

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

*File
Zayed*

December 22, 1993

93 DEC 22 P7:37

MEMORANDUM FOR JOHN PODESTA

FROM: NEAL WOLIN *NW*

SUBJECT: Head of State Immunity for Sheikh Zayed

Attached for your information is a package I put together for Tony Lake a few weeks ago on the issue of head of state immunity for Sheikh Zayed and four others in a BCCI-related case (Tab I). I have also attached Judge Green's December 8 order requiring the government to express its views on the issue before January 31, 1994 (Tab II).

I spoke with the State Legal Adviser's office this afternoon. They confirmed that no decision has been made with respect to immunity, and they understand that the White House has an interest in the decision. They have been coordinating with Justice, Treasury and the Fed and will keep us informed as their analysis progresses.

State still hopes that the broader set of issues regarding Sheikh Zayed and BCCI, of which the lawsuit involving the head of state immunity question is only a small part, will be settled so as to avoid having to make a decision on whether to suggest immunity. The UAE (Abu Dhabi) Government has agreed to meet with a team from Justice, the Fed and New York State in Geneva on January 4, and State and Justice believe there is some chance of resolving the matter.

We did not consider the prosecution of Noriega to raise a head of state immunity issue because we did not regard Noriega to be head of state.

Attachments

Tab I Memorandum for Lake on Zayed Immunity
Tab II Judge Green's December 8 Order

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TAB I

Divider Title: _____

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

December 10, 1993

INFORMATION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ALAN KRECZKO *AK*

FROM: NEAL WOLIN *NW*

SUBJECT: Head of State Immunity for Sheikh Zayed and Four Others in BCCI-Related Case

*Natl Sec Advisor
has seen*

State, in consultation with Justice, the Fed and others, is considering a UAE request that the USG intervene in a BCCI-related civil lawsuit to suggest head of state immunity for Sheikh Zayed, President of the UAE and two of his sons. State is also considering a request for a suggestion of immunity by private counsel for the rulers of two UAE emirates. Courts generally regard Executive branch suggestions of head of state immunity as dispositive. The issue has received considerable attention on the Hill and is beginning to receive some press.

In June of this year, First American Corporation and its holding company sued Sheik Zayed and 29 others seeking more than \$1.5 billion in damages for an alleged conspiracy dating back to 1977 for the fraudulent acquisition and illegal control of First American.

State hopes that the case will be settled or dismissed on other grounds so as to avoid having to make a decision on whether to suggest immunity. On November 29, the Justice Department filed a Statement of Interest in the case (Tab I) that indicated the USG was examining requests for immunity, requested the judge to defer its consideration of those issues and encouraged her to proceed with consideration of other issues on which the case might be dismissed.

The requests for suggestions of immunity in the case raise difficult legal and policy issues. The legal issues include whether the head of state immunity doctrine applies to private, commercial activity; whether Zayed's two adult sons or rulers of constituent emirates are covered by the doctrine; and whether the Sheikh, by submitting to the jurisdiction of U.S. courts in related proceedings, has waived his claim to immunity.

On the policy side, the question of immunity must be considered in the context of ongoing criminal and civil proceedings in the BCCI matter at both the federal and state levels. New York and federal authorities are planning a trip to Abu Dhabi for later this month to review documents and interview witnesses, with some hope that a global settlement of BCCI matters might result. State, Justice and the Fed have been discussing whether a

suggestion of immunity would lessen the USG's leverage over the UAE defendants in getting them to cooperate in the prosecution and settlement of BCCI matters.

Congressman Gonzalez and Senator Kerry have written to Secretary Christopher to make known their opposition to a suggestion of immunity (Tab II). In their letters, they raise the broader issue of the effect a grant of immunity would have on the USG's ability to safeguard its banking system. Congressman Gonzalez held a hearing yesterday on the head of state immunity issue. Although he invited State, Justice and the Fed to attend, only the Fed testified. State and Justice took the position that because the matter was in litigation and because the USG had not finished its review of the issue, it was inappropriate to testify at this time. DOJ's response to Gonzalez is at Tab III.

We will keep you apprised of further developments on this issue.

Concurrence by: Ellen  Leipson

Attachments

Tab I USG Statement of Interest in the Case
Tab II Gonzalez and Kerry Letters to Christopher
Tab III DOJ Letter to Congressman Gonzalez

cc: Bernard Nussbaum
 Jeremy Rosner
 Don Steinberg

28 U.S.C. § 517 provides that any officer of the Department of Justice "may be sent by 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, or in a court of a State, or to attend to any other interest of the United States."

In light of these considerations, the United States respectfully requests that the Court defer its consideration of the head of state immunity issues pending completion of the United States' review. The United States notes that, in addition to the issues relating to head of state immunity, certain other potentially dispositive issues have been raised in the motions to dismiss. In the particular circumstances of this case, the Court may wish to consider those other matters to the extent possible prior to addressing the head of state immunity issues.

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

ERIC H. HOLDER JR.
United States Attorney

Vincent M. Garvey / THP
VINCENT M. GARVEY

TH. H. PEBBLES
THOMAS H. PEBBLES

Attorneys, Department of Justice
Civil Division
Federal Programs Branch
901 E Street, N.W., Suite 1000
Washington, D.C. 20530
Telephone: (202) 514-4778

November 29, 1993

CERTIFICATE OF SERVICE

I, Thomas H. Peebles, hereby certify that on November 29, 1993, I served a copy of the foregoing Statement Of Interest Of The United States, by first-class mail, postage prepaid, to the following:

Ronald S. Liebman
Jean V. MacHarq
Charles E. Talisman
Patton, Boggs & Blow
2550 M. Street, N.W.
Washington, D.C. 20037

Stephen J. Brogan
David E. Miller
Timothy J. Finn
Mary Ellen Powers
Barbara McDowell
Jones, Day, Reavis & Pogue
1450 G Street, N.W., Suite 600
Washington, D.C. 20005-2088

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Za'beel Palace
Dubai, United Arab Emirates

Stock Holding Company
c/o Estate of Sheikh Rashid bin Said al-Maktoum
Za'beel Palace
Dubai, United Arab Emirates

Sheikh Mohammed bin Rashid al-Maktoum
Za'beel Palace
Dubai, United Arab Emirates

Crescent Holding Company
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Gulf Investment & Real Estate Company
Post Office Box 24443
Safat 13105, Kuwait

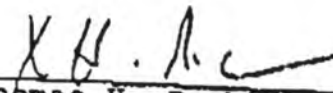
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Swaleh Naqvi
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Ministry of Justice
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Zafar Iqbal Chaudhri
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Ministry of Justice
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Abu Dhabi, United Arab Emirates



Thomas H. Peebles

16:14 No.013 P.13

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BERNARD SANDOLF, VERMONT
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U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

ONE HUNDRED THIRD CONGRESS

2129 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-8050

November 22, 1993

Honorable Warren M. Christopher
Secretary of State
Washington, D.C. 20520

Dear Secretary Christopher:

I understand that the Department of State is currently considering a grant of sovereign immunity for the Emir of Abu Dhabi. I believe it would be a mockery of our U.S. banking statutes and a terrible precedent to allow a grant of immunity to the Emir given his role in the scandal involving the Bank of Credit and Commerce International's (BCCI's) secret ownership of First American Bank.

I have long championed efforts to ensure greater oversight of foreign involvement in the U.S. financial system, especially participation by foreign government-backed entities. The recent BCCI and BNL scandals, which I helped bring to light, serve as a painful example of how vulnerable our financial system is to abuse by foreign governments.

To allow a foreign person, even a head of state, a grant of immunity from civil or criminal actions related to abuse of our financial system would send exactly the wrong signal to other miscreants wishing to engage in similar activities. While I understand that there may be diplomatic arguments to the contrary, ensuring that foreigners are held accountable for abusing our financial system should be our top priority. Accordingly, I adamantly oppose the granting of sovereign immunity to the Emir of Abu Dhabi.

Thank you for your consideration. I look forward to your thoughts on this important issue.

Sincerely,

Sincerely,
Henry Burgess

Henry B. Gonzalez
Chairman

HBG: dk

United States Senate

WASHINGTON, DC 20510

2 issues: ① Newt Gingrich
② L materials

November 10, 1993

The Honorable
Warren M. Christopher
Secretary of State
Washington DC 20520

Re: Question of Head of State Immunity for Abu Dhabi
In Matters Pertaining to BCCI

Dear Mr. Secretary:

I today learned of the possibility that the Department of State may be considering whether the Emir of Abu Dhabi and his family are entitled to be accorded head of state immunity in connection with matters pertaining to the BCCI affair, as requested by Abu Dhabi's Washington representatives at the law firm of Patton, Boggs, & Blow.

Having spent some considerable time investigating matters pertaining to BCCI's extensive web of criminal activity, including its illegal purchase of U.S. banks, I would like to express my strong opposition to the recommendation of head of state immunity for any person or entity who participated in BCCI's actions in the United States.

There are strong policy reasons in general for the United States not granting head of state immunity to anyone for activities that are commercial in nature, and that pertain to regulated industries in the United States. No foreign head of state should be in the position to have the Department of State assist him in escaping civil or criminal responsibility for violations of our law in commercial matters taking place in our own country. The alternative would expose American citizens to predation and fraud by anyone who happens to be a head of state. The Department of State is an agency of the government of the United States. Its function is to protect American citizens, not to give immunity to people who defraud American citizens and break American laws.

BCCI has been justifiably described as the biggest banking scandal in history. The scope of wrongdoing on the part of BCCI and most if not all of its shareholders, was enormous, resulting in the loss of billions of dollars and injury to millions of shareholders. Several U.S. banks were damaged by BCCI's activities, and one, the Independence Bank in Encino, California, failed as a result of BCCI's purchase, at a substantial cost to the FDIC.

Any recommendation that head of state immunity be granted in this case would send precisely the wrong message by the Department of State concerning the views of the United States government about this kind of activity. Given the notoriety of the BCCI case, such a decision could also subject the Department of State to substantial criticism domestically and abroad.

I would appreciate being kept apprised of any decision the Department of State may make on the request for immunity by the Emir of Abu Dhabi and his family, and of being provided any legal analysis produced by the Office of the Legal Advisor in regards to this matter.

Sincerely,



John Kerry



U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 7, 1993
Via Facsimile and
Messenger

Honorable Henry B. Gonzalez
Chairman
Committee on Banking, Finance and
Urban Affairs
U.S. House of Representatives
Washington, D.C. 20515

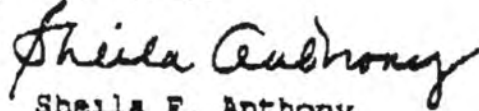
Dear Mr. Chairman:

I have tried several times since yesterday to contact you about your letter, dated November 30, 1993, inviting the Attorney General or her designee to testify at a hearing on December 9, 1993. According to the invitation, the hearing will pertain to the State Department's consideration of a request for head of state immunity by Sheikh Zayed Bin Sultan Al-Nahyan, et al., related to their role in the Bank of Credit and Commerce International (BCCI) scandal. We are advised that the Department of State also has been invited to send a witness to this hearing.

We regret that the Administration will be unable to testify at this time due to pending civil litigation and other investigations relating to BCCI. As we have advised your staff, the Department of State has been asked to express a view about the applicability of the head of state doctrine in connection with First American Corp., et al. v. Sheikh Zahed Bin Sultan Al-Nahyan, et al. (D.C.D.C.) and on November 29, 1993, we filed a Statement of Interest with the Court (copy enclosed). Hence, the issues that would be presented at this hearing are under review but our position will not be finalized in time to present testimony. Additionally, we are seriously concerned that testimony at this time would adversely impact pending negotiations regarding other BCCI related matters. Under these circumstances, we hope that you will consider postponing the hearing until a later time when these concerns are resolved. In the meantime, as we have advised Committee staff, we would be pleased to brief you about this matter at any time at your convenience.

We appreciate your consideration of our position in this matter. Please do not hesitate to contact me if we can provide other assistance.

Sincerely,



Sheila F. Anthony
Assistant Attorney General

Enclosure

cc: Honorable James A. Leach
Ranking Minority Member

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TAB II

Divider Title: _____

*file head of state immunity*UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

DEC 08 1993

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIAFIRST AMERICAN CORPORATION,
et al.,

Plaintiffs,

v.

SHEIKH ZAYED BIN SULTAN
AL-NAHYAN, *et al.*,

Defendants.

Civil Action No. 93-1309 (JHG)

ORDER

On November 29, 1993, the United States filed a Statement of Interest of the United States in the above-captioned case. The United States indicated that it has been requested to "express a view to the Court concerning the applicability of the head of state immunity doctrine in this proceeding," and that it is currently examining this request. Accordingly, it is hereby

ORDERED that should the United States elect to file a statement of interest regarding the applicability of the head of state immunity doctrine, it shall do so on or before January 31, 1994. Alternatively, should the United States determine that it is inappropriate for it to express a view to the Court regarding the head of state immunity doctrine, it shall so notify the Court as soon as possible, but no later than January 31, 1994.

IT IS SO ORDERED.

December 8, 1993

Joyce Hens Green
JOYCE HENS GREEN
United States District Judge

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