

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FIRST AMERICAN CORPORATION,	)	
et al.,	)	
	)	
Plaintiffs,	)	
v.	)	Civil Action No.
	)	93-1309 (JHG)
SHEIKH ZAYED BIN SULTAN	)	
AL-NAHYAN, et al.,	)	
	)	
Defendants.	)	
_____	)	

SUGGESTION OF IMMUNITY  
SUBMITTED BY THE UNITED STATES OF AMERICA

The undersigned attorneys of the United States Department of Justice, at the direction of the Attorney General of the United States, pursuant to 28 U.S.C. § 517<sup>1</sup>, respectfully inform the Court of the interest of the United States in the Third Party Complaint filed by Clark Clifford and Robert Altman against defendant Sheikh Zayed Bin Sultan Al-Nahyan, the sitting head of state of the United Arab Emirates, and suggests to the Court the immunity of President Zayed. In support of its interest and suggestion, the United States sets forth as follows:

1. The United States has an interest and concern in this action against President Zayed insofar as the action involves the question of immunity from the Court's jurisdiction of the head of state of a friendly foreign state. The interest of the United States arises from a determination by the Executive Branch of the Government of the United States, in the implementation of its

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<sup>1</sup> 28 U.S.C. § 517 provides in relevant part that "any officer of the Department of Justice[] may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States . . . ."

foreign policy and in the conduct of its international relations, that permitting this action to proceed against President Zayed would be incompatible with United States' foreign policy interests. As discussed below, this determination should be given effect by this Court.

2. The Acting Legal Adviser of the United States Department of State ("the Acting Legal Adviser") has informed the Department of Justice that the Government of the United Arab Emirates has formally requested that the Government of the United States suggest the immunity of President Zayed from this lawsuit. The Acting Legal Adviser has further informed the Department of Justice that the "Department of State recognizes and allows the immunity of President Zayed from this suit." Letter from Michael J. Matheson to Frank W. Hunger dated August 7, 1996 (copy attached as Exhibit 1).

3. Under a doctrine of customary international law recognized and applied in the United States, and pursuant to this Suggestion of Immunity, President Zayed, as the head of a foreign state, is immune from the jurisdiction of the Court in this case. See, e.g., LaFontant v. Aristide, 844 F. Supp. 128, 131-32 (S.D.N.Y.), appeal dismissed, No. 94-6026 (2d Cir. Mar. 28, 1994); Alicog v. Kingdom of Saudi Arabia, 860 F. Supp. 379, 382 (S.D. Tex. 1994), aff'd 79 F.3d 1145 (5th Cir. 1996).

4. The Supreme Court of the United States has mandated that the courts of the United States are bound by suggestions of immunity, such as this suggestion, submitted to the courts by the Executive Branch. See, e.g., Republic of Mexico v. Hoffman, 324

U.S. 30, 35-36 (1945); Ex Parte Peru, 318 U.S. 578, 588-89 (1943).<sup>2</sup> In Ex Parte Peru, the Supreme Court, without further review of the Executive Branch's determination regarding immunity, declared that the Executive Branch's suggestion of immunity "must be accepted by the courts as a conclusive determination by the political arm of the Government" that the retention of jurisdiction by the courts would jeopardize the conduct of foreign relations. Ex Parte Peru, 318 U.S. at 589. See also Spacil v. Crowe, 489 F.2d 614, 617 (5th Cir. 1974). Accordingly, where, as here, immunity has been recognized by the Executive Branch and a suggestion of immunity is filed, it is the "court's duty" to surrender jurisdiction. Ex Parte Peru, 318 U.S. at 588. See also Hoffman, 324 U.S. at 35.

5. The courts of the United States have heeded the Supreme Court's direction regarding suggestions of immunity submitted by the Executive Branch. See, e.g., Alicog v. Kingdom of Saudi Arabia, 860 F. Supp. 379, 382 (S.D. Tex. 1994) (suggestion of King Fahd's immunity as head of state of Saudi Arabia held to require dismissal of complaint against King Fahd for false imprisonment and abuse); LaFontant, 844 F. Supp. at 139 (suggestion

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<sup>2</sup> Prior to enactment of the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1602 et seq. (the "FSIA"), the Executive Branch suggested the immunity of both heads of state and of foreign states. The FSIA transferred the determination of the immunity of foreign states from the Executive Branch to the courts. See H.R. Rep. No. 1487, 94th Cong., 2d Sess. 12 (1976), reprinted in 1976 U.S.C.C.A.N. 6604, 6610. The FSIA, however, does not affect the binding nature of the Executive Branch's suggestions of immunity of heads of state. See, e.g., LaFontant v. Aristide, 844 F. Supp. 128, 137 (S.D.N.Y.), appeal dismissed, No. 94-6026 (2d Cir. Mar. 28, 1994); Gerritsen v. De la Madrid, No. CV 85-5020-PAR, slip. op. at 7-9 (C.D. Cal. Feb. 21, 1986) (copy attached as Exhibit 2); Estate of Domingo v. Marcos, No. C82-1055V, slip op. at 3-4 (W.D. Wash. July 14, 1983) (copy attached as Exhibit 3).

of Haitian President Aristide's immunity held to require dismissal of case alleging that President Aristide ordered murder of plaintiff's husband); Saltany v. Reagan, 702 F. Supp. 319, 320 (D.D.C. 1988), aff'd in part and rev'd in part on other grounds, 886 F.2d 438, 441 (D.C. Cir. 1989), cert denied, 495 U.S. 932 (1990) (suggestion of Prime Minister Thatcher's immunity conclusive in dismissing suit that alleged British complicity in U.S. air strikes against Libya); Gerritsen, slip op at 7-9 (suit against Mexican President De la Madrid and others for conspiracy to deprive plaintiff of constitutional rights, dismissed as against President De la Madrid pursuant to suggestion of immunity); Domingo, slip op. at 2-4 (action alleging political conspiracy by, among others, then President Ferdinand E. Marcos and then First Lady Imelda Marcos, respectively, of the Republic of the Philippines, dismissed as against them pursuant to suggestion of immunity); Psinakis v. Marcos, No. C-75-1725-RHS (N.D. Cal. 1975), result reported in Sovereign Immunity, 1975 Digest of U.S. Practice of Int'l Law § 7, at 344-45 (libel action against then President Marcos dismissed pursuant to suggestion of immunity) (copy of cited excerpt attached as Exhibit 4); Guardian F. v. Archdiocese of San Antonio, Cause No. 93-CI-11345 (Tex. Dist. Ct. Mar. 15, 1994) (copy attached as Exhibit 5) (suggestion of immunity required dismissal of suit against Pope John Paul II); Anonymous v. Anonymous, 581 N.Y.S. 2d 776, 777 (1st Dep't 1992) (divorce suit against head of state dismissed pursuant to suggestion of immunity).

6. Judicial deference to the Executive Branch's suggestions of immunity is predicated on compelling considerations

arising out of the conduct of our foreign relations. Spacil, 489 F.2d at 619. First, as the Spacil court explained,

[s]eparation-of-powers principles impel a reluctance in the judiciary to interfere with or embarrass the executive in its constitutional role as the nation's primary organ of international policy.

Id. (citing United States v. Lee, 106 U.S. 196, 209 (1882)). See also Ex Parte Peru, 318 U.S. at 588. Second, the Executive Branch possesses substantial institutional resources to pursue and extensive experience to conduct the country's foreign affairs. See Spacil, 489 F.2d at 619. By comparison, "the judiciary is particularly ill-equipped to second-guess" the Executive Branch's determinations affecting the country's interests. Id. Finally, and "[p]erhaps more importantly, in the chess game that is diplomacy only the executive has a view of the entire board and an understanding of the relationship between isolated moves." Id.

#### CONCLUSION

For the foregoing reasons, the United States respectfully suggests the immunity of President Zayed in this action.

Dated: October 10, 1996

Respectfully submitted,

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