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Survey of International Law

SURVEY OF INTERNATIONAL LAW

This survey provides brief digests of cases that represent a variety of aspects of international law that have appeared in the Courts of Appeals for the Fourth Circuit and D.C. Circuit, and the appellate courts of Maryland, the District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, and the Court of International Trade. The cases are grouped in topical categories and references are given for further research.

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I. IMMIGRATION

POWER OF CONSULAR OFFICERS AS DELEGATES OF CONGRESS TO GRANT OR DENY ADMISSION TO UNITED STATES IS NOT SUBJECT TO JUDICIAL REVIEW. *Romero v. Consulate of U.S.*, 860 F. Supp. 319 (E.D. Va. 1994).

Plaintiffs Ines Elvira Navarro de Cuello (Cuello) and Carlos Romero (Romero) applied for non-immigrant visitor visas for entry to the United States and were denied such visas by consular offices in Barranquilla, Colombia. The consular officers denied their visas on the grounds that plaintiffs were suspected of having participated in drug trafficking.[1] Plaintiffs denied any involvement in drug trafficking and sued the United States and other related entities, seeking judicial review of the consular officers' decision, as well as damages for emotional

1. Both plaintiffs received letters from the consular officers explaining the reasons for each denial of a visa.

distress.[2]

In the United States District Court for the Eastern District of Virginia, the Court *Held: Affirmed.* Courts have broadly construed that the congressional power to determine the admission of aliens into the United States extends not only to which classes of aliens may enter the United States, but also to the terms and conditions of their entry.[3] Power is given to United States consular officers, authorizing them to have exclusive authority over the issuance of non-immigrant visas to the United States. Furthermore, both prior to and since the Immigration and Nationality Act, courts have consistently held that a consular officer's decision to grant or deny a visa is not subject to judicial or administrative review.[4] The Court stressed that the doctrine of non-reviewability of consular officers' visa determinations is without exception. Even if a decision is based on possible erroneous information or mistake, courts generally will not intervene.[5] *Significance:* This decision reaffirms the doctrine that consular officers' power to deny visas is non-reviewable, regardless of the reliability of the information received regarding the applicants.

PUBLIC INTERNATIONAL LAW CONTROLS ONLY WHEN THERE IS NO TREATY AND NO CONTROLLING EXECUTIVE OR LEGISLATIVE ACT OR JUDICIAL DECISION. *Cruz-Elias v. United States Attorney General*, 870 F. Supp. 692 (E.D. Va. 1994).

Petitioner, Narciso Cruz-Elias (Cruz-Elias), was a Cuban citizen who arrived in the United States during the 1980 boatlift from Cuba. The United States declined to grant admission to these aliens and Cuba also refused to accept their return. Petitioner was one of many Cubans who was released on "immigration parole."[6] Despite Cruz-Elias' physical entry into the United States, he remained an excludable alien.[7] Al-

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2. Cuello and Romero claimed that the government negligently investigated the plaintiffs and consequently sued the United States for emotional distress stemming from this negligence.

3. The Court based their decision on precedent. See Kleindienst v. Mandel, 408 U.S. 753 (1972); Anetekhai v. INS, 876 F.2d 1218 (5th Cir. 1989).

4. See Centeno v. Shultz, 817 F.2d 1212 (5th Cir. 1987), cert. denied, 484 U.S. 1005 (1988) (decision of consular officers to deny applicant's visa request not reviewable by a federal court).

5. See Grullon v. Kissinger, 417 F.Supp. 337 (E.D.N.Y. 1976).

6. See 8 U.S.C. § 1182 (d)(5)(A). This parole does not constitute admission into the United States.

7. An excludable alien is one who is detained by immigration authorities prior to or when entering the United States. Thus, even if the alien is permitted to physically enter the U.S., legally he remains "at the border."

though Cruz-Elias was convicted of a number of crimes, he was never incarcerated until he was convicted for forcefully raping a fourteen year old girl in 1988. In 1990, the U.S. revoked his immigration parole and he was released to an INS detainer. He was denied re-parole several times over the following three years pursuant to the special parole review programs established for the Mariel Cubans.[8] Petitioner sought habeas relief alleging that indefinite detention of an excludable alien (i) is not authorized by statute, (ii) violates the Fifth and Sixth Amendments, and (iii) violates customary international law.

The District Court *Held: Denied.* International law does not require petitioner's release. The Court reasoned that public international law controls only when there is no treaty and no controlling executive or legislative act or judicial decision.[9] The Court further reasoned that even if international law were relevant, it would in no way support petitioner's arguments. While the general principle that international law forbids "unreasonable confinement or prolonged arbitrary detention," may apply in some circumstances, it had no application in this case. Petitioner's immigration parole was revoked only after he violated the conditions of that parole, i.e., he committed a series of serious crimes. Under the circumstances, the Court reasoned that the detention was neither unreasonable nor arbitrary. *Significance:* In the case of an excludable alien, international law forbidding the unreasonable confinement or prolonged arbitrary detention of an alien does not apply.

SECTION 1981 OF THE CIVIL RIGHTS ACT, PRE-1991 AMENDMENT, PROHIBITS PRIVATE DISCRIMINATION AGAINST ALIENS IN THE MAKING OF CONTRACTS. *Duane v. Geico*, 37 F.3d 1036 (4th Cir. 1994).

The Government Employees Insurance Company ("GEICO") is a private insurance company. Vincent P. Duane is a white, Australian national and permanent resident alien. In June, 1991, GEICO refused to write Duane a homeowner's insurance policy due solely to his status as a non-citizen. Duane brought suit against the insurer, claiming its refusal to contract violated 42 U.S.C. § 1981 (the Civil Rights Act of 1870). In denying GEICO's motion to dismiss, the District Court held that § 1981 affords lawfully admitted aliens the right to be free from both public and private alienage discrimination in the making of

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8. The U.S. had sought to return those Mariel Cubans who had committed crimes while on immigration parole. In 1987 the U.S. and Cuba agreed to implement an agreement for the return of 2,746 named Cubans and subsequently the U.S. passed new regulations on parole decisions.

9. See Gilbert v. U.S. Attn'y Gen., 988 F.2d 1437 (5th Cir. 1993).

contracts.

On Appeal to the United States District Court for the Fourth Circuit *Held: Affirmed.* Section 1981 prohibits racial discrimination, including racial discrimination perpetuated by private parties.[10] The Supreme Court has also held that § 1981 generally prohibits alienage discrimination.[11] The precise scope, however, of § 1981's protections against alienage discrimination is uncertain.[12] The Fourth Circuit rejected GEICO's position that, notwithstanding the statute's constraints on public alienage discrimination, § 1981 permits private actors to draw distinctions between citizens and non-citizens. In so doing, it declined to follow an *en banc* decision of the Fifth Circuit, holding that § 1981 did not reach private alienage discrimination. *See Bhandari v. First Nat'l Bank of Commerce*, 829 F.2d 1343 (5th Cir. 1987), *cert. granted and vacated*, 492 U.S. 901 (1989), *opinion reinstated*, 887 F.2d 609 (5th Cir. 1989), *cert. denied*, 494 U.S. 1061 (1990).

The Fourth Circuit held that the statute's plain language and legislative history dictated a finding that the protections against discrimination afforded to aliens under § 1981 must mirror in scope and in nature the statute's protections against racial discrimination. The business practice of a private company in discriminating in favor of citizens is held to violate § 1981. *Significance*: The decision potentially provides sweeping protection for non-citizens in their employment and commercial relations with private entities. The decision is important insofar as it establishes "alienage" as an unlawful classification, in both public and private contexts, similar to race and national origin. The Supreme Court has granted certiorari. *Government Employees Insur. Co. v. Duane, cert. granted*, 1995 U.S. LEXIS (U.S. Feb. 27, 1995).

REHABILITATION IS A CRITICAL FACTOR WHEN DETERMINING WHETHER AN ALIEN WITH A CRIMINAL RECORD SHOULD BE GRANTED RELIEF FROM DEPORTATION. *Gandarillas-Zamrana v. Board of Immigration Appeals*, 26 F.3d 1166 (4th Cir. 1995).

Nelson Gandarillas-Zambrana ("Gandarillas"), a citizen of Bolivia and a permanent resident of the United States, has been convicted

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10. *See, e.g.*, Patterson v. McClean Credit Union, 491 U.S. 164 (1989).

11. Graham v. Richardson, 403 U.S. 365, 377-80 (1971); Takahashi v. Fish and Game Comm'n, 334 U.S. 410, 419-20 (1948).

12. Some courts have found private alienage discrimination actionable under § 1981, while others have expressly rejected the claim. Compare, Espinoza v. Hillwood Square Mutual Ass'n., 522 F. Supp. 559 (E.D. Va. 1981) and De Malherbe v. International Union of Elevator Constructors, 438 F. Supp. 1121 (N.D. Cal. 1977).

of fifteen misdemeanors during the nine years he has resided in the United States. He recently admitted his latest larceny convictions to an immigration judge at a hearing, thereby conceding deportability. Gandarillas applied for a discretionary waiver of deportation under section 212(c) of the Immigration and Nationality Act. The immigration judge denied relief. The Board of Immigration Appeals ("BIA") affirmed in a one-paragraph per curiam opinion.

On Appeal to the United States Court of Appeals for the Fourth Circuit *Held*: *Affirmed*. Usually the court only reviews the findings of the BIA, but as the BIA relied on the immigration judge's finding, the court decided to adopt the rule of the Tenth Circuit. When the BIA does not make its own findings the court will review the immigration judge's determination. Gandarillas raised a new issue at the appellate level; he contended that his procedural due process rights had been violated. The court declined to consider creating an exception to the rule that constitutional claims not raised before the BIA are waived because Gandarillas' claims were without merit. Moreover, when an alien has a serious criminal record, the alien has to show unusual or outstanding equities in favor of relief from deportation. Complete rehabilitation, although not necessarily dispositive, is an important factor in determining these equities. Gandarillas had accomplished relatively small steps towards rehabilitation in comparison to his numerous criminal convictions, violations of probation, and alcohol abuse. As the immigration judge did not make an arbitrary or capricious determination, the judge did not abuse his discretion by denying Gandarillas relief. *Significance*: Unusual or outstanding equities such as complete rehabilitation, a critical although not absolute requirement, are necessary to support a discretionary grant of relief from deportation to a criminal alien.

AN ILLEGAL ALIEN'S INTENT TO BE DOMICILED IN MARYLAND OVERRULES AMBIGUOUS FEDERAL LAW ON THE MATTER. *Garcia v. Angulo*, 335 Md. 475 (1994).

Dilber E. Garcia, an El Salvadoran national, was injured in an automobile accident during his legal, but temporary, stay in the United States. He sought payment of his medical expenses from the Maryland Automobile Insurance Fund but MAIF refused, asserting that Garcia was not a "qualified person" under MD Code art. 48A §243H (a)(1).[13]

In order to determine whether or not Garcia was qualified, the Circuit Court of Prince George's County, explored his history in the

13. Maryland case law has defined "qualified person" to mean a Maryland resident, and has narrowed the definition even further to mean a domiciliary of Maryland.

United States. Garcia left El Salvador in 1990 because of the violent conditions and illegally entered this country at that time. Prior to his entry, a federal mandate was issued, allowing the Attorney General to grant temporary protected status to shield certain nationals from deportation for up to eighteen months. Garcia was included among those granted this temporary stay. At the end of his first respite, President Bush initiated the Deferred Enforced Departure program which had the effect of extending the temporary protected stays for two more years.[14]

When President Clinton came into office, he further extended the deferred departures to December of 1994. Despite this background, the Circuit Court for Prince George's County held that Garcia did not meet the requirements of being a domiciliary of Maryland. On direct appeal to the Court of Appeals of Maryland[15] *HELD: Reversed.* In order to determine whether or not Garcia was domiciled in Maryland, the Court of Appeals focused on Garcia's intent as of the date of the accident. Garcia, the court concluded, had sufficient enough intent to stay in Maryland to be considered a domiciliary of the state. Because the federal law set no specific deportation date, the court found that Garcia's intent to stay was more than merely an unrealistic or subjective one. The court applied the theory that past behavior is the best predictor of future conduct. It concluded that since the government had repeatedly deferred the deportation of these aliens, Garcia could reasonably have believed it possible to intend to remain in Maryland. *Significance*: The federal law and unknown future changes in that law does not prevent an alien's intent to be domiciled in Maryland from having legal effect.

COURT INSTRUCTED THE STATE DEPARTMENT THAT IT CANNOT DISCRIMINATE ON THE BASIS OF NATIONAL ORIGIN WHEN REFUSING TO PROCESS THE VISAS OF SCREENED OUT VIETNAMESE IMMIGRANTS. *Legal Assistance for Vietnamese Asylum Seekers, et al. v. Department of State, Bureau of Consular Affairs, et al.* 45 F.3d 469 (D.C. Cir. 1995).

A not-for-profit corporation, Legal Assistance for Vietnamese Asylum Seekers, Inc. ("LAVAS"); two detained Vietnamese immigrants in Hong Kong; and their American sponsors alleged that the State De-

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14. President Bush initiated this program in a letter to Salvadoran President Alfredo Christiani written on May 4, 1992. He extended these visas because El Salvador could not possibly absorb all of the returning nationals at once.

15. The Court of Appeals issued the writ of certiorari on its own motion, prior to a Court of Special Appeals hearing.

partment violated its own regulations as well as the Immigration and Nationality Act when it refused to process the visa applications of the Vietnamese immigrants, who had not been screened in as political refugees at the United States Consulate in Hong Kong.[16] 8 U.S.C. sect. 1152(a) provides that "no person shall . . . be discriminated against in the issuance of an immigrant visa because of the person's . . . nationality . . . or place of residence."[17] The State Department argued that it is permitted to adopt its policy toward Vietnamese immigrants as long as it possesses a rational basis for making this distinction. The State Department claimed that the goal of encouraging voluntary repatriation met this standard.

The United States District Court for the District of Columbia granted the State Department's motion for summary judgment. On appeal to the United States Court of Appeals for the D.C. Circuit *Held: Reversed and Remanded.* The language of 8 U.S.C. sect. 1152(a) is explicit. The State Department cannot make an exception to the statute, and differentiate between visa applicants on the basis of national origin, unless the justification were extremely compelling, such as a national emergency. The Court reasoned that it could not permit the State Department's interpretation of the statutory provisions when the statutory terms do not provide for "rational basis" exceptions. *Significance:* The State Department may not promulgate an immigration policy which treats Vietnamese visa applicants differently from applicants of other nationalities, simply because they are Vietnamese, despite the fact that the political situation in Vietnam stimulates the number of visa applications from Vietnamese refugees in other countries.

II. INTERNATIONAL TRADE AND COMMERCIAL LAW

ENTERING CONTRACTS WITH CHOICE OF LAW PROVISIONS EFFEC-

16. Since April, 1975, when North Vietnamese captured Saigon, large numbers of refugees have fled Vietnam to Hong Kong. Between 1979 and 1988, an informal agreement existed in which Hong Kong and other nations in the region committed themselves to granting temporary refuge in exchange for a commitment from the United States and other western countries to resettle these immigrants. Hong Kong as well as the other nations granted presumptive refugee status to these immigrants. Due to an increase in the number of persons fleeing Vietnam in the late 1980's, Hong Kong announced that it was revoking this presumptive refugee status, and that all new arrivals would be detained and screened by local immigration authorities. Those who were not granted refugee status were instructed to return to Vietnam. The United States government signed on to this plan. However, it did not carry out this policy until 1993.

17. *Legal Assistance for Vietnamese Asylum Seekers, et al. v. Department of State, Bureau of Consular Affairs, et al.* 1995 WL 39260, 4 (D.C. Cir.)

TIVELY WAIVES SOVEREIGN IMMUNITY. *Eckert Int'l. Inc. v. Fiji*, 32 F.3d 77 (4th Cir. 1994).

The Government of Fiji entered into a contract with Eckert International, Inc. for the American corporation to serve as a consultant. Eckert was to represent the Government of Fiji in various capacities. For its services, Eckert was to receive $250,000 per year. Included in the contract was a choice of law provision which indicated that "in the event of any controversy, this Agreement shall be construed and interpreted according to the laws of the state of Virginia in the United States."[18] Both parties performed for the term of the contract which was then renewed. Before the expiration of the renewed contract, Fiji terminated its end of the agreement.

Eckert sued Fiji in the U.S. District Court for wrongful repudiation and breach. Fiji moved to dismiss on the basis of sovereign immunity and several other theories. The district court held that Fiji had waived its sovereign immunity.

The United States Court of Appeals for the Fourth Circuit *Held: Affirmed.* In de novo review of the question of law, the court found that Fiji had waived its sovereign immunity by implication when it signed the contract with the choice of law provision. It found three reasons for so holding: 1) Virginia was the forum best able to address the issues; 2) it was the implied intent of the parties; and 3) it accords with the fairness assessment made by Congress.[19] *Significance:* Choice of law provisions in valid contracts with foreign nations are binding and prevent a defense of sovereign immunity.

LANHAM ACT'S TRADEMARK PROVISIONS CAN BE APPLIED EXTRATERRITORIALLY, BUT ONLY AFTER EVALUATION UNDER *Steele v. Bulova Watch Co.'s* Three-Part Balancing Test. *Nintendo of America, Inc., v. Aeropower Co., Ltd.*, 34 F.3d 246 (4th Cir. 1994).

Nintendo of America, Inc. ("Nintendo"), instituted this action against a Taiwanese citizen, Danny Chu, and two Taiwanese corporations of which he is the managing director. Nintendo alleged that the defendants violated both federal copyright and trademark statutes and North Carolina's state unfair business practices law by manufacturing and distributing video game cartridges which contained software that infringed many of Nintendo's registered trademarks and copyrights.

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18. 32 F.3d 77 at 78.

19. This refers to the legislative history to the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1602 et seq.

The defendants alleged that any violations were only as a result of a private "sting" operation that Nintendo conducted, and therefore claimed Nintendo should be equitably estopped due to unclean hands. The United States District Court for the Eastern District of North Carolina rejected the defendants' arguments and further concluded that the defendants (1) willfully counterfeited Nintendo's products and therefore violated the Trademark Counterfeiting Act of 1984 (15 U.S.C.A. § 1116); (2) falsely designated an original, violating the Lanham Trade-Mark Act (15 U.S.C.A. § 1125(a)); (3) willfully infringed eleven Nintendo copyrights, violating the Copyright Act (17 U.S.C. § 501); and (4) distributed infringing video game cartridges in North Carolina, violating the state's Unfair and Deceptive Trade Practice Act (N.C. Gen. Stat. § 75-1.1). The District Court then awarded treble monetary damages in the amount of $330,000, attorney's fees and injunctive relief.

On appeal, the United States Court of Appeals for the Fourth Circuit *Held*: affirmed in part, vacated in part, and remanded in part. The court upheld defendants' liability on all grounds and upheld the federal courts' "broad jurisdictional grant" to issue injunctions prohibiting extraterritorial conduct in violation of the Lanham Act. However, the court, in following *Steele v. Bulova Watch Co.*, 344 U.S. 280, 286, stated that three factors must all be considered before such an injunction can be issued: "only where the extraterritorial conduct would, if not enjoined, have a significant effect on United States commerce, and then only after consideration of the extent to which the citizenship of the defendant, and the possibility of conflict with trademark rights under the relevant foreign law might make issuance of the injunction inappropriate in light of international comity concerns." While the District Court properly found that the defendants' infringing conduct in Mexico and Canada did have a significant impact on United States commerce, that portion of the opinion was vacated and remanded because the court failed to evaluate Steele's second and third factors. Furthermore, the Court of Appeals vacated and remanded the monetary award, ruling the District Court inappropriately interposed the treble damages provision of the state law on top of the ascertainable damages as per the federal law. The court concluded that the Copyright Act provides exclusive remedies for copyright infringement, and that North Carolina's treble damages provision in the Unfair and Deceptive Practices Act cannot be applied to parallel violations of the federal copyright law. Finally, because the case was remanded, the court also vacated and remanded the award of attorney's fees. *Significance*: The Court of Appeals applied *Steele v. Bulova's* balancing test when invoking the Lanham Act to provide extraterritorial relief from trade-

mark violations, and held that damages under parallel federal and state copyright statutes must be calculated independently.

III. FAMILY LAW

COMITY OF FOREIGN CUSTODY DECREES COURT MUST DETERMINE WHETHER PAKISTAN'S CUSTODY LAWS ARE CONTRARY TO MARYLAND'S PUBLIC POLICY. *Malik v. Malik*, 99 Md. App. 521 (1994).

On September 15, 1990, appellee, a Pakistani citizen, left her marital home with her daughter. Appellant, her husband, and also a citizen in Pakistan, filed suit for custody in Pakistan. Appellee soon thereafter fled the country with her child and settled in Baltimore, where they resided for two years before they were found by appellant's hired detectives. The Pakistani court, in appellee's absence, granted appellant custody of his child.[20] Subsequent to being discovered in Maryland, appellee filed for custody of her daughter and for a restraining order against her husband in the Circuit Court of Baltimore County.[21] The trial court, recognizing its own jurisdiction to determine custody in this case, held that the Pakistani custody order should not receive comity. The court subsequently granted both temporary custody and a restraining order to appellee.

On appeal to the Court of Special Appeals of Maryland *HELD: Neither Affirmed nor Reversed, Remanded.* Under the Uniform Child Custody Jurisdiction Act, Md. Code Family Law Article §9-201 *et seq.*, if another state, which has jurisdiction, issues a custody decree, the Maryland court must usually decline jurisdiction.[22]

The "Home State" exception applied here because the child had resided in Maryland for a longer period of time than the six months required by the exception. The Court of Special Appeals found another problem. The child's two year residence in Maryland was solely due to her mother's unilateral, bad faith decision to remove the daughter from

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20. Pakistani courts show a preference for fathers in suits of custody. This court held that the paternal preference was not in and of itself enough of a reason to preempt the Pakistani judgment.

21. She claimed that her husband had physically abused the child.

22. However, there exist four exceptions to this rule, one of which is relevant in this case. If the child has resided in Maryland for more than six months, the court attains jurisdiction under what is called the "home state exception." This child had been in Maryland for over two years. The other bases for jurisdiction arise when a child has "significant connections" with the new country, when the child is abandoned or there exists another emergency, or when the other state follows statutory provisions "substantially in accordance" with those of the asserting state.

her home in Pakistan.

The court concluded that asserting jurisdiction would only be proper if Pakistan's court decision was based on law contrary to Maryland public policy.[23] A decision offensive to the public policy of this state will not be given effect in Maryland courts.[24]

The court remanded the case to find out more about the law applied in reaching the Pakistani custody decision. *Significance*: If, in determining custody, a foreign country does not apply the best interest of the child standard or has applied law contrary to the public policy of Maryland, Maryland courts will not give effect to that country's custody decree.

NORTH CAROLINA EXEMPTED FROM RECOGNIZING FOREIGN DIVORCE DECREE WHEN DECREE WAS OBTAINED IN FOREIGN COUNTRY SPECIFICALLY TO EVADE NORTH CAROLINA'S SUBJECT MATTER JURISDICTION AND PUBLIC POLICIES REGARDING DIVORCE AND CUSTODY. *Atassi v. Atassi*, 451 S.E.2d 371 (N.C. Ct. App. 1995).

Batoul Atassi, the plaintiff-wife, filed to divorce her husband (defendant Inad Atassi) in a North Carolina District Court.[25] Both wife and husband were born in Syria and retained Syrian citizenship; however the husband had resided in the United States for over 20 years, and is also a naturalized U.S. Citizen. When the divorce papers were filed, the defendant husband moved to dismiss the action for lack of subject matter jurisdiction, citing a divorce decree already obtained by him in Syria and two prenuptial agreements. The trial court granted the motion.[26] On appeal to the Court of Appeals of North Carolina *Held: Reversed and remanded.*

The court noted that a motion for summary judgment may only be granted if there are no genuine issues of material fact, and that there was sufficient evidence on record to indicate that the parties disagreed over several genuine issues of material fact. First, the husband's domi-

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23. The court cites a New York case which doctrinized this rule: *Falcon Manufacturing v. Ames*, 278 N.Y.S.2d 684 (N.Y.Civ.Ct.1967).

24. The court notes that the fact that appellee removed her daughter from Pakistan illegally should not be absolutely dispositive of her fitness as a mother.

25. The plaintiff-wife filed in Cumberland County District Court against defendant-husband Dr. Inad Atassi for alimony, alimony pendente lite, child custody and support, relief from domestic violence, and equitable distribution.

26. The husband's motion for summary judgment was only granted partially, for the wife's claims for alimony, alimony pendente lite, and equitable distribution. Plaintiff's remaining claims for child custody and support proceeded separately in the District Court, and were not involved in this appeal.

cile is disputed. He claims to be domiciled in Syria (which would require the North Carolina court to cede subject matter jurisdiction to Syria). However, ample evidence was cited by the court to indicate that the husband's domicile could reasonably be found to be North Carolina.[27] A finding of North Carolina domicile is necessary to give North Carolina subject matter jurisdiction over the divorce and custody proceedings. Second, the premarital agreements may not be legally binding upon the wife in the United States, as the first agreement was not signed by the wife (but rather by her father), and the second was written in English (a language not spoken by the wife at that time) and may have been signed by the wife under coercion and without sufficient knowledge of the husband's assets or debts. A third ground for granting the motion for summary judgment was dismissed by the court as being completely specious. The husband had tried to argue that the Hague Convention on the Recognition of Divorces and Legal Separations was controlling, but as the U.S. is not a signatory to this convention, it does not have the force of law here.

Most importantly, the court noted that it could not permit the defendant - as an American citizen, domiciled in North Carolina - to use his former status and relationship with Syria to evade the laws of North Carolina governing domestic relations. North Carolina's interest in the marriage would prevail over any foreign divorce. The court pointed out that the marriage relationship is interwoven with public policy to such an extent that it is dissolvable only by the law of the domicile. *Significance*: Where a foreign divorce was obtained with the specific intent of evading the laws and public policies of the United States, recognition of the foreign decree may be withheld.

IV. HUMAN RIGHTS

KIDNAPPING, BY ITS NATURE, AND DEALINGS DIRECTLY BETWEEN TWO SOVEREIGN STATES DOES NOT CONSTITUTE COMMERCIAL ACTIV-

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27. The court pointed to several things tending to favor a finding of a North Carolina domicile: 1) that the husband has consistently and actually resided in North Carolina (not Syria) for over 20 years; 2) that the husband's former status was as a permanent resident alien, and he is now a naturalized U.S. citizen; 3) that the location of his medical practice and all other sources of income are in the United States; 4) that he admitted in a deposition and in a premarital agreement that the couple had "agreed to marry and intend to reside together in North Carolina as husband and wife;" 5) that he attempted to fashion a premarital agreement specifically in compliance with North Carolina statutes; 6) that he brought his wife from Syria to live in North Carolina; and 7) that while his general lifestyle indicated some connection with Syria, overall it indicated an intention to remain in North Carolina permanently or indefinitely.

ITY UNDER THE FOREIGN SOVEREIGN IMMUNITIES ACT. *Cicippio v. Islamic Republic of Iran*, 30 F.3d 164 (D.C. Cir. 1994).

Joseph Cicippio and David Jacobson were abducted by Islamic fundamentalists in Lebanon and held for an extended period of time. They were tortured during their captivity. Iran conditioned their release on the unfreezing of Iranian assets. Cicippio and Jacobson allege that their abduction caused their families emotional harm and forced them to make payment of money to the captors. Cicippio and Jacobson sought damages for a number of intentional torts and international law violations, invoking the "commercial activity" and "noncommercial tort" exceptions to the Foreign Sovereign Immunities Act (FSIA). The Islamic Republic of Iran moved to dismiss on the grounds that subject matter and personal jurisdiction were lacking.

The United States District Court for the District of Columbia granted the motion to dismiss on lack of subject matter and personal jurisdiction. The District Court concluded that kidnapping, hostage-taking and other criminal ventures were not within the contemplation of the United States Congress when the "commercial activity" exception was enacted.

On Appeal to the United States Court of Appeals for the District of Columbia *Held: Affirmed.* A foreign sovereign's alleged use of non-official agents to conduct alleged hostage taking in order to gain economic advantage cannot be considered a commercial activity. The Court of Appeals found that when two sovereign governments deal directly with each other, even though the dealing may relate to commercial activity, such dealings are not sufficiently similar to those of marketplace participants to be considered within the scope of the FSIA. The Court similarly rejected appellants "noncommercial tort" exception because both the act and the injury must occur within the United States. *Significance:* This narrow construction of the FSIA effectively removes it as one of the few potential sources of redress for parties who suffer injury at the hands of terrorists who undoubtedly act on behalf of sovereign governments.

AMERICAN CITIZENS WHO WERE VICTIMS OF THE HOLOCAUST MAY NOT SEEK RELIEF UNDER THE FOREIGN SOVEREIGN IMMUNITIES ACT UNLESS AN EXCEPTION EXISTS TO THE GENERAL GRANT OF SOVEREIGN IMMUNITY OFFERED BY THE ACT. *Princz v. Federal Republic of Germany*, Nos. 92-7247, 26 F.3d 1166 (D.C. Cir., July 1, 1994).

Hugo Princz, an American citizen, who was a Holocaust survivor, brought suit against the Federal Republic of Germany for injuries suffered while a prisoner in Nazi concentration camps. Princz was initially

denied reparations by the German government in 1955 because he was not a German citizen and not a "refugee" within the meaning of the Geneva Convention. Apparently, Mr. Princz would have been eligible for reparations when the criteria were changed in 1965, but he made no application until after the statute of limitations had run. After unsuccessful attempts in the 1980s to obtain reparations, Mr. Princz finally filed this action in the federal district court for the District of Columbia. Germany moved to dismiss per Fed.R.Civ.P. 12(b)(1), asserting lack of subject matter jurisdiction owing to sovereign immunity, and under Rule 12(b)(6) asserting failure to state a claim upon which relief could be granted owing to the statute of limitations having run.

The United States District Court for the District of Columbia, Stanley Sporkin, J., asserted subject matter jurisdiction of the case on the grounds that the Foreign Sovereign Immunities Act (FSIA) "has no role to play where the claims alleged involve undisputed acts of barbarism committed by a one-time outlaw nation which demonstrated callous disrespect for the humanity of an American citizen, simply because he was Jewish."[28]

On Appeal to the United States District Court of Appeals for the District of Columbia *Held: Reversed, case dismissed.* The Court of Appeals did not attempt to apply the FSIA retroactively, though noting that a valid case could be made to do so, because the cause of action stated did not fall within one of the statutory exceptions to a nation's sovereign immunity. The FSIA provides for a "commercial activity" exception, but requires that the impact of the "commercial activity" have a direct effect in the United States. The Court of Appeals stated that this effect must have "no intervening element" and that Mr. Princz's work in various factories was too attenuated to have such a direct effect in the United States.

The Court of Appeals also noted the existence of an exception to sovereign immunity based upon explicit or implicit waiver. It had been urged that Nazi Germany waived sovereign immunity by violating jus cogens norms of the laws of nations. Finding that the waiver requirement of the FSIA hinges on the intention of the nation, the Court of Appeals found that Germany had not indicated its amenability to suit and as such had not waived its immunity. *Significance:* By failing to find that certain acts, so egregiously violative of international norms and laws, do not constitute a *de facto* waiver of sovereign immunity, the Court of Appeals effectively closes the door on surviving Holocaust victims seeking to utilize the FSIA for redress.

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28. *Princz v. Federal Republic of Germany*, 813 F.Supp. 22, 26 (D.D.C. 1992).

THE PRESERVATION OF HUMAN RIGHTS EMPHASIZED OVER DOMESTIC CONSUMER DEMAND. *China Diesel Imports, Inc., v. United States*; 870 F. Supp. 347 (Ct. Int'l Trade 1994).

In 1992, the United States Customs Service (Customs) excluded diesel engines manufactured by the plaintiff, China Diesel Imports, Inc. (CDI), as goods manufactured by convicts or forced labor. The diesel engines at issue (model 1100 diesel engines) were manufactured by JIMA Diesel Engine Factory (JINMA) in China. JINMA was classified as a modern day reform camp or factory. CDI filed suit seeking entry of its merchandise pursuant to the exception clause of 19 U.S.C. §1307. *Held: Affirmed* the finding of Customs. The United States Court of International Trade first determined that the governing statute, 19 U.S.C. §1307 precludes the importation of goods manufactured wholly or in part by forced labor.[29] The court next found domestic manufacturers unable to meet domestic demand; however, CDI's engines could not be imported under the exception clause of §1307.[30] The court clearly concluded that the exception solely applies to non-convict or forced labor. *Significance:* This case demonstrates the United States' commitment to the preservation of human rights at the expense of potential international trade.

29. The pertinent part reads: "All goods . . . mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced or /and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States . . . ." 19 U.S.C. §1307.

30. The exception allows the importation of goods that "are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States." 19 U.S.C. §1307.