

**SUPREME COURT
OF THE UNITED STATES**

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WASHINGTON, D.C. 20543

In the Matter of:)
)
UNITED STATES,)
)
)
Petitioner,)
)
v.)
)
IKE KOZMINSKI, ET AL.)
)
)

No. 86-2000

Pages: 1 through 39
Place: Washington, D.C.
Date: February 23, 1988

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IN THE SUPREME COURT OF THE UNITED STATES

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UNITED STATES,	:
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Petitioner,	:
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v.	: No. 86-2000
	:
IKE KOZMINSKI, ET AL.	:
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Washington, D.C.

Tuesday, February 23, 1988

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 12:59 o'clock p.m.

APPEARANCES:

WILLIAM BRADFORD REYNOLDS, ESQ., Assistant Attorney General, Department of Justice, Washington, D.C.; on behalf of the petitioner.

CARL ZIEMBA, ESQ., Detroit, Michigan; on behalf of the respondent.

I N D E X

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WILLIAM BRADFORD REYNOLDS, ESQ.	
on behalf of the petitioner	2
CARL ZIEMBA, ESQ.	
on behalf of the respondent	23

P R O C E E D I N G S

(12:59 P.M.)

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2
3 CHIEF JUSTICE REHNQUIST: We will hear argument now
4 in Number 86-2000, United States versus Ike Kozminski.

5 Mr. Reynolds, you may proceed whenever you are
6 ready.

7 ORAL ARGUMENT OF WILLIAM BRADFORD REYNOLDS, ESQ.

8 ON BEHALF OF THE PETITIONER

9 MR. REYNOLDS: Mr. Chief Justice, may it please the
10 Court, this case looks to the Thirteenth Amendment and its
11 implementing legislation, principally Section 1584, Title XVIII
12 of the U.S. Code, which makes it a crime for any person to
13 knowingly and wilfully hold another to involuntary servitude.
14 At issue are the sorts of conduct the term "involuntary
15 servitude" can properly reach.

16 Is it limited solely to the use of physical or legal
17 force or the threat thereof, as the Second Circuit has held,
18 or, as the court below concluded, may a defendant also be
19 criminally liable if he uses fraud and deceit to hold another
20 against his or her will, at least as to certain classes of
21 individuals, minors, immigrants, or mentally incompetent, or
22 as we maintain and as the Ninth Circuit has held, may other
23 forms of coercion also lead to criminal culpability if such
24 behavior was intended to compel another to work against his or
25 her will and did in fact have that result?

1 The actual backdrop in this case for deciding the
2 issue is briefly the following. Mr. and Mrs. Kozminski, with
3 the help of their son, John, ran a family dairy farm outside
4 Ann Arbor, Michigan. In about 1967, a farmhand named Bob
5 Fulner was brought to work on the farm. Several years later,
6 in the early 1970s, a second man, Lewis Molitoris, was brought
7 to the farm to work. Both men were moderately retarded. They
8 viewed the world in much the same way as children between the
9 ages of seven and ten years of age. The men generally worked
10 from 3:00 o'clock in the morning until 8:30 or 9:00 o'clock
11 at night, seven days a week, no holidays, performing heavy
12 farm labor, including the cleaning of cow manure out of the
13 barn by hand twice a day.

14 They were initially paid \$15 a week plus room and
15 board, but that pay was reduced to \$1 a week and then was
16 stopped altogether. From about 1980 on, the two men were
17 housed in an insect-infested trailer that had broken windows,
18 no running water, no lights, and no heat. They were dressed
19 in torn clothes that did not provide protection against the
20 cold and that remained filthy because the only washing machine
21 that was available to them was broken.

22 They were denied medical assistance even when they
23 suffered serious injuries, and were given food consisting
24 largely of mouldy bread and cold cuts that left them
25 serious nutritional deficiencies. They were regularly

1 subjected to physical and verbal abuse for not working as
2 directed. They were told not to leave the farm, and they were
3 threatened that they would be sent to institutions if they
4 did so. Both men --

5 QUESTION: Mr. Reynolds, do you think the government
6 could win at trial without a broad definition of this
7 statute and without the use of psychological testimony?

8 It sounded to me when I read the description in the
9 briefs of the case that with evidence of physical beatings
10 and threats of commitment that the government didn't need a
11 broad interpretation of the statute here, in this case.

12 MR. REYNOLDS: Justice O'Connor, I think that we
13 certainly feel that we could prevail in this case without
14 the psychological testimony. However, I think that there is
15 a serious question in this case that would attach if we were
16 to follow the Sixth Circuit's standard because it does not
17 go beyond physical coercion unless you --

18 QUESTION: Well, one thing that is a concern, of
19 course, is that these are criminal statutes.

20 MR. REYNOLDS: Right.

21 QUESTION: And presumably we have a rule of lenity,
22 and the concern that one has in interpreting it broadly is,
23 what do you do about services performed by someone because of
24 the attraction of a loved one or the charisma of a spiritual
25 or a political leader, or for example an adult child who may

1 work for years taking care of an invalid parent out of fear
2 that they will be cut off without an inheritance if they
3 don't? I mean, how do you take care of all those things?
4 Are all these criminal offenses?

5 MR. REYNOLDS: Well, that obviously is the
6 difficulty that the lower courts wrestle with. The statute
7 is directed at a condition, which is involuntary servitude,
8 and the --

9 QUESTION: Do we know what servitude is?

10 MR. REYNOLDS: I think that servitude is, as I
11 understand the elements of that statute, it would include
12 that a person is made to work for a defendant, to provide
13 services for that defendant against his will, that that
14 defendant has to specifically --

15 QUESTION: Well, the against the will component
16 would seem to me to go to what is involuntary. I just
17 wondered what servitude was.

18 MR. REYNOLDS: Servitude would be to perform
19 services for the defendant who is exerting the coercion.

20 QUESTION: Any kind of services?

21 MR. REYNOLDS: Well, I think that it contemplates
22 largely in the employment relationship.

23 QUESTION: Like shoveling manure.

24 MR. REYNOLDS: I am sorry?

25 QUESTION: Like shoveling manure.

1 MR. REYNOLDS: That would certainly be within the --

2 QUESTION: Well, I used to have to do that as a
3 youngster. Now, I suppose I was in servitude?

4 MR. REYNOLDS: Well, first the definition of
5 servitude under the Thirteenth Amendment is one that has been
6 traditionally recognized and was at the time to exclude
7 certain relationships, such as the parent-child relationship.
8 I think that beyond that, though, what you have to look to is
9 why, what the conditions are, the elements are for the
10 performing of the servitude. This is involuntary servitude.
11 It is one that is brought about by reason of the fact that the
12 defendant has, through certain conduct, intentionally caused
13 the result of having a victim provide the services against
14 his will, and I think there are three elements there that are
15 essential.

16 You have to show that the person is made to work
17 against his will. You have to show that that was
18 specifically intended by the defendant. And you have to show
19 that the defendant's conduct actually caused the intended
20 result. And unless you have all three of those elements,
21 then you don't have the necessary evidence for --

22 QUESTION: Well, what about the adult child who
23 doesn't want to have to take care of an invalid parent but
24 feels compelled to do so?

25 MR. REYNOLDS: Well, I think that again you have got

1 to have -- that would address the state of mind of the person
2 who was providing the services. That does not suggest that
3 there is somebody who is exerting the kind of influence or
4 manipulation over that person to make them work against their
5 will, nor do you have the causal link.

6 QUESTION: But you would acknowledge there could be
7 facts that would fit within it if the parent indeed was
8 exerting some kind of psychological pressure on the offspring
9 to make them do it.

10 MR. REYNOLDS: I think that there has to be -- I am
11 not sure psychological pressure alone would work. If you are
12 saying, can you posit a situation where a parent would engage
13 in coercive conduct of an overbearing nature with the intent
14 of forcing the child to perform certain services that the
15 child felt compelled to do and would otherwise not do, and
16 that that conduct caused that result to come about, that would
17 fall into the realm, it seems to me, of the kind of evidentiary
18 picture that would have to go to a jury to decide the state
19 of mind of both of the participants and the causal link that
20 is necessary.

21 QUESTION: Mr. Reynolds, do you agree with the
22 instruction that the District Court gave?

23 MR. REYNOLDS: I think that generally the
24 instruction that the District Court gave on those elements
25 are acceptable.

1 QUESTION: So you don't think a new trial was
2 necessary, that the Court of Appeals should have affirmed.

3 MR. REYNOLDS: Well, there is another element of
4 the case that went to the testimony of -- psychological
5 testimony that we did not bring to the Court that was thrown
6 out by the court below, which is why you would have to have
7 a new trial.

8 QUESTION: Well, I thought they ordered a new trial
9 because the District Court's definition was too broad.

10 MR. REYNOLDS: Well, they did. I'm sorry, I mis-
11 understood your question. The Sixth Circuit felt that their
12 definition was too broad, that you had to limit the scope of
13 the conduct reachable here to physical coercion.

14 QUESTION: You think the Court of Appeals should
15 have affirmed the conviction?

16 MR. REYNOLDS: That's right, I think it should have
17 affirmed the conviction.

18 QUESTION: And hence the instruction is perfectly --
19 was a proper one.

20 MR. REYNOLDS: Was a proper instruction. That's
21 correct.

22 QUESTION: Mr. Reynolds, let's get back to Justice
23 O'Connor's question about the meaning of servitude for a
24 moment. Take a fraternity hazing, where people may be
25 involuntarily performing services for a period of 24 hours.

1 Is that the sort of -- entirely apart from the involuntary
2 aspect, is that servitude for purposes of this statute?

3 MR. REYNOLDS: I would not think that that would be
4 servitude for purposes --

5 QUESTION: Why not?

6 MR. REYNOLDS: Well, I don't think that that is what
7 the statute contemplates as requiring that a specific service
8 be provided by the individuals who are hazed.

9 QUESTION: Well, supposing you are --

10 MR. REYNOLDS: That is a membership requirement to
11 get into a fraternity.

12 QUESTION: Yes, but that would be involuntary.
13 Supposing they are told just to scrub the floors and scrub
14 them and scrub them and scrub them for 24 hours.

15 MR. REYNOLDS: Well, I think that -- oh, I see what
16 you -- I guess technically one could say that would be
17 servitude, although I think if it is a hazing thing it is
18 an aberrational -- I mean, it is not to hold them in
19 service to do work for a term which I think would have to be
20 more than a --

21 QUESTION: How could it be servitude when you pay
22 for it? You pay the dues to sweep those floors. That is not
23 servitude.

24 MR. REYNOLDS: I guess the question went to before
25 they got in. Whether that --

1 QUESTION: You pay the dues when you apply to a
2 fraternity.

3 QUESTION: Mr. Reynolds, I am hung up on the
4 involuntary part, not the servitude part. It seems to me
5 that there is no such thing as, if you take it literally,
6 there is no such thing as involuntary servitude. There is
7 such a thing as involuntary imprisonment, or involuntary --
8 but you don't work for somebody unless you want to work for
9 them. So really it is just a matter of what the alternative
10 is. You want to work for them if the alternative is, he is
11 going to kill you, or if the alternative is, he is going to
12 beat you.

13 Now, what other alternatives -- I mean, involuntary
14 doesn't mean literally involuntary. It means, right, that
15 the alternative is unattractive.

16 MR. REYNOLDS: I think it has to be more than
17 unattractive. I think it has to be so intolerable as to be
18 unacceptable, and I would take the death or beating. I do
19 think, for example --

20 QUESTION: Well, why not limit it to death or
21 beating or some physical harm? Once you leave that, I don't
22 know what you are left with. You will deprive yourself of
23 the love of your father if you don't do what he says, or of
24 the love of a spiritual leader? Once you leave physical harm,
25 what do you --

1 MR. REYNOLDS: I think, for example, that you could
2 hypothesize a case involving hypnosis, where somebody was
3 hypnotized and told when they woke up they were going to
4 have the kind of conditions of these two men here and perform
5 whatever tasks they were asked to perform and would indeed be
6 in servitude involuntarily by reason of hypnosis. It seems
7 to me that would be a situation not involving physical coercion
8 or legal coercion that clearly is reached by the involuntary
9 servitude condition, so I think it is the case that you can
10 have an involuntary situation.

11 More likely than not what you are going to be
12 wrestling with under involuntary is whether indeed the
13 situation is so intolerable as to leave you no viable choice
14 but to do the work. Now, in this case, for example --

15 QUESTION: What do you mean, so intolerable? Surely
16 that depends on the individual. If I am an adherent of a
17 particular religious cult, depriving me of the love of the
18 leader of that cult is the worst thing in the world that
19 could happen to me. I mean, that is intolerable to me.

20 MR. REYNOLDS: Well, and that goes to one of the
21 elements of the offense, which is the state of the mind of the
22 victim. Whether or not it is so intolerable as to justify a --

23 QUESTION: So that could qualify then. That could
24 qualify.

25 MR. REYNOLDS: I think there are situations that

1 could qualify, for example, where a religious -- in a religious
2 situation where the leader of the cult believed that beating
3 of children or adults was the reflex response to ensure that
4 they would indeed adhere to him and his edicts, that that
5 could indeed get to the point of being, and kept them, kept
6 people basically in that kind of condition --

7 QUESTION: What about depriving me of my father's
8 love? I am no longer a minor. I am an adult. But I truly
9 love my father, and he says, you know, son, I want you to work
10 in my business, and I say, Dad, this is really not what I like
11 to do, but for you, for you I will do it, and it is the most
12 important thing in the world to me.

13 MR. REYNOLDS: There again, I think that you are
14 addressing only one feature of the element of the crime. If
15 your father is making demands of that sort with the intent of
16 keeping you there against your will knowing it will have
17 that and that his particular conduct causes that to happen,
18 and indeed you have been left with no viable alternative,
19 then I think that you would have to -- that would raise a
20 question.

21 QUESTION: I think you are going to destroy a lot
22 of family businesses in this country.

23 MR. REYNOLDS: Well, I think that the -- again, I
24 am not sure that that -- I don't think that that does follow,
25 because I think what that suggests is that the specific

1 intent factor that is necessary in the criminal case, and
2 the intent factor for the state of mind of the victim are a
3 lot more casual than they are under this code.

4 QUESTION: Mr. Reynolds, shouldn't we leave a lot
5 to the wisdom of the prosecutor? I can't imagine a prosecutor,
6 a U.S. Attorney prosecuting a father for making his son work.

7 MR. REYNOLDS: Certainly the prosecutor --

8 QUESTION: They just wouldn't bring a case like
9 that, would they?

10 MR. REYNOLDS: I agree with you, Mr. Justice
11 Marshall. I think that certainly the history of this
12 statute, the prosecutors have rarely -- this statute has been
13 used rarely by prosecutors, I think 19 times since '77, and
14 most of those are in connection with the migrant worker kind
15 of a context, where you have individuals brought over as
16 migrant workers, and then basically detained on the farm and
17 not allowed to go and not paid wages.

18 QUESTION: Mr. Reynolds, can I interrupt you and go
19 back a minute to your discussion of servitude? Would you
20 think that the statutory definition would have been met in
21 this case if these people had been paid the minimum wage and
22 overtime for their extra hours and had lived in a clean
23 trailer? Equally involuntary. All your evidence of
24 voluntariness is the same.

25 MR. REYNOLDS: I don't think so. I think those are

1 factors that are in the mix that you have to consider, but
2 I think that if you take those two factors out and you still
3 have the physical abuse and the verbal abuse and you still
4 have the threat of institutionalization, and you still have
5 the isolation that you would have a situation in this circum-
6 stance, it seems to me, where you would still have the case,
7 and --

8 QUESTION: You think it would still be servitude
9 if the terms of employment were perfectly normal and legiti-
10 mate. Here it seems to me that the case for calling it
11 servitude is much stronger when you have the kind of facts
12 you have here.

13 MR. REYNOLDS: I don't disagree.

14 QUESTION: Although I am not sure they have any-
15 thing to do with voluntariness.

16 MR. REYNOLDS: I don't disagree that it is stronger
17 if you are not paying somebody and keeping them in the
18 situation then there is certainly more reason to --

19 QUESTION: I suppose in terms of voluntariness,
20 the worse the conditions are, the more likely it is that
21 somebody would want to leave. I mean, I don't know how it
22 adds to the pressure not to feed people well. I would think
23 they would want to get out.

24 MR. REYNOLDS: I think that that certainly is in
25 the balance, and what you have to do is weigh that against

1 what it is -- what the pressures are on the other side that
2 are being exerted by the defendant to compel them to stay.
3 That again goes to the looking at the coercive conduct. I
4 think the mistake that was made by the Sixth Circuit here is
5 that it said the only thing you could look to is physical
6 coercion, and that that was all that as an evidentiary matter
7 was allowed to be introduced to the jury in terms of deter-
8 mining whether you had the conditon that was condemned, which
9 is the condition of involuntary servitude.

10 QUESTION: Or threatened state-imposed legal
11 coercion, I thought --

12 MR. REYNOLDS: That's right.

13 QUESTION: -- which may have been present here.

14 MR. REYNOLDS: I think that has reference to --

15 QUESTION: With mental institutions.

16 MR. REYNOLDS: -- the peonage situtaion --

17 QUESTION: Well, it didn't say that.

18 MR. REYNOLDS: -- Justice O'Connor.

19 QUESTION: It didn't say that.

20 MR. REYNOLDS: I think that is what the legal
21 coercion would amount to, where somebody owes a debt
22 and is being held to pay off the debt.

23 QUESTION: If you threaten someone with invoking
24 the law to institutionalize them, that is certainly legal
25 force, isn't it?

1 MR. REYNOLDS: I think that if you -- well, if
2 you were -- that is coercion. I am not sure that it is
3 legal coercion in the same sense that is understood by that
4 term as it has been used, which goes to basically holding
5 somebody to pay off a debt that they do owe.

6 QUESTION: I take it, Mr. Reynolds, that you would
7 not accept the same definition in this case as you would in
8 a criminal case for the law of duress. A criminal defendant
9 claims that he was forced to do something, and the government
10 always takes a very strict line there. Duress is permitted
11 only if there is no reasonable means of escaping imminent
12 physical harm.

13 I take it you argue for something more broad
14 than that.

15 MR. REYNOLDS: On the side of the victim?

16 QUESTION: Yes.

17 MR. REYNOLDS: Well, more -- it is not very far
18 from that, but it is -- what we are arguing here is that it
19 has to be -- that the victim has no tolerable choice, that
20 effectively choice has been removed to do anything but what
21 he is being compelled to do, that on the -- either that he
22 has lacked -- has a lack of capacity to make any choice, and
23 that is one of the features that is at play in this case,
24 given the mental retardation of these individuals --

25 QUESTION: That is just a subjective component.

1 There is no objective component as well, that a reasonable
2 person would have to believe he or she had no choice?

3 MR. REYNOLDS: No, I don't think so. I think that
4 what has to be demonstrated is the state of mind of the victim
5 with regard to the conduct that that victim is being subjected
6 to as well as the state of mind of the defendant who is
7 exerting this kind of coercive conduct on him, and then you
8 have to also prove that the conduct of the defendant which was
9 intended to cause this result of involuntary servitude did
10 in fact cause it, and I think it is that burden of proof
11 that provides ample protection against the kinds of hypothe-
12 ticals that seem to be of some concern --

13 QUESTION: But the jury always is going to have
14 some sort of evidence from which they can deduce intent.
15 There are no eye witnesses to intent. And that is pretty
16 much a jury call. It strikes me that your definition of
17 this is very, very amorphous for a criminal statute.

18 MR. REYNOLDS: The definition of involuntary
19 servitude?

20 QUESTION: The definition of both servitude and
21 involuntary, particularly if there is no reasonable man
22 standard for Justice Scalia's hypothesis when the father wants
23 the son to keep working. If in fact the son is very -- has a
24 will that is very easily overpowered, then that is enough,
25 I take it, even though a reasonable person would not be

1 overpowered by similar inducements from a father.

2 MR. REYNOLDS: Well, I think that that is not
3 unusual, though, in criminal law. I mean, look at a crime
4 of kidnapping or extortion, rape. You have the same kind of
5 situation, and the courts are called upon all the time to
6 assess the subjective intent of in those instances both the
7 -- well, of the victim certainly and of the specific intent
8 of the perpetrator of the crime. That is not a task unfamiliar
9 to the criminal law or to juries, I think.

10 QUESTION: But with kidnapping and other crimes
11 you have objective factors that have to be present as well as
12 the intent, and here there seems to be quite a dearth of
13 objective factors. You know, you have to hold someone against
14 their will. Now, holding someone is fairly easy to define.
15 But --

16 MR. REYNOLDS: You have to hold someone to
17 involuntary servitude here.

18 QUESTION: Yes, but what you are talking about in a
19 typical kidnapping statute is a physical restraint, and here
20 obviously your definition embraces something a good deal more
21 than a physical restraint.

22 MR. REYNOLDS: Well, in the kidnapping statute
23 you have to hold them against their will. In the rape
24 statute it has to be without consent. In the extortion
25 statutes, again, you have to look -- there is no -- it seems

1 to me that the element that the jury has to determine is the
2 intent factor in the same instance of the two parties, and
3 that that -- that that burden that has to be met is what
4 protects against the kind of a hypothetical that Justice
5 Scalia offered.

6 QUESTION: What differs in all of those cases,
7 though, is what I suggested earlier. It is really true that
8 you can kidnap someone against their will, and all you have
9 to show is that you intended to kidnap. You really cannot
10 get somebody to work in the literal sense against his will.
11 He wills to work. I mean, only because the choice you have
12 given him is even worse than working, so you really can't
13 compare what you do under these other criminal statutes.

14 MR. REYNOLDS: But that then is a failure of all
15 of the Courts of Appeals decisions. I mean, that would be
16 true than if we simply limited it to physical coercion.

17 QUESTION: Well, that is right, but --

18 MR. REYNOLDS: I mean, the fact is that if you are
19 to -- if you reach that conclusion that proves too much. It
20 is the case that there are certain conditions to which someone
21 is subjected to that are so intolerable as to render no other
22 choice meaningful.

23 QUESTION: All it proves is that the test can't be
24 whether the person really wills it or not, that your focus
25 on the voluntariness is a focus on something which never

1 exists. In all cases it is voluntary in some sense, so it
2 seems to me what you have to look to is the choice that is
3 given. That is the only thing that distinguishes one case
4 from the other. What is the choice that forces you to
5 accept this one rather than the other one, voluntarily?

6 MR. REYNOLDS: I guess at one level one could say
7 that, although taking this case, where you have two individuals
8 who view the world in the same eyes as children of age seven
9 to ten, and who are convinced as to no choice but to do that
10 which the authoritative figure instructs them to do, add to
11 that all of the other indicia of coercion that are in this
12 case, and it seems to me that it is easy to conclude that here
13 these individuals believed that they had no other choice than
14 to stay in the circumstances they were in, and that that was
15 what kept them there, notwithstanding the kind of living
16 conditions that Justice White mentioned.

17 QUESTION: What about the person who is absolutely
18 convinced that all he has to do is quit his job and he will
19 starve to death, that he can never get another job, and he
20 sticks around because the person wants to keep him and will
21 pay him?

22 MR. REYNOLDS: Well, I think that that is a
23 distinction, though, that is important. It doesn't seem to
24 me that we are talking here about societal conditions that
25 might lead one to the conclusion they stay where they are.

1 It has to be the conduct of the defendant that causes the --
2 that exploits the individual and causes the individual to
3 be compelled to stay.

4 QUESTION: Well, the defendant says, I want you to
5 do this job, and I will pay you a certain amount of money,
6 and I want to keep you here, and I am sure that if you quit
7 you will never get another job. As a matter of fact, I
8 picked you out of the unemployment line on purpose.

9 MR. REYNOLDS: I think that in some respects that
10 is the factual backdrop in this case, where this defendant
11 led these two people to believe that if they did not stay here
12 that there was nothing out there, no job, no home. They
13 would --

14 QUESTION: So in my example, yes, it might be --
15 you might be able to make a prima facie case.

16 MR. REYNOLDS: You might be able to do that if you
17 can demonstrate that -- there again, you have to demonstrate
18 that the defendant set about to achieve that result, intended
19 to achieve it, and that the victim --

20 QUESTION: He goes to the unemployment office and
21 finds a -- somebody who looks suitable, and brings him out to
22 his farm, and has him work, and pays him, and has him
23 work hard, and the fellow -- and he feeds him well and all
24 that, but the reason they stay, they can't stand farm work,
25 but the reason they stay is that they are just sure they would

1 be destitute. And the employer agrees with them, you would
2 be destitute if you left here, so stick around. That makes
3 out a case under your theory, I guess.

4 MR. REYNOLDS: Well, that is close. I think that
5 you -- again, the lynchpin in terms of that is whether the
6 reason they stay around is because the alternative is so
7 intolerable as to be wholly unacceptable, akin to death or --

8 QUESTION: Well, anybody would rather eat than
9 starve, I suppose.

10 QUESTION: Isn't that the whole point, that what
11 anybody would do what the jury would do, and the jury in this
12 case convicted? And in a case like all of these horrors
13 that are being presented, no reasonable minded jury would
14 convict. Isn't that the solution?

15 MR. REYNOLDS: I think that in these hypotheticals,
16 that a jury would be unlikely to convict because again I think
17 we keep focusing on these hypotheticals on one aspect as
18 opposed to three elements. It is not only the state of mind
19 of the victim, it is the state of mind of the defendant, and
20 it is also the causal link that says that defendant's conduct,
21 which was intended to cause this involuntary servitude
22 situation, did in fact cause it, and I think with that as
23 being the element of proof, that you have the protections that
24 will ensure that the kinds of cases that result in conviction
25 are the ones that have the factual backdrop such as we have

1 here.

2 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Reynolds.

3 Mr. Ziemba, we will hear next from you.

4 ORAL ARGUMENT OF CARL ZIEMBA, ESQ.

5 ON BEHALF OF THE RESPONDENT.

6 MR. ZIEMBA: Mr. Chief Justice, and may it please
7 the Court, I should like to call the Court's attention first
8 to the fact that the lower courts reversed the convictions
9 of the defendants on two bases, and that the Solicitor General
10 is not urging this Court that the judgment of the lower court
11 was erroneous in ordering a new trial. All that the Solicitor
12 General is asking this Court to do is to amend the definition
13 of involuntary servitude.

14 QUESTION: But if there is going to be a new trial,
15 the Solicitor General is interested in having the right
16 instructions to the jury.

17 MR. ZIEMBA: That's all.

18 QUESTION: Well, that's quite a bit. There is no
19 use going through a --

20 MR. ZIEMBA: Yes, I just wanted --

21 QUESTION: There is no use going through a trial
22 for nothing and then having to go through it again.

23 MR. ZIEMBA: Right, I just wanted to make that
24 clear.

25 Now, it does seem to me that the definition of

1 involuntary servitude being advocated by the Solicitor General
2 is too broad. It casts its net too broadly. It is too
3 amorphous. It is too indefinite. It leaves too much room
4 for the government to decide what conduct is improper, leading
5 to a condition of which the government disapproves. This is
6 what the Solicitor General states on Page 30 of his brief.

7 "A person may be held to involuntary servitude by being
8 intentionally deprived of the ability to make a rational
9 choice not to remain in the master's service." In short, the
10 servant or the servitor may not be making a complaint at all
11 to anyone concerning his condition over a period of many years,
12 but if the government decides that the condition of the servant
13 in the eyes of the government is undesirable, or intolerable,
14 then the government concludes that the servant has been
15 deprived of an ability to make a rational choice to remain
16 in his condition.

17 In other words, it seems to be an application of the
18 post hoc ergo proctor hoc argument --

19 QUESTION: But in this case aren't we dealing with
20 a jury verdict, not what the prosecutor did?

21 MR. ZIEMBA: Well, I think --

22 QUESTION: Are we? Is that true?

23 MR. ZIEMBA: Half true. It was the government's
24 decision to present to the jury --

25 QUESTION: But that is not what you are complaining

1 about?

2 MR. ZIEMBA: No, but in answer to your --

3 QUESTION: You are complaining about the judgment.

4 MR. ZIEMBA: In answer to your question.

5 QUESTION: And what a jury decided.

6 MR. ZIEMBA: Yes, but you see, I am convinced that
7 in this particular case, and I --

8 QUESTION: Didn't you file a motion to dismiss the
9 indictment?

10 MR. ZIEMBA: I am sorry?

11 QUESTIN: Didn't you file a motion to dismiss the
12 indictment?

13 MR. ZIEMBA: I was not trial counsel. I did not
14 move to dismiss --

15 QUESTION: Well, was it filed? It could have been
16 filed, and you could have -- all of this could have been
17 washed out.

18 MR. ZIEMBA: I really can't recall, Your Honor,
19 whether or not a motion of that nature was filed.

20 QUESTION: (Inaudible.)

21 MR. ZIEMBA: Yes, but you see, I --

22 QUESTION: What should the instruction be, in
23 your view?

24 MR. ZIEMBA: I'm sorry?

25 QUESTION: What should the instruction be in your

1 view?

2 MR. ZIEMBA: The instruction should be as defined
3 by the Sixth Circuit. It should encompass the following
4 definition. "We conclude that a holding to involuntary
5 servitude occurs when, A, the servant believes that he or
6 she has no viable alternative but to perform service for the
7 master, B, because of, 1, the master's use or threatened use
8 of physical force, or 2, the master's use or threatened use
9 of state-imposed legal coercion, for example, peonage, or
10 3, the master's use of fraud or deceit to obtain or maintain
11 services where the servant is a minor, an immigrant, or one
12 who is mentally incompetent."

13 Now, that definition in my opinion, I respectfully
14 submit, embraces objective criteria which can be explained
15 to a jury and which a jury, if they mean to convict, can find
16 factual bases for the finding of the criteria --

17 QUESTION: Mr. Ziemba, that --

18 MR. ZIEMBA: -- but psychological --

19 QUESTION: Well, what about your opponent's,
20 Mr. Reynolds' suggestion of a hypnotized person? That would
21 not cover that. And wouldn't that be about as plain a case
22 as you could get of an involuntary relationship?

23 MR. ZIEMBA: My personal opinion, Justice Stevens,
24 is that there is no such thing as hypnosis unless the subject
25 wants to be hypnotized. I maintain that a person who resists

1 the arts of the hypnotist can never be hypnotized.

2 QUESTION: Well, you may or may not be right. But
3 at least you would agree that the hypnotic case would not be
4 covered. You just say, that is not important because it
5 never happens. But it would not be covered under the
6 definition of --

7 MR. ZIEMBA: I would say that if a person complains
8 about being hypnotized into a particular pattern of conduct,
9 I would say that he voluntarily undertook that pattern of
10 conduct because he voluntarily permitted himself to fall under
11 the sway of the hypnotist. That is the only way hypnosis can
12 result.

13 QUESTION: Okay. What about these people? Do you
14 think these particular victims made a voluntary choice to
15 live under these conditions?

16 MR. ZIEMBA: I think they did. You must understand
17 that I am not here to make a brief for my clients as to the
18 payment of wages and living conditions and what have you. But
19 I think that these two individuals found themselves in such
20 conditions in life, one was living in a cardboard box in the
21 wintertime along the river in the city of Ann Arbor, Michigan,
22 and the other one, I forget what, but he had been working on
23 a farm in the vicinity of the defendant's farm. And they both
24 were invited to come to the farm to work.

25 I don't think they knew any other type of work.

1 They were unskilled. I don't -- and of course these were
2 bachelors. These were men without families. Being a
3 bachelor myself, I know how bachelors tend to live. They
4 don't tend to live as orderly and as cleanly as women do.
5 But they were given food, and there is nothing in this record
6 to show that all their food was mouldy. They were given
7 weekly supplies of food, and they prepared their own food,
8 and they ate what they wanted to eat, and they watched their
9 television shows, and they had a place where they could take
10 a shower or a bath in sort of a concrete bunkhouse.

11 They had 25 cats living in the trailer. I would
12 have to judge --

13 QUESTION: Big trailer.

14 MR. ZIEMBA: I'm sorry?

15 QUESTION: Big trailer.

16 MR. ZIEMBA: Or they certainly loved cats.

17 QUESTION: Or both.

18 MR. ZIEMBA: And there was no interference with
19 their love of cats.

20 QUESTION: Or little cats, maybe.

21 (General laughter.)

22 MR. ZIEMBA: And they weren't fenced in. There was
23 no firearms or anything of that nature, no threats made that
24 ill would befall them if they left forever. They went into
25 town periodically. They encountered police officers in town

1 and never made a complaint to police officers --

2 QUESTION: What about the threat to institutionalize
3 them? Is that true? Is that in the record?

4 MR. ZIEMBA: Yes, and then the follow-up question
5 to the individual who was one of the -- was, did that
6 frighten you? Did you like being in the institution? Oh,
7 yes, I liked it very much. I wouldn't mind going back.

8 QUESTION: A mentality of seven to ten years old.

9 MR. ZIEMBA: Your Honor --

10 QUESTION: You have got to do better than that.

11 MR. ZIEMBA: Well, you see, this is the testimony
12 of a tester of psychology. In other words, we test intelli-
13 gence. We give people intelligence tests. What are we
14 really measuring? Is it really intelligence, or is it
15 literacy? Can an illiterate basically intelligent person,
16 as we all understand that term, can such a person pass the
17 ordinary intelligence test? I doubt it very much.

18 QUESTION: Did you put in --

19 MR. ZIEMBA: You take an average --

20 QUESTION: Did you put in --

21 MR. ZIEMBA: I am sorry?

22 QUESTION: Did you put in any testimony contrary
23 to that?

24 MR. ZIEMBA: Oh, yes. The defendants called a
25 very highly respected psychiatrist from the Detroit area.

1 QUESTION: Was he the same type as the other one?

2 MR. ZIEMBA: I am sorry?

3 QUESTION: Was he the same qualification?

4 MR. ZIEMBA: Higher. Higher qualifications than --

5 QUESTION: So you think you have one, and I have one.
6 Right?

7 MR. ZIEMBA: There was one for the --

8 QUESTION: Is that your position?

9 MR. ZIEMBA: -- prosecution and one for the
10 defendant.

11 QUESTION: Is that your position?

12 MR. ZIEMBA: I am sorry?

13 QUESTION: Is that your position, that you had one
14 on one side and one on the other side?

15 MR. ZIEMBA: That is a fact.

16 QUESTION: That is your fact, and the jury
17 decided which one was to be followed. Is that correct?

18 MR. ZIEMBA: Well, I think we have to infer that.

19 QUESTION: Is that -- you admit that?

20 MR. ZIEMBA: We have to infer that, yes.

21 QUESTION: Well, what are we arguing about?

22 QUESTION: Well, you don't necessarily need to infer
23 that they believed that they had the mental ability of a
24 seven or eight-year-old.

25 MR. ZIEMBA: That's true. That's true.

1 QUESTION: Well, what do you have juries for?

2 MR. ZIEMBA: Well, sometimes I seriously ask that
3 question of myself --

4 QUESTION: You asked for a jury, didn't you?

5 MR. ZIEMBA: -- when the verdict comes in adversely,
6 when the question -- when the jury comes in with a verdict
7 favorable to the defendant, I know precisely why we have a
8 jury.

9 QUESTION: Well, Mr. Ziemba, what about the employer
10 who keeps -- who hires a person that he knows is on the run?
11 He is wanted for -- in another state for a crime, and he tells
12 him, either stay and work for me at this wage or I am going to
13 turn you in.

14 MR. ZIEMBA: Oh, I think that falls under the Ingalls
15 case, I believe it was.

16 QUESTION: What is that?

17 MR. ZIEMBA: Where the --

18 QUESTION: Yes, but what about -- does your
19 definition that you are plugging for cover that?

20 MR. ZIEMBA: Oh, yes. Oh, definitely. That is
21 legal coercion.

22 QUESTION: That is legal coercion.

23 MR. ZIEMBA: Yes. Yes.

24 QUESTION: You threaten to get him enmeshed in the
25 -- of the state.

1 MR.. ZIEMBA: Get the hounds of law upon him and
2 send him away to involuntary incarceration, yes. This is
3 legal threat.

4 QUESTION: So the threat of putting them in a
5 mental institution is the same sort of thing.

6 MR. ZIEMBA: I would think so, yes.

7 QUESTION: Would the threat to sue him for a debt
8 be that sort of coercion, or does legal coercion have to
9 include the possibility of imprisonment or confinement?

10 MR. ZIEMBA: I really haven't given consideration
11 to the threat to sue for an indebtedness. I think that
12 that might -- that comes very close to peonage, I would
13 guess just off the top of my head.

14 QUESTION: What about the threat to strand him --

15 MR. ZIEMBA: I'm sorry?

16 QUESTION: What about the threat to strand him in
17 the desert or lock him in his room?

18 MR. ZIEMBA: That is --

19 QUESTION: That is not legal, and it is not force.

20 MR. ZIEMBA: No, no, that is naked force, I would
21 judge.

22 QUESTION: That is force.

23 QUESTION: What about the threat to turn the
24 employee's brother in? He says, I know your brother, he is
25 working on the next farm. He is wanted in the next state.

1 MR. ZIEMBA: I don't know.

2 QUESTION: Now, you either stay here or I am going
3 to turn him in.

4 MR. ZIEMBA: I don't know. You see, now we are
5 getting into that gray area which we encounter in the
6 analysis of any criminal law. Is it coercion to say unless
7 you perform according to Scriptures, you will spend eternity
8 in the sulfurous fires of hell? I don't know. You see.

9 QUESTION: I thought you said you did know. Now
10 you are talking like the Solicitor General.

11 (General laughter.)

12 QUESTION: It is the Solicitor General who talks
13 about these inevitable gray areas and what not. I thought
14 you were going to give us a nice, clear line. Now you are
15 telling us that you are just as bad as they are. We are
16 looking to you for salvation and there is none, you tell us.

17 MR. ZIEMBA: No, I think I was being a little
18 facetious. However, the danger in the broad definition
19 advocated by the Solicitor General is this, that persons
20 who have a message such as Jesus Christ and Mohammed and Moses
21 had, and who induce people to abandon everything they own and
22 to follow in their steps and in their example, and who devote
23 their lives to the word given by these charismatic religious
24 leaders might be charged under the broad definition of, say,
25 psychological coercion, which deprived the followers of a

1 capacity to make a rational judgment in the eyes of the
2 government as to what they should do. Although they chose
3 a hair shirt, chose to go barefooted through the world with
4 a prayer bowl, the government said, we don't think that this
5 is an appropriate condition for a human being to live in,
6 therefore we must conclude that there was some conduct on the
7 part of the master, some psychological coercion which deprived
8 the follower of his capacity to make a rational judgment and
9 decision as to whether to follow the leader to remain in his
10 service or not.

11 In my opinion, that is the danger and the pernicious-
12 ness in this broad, amorphous definition being advocated --

13 QUESTION: Was there anything in any of the instruc-
14 tions that said what you said?

15 MR. ZIEMBA: In the case at bench?

16 QUESTION: Yes, sir.

17 MR. ZIEMBA: Nothing that remotely --

18 QUESTION: Well, how does it apply here?

19 MR. ZIEMBA: I am sorry?

20 QUESTION: How does it apply here?

21 MR. ZIEMBA: You see, if the definition advocated
22 by the Solicitor General is adopted by this Court and this
23 case is tried according to that definition, then -- and if
24 the trial judge instructs the jury according to this amorphous
25 definition of involuntary servitude which will embrace this

1 nebulous concept of psychological coercion, then the jury will
2 be left at sea without chart or compass to guide them in making
3 a determination whether or not the master, the defendants
4 actually did intend such a consequence, actually had the
5 capacity and the knowledge to subject somebody to psychological
6 coercion --

7 QUESTION: Mr. Ziemba, if you take the Sixth
8 Circuit's definition instead, the rather strictly defined
9 definition, would it not be true that all the evidence about
10 the conditions under which these men lived would be totally
11 irrelevant and probably inadmissible?

12 MR. ZIEMBA: I don't think that they would be
13 totally irrelevant and inadmissible.

14 QUESTION: What would it tend to prove? Most of
15 it, the stuff, how they lived and worked from 3:00 in the
16 morning and so forth, that doesn't show physical force --

17 MR. ZIEMBA: No.

18 QUESTION: -- it doesn't show threatened legal
19 coercion.

20 MR. ZIEMBA: No, I certainly agree with Your
21 Honor's observation that if these two individuals --

22 QUESTION: So what you are really arguing is that
23 all that evidence which somehow, I must confess, seems
24 relevant to the ultimate question, is irrelevant under your
25 definition of --

1 MR. ZIEMBA: It is irrelevant to the question
2 of --

3 QUESTION: Involuntary servitude.

4 MR. ZIEMBA: -- of -- yes, yes.

5 QUESTION: Mr. Ziemba, you really think you couldn't
6 get that evidence in on saying, you know, Your Honor, I want
7 to introduce it, because nobody who has not been threatened
8 with physical coercion would be likely to endure these
9 conditions. It tends to prove that the person was threatened
10 with some physical harm or with some physical coercion. Now,
11 it doesn't necessarily establish that, but it certainly tends
12 to prove it. Wouldn't you be able to get it in on that
13 theory?

14 MR. ZIEMBA: I would agree with Your Honor,
15 absolutely, but then on the other hand I fully agree with
16 Justice Stevens in his observation that all of the conditions
17 in this case being pressed say --

18 QUESTION: (Inaudible.)

19 MR. ZIEMBA: You are next.

20 QUESTION: I mean, while you are at it, if you are
21 going to --

22 MR. ZIEMBA: You are next, Justice Marshall.

23 (General laughter.)

24 MR. ZIEMBA: All the conditions remain the same but
25 the two individuals in this case were paid \$5,000 a month

1 for their labors, the government would not have made his
2 suggestion of involuntary servitude. What this case really
3 comes down to is this. Are the defendants guilty of not
4 paying minimum wage or a decent wage or something of that
5 nature?

6 QUESTION: Any wage.

7 MR. ZIEMBA: I am sorry?

8 QUESTION: Any wage. They didn't pay any.

9 MR. ZIEMBA: Oh, they did, for a while.

10 QUESTION: I mean as of now they weren't paying
11 them any when this case was brought. They weren't paying
12 them any.

13 MR. ZIEMBA: Well, they were getting some payment
14 in kind, food, weekly food, and they were taking --

15 QUESTION: When did you ever consider food to be
16 payment?

17 MR. ZIEMBA: When?

18 QUESTION: When. Payment means money, m-o-n-e-y.
19 Green.

20 (General laughter.)

21 QUESTION: And the only green they had was mouldy
22 bread.

23 (General laughter.)

24 MR. ZIEMBA: Very well, Your Honor... Are there any
25 further questions?

1 (General laughter.)

2 QUESTION: Well, they did get \$10 on holidays,
3 didn't they?

4 MR. ZIEMBA: Something of that nature. There was
5 testimony to that effect.

6 QUESTION: For the County fair and this kind of
7 thing?

8 MR. ZIEMBA: They were taken into town for Sunday
9 dinner. I think they were taken to a baseball game maybe
10 once or twice a year. Something of that nature. Gratuities.
11 Not payment, gratuities.

12 Are there any further questions?

13 CHIEF JUSTICE REHNIQUST: Thank you, Mr. Ziemba.

14 MR. ZIEMBA: Thank you.

15 CHIEF JUSTICE REHNOUIST: Mr. Reynolds, you have
16 used your time.

17 The case is submitted.

18 (Whereupon, at 1:51 p.m., the case in the above-
19 entitled matter was submitted.)
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REPORTER'S CERTIFICATE

DOCKET NUMBER: 86-2000

CASE TITLE: U.S. v. Kozminski

HEARING DATE: February 23, 2988

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence
are contained fully and accurately on the tapes and notes
reported by me at the hearing in the above case before the
UNITED STATES SUPREME COURT.

Date: 2/26/88

Margaret Daly

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