

1 JOHN C. ULIN (State Bar No. 165524)  
2 John.Ulin@arnoldporter.com  
3 ARNOLD & PORTER KAYE SCHOLER LLP  
4 777 South Figueroa Street, 44th Floor  
5 Los Angeles, California 90017-5844  
6 Telephone: (213) 243-4000  
7 Facsimile: (213) 243-4199

8 *Attorney for Defendant*  
9 *Nandasena Gotabaya Rajapaksa*

10 [Additional counsel listed on following page]

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13 **WESTERN DIVISION**

14 ROY MANOJKUMAR SAMATHANAM, RAMESH  
15 THEVARAJAN, VIDHYA JAYAKUMAR,  
16 RAMANAN SIVALINGAM, SHANTI  
17 PADMANATHAN, SAMAN PERERA, NIMAL  
18 JAYASURIYA, VASANTHI RATNASINGHAM,  
19 SURESH JEYABALAN, SENTHIL  
20 PUWANESWARAN, MAYURAN RAJKUMAR,

21 *Plaintiffs,*

22 v.

23 NANDASENA GOTABAYA RAJAPAKSA,

24 *Defendant.*

Case No. 2:19-cv-02626-JFW-PLA

**DEFENDANT’S NOTICE OF  
MOTION AND MOTION TO  
DISMISS PLAINTIFF’S FIRST  
AMENDED COMPLAINT  
PURSUANT TO RULES  
12(b)(1) AND 12(b)(6), FORUM  
NON CONVENIENS, AND  
INTERNATIONAL COMITY;  
MEMORANDUM OF POINTS  
AND AUTHORITIES**

*[Declaration of Joseph Asoka  
Nihal de Silva and Proposed Order  
submitted concurrently herewith]*

Date: October 21, 2019  
Time: 1:30 pm  
Courtroom: 7A  
Judge: Hon. John F. Walter

1 Robert N. Weiner\*  
2 Robert.Weiner@arnoldporter.com  
3 Raul R. Herrera\*  
4 Raul.Herrera@arnoldporter.com  
5 R. Stanton Jones\*  
6 Stanton.Jones@arnoldporter.com  
7 ARNOLD & PORTER KAYE SCHOLER LLP  
8 601 Massachusetts Ave., NW  
9 Washington, DC 20001  
10 Telephone: (202) 942-5000  
11 Facsimile: (202) 942-5999

12 *Attorneys for Defendant*  
13 *Nandasena Gotabaya Rajapaksa*

14 \*Applications to appear *pro hac vice* pending.  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on October 21, 2019 at 1:30 pm, or as soon thereafter as this matter may be heard, in the courtroom of the Honorable John F. Walter, Courtroom 7A, U.S. Courthouse, 350 W. 1st Street, Los Angeles, CA 900012, Defendant Nandasena Gotabaya Rajapaksa will and hereby does move the Court, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), *forum non conveniens*, and international comity, for an order dismissing with prejudice Plaintiffs' First Amended Complaint in its entirety.

Mr. Rajapaksa's motion is based on this Notice of Motion; the accompanying Memorandum of Points and Authorities, Declaration of Joseph Asoka Nihal de Silva, and exhibits; the complete files and records in this action; and such other argument or evidence as this Court may consider.

This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on August 1, 2019. ECF No. 40.

Dated: August 16, 2019

ARNOLD & PORTER  
KAYE SCHOLER LLP

By: /s/ John C. Ulin  
John C. Ulin  
Robert N. Weiner\*  
Raul R. Herrera\*  
R. Stanton Jones\*

*Attorneys for Defendant  
Nandasena Gotabaya Rajapaksa*

*\*Applications to appear pro hac  
vice forthcoming.*

**TABLE OF CONTENTS**

1

2 TABLE OF AUTHORITIES .....ii

3

4 INTRODUCTION..... 1

5 ALLEGATIONS IN THE FIRST AMENDED COMPLAINT .....2

6 ARGUMENT .....4

7 I. Defendant Is Immune Under the Doctrine of Foreign-Official

8 Immunity .....4

9 II. The FAC Should Be Dismissed for *Forum Non Conveniens* .....8

10 A. Sri Lanka Is an Adequate Alternative Forum .....9

11 B. Plaintiffs’ Choice of Forum Merits Minimal Deference ..... 11

12 C. The Public and Private Interests Strongly Favor

13 Dismissal ..... 12

14 III. The FAC Should Be Dismissed Based on Principles of Comity .... 17

15 IV. Plaintiffs’ Claims Are Barred for Multiple Other Reasons..... 19

16 A. Plaintiffs’ State-Law Claims Are Impermissibly

17 Extraterritorial ..... 19

18 B. Plaintiffs’ State-Law Claims Are Time-Barred .....21

19 C. Plaintiffs’ Failure to Exhaust Local Remedies Bars Their

20 TVPA Claims .....23

21 CONCLUSION .....25

22

23

24

25

26

27

28

**TABLE OF AUTHORITIES**

**CASES**

1

2

3

4 *Allstate Ins. Co. v. Hague*, 449 U.S. 302 (1981) ..... 21

5 *AT & T Mobility LLC v. AU Optronics Corp.*, 707 F.3d 1106 (9th Cir. 2013) ..... 21

6 *Belhas v. Ya’alon*, 515 F.3d 1279 (D.C. Cir. 2008)..... 6

7 *Bi v. Union Carbide Chems. & Plastics Co.*, 984 F.2d 582 (2d Cir. 1993) ..... 10, 13

8 *BLK Enters., LLC v. Unix Packaging, Inc.*, No. 2:18-cv-2151, 2018 WL 5993844 (C.D. Cal. June 14, 2018) ..... 19

9 *Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216 (9th Cir. 2011) ..... 9

10 *Cave Consulting Grp., Inc. v. Truven Health Analytics Inc.*, No. 15-cv-2177, 2017 WL 1436044 (N.D. Cal. Apr. 24, 2017)..... 19

11 *Centaur Classic Convertible Arbitrage Fund Ltd. v. Countrywide Fin. Corp.*, 878 F. Supp. 2d 1009 (C.D. Cal. 2011)..... 22

12 *Chen v. L.A. Truck Ctrs., LLC*, 213 Cal. Rptr. 3d 142 (Ct. App. 2017) ..... 20

13 *Corrie v. Caterpillar, Inc.*, 403 F. Supp. 2d 1019 (W.D. Wash. 2005),

14 *aff’d*, 503 F.3d 974 (9th Cir. 2007)..... 24

15 *Diamond Multimedia Sys., Inc. v. Superior Court*, 968 P.2d 539 (Cal. 1999) ..... 19, 20

16 *Doğan v. Barak (Doğan I)*, No. 2:15-cv-8130, 2016 WL 6024416 (C.D. Cal. Oct. 13, 2016)..... 4, 7

17 *Doğan v. Barak (Doğan II)*, No. 16-56704, 2019 WL 3520606 (9th Cir. Aug 2, 2019) ..... 4, 5, 6, 7

18 *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947)..... 15, 17

19 *Gutierrez v. Advanced Med. Optics, Inc.*, 640 F.3d 1025 (9th Cir. 2011)..... 9

20 *Hassen v. Nahyan*, No. 09-cv-1106, 2010 WL 9538408 (C.D. Cal. Sept. 17, 2010) ..... 23

21 *Heaney v. Gov’t of Spain*, 445 F.2d 501 (2d Cir. 1971) ..... 6

22 *Hilao v. Estate of Marcos*, 103 F.3d 767 (9th Cir. 1996) ..... 23

23 *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. C 11-2225 SI, 2012 WL 149632 (N.D. Cal. Jan. 18, 2012) ..... 21

24 *In re Union Carbide Corp. Gas Plant Disaster at Bhopal, India in Dec., 1984*, 634 F. Supp. 842 (S.D.N.Y. 1986) ..... 14, 15

1 *John Roe I v. Bridgestone Corp.*, 492 F. Supp. 2d 988 (S.D. Ind. 2007) ..... 20  
 2 *Leetsch v. Freedman*, 260 F.3d 1100 (9th Cir. 2001)..... 9  
 3 *Leibman v. Prupes*, No. 14-cv-09003, 2015 WL 3823954 (C.D. Cal. June  
 4 18, 2015) ..... 20  
 5 *Lueck v. Sundstrand Corp.*, 236 F.3d 1137 (9th Cir. 2001) ..... passim  
 6 *Matar v. Dichter*, 563 F.3d 9 (2d Cir. 2009) ..... 6, 7  
 7 *Mireskandari v. Mayne*, No. 12-cv-3861, 2016 WL 1165896 (C.D. Cal.  
 8 Mar. 23, 2016)..... 5, 6  
 9 *Moriah v. Bank of China, Ltd.*, 107 F. Supp. 3d 272 (S.D.N.Y. 2015)..... 5  
 10 *Movsesian v. Victoria Versicherung AG*, 670 F.3d 1067 (9th Cir. 2012) ..... 21  
 11 *Mujica v. AirScan Inc.*, 771 F.3d 580 (9th Cir. 2014) ..... 8, 17, 18  
 12 *Mujica v. Occidental Petroleum Corp.*, 381 F. Supp. 2d 1134 (C.D. Cal.  
 13 2005) ..... 13, 16, 17  
 14 *Petersen v. Boeing Co.*, 108 F. Supp. 3d 726 (D. Ariz. 2015) ..... 9  
 15 *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981)..... passim  
 16 *RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090 (2016)..... 17  
 17 *Rodriguez v. Los Angeles Police Dep’t*, No. 2:16-CV-2048-RGK-JPR,  
 18 2017 WL 3457115 (C.D. Cal. Apr. 24, 2017) ..... 23  
 19 *Russo v. APL Marine Servs., Ltd.*, 135 F. Supp. 3d 1089 (C.D. Cal. 2015)..... 20  
 20 *Sandoval v. Carnival Corp.*, No. 12-cv-5517, 2014 WL 12585803 (C.D.  
 21 Cal. Sept. 15, 2014)..... 16  
 22 *Sullivan v. Oracle Corp.*, 254 P.3d 237 (Cal. 2011)..... 19  
 23 *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163 (9th Cir. 2006) ..... 9, 24  
 24 *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227 (11th Cir. 2004) ..... 18  
 25 *Wade v. Ratella*, 407 F. Supp. 2d 1196 (S.D. Cal. 2005) ..... 22  
 26 *Walker v. Armco Steel Corp.*, 446 U.S. 740, 745–46 (1980)..... 22  
 27  
 28

**STATUTES**

Torture Victim Protection Act (TVPA), 28 U.S.C. § 1350 note ..... 3, 23

**OTHER AUTHORITIES**

1

2 Brief for the United States at 3, 21 n.\*, *Matar v. Dichter*, 563 F.3d 9 (2d

3 Cir. 2009) (No. 07-2579), 2007 WL 6931924..... 5

4 Freedom House, *Freedom of the World 2019, Sri Lanka Country Report*

5 (2019)..... 10

6 H.R. Rep. No. 102-367, at 5 (1991)..... 23

7 U.S. Dep’t of Justice, *Sri Lanka 2018 Human Rights Report* ..... 11

8 World Justice Project, *World Justice Project Rule of Law Index 2017-*

9 *2018*..... 11

**TREATISES**

10 Restatement (Second) of Foreign Relations Law § 66(f) (1965) ..... 5

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **INTRODUCTION**

2 Plaintiffs, a Canadian citizen residing in Canada and ten Sri Lankan nationals  
3 residing in Europe, have brought this suit in California concerning conduct allegedly  
4 committed in Sri Lanka by the then-Sri Lankan Secretary to the Ministry of Defense,  
5 Gotabaya Rajapaksa, a citizen and resident of Sri Lanka. The First Amended  
6 Complaint (“FAC”) alleges that, while living in Sri Lanka, Plaintiffs were arrested,  
7 detained, and tortured by security personnel acting under Mr. Rajapaksa’s authority.  
8 Although these allegations are serious—and Mr. Rajapaksa will, if necessary, disprove  
9 them on the merits—this lawsuit has no place in U.S. courts. It should be dismissed,  
10 with prejudice, for several reasons.

11 *First*, the FAC alleges conduct undertaken solely in Mr. Rajapaksa’s capacity as  
12 “Secretary of Defense” of Sri Lanka. Mr. Rajapaksa therefore is immune from suit  
13 under common-law foreign-official immunity, and the FAC must be dismissed for lack  
14 of subject-matter jurisdiction.

15 *Second*, Sri Lanka has a far greater interest than the United States in this  
16 litigation and provides an adequate alternative forum, requiring dismissal based on  
17 *forum non conveniens*. All the conduct alleged in the FAC occurred in Sri Lanka. All  
18 the allegations point to evidence and witnesses located in Sri Lanka, including  
19 members of the Sri Lankan military and police. The defendant, Mr. Rajapaksa, resides  
20 in Sri Lanka and is currently a nominee for president there. Plaintiffs are similarly  
21 located abroad. Nothing whatsoever—no party, no witness, no evidence—ties this  
22 litigation to the United States.

23 *Third*, for many of the same reasons supporting dismissal for *forum non*  
24 *conveniens*, the Court should dismiss the FAC as a matter of international comity, out  
25 of respect for Sri Lanka’s courts and in recognition that they provide a far better forum  
26 for this suit.

1 *Finally*, the FAC fails on multiple other grounds. Plaintiffs’ state law tort  
 2 claims must be dismissed because they are impermissibly extraterritorial and time-  
 3 barred, and Plaintiffs failed to exhaust local remedies in Sri Lanka as required to assert  
 4 a claim under the Torture Victim Protection Act.

5 **ALLEGATIONS IN THE FIRST AMENDED COMPLAINT**

6 Plaintiff Roy Samathanam is a citizen and resident of Canada. FAC ¶ 12.  
 7 Plaintiffs Ramesh Thevarajan, Vidhya Jayakumar, Ramanan Sivalingam, Shanti  
 8 Padmanathan, Saman Perera, Nimal Jayasuriya, Vasanthi Ratnasingham, Suresh  
 9 Jeyabalan, Senthil Puwaneswaran, and Mayuran Rajkumar are Sri Lankan nationals  
 10 who reside in Europe and are proceeding in pseudonym. *Id.* ¶¶ 13-22. Plaintiffs allege  
 11 that they were detained by security forces acting under Mr. Rajapaksa’s authority  
 12 between 2007 and 2014—a particularly intense period of conflict during and directly  
 13 following Sri Lanka’s decades-long civil war—and tortured while in custody. *Id.* ¶¶ 6,  
 14 54-255.<sup>1</sup>

15 Plaintiffs allege that Defendant Gotabaya Rajapaksa is a dual U.S.-Sri Lanka  
 16 citizen and resident of Sri Lanka.<sup>2</sup> *Id.* ¶ 23. From 2005 until 2015, Mr. Rajapaksa  
 17 served as “Secretary of Defense of Sri Lanka” (“Defense Secretary”).<sup>3</sup> *Id.* ¶ 35.  
 18 Plaintiffs allege that in that position, Mr. Rajapaksa reported directly to the President  
 19  
 20  
 21

---

22 <sup>1</sup> For the purposes of this motion only, Mr. Rajapaksa addresses the legal  
 23 inadequacy of the FAC even assuming that the well-pleaded allegations of the FAC are  
 24 true. This temporary suspension of disbelief is an accepted feature of U.S. legal  
 25 procedures. As many Sri Lankan citizens are following this case, Mr. Rajapaksa  
 wishes to make absolutely clear that *assuming* the truth of the allegations for purposes  
 of this motion in no way *concedes* their truth.

26 <sup>2</sup> In fact, Mr. Rajapaksa relinquished his U.S. citizenship at the U.S. embassy in  
 27 Colombo, Sri Lanka, on April 17, 2019.

28 <sup>3</sup> Mr. Rajapaksa’s title at the time was Secretary to the Ministry of Defence.

1 and “commanded all agencies of the Sri Lankan military and intelligence forces.” *Id.*  
2 ¶¶ 19, 37.

3 Mr. Rajapaksa allegedly controlled the various detention centers where Plaintiffs  
4 were held and tortured. *Id.* ¶ 46. These sites “were administered by the Ministry of  
5 Defense and used by the military or police, and sometimes both[.]” *Id.* The alleged  
6 abuse was “coordinat[ed] between different components of the Ministry of Defense.”  
7 *Id.* ¶ 47.

8 The First Amended Complaint alleges that each of the Plaintiffs’ experiences  
9 broadly “followed th[e] same script.” *Id.* ¶ 53. The Plaintiff would be placed in a van,  
10 restrained, and driven to a detention center. *Id.* ¶ 48. He or she would then be  
11 interrogated for lengthy periods of time, and subjected to various forms of physical  
12 abuse. *Id.* ¶¶ 50-51. Some Plaintiffs were coerced into signing confessions. *See id.* ¶¶  
13 76, 93, 109, 233. Following this detention and torture, each Plaintiff would be  
14 released. *Id.* ¶ 52.

15 Plaintiffs sue Mr. Rajapaksa, advancing three counts of “California-law”  
16 claims—assault, battery, and intentional infliction of emotional distress—and one  
17 count of torture under the [Torture Victim Protection Act \(TVPA\), 28 U.S.C. § 1350](#)  
18 [note](#). FAC ¶¶ 273-312. Plaintiffs bring their claims under theories of command  
19 responsibility, conspiracy, aiding and abetting, and agency law, alleging that Mr.  
20 Rajapaksa (1) breached his “duty to investigate, prevent, and punish violations of  
21 international and Sri Lankan law committed by members of the military, intelligence,  
22 and police forces under his command,” *id.* ¶ 286; (2) “conspired and knowingly acted  
23 in concert with other officers of the Ministry of Defense” as part of a “common plan”  
24 among members of the Sri Lankan military and police forces “to use physical violence  
25 and intimidation to persecute the Tamil population,” *id.* ¶ 288; (3) aided and abetted  
26 the commission of the wrongful acts alleged in the FAC, *id.* ¶ 291; and (4) is liable  
27  
28

1 under agency law for his subordinates’ misconduct, *id.* ¶¶ 292-297. Plaintiffs seek  
2 compensatory damages, punitive damages, and attorneys’ fees. *Id.* at p. 60.

### 3 ARGUMENT

#### 4 **I. Defendant Is Immune Under the Doctrine of Foreign-Official Immunity**

5 This lawsuit explicitly and directly challenges actions allegedly undertaken by  
6 Mr. Rajapaksa in his official capacity as a high-ranking official of a foreign  
7 government—namely, Sri Lanka’s Defense Secretary. *See, e.g.*, FAC ¶¶ 35, 37  
8 (alleging that Mr. Rajapaksa “commanded all agencies of the Sri Lankan military and  
9 intelligence forces from 2005-2015” and “exercised control through a formal chain of  
10 command”). Mr. Rajapaksa is therefore immune from suit under common-law  
11 foreign-official immunity, and this suit must be dismissed for lack of subject-matter  
12 jurisdiction. *See* [Doğan v. Barak \(Doğan I\)](#), No. 2:15-cv-8130, 2016 WL 6024416, at  
13 [\\*3 \(C.D. Cal. Oct. 13, 2016\)](#), *aff’d*, [Doğan v. Barak \(Doğan II\)](#), No. 16-56704, 2019  
14 [WL 3520606 \(9th Cir. Aug 2, 2019\)](#)

15 If there were any doubt that principles of immunity barred these claims at the  
16 time Plaintiffs filed the FAC, the Ninth Circuit extinguished it in a decision issued  
17 August 2, 2019. *See* [Doğan II](#), 2019 WL 3520606. In *Doğan*, as here, the plaintiffs  
18 brought TVPA and other claims against a former high-ranking government official, the  
19 Israeli Defense Minister. *Id.* at \*2. As here, plaintiffs alleged that the defendant  
20 should be held liable for acts carried out by forces under his command. *Id.* And, as  
21 here, plaintiffs sought to avoid the bar on suits against a foreign *sovereign* by suing a  
22 former foreign official in his individual capacity. *See id.* Judge Wright dismissed the  
23 suit on immunity grounds, and the Ninth Circuit affirmed, concluding after an  
24 “independent judicial determination” that Barak was “entitled to common-law foreign  
25 sovereign immunity.” *Id.* at \*5.

26 *Doğan II* provides the controlling standard for whether the immunity of the  
27 sovereign extends to a former foreign official like Mr. Rajapaksa: “Common-law  
28

1 foreign sovereign immunity extends to individual foreign officials for ‘acts performed  
 2 in [their] official capacity if the effect of exercising jurisdiction would be to enforce a  
 3 rule of law against the state[.]’” *Id.* (quoting [Restatement \(Second\) of Foreign](#)  
 4 [Relations Law § 66\(f\) \(1965\)](#)). If all the requisites for immunity are met, the court  
 5 must dismiss the suit, even without a formal Suggestion of Immunity from the State  
 6 Department.<sup>4</sup> *Id.*; see also [Mireskandari v. Mayne](#), No. 12-cv-3861, 2016 WL  
 7 [1165896](#), at \*20 (C.D. Cal. Mar. 23, 2016); [Moriah v. Bank of China, Ltd.](#), 107 F.  
 8 [Supp. 3d 272, 276-80 \(S.D.N.Y. 2015\)](#). The determining factor in whether a  
 9 government official is entitled to immunity for a challenged act is “whether the act was  
 10 performed on behalf of the foreign state and thus [is] attributable to the state.” [Moriah](#),  
 11 [107 F. Supp. 3d at 277](#) (quoting [Rishikof v. Mortada](#), 70 F. Supp. 3d 8, 13 (D.D.C.  
 12 [2014](#))).

13 This suit presents a straightforward case of foreign-official immunity under  
 14 [Doğan II](#). [2019 WL 3520606](#), at \*5. It challenges actions that Mr. Rajapaksa  
 15 allegedly undertook in his capacity as “a hands-on leader of [Sri Lanka’s] military and  
 16 police forces” and the “chief architect” of a military campaign to end a decades-long  
 17 civil war against a separatist rebel army.<sup>5</sup> FAC ¶¶ 29, 42. Moreover, Plaintiffs allege  
 18 that Mr. Rajapaksa acted pursuant to two laws that provided him with “extraordinary  
 19 emergency powers,” allowing “prolonged detention without judicial review.” *Id.* ¶ 36.  
 20 This suit therefore challenges alleged actions that Mr. Rajapaksa “performed on behalf  
 21 of the” government of Sri Lanka, and those actions are “attributable to the state.”  
 22

---

23 <sup>4</sup> The position of the Executive Branch is that it “need not appear in each case in order  
 24 to assert the immunity of a foreign official.” [Brief for the United States at 3, 21 n.\\*](#),  
 25 [Matar v. Dichter](#), 563 F.3d 9 (2d Cir. 2009) (No. 07-2579), 2007 WL 6931924.

26 <sup>5</sup> The rebel army, the Liberation Tigers of Tamil Eelam (LTTE), was designated by the  
 27 U.S. State Department as a Foreign Terrorist Organization on October 8, 1997. [U.S.](#)  
 28 [Dep’t of State, Foreign Terrorist Organizations](#), <https://www.state.gov/foreign-terrorist-organizations/>.

1 [Mireskandari](#), 2016 WL 1165896, at \*16; see also [Matar v. Dichter](#), 563 F.3d 9, 14  
2 ([2d Cir. 2009](#)) (“[P]laintiff’s concession [in [Heaney v. Gov’t of Spain](#), 445 F.2d 501  
3 ([2d Cir. 1971](#))] that defendant was ‘at all relevant times an employee and agent of the  
4 defendant Spanish Government’ sufficed to dispose of the claim against the individual  
5 defendant”); [Belhas v. Ya’alon](#), 515 F.3d 1279, 1284 ([D.C. Cir. 2008](#)) (“The complaint  
6 identifies nothing that General Ya’alon is alleged to have done in an individual  
7 capacity, or other than as an agent or instrumentality of the state of Israel.”). Thus, Mr.  
8 Rajapaksa enjoys the same immunity from suit as would Sri Lanka itself.

9       Indeed, the allegations in the FAC closely track allegations the Ninth Circuit  
10 cited in holding that the Israeli Minister of Defense was entitled to immunity. In  
11 *Doğan II*, the court noted that “[t]he Complaint’s claims for relief state . . . that  
12 Barak’s actions were done under ‘actual or apparent authority, or color of law, of the  
13 Israeli Ministry of Defense and the Government of the State of Israel.’”. [2019 WL](#)  
14 [3520606](#), at \*5. The same is true of the FAC. FAC ¶ 278 (“The acts described herein  
15 were inflicted under actual or apparent authority or color of law of the government of  
16 Sri Lanka by members of the Sri Lankan military and police forces.”). The *Doğan II*  
17 Court also pointed to the allegation “that Barak’s ‘power . . . to plan, order, and control  
18 the IDF operation and troops as Minister of Defense is set out in Israel’s Basic  
19 Law[.]’” [2019 WL 3520606](#), at \*5. Plaintiff alleges a similar statutory basis for the  
20 alleged acts. See FAC ¶ 36 (discussing Mr. Rajapaksa’s “extraordinary emergency  
21 powers under two laws,” which provided for “prolonged” or “indefinite” detention  
22 “without judicial review”). Here, as in *Doğan II*, Plaintiffs’ own allegations establish  
23 that Mr. Rajapaksa is immune because he acted in his official capacity and “the effect  
24 of exercising jurisdiction would be to enforce a rule of law against the state[.]” [2019](#)  
25 [WL 3520606](#), at \*5.

1 The allegation that Mr. Rajapaksa acted in derogation of a *jus cogens* norm  
2 against torture and extrajudicial killing does not change this analysis.<sup>6</sup> The Ninth  
3 Circuit in *Doğan II* expressly declined to recognize a *jus cogens* exception to common-  
4 law foreign-official immunity. See [2019 WL 3520606, at \\*7](#); see also [Matar, 563 F.3d](#)  
5 [at 15](#) (“A claim premised on the violation of *jus cogens* does not withstand [common-  
6 law] foreign sovereign immunity.”). As the district court in *Doğan I* explained,  
7 recognizing a *jus cogens* exception “would effectively eviscerate immunity for *all*  
8 foreign officials,” because an inquiry into whether a *jus cogens* violation occurred “is  
9 inextricably intertwined with the merits of the underlying claim[.]” [2016 WL](#)  
10 [6024416, at \\*10](#) (emphasis in original).

11 Nor does the analysis change simply because Plaintiff is suing under the TVPA.  
12 The *Doğan II* Court expressly held—and it is thus the law in this Circuit—that “the  
13 TVPA does not abrogate foreign official immunity.” [2019 WL 3520606, at \\*5-7](#). The  
14 Ninth Circuit reasoned that a contrary approach “would open a Pandora’s box of  
15 liability for foreign military officials,” and “[t]he Judiciary . . . would be faced with  
16 resolving any number of sensitive foreign policy questions which might arise in the  
17 context of such lawsuits.” [Id. at \\*6](#). “It simply cannot be that Congress intended the  
18 TVPA to open the door to that sort of litigation.” [Id.](#)

19 Applying the binding standard set forth in *Doğan II*, this Court should dismiss  
20 the FAC on immunity grounds.

21  
22  
23  
24 <sup>6</sup> “A *jus cogens* norm, also known as a ‘peremptory norm of general international law,’  
25 can be defined as ‘a norm accepted and recognized by the international community of  
26 States as a whole as a norm from which no derogation is permitted and which can be  
27 modified only by a subsequent norm of general international law having the same  
28 character.” [Doğan I, 2016 WL 6024416, at \\*10 n.18](#) (quoting [Yousuf v. Samantar, 699](#)  
[F.3d 763, 775 \(4th Cir. 2012\)](#)).

## 1 II. The FAC Should Be Dismissed for *Forum Non Conveniens*

2 Under the *forum non conveniens* doctrine, courts have discretion to dismiss  
3 cases that would be better adjudicated elsewhere. For reasons of convenience and  
4 comity, the Court should do so here.

5 *Forum non conveniens* is rooted in both “international principles of sovereignty  
6 and territoriality” and “constitutional doctrines such as the political question  
7 doctrine[.]” [Mujica v. AirScan Inc.](#), 771 F.3d 580, 598 (9th Cir. 2014). To determine  
8 whether to dismiss a case under the doctrine, courts must first determine whether an  
9 adequate alternative forum exists. [Lueck v. Sundstrand Corp.](#), 236 F.3d 1137, 1142-43  
10 (9th Cir. 2001) (citing [Piper Aircraft Co. v. Reyno](#), 454 U.S. 235, 254 n.22, 257  
11 (1981)). Second, they must weigh “whether the balance of private and public interest  
12 factors favors dismissal.” *Id.*

13 This case passes both tests. First, Sri Lanka is an adequate forum to hear this  
14 case. The Sri Lankan courts would have jurisdiction over the types of claims brought  
15 by Plaintiffs against Mr. Rajapaksa, and, if properly pleaded, the allegations in the  
16 FAC would constitute the basis for a cause of action recognized by Sri Lankan law.  
17 *See de Silva Decl.* ¶ 4.3. Second, both the public and private interest factors favor  
18 dismissal. The public interest analysis turns on whether adjudicating the case in the  
19 plaintiff’s chosen forum is appropriate in the context of the legal system at large.  
20 Because this case involves questions relating to politics and security that go to the  
21 heart of Sri Lanka’s national sovereignty—and because it involves no questions that  
22 directly relate to California—Sri Lanka, not the Central District of California, is the  
23 appropriate forum. The traditional private factors are rooted in reasonableness and  
24 convenience. [Piper Aircraft](#), 454 U.S. at 256. In this case brought in California,  
25 eleven foreign plaintiffs domiciled in Canada and Europe have sued a defendant  
26 domiciled in Sri Lanka for alleged acts that occurred exclusively in Sri Lanka.  
27 Adjudicating it here is neither reasonable nor convenient.

1           **A. Sri Lanka Is an Adequate Alternative Forum**

2           Sri Lanka provides an adequate alternative forum for this suit. An alternative  
3 forum is adequate if “(1) the defendant is amenable to process there; and (2) the other  
4 jurisdiction offers a satisfactory remedy.” Carijano v. Occidental Petroleum Corp.,  
5 643 F.3d 1216, 1225 (9th Cir. 2011) (citing Piper Aircraft, 454 U.S. at 254 n.22). The  
6 moving party bears the burden of proof. Leetsch v. Freedman, 260 F.3d 1100, 1103  
7 (9th Cir. 2001).

8           The test’s first prong is satisfied “when defendants are amenable to service of  
9 process in the foreign forum and when the entire case and all parties can come within  
10 the jurisdiction of that forum.” Gutierrez v. Advanced Med. Optics, Inc., 640 F.3d  
11 1025, 1029 (9th Cir. 2011) (quotation marks omitted). That is the case here. *First*,  
12 Mr. Rajapaksa is amenable to service of process in Sri Lanka. *See* de Silva Decl. ¶¶  
13 3.74-3.77, 3.86. *Second*, Sri Lankan courts would have jurisdiction over similar claims  
14 brought in Sri Lanka. *See id.* ¶¶ 4.3-4.6, 4.14-4.15. *Third*, it is not necessary for  
15 Plaintiff to be physically present in Sri Lanka to file a civil action; a plaintiff living  
16 abroad may bring suit from outside the country by granting a power of attorney to a  
17 competent resident of Sri Lanka or, for claims alleging an infringement of a  
18 fundamental right, by sending a postcard addressed to the Supreme Court’s Chief  
19 Justice. *See id.* ¶¶ 3.70, 3.75, 4.16-4.18.

20           The second prong, whether the alternative jurisdiction offers a satisfactory  
21 remedy, is deliberately “easy to pass.” Tuazon v. R.J. Reynolds Tobacco Co., 433 F.3d  
22 1163, 1178 (9th Cir. 2006). The Supreme Court has held that a court should find a  
23 forum inadequate only if “the remedy provided by the alternative forum is so clearly  
24 inadequate or unsatisfactory that it is no remedy at all.” Piper Aircraft, 454 U.S. at  
25 254 & n.22. Rather, “[t]he forum need only provide *some potential* avenue for  
26 redress.” Petersen v. Boeing Co., 108 F. Supp. 3d 726, 731 (D. Ariz. 2015) (quotation  
27 marks omitted) (emphasis added). In other words, “a foreign forum will be deemed  
28

1 adequate unless it offers no practical remedy for the plaintiff's complained of wrong."

2 [Lueck, 236 F.3d at 1144.](#)

3       There are important foreign policy reasons for why finding a forum inadequate  
4 is rare. Under the principle of equal sovereignty, courts are reluctant to pass judgment  
5 on foreign legal systems. *See [Bi v. Union Carbide Chems. & Plastics Co., 984 F.2d](#)*  
6 [582, 586 \(2d Cir. 1993\)](#) ("[W]ere we to pass judgment on the validity of India's  
7 response to a disaster that occurred within its borders, it would disrupt our relations  
8 with that country and frustrate the efforts of the international community to develop  
9 methods to deal with problems of this magnitude in the future."). There are also  
10 domestic considerations. "Requiring district courts to interpret the law of foreign  
11 jurisdictions . . . is diametrically opposed to another of the [*forum non conveniens*]  
12 doctrine's purposes": to "help courts avoid conducting complex exercises in  
13 comparative law." [Lueck, 236 F.3d at 1144](#) (quoting [Piper Aircraft, 454 U.S. at 251](#)).

14       Under this standard, Sri Lanka's remedies provide an adequate alternative. Sri  
15 Lanka has a well-established legal system steeped in the English common law and  
16 Roman Dutch Law, among other traditions, as well as a constitutional structure of  
17 government and an independent judiciary. *See de Silva Decl.* ¶¶ 3.1-3.41. Civil  
18 causes of action are available for battery, assault, wrongful imprisonment, and  
19 intentional infliction of emotional distress, *id.* ¶¶ 3.63, 3.68, 4.4, and civil actions may  
20 be brought against both sitting and former public officials, *id.* ¶¶ 3.50-3.52, 3.86.  
21 Moreover, Sri Lankan law criminalizes torture. *See id.* ¶ 3.88.

22       Recent developments demonstrate that the Sri Lankan judiciary is capable of  
23 providing Plaintiffs with redress. New reports by international monitoring  
24 organizations commend the country's fair and independent judiciary.<sup>7</sup> And the U.S.  
25

---

26  
27 <sup>7</sup> *See, e.g., [Freedom House, Freedom of the World 2019, Sri Lanka Country](#)*  
28 [Report \(2019\), <https://freedomhouse.org/report/freedom-world/2019/sri-lanka>](#) (raising  
Sri Lanka's judicial independence score from two to three out of four because the

1 Department of Justice has noted that Sri Lanka “law provides for an independent  
 2 judiciary, and the government generally respect[s] judicial independence and  
 3 impartiality.”<sup>8</sup> Sri Lanka courts have recently demonstrated these qualities by  
 4 permitting criminal cases against former high-ranking public officials to proceed. *See*  
 5 *de Silva Decl.* ¶ 4.10. Indeed, Mr. Rajapaksa is currently facing criminal charges in  
 6 Sri Lanka’s High Court based on allegations that he aided and abetted board members  
 7 of the Land Reclamation and Development Authority in misappropriating public funds  
 8 to build a memorial. *See id.* ¶ 4.11; *id.*, Ex. 2 (copy of indictment with certified  
 9 translation). Although Mr. Rajapaksa vigorously disputes these charges, they  
 10 demonstrate that Sri Lanka is capable of proceeding against high-level government  
 11 officials for wrongful conduct undertaken while in office.

#### 12 **B. Plaintiffs’ Choice of Forum Merits Minimal Deference**

13 The Court should dismiss this case because Plaintiffs are foreign and their case  
 14 is precisely what the *forum non conveniens* doctrine was designed to address. As the  
 15 Supreme Court has explained, “[b]ecause the central purpose of any *forum non*  
 16 *conveniens* inquiry is to ensure that the trial is convenient, a foreign plaintiff’s choice  
 17 deserves less deference.” *Piper Aircraft*, 454 U.S. at 256.

18 Implementing this rule, the Ninth Circuit has held that defendants bear a  
 19 “reduced” burden to demonstrate inconvenience in suits brought by foreign plaintiffs.  
 20 *Lueck*, 236 F.3d at 1145. In these instances, dismissal is proper whenever “the balance

21  
 22  
 23 Supreme Court and Court of Appeal “demonstrated their independence” during a 2018  
 24 constitutional crisis); [World Justice Project, World Justice Project Rule of Law Index  
 25 2017-2018](https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition.pdf), at 25 (2018), [https://worldjusticeproject.org/sites/default/files/documents/  
 26 WJP-ROLI-2018-June-Online-Edition.pdf](https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition.pdf) (noting that of an indexed 113 countries, Sri  
 Lanka’s rank improved significantly, by nine spots).

27 <sup>8</sup> [U.S. Dep’t of Justice, Sri Lanka 2018 Human Rights Report at 8,  
 28 <https://www.justice.gov/coir/page/file/1145711/download>.](https://www.justice.gov/coir/page/file/1145711/download)

1 of conveniences suggests that trial in the chosen forum would be unnecessarily  
2 burdensome for the defendant or the court.” *Id.*

3 Here, the “balance of conveniences” clearly tilts to dismissal. Plaintiffs are  
4 foreign, and the FAC provides no valid reason for bringing suit in California when Mr.  
5 Rajapaksa is amenable to suit in Sri Lanka. Plaintiffs’ Canadian and European  
6 residencies do not affect this calculus because Sri Lanka has procedural mechanisms  
7 that allow a plaintiff to file suit while abroad. *See de Silva Decl.* ¶¶ 3.70, 3.75, 4.16-  
8 4.18. In any event, both Plaintiffs and Mr. Rajapaksa are domiciled in foreign  
9 jurisdictions, the alleged conduct occurred in a foreign jurisdiction, and all relevant  
10 evidence is located in a foreign jurisdiction. The only reason Plaintiffs were able to  
11 sue in this District is that they managed to obtain “gotcha” jurisdiction by serving Mr.  
12 Rajapaksa while he was visiting California. That is not sufficient reason to proceed.

### 13 **C. The Public and Private Interests Strongly Favor Dismissal**

14 When an alternative forum is adequate, *forum non conveniens* is appropriate  
15 where the “‘private interest’ and the ‘public interest’ factors strongly favor trial in a  
16 foreign country.” *Lueck, 236 F.3d at 1145*. That is the case here.

#### 17 **1. The Public Interest Factors Favor Dismissal**

18 The public interest factors strongly favor dismissal. To assess these public  
19 interest factors, courts look to the “(1) local interest of [the] lawsuit; (2) the court’s  
20 familiarity with governing law; (3) burden on local courts and juries; (4) congestion in  
21 the court; and (5) the costs of resolving a dispute unrelated to this forum.” *Lueck, 236*  
22 *F.3d at 1147* (citing *Piper Aircraft, 454 U.S. at 259-61*). All five factors weigh in  
23 favor of dismissal here.

24 *First*, there is no local interest in this lawsuit. The alleged acts were taken  
25 exclusively in Sri Lanka by a Sri Lankan national against non-U.S. citizens.

26 *Second*, while this Court is well-equipped to interpret federal law claims, this  
27 case is not limited to federal law. The Court will necessarily need to engage with Sri  
28

1 Lankan law, particularly as it relates to the powers of the Defense Secretary and the  
2 chain of command within the Sri Lankan Ministry of Defense, to fairly adjudicate  
3 Plaintiffs' claims.

4 *Third*, absent a local interest in the adjudication of the dispute, it will unduly  
5 burden the Court and a jury to hear this case. This Court reached an identical  
6 conclusion in a case very similar to this one, [Mujica v. Occidental Petroleum Corp.](#),  
7 [381 F. Supp. 2d 1134, 1153 \(C.D. Cal. 2005\)](#). There, the court held that, although  
8 Congress had permitted American juries to review foreign claims arising under the  
9 TVPA, the equities favored dismissal where the alleged acts involved foreign plaintiffs  
10 and occurred abroad. *Id.*

11 *Fourth*, caseloads in the Central District of California are high, and there is no  
12 reason to further burden this Court with a case lacking any connection to this District  
13 or the United States more broadly.

14 *Finally*, the costs of this case will significantly outstrip any local interest it may  
15 hold. The facts alleged in the FAC suggest that all relevant evidence is located abroad,  
16 and, because it relates to conduct that allegedly occurred while Plaintiffs were in  
17 custody, some, if not all, of that evidence is in the possession of a foreign government.  
18 The parties and the Court will need to expend substantial resources to request the  
19 evidence, and, if they obtain it—which is far from certain, given the national security  
20 implications raised by this litigation—there may be translation costs. Because criminal  
21 charges were filed against four of the Plaintiffs in Sri Lanka in connection with their  
22 arrests, *see id.* ¶¶ 77, 95, 186, 202, the Court also may need to consider foreign  
23 criminal proceedings—another time-consuming and costly process that will possibly  
24 require translation and expert testimony.

25 There is yet another reason to dismiss this case on public interest grounds. The  
26 Second Circuit famously reaffirmed this rationale in [Bi](#), [984 F.2d at 583](#). *See also*  
27 [AirScan](#), [771 F.3d at 607](#) (relying on *Bi*). In *Union Carbide*, the district court, against  
28

1 the State of India’s own request, dismissed a case relating to a gas leak at an  
2 American-owned chemical plant in India because allowing it to proceed would unfairly  
3 indict India’s courts and stunt the development of its judiciary. *In re Union Carbide*  
4 *Corp. Gas Plant Disaster at Bhopal, India in Dec., 1984*, 634 F. Supp. 842, 866-67  
5 (S.D.N.Y. 1986), *aff’d as modified*, 809 F.2d 195 (2d Cir. 1987). The plaintiffs in that  
6 case had claimed that “the Indian justice system ha[d] not yet cast off the burden of  
7 colonialism to meet the emerging needs of a democratic people.” *Id. at 867*. But the  
8 court rejected their argument, holding that

9 to retain the litigation in this forum . . . would be yet another example of  
10 imperialism, another situation in which an established sovereign inflicted  
11 its rules, its standards and values on a developing nation . . . . To deprive  
12 the Indian judiciary of this opportunity to stand tall before the world and to  
13 pass judgment on behalf of its own people would be to revive a history of  
14 subservience and subjugation from which India has emerged.

15 *Id.*

16 So too here, with even greater force. The Sri Lankan courts are well-  
17 established, with deep roots in Sri Lanka’s Commonwealth history and the common-  
18 law tradition. *See de Silva Decl.* ¶¶ 3.1. The Sri Lankan Constitution guarantees  
19 judicial independence, and the Sri Lankan courts have recently demonstrated this  
20 quality by permitting prosecutions of former public officials to proceed. *See id.* ¶¶  
21 3.36-3.41, 4.10-4.11. Further, as the FAC itself establishes, since 2015 the  
22 government has publicly affirmed “its commitment to holding human rights abusers  
23 accountable by the opening of a handful of emblematic cases of abduction, torture, and  
24 extrajudicial killing.” FAC ¶ 271; *see also id.* ¶¶ 264-266 (identifying concrete actions  
25 that the Sri Lankan government took to review torture allegations prior to 2015,  
26 including establishing investigatory bodies). While Plaintiffs contest the efficacy of  
27 those efforts, *id.* ¶¶ 264-266, 271, this Court is not best positioned to adjudicate a  
28

1 foreign nation’s approach to internal rapprochement. The cultural, political,  
2 historical, psychological, and communal issues implicated by such a truth-and-  
3 reconciliation effort are powerful and intensely local. Adjudicating this Sri Lankan  
4 dispute in California would threaten this process in ways a U.S. court could not  
5 foresee, and would deprive the Sri Lankan judiciary of the opportunity to “stand tall”  
6 and “pass judgment on behalf of its own people.” See [Union Carbide, 634 F. Supp. at](#)  
7 [867](#).

## 8                   2.       The Private Interest Factors Favor Dismissal

9           The doctrine’s traditional private interest factors similarly warrant dismissal.  
10 When considering whether to dismiss a case, courts will review “(1) the residence of  
11 the parties and the witnesses; (2) the forum’s convenience to the litigants; (3) access to  
12 physical evidence and other sources of proof; (4) whether unwilling witnesses can be  
13 compelled to testify; (5) the cost of bringing witnesses to trial; (6) the enforceability of  
14 the judgment; and (7) ‘all other practical problems that make trial of a case easy,  
15 expeditious and inexpensive.’” [Lueck, 236 F.3d at 1145](#) (quoting [Gulf Oil Corp. v.](#)  
16 [Gilbert, 330 U.S. 501, 508 \(1947\)](#)). No one factor is dispositive; rather, the court  
17 “should consider them together in arriving at a balanced conclusion.” [Id. at 1145-46](#)  
18 Here, not just some but *all* factors dictate dismissal.

19           *First*, as noted, all parties reside abroad, and the facts alleged in the FAC  
20 suggest that any potential witnesses are located in Sri Lanka.

21           *Second*, because no party or identified witness to the case resides in California,  
22 the forum is inconvenient to everyone involved.

23           *Third*, the facts alleged in the FAC suggest that all or the vast majority of the  
24 physical and documentary evidence is located abroad, making it difficult and  
25 expensive to obtain. Although Sri Lanka is a signatory to the Hague Convention,  
26 conducting cross-border discovery remains inconvenient and time-consuming. See  
27 [Sandoval v. Carnival Corp., No. 12-cv-5517, 2014 WL 12585803, at \\*7 \(C.D. Cal.](#)  
28

1 [Sept. 15, 2014](#)). This is especially so because the Sri Lankan law giving effect to the  
2 Hague Convention provides an exception when sharing the information will be, in the  
3 judgment of the Sri Lanka Central Authority, “prejudicial to the sovereignty or security  
4 of Sri Lanka.” *See de Silva Decl.* ¶ 3.78. And beyond the challenges associated with  
5 *obtaining* evidence from abroad, courts have acknowledged that “conducting a  
6 substantial portion of a trial on deposition testimony precludes the trier of fact from its  
7 most important role; evaluating the credibility of the witnesses.” [Mujica, 381 F. Supp.](#)  
8 [2d at 1151](#) (citation omitted). Moreover, as noted, many of the alleged evidentiary  
9 documents are in the control of the Sri Lankan government. Courts have recognized  
10 that these circumstances make adjudication particularly difficult because, even under  
11 the Hague Convention and similar international agreements, American courts cannot  
12 compel production from foreign governments. *See Lueck, 236 F.3d at 1146-47*. The  
13 third factor thus weighs very strongly in favor of dismissal.

14 *Fourth*, the most material and important witnesses are abroad and have no  
15 “accessibility and convenience to the forum.” [Lueck, 236 F.3d at 1146](#) (citation  
16 omitted). Beyond the usual challenges involved in convincing foreign witnesses to  
17 travel, many of the witnesses in this case may be unwilling to testify because doing so  
18 could expose them to liability. Plaintiffs’ claims rest on theories of command  
19 responsibility, conspiracy, aiding and abetting, and agency law, *see* FAC ¶¶ 281–297;  
20 as a result, the witnesses most material to his case—the people who allegedly  
21 conspired with Mr. Rajapaksa and executed his orders—could be named third-party  
22 defendants. Where, as here, a case involves potential third-party defendants whom the  
23 court cannot compel to testify, that factor “clearly support[s] holding the trial” in the  
24 foreign forum. [Mujica, 381 F. Supp. 2d at 1152-53](#) (citation omitted).

25 *Fifth*, this case likely will be extremely costly to try. All alleged acts occurred  
26 abroad; all relevant evidence likely is located abroad; and relevant materials and  
27 testimony may be in a foreign language.

1           *Sixth*, even if Plaintiffs were to succeed on the merits, it would be difficult to  
2 enforce the judgment. Mr. Rajapaksa resides in Sri Lanka, where he is the nominee of  
3 a major political party for president, and he has relinquished his U.S. citizenship.

4           *Seventh*, this lawsuit is a classic “foreign-cubed” case—a case “where the  
5 plaintiffs are foreign, the defendants are foreign, and all the relevant conduct occurred  
6 abroad.” See [RJR Nabisco, Inc. v. European Cmty.](#), 136 S. Ct. 2090, 2116 (2016)  
7 (Breyer, J., concurring in part, dissenting in part, and dissenting from the judgment).  
8 These facts suggest that the “practical problems” of this case will make trial in  
9 Plaintiffs’ chosen forum anything but “easy, expeditious, [or] inexpensive.” [Lueck](#),  
10 [236 F.3d at 1145-46](#) (quoting [Gulf Oil](#), 330 U.S. at 508).

11           *Finally*, choice-of-law analysis also supports dismissal. The TVPA does not  
12 require venue in the United States; in fact, it has a foreign exhaustion requirement. See  
13 [Mujica](#), 381 F. Supp. 2d at 1141. As discussed below, plaintiffs’ California law claims  
14 should be dismissed because they do not apply extraterritorially and their statutes of  
15 limitations have long since passed. But, to the extent those claims arise under Sri  
16 Lankan law, that would further support dismissal for *forum non conveniens*.

### 17 **III. The FAC Should Be Dismissed Based on Principles of Comity**

18           Alternatively, the Court should dismiss this case as a matter of international  
19 comity. Comity is a prudential abstention doctrine intended “to promote cooperation  
20 and reciprocity with foreign lands.” [AirScan](#), 771 F.3d at 598 (quotation marks  
21 omitted). It is “the golden rule among nations [that] compels [courts] to give the  
22 respect to the laws, policies, and interests of others that [they] would have others give  
23 to [their] own in the same or similar circumstances.” [Id.](#) at 608 (quotation marks  
24 omitted). Comity “counsels voluntary forbearance when a sovereign which has a  
25 legitimate claim to jurisdiction concludes that a second sovereign also has a legitimate  
26 claim to jurisdiction under principles of international law.” [Id.](#) at 598 (citation  
27 omitted).

1 International comity traditionally encompasses two distinct doctrines. The first,  
2 legislative, or prescriptive, comity, “guides domestic courts as they decide the  
3 extraterritorial reach of federal statutes.” [Id. at 598-99](#) (citation omitted). The second,  
4 adjudicatory comity, or comity among courts, “arises in two contexts: (i) determining  
5 the preclusive effect or enforceability of a foreign ruling or judgment; or (ii) evaluating  
6 whether to stay or dismiss an action in a domestic court in favor of either a pending or  
7 future proceeding in a foreign forum.” [Id. at 621](#) (Zilly, J., concurring in part and  
8 dissenting in part).

9 The Ninth Circuit recently applied adjudicatory comity in [AirScan, 771 F.3d](#)  
10 [580](#), to dismiss claims against an American corporate defendant for its alleged  
11 involvement in a bombing of a Colombian village. Although the court had jurisdiction  
12 to hear the case, it deferred because the plaintiffs had already successfully brought  
13 related claims against different defendants in Colombia. To reach its decision, the  
14 court applied the three-part analysis introduced in [Ungaro-Benages v. Dresdner Bank](#)  
15 [AG, 379 F.3d 1227, 1238 \(11th Cir. 2004\)](#), under which a court “evaluate[s] several  
16 factors, including [1] the strength of the United States’ interest in using a foreign  
17 forum, [2] the strength of the foreign governments’ interests, and [3] the adequacy of  
18 the alternative forum.” [AirScan, 771 F.3d at 603](#). The court held that, “because of the  
19 strength of the U.S. government’s interest in respecting Colombia’s judicial process,  
20 the weakness of California’s interest in the case, the strength of Colombia’s interests in  
21 serving as an exclusive forum, and the adequacy of the Colombian courts,” the  
22 plaintiffs’ claims were nonjusticiable. [Id. at 615](#).

23 This Court should abstain here for the reasons articulated by the Ninth Circuit in  
24 [AirScan](#), which are addressed in the *forum non conveniens* analysis above. As this  
25 more extensive discussion shows, the United States has a strong interest in respecting  
26 Sri Lanka’s judicial process, Sri Lanka’s interest in the case is as strong as the interests  
27  
28

1 of the United States and California are weak, and the Sri Lankan courts provide an  
2 adequate forum to adjudicate the claims.

#### 3 **IV. Plaintiffs' Claims Are Barred for Multiple Other Reasons**

##### 4 **A. Plaintiffs' State-Law Claims Are Impermissibly Extraterritorial**

5 Counts 2, 3, and 4 of the FAC are "California-law claims" that concern alleged  
6 conduct that took place outside of California by a non-California resident against other  
7 non-California residents. *See* FAC ¶¶ 8, 10. These claims are impermissibly  
8 extraterritorial and must be dismissed.

9 The California Supreme Court has long applied a "presumption against  
10 extraterritoriality" to California state law, according to which courts presume that "the  
11 [California] Legislature did not intend" California law "to be operative[] with respect  
12 to occurrences outside the state." [Sullivan v. Oracle Corp., 254 P.3d 237, 248 \(Cal. 2011\)](#) (internal quotation marks omitted) (quoting [Diamond Multimedia Sys., Inc. v. Superior Court, 968 P.2d 539, 553 \(Cal. 1999\)](#)). Although this presumption applies  
14 specifically to California statutes, this Court has previously explained that it "has not  
15 found any authority indicating that California common law does or does not apply  
16 extraterritorially," and for this reason has insisted that, "[w]ithout any authority from  
17 the California legislature or courts," it "will *not* presume that California common law  
18 applies extraterritorially." [BLK Enters., LLC v. Unix Packaging, Inc., No. 2:18-cv-2151, 2018 WL 5993844, at \\*7 \(C.D. Cal. June 14, 2018\)](#) (emphasis added); *accord*  
20 [Cave Consulting Grp., Inc. v. Truven Health Analytics Inc., No. 15-cv-2177, 2017 WL 1436044, at \\*7 \(N.D. Cal. Apr. 24, 2017\)](#) ("Without authority from the California  
21 courts or the California legislature, the Court will not presume that the California  
22 common law is meant to have extraterritorial effect."). If a law does not apply  
23 extraterritorially, then a claim under that law must be dismissed if, as in this case, "the  
24 conduct which gives rise to liability" did not "occur[] in California." [Leibman v. Prupes, No. 14-cv-09003, 2015 WL 3823954, at \\*7 \(C.D. Cal. June 18, 2015\)](#) (internal  
25  
26  
27  
28

1 quotation marks and emphasis removed) (quoting [Diamond Multimedia, 968 P.2d at](#)  
2 [554](#)).

3 Further, even if the presumption against extraterritoriality *did not* apply to  
4 California common law claims, “there are still limits on the extraterritorial application  
5 of California law.” [Russo v. APL Marine Servs., Ltd., 135 F. Supp. 3d 1089, 1096](#)  
6 [\(C.D. Cal. 2015\)](#), *aff’d*, [694 F. App’x 585 \(9th Cir. 2017\)](#). Specifically, even for  
7 causes of action that *are* designed to be extraterritorial in scope, California courts will  
8 not apply California law if “none of the conduct which gave rise to the liability  
9 occurred in California.” *Id.* The rationale is simple: “California has no interest in  
10 compensating injured plaintiffs who are neither injured in California nor California  
11 residents.” [Chen v. L.A. Truck Ctrs., LLC, 213 Cal. Rptr. 3d 142, 155 \(Ct. App. 2017\)](#);  
12 *see also* [John Roe I v. Bridgestone Corp., 492 F. Supp. 2d 988, 1024 \(S.D. Ind. 2007\)](#)  
13 (dismissing California common law claims arising out of the defendants’ management  
14 of a plantation in Liberia because “Plaintiffs have not . . . articulated a viable basis for  
15 applying California law” in such a context).

16 Here, Plaintiffs are foreign nationals, FAC ¶¶ 12-22, the defendant is a resident  
17 of Sri Lanka, *id.* ¶ 23, and the case turns on conduct that took place entirely in Sri  
18 Lanka, *id.* ¶¶ 1-6. There is absolutely no indication that California intended its  
19 common law to apply in such a context, which is entirely disconnected from the State  
20 or its residents.

21 In fact, applying California causes of action—common law or otherwise—to  
22 conduct that occurred outside the United States and has no relation to California would  
23 raise serious constitutional questions. The Fourteenth Amendment’s Due Process  
24 Clause “requires a court to invalidate the application of a state’s law . . . where the  
25 state has ‘no significant contact or significant aggregation of contacts, creating state  
26 interests, with the parties and the occurrence or transaction.’” [AT & T Mobility LLC v.](#)  
27 [AU Optronics Corp., 707 F.3d 1106, 1111 \(9th Cir. 2013\)](#) (quoting [Allstate Ins. Co. v.](#)  
28

1 [Hague, 449 U.S. 302, 308 \(1981\)](#)). That is, “if a State has only an insignificant  
2 contact”—or, as here, *no* contact—“with the parties” and the wrongful conduct at  
3 issue, “application of [the State’s] law is unconstitutional.” [Hague, 449 U.S. at 310-](#)  
4 [11; see also \*In re TFT-LCD \(Flat Panel\) Antitrust Litig.\*, No. C 11-2225 SI, 2012 WL](#)  
5 [149632, at \\*4 \(N.D. Cal. Jan. 18, 2012\)](#) (“[The plaintiff] has not alleged that it dealt  
6 with the defendants in California, or that California otherwise had any direct relevance  
7 to the [wrongful conduct at issue]. Without more, due process precludes the  
8 application of California law.”).

9 In addition, because “[t]he Constitution gives the federal government the  
10 exclusive authority to administer foreign affairs,” a state law is preempted under “field  
11 preemption” if it “intrudes on the field of foreign affairs without addressing a  
12 traditional state responsibility.” [Movsesian v. Victoria Versicherung AG](#), 670 F.3d  
13 [1067, 1071-72 \(9th Cir. 2012\)](#) (*en banc*). California has no “traditional state  
14 responsibility” to regulate foreign conduct by foreign defendants against foreign  
15 plaintiffs. Applying California law here would “invite[] courts to conduct detailed  
16 inquiries into the political systems and conduct of foreign nations,” thereby intruding  
17 on the federal government’s foreign affairs prerogatives. [Id. at 1072](#).

18 For the reasons discussed above, this Court should dismiss Plaintiffs’ state law  
19 claims as an impermissibly extraterritorial application of California state law.

## 20 **B. Plaintiffs’ State-Law Claims Are Time-Barred**

21 Plaintiffs’ state-law claims fail for the additional reason that the statutes of  
22 limitations have long since run. California’s statute of limitations for civil assault,  
23 battery, and intentional infliction of emotional distress is two years. Cal. Civ. Proc.  
24 Code § 335.1. But the FAC does not allege abuse of the Plaintiffs dating beyond 2014,  
25 *see* FAC ¶ 161—more than *four* years prior to Plaintiffs bringing suit.

26 Nor can Plaintiffs satisfy the test for equitable tolling. “Federal courts  
27 addressing state law claims must apply state law statutes of limitation and state law  
28

1 applies to the question of tolling state claims.” *Centaur Classic Convertible Arbitrage*  
2 *Fund Ltd. v. Countrywide Fin. Corp.*, 878 F. Supp. 2d 1009, 1015 (C.D. Cal. 2011)  
3 (citing *Walker v. Armco Steel Corp.*, 446 U.S. 740, 745–46, 752–53 (1980)). Under  
4 California law, for a court to toll a statute of limitations, “(1) defendant must have had  
5 timely notice of the claim; (2) defendant must not be prejudiced by being required to  
6 defend the otherwise barred claim; and (3) plaintiff’s conduct must have been  
7 reasonable and in good faith.” *Wade v. Ratella*, 407 F. Supp. 2d 1196, 1205 (S.D. Cal.  
8 2005) (emphasis added).

9 Failing only one prong of the test is sufficient to end the inquiry. Plaintiffs fail  
10 all three. *First*, Mr. Rajapaksa did not have notice of his claims until he was served in  
11 a parking lot in California nearly nine years after the time—and across the globe from  
12 the place—the claims allegedly accrued. *See* ECF No. 9. *Second*, Mr. Rajapaksa  
13 resides in—and is currently a nominee for president of—Sri Lanka. He will be heavily  
14 prejudiced by the need to defend against otherwise barred California law claims, both  
15 due to the practical burdens of defending a lawsuit from abroad and because Plaintiffs’  
16 inflammatory allegations could remain unresolved in the United States throughout the  
17 Sri Lankan presidential campaign. *Third*, Plaintiffs fail to adequately show a  
18 reasonable and good-faith reason for waiting (at *least*) two-and-a-half years after the  
19 two-year statute of limitations had expired to file suit. Plaintiffs appear to claim that  
20 the statute of limitations should be tolled because “exceptional circumstances”  
21 prevented them from filing earlier: specifically, that Mr. Rajapaksa remained in the  
22 government until January 2015, and that Mr. Rajapaksa returned infrequently to the  
23 United States after leaving office. FAC ¶ 295. But by that same token, Plaintiffs have  
24 been free from custody for at least four years, Mr. Rajapaksa has been a private citizen  
25  
26  
27  
28

1 for four years, and Plaintiffs contend only that Mr. Rajapaksa returned to the United  
2 States “infrequently.”<sup>9</sup>

3 Because the FAC is untimely and Plaintiff fails California’s test for equitable  
4 tolling, it should be dismissed.

5 **C. Plaintiffs’ Failure to Exhaust Local Remedies Bars Their TVPA**  
6 **Claims**

7 The Court should dismiss Plaintiffs’ TVPA claims because Plaintiffs failed to  
8 exhaust adequate and available Sri Lankan remedies. The TVPA expressly states that  
9 “[a] court shall decline to hear a claim under this section if the claimant has not  
10 exhausted adequate and available remedies in the place in which the conduct giving  
11 rise to the claim occurred.” [28 U.S.C. § 1350 note](#).

12 As this Court has previously explained, “Congress included the exhaustion  
13 requirement to promote comity, avoid unnecessary burdens on American courts, and  
14 encourage the development of foreign legal systems.” [Hassen v. Nahyan, No. 09-cv-](#)  
15 [1106, 2010 WL 9538408, at \\*18 \(C.D. Cal. Sept. 17, 2010\)](#) (citing [H.R. Rep. No. 102-](#)  
16 [367, at 5 \(1991\)](#)). While the “ultimate burden of proof and persuasion . . . lies with the  
17 defendant,” “[o]nce the defendant makes a showing of remedies abroad which have not  
18 been exhausted, the burden shifts to the plaintiff to rebut by showing that the local  
19 remedies were ineffective, unobtainable, unduly prolonged, inadequate, or obviously  
20 futile.” [Hilao v. Estate of Marcos, 103 F.3d 767, 778 n.5 \(9th Cir. 1996\)](#).

21 The Ninth Circuit has interpreted “adequate and available remedies” for  
22 purposes of the TVPA to accord with the *forum non conveniens* standard articulated in  
23

---

24  
25 <sup>9</sup> Plaintiffs also imply that their claims should be tolled under the “continuing tort”  
26 doctrine, FAC ¶ 295. They fail, however, to identify any “injury” or “tortuous act[]”  
27 that has occurred over the last two years to justify applying this doctrine. See  
28 [Rodriguez v. Los Angeles Police Dep’t, No. 2:16-CV-2048-RGK-JPR, 2017 WL](#)  
[3457115, at \\*2 \(C.D. Cal. Apr. 24, 2017\)](#) (internal citation omitted).

1 [Piper Aircraft, 454 U.S. 235](#). See [Corrie v. Caterpillar, Inc., 403 F. Supp. 2d 1019,](#)  
2 [1025-26 \(W.D. Wash. 2005\)](#), *aff'd*, [503 F.3d 974 \(9th Cir. 2007\)](#) (holding that Israeli  
3 law provided adequate remedies and therefore that the exhaustion requirement  
4 applied). For the same reasons that Sri Lanka constitutes an adequate forum for  
5 purposes of *forum non conveniens*, it provides adequate and available remedies under  
6 the statute.

7         Nevertheless, Plaintiffs allege that exhaustion is futile because they are  
8 “[u]nable to obtain any assurance of due process or impartial justice” in Sri Lanka.  
9 FAC ¶ 272. But “[a] litigant asserting inadequacy or delay must make a powerful  
10 showing,” and generalized assertions of corruption or delay are insufficient to establish  
11 that the alternative forum is inadequate. [Tuazon v. R.J. Reynolds Tobacco Co., 433](#)  
12 [F.3d 1163, 1179 \(9th Cir. 2006\)](#). This standard sets a very high bar, which Plaintiffs  
13 cannot meet. See *id.* (stating that the court was aware of only two federal cases “to  
14 hold that an alternative forum was inadequate because of corruption”). Indeed, as  
15 noted, Sri Lanka has recently been commended for its fair and independent judiciary.  
16 See *supra* note 7.

17         Plaintiffs also assert that they “have no effective remedies available to them in  
18 the courts of Sri Lanka” because they fear “violent reprisals against themselves and  
19 their relatives.” FAC ¶ 272. But here, too, plaintiffs’ claims fall short. Sri Lanka  
20 affords both plaintiffs and witnesses substantial legal protections from intimidation and  
21 retaliation—and in the appropriate circumstances allow plaintiffs to proceed  
22 anonymously. See de Silva Decl. ¶ 3.82. Plaintiffs fail to allege why those protections  
23 are so insufficient as to render exhaustion futile.

24         Because Sri Lanka provides adequate and available remedies for the causes of  
25 action Plaintiff alleges accrued there, and because they failed to exhaust those  
26 remedies, Plaintiff’s suit is barred.

1 **CONCLUSION**

2 This case—brought against a former Sri Lankan Defense Secretary and current  
3 presidential candidate just before elections there—has no place in a U.S. court.  
4 Everything about this case is centered in Sri Lanka; nothing connects it to this District.  
5 The Defendant is immune from suit for his official conduct. And the FAC is barred  
6 because the state tort claims are impermissibly extraterritorial and untimely, and  
7 because Plaintiffs failed to exhaust their Sri Lankan remedies. The Court should  
8 dismiss the FAC in its entirety and with prejudice.

9  
10 Dated: August 16, 2019

ARNOLD & PORTER KAYE SCHOLER LLP

11  
12  
13 By: /s/ John C. Ulin

John C. Ulin

Robert N. Weiner\*

Raul R. Herrera\*

R. Stanton Jones\*

14  
15  
16  
17 *Attorneys for Defendant*

*Nandasena Gotabaya Rajapaksa*

18  
19 \*Applications to appear *pro hac vice*  
20 pending.

**CERTIFICATE OF SERVICE**

I hereby certify that on August 16, 2019, I electronically filed the foregoing **DEFENDANT’S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF’S FIRST AMENDED COMPLAINT PURSUANT TO RULES 12(b)(1) AND 12(b)(6), FORUM NON CONVENIENS, AND INTERNATIONAL COMITY; MEMORANDUM OF POINTS AND AUTHORITIES** with the Clerk by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

*s/ Vicky Apodaca*  
\_\_\_\_\_  
Vicky Apodaca