

“shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as such representatives, officers, or employees except insofar as such immunity may be waived by the . . . international organization concerned.” *Id.* § 288d(b).

In 2010, the IOIA was amended to authorize the President to extend the provisions of the statute to the Office of the High Representative for Bosnia and Herzegovina (“OHR”) and its officers and employees. Pub. L. 111-177, 124 Stat. 1260 (2010) (codified at 22 U.S.C. § 288f-7). In 2011, the President used this authority to order that “all privileges, exemptions, and immunities provided by the International Organizations Act be extended to the Office of the High Representative in Bosnia and Herzegovina and to its officers and employees.” Exec. Order No. 13,568, 76 Fed. Reg. 13,497 (Mar. 8, 2011).

As a result of this Executive Order, OHR enjoys the same protections from suit as other qualifying international organizations under the IOIA. For this reason, the Court held that OHR is immune from plaintiff’s lawsuit. Mem. Op. Granting Defendants’ Motion to Dismiss (“Mem. Op.”) (ECF 18) at 7-12 (court lacks subject matter jurisdiction over plaintiff’s suit against the OHR); 22 U.S.C. § 288a(b) (qualifying international organization under the IOIA “shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments”).

Officers and employees of OHR also enjoy immunity with respect to their official acts under the IOIA, but they must satisfy the requirements of section 8(a) of the statute, which provides:

No person shall be entitled to the benefits of this subchapter, unless he (1) shall have been duly notified to and accepted by the Secretary of State as a representative, officer, or

employee; or (2) shall have been designated by the Secretary of State, prior to formal notification and acceptance, as a prospective representative, officer, or employee; or (3) is a member of the family or suite, or servant, of one of the foregoing accepted or designated representatives, officers, or employees.

22 U.S.C. § 288e(a).

In the Court's Request for Statement of Interest, it asked for the views of the United States "regarding whether Defendants Inzko and Ashdown satisfy the requirements set forth at section 8(a) of the IOIA," "or, more generally, the interpretation of that statutory provision, specifically the language 'duly notified to and accepted by the Secretary of State as a representative, officer, or employee.'" Request for Statement of Interest at 2.

II. ASHDOWN AND INZKO HAVE BEEN FORMALLY NOTIFIED AND ACCEPTED WITHIN THE MEANING OF SECTION 8(a) OF THE IOIA

In response to the Court's Request, the United States confirms that both individual defendants satisfy section 8(a)'s requirements. On November 20, 2015, the Department of State's Acting Deputy Director of the Office of Foreign Missions certified that both Inzko and Ashdown have been notified to the Department and accepted as the current and former High Representative, respectively, of the OHR. *See* November 20, 2015 Certification from Clifton Seagroves, Acting Deputy Director of the Office of Foreign Missions (Exhibit A).

Thus, section 8(a)'s requirements are satisfied with respect to Inzko and Ashdown and they are entitled to the immunity conferred by section 7(b) of the IOIA and Executive Order No. 13,568. This immunity extends to all "acts performed by them in their official capacity and falling within their functions. . .except insofar as such immunity may be waived by the...international organization concerned." 22 U.S.C. § 288d(b). As the Court correctly determined, Ashdown and Inzko carried out the actions on which plaintiff's complaint is based

in their official capacity as officers of the OHR, Mem. Op. at 16; *see also* Compl. ¶ 6, and OHR has not waived Ashdown's and Inzko's immunity.² Accordingly, section 7(b) of the IOIA and Executive Order No. 13,568 render the individual defendants immune from plaintiff's suit.

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Respectfully submitted,

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² Far from waiving the individual defendants' immunity, OHR has expressly requested that the Department of State formally confirm its acceptance of Ashdown and Inzko as the former and current High Representative, respectively, of the OHR entitled to immunity under the IOIA. *See* August 17, 2015 Letter from Valentin Inzko to Ambassador Gentry O. Smith (Exhibit B).