

GUARDIAN F., INDIVIDUALLY	)	IN THE DISTRICT COURT
AND AS NEXT FRIEND OF MINOR G.,	)	
	)	
Plaintiff,	)	225TH JUDICIAL DISTRICT
	)	
v.	)	
	)	
ARCHDIOCESE OF SAN ANTONIO, et al.,	)	BEXAR COUNTY, TEXAS
	)	
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 this Honorable Court of the interest of the United States in the pending lawsuit against defendant Pope John Paul, II, the sitting head of state of the Vatican City State, and suggest to the Court the immunity of the Pope. 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 the Pope 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 United States, in the implementation of its foreign policy and in the conduct of its international relations,

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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 . . . a State."

that permitting this action to proceed against the Pope 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 Apostolic Nunciature has formally requested the Government of the United States to suggest the immunity of the Pope from this lawsuit. The Attorney General further has been informed by the Legal Adviser that the "Department of State recognizes and allows the immunity of the Pope from this suit." Letter from Harper to Hunger of 3/1/94 (copy attached as Exhibit 1).

3. Under customary rules of international law recognized and applied in the United States, and pursuant to this Suggestion of Immunity, Pope John Paul, II, 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, \*4-\*5 (suggestion of Haitian President Aristide's immunity held

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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 pending) (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).

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 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).

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 Pope John Paul, II, in this action.

Dated: March 4, 1994

FRANK W. HUNGER  
Assistant Attorney General



VINCENT M. GARVEY  
DAVID O. BUCHHOLZ  
U.S. Department of Justice  
Civil Division, Room 934  
901 E Street, N.W.  
Washington, DC 20530  
202/ 514-3330  
Counsel for the United States

OF COUNSEL:

CONRAD K. HARPER  
Legal Adviser  
U.S. Department of State

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Suggestion of Immunity Submitted by United States of America was served on this 4th day of March, 1994, by first class mail, postage prepaid, on the following counsel:

Thomas Drought  
Drought & Pipkin  
Suite 2600  
112 East Pecan Street  
San Antonio, TX 78205

Michele Petty  
Suite 1650  
300 Convent Street  
San Antonio, TX 78205

Ronald E. Mendoza  
Davis, Adami & Cedillo, Inc.  
7710 Jones Maltsberger #400  
San Antonio, TX 78216

Phillip H. Harris  
Office of the General Counsel  
United States Catholic Conference  
3211 4th Street, N.E.  
Washington, DC 20017



DAVID O. BUCHHOLZ