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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

12 SAURYVONG SAVANG, *et al.*,

13 *Plaintiffs,*

14 *v.*

15 LAO PEOPLE'S DEMOCRATIC REPUBLIC,
16 *et al.*,

17 *Defendants.*

Case No. 2:16-CV-02037-VC

**SUGGESTION OF IMMUNITY AND
STATEMENT OF INTEREST OF
THE UNITED STATES OF
AMERICA**

18 **INTRODUCTION**

19 Plaintiffs, on behalf of themselves and a putative class of similarly situated
20 claimants, seek relief in this action from, among others, the Lao People's Democratic
21 Republic (Laos); its sitting president, Bounnhang Vorachith; and its sitting prime
22 minister, Thongloun Sisoulith. *See* Complaint, ECF No. 2. On June 22, 2017, the
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1 Court issued an order directing Plaintiffs to file a supplemental brief addressing, *inter*
2 *alia*: (1) “[w]hether any of the individual defendants are entitled to head-of-state
3 immunity, or any other form of immunity”; (2) “[w]hether service was proper as to all
4 defendants”; and (3) “[w]hether the Court has jurisdiction over [Laos] assuming
5 service was effected properly.” Order Granting Leave to Amend and Requesting
6 Supplemental Briefing (“Order”) at 1-2, ECF No. 24. Plaintiffs filed their
7 supplemental brief on July 5, 2017. Plaintiffs’ Brief re Court’s Legal Issues (“Pls.’
8 Supp. Br.”), ECF No. 25.

9 Pursuant to 28 U.S.C. § 517,¹ the United States respectfully submits this
10 Suggestion of Immunity and Statement of Interest addressing three issues presented
11 by this case and highlighted in the Court’s June 22 Order. First, the U.S. Department
12 of State has determined that President Bounnhang and Prime Minister Thongloun
13 are immune from suit. Because the Executive Branch retains the authority to
14 recognize the immunity of foreign heads of state and heads of government, the United
15 States respectfully submits that this action cannot proceed against them. Second,
16 the record shows that Plaintiffs’ attempt to serve Laos was ineffective under the
17 terms of the Foreign Sovereign Immunities Act (FSIA). 28 U.S.C. §§ 1330, 1602–11.
18 The United States has a strong interest in ensuring that foreign states are haled
19 before U.S. courts only when properly served with process.² Third, even if Plaintiffs

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21 ¹ Under this statute, “any officer of the Department of Justice[] may be sent by
22 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 the United States.”

23 ² At this time, the United States takes no position on (1) the possible immunity
of the individual defendants other than President Bounnhang and Prime Minister

1 had properly effected service, the FSIA provides the sole basis for securing
2 jurisdiction over foreign states in U.S. courts, and Plaintiffs have not properly
3 identified an FSIA exception to immunity that would provide this Court with
4 jurisdiction over Laos.³

5 The Lao Ministry of Foreign Affairs has formally requested that the United
6 States recognize the immunity of President Bounnhang and Prime Minister
7 Thongloun. See Diplomatic Note from the Min. of Foreign Affairs of the Lao People's
8 Dem. Rep. to the U.S. Dep't of State (April 28, 2017) (attached as Exhibit A). In light
9 of the relevant principles of customary international law, and based on its
10 consideration of the United States' foreign policy and foreign relations interests, the
11 Department of State has determined that it "recognizes and allows the immunity of

12 Thongloun; (2) the validity of Plaintiffs' service on defendants other than Laos; (3)
13 whether Plaintiffs have shown minimum contacts sufficient for personal jurisdiction
14 over the individual defendants; or (4) the merits of Plaintiffs' claims. In a case
15 involving a claim of immunity, a court need not address the immunity question until
16 it has first reached determinations on other threshold issues, including whether a
foreign official defendant has been properly served and whether the court has
personal jurisdiction. See *Sinochem Intern. Co. v. Malaysia Intern. Shipping Corp.*,
549 U.S. 422, 425 (2007).

17 ³ The United States has also filed a suggestion of immunity and statement of
18 interest in a similar case in this district, *Hmong I v. Lao PDR*, Civ. No. 15-2439, in
19 which it suggested immunity on behalf of Laos's then-President and -Prime Minister
and explained that the plaintiff had failed to effectuate service on Laos. ECF No. 23.
20 On May 17, 2016, the magistrate judge issued an order and amended findings and
21 recommendations, concluding that (1) the court lacks jurisdiction over the suit under
Kiobel v. Royal Dutch Petroleum Co., 133 S. Ct. 1659 (2013); (2) the plaintiff had not
22 identified an FSIA exception to immunity in the case of Laos; and (3) the then-sitting
23 President and Prime Minister of Laos were immune from suit. ECF No. 34. On June
13, 2016, the district court adopted the magistrate judge's findings and
recommendations in full and ordered the plaintiff to show cause why the case should
not be dismissed for lack of federal jurisdiction. ECF No. 40. The district court has
not yet ruled on plaintiff's response to the order to show cause.

1 President Bounnhang as a sitting head of state and Prime Minister Thongloun as a
2 sitting head of government from the jurisdiction of the United States District Court
3 in this suit.” Letter from Richard C. Visek, Acting Legal Adviser, U.S. Dep’t of State,
4 to Chad A. Readler, Acting Assistant Att’y Gen., U.S. Dep’t of Justice (May 26, 2017)
5 (hereinafter “Dep’t of State Letter”) (attached as Exhibit B).

6 The United States also has an important interest in ensuring that litigation
7 against foreign states in U.S. courts proceeds in accordance with the comprehensive
8 rules set out in the FSIA. Plaintiffs’ attempt to serve the Lao state via the
9 Presidential Palace in Vientiane, Laos did not satisfy the FSIA’s requirements.
10 Plaintiffs purported to serve Laos on September 22, 2016, by sending copies of the
11 summons, Complaint, and civil cover sheet to the Presidential Palace, addressed to
12 the former President of Laos, via Federal Express International Delivery. *See* ECF
13 No. 9; *see also* Pls.’ Supp. Br. at 6. Such service does comport with any of the methods
14 of service set out in the FSIA, 28 U.S.C. § 1608(a). Nor have Plaintiffs even identified
15 which of the FSIA’s statutory exceptions to immunity they believe apply to provide
16 the court with jurisdiction over the claims against Laos. In light of these deficiencies,
17 it would be inappropriate for the Court to enter a default judgment against Laos, as
18 Plaintiffs have requested, *see* Plaintiffs’ Motion for Default Judgment, ECF No. 22.

1 **SUGGESTION OF IMMUNITY FOR PRESIDENT**
2 **BOUNNHANG AND PRIME MINISTER THONGLOUN**

3 **I. President Bounnhang and Prime Minister Thongloun Are Immune**
4 **From Suit.**

5 The United States respectfully informs the Court of its interest in the pending
6 claims against President Bounnhang, Laos's sitting head of state, and Prime Minister
7 Thongloun, its sitting head of government, and hereby informs the Court that both
8 officials are immune from suit. The Constitution assigns to the U.S. President alone
9 the responsibility to represent the Nation in its foreign relations. As an incident of
10 that power, the Executive Branch has the sole authority to determine the immunity
11 from suit of incumbent heads of state and heads of government. The interest of the
12 United States in this matter arises from a determination by the Executive Branch, in
13 consideration of the relevant principles of customary international law, and in the
14 implementation of its foreign policy and in the conduct of its international relations,
15 that President Bounnhang and Prime Minister Thongloun are immune from this suit.
16 As discussed more fully below, this determination is controlling and is not subject to
17 judicial review. Indeed, the United States is aware of no case in which a court has
18 ever subjected a sitting head of state or head of government to suit once the Executive
19 Branch has determined that he or she is immune.

20 Here, the Office of the Legal Adviser of the U.S. Department of State has
21 informed the U.S. Department of Justice that the government of Laos has formally
22 requested that the United States recognize President Bounnhang's and Prime
23 Minister Thongloun's immunity from this lawsuit. *See* Dep't of State Letter, *supra*.

1 The Office of the Legal Adviser has further informed the Department of Justice that
2 the “Department of State recognizes and allows the immunity of President
3 Bounnhang as a sitting head of state and Prime Minister Thongloun as a sitting head
4 of government from the jurisdiction of the United States District Court in this suit.”
5 *Id.*

6 The immunity of foreign officials from suit in U.S. courts is now determined
7 under a different legal regime from the immunity of foreign states. For many years,
8 both types of immunity were determined exclusively by the Executive Branch, and
9 courts deferred completely to the Executive’s foreign sovereign immunity
10 determinations. *See, e.g., Republic of Mexico v. Hoffman*, 324 U.S. 30, 35 (1945) (“It
11 is . . . not for the courts to deny an immunity which our government has seen fit to
12 allow, or to allow immunity on new grounds which the government has not seen fit
13 to recognize.”). But in 1976, Congress codified the standards governing suits against
14 foreign states in the FSIA, transferring to the Judiciary the responsibility for
15 determining whether such a state is subject to suit. *See* 28 U.S.C. § 1602 (“Claims of
16 foreign states to immunity should henceforth be decided by courts of the United
17 States and of the States in conformity with the principles set forth in the [FSIA].”).
18 As the Supreme Court has explained, however, Congress has not similarly codified
19 standards governing the immunity of foreign officials from suits in our courts.
20 *Samantar v. Yousuf*, 560 U.S. 305, 325 (2010) (“Although Congress clearly intended
21 to supersede the common-law regime for claims against foreign states, we find
22 nothing in the statute’s origin or aims to indicate that Congress similarly wanted to
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1 codify the law of foreign official immunity.”). Instead, when it codified the principles
2 governing the immunity of foreign states, Congress left in place the practice of judicial
3 deference to Executive Branch immunity determinations with respect to foreign
4 officials. *See id.* at 323 (“We have been given no reason to believe that Congress saw
5 as a problem, or wanted to eliminate, the State Department’s role in determinations
6 regarding individual official immunity.”). Thus, the Executive Branch retains its
7 historic authority to determine a foreign official’s immunity from suit, including the
8 immunity of foreign heads of state and heads of government. *See id.* at 311–12 & n.6
9 (noting the Executive Branch’s historical role in determining head of state immunity).

10 This doctrine of head of state immunity is well-established in customary
11 international law. *See, e.g., Lafontant v. Aristide*, 844 F. Supp. 128, 132–33 (E.D.N.Y.
12 1994); Ernest Mason Satow, *Satow’s Guide to Diplomatic Practice* 9 (Lord Gore-Booth
13 ed., 5th ed. 1979); Restatement (Second) of the Foreign Relations Law of the United
14 States §§ 65–66 (1965). It protects a foreign leader’s ability to function effectively
15 and ensures respect for the dignity of his or her office. *See, e.g., Ex parte Republic of*
16 *Peru*, 318 U.S. 578, 588–89 (1943). Despite the doctrine’s common label — “head of
17 state immunity” — it extends to incumbent foreign heads of government as well. *See,*
18 *e.g., Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116, 137–38 (1812); *see also*
19 *Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.)*, 2002 I.C.J. 3, 29–30 (Feb.
20 14); Restatement (Second), *supra*, §§ 65–66.

21 In the United States, head of state immunity determinations are made by the
22 Department of State, incident to the Executive Branch’s authority in the field of
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1 foreign affairs. *See, e.g., Habyarimana v. Kagame*, 696 F.3d 1029, 1032–33 (10th Cir.
2 2012). The Supreme Court has held that the courts of the United States are bound
3 by suggestions of immunity submitted on the Department’s behalf. *See Hoffman*, 324
4 U.S. at 35–36; *Peru*, 318 U.S. at 588–89. In *Peru*, for example, the Supreme Court
5 declared that such a determination “must be accepted by the courts as a conclusive
6 determination by the political arm of the Government.” 318 U.S. at 589. In other
7 words, once a suggestion of immunity is filed, “it is the court’s duty to surrender the
8 [matter] and remit the [plaintiff] to the relief obtainable through diplomatic
9 negotiations.” *Id.* at 588.

10 For this reason, courts have routinely deferred to the Executive Branch’s
11 immunity determinations concerning sitting heads of state and heads of government
12 without further review. *See, e.g., Habyarimana*, 696 F.3d at 1031–33 (“We must
13 accept the United States’ suggestion that a foreign head of state is immune from
14 suit . . . as a conclusive determination . . . that the continued [exercise of jurisdiction]
15 interferes with the proper conduct of our foreign relations.” (quoting *Peru*, 324 U.S.
16 at 589) (third alteration in original)); *Wei Ye v. Jiang Zemin*, 383 F.3d 620, 625 (7th
17 Cir. 2004) (“The obligation of the Judicial Branch is clear — a determination by the
18 Executive Branch that a foreign head of state is immune from suit is conclusive and
19 a court must accept such a determination without reference to the underlying claims
20 of a plaintiff.”); *Doe v. State of Israel*, 400 F. Supp. 2d 86, 110 (D.D.C. 2005)
21 (dismissing claims against the prime minister of Israel because “[w]hen the Executive
22 Branch concludes that a recognized leader of a foreign sovereign should be immune
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1 from the jurisdiction of American courts, that conclusion is determinative.”); *Saltany*
2 *v. Reagan*, 702 F. Supp. 319, 320 (D.D.C. 1988) (holding that the determination of the
3 U.K. prime minister’s immunity from suit was conclusive and dismissing the claims
4 against her), *aff’d in part and rev’d in part on other grounds*, 886 F.2d 438 (D.C. Cir.
5 1989).

6 When the Executive Branch determines that a sitting head of state or head of
7 government is immune from suit, judicial deference to that determination is
8 predicated on compelling considerations arising out of the Executive’s constitutional
9 authority to conduct foreign affairs. *See Wei Yi*, 383 F.3d at 626. Judicial deference
10 to the Executive Branch in these matters, as the Seventh Circuit has noted, is
11 “motivated by the caution we believe appropriate of the Judicial Branch when the
12 conduct of foreign affairs is involved.” *Id.*; *see also Spacil v. Crowe*, 489 F.2d 614, 619
13 (5th Cir. 1974) (“Separation-of-powers principles impel a reluctance in the judiciary
14 to interfere with or embarrass the executive in its constitutional role as the nation’s
15 primary organ of international policy.”). As other courts have explained, the
16 Executive Branch possesses substantial institutional resources and extensive
17 experience with which to conduct the country’s foreign affairs. *See, e.g., Spacil*, 489
18 F.2d at 619; *cf. United States v. Truong Dinh Hung*, 629 F.2d 908, 913–14 (4th Cir.
19 1980). In other words, “in the chess game that is diplomacy only the executive has a
20 view of the entire board and an understanding of the relationship between isolated
21 moves.” *Spacil*, 489 F.2d at 619. For this reason, and as noted above, the United
22 States is aware of no case in which a court has subjected a sitting head of state or
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1 head of government to suit once the Executive Branch has recognized his or her
2 immunity.⁴

3 Under the customary international law principles recognized and accepted by
4 the Executive Branch, head of state immunity attaches to a head of state's or head of
5 government's status as the current holder of his or her office. Because the
6 Department of State has determined that President Bounnhang and Prime Minister

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8 ⁴ Instead, courts have dismissed numerous cases against sitting heads of state
9 and heads of government. *See, e.g.*, Order at 3, *Am. Justice Ctr. v. Modi*, No. 14-CV-
10 7780 (S.D.N.Y. Jan. 14, 2015) (dismissing a complaint against India's prime minister
11 because, "in light of the determination by the Executive Branch that [he was] entitled
12 to immunity as the sitting head of a foreign government, he [was] immune from the
13 jurisdiction of [the] Court"); *Tawfik v. al-Sabah*, No. 11-CV-6455, 2012 WL 3542209,
14 at *3-4 (S.D.N.Y. Aug. 16, 2012) (holding that "the Executive Branch's determination
15 over the scope of the [sitting head of state of Kuwait]'s immunity [was] controlling");
16 *Manoharan v. Rajapaksa*, 845 F. Supp. 2d 260, 262 (D.D.C. 2012) (dismissing claims
17 against the president of Sri Lanka because "the Court [was] bound by the State
18 Department's Suggestion of Immunity"), *aff'd*, 711 F.3d 178 (D.C. Cir. 2013);
19 *Howland v. Resteiner*, No. 07-CV-2332, 2007 WL 4299176, at *2 & n.2 (E.D.N.Y. Dec.
20 5, 2007) (dismissing a complaint against the prime minister of Grenada and
21 recognizing "no doubt that he [was] entitled to immunity" after the Executive Branch
22 had filed a suggestion of immunity); *Doe v. Roman Catholic Diocese of Galveston-
23 Houston*, 408 F. Supp. 2d 272, 278 (S.D. Tex. 2005) (holding that the Executive's
immunity determination "is not subject to additional review by a federal court");
Leutwyler v. Queen Rania Al-Abdullah, 184 F. Supp. 2d 277, 280 (S.D.N.Y. 2001)
(noting that the Executive Branch's head of state immunity determination "is entitled
to conclusive deference from the courts"); *Tachiona v. Mugabe*, 169 F. Supp. 2d 259,
297 (S.D.N.Y. 2001) (dismissing a suit against the president and foreign minister of
Zimbabwe based on a suggestion of immunity filed by the Executive Branch), *aff'd*,
386 F.3d 205 (2d Cir. 2004); *First Am. Corp. v. Al-Nahyan*, 948 F. Supp. 1107, 1119
(D.D.C. 1996) (dismissing a suit against the president of the United Arab Emirates
based on a suggestion of immunity because "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 the Saudi king's immunity required dismissal of the complaint
against him), *aff'd*, 79 F.3d 1145 (5th Cir. 1996); *Lafontant*, 844 F. Supp. at 132
(recognizing that the determination by the Executive Branch of the Haitian
president's immunity was binding on the court and required dismissal of the case).

1 Thongloun enjoy immunity from the jurisdiction of U.S. courts in light of their current
2 status as Laos’s head of state and head of government, respectively, the claims
3 against them should be dismissed.⁵

4 That Plaintiffs allege that the President and Prime Minister committed “war
5 crimes,” *see* Pls.’ Supp. Br. at 9-13, does not alter this conclusion. Despite the Court’s
6 specific direction to address “[w]hether any of the individual defendants are entitled
7 to head-of-state immunity,” *see* Order at 2, Plaintiffs do not address head of state
8 immunity at all in their supplemental brief. *See* Pls.’ Supp. Br. at 9-13. Instead,
9 Plaintiffs argue that “[w]ar crimes do not receive protection under *functional*
10 immunities” and cite to cases purportedly supporting their view that the President
11 and Prime Minister are not entitled to “*functional* immunity” because Plaintiffs have
12 alleged that they committed “war crimes.” *Id.* at 13 (emphasis added). Here,
13 however, the Executive has determined that the President and Prime Minister of
14 Laos enjoy immunity based on their *status* as the sitting head of state and head of
15 government, respectively. In cases where the Executive does so, courts consistently
16 defer to the State Department’s determination, regardless of the nature of plaintiffs’
17 allegations, including allegations of war crimes or other human rights abuses. *See,*
18 *e.g., Habyarimana*, 696 F.3d at 1032 (deferring to suggestion of immunity for head of
19 state in case involving allegations of political assassination and torture); *Wei Ye*, 383

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21 ⁵ Once the Executive Branch submits a suggestion of immunity, “the district
22 court surrender[s] its jurisdiction.” *Samantar*, 560 U.S. at 311; *see also Peru*, 318
23 U.S. at 588. As such, even if President Bounnhang or Prime Minister Thongloun
were to leave office before this Court dismisses the claims against them, they would
remain immune from this lawsuit.

1 F.3d at 627 (7th Cir. 2004) (court is bound by the Executive’s suggestion of immunity,
2 “that a foreign leader should be immune from suit even when the leader is accused of
3 acts that violate *jus cogens* norms”); *Doe I v. State of Israel*, 400 F. Supp. 2d 86, 110
4 (D.D.C. 2005) (in case alleging *jus cogens* violations, “[w]hen the Executive Branch
5 concludes that a recognized leader of a foreign sovereign should be immune from the
6 jurisdiction of American courts, that conclusion is determinative.”).⁶

7 Plaintiffs’ argument “ignores the distinction between a Suggestion of
8 Immunity, which is made by the United States, and a claim of immunity, which is
9 made by a defendant.” *Hmong I v. Lao People’s Democratic Republic*, No. 2:15-CV-
10 2349 TLN AC, 2016 WL 2901562, at *10 (E.D. Cal. May 17, 2016), *report and*
11 *recommendation adopted sub nom. Hmong v. Lao People’s Democratic Republic*, No.
12 2:15-CV-02349 TLN AC, 2016 WL 3254066 (E.D. Cal. June 13, 2016). “The
13 distinction is critical, because . . . claims of immunity [a]re examined by . . . court[s]
14 on the merits of the immunity claim, whereas . . . a Suggestion of Immunity is entitled
15 to deference without any examination of the merits of the immunity claim.” *Id.* at
16 *10. Thus, “even if plaintiff[s] [were] correct that the courts may reject a ‘claim of
17 immunity’ *made by the defendant* when war crimes are involved,” that argument has
18 no application “where the United States has filed a Suggestion of Immunity on behalf
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20 ⁶ In any event, the courts defer as well to Executive Branch suggestions of immunity
21 involving foreign officials or former foreign officials, who enjoy functional immunity,
22 including in cases where the plaintiffs allege war crimes and violations of *jus cogens*
23 norms. *See, e.g., Dogan v. Barak*, 2016 WL 6024416, at *10 (C.D. Cal. Oct. 13, 2016)
24 (“The resolution of this dispute belongs with the Executive Branch, not the Judicial
25 Branch.”), *judgment entered sub nom. Doğan v. Barak*, 2016 WL 5947236, *appeal*
26 *pending*, No. 16-57604 (9th Cir.).

1 of a sitting head of state or head of government.” *Id.* at *10 n.16 (emphasis in
2 original). Plaintiffs’ allegations thus have no bearing on the immunity determination
3 here, which is controlled by the Executive Branch’s determination that the President
4 and Prime Minister of Laos are immune from suit.

5 **STATEMENT OF INTEREST REGARDING**
6 **PLAINTIFFS’ CLAIMS AGAINST LAOS**

7 The United States also has an important interest in ensuring that litigation
8 against foreign states in U.S. courts proceeds in accordance with the rules set out in
9 the FSIA and that foreign states do not have to respond or appear in U.S. courts
10 without having received proper service of process. These interests are based, in part,
11 on considerations of reciprocity. The Department of State regularly objects when
12 foreign courts or litigants attempt to serve the United States in a manner that we
13 view as inconsistent with international law. Ensuring that service upon foreign
14 states and jurisdiction over foreign states in U.S. courts complies with domestic and
15 international law encourages other nations to accord the United States the same
16 consideration in their judicial systems.

17 Here, the record shows that Plaintiffs’ attempt to serve the Lao state was
18 improper because it did not meet the requirements for service set forth in the FSIA.
19 In addition, Plaintiffs have failed to identify an FSIA exception to immunity that
20 would provide this Court jurisdiction over Laos.
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1 **I. The FSIA Does Not Allow for Plaintiffs’ Purported Method of Service**
2 **Upon Laos.**

3 The FSIA establishes “the sole basis for obtaining jurisdiction over a foreign
4 state in our courts.” *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S.
5 428, 434 (1989). Personal jurisdiction exists under the statute where there is both
6 subject matter jurisdiction and proper service. *See* 28 U.S.C. § 1330(a)–(b). Section
7 1608(a) of the act contains the four exclusive means of service of process on a foreign
8 state, and specifies the order in which they must be attempted. *See id.* § 1608(a);
9 *accord Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1130 (9th Cir. 2010).
10 These methods are (1) service according to a “special arrangement between the
11 plaintiff and the foreign state,” (2) service under “an applicable international
12 convention on service,” (3) service by mail to the foreign minister of the foreign state,
13 or (4) service by transmission of process to the State Department, which will forward
14 necessary papers “through diplomatic channels to the foreign state.” 28 U.S.C. §
15 1608(a). Consistent with the United States’ position, most courts have required
16 “strict compliance” with § 1608(a). *See, e.g., Magness v. Russian Federation*, 247 F.3d
17 609, 615 (5th Cir. 2010); *Transaero, Inc. v. La Fuerza Aérea Boliviana*, 30 F.3d 148,
18 154 (D.C. Cir. 1994). The Ninth Circuit, by contrast, has held that “substantial
19 compliance” will do. *Peterson*, 627 F.3d at 1129.

20 Even under a more liberal substantial compliance standard, however,
21 Plaintiffs’ attempt to serve Laos was ineffective to satisfy any of § 1608(a)’s four
22 methods of service. Subsection (a)(1) is inapposite, because there is no suggestion in
23 the record of a “special arrangement” between Plaintiffs and Laos. Subsection (a)(2)

1 is similarly inapplicable, because there are no international treaties on service of
2 process in force between the United States and Laos. While Plaintiffs' supplemental
3 brief discusses service under the Hague Service Convention,⁷ see Pls.' Supp. Br. at 6-
4 8, Laos is not a party to that Convention, so service under (a)(2) is not an option
5 available to Plaintiffs.

6 Plaintiffs' purported service also failed to "substantially comply" with
7 subsection (a)(3). To satisfy that provision, a plaintiff must:

8 send[] a copy of the summons and complaint and a notice of suit,
9 together with a translation of each into the official language of the
10 foreign state, by any form of mail requiring a signed receipt, to be
addressed and dispatched by the clerk of the court to the head of the
ministry of foreign affairs of the foreign state concerned.

11 28 U.S.C. § 1609(a)(3). Here, the summons and complaint were not sent via the clerk
12 of the court. They did not include a "notice of suit" — a particular legal document
13 whose components are specified in 22 C.F.R. § 93.2. Plaintiffs also concede that the
14 summons and complaints were not translated into Lao. See Pls.' Supp. Br. 6. And
15 they were not addressed to the Lao minister of foreign affairs. See Affidavit of Process
16 Server at 2, ECF No. 9.⁸

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18 ⁷ The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents
in Civil and Commercial Matters, *Convention Done at the Hague Nov. 15, 1965*;
T.I.A.S. No. 6638 (Feb. 10, 1969).

19
20 ⁸ The failure to translate the documents alone would be sufficient to take
Plaintiffs' purported service beyond the realm of "substantial compliance": the Ninth
21 Circuit has held that "[f]ailure to deliver a complaint in the correct language is such
a fundamental defect that it fails . . . [the] 'substantial compliance' test." *Straub v. A*
22 *P Green, Inc.*, 38 F.3d 448, 453 (9th Cir. 1994). Indeed, relevant case law confirms
that Plaintiffs did not even achieve "minimal compliance" with the statute. *Berdakin*
23 *v. Consulado de la República de El Salvador*, 912 F. Supp. 458, 467 (C.D. Cal. 1995).
In *Berdakin*, the court held that the plaintiff fell far short of substantial compliance

1 Finally, Plaintiffs have made no attempt to effect service under subsection
2 (a)(4) by requesting the clerk of the court to dispatch the requisite documents to the
3 Secretary of State for transmission through diplomatic channels.

4 Accordingly, Plaintiffs' attempt to serve Laos by sending via Federal Express
5 copies of the summons, Complaint, and civil cover sheet to the Presidential Palace,
6 addressed to the former President of Laos, does not satisfy § 1608(a)'s requirements.
7 The Court therefore lacks personal jurisdiction over Laos.

8 **II. Plaintiffs Have Failed to Identify an FSIA Exception to Immunity**
9 **Providing this Court with Jurisdiction Over Laos.**

10 Even if Plaintiffs had properly effected service, they fail to identify an FSIA
11 exception to immunity that would provide this Court with jurisdiction over Laos.
12 Under the FSIA, foreign states are immune from the jurisdiction of U.S. courts unless
13 a suit falls within one of the exceptions to immunity set forth in the Act. 28 U.S.C. §
14 1604; *see also* 28. U.S.C. § 1330. Nowhere in Plaintiffs' Complaint or subsequent
15 filings do they identify which statutory exception to immunity applies in this case.
16 Plaintiffs cite only 28 U.S.C. § 1331 (federal question jurisdiction) and the Alien Tort
17 Claims Act (ATCA), 28 U.S.C. § 1350, as the jurisdictional bases for their suit, *see*
18 Complaint ¶ 1, and their sole cause of action relies on the ATCA. *See id.* ¶ 119. Their
19 supplemental brief baldly states that "sovereign immunity[y] do[es] not apply to war
20 crimes," Pls.' Supp. Br. 9, 13 (same), but cites no authority for that proposition and

21 _____
22 where process was not dispatched by the clerk of the court, was not translated, was
23 not addressed to the foreign minister, and was not sent with a return receipt
requested. *Id.* at 467. Plaintiffs' purported service here was equally deficient.

1 contains no reference to or discussion of the FSIA's exceptions to immunity. Entry of
2 a default judgment against Laos would be unwarranted for this additional reason.

3 **CONCLUSION**

4 For the foregoing reasons, President Bounnhang and Prime Minister
5 Thongloun are immune from this suit, Plaintiffs' attempt to serve Laos did not
6 amount to proper service under the FSIA, and Plaintiffs have failed to identify an
7 FSIA exception to immunity providing this Court with jurisdiction over Laos.

8 July 13, 2017

Respectfully submitted,

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14 /s/
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CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2017, I filed the foregoing statement of interest and all attachments through the Court's CM/ECF system, which will send notice of such filing to all counsel of record.

July 13, 2017

 /s/
EMILY S. NEWTON