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12 **IN THE UNITED STATES DISTRICT COURT**  
13 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

14 HMONG I, a fictitious name, on behalf  
15 of herself and as representative of  
16 members of a class of similarly  
17 situated claimants,

*Plaintiff,*

18 *v.*

19 LAO PEOPLE'S DEMOCRATIC REPUBLIC;  
20 CHOUMMALY SAYASONE, President of  
21 Laos; THONGSING THAMMAVONG,  
22 Prime Minister of Laos; BOUNKERT  
23 SANGSOMASACK, Minister of Justice of  
Laos; SENGNUAN XAYALATH, Minister  
of Defense of Laos; THONGBANH  
SENGAPHONE, Minister of Public  
Security of Laos; LAO GENERAL  
BOUNCHANH,

*Defendants.*

**Case No. 2:15-CV-2349-TLN-AC**

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

1 **INTRODUCTION**

2 The plaintiff, identified only by the fictitious name Hmong I, seeks relief in  
3 this action from the Lao People’s Democratic Republic (Laos); its sitting president,  
4 Choummaly Sayasone; its sitting prime minister, Thongsing Thammavong; and  
5 several other current and former Lao officials. Pursuant to 28 U.S.C. § 517,<sup>1</sup> the  
6 United States respectfully offers this Suggestion of Immunity and Statement of  
7 Interest addressing two important questions presented by this case. First, the  
8 Department of State has determined that President Choummaly and Prime  
9 Minister Thongsing are immune from suit. Because the Executive Branch retains  
10 the authority to recognize the immunity of foreign heads of state and heads of  
11 government, the United States respectfully submits that this action cannot proceed  
12 against them. Second, the record shows that the plaintiff’s attempt to serve Laos  
13 was ineffective under both federal and international law. The United States has a  
14 strong interest in ensuring that foreign states are haled before U.S. courts only  
15 when properly served with process.<sup>2</sup>

16 The Lao Ministry of Foreign Affairs has formally requested that the U.S.  
17 government recognize the immunity of President Choummaly and Prime Minister  
18 Thongsing. See Letter from Katherine D. McManus, Deputy Legal Adviser, U.S.

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19 <sup>1</sup> Under this statute, “any officer of the Department of Justice[] may be sent by  
20 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.”

21 <sup>2</sup> At this time, the United States takes no position on (1) the possible immunity  
22 of Laos or any defendants other than President Choummaly and Prime Minister  
Thongsing, (2) the validity of the plaintiff’s service on defendants other than Laos,  
23 or (3) the merits of the plaintiff’s claims.

1 Dep't of State, to Benjamin C. Mizer, Principal Deputy Assistant Att'y Gen., U.S.  
2 Dep't of Justice (Feb. 8, 2016) (hereinafter "Dep't of State Letter") (attached as  
3 Exhibit A). In light of the relevant principles of customary international law, and  
4 based on its consideration of the United States' foreign policy and foreign relations  
5 interests, the Department of State has determined that it "recognizes and allows  
6 the immunity of President Choummaly as a sitting head of state and Prime  
7 Minister Thongsing as a sitting head of government from the jurisdiction of the  
8 United States District Court in this suit." *Id.*

9 The Lao Ministry of Foreign Affairs has further noted its objection to the  
10 plaintiff's attempt to serve the Lao state via its U.S. embassy in Washington. *See*  
11 Diplomatic Note from the Min. of Foreign Affairs of the Lao People's Dem. Rep. to  
12 the U.S. Dep't of State (Feb. 8, 2016) (attached as Exhibit B). The plaintiff claims to  
13 have served the Lao state with process by serving the Lao ambassador to the United  
14 States "on behalf of" Laos. *See* Affidavit of Process Server, ECF No. 4. More  
15 specifically, she dispatched a process server to personally deliver a copy of the  
16 summons and complaint to the Lao embassy in Washington, where the documents  
17 were accepted by an individual identified as a "general counsel" and "authorized  
18 agent" of the ambassador. *See id.* As discussed further herein, the United States  
19 maintains an important interest in ensuring that litigants do not improperly serve  
20 foreign states with process at their embassies — a manner of service that is  
21 inconsistent with the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. §§ 1330,  
22 1602–11, and the Vienna Convention on Diplomatic Relations (VCDR), Apr. 18,

1 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95, to which both the United States and Laos  
2 are parties.

3 **SUGGESTION OF IMMUNITY FOR PRESIDENT**  
4 **CHOUMMALY AND PRIME MINISTER THONGSING**

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

21 Here, the Office of the Legal Adviser of the U.S. Department of State has  
22 informed the Department of Justice that the government of Laos has formally  
23 requested that the United States recognize President Choummaly's and Prime

1 Minister Thongsing’s immunity from this lawsuit. *See* Dep’t of State Letter, *supra*.  
2 The Office of the Legal Adviser has further informed the Department of Justice that  
3 the “Department of State recognizes and allows the immunity of President  
4 Choummaly as a sitting head of state and Prime Minister Thongsing as a sitting  
5 head of government from the jurisdiction of the United States District Court in this  
6 suit.” *Id.*

7 The immunity of foreign officials from suit in U.S. courts arises from a  
8 different source than the immunity of foreign states. For many years, both types of  
9 immunity were determined exclusively by the Executive Branch, and courts  
10 deferred completely to the Executive’s foreign sovereign immunity determinations.  
11 *See, e.g., Republic of Mexico v. Hoffman*, 324 U.S. 30, 35 (1945) (“It is . . . not for the  
12 courts to deny an immunity which our government has seen fit to allow, or to allow  
13 immunity on new grounds which the government has not seen fit to recognize.”).  
14 But in 1976, Congress codified the standards governing suits against foreign states  
15 in the FSIA, transferring to the Judiciary the responsibility for determining  
16 whether such a state is subject to suit. *See* 28 U.S.C. § 1602 (“Claims of foreign  
17 states to immunity should henceforth be decided by courts of the United States and  
18 of the States in conformity with the principles set forth in the [FSIA].”). As the  
19 Supreme Court has explained, however, Congress has not similarly codified  
20 standards governing the immunity of foreign officials from suits in our courts.  
21 *Samantar v. Yousuf*, 560 U.S. 305, 325 (2010) (“Although Congress clearly intended  
22 to supersede the common-law regime for claims against foreign states, we find  
23

1 nothing in the statute’s origin or aims to indicate that Congress similarly wanted to  
2 codify the law of foreign official immunity.”). Instead, when it codified the  
3 principles governing the immunity of foreign states, Congress left in place the  
4 practice of judicial deference to Executive Branch immunity determinations with  
5 respect to foreign officials. *See id.* at 323 (“We have been given no reason to believe  
6 that Congress saw as a problem, or wanted to eliminate, the State Department’s  
7 role in determinations regarding individual official immunity.”). Thus, the  
8 Executive Branch retains its historic authority to determine a foreign official’s  
9 immunity from suit, including the immunity of foreign heads of state and heads of  
10 government. *See id.* at 311–12 & n.6 (noting the Executive Branch’s historical role  
11 in determining head of state immunity).

12 This doctrine of head of state immunity is well-established in customary  
13 international law. *See, e.g., Lafontant v. Aristide*, 844 F. Supp. 128, 132–33  
14 (E.D.N.Y. 1994); Ernest Mason Satow, *Satow’s Guide to Diplomatic Practice* 9 (Lord  
15 Gore-Booth ed., 5th ed. 1979); Restatement (Second) of the Foreign Relations Law of  
16 the United States §§ 65–66 (1965). It protects a foreign leader’s ability to function  
17 effectively and ensures respect for the dignity of his or her office. *See, e.g., Ex parte*  
18 *Republic of Peru*, 318 U.S. 578, 588–89 (1943). Despite the doctrine’s common  
19 label — “head of state immunity” — it extends to incumbent foreign heads of  
20 government as well. *See, e.g., Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch)  
21 116, 137–38 (1812) (recognizing that “the immunity which all civilized nations allow  
22 to foreign ministers” derives from the “same principles” as the immunity of the  
23

1 foreign sovereign itself); *see also Arrest Warrant of 11 April 2000 (Dem. Rep. Congo*  
2 *v. Belg.*), 2002 I.C.J. 3, 29–30 (Feb. 14); Restatement (Second), *supra*, §§ 65–66.

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

14 For this reason, courts have routinely deferred to the Executive Branch’s  
15 immunity determinations concerning sitting heads of state and heads of  
16 government without further review. *See, e.g., Habyarimana*, 696 F.3d at 1031–33  
17 (“We must accept the United States’ suggestion that a foreign head of state is  
18 immune from suit . . . as a conclusive determination . . . that the continued [exercise  
19 of jurisdiction] interferes with the proper conduct of our foreign relations.” (quoting  
20 *Peru*, 324 U.S. at 589) (third alteration in original)); *Wei Ye v. Jiang Zemin*, 383  
21 F.3d 620, 625 (7th Cir. 2004) (“The obligation of the Judicial Branch is clear — a  
22 determination by the Executive Branch that a foreign head of state is immune from  
23

1 suit is conclusive and a court must accept such a determination without reference to  
2 the underlying claims of a plaintiff.”); *Doe v. State of Israel*, 400 F. Supp. 2d 86, 110  
3 (D.D.C. 2005) (dismissing claims against the prime minister of Israel because  
4 “[w]hen the Executive Branch concludes that a recognized leader of a foreign  
5 sovereign should be immune from the jurisdiction of American courts, that  
6 conclusion is determinative.”); *Saltany v. Reagan*, 702 F. Supp. 319, 320 (D.D.C.  
7 1988) (holding that the determination of the U.K. prime minister’s immunity from  
8 suit was conclusive and dismissing the claims against her), *aff’d in part and rev’d in*  
9 *part on other grounds*, 886 F.2d 438 (D.C. Cir. 1989).

10 When the Executive Branch determines that a sitting head of state or head of  
11 government is immune from suit, judicial deference to that determination is  
12 predicated on compelling considerations arising out of the Executive’s constitutional  
13 authority to conduct foreign affairs. *See Wei Yi*, 383 F.3d at 626. Judicial deference  
14 to the Executive Branch in these matters, as the Seventh Circuit has noted, is  
15 “motivated by the caution we believe appropriate of the Judicial Branch when the  
16 conduct of foreign affairs is involved.” *Id.*; *see also Spacil v. Crowe*, 489 F.2d 614,  
17 619 (5th Cir. 1974) (“Separation-of-powers principles impel a reluctance in the  
18 judiciary to interfere with or embarrass the executive in its constitutional role as  
19 the nation’s primary organ of international policy.”). As other courts have  
20 explained, the Executive Branch possesses substantial institutional resources and  
21 extensive experience with which to conduct the country’s foreign affairs. *See, e.g.,*  
22 *Spacil*, 489 F.2d at 619; *cf. United States v. Truong Dinh Hung*, 629 F.2d 908, 913–

1 14 (4th Cir. 1980). In other words, “in the chess game that is diplomacy only the  
2 executive has a view of the entire board and an understanding of the relationship  
3 between isolated moves.” *Spacil*, 489 F.2d at 619. For this reason, and as noted  
4 above, the United States is aware of no case in which a court has subjected a sitting  
5 head of state or head of government to suit once the Executive Branch has  
6 recognized his or her immunity.<sup>3</sup>

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8  

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9 <sup>3</sup> Instead, courts have dismissed countless cases against sitting heads of state  
10 and heads of government. *See, e.g.*, Order at 3, *Am. Justice Ctr. v. Modi*, No. 14-CV-  
11 7780 (S.D.N.Y. Jan. 14, 2015) (dismissing a complaint against India’s prime  
12 minister because, “in light of the determination by the Executive Branch that [he  
13 was] entitled to immunity as the sitting head of a foreign government, he [was]  
14 immune from the jurisdiction of [the] Court”); *Tawfik v. al-Sabah*, No. 11-CV-6455,  
15 2012 WL 3542209, at \*3–4 (S.D.N.Y. Aug. 16, 2012) (holding that “the Executive  
16 Branch’s determination over the scope of the [sitting head of state of Kuwait]’s  
17 immunity [was] controlling”); *Manoharan v. Rajapaksa*, 845 F. Supp. 2d 260, 262  
18 (D.D.C. 2012) (dismissing claims against the president of Sri Lanka because “the  
19 Court [was] bound by the State Department’s Suggestion of Immunity”), *aff’d*, 711  
20 F.3d 178 (D.C. Cir. 2013); *Howland v. Resteiner*, No. 07-CV-2332, 2007 WL 4299176,  
21 at \*2 & n.2 (E.D.N.Y. Dec. 5, 2007) (dismissing a complaint against the prime  
22 minister of Grenada and recognizing “no doubt that he [was] entitled to immunity”  
23 after the Executive Branch had filed a suggestion of immunity); *Doe v. Roman  
Catholic Diocese of Galveston-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

1 Under the customary international law principles recognized and accepted by  
2 the Executive Branch, head of state immunity attaches to a head of state's or head  
3 of government's status as the current holder of his or her office. Because the  
4 Department of State has determined that President Choummaly and Prime  
5 Minister Thongsing enjoy immunity from the jurisdiction of U.S. courts in light of  
6 their current status as Laos's head of state and head of government, respectively,  
7 the claims against them should be dismissed.<sup>4</sup>

8 **STATEMENT OF INTEREST REGARDING THE**  
9 **PLAINTIFF'S PURPORTED SERVICE ON LAOS**

10 The United States also has an important interest in preserving the  
11 inviolability of diplomatic missions and ensuring that foreign states do not have to  
12 respond or appear in U.S. courts without proper service of process. These interests  
13 are based, in part, on considerations of reciprocity. The Department of State  
14 regularly objects to attempts by foreign courts or litigants to serve American  
15 diplomatic missions overseas with any type of order directing the United States to  
16 respond or appear in litigation. Ensuring that service upon foreign states in U.S.

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17 that the determination by the Executive Branch of the Haitian president's  
18 immunity was binding on the court and required dismissal of the case).

19 <sup>4</sup> Even if President Choummaly or Prime Minister Thongsing were to leave  
20 office before this Court dismisses the claims against them, they would remain  
21 immune from this lawsuit. Once the Executive Branch submits a suggestion of  
22 immunity, "the district court surrender[s] its jurisdiction." *Samantar*, 560 U.S. at  
23 311; *see also Peru*, 318 U.S. at 588. Moreover, the President and Prime Minister's  
immunity from suit would preclude any effort to serve them with process while they  
are still in office. *See Wei Ye*, 383 F.3d at 622, 628 (holding that the Executive's  
"power to recognize the immunity of a foreign head of state includes the power to  
preclude service of process in that same suit on the head of state").

1 courts complies with domestic and international law encourages other nations to  
2 accord the United States the same consideration in their judicial systems.

3 Here, the record shows that the plaintiff's attempt to serve the Lao People's  
4 Democratic Republic was improper. In particular, the plaintiff's service on the Lao  
5 embassy was inconsistent with the FSIA and the VCDR.

6 **I. The FSIA does not allow the plaintiff to serve Laos by delivering a copy**  
7 **of the summons and complaint to the Lao ambassador at the Lao**  
8 **embassy in Washington.**

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

1 *Aérea Boliviana*, 30 F.3d 148, 154 (D.C. Cir. 1994). The Ninth Circuit, by contrast,  
2 has held that “substantial compliance” will do. *Peterson*, 627 F.3d at 1129.

3 Even under a more liberal substantial compliance standard, however, the  
4 plaintiff’s attempt to serve Laos was ineffective to satisfy any of § 1608(a)’s four  
5 methods of service. Subsection (a)(1) is inapposite, because there is no suggestion in  
6 the record of a “special arrangement” between the plaintiff and Laos. Subsection  
7 (a)(2) is similarly inapplicable, because there are no international treaties on  
8 service of process in force between the United States and Laos.

9 Plaintiff’s purported service also failed to “substantially comply” with  
10 subsection (a)(3). To satisfy that provision, a plaintiff must:

11 send[] a copy of the summons and complaint and a notice of suit,  
12 together with a translation of each into the official language of the  
13 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.

14 28 U.S.C. § 1609(a)(3). But here, the summons and complaint were not sent via the  
15 clerk of the court. They did not include a “notice of suit” — a particular legal  
16 document whose components are specified in 22 C.F.R. § 93.2. They were not  
17 translated into Lao. And they were not addressed to the Lao minister of foreign  
18 affairs. *See Affidavit of Process Server*.<sup>5</sup>

19  
20 <sup>5</sup> The failure to translate the documents alone would be sufficient to take the  
21 plaintiff’s purported service beyond the realm of “substantial compliance”: the Ninth  
22 Circuit has held that “[f]ailure to deliver a complaint in the correct language is such  
23 a fundamental defect that it fails . . . [the] ‘substantial compliance’ test.” *Straub v.*  
*A P Green, Inc.*, 38 F.3d 448, 453 (9th Cir. 1994). Indeed, relevant case law  
confirms that the plaintiff did not even achieve “minimal compliance” with the  
statute. *Berdakin v. Consulado de la República de El Salvador*, 912 F. Supp. 458,

1 Finally, the plaintiff has 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 The plaintiff's efforts to serve Laos by delivering papers to its embassy,  
5 addressed to the ambassador, cannot satisfy any of § 1608(a)'s requirements.  
6 Congress considered and rejected this very method of service in enacting the FSIA,  
7 particularly given its concern that such service would be inconsistent with the  
8 inviolability of embassy guaranteed by the VCDR (discussed in greater detail  
9 below). *See Autotech Techs. LP v. Integral Research & Dev. Corp.*, 499 F.3d 737, 749  
10 (7th Cir. 2007) (citing H.R. Rep. No. 94-1487, at 26 (1976)). For the foregoing  
11 reasons, the plaintiff's purported service was ineffective under the FSIA, and the  
12 Court lacks personal jurisdiction over Laos.

13 **II. The plaintiff's service of process was inconsistent with the VCDR's**  
14 **recognition that foreign embassies and foreign ambassadors are**  
**"inviolable."**

15 The VCDR, to which both the United States and Laos are parties, provides  
16 that the premises of a diplomatic mission are "inviolable." VCDR art. 22, 23 U.S.T.  
17 at 3237–38, 500 U.N.T.S. at 106–08. So is "[t]he person of a diplomatic agent." *Id.*  
18 art. 29, 23 U.S.T. at 3240, 500 U.N.T.S. at 110. As several courts have recognized,  
19 efforts to serve legal documents upon an embassy or ambassador as an agent of a

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20 467 (C.D. Cal. 1995). In *Berdakin*, the court held that the plaintiff fell far short of  
21 substantial compliance where process was not dispatched by the clerk of the court,  
22 was not translated, was not addressed to the foreign minister, and was not sent  
23 with a return receipt requested. *Id.* at 467. The plaintiff's purported service here  
was equally deficient.

1 foreign state are contrary to this inviolability. *See, e.g., Autotech*, 499 F.3d at 748;  
2 *Tachiona v. United States*, 386 F.3d 205, 221–24 (2d Cir. 2004); *see also*  
3 Restatement (Third) of the Foreign Relations Law of the United States §§ 464–66  
4 n.2 (1987). The fact that validating the plaintiff’s service in this case would be  
5 inconsistent with the United States’ treaty obligations further informs the proper  
6 understanding of the FSIA — and provides an additional reason why the plaintiff  
7 has failed to properly serve Laos.

8 As noted above, the United States has strong reciprocity interests at stake in  
9 this matter. The United States has long maintained that it may only be served  
10 through diplomatic channels or in accordance with an applicable international  
11 convention or other agreed-upon method. If U.S. courts were to allow plaintiffs  
12 themselves to directly serve papers on an embassy, the United States could be  
13 vulnerable to similar treatment in foreign courts — contrary to the United States’  
14 consistently asserted view of the law.

1 **CONCLUSION**

2 For the foregoing reasons, President Choummaly and Prime Minister  
3 Thongsing are immune from this suit, and the plaintiff's attempt to serve Laos was  
4 improper under the FSIA and the VCDR.

5 February 12, 2016

Respectfully submitted,

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7 *Principal Deputy Assistant Attorney General*

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12  /s/  
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17 *Counsel for the United States of America*



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**EXHIBIT A:**

Letter from Katherine D. McManus, Deputy Legal Adviser, U.S. Dep't of State, to Benjamin C. Mizer, Principal Deputy Assistant Att'y Gen., U.S. Dep't of Justice (Feb. 8, 2016)

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Washington, D.C. 20520

February 8, 2016

Benjamin C. Mizer  
Principal Deputy Assistant Attorney General  
Civil Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Re: *Hmong I et al. v. Lao People's Democratic Republic et al.*, No. 2:15-cv-2349  
(E.D. Cal.)

Dear Mr. Mizer:

The above-referenced suit names as defendants, among others, Choummaly Sayasone and Thongsing Thammavong, who are currently the President and Prime Minister, respectively, of the Lao People's Democratic Republic (Lao PDR). In light of President Choummaly's current status as the Head of State of the Lao PDR and Prime Minister Thongsing's current status as Head of Government of the Lao PDR, the Lao PDR has asked the Department of State to take the steps necessary to have this action dismissed as against these officials on the basis of their immunity from jurisdiction as a sitting foreign head of state and a sitting head of government, respectively.

The Department of State recognizes and allows the immunity of President Choummaly as a sitting head of state and Prime Minister Thongsing as a sitting head of government from the jurisdiction of the United States District Court in this suit. Under common law principles of immunity articulated by the Executive Branch in the exercise of its Constitutional authority over foreign affairs and informed by customary international law, President Choummaly, as the sitting head of state of a foreign state, and Prime Minister Thongsing, as a sitting head of government, are immune while in office from the jurisdiction of the United States District Court in this suit.

I would emphasize the particular importance of obtaining the prompt dismissal of the proceedings as against President Choummaly and Prime Minister Thongsing in view of the significant foreign policy implications, particularly as President Choummaly is expected to attend a diplomatic summit meeting in the United States scheduled for February 15 and 16, 2016. Accordingly, the Department of State requests that the Department of Justice submit a suggestion of immunity to the district court at the earliest opportunity.

Sincerely,

A handwritten signature in black ink that reads "Katherine D. McManus". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Katherine D. McManus  
Deputy Legal Adviser

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**EXHIBIT B:**

Diplomatic Note from the Min. of Foreign Affairs of the Lao  
People's Dem. Rep. to the U.S. Dep't of State (Feb. 8, 2016)

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LAO PEOPLE'S DEMOCRATIC REPUBLIC  
Peace Independence Democracy Unity Prosperity

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MINISTRY OF FOREIGN  
AFFAIRS

No: 032 /MOFA.DTL

The Ministry of Foreign Affairs of the Lao People's Democratic Republic presents its compliments to the United States Department of State and with reference to the court case No. **2:15-CV-02349-TLN-AC** brought by Hmong I, has the honor to state that:

One

- The Lao PDR as a sovereign state and a member of the United Nations enjoys immunity from the US Court jurisdiction in accordance with international law and the law of the United States.
- The Foreign Sovereign Immunities Act, 28 U.S.C, Section 1604, provides that foreign states shall be immune from the jurisdiction of the courts of the United States except as provided in certain enumerated exceptions.
- The lawsuit does not fall under any of the exceptions described in the Act. See 28 U.S.C. Sections 1605 and 1607.

Two

- Plaintiff delivered a copy of the summons and complaint to the Embassy of the Lao PDR on November 18, 2015.
- This method of service is inconsistent with the requirements of both the Foreign Sovereign Immunities Act and the Vienna Convention on Diplomatic Relations.

Three

- The U.S Supreme Court's decision in *Kiobel vs, Royal Dutch Shell Petroleum* (2013) requires the dismissal of this suit as an unwarranted extraterritorial application of the Alien Torts Statute.

In light of the above, the Government of the Lao PDR is formally requesting the U.S. Government to take all steps necessary to have this case dismissed.

The Ministry of Foreign Affairs of the Lao People's Democratic Republic avails itself of this opportunity to renew to the United States Department of State the assurances of its highest consideration.

Vientiane, 08 February 2016



United States Department of State  
Washington, D.C.

CC: Embassy of the United States of America,  
Vientiane