in its own memorandum of law in support  
17 of its motion to dismiss, recognizes that Congress has placed upon the federal  
18 government an obligation to insure that all of the United States' international  
19 obligations are observed. The United States quotes legislative history from the  
20 Senate concerning implementation of the Convention Against Torture:  
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23 That the United States shall implement the convention to the  
24 extent that the Federal Government exercises its legislative and  
25 judicial jurisdiction over the matters covered therein; *to the extent*  
26 *that constituent units exercise jurisdiction over such matters, the Federal*  
*Government shall take appropriate measures, to the end that competent*



1 *authorities of the constituent units may take appropriate measures for*  
2 *the fulfillment of this Convention.*

3 126 Cong. Rec. S17486-01, S17492 (Oct. 27, 1990) (Quoted in Defendant United  
4 States' Memorandum of Points and Authorities. Emphasis added).

5 The court is not ready to finally rule on this question in this motion to  
6 dismiss. The foregoing language, coupled with the United States' recognition  
7 and assertion that it is sovereign over the Commonwealth by the plain language  
8 of Covenant § 102, seems to indicate to the court that the United States is  
9 required to play a role in assuring that the Commonwealth, a "constituent unit  
10 exercis[ing] jurisdiction over such matters," fulfills all of the United States'  
11 international obligations.<sup>9</sup> Because plaintiffs simply seek to submit and have  
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17 The court will also consider at a later time defendant United States'  
18 suggestion, apparently serious, that plaintiffs now present on American soil  
19 should seek a referral from the United Nations High Commission on Refugees.

20 Although it is defendants' understanding that the UNHCR takes  
21 the position that it will not interview persons seeking refugee status  
22 in the CNMI, plaintiffs may seek a referral from the UNHCR  
23 wherever the UNHCR is able and willing to interview them.

24 "Memorandum of Points and Authorities in Support of Federal Defendants'  
25 Motion to Strike the Fifth Amended Complaint," at 36-37 n.15 (July 9, 2002).  
26 See also Unofficial Transcript of Hearing on United States' Motion to Dismiss, Ahmed, et al. v. United States, et al., Civil Action No. 00-0005 (Sept. 26, 2002):

THE COURT: So that it's perfectly clear: Is it the position of the

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considered their applications for admission into the United States, and because defendant United States recognizes at least some obligations in that regard, the court will not say that “from the complaint it appears beyond doubt that plaintiffs can prove no set of facts in support of their claim that would entitle them to relief.” Morley v. Walker, 175 F.3d at 759. Accordingly, defendant United States’ motion to dismiss claims for relief one and two is denied.

The third claim for relief is based on unlawful detention. The complaint is unclear as to whether or not plaintiffs seek relief from federal defendants in the third claim for relief but, on balance, it appears they do not. To the extent they

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Department of Justice that these plaintiffs should seek the United Nations High Commissioner on Refugees assistance to get the remedy they want?

\* \* \*

MS. FERRIER: That is an alternative that the plaintiffs may seek.

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THE COURT: So am I correct that it is the Department of Justice’s position that these plaintiffs should seek the recommendation of the United Nations High Commissioner for Refugees as a possible resolution of their problem?

MS. FERRIER: As a possible resolution, yes.

1 do seek such relief, the claim fails. Federal defendants have no authority to  
2 arrest or confine plaintiffs for alleged violations of the Commonwealth's  
3 immigration laws but, even if they did, no such claim has been even remotely  
4 alleged. The third claim for relief is dismissed with prejudice as to all federal  
5 defendants.  
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8 The fourth claim for relief, based on 42 U.S.C. § 1985, does not appear to  
9 be pleaded against defendant United States. To the extent that plaintiffs sought  
10 to allege a violation against the United States the claim fails because the United  
11 States has not consented to be sued under the statute. Claims against federal  
12 officials in their official or personal capacities have been dismissed, *supra*.  
13 Accordingly, the fourth claim for relief is dismissed with prejudice as to  
14 defendant United States and any individually-identified federal defendants, on  
15 the grounds set out above.  
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19 The fifth claim for relief---misrepresentation, concealment, and  
20 nondisclosure under *Restatement (Second) of Torts* § 557A---is dismissed with  
21 prejudice as to defendant United States on grounds of sovereign immunity. The  
22 Alien Tort Claims statute, 28 U.S.C. § 1350, does not waive the United States'  
23 sovereign immunity. See e.g. Koohi v. United States, 976 F.2d 1328, 1332 n.4  
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1 (9th Cir. 1992), *citing* Canadian Transport Co. v. United States, 663 F.2d 1081,  
2 1092 (D.C.Cir. 1980). To the extent that a claim is asserted against federal  
3 officials acting in their official or personal capacities, the claim is dismissed with  
4 prejudice for the reasons set out above.  
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7 In sum, as to defendant United States, claims for relief one and two  
8 survive the motion to dismiss. Claims for relief three, four, and five are  
9 dismissed with prejudice. Also, as cited above, given the several opportunities  
10 plaintiffs have had to amend their complaint, and their repeated failures to  
11 comply with the court's orders when amending, the court will not entertain  
12 another motion to again file an amended complaint to add new claims and/or  
13 parties. The court has discretion to *not* allow another attempt to properly plead  
14 claims for relief where there has been repeated failure to cure deficiencies by  
15 previous amendments. Schwarzer, Tashima, and Wagstaffe *Federal Civil*  
16 *Procedure Before Trial* ¶ 8:416 (2001), *see also e.g.* Steckman v. Hart Brewing, 143  
17 F.3d at 1298; Sisseton-Wahpeton Sioux Tribe v. United States, 90 F.3d at 355.  
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22 Defendant United States and defendant Commonwealth's motions to  
23 dismiss are granted and denied as set forth above. Defendants are given until  
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1 3:30 p.m., Tuesday, November 12, 2002, to file their answers.

2 IT IS SO ORDERED.

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4 DATED this 22nd day of October, 2002.

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8 ALEX R. MUNSON  
9 Judge

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