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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 ADAM JIBREEL,

Case No. C 13-3470 LB

16 Plaintiff,

17 v.

18 HOCK SENG CHIN, et al.,

19 Defendants.
20

21 **SUGGESTION OF IMMUNITY**
22 **SUBMITTED BY THE UNITED STATES OF AMERICA**

23 The United States of America, pursuant to 28 U.S.C. § 517,¹ respectfully informs the Court of
24 the interest of the United States in the pending claims against Prime Minister Lee Hsien Loong, the
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26 ¹ 28 U.S.C. § 517 provides that “any officer of the Department of Justice[] may be sent by the
27 Attorney General to any State or district in the United States to attend to the interests of the United

1 sitting head of government of the Republic of Singapore, and hereby informs the Court that Prime
2 Minister Lee is immune from this suit. In support of its interest and determination, the United States
3 sets forth as follows:

4 1. The United States has an interest in this action because Defendant Lee is the sitting head
5 of a foreign government, thus raising the question of Prime Minister Lee’s immunity from the Court’s
6 jurisdiction while in office. The Constitution assigns to the U.S. President alone the responsibility to
7 represent the Nation in its foreign relations. As an incident of that power, the Executive Branch has sole
8 authority to determine the immunity from suit of sitting heads of government. The interest of the United
9 States in this matter arises from a determination by the Executive Branch of the Government of the
10 United States, in consideration of the relevant principles of customary international law, and in the
11 implementation of its foreign policy and in the conduct of its international relations, to recognize Prime
12 Minister Lee’s immunity from this suit while in office. As discussed below, this determination is
13 controlling and is not subject to judicial review. Thus, no court has ever subjected a sitting head of
14 government to suit once the Executive Branch has determined that he or she is immune.
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17 2. The Office of the Legal Adviser of the U.S. Department of State has informed the
18 Department of Justice that the Embassy of the Republic of Singapore has formally requested the
19 Government of the United States to determine that Prime Minister Lee is immune from this lawsuit. The
20 Office of the Legal Adviser has further informed the Department of Justice that the “Department of State
21 recognizes and allows the immunity of Prime Minister Lee as a sitting head of government from the
22 jurisdiction of the United States District Court in this suit.” Letter from Mary E. McLeod to Stuart
23 Delery (copy attached as Exhibit A).
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25 States in a suit pending in a court of the United States.”
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1 3. The immunity of foreign states and foreign officials from suit in our courts has different
2 sources. For many years, such immunity was determined exclusively by the Executive Branch, and
3 courts deferred completely to the Executive’s foreign sovereign immunity determinations. *See, e.g.,*
4 *Republic of Mexico v. Hoffmann*, 324 U.S. 30, 35 (1945) (“It is therefore not for the courts to deny an
5 immunity which our government has seen fit to allow, or to allow an immunity on new grounds which
6 the government has not seen fit to recognize.”). In 1976, Congress codified the standards governing suit
7 against foreign states in the Foreign Sovereign Immunities Act, transferring to the courts the
8 responsibility for determining whether a foreign state is subject to suit. 28 U.S.C. §§ 1602 *et seq.*; *see*
9 *id.* § 1602 (“Claims of foreign states to immunity should henceforth be decided by courts of the United
10 States and of the States in conformity with the principles set forth in this chapter.”).

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12 4. As the Supreme Court explained, however, Congress has not similarly codified standards
13 governing the immunity of foreign officials from suit in our courts. *Samantar v. Yousuf*, 130 S. Ct.
14 2278, 2292 (2010) (“Although Congress clearly intended to supersede the common-law regime for
15 claims against foreign states, we find nothing in the statute’s origin or aims to indicate that Congress
16 similarly wanted to codify the law of foreign official immunity.”). Instead, when it codified the
17 principles governing the immunity of foreign states, Congress left in place the practice of judicial
18 deference to Executive Branch immunity determinations with respect to foreign officials. *See id.* at
19 2291 (“We have been given no reason to believe that Congress saw as a problem, or wanted to
20 eliminate, the State Department’s role in determinations regarding individual official immunity.”).
21 Thus, the Executive Branch retains its historic authority to determine a foreign official’s immunity from
22 suit, including the immunity of foreign heads of state and heads of government. *See id.* at 2284–85 &
23 n.6 (noting the Executive Branch’s role in determining head of state immunity).
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1 5. The doctrine of head of state immunity is well established in customary international law.
2 *See Satow's Guide to Diplomatic Practice* 9 (Lord Gore-Booth ed., 5th ed. 1979). Although the doctrine
3 is referred to as “head of state immunity,” it applies to heads of government and foreign ministers as
4 well. *See, e.g., The Schooner Exchange v. M'Faddon*, 11 U.S. (7 Cranch) 116, 138-39 (1812)
5 (discussing generally the immunity of foreign ministers in U.S. courts); *Arrest Warrant of 11 Apr. 2000*
6 (*Dem. Rep. Congo v. Belgium*), 2002 I.C.J. 3, 20-21 (Feb. 14) (Merits) (heads of state, heads of
7 government, and ministers of foreign affairs enjoy immunity from the jurisdiction of foreign states);
8 Restatement (Second) of Foreign Relations Law §§ 65, 66 (1965) (noting that head of state immunity
9 includes heads of government).

11 6. In the United States, head of state immunity determinations are made by the Department
12 of State, incident to the Executive Branch's authority in the field of foreign affairs. The Supreme Court
13 has held that the courts of the United States are bound by Suggestions of Immunity submitted by the
14 Executive Branch. *See Hoffman*, 324 U.S. at 35–36; *Ex parte Peru*, 318 U.S. 578, 588–89 (1943). In *Ex*
15 *parte Peru*, in the context of foreign state immunity, the Supreme Court, without further review of the
16 Executive Branch's immunity determination, declared that such a determination “must be accepted by
17 the courts as a conclusive determination by the political arm of the Government.” 318 U.S. at 589.
18 After a Suggestion of Immunity is filed, it is the “court's duty” to surrender jurisdiction. *Id.* at 588. The
19 courts' deference to Executive Branch determinations of foreign state immunity is compelled by the
20 separation of powers. *See, e.g., Spacil v. Crowe*, 489 F.2d 614, 619 (5th Cir. 1974).

23 7. For the same reason, courts also have routinely deferred to the Executive Branch's
24 immunity determinations concerning sitting heads of state and heads of government. *See Habyarimana*
25 *v. Kagame*, 696 F.3d 1029, 1032 (10th Cir. 2012) (“We must accept the United States' suggestion that a
26 foreign head of state is immune from suit . . . as a conclusive determination by the political arm of the
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1 Government that the continued [exercise of jurisdiction] interferes with the proper conduct of our
2 foreign relations.” (quotation omitted)); *Ye v. Jiang Zemin*, 383 F.3d 620, 626 (7th Cir. 2004) (“The
3 obligation of the Judicial Branch is clear—a determination by the Executive Branch that a foreign head
4 of state is immune from suit is conclusive and a court must accept such a determination without
5 reference to the underlying claims of a plaintiff.”); *Howland v. Resteiner*, No. 07-CV-2332, ECF No. 27,
6 at 5 n.2 (E.D.N.Y. Dec. 5, 2007) (noting “there is no doubt that [the sitting Prime Minister of Grenada]
7 is entitled to immunity from th[e] Court’s jurisdiction” after Executive Branch filed Suggestion of
8 Immunity); *Doe I v. State of Israel*, 400 F. Supp. 2d 86, 110 (D.D.C. 2005) (“When the Executive
9 Branch concludes that a recognized leader of a foreign sovereign [in this case, Prime Minister Ariel
10 Sharon of Israel] should be immune from the jurisdiction of American courts, that conclusion is
11 determinative.”); *Saltany v. Reagan*, 702 F. Supp. 319, 320 (D.D.C. 1988) (holding that the
12 determination of Prime Minister Thatcher’s immunity was conclusive in dismissing a suit that alleged
13 British complicity in U.S. air strikes against Libya), *aff’d in part and rev’d in part on other grounds*, 886
14 F.2d 438 (D.C. Cir. 1989). When the Executive Branch determines that a sitting head of state or head of
15 government is immune from suit, judicial deference to that determination is predicated on compelling
16 considerations arising out of the Executive Branch’s authority to conduct foreign affairs under the
17 Constitution. *See Ye*, 383 F.3d at 626 (citing *Spacil*, 489 F.2d at 618). Judicial deference to the
18 Executive Branch in these matters, the Seventh Circuit noted, is “motivated by the caution we believe
19 appropriate of the Judicial Branch when the conduct of foreign affairs is involved.” *Id.* *See also Spacil*,
20 489 F.2d at 619 (“Separation-of-powers principles impel a reluctance in the judiciary to interfere with or
21 embarrass the executive in its constitutional role as the nation’s primary organ of international policy.”
22 (citing *United States v. Lee*, 106 U.S. 196, 209 (1882))); *Ex parte Peru*, 318 U.S. at 588.² As noted
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27 ² As other courts have explained, the Executive Branch possesses substantial institutional

1 above, in no case has a court subjected a sitting head of state or head of government to suit after the
2 Executive Branch has determined that the head of state or head of government is immune.³

3 8. Under the customary international law principles accepted by the Executive Branch, head
4 of state immunity attaches to a head of state's or head of government's status as the current holder of the
5 office. After a head of state or head of government leaves office, however, that individual generally
6 retains residual immunity only for acts taken in an official capacity while in that position. *See* 1
7 *Oppenheim's International Law* 1043–44 (Robert Jennings & Arthur Watts eds., 9th ed. 1996). In this
8 case, because the Executive Branch has determined that Prime Minister Lee Hsien Loong, as the sitting
9 head of a foreign government, enjoys head of state immunity from the jurisdiction of U.S. courts in light

11 resources and extensive experience with which to conduct the country's foreign affairs. *See, e.g.,*
12 *Spacil*, 489 F.2d at 619; *United States v. Truong Dinh Hung*, 629 F.2d 908, 913–14 (4th Cir. 1980).
13 Furthermore, “in the chess game that is diplomacy only the executive has a view of the entire board and
14 an understanding of the relationship between isolated moves.” *Spacil*, 489 F.2d. at 619.

15 ³ *See, e.g., Tawfik v. al-Sabah*, 2012 WL 3542209, *3-*4 (S.D.N.Y. Aug. 16, 2012); *Manoharan*
16 *v. Rajapaksa*, 845 F. Supp. 2d 260 (D.D.C. 2012), *aff'd*, 711 F.3d 178 (D.C. Cir. 2013); *Habyarimana v.*
17 *Kagame*, 2011 WL 5170243, *19 (W.D. Okla. Oct. 28, 2011) (“Where the United States’ Executive
18 Branch has concluded that a foreign head of state is immune from suit, and where it has urged the Court
19 to take recognition of that fact and to dismiss the suit pending against said head of state, the Court is
20 bound to do so.”), *aff'd*, 696 F.3d 1029 (10th Cir. 2012); *Doe v. Roman Catholic Diocese of Galveston-*
21 *Houston*, 408 F. Supp. 2d 272, 278 (S.D. Tex. 2005) (“The executive’s [head of state immunity]
22 determination is not subject to additional review by a federal court.”); *Leutwyler v. Queen Rania Al-*
23 *Abdullah*, 184 F. Supp. 2d 277, 280 (S.D.N.Y. 2001) (holding that the Executive Branch’s immunity
24 determination on behalf of the Queen of Jordan “is entitled to conclusive deference from the courts”);
25 *Tachiona v. Mugabe*, 169 F. Supp. 2d 259, 297 (S.D.N.Y. 2001) (dismissing a suit against the President
26 and Foreign Minister of Zimbabwe based upon a Suggestion of Immunity filed by the Executive
27 Branch), *aff'd on other grounds sub nom., Tachiona v. United States*, 386 F.3d 205 (2d Cir. 2004); *First*
28 *American Corp. v. Al-Nahyan*, 948 F. Supp. 1104, 1119 (D.D.C. 1996) (“The United States has filed a
Suggestion of Immunity on behalf of H.H. Sheikh Zayed, and courts of the United States are bound to
accept such head of state determinations as conclusive.”); *Alicog v. Kingdom of Saudi Arabia*, 860 F.
Supp. 379, 382 (S.D. Tex. 1994) (concluding that the recognition by the Executive Branch of King
Fahd’s immunity as the head of state of Saudi Arabia required dismissal of a complaint against King
Fahd for false imprisonment and abuse), *aff'd*, 79 F.3d 1145 (5th Cir. 1996); *Lafontant v. Aristide*, 844
F. Supp. 128, 132 (E.D.N.Y. 1994) (recognizing that the determination by the Executive Branch of
Haitian President Aristide’s immunity was binding on the court and required dismissal of the case);
Anonymous v. Anonymous, 181 A.D.2d 629, 629–30 (N.Y. Sup. Ct. App. Div. 1992) (dismissing suit
against unnamed head of state based on Executive Branch determination of immunity); *Kline v. Kaneko*,
535 N.Y.S. 2d 303, 304-05 (N.Y. Sup. Ct. 1988) (dismissing suit based on “conclusive” determination
of head of state immunity), *aff'd*, 546 N.Y.S. 2d 506 (N.Y. App. Div. 1989).

1 of his current status, Prime Minister Lee is entitled to immunity from the jurisdiction of this Court over
2 this suit.

3 CONCLUSION

4 For the foregoing reasons, the United States respectfully submits to the Court that Prime Minister
5 Lee is immune in this action.
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8 Dated: March 14, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notice of such filing to all parties.

s/ Michelle R. Bennett
MICHELLE R. BENNETT