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UNITED STATES v. YIAN 905 E Supp. 160 (S.D.N.Y. 1995) United States District Court, Southern District of New York

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I. FACTS

On October 5, 1994, a Grand Jury returned an indictment against the defendant Chen De Yian, a recent immigrant from China, for conspiracy to commit interstate murder-for-hire and use of a firearm during and in relation to a crime of violence. On March 6, 1995, the government filed a superseding indictment with three additional counts, including conspiracy to attempt hostage-taking and hostage-taking. Yian had already pled guilty under state law for these additional crimes. In response to the superseding indictment, he filed additional motions on April 10, 1995 to dismiss the two hostage taking counts on the grounds that the statute under which he was charged, the Hostage Taking Act,[1] was unconstitutional.[2]

Congress enacted the Hostage Taking Act as part of a three-bill package designed to combat the rise of terrorism.[3] Specifically, the Act implemented the International Convention Against the Taking of Hostages ("Convention") which the United Nations General Assembly adopted on December 17, 1979, and the United States and forty-five other countries signed on December 21, 1979.[4] The Act criminalized the seizing of hostages only when the perpetrator or the victim was not a United States national.[5]

Yian advanced three constitutional defects in the Act. First, he alleged that the broad language of the Act was not "necessary and proper for carrying into [e]xecution" the Congress' treaty-making power contained in Art. 1 § 8 of the Constitution because it included conduct not essential to the implementation of the Convention.[6] The Convention was narrowly targeted at combating international terrorism, but the broadly worded Hostage Taking Act criminalized hostage taking regardless of whether it was pursuant to terrorism. Second, the Yian asserted that the Act violated the Tenth Amendment[7] because the Act was not limited to conduct which could be classified as interstate or international.[8] Finally, he argued the Act violated the Equal Protection guarantee inherent in the Fifth Amendment's Due Process Clause because it impermissibly imposed criminal liability based on alienage.[9]

II. HOLDING

The court found all three of Yian's contentions unpersuasive. The court held that the Hostage Taking Act passed constitutional muster under the Nec-

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[1] 18 U.S.C. § 1203 (1994). The Hostage Taking Act provides in relevant part: (a) Except as provided in subsection (b) of this section, whoever, whether inside or outside the United States, seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts or conspires to do so, shall be punished by imprisonment . . . . (b)(1) It is not an offense under this section if the conduct required for the offense occurred outside the United States unless—(A) the offender or the person seized or detained is a national of the United States; (B) the offender is found in the United States; or (C) the governmental organization sought to be compelled is the Government of the United States. (2) It is not an offense under this section if the conduct required for the offense occurred inside the United States, each alleged offender and each person seized or detained are nationals of the United States, and each alleged offender is found in the United States, unless the governmental organization sought to be compelled is the Government of the United States.

[2] *See United States v. Yian*, 905 F. Supp. 160 (S.D.N.Y. 1995).

[3] *Yian*, 905 F. Supp. at 162.

[4] Terrorism Taking of Hostages Convention Between the United States of America and Other Governments, Dec. 17, 1979, T.I.A.S. No. 11,081, 1983 WL 144724 [hereinafter Convention].

[5] 18 U.S.C. § 1203.

[6] *Yian*, 905 F. Supp. at 163 n. 4 (citing U.S. Const. art. I, § 8, cl. 10). The Necessary and Proper Clause states in relevant part: "The Congress shall have Power . . . To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." 905 F. Supp. at 163 n. 4.

[7] The Tenth Amendment reads, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X.

[8] *Yian*, 905 F. Supp. at 163.

[9] *Id.*

essary and Proper Clause because it was reasonably related to carrying into execution the United States' Treaty Power of Article 1, § 2 of the Constitution.[10] In addition, the district court held that the Act did not violate the Tenth Amendment because a United States treaty may override any state's power over relations which usually fall within that state's control.[11] Finally, the court held the Act's alienage classification did not violate Equal Protection because it reasonably furthered the legitimate government interest of fighting international terrorism.[12]

III. APPLICATION/ANALYSIS

A. NECESSARY AND PROPER

Citing *M'Culloch v. Maryland*,[13] the court ruled that rational basis was the appropriate judicial standard for reviewing legislation allegedly in violation of the Necessary and Proper Clause.[14] Under this deferential level of scrutiny, a court must find a statute "necessary and proper" so long as it bears a reasonable relationship to carrying out a grant of power to the federal government and is not otherwise prohibited by law.[15] Therefore, even assuming that the Convention was, as Yian asserted, "narrowly targeted" at the problem of international terrorism, the legislation which implemented the Convention had to be only rationally related to fighting terrorism, not narrowly-tailored to that end.[16]

The court went on to find that the Convention's purpose was not to combat "terrorism" in general, but to tackle a discrete offense intimately associated with terrorism, namely, hostage taking.[17] Indeed, the Convention's definition of hostage taking made no reference whatsoever to "terrorism."[18] Finding that the Convention neither defined "terrorism" nor included political or social motivation in its definition of hostage taking, the court concluded that the Hostage Taking Act was reasonably related to implementing the Convention.[19] The court held that, therefore, Congress had the power to implement the Convention pursuant to the Necessary and Proper Clause.[20]

B. FEDERALISM AND THE TENTH AMENDMENT

Yian's second objection to the Hostage Taking Act was that Congress had exceeded its treaty-making powers by reaching beyond matters of national or international importance and usurping states' traditional power to establish the criminal law within their borders.[21] Yian cited dicta from the Supreme Court in *Missouri v. Holland*[22] to support his contention that Congress' power to implement treaties was limited to matters of national or international concern.[23] However, the court found no language in *Holland* to support Yian's proposition.[24] It noted, rather, the *Holland* Court's observing that a federal treaty may override a state's traditional power of regulating relations within its jurisdiction.[25] Al-

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[10] *Id.* at 165.

[11] *Id.*

[12] *Id.* at 168.

[13] *M'Culloch v. Maryland*, 17 U.S. 316 (1819). The Court set out the rational basis test as follows: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *M'Culloch*, 17 U.S. at 421.

[14] *Yian*, 905 F. Supp. at 163.

[15] 905 F. Supp. at 163. *See also Missouri v. Holland*, 252 U.S. 416 (1920). "If the treaty is valid there can be no dispute about the validity of the statute under Article 1, Section 8, as a necessary and proper means to execute the powers of the Government." *Holland*, 252 U.S. at 432.

[16] *Yian*, 905 F. Supp. at 163.

[17] 905 F. Supp. at 163.

[18] *Id.* at 164. *See also* 18 U.S.C. § 1203 (text *supra* note 1). The Hostage Taking Act tracks the Convention's definition of hostage taking, including the specific exclusion of domestic hostage taking when the hostage and the alleged offender are nationals of the State in which the offense occurred: "This Convention shall not apply where the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State." Convention, *supra* note 4, at *4.

[19] *Yian*, 905 F. Supp. at 164-65.

[20] 905 F. Supp. at 162.

[21] *Id.* at 165.

[22] *Missouri v. Holland*, 252 U.S. 416 (1920).

[23] *Yian*, 905 F. Supp. at 165. Specifically, Yian relied on the following passage from *Holland:* "It is obvious that there may be matter of the sharpest exigency *for the national well being* that an act of Congress could not deal with but that a treaty followed by such an act could, and it is not lightly to be assumed that, in matters requiring national action, a power which must belong to and somewhere reside in every civilized government is not to be found." *Holland*, 252 U.S. at 433 (emphasis added) (internal quotations omitted).

[24] *Yian*, 905 F. Supp. at 165.

[25] The *Holland* Court stated, "Valid treaties of course are as binding within the territorial limits of the States as they are elsewhere throughout the dominion of the United States. No doubt the great body of private relations usually fall within the control of the State, but a treaty may

though acts of Congress are the supreme law of the land only when enacted pursuant to an enumerated power under Article 1, Section 8 of the Constitution, treaties take precedent when made under the authority of the United States.[26] This fundamental difference between domestic legislation and international treaties has led to the contention that all Tenth Amendment challenges to the Treaty Power are structurally unsound.[27] In the words of one constitutional law scholar:

Since the Treaty Power was delegated to the Federal Government, whatever was within it was not reserved to the States by the Tenth Amendment. Many matters, then, may be 'reserved to the States' as regards domestic legislation but not as regards international agreement. They are, one might say, left to the States subject to defeasance if the United States should decide to make a treaty about them.[28]

Because the court lacked any precedent for Yian's asserted limitation on the federal government's treaty making powers, it held that the Hostage Taking Act did not violate the Tenth Amendment.

C. EQUAL PROTECTION

The court also rejected Yian's contention that the Hostage Taking Act violated the equal protection guarantee inherent in the Fifth Amendment's Due Process Clause. To resolve this issue, the court had to make two determinations: whether the Act discriminated on the basis of alienage, and if so, the what the appropriate level of judicial scrutiny was.[29] The Act criminalized a hostage taking only if one of the offenders or one of the persons seized or detained was not a United States national—i.e. was an "alien."[30] As a result, the court held that the Hostage Taking Act facially discriminated on the basis of alienage.[31]

In deciding what level of scrutiny to apply, the court noted that the power of Congress to regulate aliens within the nation's borders was more complete than any other congressional power.[32] As a result, the court found the appropriate standard of review necessarily depended on whether the law was passed by Congress or by the states.[33] If Congress had passed the law, the classification would survive judicial scrutiny as long as it reasonably furthered a legitimate government interest.[34] The Supreme Court in *Mathews v. Diaz*[35] recognized that because "decisions in [matters regarding the relationship between the United States and its alien visitors] may implicate our relations with foreign powers, and since a wide variety of classifications must be defined in the light of changing political and economic circumstances," any rule of constitutional law that would burden the government's response to such changing global conditions "should be adopted only with the greatest caution."[36] Both the Second and Ninth Circuits seized upon this dicta and surmised that the Supreme Court adopted a standard of minimal review when reviewing congressionally enacted legislation whch classified on the basis of alienage.[37] Applying a rational basis standard of review, the court held that the alienage classification in the Hostage Taking Act did not violate equal protection

override its power." *Holland*, 252 U.S. at 434 (internal quotations and citations omitted). *See also Asakura v. City of Seattle*, 265 U.S. 332 (1924) (holding that a city ordinance prohibiting the granting of pawnbroker's license to aliens violated a treaty between the United States and Japan and was unconstitutional under the Supremacy Clause of the Constitution).

[26] *Holland*, 252 U.S. at 432.

[27] *Yian*, 905 F. Supp. at 165 n.18.

[28] 905 F. Supp. at 165 n.18.

[29] *Id.* at 166.

[30] *Id.* This limitation did not apply if the United States government was the party compelled to comply with a demand, such as a ransom note, in exchange for the release of a hostage. *See* 18 U.S.C. § 1203.

[31] *Yian*, 905 F. Supp. at 166.

[32] 905 F. Supp. at 166 (citing *Fiallo v. Bell*, 430 U.S. 787, 792 (1977)).

[33] *Id.* at 167. *See also Plyler v. Doe*, 457 U.S. 202, 219 n. 19 (1982) (stating, "[w]ith respect to the actions of the Federal Government, alienage classifications may be intimately related to the conduct of foreign policy"); *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952) (stating that "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations").

[34] *Yian*, 905 F. Supp. at 164-65.

[35] *Mathews v. Diaz*, 426 U.S. 67 (1976). In *Mathews*, resident aliens brought suit challenging the constitutionality of a Social Security Act provision that granted eligibility for enrollment in the Medicare part B supplemental medical insurance program to resident citizens who were 65 or older, but it denied eligibility to aliens unless they had been admitted for permanent residence and had resided in the United States for at least five years. The Court held that this classification by Congress did not deprive aliens of liberty or property without due process of law. *Id.*

[36] *Diaz*, 426 U.S. at 81.

[37] *See United States v. Duggan*, 743 F.2d 59, 76 (2d Cir. 1984) (noting that "the [Supreme] Court has adopted a stance of minimal scrutiny respecting federal regulations that contain alienage-based classifications"); *United States v. Lopez-Flores*, 63 F.3d 1468, 1474-75 (9th Cir. 1995)

because it reasonably furthered the legitimate government interest of fighting international terrorism.[38]

IV. CONCLUSION

The Hostage Taking Act raises a number of issues regarding federalism and equal protection. If Congress had attempted to assert jurisdiction over all acts of hostage taking, even those not covered by the Convention, the resulting statute could violate the Tenth Amendment. Unlike the federal kidnapping statute[39] which contains five readily identifiable jurisdictional elements, the Hostage Taking Act contains no similar requirements for federal jurisdiction. It does, however, require that either the offender or the victim to be a non-citizen of the United States.[40] Without this alienage classification, the Act would extend to all acts of hostage taking, some of which would contain no independent basis for Congress to assert federal jurisdiction. The need to comply with both the Convention and the Tenth Amendment necessitated the use of alienage as a jurisidictional element. Commenting on the Hostage Taking Act, New York District Judge Sonia Sotomayor eloquently wrote:

> It is unfortunate that the federal government, through its treaty power and in subsequent [enabling] legislation, saw fit to criminalize conduct specifically on the basis of the alienage of the persons involved. It troubles this Court to contemplate that its holding today might come to be relied upon as authority in support of some other provision or regime which, at bottom, effects no sounder purpose than to discriminate against persons on the basis of their alienage. Nevertheless, this does not appear to be the motivation behind the Hostage Taking Act. In light of the deference afforded the federal government in connection with legislation passed pursuant to its immigration and foreign policy powers, the Act must therefore be upheld as constitutional.[41]

Even assuming that the Act's underlying purpose was not to discriminate on the basis of alienage, the Act as applied by the United States Attorney's Office in Chen De Yian's case still raises equal protection concerns. Contrary to the district court's opinion, ample evidence in the legislative history of the Hostage Taking Act and in case law discussing the Act indicated both the executive and legislative branches understood that the purpose of the Act was to fight international or political terrorism. President Ronald Reagan, in his message transmitting the proposed legislation to Congress, described its ultimate aim: "To demonstrate to other governments and international forums that the United States is serious about its efforts to deal with international terrorism, it is essential that the Congress provide the necessary enabling legislation, so that we may fully implement the Hostage-Taking Convention."[42] Deputy Assistant Director Wayne R. Gilbert of the Federal Bureau of Investigation further explained: "The Hostage-Taking Act would extend our jurisidiction and authority to act, where deemed appropriate, on certain terrorist related hostage situations both within the United States and internationally."[43] In *United Sates v. Lopez-Flores*, the Ninth Circuit stated that "[s]trong foreign policy concerns arising from the increased threat of in-country terrorist attacks and the desire to meet the United States' obligations under international treaties provided the impetus for passage of the Hostage Taking Act."[44] In addition, the *Yian* court itself acknowledged that the "foreign policy interest behind the Hostage Taking Act [was] to attack the pressing and urgent problem of international terrorism."[45]

Contrary to this understanding of the Act's purpose, the U.S. Attorney's Office brought federal charges against Chen De Yian for an intra-state, even intra-city, domestic kidnapping incident that did not

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(holding, "Federal legislation that classifies on the basis of alienage, enacted pursuant to Congress' immigration or foreign policy powers, is therefore subject to the lowest level of judicial review").

[38] *Yian*, 905 F. Supp. at 168.

[39] 18 U.S.C. § 1201 (1994).

[40] 18 U.S.C. § 1203(b)(2) (1994).

[41] *United States v. Yi*, 951 F. Supp. 42, 46 (S.D.N.Y. 1997).

[42] Message from the President of the United States Transmitting Four Drafts of Proposed Legislation to Attack the Pressing and Urgent Problem of International Terrorism, H.R. Doc. No. 211, 98th Cong., 2d Sess. 3 (1984).

[43] *Legislative Initiatives to Curb Domestic and International Terrorism: Hearings on S. 2626 Before the Subcomm. on Security and Terrorism of the Senate Judiciary Comm.*, 98th Cong., 2d Sess. 60 (1984).

[44] *United States v. Lopez-Flores*, 63 F.3d 1468, 1473 (9th Cir. 1995).

[45] *Yian*, 905 F. Supp. at 168 (internal quotations omitted).

have the slightest connection with international or political terrorism. This system of concurrent federal and state criminal jurisdiction under the Act allows multiple prosecutions for a single act of hostage taking by aliens but not for United States nationals. Perhaps United States District Court Judge Kimba Wood said it best while describing the alienage classification of the Hostage Taking Act: "Although Congress's interest in combating international terrorism is clearly a legitimate government purpose, care must be taken to ensure that this legitimate purpose is not used as a springboard to discriminate against aliens merely on the basis of alienage."[46]

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[46] *United States v. Song*, 1995 WL 736872, *5 (S.D.N.Y. 1995).