
Constitutional Law

Benchmark decision in Texas on corporate claims against Iran

by George Canning

On Feb. 12, 1981 federal Judge Robert W. Porter enjoined the transfer of \$19 million dollars in Iranian funds that he had in May 1980 awarded to Electronic Data Systems (EDS). The Dallas-based EDS had sought the \$19 million in damages in July 1979, claiming breach of contract on the part of Iranian entities. In a parallel suit in the Southern District of New York, EDS sought the prejudgment for attachment of \$19 million in Iranian funds—a common occurrence in suits against Iranian entities—first, to prevent the funds' flight from the country, and second, because Iranian entities do not, in general bank outside New York. President Carter's seizure of all frozen Iranian assets for transfer to Iran in exchange for the hostages under executive jurisdiction was termed by the court to be decidedly unconstitutional.

"Congress expressly granted this court jurisdiction to hear claims such as the plaintiff's with the enactment of the Foreign Sovereign Immunities Act. Article III of the United States Constitution vests this court with the judicial power to enter judgments and orders within the scope of congressional grants of jurisdiction. I cannot ignore these principles and neither may the executive. Congress is free to repeal the Foreign Sovereign Immunities Act, but the President may not do so by executive fiat."

So saying, Judge Robert W. Porter of the U.S. District Court in Dallas, Texas granted Electronic Data Systems Iran a preliminary injunction against the United States and the secretary of the Treasury, restraining them "directly or indirectly taking any action of any nature whatever nullifying, impeding or interfering with, or in any other way affecting" court orders (including transferring attached funds) or the jurisdiction of the federal courts in EDS's suit against several Iranian entities. The net effect of the injunction is to prevent the transfer to Iran of some \$19 million awarded to EDS on May 9, 1980 in Dallas and earlier attached through action in the Southern District Court of New York. Those funds would otherwise be in imminent danger of being trans-

ferred, along with other nominally Iranian funds held in U.S. banks, to complete Jimmy Carter's dirty deal with the Islamic Republic for the 52 hostages.

Although the Reagan administration has issued an executive order effectively ratifying the Carter executive orders implementing the deal (including the suspension of lawsuits involving claims against Iran), the regulations issued by the Treasury Department include the proviso that the transfers may be delayed until "the Secretary of the Treasury determines that the authority of the United States to order these transfers has been the subject of a definitive legal ruling." Thus the stage has been set for a showdown between Iran's American allies and the U.S. Constitution, a confrontation the Carterites had studiously attempted to avoid.

EIR termed the deal "illegal and unconstitutional" (Feb. 10, 1981). We publish here arguments from Judge Porter's "Memorandum Opinion," arguments which powerfully expose the assets deal as an attack on the Constitution and statutes of this country. For space reasons we have deleted many of the case citations; we urge executives and legal specialists to read the document in its entirety.

Judge Porter on public interest

I note that both the orders and judgments of this court, and the orders of the Southern District of New York in aid of ultimate satisfaction of this judgment, were rendered pursuant to jurisdiction conferred by Congress in the Foreign Sovereign Immunities Act. . . . Further, Article III of the United States Constitution provides that judicial power of the United States "shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." It could not be any clearer than that the judgment and orders of this court as well as the orders of the Southern District of New York were rendered pursuant to constitutional and statutory authority. If I

assume that the judgment entered in this case is a valid, subsisting judgment, which I think I must, then Executive Order 12279 raises serious constitutional issues with regard to the power of the executive branch to nullify or negate the constitutional and statutory authority of Article III courts with respect to pending cases. As one court has stated, it must "be assumed that the Constitution is the ultimate expression of public interest."

Statutory authority

The grant of authorities under IEEPA [International Emergency Economic Powers Act, under which Carter claimed the authority to arrange the assets transfer—ed.] expressly excluded certain authorities granted to the President under Section 5(b) of the Trading With the Enemy Act including "the power to vest, i.e. to take title to foreign property." . . . Thus, it is clear that under the authority of IEEPA the President may "freeze but not seize" assets in which a foreign nation has an interest. . . .

Executive Order 12279 directs and compels the transfer of Iranian funds in the possession of banking institutions "to the Federal Reserve Bank of New York, to be held or transferred as directed by the secretary of the Treasury." In essence, the order directs that the funds in which Iran has an interest be transferred to the control of the executive branch and attempts to vest custody and control of the assets in the executive. This is a power which Congress declined to grant to the President with the enactment of IEEPA in 1977. Therefore, insofar as the executive order attempts to vest custody and control of the assets in question in the executive branch, such a directive is without congressional authority. In addition, any claim that the language of Section 1702 was intended to limit or nullify the jurisdiction of Article III courts was effectively refuted in a recent decision involving the Iranian Assets Control Regulations. . . . The court refused to accept the interpretation of the government of the United States that Section 504(d) of the Freeze Regulations . . . precluded further judicial proceedings. Citing "the familiar canon that a construction involving unconstitutionality is to be avoided if at [all] possible," the court stated that the government's interpretation would give rise to grave constitutional difficulties. . . .

The constitutional issues resolve to the power of either the executive branch or Congress to negate or countermand valid orders of Article III courts issued pursuant to an express congressional grant of jurisdiction under the Foreign Sovereign Immunities Act. . . . The pertinent inquiry is whether either Congress or the executive can subsequently nullify those exercises of the judicial power. It is my conclusion that neither Congress nor the executive have such authority. . . . There is more than ample authority for the proposition that neither

Congress, the executive, an executive agency, nor a state legislature may by subsequent acts negate, disregard, or nullify the judgment of the court already rendered, or the rights determined thereby. . . . Article III of the United States Constitution and the congressional grant of jurisdiction in the Foreign Sovereign Immunities Act provided this court with the judicial power to adjudicate the issues in this case. Concomitant with that power is the power and duty of this court to see that its orders and judgments are effectuated. Therefore, I am compelled to conclude that Executive Order 12279, with or without the blessing of Congress, is constitutionally invalid insofar as it attempts or purports to countermand or nullify valid exercises of the judicial power. . . .

The impact of Executive [Order] 12279 poses a similar and related constitutional issue concerning the power of either the Congress or the executive to delimit the jurisdiction of the federal courts. . . . It is well established that only Congress can confer and redefine the jurisdiction of United States courts. . . . Therefore, executive orders lacking congressional approval or authority cannot possibly interfere with the exercise of jurisdiction of federal courts. . . . The foremost limitation on that power was succinctly delineated in *Battaglia v. General Motors Corporation*. . . .

We think, however, that the exercise by Congress of its control over jurisdiction is subject to compliance with at least the requirements of the Fifth Amendment. That is to say, while Congress has the undoubted power to give, withhold, and restrict the jurisdiction of courts other than the Supreme Court, it must not so exercise that power as to deprive any person of life, liberty, or property without due process of law or to take private property without just compensation.

With respect to any assertion that the directives of Executive Order 12279 are within the inherent or implied powers of the President as commander-in-chief, I note that the facts in this case closely resemble those in *Youngstown Sheet & Tube Co. v. Sawyer*. . . . I have concluded above that with the passage of IEEPA Congress expressly declined to preserve a power previously available to the President under the Trading With the Enemy Act—the power to vest custody and control of foreign assets in the executive branch. Likewise, in *Youngstown* Congress had expressly declined to grant the President the power to seize steel manufacturing plants during times of emergency. . . . Just as the court in *Youngstown* concluded that President Truman was without statutory or constitutional authority to seize the nation's steel mills, I likewise conclude that President Carter was without statutory or constitutional authority to order the vesting of foreign assets in the custody and control of the executive branch.