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Emergency-Federal Court Jurisdiction-Fifth  
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FOREIGN SOVEREIGN IMMUNITY ACT—WAR AND NATIONAL EMERGENCY—FEDERAL COURT JURISDICTION—FIFTH AMENDMENT TAKINGS CLAUSE—*Persinger v. Islamic Republic of Iran*, 690 F.2d 1010 (D.C. Cir. 1982).

Sergeant Persinger is a United States Marine who was stationed at the American Embassy in Tehran when it was seized by Iranian militants on November 4, 1979. Two weeks after the hostages were released, Sergeant Persinger and his parents filed suit against Iran in federal district court seeking damages for injuries suffered during the fifteen months he was held in captivity. Pursuant to the executive agreement reached with Iran terminating such claims, the United States intervened as a party-defendant and moved to dismiss the suit. The district court, relying on *Dames & Moore v. Regan*,<sup>1</sup> granted the motion and the court of appeals affirmed.

In arguments before the court of appeals, the plaintiffs urged several grounds for reversal. The first argument advanced was that Executive Order 12,283,<sup>2</sup> issued by President Carter under the terms of the agreement with Iran, was unconstitutional because it attempted to curb the jurisdiction of the federal courts. In rejecting this interpretation, the court concluded that the executive order did not divest the federal courts of jurisdiction, but merely defined a rule of law applicable to certain types of claims.

The court then turned to the related jurisdictional issue of sovereign immunity which the United States had raised as a bar to subject matter jurisdiction in arguments before the district court. On appeal the government proposed, however, that the court not consider the jurisdictional question on the ground that President Carter had lawfully settled the claims of the hostages as part of the executive agreement. The United States claimed, in the alternative, that Iran's immunity under the Foreign Sovereign Immunity Act<sup>3</sup> warranted dismissal of the suit for failure to state a claim upon which relief could be granted. The court ruled that consideration of the jurisdictional question could not be avoided, for if Iran was entitled to sovereign immunity then the court was without jurisdiction to reach the merits of the suit. The court further determined that, for the purposes of the Foreign Sovereign Immunity Act, the seizure of the embassy occurred within United States territory. The reasons underlying this decision were that the

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1. 453 U.S. 654 (1981).

2. 46 Fed. Reg. 7927 (1981).

3. Foreign Sovereign Immunity Act, 28 U.S.C. § 1604 (1976).

United States exercises concurrent jurisdiction over its embassies and that the Act does not require that the covered territory be subject to the exclusive jurisdiction of the United States.<sup>4</sup> The court also decided that the seizure could not be construed as discretionary within the meaning of the Act<sup>5</sup> because the take-over of the embassy violated several treaties<sup>6</sup> between the United States and Iran as well as long-established rules of international law.

After deciding that Iran could not claim sovereign immunity in this case, the court considered the plaintiffs' argument that the President exceeded his constitutional authority under the separation of powers doctrine by extinguishing a particular class of claims without express congressional approval. While noting that Congress never explicitly authorized or ratified the President's actions, the court found that Congress had acquiesced to the executive agreement by failing to take any contrary action. After acknowledging the deference traditionally accorded executive decisions in the sphere of foreign affairs and recognizing the need that existed for prompt resolution of the hostage crisis, the court concluded that the terms of the executive agreement did not exceed the bounds of presidential authority.

The final argument advanced by the plaintiffs was that the executive agreement should be held invalid under the fifth amendment on the ground that the termination of private claims against Iran constituted a taking of private property for public use without just compensation. Without actually deciding the merits of the takings issue, the court dismissed plaintiffs' claim on the grounds that the Court of Claims has jurisdiction to award damages for violations of the takings clause and that this remedy was available at the time of the alleged taking.<sup>7</sup>

In deciding to dismiss plaintiffs' claim, the court relied extensively on the Supreme Court's decision in *Dames & Moore v. Regan*<sup>8</sup> which sustained the executive order suspending commercial claims against Iran. While the court of appeals noted that *Dames & Moore v. Regan* involved the suspension of claims whereas the present case in-

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4. *Id.* at § 1603 (c).

5. *Id.* at § 1605 (a)(5).

6. See Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, T.I.A.S. No. 7502, 500 U.N.T.S. 95; Vienna Convention on Consular Relations, Apr. 24, 1963, 21 U.S.T. 77, T.I.A.S. No. 6820, 596 U.N.T.S. 261; Treaty of Amity, Economic Relations and Consular Rights, Aug. 15, 1955, United States—Iran, 8 U.S.T. 901, T.I.A.S. No. 3853.

7. Tucker Act, 28 U.S.C. § 1491 (1976).

8. 453 U.S. 654 (1981).

volved the termination of claims, it emphasized that both suits stemmed from the same international crisis that the President had resolved with the acquiescence of Congress. In stressing the narrowness of its holding, the court of appeals merely underscored the conclusion reached by the Supreme Court in *Dames & Moore v. Regan* that further clarification of the limits on the exercise of presidential power in this area cannot be made in the abstract, but must await events which have yet to unfold.

**FORUM NON CONVENIENS—EFFECT OF LAW OF ALTERNATE FORUM ON PROPRIETY OF DISMISSAL—*Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981).**

In July 1976 a small aircraft crashed in Scotland killing the pilot and five passengers who were all Scottish subjects and residents. The plane and its propellers were manufactured in the United States by Piper Aircraft Company and Hartzell Propeller, Inc. Wrongful death actions were brought against the two companies by Gaynell Reyno, an American citizen who was appointed administratrix of the decedents' estates. The actions were commenced in a California state court and subsequently transferred to the United States District Court for the Middle District of Pennsylvania.

Reyno admitted that the suit was brought in the United States rather than in Scotland because of more favorable laws regarding damages, capacity and liability. Scottish law permits recovery of damages in products liability actions only if negligence on the part of the manufacturer is established. Strict liability is not recognized in Scotland. Additionally, Scottish law allows wrongful death actions to be brought only by a decedent's family.

The district court granted Piper's motion to dismiss the suit on the ground of forum non conveniens. This decision was reversed by the Court of Appeals for the Third Circuit which held that dismissal was inappropriate because trial in Scotland would eliminate Reyno's strict liability claim. The Supreme Court reversed. Justice Marshall, writing for the majority, held that "the possibility of a change in substantive law should ordinarily not be given conclusive or even substantial weight in the forum non conveniens inquiry."<sup>1</sup>

Justice Marshall stressed the need for a flexible approach when

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1. 454 U.S. at 247.