

Supreme Court, U.S.
FILED
NOV 24 1986
JOSEPH F. SPANIOLO, JR.
CLERK

NO. 110, ORIGINAL
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1986

In the Matter of the
REPUBLIC OF SURINAME,
ex Rel., ETIENNE BOERENVEEN,
Petitioner,
For a Writ of Habeas Corpus

ORIGINAL PROCEEDING FOR ISSUANCE
OF WRIT OF HABEAS CORPUS

REPLY OF REPUBLIC OF SURINAME
TO BRIEF FOR THE UNITED STATES
IN OPPOSITION

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QUESTION PRESENTED:

Whether the Supreme Court should grant the Motion of the Republic of Suriname for leave to file a Petition for Writ of Habeas Corpus on behalf of its Public Minister who serves as an alternate to the Leader of its Government and who is currently being held in custody by the Attorney General of the United States.

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REPLY BRIEF

The Republic of Suriname has moved for leave to proceed on the merits with its request for the issuance of a Writ of Habeas Corpus seeking release of its Public Minister from the custody of the Attorney General of the United States. The Republic of Suriname's contention is that its Public Minister, Etienne

Boerenveen, is entitled to immunity from criminal prosecution by the United States.

This Court, in Ex parte Republic of Peru, 318 U.S. 578 (1942), has previously granted the motion of a foreign state for leave to file an original proceeding for the issuance of writs of mandamus and prohibition. Here, as in Ex parte Peru, supra, the issue raised "involves the dignity and rights of a friendly sovereign state". (at 587). This proceeding is distinguishable, however, because the remedy sought is not the release of a ship claimed to be immune from seizure, but the release of a member of the military authority which rules the Nation of Suriname; a Public Minister who serves as an alternate to the Leader of the Government for the Republic of Suriname;

and who, at age 30, is one of the five Commanders of the Surinamese Army and the Chairman of the State Fishery Commission.

Certainly, if "the judicial seizure of the vessel of a friendly foreign state is so serious a challenge to its dignity" Ex parte Peru, supra, at 588, that the same constituted the basis upon which this Court granted leave to the Republic of Peru to proceed with an original action for the issuance of an extraordinary writ, then the detention and incarceration of a Public Minister of the Republic of Suriname is of sufficient seriousness and dignity to warrant this Court's consideration.

Contrary to the argument of the Government in its Brief in Opposition, it is not the detained Public Minister,

Commander Boerenveen, who here seeks review.

Rather, it is the Republic of Suriname, a foreign sovereign, which seeks to invoke the original jurisdiction of this Court as "a necessary substitute for the power (sic) of ... diplomacy ... previously ... relied upon". South Carolina v. Regan, 465 U.S. 367 (1984) at 397. 1124.

In this instance, unlike Ex parte Peru, supra, the foreign sovereign was unable to obtain relief through diplomatic negotiations. The formal request of the Republic of Suriname to "the Department of State, the political arm of the Government charged with the conduct of our foreign affairs" (Ex parte Peru, supra, at 588) made through its Ambassador to the United States for allowance of its claim and a

certificate of immunity was denied. Accordingly, the Republic of Suriname is left with no alternative but to seek redress through "the compulsions of judicial proceedings". Ex parte Peru, supra, at 589.

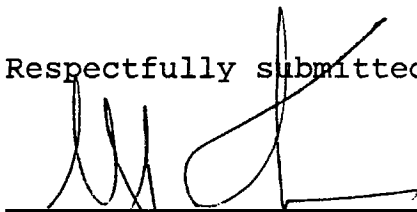
While the grant of original jurisdiction in Article III, Section 2, Clause 2, matters has, according to one commentator "almost never been used" because of the "diplomatic immunity which attaches to ambassadors and other public ministers" C. Wright, Federal Courts Section 110 (1966), certainly when the claim of a foreign sovereign which may be "normally presented and settled in the course of conduct of foreign affairs by the President and by the Department of State" Ex parte Peru, supra, at 58, is

not so resolved, then the appropriate forum mandated by the Framers for review through the exercise of its original jurisdiction is the Supreme Court. South Carolina v. Regan, supra, at 396-397.

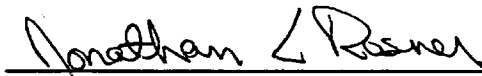
CONCLUSION

The Motion of the Republic of Suriname for leave to file a Petition for Issuance of a Writ of Habeas Corpus should be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the foregoing Reply of Republic of Suriname to Brief for the United States in Opposition, were mailed this 23rd day of November, 1987 to: THE SOLICITOR GENERAL OF THE UNITED STATES, Department of Justice, Office of the Solicitor General, 10th and Constitution Avenue, N.W., Room 5143, Washington, D.C. 20530.



MYLES J. TRALINS, ESQ.

