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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GLADYS M. LAFONTANT, Plaintiff, v. JEAN-BERTRAND ARISTIDE, Defendant.	Civil Action No. 93-CV-4268 (Weinstein, J.)

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,[1] respectfully inform this Honorable Court of the interest of the United States in the pending lawsuit against defendant Jean-Bertrand Aristide, President of the Republic of Haiti, and suggest to the Court the immunity of President Aristide. In support of its interests and suggestion, the United States respectfully states:

1. The United States has an interest and concern in this action against President Aristide 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 United States' interest arises from a determination by the Executive

[1] 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 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 . . ."

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

2. The Attorney General has been informed by the Legal Adviser of the United States Department of State that the Government of the Republic of Haiti has formally requested the Government of the United States to suggest the immunity of President Aristide from this lawsuit. The Attorney General further has been informed by the Legal Adviser that "[t]he Department of State recognizes and allows the immunity of President Aristide from this suit." Letter from Conrad K. Harper to Frank W. Hunger, dated November 10, 1993.[2]

3. Under customary rules of international law, recognized and applied in the United States, and pursuant to this Suggestion of Immunity, President Aristide, as the head of a foreign state, is immune from the jurisdiction of the Court in this case. See, e.g., Schwarzenberger, A Manual of International Law at 81 (6th ed. 1976);[3] Brierly, The Law of Nations at 254-55 (H. Waldock 6th ed. 1963).[4]

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[2]A copy of this letter is attached hereto as Exhibit A.

[3]A copy of this section is attached hereto as Exhibit B.

[4]A copy of this section is attached hereto as Exhibit C.

4. The Supreme Court has mandated that the courts of the United States are bound by suggestions of immunity, such as the instant 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).[5] 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. Id., 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 Republic of Mexico v. Hoffman, 324 U.S. at 35.

5. The courts of the United States have heeded the Supreme Court's direction regarding suggestions of immunity

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[5]Prior to enactment of the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1602 et seq. ("FSIA"), the Executive Branch suggested the immunity of both heads of state and foreign states themselves. The FSIA transferred the determination of the immunity of foreign states from the Executive Branch to the courts. See H.Rep. No. 94-1487, 94th Cong., 2d Sess., reprinted in 1976 U.S. Code Cong. & Admin. News 6604, 6610. As noted in Gerritsen v. De la Madrid, No. CV 85-5020-PAR, slip. op. at 7-9 (C.D. Cal. Feb. 21, 1986) and Estate of Silme G. Domingo v. Marcos, No. C82-1055V, slip. op. at 3-4 (W.D. Wash. July 14, 1983), however, the FSIA does not affect the binding nature of the Executive Branch's suggestions of immunity of heads of state.

submitted by the Executive Branch. See, e.g., Saltany v. Reagan, 702 F.Supp. 319, 320 (D.D.C. 1988) (State Department's suggestion of Prime Minister Thatcher's immunity conclusive in dismissing suit that alleged British complicity in U.S. air strikes against Libya); Gerritsen v. De la Madrid, No. CV 85-5020-PAR (in suit against Mexican President De la Madrid and others for conspiracy to deprive plaintiff of constitutional rights, action against President De la Madrid dismissed pursuant to suggestion of immunity),[6] Estate of Silme G. Domingo v. Marcos, No. C82-1055V (action alleging political conspiracy by, among others, Ferdinand E. Marcos and Imelda Marcos, then President and First Lady, respectively, of the Republic of the Philippines, dismissed against President and Mrs. Marcos pursuant to suggestion of immunity);[7] Psinakis v. Marcos, No. C-75-1725-RHS (N.D. Cal. 1975), result reported in [1975] Digest of United States Practice of International Law, pp. 344-45 (libel action against then President Ferdinand Marcos dismissed pursuant to suggestion of immunity).[8]

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 v. Crowe, 489 F.2d at 619. Several

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[6]A copy of this decision is attached hereto as Exhibit D.

[7]A copy of this decision is attached hereto as Exhibit E.

[8]A copy of this decision is attached hereto as Exhibit F.

rationales animate this principle. 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 v. Crowe, 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 Aristide in this action.

Dated: Brooklyn, New York
November 19, 1993

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