

1 UNITED STATES COURT OF APPEALS  
2 FOR THE SECOND CIRCUIT  
3

4 SUMMARY ORDER  
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6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL  
7 REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS  
8 OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS  
9 OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A  
10 RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL  
11 OR RES JUDICATA.  
12

13 At a stated term of the United States Court of Appeals for the Second Circuit, held at the  
14 Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the  
15 21st day of September, two thousand and four.  
16

17 PRESENT:

18 HON. GUIDO CALABRESI,  
19 HON. ROBERT D. SACK,  
20 HON. REENA RAGGI,  
21

22 *Circuit Judges.*  
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27 SIDDIK MOHAMMAD, and his family,

28 *Plaintiff-Appellant,*  
29

30 v.

No. 02-7627

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32  
33 MOHAMMED HILAL BIN TARRAF, Dubai, United Arab Emirates,

34 *Defendant,*  
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37 MAKTOUM BIN RASHID AL-MAKTOUM, Sheikh, Dubai, MOHAMMED BIN RASHID AL-  
38 MAKTOUM, Sheikh, Dubai, United Arab Emirates, HILAL BIN TARRAF, Dubai, United Arab  
39 Emirates, UNITED ARAB EMIRATES GOVERNMENT,  
40

41 *Defendants-Appellees.*  
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44 For Plaintiff-Appellant: SIDDIK MOHAMMAD, Buffalo, NY, *pro se.*

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46 For Defendants-Appellees: No appearance.

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2 Appeal from the United States District Court for the Western District of New York  
3 (Elfvin, *J.*).  
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7 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**  
8 **DECREED that the judgment of the district court be and it hereby is AFFIRMED in part**  
9 **and VACATED in part, and that the case be and it hereby is REMANDED.**  
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14 In April 2002, plaintiff-appellant Siddik Mohammad, a Canadian resident, on behalf of  
15 himself and his family, brought suit against defendants Mohammed Hilal Bin Tarraf, Sheikh  
16 Maktoum Bin Rashid Al-Maktoum, and Hilal Bin Tarraf (collectively, the “Bin Tarraf  
17 defendants”), as well as the United Arab Emirates government (the “UAE”), alleging various  
18 injuries pursuant to the Alien Tort Claims Act (“ATCA”), 28 U.S.C. § 1350. Mohammad  
19 claimed that the Bin Tarraf defendants and the UAE caused his family to suffer false  
20 imprisonment, unlawful seizure of property, mental and physical torture, and other assorted  
21 injuries.

22 In May 2002, the district court (Elfvin, *J.*) *sua sponte* dismissed Mohammad’s complaint,  
23 with prejudice, for lack of subject matter jurisdiction. Mohammad was not qualified to represent  
24 his children as an attorney, and so all claims raised by Mohammad on behalf of his children  
25 were, correctly, dismissed at the outset. *See Cheung v. Youth Orchestra Found. of Buffalo, Inc.*,  
26 906 F.2d 59, 61 (2d Cir. 1990) (noting that a “non-attorney parent must be represented by  
27 counsel in bringing an action on behalf of his or her child,” and that the absence of counsel  
28 requires dismissal without prejudice in order to protect the child’s rights). With respect to the  
29 remaining claims, three possible bases for jurisdiction were rejected. First, because the Federal  
30 Sovereign Immunities Act only permits a United States court to exercise jurisdiction over a

1 foreign government in a limited number of cases involving issues not properly raised by  
2 Mohammad, his claims against the UAE were dismissed. Second, as neither Mohammad nor the  
3 Bin Tarraf defendants were residents of the United States, the court found diversity jurisdiction  
4 wanting under 28 U.S.C. § 1332. Finally, the court determined that, since the alleged torts  
5 occurred entirely within the United Arab Emirates and since none of the parties were currently  
6 residents of the United States, Mohammad’s complaint did not bear a close connection to the  
7 United States, and therefore did not state claims “arising under” the ATCA for the purposes of 28  
8 U.S.C. § 1331. In the alternative, the district court determined that the physical torture claims  
9 failed for lack of an allegation that the Bin Tarraf defendants acted under color of state law when  
10 committing these torts. Mohammad now appeals his complaint’s dismissal.

11 With respect to Mohammad’s claims against the UAE, we affirm for substantially the  
12 reasons expressed by the district court. We do the same for each of Mohammad’s allegations of  
13 property seizure by the Bin Tarraf defendants. *See Bigio v. Coca-Cola Co.*, 239 F.3d 440, 448-49  
14 (2d Cir. 2000).

15 With respect to Mohammad’s claims arising out of physical torture, we vacate the district  
16 court’s order of dismissal. Such torture may be actionable under the ATCA and its companion  
17 act, the Torture Victims Protection Act (“TVPA”), Pub.L. No. 102-256, 106 Stat. 73 (1991), *see*  
18 *Sosa v. Alvarez-Machain.*, 124 S. Ct. 2739 (2004), regardless of the existence of a close United  
19 States connection, *see, e.g., Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 104-06 (2d Cir.  
20 2000). And, although Mohammad’s complaint, on its face, does not allege that the TPVA was  
21 violated in contravention of the ATCA and the law of nations, a *pro se* litigant should typically  
22 receive at least one opportunity to amend his or her complaint. *See Fed. R. Civ. P. 15(a); Min Jin*  
23 *v. Metro. Life Ins. Co.*, 310 F.3d 84, 101 (2d Cir. 2002). Since Mohammad might, upon

1 amending his claims, adequately allege harms arising under the ATCA, we vacate the district  
2 court's decision and remand the case with instructions to permit Mohammad to amend his  
3 complaint.<sup>1</sup>

4 We have considered all of Mohammad's arguments on appeal, and, with the exception of  
5 those related to his own claims of physical torture, find them to be without merit. The district  
6 court's dismissal is AFFIRMED in part, VACATED in part, and the case REMANDED for  
7 further proceedings consistent with this order.

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<sup>1</sup> Read liberally, Mohammad's complaint does seem to allege that the Bin Tarraf defendants acted under color of state law. But if his complaint fails in this regard, an opportunity to correct that defect, by amending the complaint, is appropriate as well.