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15 **UNITED STATES DISTRICT COURT**
 16 **CENTRAL DISTRICT OF CALIFORNIA**

17
 18 AHIMS A WICKREMATUNGE, in her
 19 individual capacity and in her capacity
 as the legal representative of the estate
 of LASANTHA WICKREMATUNGE,

20 Plaintiff,

21 v.

22
 23 NANDASENA GOTABAYA RAJAPAKSA,
 24 Defendant.

Case No. 2:19 CV-02577-R-RAO

**PLAINTIFF’S MEMORANDUM
 OF POINTS AND AUTHORITIES
 IN OPPOSITION TO
 DEFENDANT’S MOTION TO
 STAY CASE**

*Proposed Order and Declaration of
 Natalie L. Reid submitted concurrently
 herewith*

Date: September 23, 2019
 Time: 10:00 am
 Location: Courtroom 850
 Judge: Hon. Manuel L. Real

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1 **INTRODUCTION**

2 Plaintiff Ahimsa Wickrematunge (“Plaintiff”) respectfully submits this
3 memorandum of points and authorities in opposition to Defendant Nandasena
4 Gotabaya Rajapaksa’s (“Defendant”) motion to stay. For the reasons stated herein,
5 Defendant’s arguments are without merit, and his motion to stay should be denied.

6 *First*, due to the wholly speculative nature of Defendant’s motion to stay,
7 Defendant cannot meet the heavy burden of demonstrating that, absent a stay, he
8 will suffer a “clear case of hardship or inequity.” *Landis v. N. Am. Co.*, 299 U.S.
9 248, 255 (1936). On Defendant’s own case, he will suffer no harm unless several
10 contingencies are all resolved in his favor—including, but not limited to, becoming
11 an official presidential nominee; surviving potential challenges based on his U.S.
12 citizenship, other constitutional challenges, and investigations of complaints
13 lodged with the Election Commission currently pending in Sri Lanka; thereafter
14 actually winning the election; and possible issuance of a Suggestion of Immunity
15 by the State Department. In contrast, the harm to Plaintiff is rooted in her well-
16 founded interest in timely justice and accountability for the savage torture and
17 murder of her father, and her continued exposure to ongoing and future harm by
18 bringing a case against a powerful public figure in Sri Lanka known for the
19 brutality of his tactics against his perceived enemies. The interests thus heavily
20 weigh in Plaintiff’s favor, and an analysis of judicial economy bolsters this
21 conclusion.

22 *Second*, Defendant’s argument that a stay is warranted as an exercise of
23 international comity also fails. Defendant’s speculation that media coverage of the
24 case may affect public opinion or a political campaign in Sri Lanka (Motion to
25 Stay (“MTS”) 7) has no bearing on the doctrine of comity. The alleged
26 “democratic right of Sri Lanka’s electorate to choose a candidate without the
27 interference of publicity” (MTS 8) is not only a gross mischaracterization of the
28

1 facts here, where Defendant has engaged in the persecution of journalists, but as a
2 matter of law, simply cannot constitute a legislative, executive or judicial act of a
3 foreign nation to which this Court could defer as a matter of comity. In fact,
4 Defendant's argument in this regard is tantamount to his continued efforts to
5 suppress criticism and free expression in Sri Lanka, and should be soundly rejected
6 by the Court.

7 **BACKGROUND¹**

8 On April 4, 2019, Plaintiff brought this action for torture, extrajudicial
9 killing, and crimes against humanity in violation of international law under the
10 Torture Victim Protection Act ("TVPA") (28 U.S.C. § 1350 note) and the Alien
11 Tort Statute ("ATS") (28 U.S.C. § 1350), for the torture and assassination of her
12 father, Lasantha Wickrematunge ("Lasantha" or "Decedent"), a prominent
13 journalist and defender of human rights in Sri Lanka. First Amended Complaint
14 ("FAC"). The FAC alleged that the attack against Decedent was carried out by
15 members of the Sri Lankan Directorate of Military Intelligence under the command
16 and control of Defendant, then Secretary of Defense, and that the attack was part of
17 a larger pattern of persecution and extrajudicial killing targeting independent
18 journalists during Defendant's time in office from 2005 to 2015. *Id.* ¶¶ 23-31.

19 Defendant claims to have relinquished his U.S. citizenship at the U.S.
20 embassy in Sri Lanka less than two weeks later, on April 17, 2019. Motion to
21 Dismiss the FAC ("MTD") 2, n.2. Defendant has not, however, put forward any
22 evidence of revocation or U.S. government recognition of revocation.² The U.S.
23 Secretary of the Treasury received no information indicating that Defendant

24 ¹ Plaintiff submits this memorandum in compliance with the standing order of
25 Judge Manuel Real, the judicial officer before whom the motion has been noticed
26 under Local Rule 7-4.

27 ² As discussed in Plaintiff's Opposition to Defendant's Motion to Dismiss ("MTD
28 Opp."), the revocation of Defendant's U.S. citizenship, even if effective, is
immaterial to the jurisdiction or merits of this case. MTD Opp. n.12.

1 revoked his U.S. citizenship as of June 30, 2019. *See* Dep't of Treas., *Quarterly*
2 *Publication of Individuals, Who Have Chosen To Expatriate, As Required By*
3 *Section 6039G*, 84 Fed. Reg. 158 (Aug. 15, 2019).

4 In an interview on April 26, 2019, Defendant said that he would run for
5 President of Sri Lanka. *See* Sanjeev Miglani & Shihar Aneez, *Exclusive: Sri*
6 *Lankan Ex-Defense Chief Gotabaya Says He Will Run For President, Tackle*
7 *Radical Islam*, REUTERS, Apr. 26, 2019, available at [https://www.reuters.com/](https://www.reuters.com/article/us-sri-lanka-blasts-gotabaya-exclusive/exclusive-sri-lankan-ex-defense-chief-gotabaya-says-he-will-run-for-president-tackle-radical-islam-idUSKCN1S21UF)
8 [article/us-sri-lanka-blasts-gotabaya-exclusive/exclusive-sri-lankan-ex-defense-](https://www.reuters.com/article/us-sri-lanka-blasts-gotabaya-exclusive/exclusive-sri-lankan-ex-defense-chief-gotabaya-says-he-will-run-for-president-tackle-radical-islam-idUSKCN1S21UF)
9 [chief-gotabaya-says-he-will-run-for-president-tackle-radical-islam-idUSKCN](https://www.reuters.com/article/us-sri-lanka-blasts-gotabaya-exclusive/exclusive-sri-lankan-ex-defense-chief-gotabaya-says-he-will-run-for-president-tackle-radical-islam-idUSKCN1S21UF)
10 [1S21UF](https://www.reuters.com/article/us-sri-lanka-blasts-gotabaya-exclusive/exclusive-sri-lankan-ex-defense-chief-gotabaya-says-he-will-run-for-president-tackle-radical-islam-idUSKCN1S21UF). Defendant's announcement came in the wake of the Easter bombing
11 attacks on churches and hotels in Sri Lanka on April 21, 2019. Defendant stated
12 that Plaintiff's civil suit was only a "little distraction" as he prepared for the
13 election campaign. *Id.*

14 On August 11, 2019, Defendant was announced as the presidential candidate
15 for an opposition political party, Sri Lanka Podujana Peramuna ("SLPP"). MTS 3.
16 Defendant's nomination does not become official until it is reviewed and published
17 by the Election Commission, which has not yet announced a call for nominations, a
18 preliminary step that it can do any time between September 28, 2019 and
19 November 4, 2019. *See* Presidential Elections Act No. 15 (1981) (Sri Lanka),
20 § 2(1)(b), amended by Presidential Elections (Amendment) Act No. 16 (1988) (Sri
21 Lanka), § 2(2), available at [http://srilankalaw.lk/Volume-VI/presidential-elections-](http://srilankalaw.lk/Volume-VI/presidential-elections-act.html)
22 [act.html](http://srilankalaw.lk/Volume-VI/presidential-elections-act.html). While the SLPP announced Defendant's candidacy early, two major
23 political parties, the United National Party and the Sri Lanka Freedom Party, can
24 select their nominees at any time before the Election Commission convenes to
25 review and confirm nominations. *See id.* Notably, the only information Defendant
26 has offered about his likelihood of success is the unsupported assertion by a single
27 political commentator that, if none of the other political parties nominate a
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1 candidate, Defendant is “the probable victor” of the election. Seneviratne Decl. in
2 Support of Def.’s MTS ¶ 9, ECF 48-1 (hereinafter “Seneviratne Decl.”). However,
3 it is clear from the regulations governing presidential elections that the other
4 parties are well within time to put forward their nominees. Further, the current
5 President Miathripala Sirisena, who is in his first term, can still seek reelection for
6 a second and final term in office. Constitution of Sri Lanka, Art. 31 (3A);
7 Seneviratne Decl. Therefore, to assume that no other candidates will stand against
8 Defendant is entirely speculative.

9 After nominations are submitted to the Election Commission, Defendant
10 may face challenges to his legal qualification as a candidate. In particular,
11 Defendant’s candidacy would be legally barred if he cannot establish (as he has
12 been unable to do thus far) that his purported renunciation of his U.S. citizenship
13 was effective. *See* Constitution of Sri Lanka, Arts. 91(1)(d)(xiii), 92(b)
14 (disqualifying for election as President “a citizen of Sri Lanka who is also a citizen
15 of any other country”).³ The Election Commission is reportedly already
16 investigating complaints against Defendant,⁴ the resolution of which may impact
17 Defendant’s candidacy and unduly prolong any stay of these proceedings.

18
19 ³ In the *Kumarasinghe* case, for example, the Supreme Court of Sri Lanka
20 disqualified a Member of Parliament who had submitted a letter to Swiss
21 authorities renouncing her Swiss citizenship but did not prove that the renunciation
22 was effective by the time of the election. *N.W.E. Buwaneka Lalitha et al. v.*
23 *Geetha Samanmali Kumarasinghe et al.*, SC Appeal 99/2017, 14 (Sri Lanka), Reid
24 Decl. ¶ 3, Ex. A (“Considering Article 91(1)(d)(xiii) of the Constitution, I hold that
25 a person who is holding a dual citizenship on the day of the Parliamentary Election
26 was not qualified to be elected as a Member of Parliament and office of such
27 person as a Member of Parliament is a nullity.”).

28 ⁴ *See, e.g.,* Manoj Colambage, *EC Launches Probe: Voter Fraud Complaint*
against Gotabaya, Medamulana Walawwa, SUNDAY OBSERVER, Aug. 25, 2019,
available at <http://www.sundayobserver.lk/2019/08/25/ec-launches-probe-voter-fraud-complaint-against-gotabaya-medamulana-walawwa>; *Investigate Gota’s*
Voting At 2005 Presidential Election: CMEV Tells EC, COLOMBO TELEGRAPH,

STANDARD OF REVIEW

Courts in this Circuit weigh three factors to determine whether to stay proceedings: (1) “possible damage” or harm to the non-moving party if a stay is granted; (2) “hardship or inequity” to the moving party if a stay is denied; and (3) whether grant or denial will advance the “orderly course of justice.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (citing *Landis*, 299 U.S. at 268; MTS 3. “The proponent of a stay bears the burden of establishing its need.” *Clinton v. Jones*, 520 U.S. 681, 708 (1997).

International comity “is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation.” *Société Nationale Industrielle Aérospatiale v. U.S. Dist. Court for S. Dist. of Iowa*, 482 U.S. 522, 543, n.27 (1987) (quoting *Hilton v. Guyot*, 159 U.S. 113, 163-164 (1895)). The party asserting the applicability of the comity doctrine bears the burden of proof. *See In re Grand Jury Proceedings*, 40 F.3d 959, 964 (9th Cir. 1994); *Cruz v. United States*, 387 F.Supp.2d 1057, 1069 (N.D. Cal. 2005). Comity is an abstention doctrine; as such, it is a “narrow exception” to the “virtually unflagging obligation of the federal courts to exercise the jurisdiction given them” (*Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813, 817 (1976)) and “[a]ny doubt . . . should be resolved against a stay.” *Travelers Indem. Co. v. Madonna*, 914 F.2d 1364, 1369 (9th Cir. 1990) (citing *Colorado River*, 424 U.S. at 819 (1976)).

Aug. 20, 2019, available at <https://www.colombotelegraph.com/index.php/investigate-gotas-voting-at-2005-presidential-election-cmev-tells-ec/>.

ARGUMENT

I. The Court Should Deny Defendant’s Speculative Motion to Stay the Case.

The balance of factors plainly weighs against a stay. Where there is “even a fair possibility that the stay . . . will work damage to some one else,” the moving party bears the burden of demonstrating a “clear case of hardship or inequity in being required to go forward.” *Landis*, 299 U.S. at 255. Defendant cannot meet his heavy burden, and the other factors strongly disfavor a stay.

A. The Potential Harm to Plaintiff Militates Against a Stay.

If a stay is granted, Plaintiff would suffer more than a “fair possibility” of harm. A stay would both contravene Plaintiff’s pronounced interest in timely justice and cause ongoing and future harm to Plaintiff—either of which is alone sufficient to constitute harm warranting denial of Defendant’s motion to stay.

First, Plaintiff has a strong interest in obtaining “timely justice” for the brutal attack, torture, and murder of her father. *See Equal Employment Opportunity Comm’n v. Peters’ Bakery*, No. 13-CV-04507-BLF, 2015 WL 13358147, at *2 (N.D. Cal. Mar. 4, 2015). Defendant’s contention that Plaintiff “waited a decade to sue” and thus “cannot plausibly argue” that a stay would cause her harm (*see* MTS 5) purposefully ignores the reasons that Plaintiff did not—and could not—file a complaint sooner, including the risk of reprisal in Sri Lanka for Plaintiff, witnesses, and lawyers; the political influence and targeted obstructions by Defendant and his family; and the lack of equivalent causes of action under Sri Lankan law. MTD Opp. 6-9. As previously pleaded, Plaintiff could not receive a “fair or even a safe trial” in Sri Lanka. MTD Opp. 8. Now that Plaintiff, after exhausting all other avenues to bring this case (*see* MTD Opp. 17-18) *has* found an adequate—indeed, the only—forum in the present action, she has an overwhelming interest “in having [the] case resolved quickly.” *Sec. & Exch. Comm’n v. Neman*,

1 No. CV1203142 BROPLAX, 2015 WL 12806459, at *3 (C.D. Cal. Mar. 18, 2015).
2 *See also Gould v. Farmers Ins. Exch.*, 326 F.R.D. 530, 532 (E.D. Mo. 2018)
3 (“[I]ssuing a stay in this circumstance would run counter to the ‘speedy
4 determination’ of this action[.]”). Because a stay runs counter to the timely
5 determination to which Plaintiff is entitled, this Court should deny Defendant’s
6 motion to stay.⁵

7 *Second*, the likelihood of ongoing and future harm to Plaintiff serves as an
8 independent basis for denying a stay. Courts are generally more reluctant to issue
9 stays where the non-moving party seeks relief against ongoing harm. *See Lockyer*,
10 398 F.3d at 1110 (denying stay because “[u]nlike the plaintiffs [in other cases] who
11 sought only damages for past harm, [Plaintiff] seeks injunctive relief against
12 ongoing and future harm”). Here, the well-founded risks of reprisal and targeted
13 obstructions (MTD Opp. 8-9) heighten the grave “danger of prejudice [to Plaintiff]
14 resulting from the loss of evidence, including the inability of witnesses to recall
15 specific facts.” *Clinton*, 520 U.S. at 707-708. A stay would also create a “fair
16 possibility of harm” to the public interest in a free and independent press, which
17 Plaintiff’s litigation seeks to protect and which is the object of Defendant’s wider
18 conspiracy and attack. FAC ¶¶ 23-31. *See Lockyer*, 398 F.3d at 1112 (denying a
19 stay after weighing the possible harm both to the plaintiff and to “the interests of
20 the electricity consumers of northern California whose interests [Plaintiff] seeks to
21 protect”). Further, a stay would delay this Court’s ruling on Plaintiff’s request for
22 equitable relief, including an injunction prohibiting Defendant from interfering
23 with any criminal investigations involving the Decedent. FAC 45. Due to the
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25 ⁵ Defendant’s citation to *Gallion v. Chart Commc’ns Inc.*, 287 F.Supp. 3d 920, 932
26 (C.D. Cal. 2018) for the proposition that “a brief stay does not prejudice a
27 plaintiff” (MTS 5) is readily distinguishable because that case involved a stay
28 while waiting for the results of an active, ongoing parallel proceeding, and not the
speculative, potential result of a foreign election.

1 ongoing and future nature of harms against which Plaintiff seeks relief, this Court
2 should deny Defendant’s motion to stay.

3 **B. Defendant Cannot Meet His Burden to Establish a “Clear Case of**
4 **Hardship or Inequity” Justifying a Stay.**

5 Defendant fails to meet the high burden of demonstrating that, absent a stay,
6 there would be a “*clear case* of hardship or inequity in being required to go
7 forward” with the case. *Landis*, 299 U.S. at 255 (emphasis added). Defendant’s
8 vague assertions that he “would experience undue hardship and inequity if required
9 to litigate [this] case” and that defending the present suit would “divert [him] from
10 the election campaign to participate in this case” (*see* MTS 5-6) are insufficient.
11 As the Ninth Circuit has unequivocally held, “being required to defend a suit”
12 cannot alone qualify as the kind of burden that warrants a stay, regardless of the
13 asserted importance of the defendant. *Lockyer*, 398 F.4d at 1112. *See also Clinton*
14 *v. Jones*, 520 U.S. 681, 708 (1997) (finding “the fact that a trial may consume
15 some of the President’s time and attention” insufficient to meet defendant’s burden
16 to establish hardship or inequity).

17 Moreover, Defendant himself has publicly confirmed that this litigation will
18 impose no burden justifying a stay. When announcing his campaign on April 26,
19 2019—over three weeks after being served with the Complaint detailing Plaintiff’s
20 allegations—Defendant told the press that the present lawsuit was “only a ‘little
21 distraction.’” Miglani & Aneez, *supra* 3. Defendant’s position has not changed
22 since service of the FAC. As recently as September 1, 2019, Defendant’s
23 spokesperson again rejected any suggestion that this case could interfere with the
24 campaign, insisting that “[i]t was never mentioned that this case was a
25 disadvantage to the election campaign.” *Gota Seeks To Stall US Civil Trial On*
26 *Lasantha Murder*, SUNDAY OBSERVER, Sept. 1, 2019, *available at*

1 [http://www.sundayobserver.lk/2019/09/01/news/gota-seeks-stall-us-civil-trial-](http://www.sundayobserver.lk/2019/09/01/news/gota-seeks-stall-us-civil-trial-lasantha-murder)
2 [lasantha-murder.](http://www.sundayobserver.lk/2019/09/01/news/gota-seeks-stall-us-civil-trial-lasantha-murder)

3 Indeed, at this time, Defendant is already facing pending criminal charges
4 for “criminal breach of trust” in Sri Lanka, which have not been stayed due to the
5 election. DeSilva Decl. in Support of Def.’s MTD ¶ 4.11, ECF 42-1 (citing to
6 Exhibit 2, Defendant’s indictment for violations of Section 5(1) of the Offences
7 Against Public Property Act No. 12 of 1982, ¶ 01). Hearings for that trial,
8 although continually delayed, are scheduled to begin in October 2019. *Supreme*
9 *Court Lets Gota Off The Hook; DA Rajapaksa Trial Delayed Till October,*
10 *COLOMBO TELEGRAPH, July 25, 2019, available at*
11 [https://www.colombotelegraph.com/index.php/supreme-court-lets-gota-off-the-](https://www.colombotelegraph.com/index.php/supreme-court-lets-gota-off-the-hook-da-rajapaksa-trial-delayed-till-october/)
12 [hook-da-rajapaksa-trial-delayed-till-october/](https://www.colombotelegraph.com/index.php/supreme-court-lets-gota-off-the-hook-da-rajapaksa-trial-delayed-till-october/). Sri Lanka has not stayed the
13 proceedings against Defendant simply because he has announced his candidacy in
14 the presidential election.

15 Nor does Defendant’s contention that the denial of a stay “would be
16 unfair . . . particularly when he *might* receive absolute immunity from suit in just a
17 few short months” (*see* MTS 6 (emphasis added)) constitute the requisite “clear
18 case of hardship or inequity.” As Defendant’s own submission shows, this
19 purported harm is speculative. *See Clinton*, 520 U.S. at 708 (finding the lower
20 court’s decision to grant a stay was unwarranted when based on speculation that “a
21 trial might generate unrelated civil actions that could conceivably hamper the
22 President in conducting the duties of his office”). Defendant’s assumption that
23 immunity would apply is wholly speculative, not least because it depends on
24 whether he is in fact elected as Sri Lanka’s President, itself subject to many
25 contingencies—including, but not limited to, becoming an official nominee,
26 overcoming potential challenges to his candidacy based on his U.S. citizenship and
27 other constitutional challenges, as well as investigations of complaints lodged
28

1 against Defendant with the Election Commission currently pending in Sri Lanka,
2 actually winning the election, and the possible issuance of a State Department
3 Suggestion of Immunity should he prevail. *Supra* 1.

4 Any claim to immunity is therefore, “[g]iven the many contingencies
5 involved . . . at this point remote, if not wholly speculative.” *Log Cabin*
6 *Republicans v. United States*, No. CV 04-08425-VAP (Ex), 2010 WL 11508368, at
7 *7 (C.D. Cal. July 6, 2010) (denying motion for stay pending legislation because of
8 several conditions precedent, including Congressional approval and presidential
9 certification, as well as a “lack of clear timelines”). *See also Linh Thi Minh Tran*
10 *v. Kuehl*, No. 03:16-CV-00707-AC, 2018 WL 3849779, at *3 (D. Or. Aug. 13,
11 2018) (“[A]ny prejudice Tran would experience absent a stay is undermined by its
12 contingency on an uncertain event . . . [t]he contingency and remoteness of
13 [which], substantially diminish the potential prejudice toward her while proceeding
14 with the case.”). Because Defendant cannot meet his burden to establish a “clear
15 case of hardship or inequity,” the Court should deny Defendant’s motion to stay.

16 C. The “Orderly Course of Justice” Weighs Against a Stay.

17 The “orderly course of justice” further favors denial of Defendant’s motion
18 to stay. This factor often rests on an analysis of judicial economy (*see Rivers v.*
19 *Walt Disney Co.*, 980 F. Supp. 1358, 1362 (C.D. Cal. 1997)), and typically weighs
20 against the granting of a stay due to the common interest of courts “in clearing
21 [their] docket[s].” *General Elec. Co. v. Liang*, 2014 WL 1089264, at *6 (C.D. Cal.
22 2014) (citing, *inter alia*, *Federal Sav. and Loan Ins. Corp. v. Molinaro*, 889 F.2d
23 899, 903 (9th Cir. 1989)).

24 Disregarding this presumption against a stay, Defendant asserts that a “stay
25 would enhance the orderly course of justice by simplifying the issues for this Court
26 to determine.” MTS 5. That is not the case. For example, Defendant’s motion to
27 dismiss is already fully briefed and may be heard before or on the same day as this
28

1 stay motion. Should Defendant at some point next year become entitled to head-
2 of-state immunity—which is, as noted above, too speculative an assertion to credit
3 (*see SEC v. Blockvest, LLC*, 2019 WL 1510912 (S.D. Cal. 2019) (rejecting
4 Defendant’s assertion that judicial economy weighs in favor of a stay because “it is
5 speculative to assert that [the basis for the stay] will narrow issues in the civil
6 case”))—then the Court is fully capable of hearing an argument for a stay at that
7 point. Defendant thus cannot claim that the orderly course of justice warrants a
8 stay.

9 Even if Defendant is elected President, the timeline for invoking immunity is
10 equally too speculative and indefinite to support a stay, particularly since deferral
11 is appropriate only if and when the State Department has responded to any request
12 for a Suggestion of Immunity. *Collett v. Socialist Peoples’ Libyan Arab*
13 *Jamahiriya*, 362 F. Supp. 2d 230, 237-238 (D.D.C. 2005) (dismissing motion to
14 dismiss without prejudice “[b]ecause the court awaits a potentially dispositive
15 statement from the Executive Branch on head-of-state immunity”); *Habyarimana*
16 *v. Kagame*, 821 F. Supp. 2d 1244 (W.D. Ok. 2011) (waiting to make immunity
17 determination because State Department had not yet submitted statement of
18 interest); *Warfaa v. Ali*, 811 F.3d 653, 656 (4th Cir. 2016) (extending stay from
19 April 2013 to April 2014 until State Department submitted statement). These
20 contingencies undercut any assertion that the “orderly course of justice” supports a
21 stay.

22 The interests of judicial efficiency are thus best served by the Court denying
23 Defendant’s motion to stay. *See, e.g., Block v. Equifax, Inc.*, 2017 WL 10573832,
24 at *2 (N.D. Cal. 2017) (denying motion, even if the “orderly course of justice”
25 were served by a stay, because it was the “only one of the three factors favor[ing] a
26 stay and there is a possibility that Plaintiff may be harmed if a stay were issued
27 thus outweighing the favorable factor”).
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1 **II. The Court Should Deny Defendant’s Motion to Stay the Case Based on**
2 **Principles of Comity.**

3 Defendant offers international comity as “an additional reason” to stay the
4 case, claiming that “doing so will promote the democratic right of Sri Lanka’s
5 electorate to choose a candidate without the interference of publicity surrounding
6 unproven allegations asserted in a foreign court.” MTS 6, 8. Defendant’s
7 argument fundamentally misapprehends the doctrine of comity, distorting it
8 beyond recognition. Defendant cannot invoke international comity to prevent the
9 Court from considering a case properly before it based on speculation that media
10 coverage of the case could affect public opinion in Sri Lanka, and thereby
11 indirectly impact a foreign political campaign.

12 Comity “is the recognition which one nation allows within its territory to
13 the legislative, executive or judicial acts of another nation.” *Société Nationale*
14 *Industrielle Aérospatiale*, 482 U.S. at 543, n.27 (1987) (quoting *Hilton v. Guyot*,
15 159 U.S. 113, 163-164 (1895)). As Defendant previously conceded, “international
16 comity traditionally encompasses two distinct doctrines.” MTD 18. These are
17 (i) prescriptive comity, wherein there is a conflict of laws and U.S. courts defer to
18 the laws of a foreign jurisdiction or limit the extraterritorial reach of U.S. law (*see*
19 *F. Hoffman-La Roch Ltd. v. Empagran S.A.*, 542 U.S. 155 (2004)); and
20 (ii) adjudicative comity, wherein U.S. courts defer to a foreign ruling or pending
21 foreign court proceeding (*see Mujica v. AirScan Inc.*, 771 F.3d 580 (9th Cir.
22 2014)). In this motion, however, Defendant has invoked neither. Nor could he:
23 the circumstances that Defendant claims require a stay do *not* present a conflict of
24 laws or competing judicial proceedings. Instead, Defendant asks this Court to halt
25 the proceedings pending before it based only on the speculation that media
26 coverage of the case may affect public opinion of a political campaign in Sri
27 Lanka.

1 Granting a motion to stay in this case on the basis of comity would extend
2 that doctrine into a new realm in which courts have not trod, and appropriately so.
3 Contrary to Defendant’s assertions, the speculative effect this case may have on
4 public discourse in Sri Lanka in the run-up to an election (*see* MTS 6) is not a
5 legislative, executive, or judicial act of a foreign nation to which the Court could
6 defer. Defendant has not cited a single comity case which presents analogous
7 facts, because he cannot: courts have repeatedly refused to apply the comity
8 doctrine in analogous circumstances. In *Cruz v. United States*, for example, the
9 court refused to dismiss a case where the defendant asked it to defer to the
10 proceedings of a commission appointed by the Mexican Congress to investigate the
11 plaintiffs’ claims. 387 F.Supp.2d 1057 (N.D. Cal. 2005). The court held that the
12 facts did “not present the typical situation in which the principle of international
13 comity is applied. That is, there is no ‘legislative, executive, or judicial act[]’ to
14 which the Court could show deference. *Id.* 1070. *See also Bodner v. Banque*
15 *Paribas*, 114 F. Supp. 2d 117, 129-130 (E.D.N.Y. 2000) (rejecting a motion to
16 dismiss on comity grounds where the court had no foreign act to defer to aside
17 from a set of recommendations issued by a similar commission appointed by the
18 French government).

19 While Defendant has appealed to select policy rationales motivating
20 comity—including “neighbourliness [sic],” a “spirit of cooperation,” and the
21 maintenance of “amicable working relationships between nations”—he cannot tie
22 these concerns to any test that has been elaborated or applied by U.S. courts in a
23 scenario like the present one. Courts have rejected similarly broad arguments that
24 they should decline to exercise jurisdiction just because a case has international
25 impacts, finding that it would be erroneous “to suppose that every case or
26 controversy which touches foreign relations lies beyond judicial cognizance.”
27 *Baker v. Carr*, 369 U.S. 186, 211 (1962). As a result, “few cases view
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1 international comity as a doctrine of preemption that would require courts to
2 decline jurisdiction merely because foreign affairs are at play.” *United States v.*
3 *One Gulfstream G-V Jet Aircraft*, 941 F.Supp.2d 1, at *10 (D.D.C. 2013). The
4 current circumstances—in which one party to an ongoing litigation is a potential
5 candidate for office in a foreign country—is simply not one in which international
6 comity requires this Court to abstain from exercising its jurisdiction.

7 To the contrary, Defendant’s comity arguments are nothing more than an
8 attempt to stifle free expression in Sri Lanka by suppressing criticism of his
9 candidacy, and delay accountability through the instant action. Defendant accuses
10 Plaintiff of election interference solely based on the following acts, which reflect
11 her exercise of the right of free expression and her right to bring claims arising
12 from the torture and murder of her father: (i) authoring a letter to the Prime
13 Minister of Sri Lanka, criticizing him for “publicly attacking [Defendant] as a
14 killer” while simultaneously shielding him from responsibility;⁶ and (ii) bringing
15 this action to vindicate her rights, claiming that “[h]aving waited a decade to file
16 this lawsuit until just after it became apparent Mr. Rajapaksa intended to run for
17 president, it appears that Plaintiff intends her lawsuit to influence Sri Lanka’s
18 elections.” MTS 2, 7-8.

19 These assertions are simply false. Plaintiff, a Sri Lankan citizen before she
20 was forced to flee to Australia, has a right to participate in the discussion
21 surrounding the election in Sri Lanka. Plaintiff has tirelessly advocated for justice
22 for her father’s murder for years,⁷ only bringing this case after exhausting all other
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24 ⁶ See Ahimsa Wickrematunge, *Prime Minister, You Protect Gotabaya Rajapaksa,*
25 *Will My Father Ever Receive Justice: Ahimsa Writes To Ranil*, COLOMBO
26 TELEGRAPH, Aug. 13, 2019, available at <https://www.colombotelegraph.com/index.php/prime-minister-you-protect-gotabaya-rajapaksa-will-my-father-ever-receive-justice-ahimsa-writes-to-ranil/>.

27 ⁷ See e.g. Ahimsa Wickrematunge, *Proud To Be Lasantha’s Daughter*, SUNDAY
28 TIMES, Jan. 9, 2011, available at <http://www.sundaytimes.lk/110109/>

1 avenues for relief. *See supra* 6; MTD Opp. 17-18. Defendant’s vague comity
2 arguments cannot justify his attempt to prevent her from pursuing her rights in
3 court or commenting on her father’s murder in the public sphere. *See Nat’l*
4 *Airmotive Corp. v. Government and State of Iran*, 499 F. Supp. 401 (D.D.C. 1980)
5 (rejecting the U.S. government’s request for a stay in proceedings against Iran
6 because it impacted constitutional rights and noting as an example that the press
7 could not “be prohibited from publishing the news or commenting thereon on the
8 ground that this was desirable in order to preserve diplomatic flexibility or to avoid
9 incurring the displeasure of a foreign regime.”).

10 Defendant claims that his efforts to stifle criticism by the press and private
11 actors are necessary for the integrity of the election process, asserting that “each
12 U.S. state has a compelling interest in preserving the integrity of its election
13 process, and by logical extension foreign states have a materially identical
14 interest.” MTS 8 (internal quotation marks and citation omitted). As an initial
15 matter, there is simply no interest in integrity served by restricting free expression
16 in any way with respect to Defendant’s Presidential candidacy in Sri Lanka. For
17 good reason, U.S. courts have been unwilling to permit the type of content-based
18 restriction on speech that Defendant seeks by preventing Plaintiff and others from
19 speaking about Defendant’s crimes. *See Burson v. Freeman*, 504 U.S. 191, 198
20 (1992) (“[A] facially content-based restriction on political speech in a public
21 forum . . . must be subjected to exacting scrutiny”); *Meyer v. Grant*, 486 U.S. 414,
22 425 (1988) (finding that there is a “well-nigh insurmountable” burden to justify
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24 News/nws_0101.html; Ahimsa Wickrematunge, *8th Jan: Poetic Justice For My*
25 *Father Lasantha?*, COLOMBO TELEGRAPH, Dec. 9, 2014, available at
26 [https://www.colombotelegraph.com/index.php/8th-jan-poetic-justice-for-my-](https://www.colombotelegraph.com/index.php/8th-jan-poetic-justice-for-my-father-lasantha/)
27 [father-lasantha/](https://www.colombotelegraph.com/index.php/8th-jan-poetic-justice-for-my-father-lasantha/); Ahimsa Wickrematunge, *What They Did To My Father And Why*
28 *They Did It*, COLOMBO TELEGRAPH, Jan. 8, 2019, available at
[https://www.colombotelegraph.com/index.php/what-they-did-to-my-father-and-](https://www.colombotelegraph.com/index.php/what-they-did-to-my-father-and-why-they-did-it/)
[why-they-did-it/](https://www.colombotelegraph.com/index.php/what-they-did-to-my-father-and-why-they-did-it/).

1 restrictions on political speech); *Anderson v. Celebrezze*, 460 U.S. 780, 798 (1983)
2 (“A State’s claim that it is enhancing the ability of its citizenry to make wise
3 decisions by restricting the flow of information to them must be viewed with some
4 skepticism.”); *281 Care Committee v. Arneson*, 766 F.3d 774, 787 (8th Cir. 2014)
5 (“Directly regulating what is said or distributed during an election . . . goes beyond
6 an attempt to control the process to enhance the fairness overall so as to carefully
7 protect the right to vote.”).

8 Thus, international comity does not justify a stay or require this Court to
9 abstain from exercising its jurisdiction.

10 CONCLUSION

11 For the foregoing reasons, Plaintiff respectfully requests that this Court deny
12 Defendant’s motion to stay.

13
14 Dated: September 3, 2019

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 3, 2019, I electronically filed the foregoing **PLAINTIFF’S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT’S MOTION TO STAY CASE** 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/Catherine Amirfar

Catherine Amirfar

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