

THE LEGAL ADVISER  
DEPARTMENT OF STATE  
WASHINGTON

July 24, 2006

Hon. Peter D. Keisler  
Assistant Attorney General  
Civil Division  
United States Department of Justice  
Washington, D.C. 20530

Re: *Li Weixum, et al. v. Bo Xilai*, No. 1:04CV00649 (DDC)

Dear Mr. Keisler:

By letter dated February 24, 2006, U.S. District Court Judge Richard J. Leon solicited the Department of State's views in connection with the above-referenced suit, which was brought under the Alien Tort Statute (ATS) and the Torture Victim Protection Act (TVPA). Specifically, Judge Leon asked for the Department of State position on: (1) what effect, if any, adjudication of this case will have on the foreign policy of the United States; (2) the applicability of the act of state doctrine; and (3) if the court finds that the case is justiciable, the application of the Foreign Sovereign Immunities Act (FSIA). Judge Leon asked that we respond either directly or by statement of interest pursuant to 28 U.S.C. §517. A copy of his letter is enclosed (Enclosure A). We here provide our views on the foreign policy consequences of this litigation and request that this letter be submitted to the court as an attachment to a Suggestion of Immunity and Statement of Interest addressing the legal issues.

*Background*

The plaintiffs allege that Chinese Minister of Commerce Bo Xilai planned and carried out serious human rights abuses against practitioners of the Falun Gong spiritual movement (FLG) in Liaoning Province. All plaintiffs appear to be Chinese nationals who reside in the People's Republic of China or in countries other than the United States. They assert that Minister Bo, acting "under color of law" in his former position as Governor of Liaoning, is responsible for these violations. All of the acts alleged in the complaint are said to have occurred within China, at the direction of the Chinese government, against Chinese nationals. We are unaware of any connection between the underlying suit and the United States.

As Minister of Commerce, Bo Xilai is now responsible for China's commerce and international trade, including international trade policy and negotiation. The attempt to serve process on Minister Bo was made at a time when he was Minister of Commerce (no longer Governor of Liaoning Province) and while he was on official diplomatic travel to the United States as an active member of the delegation of Chinese Vice Premier Wu Yi to the U.S.-China Joint Commission on Commerce and Trade (JCCT) – a bilateral, governmental consultative forum that addresses significant bilateral trade concerns and promotes commercial opportunities between the United States and China. We understand from the Government of China that the summons and complaint were physically thrust upon Minister Bo while he was attending a U.S. - China Business Council reception in honor of Vice Premier Wu Yi and her delegation (see Enclosure B).

Without reference to the specific allegations in this suit, the Department of State has informed China, both publicly and privately, of its strong opposition to violations of the basic human rights of FLG practitioners in China. We have repeatedly called on China to respect the rights of all its citizens, including FLG adherents. The Department of State's critical views of China's treatment of the FLG practitioners are a matter of public record. *See, e.g.,* Department of State Annual Human Rights Report for 2005, [www.state.gov/g/drl/rls/hrrpt/2005/61065.htm](http://www.state.gov/g/drl/rls/hrrpt/2005/61065.htm) (especially pages 22-23).

#### *Discussion*

Although we oppose the Chinese government's anti-FLG policies, we believe that this suit should be dismissed. For U.S. courts to exercise jurisdiction over Minister Bo in the circumstances of this case would be inconsistent with international law and expectations relating to the immunities of states and their official representatives and would seriously interfere with the United States' ability to conduct foreign relations. Moreover, it will undercut the U.S. government's efforts to engage China on human rights issues, including its treatment of the FLG. It could also adversely affect U.S. engagement with China on a broad range of other issues, including counter-terrorism, law enforcement, economics and trade, trafficking in persons, adoption, narcotics suppression, and nuclear nonproliferation. Indeed, the instant lawsuit has already had a chilling effect on U.S.-China relations; I enclose a series of diplomatic notes and letters that China has sent the United States expressing its deep concern about it (Enclosures B – D).

1. The Department of State regards the April 2004 visit of Minister Bo to have been a special diplomatic mission and considers Minister Bo to have been an official diplomatic envoy while present in the United States on that special mission. Consistent with the rules of customary international law recognized and applied in the United States and in furtherance of the President's authority under Article II of the Constitution, it is appropriate to recognize the immunity of a high-level official on a special diplomatic mission from the jurisdiction of United States federal and state courts in a case such as this. In light of these considerations, the Department recognizes and allows the immunity of Minister Bo Xilai from the jurisdiction of the United States District Court, including from service of process, during the period of his visit to the United States.

The practical wisdom underlying this immunity is apparent. Diplomatic relations often turn on the ability of officials from different states to communicate and meet with each other without harassment or distraction. Indeed, the need for unhampered communication between governments is often most critical when the disagreements between them are the greatest. If suits of this kind can be commenced in U.S. courts against a senior foreign government official present in the United States for government-to-government business, the President will be deprived of an essential foreign policy tool and our ability to pursue our foreign policy objectives effectively will be significantly undermined. The United States must be able to host foreign officials without the prospect that they may be served with process in a civil suit.

Permitting suits like this would also be inconsistent with U.S. views on the assertion of jurisdiction over U.S. government officials by foreign governments and courts. The United States has made clear to foreign governments that it objects to service of process on senior U.S. officials traveling overseas; we have insisted, for example, that requests for documents and information about official acts of U.S. representatives for use in criminal investigations should be made government-to-government through diplomatic or law enforcement channels, not by attempting to serve or obtain jurisdiction over the officials themselves, particularly when they are on temporary visits. Permitting this suit against Minister Bo would be inconsistent with our representations to other governments, and could expose U.S. officials visiting other countries to suits arising from their performance of official U.S. government functions.

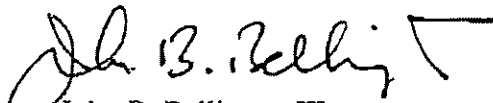
2. The attempted assertion of jurisdiction over Minister Bo while he was in the United States on official, bilateral business at the invitation of the United States has had immediate adverse foreign policy consequences and has directly interfered with the President's authority to conduct foreign relations, including his authority to receive "Ambassadors and other public ministers" (U.S. Const. Art. II, Section 3). The Executive originally invited Vice Premier Wu Yi to head a delegation to the United States for bilateral consultations in an effort to further U.S. - China trade relations. The attempt to serve Minister Bo while he was here on that delegation undercut that effort and elicited strong objections from China, which characterized the purported service as an assault and questioned the good faith of the United States in hosting the visit. Indeed, China's Legal Adviser has made clear to me that, because of this litigation, he has recommended that Minister Bo not travel to the United States unless his immunities from jurisdiction will be respected.

3. The foreign policy problems created by this case are exacerbated by the fact that it is, in effect, a suit against China about acts taken in China against Chinese nationals. Any lawsuit that challenges the policies and actions of foreign authorities in their own territory concerning their own citizens has an inherent potential to cause friction in foreign relations. A review of the complaint in this case makes clear its ambition to challenge not only acts attributed to Minister Bo, but also the Chinese Government's anti-FLG policy in general. (See, for example, Compl. ¶ 1, alleging that Minister Bo's actions were taken "in concert with other officials at the highest levels of the national government of the People's Republic of China (PRC) and its ruling Central

Committee of the Chinese Communist Party.”) The fact that the lawsuit is effectively directed against the Chinese Government and its official policies is confirmed when it is seen in the context of the large number of suits the FLG have initiated against high-level Chinese officials in the United States and other countries. The FLG website (flgjustice.org) lists over sixty actions against Chinese entities and officials. Lawsuits have been filed in South America, Africa, Asia and Europe (in over ten different European countries), in addition to Canada, where multiple suits have been filed, and the United States, where the website reports fifteen suits.

In view of the Department of State’s recognition of Minister Bo’s immunity from the Court’s jurisdiction and the significant adverse foreign policy implications of the further conduct of this suit, the Department of State asks that you submit to the Court an appropriate Suggestion of Immunity and Statement of Interest to obtain the prompt dismissal of the proceedings against Minister Bo.

Sincerely,



John B. Bellinger, III

Enclosures:

- A. Letter from Hon. Richard J. Leon, U.S. District Court for the District of Columbia, to Hon. John B. Bellinger, III, dated February 28, 2006.
- B. Diplomatic Note from the Embassy of the People’s Republic of China to the U.S. Department of State, dated April 26, 2004.
- C. Letter from Liu Zhenmin, Director General of the Department of Treaty and Law to Hon. William Taft, dated August 23, 2004.
- D. Letter from Li Zhaoxing, Minister of Foreign Affairs, to Hon. Condoleezza Rice, dated March 30, 2006.