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On May 22, 2003 President Bush issued Executive Order 13303, "Protecting the Development Fund for Iraq and Certain Other Property in Which Iraq Has an Interest." The Order's validity is questionable. It appears to extend perpetual judicial immunity to oil companies doing business in Iraq, and precludes a class of claims against private companies without providing an alternative forum for those claims. Although potential plaintiffs may in theory seek to establish liability against an oil company, in order to enforce such a judgment they would need to first obtain permission from the government (*i.e.*, a license). It is unclear how the Supreme Court would treat this Order if it were challenged.

This Essay argues that the Order is deeply troubling and it should likely be invalidated under the current analytical framework set forth in *Dames & Moore v. Regan*, 453 U.S. 654 (1981). The President lacks

inherent power to issue the Order and has no explicit or implicit authorization from Congress. The attempt to cut off meaningful access to the courts for claims against private parties, without permission of Congress, and without establishing an alternative forum, is without authority. Further, even if the President were authorized to issue the Order, the Order goes too far. The failure of the President to provide for an alternative forum results in an impermissible withdrawal of federal jurisdiction and raises the possibility of an unconstitutional taking.

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