

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
ENTERED

NOV 21 2001

Michael N. Milby, Clerk of Court

ABOLALA SOUDAVAR, §  
Plaintiff §  
VS. § CIVIL ACTION NO. H-01-0343  
PRESIDENT OF THE UNITED STATES, §  
Defendant §

MEMORANDUM AND ORDER OF DISMISSAL

The above referenced action seeks injunctive relief against and the recovery of damages caused by successive executive orders imposing economic sanctions and trade restrictions on the Republic of Iran, based on pro se Plaintiff Abolala Soudavar's ("Soudavar's") alleged guaranteed right to do commerce with Iran under article X ("Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation") of the Treaty of Amity, Economic Relations and Consular Rights Between the United States of America and Iran, June 16, 1957, 8 U.S.T. 899, T.I.A.S. 3853, 284 U.N.T.S. 93 ("Treaty").

Pending before the Court are the following motions: (1) Defendant The President of the United States' motion to dismiss for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(1) and (6) (instrument #4); and (2) Defendant's unopposed motion to stay discovery cut-off deadline (instrument #10).

According to his complaint, Soudavar is an Iranian citizen and legal resident alien living in Houston, Texas since

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1983. He owns a local business that imports and manufactures furniture and furnishings and that would benefit greatly from commerce between Iran and this country.

#### STANDARD OF REVIEW

Federal courts are courts of limited jurisdiction, which encompasses only cases authorized by the Constitution and laws of the United States. Coury v. Prot, 85 F.3d 244, 248 (5th Cir. 1996). When subject matter jurisdiction is challenged under Rule 12(b)(1), the party asserting its existence bears the burden of proving it. Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 376-78 (1994). A trial court has the power to dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) on any of three bases: (1) on the complaint alone; (2) on the complaint supplemented by undisputed facts evidenced in the record; and (3) on the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. Barrera-Montenegro v. United States, 74 F.3d 657, 659 (5th Cir. 1996). If the court elects to follow the third avenue, it is authorized to resolve factual disputes and to devise a procedure for making a determination on the jurisdictional issue. Moran v. Kingdom of Saudi Arabia, 27 F.3d 169, 172 (5th Cir. 1994). If the court bases its decision on its resolution of disputed facts, it must give the plaintiff an opportunity for discovery and a hearing that is appropriate to the nature of the motion to dismiss. McAllister v. FDIC, 87 F.3d 762, 766 (5th Cir. 1996). The approach it devises to consider evidence beyond the complaint may include review of affidavits, allowing further discovery, hearing oral

testimony, and conducting an evidentiary hearing limited to the question of jurisdiction. Moran, 27 F.3d at 172; Coury, 85 F.3d 248.

In reviewing the sufficiency of a complaint in response to a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6), before any evidence has been submitted, the district court's task is limited. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support its claims. Id. The district court should consider all allegations in favor of the plaintiff and accept as true all well-pleaded facts in the complaint. Lawal v. British Airways, PLC, 812 F. Supp. 713, 716 (S.D. Tex. 1992). Dismissal is not appropriate "unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of [his] claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Nevertheless, conclusory allegations or legal conclusions masquerading as factual conclusions do not defeat a motion to dismiss. Fernandez-Montes v. Allied Pilot Assoc., 987 F.2d 278, 284 (5th Cir. 1993). A plaintiff must plead specific facts, and not merely conclusory allegations to withstand a motion to dismiss. Guidry v. Bank of LaPlace, 954 F.2d 278, 281 (5th Cir. 1992) ("'Conclusory allegations and unwarranted deductions of fact are not admitted as true' by a motion to dismiss.") (quoting Associated Builders, Inc. v. Alabama Power Co., 505 F.2d 97, 100 (5th Cir. 1974)).

**DEFENDANT'S MOTION TO DISMISS**

Defendant notes that executive orders imposing economic sanctions on Iran were issued by Presidents Carter, Reagan and Clinton pursuant to the International Emergency Economic Powers Act, 91 Stat. 1626, 50 U.S.C. §§ 1701-06 ("IEEPA"). See, e.g., United States v. Ehsan, 163 F.3d 855 (4th Cir. 1998) (discussing Executive Order Nos. 12957 and 12959, both issued in 1995, and No. 13059, in 1997); Dames & Moore v. Regan, 453 U.S. 654 (1981) (discussing Executive Orders issued by Presidents Carter and Regan). As the court explained in Beacon Products Corp. v. Reagan, 633 F. Supp. 1191, 1193 (D. Mass. 1986), aff'd 814 F.2d 1 (1st Cir. 1987),

The [IEEPA] . . . grants the President certain powers to deal with "any unusual and extraordinary threat which has its source in whole or substantial part outside the United States to the national security, foreign policy, or economy of the United States." 50 U.S.C. § 1701(a). Among these powers is the power to prevent the "importation or exportation of . . . any property in which any foreign country or a national thereof has any interest; by any person, or with respect to any property, subject to the jurisdiction of the United States." 50 U.S.C. § 1702(a)(1). The President's IEEPA powers may be exercised only when a state of national emergency has been declared. 50 U.S.C. § 1701(b),

Defendant moves to dismiss on several grounds. First, as President of the United States, he is absolutely immune from damages liability arising out of his official acts. Forrester v. White, 484 U.S. 219, 225 (1988).

Second, while Soudavar argues that no emergency exists to justify imposition of the sanctions, that issue is a nonjusticiable political question. Beacon Products, 633 F. Supp. at 1193-94 (holding that the question whether Nicaragua posed a sufficient threat to trigger the President's IEEPA powers was a nonjusticiable issue inter alia because the matter was not susceptible to judicially manageable standards and would require the court to make its own judgments about national security and foreign policy.). "The political question doctrine operates as a prudential limitation on the courts' review of other branches of government; it is 'primarily a function of the separation of power.'" Id. at 1194, quoting Baker v. Carr, 369 U.S. 186, 210 (1961).

Furthermore, Defendant contends, Soudavar lacks standing<sup>1</sup> to challenge the lawful authority of the Executive

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<sup>1</sup> This Court notes that standing is a jurisdictional matter that must be found before the merits of a case can be addressed by a court. Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 93-102 (1998); Cox v. City of Dallas, Tex., 256 F.3d 281, 303 (5th Cir. 2001). For each claim, a plaintiff must demonstrate that he satisfies the three constitutional requirements for standing: (1) injury in fact; (2) causation; and (3) redressibility. Bennett v. Spear, 520 U.S. 154, 167 (1997); Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992); Cox, 256 F.3d at 304. An "injury in fact" occurs when there is "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." Lujan, 504 U.S. at 560. A plaintiff demonstrates causation by showing that the injury is "'fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.'" Cox, 256 F.3d at 304, quoting Simon v. Easter Ky. Welfare Rights Org., 426 U.S. 26, 41-42 (1976). To demonstrate redressibility, the plaintiff must show that it is "likely, as opposed to merely speculative that the injury will be redressed by a favorable decision." Id.

Orders or the sanctions imposed by them. Pederson v. Louisiana State University, 213 F.3d 858, 869 (5th Cir. 2000) (plaintiff must demonstrate that he has standing by establishing that he has suffered injury in fact, i.e., concrete and actual or imminent harm, that defendant's alleged conduct caused his injury, and that the relief he requests will redress his injury). "'A question of standing raises the issue of whether the plaintiff is entitled to have the court decide the merits of the dispute or of particular issues. Standing is a jurisdictional requirement that focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated.'" Id., quoting Cook v. Reno, 74 F.3d 97, 98-99 (5th Cir. 1996). Defendant contends that Soudavar has not shown economic injury in fact nor a substantial likelihood that lifting the sanctions against Iran would redress the injury he claims by creating a business opportunity for him as opposed to his competitors. Dellums v. U.S. Nuclear Regulatory Commission, 863 F.2d 968, 972-73 (D.C. Cir, 1988) ("A favorable change in economic incentives alone, without an additional showing that the change will be likely to redress the alleged injury, is not sufficient to establish the required causal nexus" for standing") (citing Allen v. Wright, 468 U.S. 737, 758 (1983)). Moreover, courts have consistently dismissed cases raising only generalized grievances where harm is shared in substantially equal measure by all or a large class of citizens, another prudential principle. Pederson, 213 F.3d at

869. Thus Defendant maintains that Soudavar lacks standing to bring this suit.

Soudavar's complaint asserts that this Court has diversity jurisdiction under 28 U.S.C. § 1332(a) and Article X of the Treaty. Defendant insists that diversity jurisdiction is not appropriate here. Article X does not confer a jurisdictional base for a suit by a citizen of a foreign state against the President of the United States. Soudavar v. Islamic Republic of Iran, 186 F.3d 671, 674-75 (5th Cir. 1999) (The Treaty's limited waiver of immunity extends only to enterprises of the country and does not waive sovereign immunity of the state), cert. denied, 528 U.S. 1157 (2000); National Iranian Oil Co. v. Ashland Oil Co., 716 F. Supp. 268, 274-75 (S.D. Miss. 1989), aff'd and remanded, 817 F.2d 326 (5th Cir. 1987).

To the extent that Soudavar may be pursuing a tort claim against the United States, Defendant observes that Plaintiff has failed to exhaust administrative remedies, a jurisdictional prerequisite, under the Federal Tort Claims Act, 28 U.S.C. § 2675. McNeil v. United States, 508 U.S. 106, 107 (1993); Ross v. Runyon, 858 F. Supp. 630, 636 (S.D. Tex. 1994); MacMillan v. United States, 46 F.3d 377, 380 n.3 (5th Cir. 1995). Failure to exhaust such remedies before filing a suit under the statute deprives a court of subject matter jurisdiction over the suit. Ross, 858 F. Supp. at 636; Reynolds v. United States, 748 F.2d 291, 292 (5th Cir. 1984); Taylor v. Administrator of SBA, 722 F.2d 105, 110 (5th Cir. 1983). Soudavar bears the burden of proving that he complied

with this jurisdictional prerequisite, but has failed to meet that burden. In re Agent Orange Prod. Liability Litig., 818 F.2d 210, 214 (2d Cir. 1987), cert. denied, 484 U.S. 1004 (1988).

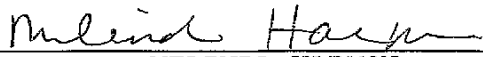
For these reasons, Defendant asks the Court to dismiss this suit with prejudice.

Because the Court agrees with Defendant's presentation of the law regarding Defendant's sovereign immunity from liability for damages, Plaintiff's lack of standing to pursue his claim, and Plaintiff's cause of action's constituting a non-justiciable controversy under the political question doctrine, and because Plaintiff's response misinterprets the law and makes meritless arguments, the Court does not summarize his pleading.

Accordingly, for the reasons stated, the Court

ORDERS that Defendant's motion to dismiss is GRANTED and that this action is DISMISSED with prejudice, pursuant to Fed. R. Civ. P. 12(b)(1) and (6). Thus Defendant's motion to stay is MOOT.

SIGNED at Houston, Texas, this 19<sup>th</sup> day of November, 2001.

  
MELINDA HARMON  
UNITED STATES DISTRICT JUDGE