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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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	:	
MARIEUM MUMTAZ,	:	
	:	
Plaintiff,	:	Index No. 74258/89
	:	
v.	:	IAS Part 17
	:	
GENERAL H.M. ERSHAD,	:	JUSTICE SCHACKMAN
	:	
Defendant.	:	
-----X	:	

**NOTICE OF CHANGED CIRCUMSTANCES SUBMITTED BY
THE UNITED STATES OF AMERICA**

Preliminary Statement

OTTO G. OBERMAIER, United States Attorney for the Southern District of New York, at the direction of the Attorney General of the United States, pursuant to Section 517, Title 28 of the United States Code, appears herein specially to inform the Court that the United States, which on May 30, 1990 filed a Suggestion of Immunity on behalf of defendant H.M. Ershad ("Ershad"), now no longer recognizes Ershad as a head of state. The United States therefore believes that Ershad is no longer entitled to immunity in any action that involves a purely private matter.

STATEMENT OF THE CASE

Plaintiff Marieum Mumtaz brought this suit against defendant H.M. Ershad, seeking dissolution of a marriage that allegedly occurred in Dhaka, Bangladesh, in 1982, as well as spousal maintenance and equitable distribution of marital property. At the time the complaint was filed, Ershad was President of the People's Republic of Bangladesh.

The Government of the People's Republic of Bangladesh requested that the United States suggest immunity for then-President Ershad. Upon consideration of the request, the State Department recognized that President Ershad, as head of state of the People's Republic of Bangladesh, was entitled in this action to the immunity customarily granted to heads of state. Accordingly, the State Department made a formal request to the Department of Justice to file a Suggestion of Immunity with this Court. Thereafter, pursuant to 28 U.S.C. § 517, the United States filed a Suggestion of Immunity with the Supreme Court of the State of New York, County of New York, on May 30, 1990. On June 15, 1990, the United States filed a Memorandum of Law in Support of the Suggestion of Immunity Filed on Behalf of the Defendant by the United States ("U.S. Memorandum of Law").

The Supreme Court of the State of New York, County of New York, granted defendant Ershad's motion to dismiss on June 27, 1990. In a written opinion, Justice Walter M. Schackman properly held that then-President Ershad was entitled to head-of-state immunity, noting that "[o]nce a recommendation of immunity is suggested by the government, no further examination of the details of the case is appropriate." Muntaz v. Ershad, Index No. 74258/89, Opinion dated June 27, 1990, at 5.

Plaintiff has appealed that decision and has also moved this Court for renewal of defendant's motion to dismiss the complaint based on the recent developments described below.

RECENT DEVELOPMENTS

On December 6, 1990, President Ershad announced his resignation as President of the People's Republic of Bangladesh. Affirmation of Edward G. Abington, Country Director for Pakistan, Afghanistan and Bangladesh Affairs, Department of State (Exhibit A to Affirmation of Gideon A. Schor ("Schor Affirmation"), attached hereto). The Department of State has advised the Department of Justice that former President Ershad currently holds no official position in the Government of Bangladesh. Letter, dated January 8, 1991, from Edwin D. Williamson to Richard Thornburgh (Exhibit B to Schor Affirmation, attached hereto). Based upon these facts, the Department of State has informed the Attorney General that former President Ershad is no longer entitled to head-of-state immunity. See Exhibit B.

The United States Supreme Court has repeatedly held that suggestions made by the United States that immunity be granted or denied are conclusive on the courts. See United States v. Lee, 106 U.S. 196, 209 (1882). See also U.S. Memorandum of Law, at 5-13. Thus, the determination of the United States that Ershad is no longer entitled to head-of-state immunity is binding on this Court.

Moreover, as a former head of state, Ershad now enjoys immunity covering only official acts performed pursuant to governmental authority as head of state. See, e.g., Hatch v. Baez, 7 Hun. 596, 599-600 (N.Y. App. Div. 1876) (former-head-of-state immunity extends only to acts done by head of state in exercise of executive authority). See also Republic of Philippines v. Marcos,

et al., 806 F.2d 344, 360 (2d Cir. 1986), cert. dismissed, 480 U.S. 942 (1987); In re Doe, 860 F.2d 40, 45 (2d Cir. 1988).

The United States therefore submits that Ershad is no longer entitled to immunity in any action that involves a purely private matter. Accordingly, this Court should hold further proceedings consistent with this conclusion.

Dated: New York, New York
March , 1991

Respectfully submitted,

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By: _____

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