



District Court of Maryland for Montgomery County against Mr. Bede Ibeh. Mrs. Ibeh alleged that on May 29, 2001, Mr. Ibeh informed her that on a prior trip to Nigeria in January, he had obtained an ex parte divorce from her, and that his new wife was coming to the United States. She claims that he then slapped her in the face and shoved her. The next morning, as she was getting her children into the car to take them to school, Mrs. Ibeh alleges that Mr. Ibeh came into the garage, tried to take the keys away from her, and twisted her arm in the process. She also claims that he threatened to sell her car, and "make her miserable." The Ex Parte Order was entered on June 8, and a Protective Order Hearing was set for June 15, 2001.

At the hearing on June 15, 2001, Mr. David Baker of the State's Attorney's Office for Montgomery County informed the Court that Mr. Ibeh, as a diplomat at the Embassy of Nigeria, had immunity from the court's jurisdiction. Mr. Baker, who confirmed the position expressed to the court by Mr. Ibeh's attorney, appeared because a certification prepared by the U.S. Department of State concerning the status of Mr. Ibeh and his children could not be delivered to the court in time for the hearing. The certification (attached hereto as Exhibit A) indicates that, in accordance with the Vienna Convention, Mr. Ibeh was notified as a counselor at the Embassy of the Federal Republic of Nigeria and, as a diplomatic agent, is entitled to immunity from civil and criminal jurisdiction of the United States. The certification further states that Beverly Ibeh and Willis Ibeh were notified as members of Mr. Ibeh's household and also are not subject to United States jurisdiction.<sup>2</sup>

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<sup>2</sup> It should be noted that the Certification mentions three children: Beverly, Obinna, and Willis as "members of [Mr. Ibeh's] family forming part of his household." Beverly and Willis are mentioned in the Protective Order (Obinna is not mentioned), as is a fourth child, Grant. Grant's citizenship status is unknown.

A Protective Order was nevertheless entered by the Court on June 15, 2001 (attached hereto as Exhibit B). The Order directed Mr. Ibeh not to abuse or threaten to abuse Mrs. Ibeh. The Court also granted custody of three of the Ibeh's children – Beverly, Willis, and Grant – to Mrs. Ibeh, and ordered that they not be removed from the United States. The Order is effective until June 15, 2002. The matter is now before this Court on Mr. Ibeh's Motion to Dismiss for Lack of Personal Jurisdiction (attached hereto as Exhibit C).

### ARGUMENT

I. Mr. Ibeh and His Children Are Entitled to Diplomatic Immunity Under The Vienna Convention.

The Vienna Convention extends to diplomatic officers, as well as family members forming part of their households, immunity from the jurisdiction of the court in the "receiving state," in this case, the United States. Vienna Convention, arts. 31, 37. The special privileges and immunities accorded diplomatic agents by the Vienna Convention reflect a set of international standards developed by the world's community of nations to regulate and shape the conduct of international relations. See generally, 767 Third Avenue Associates v. Permanent Mission of the Republic of Zaire, 988 F.2d 295, 299-300 (2nd Cir.) cert. denied, 510 U.S. 819 (1993). The underlying concept of the Vienna Convention's treatment of privileges and immunities is that foreign diplomatic representatives cannot effectively carry out their responsibilities unless they are accorded a certain degree of insulation from the application of the laws of the host country. See id. One of the most basic attributes of diplomatic immunity is that neither a diplomatic agent nor any member of his or her household is subject to the jurisdiction of the courts of the "receiving state." See id.

The relevant provisions of the Vienna Convention are as follows:

Article 31(1) of the Vienna Convention provides that "[a] diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of: (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission; (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee of a private person and not on behalf of the sending State; (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions." None of the three exceptions applies in this case.

Article 31(3) of the Vienna Convention provides that "[n]o measures of execution may be taken in respect of a diplomatic agent except in the cases coming under sub-paragraphs (a), (b) and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence."

Article 1(e) defines "a 'diplomatic agent' [as] the head of the mission or a member of the diplomatic staff of the mission."

Article 1(d) defines " 'members of the diplomatic staff' [as] members of the staff of the mission having diplomatic rank."

Article 37 provides in pertinent part: "The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36."

II. The Vienna Convention's Grant of Diplomatic Immunity to Mr. Ibeh and the Children Prevents Maryland Courts from Exercising Jurisdiction Over Mr. Ibeh and Over the Custody of the Children.

On June 14, 2001, Lawrence Dunham, Assistant Chief of Protocol, Department of State, certified that Mr. Ibeh has diplomatic status and is therefore entitled to immunity from most civil jurisdiction pursuant to the Vienna Convention, 23 U.S.T. 3227. (Exhibit A). Mr. Baker notified the District Court of the Department of State's views. Courts have previously recognized that "questions of the diplomatic status enjoyed by a given defendant and the immunity to be accorded him are . . . questions where a determination of the Department of State is binding upon the court." Arcaya v. Paez, 145 F. Supp. 464, 467 (S.D.N.Y. 1956); see also Zdravkovich v. Consul General of Yugoslavia, 1998 WL 389086 (D.C. Cir. 1998) ("The courts are required to accept the State Department's determination that a foreign official possesses diplomatic immunity from suit."); Weidner v. International Telecommunications Satellite Org., 392 A.2d 508, 510-11 (D.C. 1978) (upholding immunity of an international organization from an employee's breach of contract claim, even though the organization had not been designated under the Act until after the employee's claim accrued because "courts lack jurisdiction to entertain actions brought against such individuals or organizations so long as the immunity exists"); United States v. Enger, 472 F. Supp. 490, 506 n. 19 (D.N.J. 1978) ("The courts are bound by a determination of the Department of State that an alien claiming diplomatic status is entitled to that status, since this is construed as a nonreviewable political decision."); Traore v. State, 431 A. 2d 96,98 (Ct. App. Md. 1981). ("It is settled that the State Department's determinations concerning an individual's diplomatic status at a particular time should ordinarily be accepted by the courts" (citations omitted)).

In this instance, the Department of State's determination that Mr. Ibeh is a diplomatic

agent entitled to immunity, communicated orally to the court by the State's Attorney's Office for Montgomery County, is consistent with the provisions of the Vienna Convention. Article 31 of the Vienna Convention, 23 U.S.T. 3227, reflecting customary international law, provides, in part, that a diplomatic agent enjoys immunity from the civil jurisdiction of the host country and "[n]o measures of execution may be taken in respect of a diplomatic agent" except in the three inapplicable exceptions set forth in Article 31.

III. A Finding That Mr. Ibeh Is Subject to the Jurisdiction of Maryland Courts Would Impair The United States' Ability to Conduct Its Foreign Relations.

The United States is not taking a position on the allegations before this Court. However, failure to respect the immunities invoked in this case might have serious consequences. Indeed, if the court is allowed to "upset[] existing treaty relationships [by denying the defendant immunity,] American diplomats abroad [might] well be denied lawful protection of their lives and property to which they would otherwise be entitled." 767 Third Ave. Assocs., 988 F.2d at 296. As a leading scholar on diplomatic law has noted, "the real sanction of diplomatic law is reciprocity. Every State is both a sending and a receiving State. Its own representatives abroad are hostages and even in minor matters their treatment will depend on what the sending State itself accords." Eileen Denza, *Diplomatic Law* 2 (1976).

CONCLUSION

For the foregoing reasons, the United States respectfully submits that the District Court lacked jurisdiction to enter the Protective Order against Mr. Ibeh.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Filing of a Statement of Interest and the Statement of Interest of the United States was served on the 29th day of August, 2001, by overnight mail upon:

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Hannah A. Stires

MARYLAND  
IN THE CIRCUIT COURT  
FOR MONTGOMERY COUNTY

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LILIAN IBEH,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	FL18-338
	)	
BEDE IBEH,	)	
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	)	
Respondent.	)	
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NOTICE OF FILING OF STATEMENT OF INTEREST OF THE UNITED STATES

Pursuant to a request from the United States Department of State and consistent with the terms of 28 U.S.C. § 517, the United States Department of Justice files the attached Statement of Interest.

Respectfully submitted,

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