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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JANE DOE *1, an alien,* )  
et al, )  
Plaintiffs, )

NO: 3:11CV1433(MPS)

vs. )

July 18, 2013

ERNESTO ZEDILLO PONCE de )  
LEON, *An Alien resident* )  
*of Connecticut,* )  
Defendant. )

RULING

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450 Main Street  
Hartford, Connecticut

B E F O R E:

THE HONORABLE MICHAEL P. SHEA, U.S.D.J.

A P P E A R A N C E S:

For the Plaintiffs:

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For the Defendant:

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Court Reporter:

Martha C. Marshall, RMR, CRR

Proceedings recorded by mechanical stenography, transcript  
produced by computer.

1 THE COURT: First, I want to thank both counsel,  
2 all counsel, for their presentations which were helpful, and  
3 for their voluminous papers which I did review. I recognize  
4 this case is important to both sides.

5 I've reviewed all the papers submitted by the  
6 parties in response to the Order to Show Cause issued by the  
7 Court on September 25, 2012. Now I've heard oral argument  
8 from the parties. I will assume your familiarity with the  
9 facts. For the reasons that follow, the case will be  
10 dismissed because the State Department has determined that  
11 Defendant Ernesto Zedillo Ponce de Leon is immune from this  
12 lawsuit as a former head-of-state and Plaintiffs have offered  
13 no reason why this Court is not required to defer to that  
14 immunity determination.

15 This action was brought by ten anonymous Plaintiffs  
16 against the Defendant, the former President of Mexico who  
17 allegedly resides in Connecticut, claiming violations of  
18 domestic and international law, including claims under the  
19 Alien Tort Claims Act and the Torture Victim Protection Act,  
20 stemming from Defendant's alleged involvement in the Acteal  
21 Massacre which resulted in the extrajudicial killings of  
22 several of Plaintiffs' family members and the attempted  
23 killing of the Plaintiffs. On September 7, 2012, the United  
24 States filed a Suggestion of Immunity informing the Court  
25 that the State Department had determined that the Defendant

1 was entitled to immunity from this lawsuit as a former  
2 head-of-state. In light of that filing, the Court issued an  
3 Order to Show Cause why this case should not be dismissed on  
4 the basis of former head-of-state immunity. Since that time  
5 there have been various proceedings in Mexico which have been  
6 brought to the Court's attention, but which are ultimately  
7 irrelevant in light of the State Department's position.

8 On May 15, 2013, the United States filed a Notice  
9 with the Court indicating that it did not intend to appear at  
10 this hearing on the Order to Show Cause and further stating  
11 that it "rests on its Suggestion of Immunity, docket number  
12 38, which sets forth the United States' determination  
13 regarding the immunity of former President Zedillo from this  
14 suit." I view that Notice as a reaffirmation of the State  
15 Department's Suggestion of Immunity, but even if it were a  
16 Statement of Neutrality, as the Plaintiffs' contend, the fact  
17 is that the State Department has not withdrawn its Suggestion  
18 of Immunity which remains pending before the Court.

19 Our Supreme Court has consistently held that courts  
20 must defer to Suggestions of Immunity submitted by the  
21 Executive Branch. See, for example, *Republic of Mexico v.*  
22 *Hoffman*, 324 U.S. 30; *Ex Parte Republic of Peru*, a case that  
23 Mr. Freiman referred to which is 318 U.S. 578; the *Samantar*  
24 case; see also *United States v. Pink*, 315 U.S. 203. All of  
25 those cases say essentially that the Court must surrender its

1 jurisdiction immediately, promptly, as Mr. Freiman points  
2 out, upon a Suggestion of Immunity by the State Department.  
3 Here, the State Department has determined that the Defendant  
4 is immune from suit and, under those cases, the Court must  
5 defer to that decision.

6           The Plaintiffs do not dispute this case law, but  
7 instead argue that the Court need not defer to the Executive  
8 Branch's determination because it was based on an unlawful  
9 Immunity Request issued by the Mexican government.  
10 Plaintiffs today also made arguments about timing. To  
11 support their position, Plaintiffs rely heavily on the  
12 Mexican trial court's decision finding that the Immunity  
13 Request violated Mexican law, a decision which the Defendant  
14 informed this Court has since been reversed by a unanimous  
15 Appellate Court. But even if that decision had stood, I find  
16 that it would ultimately be irrelevant to this Court's  
17 determination of whether the Defendant is immune from this  
18 lawsuit because the Plaintiffs have cited no authority, and  
19 I'm not aware of any authority, for the proposition that the  
20 impropriety of such a request by the Mexican government would  
21 be sufficient justification for a court to disregard our own  
22 State Department's Suggestion of Immunity. I also note that  
23 it appears that the State Department had available to it all  
24 of the evidence that the Plaintiffs subsequently produced in  
25 the so-called *Amparo* proceeding challenging the validity of

1 the Mexican government's Request for Immunity, and the State  
2 Department is also presumably aware of the Mexican trial  
3 court's decision invalidating that Request. Yet, despite  
4 having access to that information, the State Department has  
5 communicated to this Court that it stands by its Suggestion  
6 of Immunity. And once again, even if that were not the case,  
7 I believe that I am bound by the State Department's  
8 Suggestion of Immunity which has not been withdrawn.

9 The cases cited by the Plaintiffs as authority for  
10 this Court to defer to a foreign government's waiver of  
11 immunity over our own State Department's position on the  
12 issue are distinguishable from this case. First, in those  
13 cases, our State Department actually either took no position  
14 on the immunity issue or advised against granting immunity to  
15 the former head-of-state and, therefore, do not stand for the  
16 proposition that this Court may disregard a State  
17 Department's determination that is contrary to the opinion of  
18 a foreign government. I also note that in those cases -- and  
19 I'm referring to the *Doe* case, 860 F.2d 40, and *In Re Grand*  
20 *Jury Proceedings*, the Fourth Circuit case. I also note that  
21 in those cases the Executive Branch of the foreign government  
22 expressly advised our State Department in diplomatic notes  
23 that it waived the immunity of its former head-of-state.  
24 That is not the case here. But, again, let me come back to  
25 what is the real basis for my ruling which is that I believe

1 that I'm bound by the State Department's Suggestion of  
2 Immunity which has not been withdrawn.

3 For these reasons, I dismiss this action because of  
4 the State Department's Suggestion of Immunity.

5 Thank you, counsel. That's my ruling.

6 We'll stand in recess.

7 (Concluded.)

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C E R T I F I C A T E

I, Martha C. Marshall, RMR, CRR, hereby certify that the foregoing pages are a complete and accurate transcription of my original stenotype notes taken in the matter of Doe v. Zedillo, which was held before the Honorable Michael P. Shea, U.S.D.J, at 450 Main Street, Hartford, Connecticut, on July 18, 2013.

Martha C. Marshall, RMR, CRR  
Official Court Reporter