

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AHMET DOĞAN, et al.,

Plaintiffs-Appellants,

v.

EHUD BARAK,

Defendant-Appellee.

No. 16-56704

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

Amicus Curiae the United States of America respectfully requests permission to participate in oral argument in this appeal, which the Court has scheduled for Thursday, April 12, 2018, in Pasadena, California. Defendant-Appellant consents to this request and will cede some of his argument time to the United States. Plaintiffs-Appellants' counsel did not respond by the time of this filing to the government's request for Plaintiffs-Appellants' position on this motion.

The reasons for this request are as follows:

1. This case involves claims brought against a foreign government official for acts taken in his official capacity. The district court recognized that, under the Supreme Court's decision in *Samantar v. Yousuf*, 560 U.S. 305 (2010), courts are

required to defer to the Executive Branch's suggestion of immunity on behalf of a foreign official named as a defendant in a civil suit in the United States. ER 13.

The State Department determined that defendant Ehud Barak is immune from this suit (ER 92-93), and the Department of Justice communicated that determination to the district court in a suggestion of immunity (ER 77-90). Accordingly, the district court deferred to the State Department's immunity determination and dismissed the suit. ER 15, 27.

2. The United States has a substantial interest in ensuring that courts properly recognize the controlling nature of the State Department's foreign-official immunity determinations. Moreover, the question of the amenability of foreign officials to suit in the United States for acts taken in an official capacity has significant implications for the reciprocal treatment of United States officials in foreign courts and for our Nation's foreign relations. *Cf. Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co.*, 137 S.Ct. 1312, 1322 (2017) (recognizing the United States' interests in reciprocal treatment in suit implicating foreign-state immunity); *Boos v. Barry*, 485 U.S. 312, 323 (1988) (noting "the concept of reciprocity that governs much of international law" addressing the immunity of diplomats).

3. In light of these significant interests, the United States filed a brief as amicus curiae in support of affirmance. The same interests justify government counsel's participation in oral argument to present the views of the United States and to respond to any questions the Court may have.

Respectfully submitted,

SHARON SWINGLE

s/ Lewis S. Yelin

LEWIS S. YELIN

*Attorneys, Appellate Staff
Civil Division, Room 7239
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
(202) 514-3425*

February 13, 2018

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Civil Procedure 32(g)(1), I hereby certify that this motion contains 367 words according to the word count of Microsoft Word 2013.

s/ Lewis S. Yelin

LEWIS S. YELIN

Counsel for the United States of America

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2018, I electronically filed the foregoing Motion by the United States for Leave to Participate in Oral Argument with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system, which, under the Court's rules, constitutes service on all parties registered with the CM/ECF system.

s/ Lewis S. Yelin _____

LEWIS S. YELIN

Counsel for the United States of America