

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

\_\_\_\_\_) )  
JOSEPHINE ALICOG and SRIYANI ) )  
MARIAN FERNANDO, each Individually, ) )  
 ) )  
Plaintiffs, ) Civil Action No. H-93-4169  
 ) )  
v. ) )  
 ) )  
KINGDOM OF SAUDI ARABIA, HIS ROYAL ) )  
HIGHNESS KING FAHD BIN ABDULAZIZ ) )  
AL-SAUD, MAJID AFIFI, SALIM ) )  
AFIFI, ) )  
 ) )  
Defendants. ) )  
\_\_\_\_\_)

SUGGESTION OF IMMUNITY  
SUBMITTED BY THE UNITED STATES OF AMERICA

The undersigned attorneys of the United States Department of Justice, pursuant to 28 U.S.C. § 517,<sup>1</sup> respectfully inform the Court of the interest of the United States in the pending lawsuit against defendant His Royal Highness King Fahd bin Abdulaziz Al-Saud, the sitting head of state of the Kingdom of Saudi Arabia, and suggest to the Court the immunity of King Fahd. In support of its interest and suggestion, the United States states:

1. The United States has an interest in this action against King Fahd 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 Branch of the Government of the

<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. . . ."

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

2. The Department of Justice has been informed by the Legal Adviser of the United States Department of State that the Government of Saudi Arabia has formally requested the Government of the United States to suggest the immunity of King Fahd from this lawsuit. The Department of Justice further has been informed by the Legal Adviser that the "Department of State recognizes and allows the immunity of King Fahd from this suit." Letter from Harper to Hunger of May 17, 1994 (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, King Fahd, as the head of a foreign state, is immune from the jurisdiction of the Court in this case. See, e.g., Georg Schwarzenberger and E.D. Brown, A Manual of International Law 81 (6th ed. 1976) (copy attached as Exhibit 2); James L. Brierly, The Law of Nations 254-55 (Humphrey Waldock ed., 6th ed. 1963) (copy attached as Exhibit 3).

4. The Supreme Court 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; Gerhard von Glahn, Law Among Nations 136-37 (6th ed. 1992) (copy attached as Exhibit 7).

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., LaFontant, 1994 WL at 30044,

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<sup>2</sup> 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.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, \_\_\_ F. Supp. \_\_\_, 1994 WL 30044, \*9-\*10 (E.D.N.Y. Jan. 27, 1994), appeal dismissed, No. 94-6026 (2d Cir. Mar. 28, 1994) (copy attached as Exhibit 4); 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 5); Estate of Domingo v. Marcos, No. C82-1055V, slip. op. at 3-4 (W.D. Wash. July 14, 1983) (copy attached as Exhibit 6).

\*4-\*5 (suggestion of Haitian President Aristide's immunity held binding on court and requires 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 (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); 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 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 attached as Exhibit 8); Anonymous v. Anonymous, 581 N.Y.S.2d 776, 777 (N.Y. App. Div. 1992) (divorce suit against head of state dismissed pursuant to suggestion of immunity); Guardian F. v. Archdiocese of San Antonio, Cause No. 93-CI-11345 (Tex. Dist. Ct. Mar. 15, 1994) (copy attached as Exhibit 9) (suggestion of immunity required dismissal of suit against Pope John Paul II).

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.

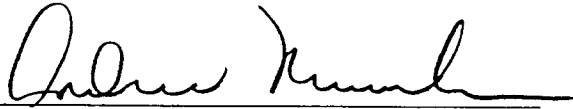
Id. (citing United States v. Lee, 106 U.S. 196, 209 (1882)). See also Ex Parte Peru, 318 U.S. at 588. Second, the Executive Branch possesses substantial institutional resources to pursue and extensive experience to conduct the country's foreign affairs. See Spacil, 489 F.2d at 619. By comparison, "the 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 His Royal Highness King Fahd bin Abdulaziz Al-Saud in this action.

Dated: May 23, 1994

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