

[ORAL ARGUMENT SCHEDULED MARCH 8, 2012]

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

KASIPPILLAI MANOHARAN, DR., ET AL.,
Plaintiffs-Appellants,

v.

PERCY MAHENDRA RAJAPAKSA,
Defendant-Appellee.

No. 12-5087

**UNOPPOSED MOTION BY THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT**

Amicus Curiae the United States respectfully requests permission to participate in oral argument in this appeal. Both parties consent to this request.¹

1. This is an appeal from a district court order dismissing a lawsuit against the sitting President of Sri Lanka, Percy Mahendra Rajapaksa.

¹ In this appeal, the defendant-appellee filed a "Statement in Lieu of Brief." Counsel for the defendant-appellee informs us that he has not yet determined whether he will participate at the argument but that the defendant-appellee will, in any case, cede time to the United States.

After the United States filed a suggestion of immunity, the district court dismissed the case.

2. As discussed in the government's brief as amicus curiae, although the Foreign Sovereign Immunities Act "transfer[red] primary responsibility for immunity determinations" regarding foreign states "from the Executive to the Judicial Branch," *Republic of Austria v. Altmann*, 541 U.S. 677, 691 (2004), Congress did not "eliminate[] the State Department's role in determinations regarding individual official immunity." *Samantar v. Yousuf*, 130 S. Ct. 2278, 2291 (2010). See also, e.g., *Habyarimana v. Kagame*, 696 F.3d 1029, 1032 (10th Cir. 2012) ("the FSIA does not alter common law precedents as they bear upon 'the immunity of individual officials' * * * [and] "does not affect the 'State Department's [historical] role in determinations regarding individual official immunity'" (quoting *Samantar*, 130 S. Ct. at 2289, 2291); *Wei Ye v. Jiang Zemin*, 383 F.3d 620, 625 (7th Cir. 2004) (a determination concerning foreign official immunity "remains vested where it was prior to [enactment of the Foreign Sovereign Immunities Act] — with the Executive Branch."). Because the views of the

United States are of particular significance in a case of this kind, we respectfully suggest that it would be appropriate to permit the government to participate in oral argument.

CONCLUSION

For the foregoing reasons, the Court should permit the United States as amicus curiae to participate in oral argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2012, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Adam C. Jed

Adam C. Jed