

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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KASIPPILLAI MANOHARAN, et al.,)	
)	
Plaintiffs,)	Civil Action No. 1:11-cv-235 (CKK)
)	
v.)	
)	
PERCY MAHENDRA RAJAPAKSA,)	
)	
Defendant.)	
_____)	

**MOTION OF DEFENDANT PRESIDENT MAHINDA RAJAPAKSA
TO SOLICIT THE VIEWS OF THE UNITED STATES
AND FOR ENLARGEMENT OF TIME TO RESPOND TO THE COMPLAINT**

Defendant Mahinda Rajapaksa (sued herein as Percy Mahendra Rajapaksa), the President of the Democratic Socialist Republic of Sri Lanka, without waiving his immunity from the jurisdiction and process of the United States courts, and expressly reserving all defenses available to him under FED. R. CIV. P. 12 and otherwise, respectfully moves the Court, pursuant to the Court's inherent authority and FED. R. CIV. P. 6(b), to:

A. Solicit the views of the United States government with respect to: (i) President Rajapaksa's entitlement to Head of State and foreign official immunity from suit; (ii) the justiciability of plaintiffs' claims under the political question doctrine; and (iii) the applicability of the Act of State doctrine as a bar to adjudication of plaintiffs' claims; and

B. In the interim, enlarge President Rajapaksa's time to respond to the Complaint in this action until 20 days following the submission of the views of the United States.

Following submission of the views of the United States, if the Court is not divested of jurisdiction, President Rajapaksa would move to dismiss the Complaint on the basis of his immunity from suit, the non-justiciability of plaintiffs' claims under the political question doctrine, the Act of

State doctrine, and the absence of U.S. personal jurisdiction over him, among other grounds. These issues are more fully explained in the accompanying Memorandum of Points and Authorities.

Because this motion relates to President Rajapaksa's entitlement to dispositive relief, in the form of dismissal based on Head of State and foreign official immunity among other grounds, undersigned counsel respectfully submits that there is no duty to confer pursuant to Local Rule 7(m). Undersigned counsel nonetheless contacted plaintiffs' counsel, Mr. Bruce Fein, and sought plaintiffs' position. Mr. Fein stated that plaintiffs take no position because of insufficient time to carefully consider the motion.

A proposed order is submitted herewith.

Respectfully submitted,

PATTON BOGGS LLP

By: /s/ Mitchell R. Berger
Mitchell R. Berger (D.C. Bar No. 385467)
2550 M Street, NW
Washington, D.C. 20037
Telephone: (202) 457-5601
Facsimile: (202) 457-6315
Email: mberger@pattonboggs.com

Counsel for Defendant Mahinda Rajapaksa

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2011, a copy of the foregoing motion along with its supporting Memorandum of Points and Authorities, and a proposed order, were filed via the Court's CM/ECF filing system, by which those papers automatically will be served on plaintiffs' counsel.

By: /s/ Mitchell R. Berger
Mitchell R. Berger (D.C. Bar No. 385467)
2550 M Street, NW
Washington, D.C. 20037
Telephone: (202) 457-5601
Facsimile: (202) 457-6315
Email: mberger@pattonboggs.com

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Plaintiffs,)	Civil Action No. 1:11-cv-235 (CKK)
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PERCY MAHENDRA RAJAPAKSA,)	
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Defendant.)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PRESIDENT
RAJAPAKSA’S MOTION TO SOLICIT THE VIEWS OF THE UNITED STATES
AND FOR ENLARGEMENT OF TIME TO RESPOND TO THE COMPLAINT**

Defendant Mahinda Rajapaksa (sued herein as “Percy Mahendra Rajapaksa”)—without waiving his immunity from the jurisdiction and process of the United States courts, and expressly reserving all defenses available to him under FED. R. CIV. P. 12 and otherwise¹—respectfully submits this Memorandum in support of his Motion to solicit the views of the United States government and (in the interim) to enlarge his time to respond to the Complaint pending submission of those views.

Background

The Complaint acknowledges that Mahinda Rajaapaksa is the President of the Democratic Socialist Republic of Sri Lanka. Cplt. (Dkt. #1) ¶ 6; *accord* Background Note: Sri Lanka, U.S. Department of State (Apr. 6, 2011), <http://www.state.gov/r/pa/ei/bgn/5249.htm> (last visited December 15, 2011) (“State Department Background Note”). The President of Sri Lanka is Head

¹ A defendant does not waive jurisdictional and other defenses under FED. R. CIV. P. 12(b)(2)-(5) unless (i) he fails to raise them in a Rule 12 motion, or (ii) fails to raise the defense before litigating the substantive relief sought by plaintiff. See FED. R. CIV. P. 12(h)(1); *see also* *Majbor v. Kempthorne*, 518 F.Supp.2d 221, 238 (D.D.C. 2007) (Walton, J.) (holding that FED. R. CIV. P. 12(h)(1) requires “that defendants raise defenses of, *inter alia*, lack of personal jurisdiction or insufficient service of process, by motion under Rule 12 or in a responsive pleading) (internal quotations omitted). As noted herein, President Rajapaksa proposes to raise his jurisdictional and other defenses in a Rule 12 motion following the submission of the views of the United States, if the Court is not divested of jurisdiction by the U.S. government’s views.

of State as well as Head of the Government and Commander in Chief of the Armed Forces of Sri Lanka. *See* Democratic Socialist Republic of Sri Lanka (2007), http://www.president.gov.lk/about_presidency.php (last visited December 15, 2011).

All of plaintiffs' claims necessarily are brought against President Rajapaksa solely in his official capacity because of plaintiffs' central allegation that, "as President of Sri Lanka, [he] exercised command responsibility over the Sri Lankan armed forces or security services" that allegedly killed plaintiffs' decedents, and that he "refused to bring them to justice." Cpl. ¶¶ 6, 66, 73, 80, 87, 94, 101. The deaths at issue occurred between January 2, 2006 and May 14, 2009 (*id.*, ¶¶ 28, 49, 58), during the conflict between armed forces of the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam ("LTTE" or "Tamil Tigers"), a U.S. government-designated "foreign terrorist organization." *See* State Department Background Note. That protracted conflict ended on May 19, 2009 when the Sri Lankan "government declared victory over the LTTE as they reported the capture of the remaining Tiger-held territory and the death of LTTE leader Velupillai Prabhakaran." *Id.*

Following the end of the conflict, the Government of Sri Lanka established a Lessons Learnt and Reconciliation Commission ("LLRC") with a mandate "to inquire and report" on events relating to the conflict "during the period between 21st February 2002 and 19th May 2009." *See* Lessons Learnt Reconciliation Commission, <http://llrc.lk> (last visited December 15, 2011). The United States government endorsed the work of the LLRC in addressing allegations concerning the actions of the combatants during the now-ended conflict:

The Lessons Learned and Reconciliation Commission is playing an important role in the reconciliation process. The Commission has heard testimony from Sri Lankans from all regions and ethnic backgrounds. It has provided a forum for individuals to bring injustices to light and to express the personal tragedy and hardship created by the war. We hope that the LLRC will also address accountability and will offer recommendations on how to redress wrongs committed by both sides during the conflict.

Remarks of Robert O. Blake, Jr., U.S. Assistant Secretary of State for South and Central Asian Affairs, Colombo, Sri Lanka, May 4, 2011, U.S.—Sri Lanka relations, U.S. Department of States <http://www.state.gov/p/sca/rls/rmks/2011/162574.htm> (last visited December 15, 2011); *see also* Remarks of Robert O. Blake, Jr., U.S. Assistant Secretary of State for South and Central Asian Affairs, Colombo, Sri Lanka, September 14, 2011—Press Conference at the American Center in Colombo (“We’re not in the business of making threats to our friends. We’re in the business of trying to achieve progress. And so as I said earlier, we are very hopeful that the LLRC will be a credible process and a credible report, so we, like many others, look forward to the release of that report and hopefully the publication of that report in public.”) <http://www.state.gov/p/sca/rls/rmks/2011/172423.htm> (last visited December 15, 2011). The LLRC completed its work on November 15, 2011, and delivered its report to President Rajapaksa on November 20, 2011. http://slembassyusa.org/wp-content/uploads/2011/11/Press-Release_20111114.pdf (last visited December 15, 2011). President Rajapaksa today provided the LLRC report to the Parliament of Sri Lanka.

More broadly:

The United States enjoys cordial relations with Sri Lanka that are based, in large part, on shared democratic traditions. U.S. policy toward Sri Lanka is characterized by respect for its independence, sovereignty, and moderate nonaligned foreign policy; support for the country’s unity, territorial integrity, and democratic institutions; and encouragement of its social and economic development. The United States is a strong supporter of ethnic reconciliation in Sri Lanka.

See State Department Background Note.

In the midst of Sri Lanka’s ongoing post-conflict reconciliation process, and against the backdrop of a successful U.S.-Sri Lanka bilateral relationship, plaintiffs nevertheless ask a United States court to adjudicate allegations that charge the sitting President of Sri Lanka with “command responsibility” for deaths that occurred during the conflict. On behalf of President Rajapaksa, we

respectfully submit that a U.S. court cannot and should not adjudicate plaintiffs' claims, for at least five reasons. *First*, Heads of State are absolutely immune from suit in the United States. *Second*, senior foreign government officials—including Heads of Government, like President Rajapaksa—are entitled to foreign official immunity. *Third*, plaintiffs' claims raise non-justiciable political questions whose adjudication would interfere with the U.S.-Sri Lanka bilateral relationship. *Fourth*, U.S. judicial evaluation of alleged sovereign acts within Sri Lanka would violate the Act of State doctrine. *Fifth*, U.S. courts lack personal jurisdiction over President Rajapaksa in connection with claims arising from acts that allegedly occurred exclusively in Sri Lanka, and that involve no alleged conduct purposefully directed at the United States or Americans.

Plaintiffs apparently first attempted to serve process by mail to President Rajapaksa both at his official residence in Sri Lanka and at the Embassy of Sri Lanka in Washington, D.C. *See* Dkt. #4. However, in its accession to The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("Hague Service Convention"), Sri Lanka disallowed service "by postal channels, directly to persons abroad." *Compare* Hague Service Convention, Art. 10(a) *with* "Sri Lanka-Central Authority & practical information," Hague Conference On Private International Law, (July 27, 2006), http://www.hcch.net/index_en.php?act=authorities.details&aid=274 (last visited December 15, 2011) (noting Sri Lanka's Opposition to Art. 10(a)); *see also* *FTC v. Compagnie de Saint-Gobain-Pont-a-Mousson*, 636 F.2d 1300, 1323 n.136 (D.C. Cir. 1980) ("The Hague Convention . . . establishes standard procedures for service of judicial and extrajudicial documents in the territory of one contracting nation in aid of private commercial or civil litigation taking place in another contracting nation."); *see also* *Day v. Cornèr Bank (Overseas) Ltd.*, 10-cv-1339, 2011 U.S. Dist. LEXIS 62386, at *20 (D.D.C. June 10, 2011) ("Thus, to serve defendants in this case, plaintiff must adhere to procedures set forth in the Hague Convention.") (Lamberth, Chief J.).

Thereafter, plaintiffs attempted to serve process pursuant to the Hague Service Convention by delivering a summons and a copy of the Complaint to Sri Lanka's Ministry of Justice, which is the "Central Authority" designated by Sri Lanka for receipt of service of process requests under the Hague Service Convention. On June 14, 2011, Sri Lanka invoked its right under Article 13 of the Hague Service Convention to refuse plaintiffs' request for service of process. On June 18, 2011, the Secretary, Ministry of Justice provided a statement of Sri Lanka's reasons for refusing the service request, as required by Article 13 of the Hague Service Convention. *See* Exhibit A (June 18 letter). The Secretary, Ministry of Justice explained that "compliance would infringe the sovereignty of Sri Lanka." *See id.*, ¶ 6. The Ministry of Justice further explained:

It would be seriously prejudicial to Sri Lanka's sovereignty for the Central Authority to facilitate proceedings in the *Manoharan* Lawsuit against President Rajapaksa because *inter alia* (a) As Head of State of Sri Lanka, President Rajapaksa is absolutely immune from the jurisdiction of the courts of the United States; (b) The claims against President Rajapaksa, for actions allegedly taken under his "command responsibility" as Head of State, Head of Government and Commander in Chief of the Armed Forces of Sri Lanka, are in substance claims against Sri Lanka itself, for which both Sri Lanka and President Rajapaksa are entitled to sovereign immunity from suit; (c) The claims against President Rajapaksa intrude on the sovereignty of Sri Lanka because they seek to impose liability, under the laws of another country, for acts allegedly taken within the sovereign territory of Sri Lanka and under its own legal authority; (d) The claims against President Rajapaksa directly call into question expressions of comity and mutual respect between the governments of Sri Lanka and the United States, and thereby burden the relationship between the two nations; and (e) President Rajapaksa is not otherwise subject to the jurisdiction of a United States court for actions allegedly occurring entirely within Sri Lanka.

Id., ¶ 4. Further, the Ministry of Justice noted that: "The Central Authority has been informed by the Attorney General of Sri Lanka that the foregoing points have been brought to the attention of the United States of America, Department of State." *Id.*, ¶ 5.

Although plaintiffs purport to sue President Rajapaksa in both his official and his personal capacities (Cplt., p.1), their claims necessarily are directed at him solely in his official capacity, as the Sri Lanka Ministry of Justice recognized in its Hague Convention statement. Plaintiffs' claims all

emanate from their core allegation that, “as President of Sri Lanka,” President Rajapaksa “exercised command responsibility over the Sri Lankan armed forces or security services” that allegedly killed plaintiffs’ decedents and gave rise to plaintiffs’ claims. Cplt. ¶¶ 6, 66, 73, 80, 87, 94, 101. We understand that the plaintiffs nonetheless successfully moved this Court to authorize service of process by alternative means on President Rajapaksa in his “personal capacity” (Dkt. # 7). As a foreign Head of State, however, President Rajapaksa has absolute immunity from claims asserted against him in any capacity in a court of the United States, as explained below.

We accordingly submit that it would be premature to proceed further in this action until the United States government² submits its views concerning President Rajapaksa’s Head of State immunity and foreign official immunity, and the justiciability issues that are implicated by plaintiffs’ claims. *See infra* at 7-10. Thereafter, if the Court is not divested of jurisdiction based solely on the views of the United States (*see infra* at 6-7), President Rajapaksa would move to dismiss the Complaint.

Courts in this Circuit regularly solicit the views of the United States government with respect to issues in litigation that can interfere with U.S. foreign policy interests. *See, e.g., Samantar v. Yousuf*, 130 S. Ct. 2278, 2283 (2010) (“The District Court stayed the proceedings to give the State Department an opportunity to provide a statement of interest regarding petitioner’s claim of sovereign immunity.”); *Giraldo v. Drummond Co.*, No. 1:20-mc-00764, 2011 WL 3926372, at *1 (D.D.C. Sept. 8, 2011) (Bates, J.) (“At this Court’s request, the United States has submitted a Statement of Interest in this matter and suggests that respondent is immune from testifying.”) (denying plaintiffs’ motion to compel testimony of Colombia’s former president); *Gilmore v.*

² *See* 28 U.S.C. § 517 (“[A]ny officer of the Department of Justice ... may be sent by the Attorney General ... to any district in the United States to attend to the interests of the United States in any suit pending in a court of the United States.”). As shown herein, the views of the United States generally are expressed either by a Suggestion of Immunity or by a Statement of Interest filed by the Justice Department in conjunction with the State Department.

Palestinian Interim Self-Gov't Authority, 675 F.Supp.2d 104, 112 n.7 (D.D.C. 2009) (Kessler, J.) (“The Court requested that the State Department file a Statement of Interest in order to understand the international ramifications of any order it might enter, and to be apprised of our Government’s position about such ramifications.”); *Weixum v. Xilia*, 568 F. Supp. 2d 35, 36 (D.D.C. 2008) (Leon, J.) (“Shortly thereafter, [the Court] forwarded a letter to the Department of State seeking its views on the applicability of various doctrines to the jurisdiction of this Court to hear plaintiffs’ case.”) (dismissing case for lack of jurisdiction following submission of Statement of Interest by State Dept. pertaining to former Chinese minister’s immunity from suit). *See also Doe v. Exxon Mobil Corp.*, --- F.3d ---, 2011 WL 2652384 at *2 (D.C. Cir. July 8, 2011) (noting that “the district court requested the Office of the Legal Adviser of the Department of State to inform the court whether the Department deemed adjudication of the case to affect adversely the interests of the United States.”).

Here, the Court should seek the views of the United States, as expressed by the Department of Justice and/or the Department of State (*see supra* n.2), for at least the following reasons:

1. Head of State Immunity. The Executive Branch of the United States government is empowered to recognize a foreign official as the Head of State of a foreign nation with absolute immunity from suit in a U.S. court, and federal courts “are bound to accept such head of state determinations as conclusive.” *First Am. Corp. v. Al-Nahyan*, 948 F. Supp. 1107, 1119 (D.D.C. 1996) (J.H. Green, J.); *see Giraldo*, 2011 WL 3926372, at *2 (“If the State Department grants the request [for a Suggestion of Immunity], the ‘district court surrenders its jurisdiction.’”) (quoting *Samantar v. Yousuf*, 130 S. Ct. 2278, 2283 (2010)); *Weixum v. Xilia*, 568 F. Supp. 2d 35, 36 (D.D.C. 2008) (Leon, J.) (deferring to Suggestion of Immunity submitted by the State Department). Claims asserting violation of international law, whether under the Alien Tort Statute (“ATS”), 28 U.S.C. § 1350, or (as here) under the Torture Victims Protection Act (“TVPA”), 28 U.S.C. § 1350 *note*, do not defeat the “foreign official immunity” of current and former Heads of State, particularly when the United

States government supports the Head of State's immunity from suit. *See Belbas v. Moshe Ya'Alon*, 515 F.3d 1279, 1287 (D.C. Cir. 2008) (TVPA); *Giraldo v. Drummond Co.*, No. 1:20-mc-00764, 2011 WL 3926372 at *3-*4 (relying on *Belbas*) (ATS and TVPA).

2. Foreign Sovereign Immunity. President Rajapaksa also is the Head of Government of Sri Lanka. Following the Supreme Court's decision in *Samantar*, recognition of the sovereign immunity of foreign government officials "is governed by common law," rather than by the Foreign Sovereign Immunities Act ("FSIA"), although the "rules that appellate courts developed for foreign official immunity under the FSIA 'may be correct as a matter of common-law principles.'" *Giraldo v. Drummond Co.*, No. 1:20-mc-00764, 2011 WL 3926372, at *2-*3 (D.D.C. Sept. 8, 2011) (Bates, J.) (citing and quoting *Samantar*, 130 S. Ct. at 2284, 2291 n.17). Under the common law approach, "foreign official immunity" is determined through "a two-step procedure" that inquires, first, whether there will be "a suggestion of immunity from the State Department" that would be conclusive on the courts. *Id.* (quoting *Samantar*, 130 S. Ct. at 2284). If "the State Department takes no action" then, as a second step, "a district court ha[s] authority to decide for itself whether all the requisites for such immunity exist[]." *Id.*

Even under pre-*Samantar* case law, courts in this District treated State Department Suggestions of Immunity for foreign Heads of Government as conclusive, divesting the court of jurisdiction over such foreign officials. *See, e.g., Saltany v. Reagan*, 702 F. Supp. 319, 320 (D.D.C. 1988), *aff'd in part, reversed in part (on other grounds)*, 886 F.2d 438 (D.C. Cir. 1989) ("[T]he United States has suggested to the Court the immunity from its jurisdiction of Prime Minister Thatcher as the sitting head of government of a friendly foreign state. The Department of State has made the requisite certification and determination to allow the immunity. The Court must accept them as conclusive.") (citing cases from the Supreme Court). Under the FSIA, moreover, our Court of Appeals held that neither the ATS nor the TVPA claims negated the sovereign immunity of foreign

government officials from claims against them based on those statutes. *See Belbas*, 515 F.3d at 1286-89.

3. Non-Justiciability. Plaintiffs' allegations relate to the now-ended conflict in Sri Lanka and Sri Lanka's post-conflict reconciliation process, both of which implicate U.S. foreign policy toward Sri Lanka. *See supra* at 2-3. Our Court of Appeals recognizes that the "political question" doctrine "bars reviews of claims" that—like plaintiffs' claims here—"regardless of how they are styled, call into question the prudence of the political branches in matters of foreign policy or national security constitutionally committed to their discretion." *El-Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836, 842 (D.C. Cir. 2010) (en banc). Further, courts in this Circuit defer to statements by the Executive Branch concerning non-justiciability of claims because of the impact of litigation on U.S. foreign policy interests. *Doe v. Exxon Mobil Corp.*, 2011 U.S. App. LEXIS 13934, at *147 (D.C. Cir. July 8, 2011) (holding that the D.C. Circuit "'grant[s] substantial weight' to State Department statements regarding factual questions that are 'at the heart of the Department's expertise'" (quoting *In re Papandreou*, 139 F.3d 247, 252 & n.2 (D.C. Cir. 1998)); *Hwang Geum Joo v. Japan*, 413 F.3d 45, 48 (D.C. Cir. 2005) (affirming dismissal of claims alleging World War II atrocities by the Japanese government because they raised non-justiciable political questions and holding: "[W]e defer to the judgment of the Executive Branch of the United States Government, which represents, in a thorough and persuasive, Statement of Interest, that judicial intrusion into the relations between Japan and other foreign governments would impinge upon the ability of the President to conduct the foreign relations of the United States."); *see also Doe v. Exxon Mobil*, 473 F.3d 345, 360 (D.C. Cir. 2007) (Kavanaugh, J., dissenting) (explaining that courts in this Circuit "give deference to the Executive Branch when the Executive reasonably explains that adjudication of a particular civil lawsuit would adversely affect the foreign policy interests of the United States.")).

4. **Act of State Doctrine.** Because plaintiffs' claims seek U.S. judicial examination of acts allegedly occurring within Sri Lanka by forces under the "command responsibility" of President Rajapaksa, this lawsuit implicates the Act of State doctrine, which "precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory." *World Wide Minerals, Ltd. v. Republic of Kazakhstan*, 296 F.3d 1154, 1164 (D.C. Cir. 2002) (internal quotations and citations omitted); accord *Society of Lloyds's v. Siemon-Netto*, 457 F.3d 94, 102-03 (D.C. Cir. 2006). As with the related issue of non-justiciability under the political question doctrine, the State Department's views concerning the applicability of the Act of State doctrine are entitled to substantial weight. For example, in *Doe v. Qi*, 349 F. Supp. 2d 1258, 1271 (N.D. Cal. 2004), the court barred certain claims arising from "acts of state" of the People's Republic of China after considering the views of the Legal Adviser of the State Department that "U.S. courts should be cautious when asked to sit in judgment on the acts of foreign officials taken within their own countries pursuant to their government's policy." *Id.* (quoting Letter from William H. Taft, IV to Assistant Attorney Gen. McCallum of September 25, 2002, at 7-8 (emphasis in original)).

For all of the above reasons, we respectfully submit that the United States government is obliged to submit a Suggestion of Immunity on behalf of President Rajapaksa, and that it would benefit the Court and the parties for the United States government to submit a Statement of Interest addressing the political question and Act of State issues. If the Court is not thereafter divested of jurisdiction based on the views of the United States government, then President Rajapaksa would seek dismissal of the Complaint on all of the above grounds, in addition to demonstrating the absence of U.S. personal jurisdiction over him. We therefore respectfully request that, to facilitate this process, the Court should invite the United States government, acting through the Department of Justice and/or the Department of State (*see supra* n.2), to submit its views on the immunity,

political question and Act of State issues. In the interest of justice, moreover, any deadline for President Rajapaksa to respond to the Complaint should be deferred pending submission of the views of the United States.

Conclusion

For the foregoing reasons, President Rajapaksa's motion to solicit the views of the United States government, and for an enlargement of time to respond to the Complaint pending receipt of those views, should be granted.

Respectfully submitted,

PATTON BOGGS LLP

By: /s/ Mitchell R. Berger
Mitchell R. Berger (D.C. Bar No. 385467)
Patton Boggs LLP
2550 M Street, NW
Washington, D.C. 20037
Telephone: (202) 457-5601
Facsimile: (202) 457-6315
Email: mberger@pattonboggs.com

Counsel for Defendant Mahinda Rajapaksa

EXHIBIT A

ලේකම් Secretary	දුරකථන දුරකථන Telephone	} 2449959
ප්‍රධාන කාර්යාලය General Office	දුරකථන දුරකථන Telephone	} 2323022



අධිකරණ අමාත්‍යාංශය
நீதி அமைச்சு
MINISTRY OF JUSTICE

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Web Site: www.justiceministry.gov.lk

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My No

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Your No.

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Date } 18th June, 2011

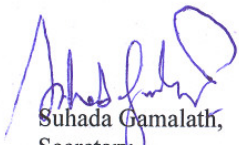
Mr. Rick Hamilton,
633 Yesler Way,
Seattle, WA 98104,
United States of America

1. This office is the Central Authority of the Government of Sri Lanka (“Central Authority”) designated in Article 2 of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (“Hague Service Convention”).
2. On 06.06.2011 the Central Authority received a request (the “Request”) from Process Forwarding International, Seattle Washington to serve legal process in the form of a summons and complaint in the matter of *Manoharan et al.v. Percy Mahendra (“Mahinda”) Rajapaksa*, pending in the United States District Court for the District of Columbia, United States of America, No. 1:11 –cv-00235 (CKK) (the “*Manoharan Lawsuit*”).
3. It appears to the Central Authority that the *Manoharan Lawsuit* makes claims against the Head of State of the Democratic Socialist Republic of Sri Lanka (“Sri Lanka”), H.E. President Mahinda Rajapaksa, for actions allegedly occurring under his “command responsibility” as Head of State, Head of Government and Commander in Chief of the Armed Forces of Sri Lanka.
4. It would be seriously prejudicial to Sri Lanka’s sovereignty for the Central Authority to facilitate proceedings in the *Manoharan Lawsuit* against President Rajapaksa because *inter alia*. (a) As Head of State of Sri Lanka, President Rajapaksa is absolutely immune from the jurisdiction of the courts of the United States; (b) The claims against President Rajapaksa, for actions allegedly taken under his “command responsibility” as Head of State, Head of Government and Commander in Chief of the Armed Forces of Sri Lanka, are in substance claims against Sri Lanka itself, for which both Sri Lanka and President Rajapaksa are entitled to sovereign immunity from suit; (c) The claims against President Rajapaksa intrude on the sovereignty of Sri Lanka because they seek to impose liability, under the laws of another country, for acts allegedly taken within the sovereign territory of Sri Lanka and under its own legal authority; (d) The claims against President Rajapaksa directly call into question expressions of comity and mutual respect between the governments of Sri Lanka and the United States, and thereby burden the relationship between the two nations; and (e) President Rajapaksa is not otherwise subject to the jurisdiction of a United States court for actions allegedly occurring entirely within Sri Lanka.

5. The Central Authority has been informed by the Attorney General of Sri Lanka that the foregoing points have been brought to the attention of the government of the United States of America, Department of State.

6. Accordingly, pursuant to Article 13(1) of the Hague Service Convention, the Central Authority of Sri Lanka hereby refuses the Request on the basis that compliance would infringe the sovereignty of Sri Lanka.

7. This note accordingly informs the applicant of the basis and reasons for refusal of the Request, pursuant to Article 13(3) of the Hague Service Convention.



Suhada Gamalath,
Secretary,
Ministry of Justice and
Central Authority

Suhada Gamalath, P.C.
Secretary
Ministry of Justice
Superior Courts Complex
Hulftdrop, Colombo 12.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
KASIPPILLAI MANOHARAN, et al.,)	
)	
Plaintiffs,)	Civil Action No. 1:11-cv-235 (CKK)
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v.)	
)	
PERCY MAHENDRA RAJAPAKSA,)	
)	
Defendant.)	
_____)	

ORDER

UPON CONSIDERATION of the motion of defendant Mahinda Rajapaksa, sued herein as Percy Mahendra Rajapaksa, to solicit the views of the United States government and for an enlargement of time to respond to the Complaint pending the submission of the views of the United States (Dkt. #__), and having been advised that the defendant currently serves as the President and Head of State of the Democratic Socialist Republic of Sri Lanka, and for other good cause, it is hereby

ORDERED that the motion is granted; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Order on the Honorable Harold H. Koh, The Legal Adviser, U.S. Department of State, 2201 C Street, N.W., Washington, D.C. 20520, and the Honorable Ronald C. Machen, Jr., United States Attorney for the District of Columbia, 555 4th Street, N.W., Washington, D.C. 20530, inviting the United States government to submit its views to the Court with respect to: (i) President Rajapaksa's entitlement to Head of State and foreign official immunity in this action; (ii) the justiciability of plaintiffs' claims under the political question doctrine; and (iii) the applicability of the Act of State doctrine as a bar to adjudication of plaintiffs' claims; and it is further

ORDERED that defendant's time to respond to the Complaint in this action is enlarged until and including 20 days following the submission of the views of the United States.

Dated: _____

COLLEEN KOLLAR-KOTELLY
United States District Judge