

Ninth Circuit Court

Case: *Fritz Desir v. David N. Ilchert, Director INS*, 840 F.2d 723 (1988)

Judges: Choy, Tang*, Nelson

Date: March 7, 1988

Tags: Persecution, political opinion, humanitarian asylum

Gravamen/Question(s) at issue: Should petition for habeas corpus be granted to immigrant in deportation custody because he really did establish persecution on account of a protected ground?

Holdings: Habeas petition granted. Remand to inquire about well-founded fear of future persecution, given changes in Haiti.

Rationale: “the evidence amply demonstrated past persecution on account of political opinion within the meaning of the Act.” (726)

- Also: petitioner did not bring evidence about post-Duvalier Haiti and the possibility of ongoing persecution, because the regime changed in the middle of these court proceedings.

Facts: Citizen of Haiti. Forced to pay bribes to Haitian security forces. Arrested, assaulted, and threatened by these forces for failure to pay up. Fled to US by boat, fears future persecution if he returns.

History of Case:

- **INS** placed him in exclusion proceedings because no documentation. Desir sought asylum.
- **IJ** found testimony creditable, but did not carry burden of proof and ordered him deported.
- **BIA** affirmed IJ because Desir was not persecuted on one of the protected grounds (that his refusal to pay bribes was not the same as a political opinion).
- **USDC for NCA (1986):** filed habeas petition. DC supported BIA decision. “The district court and the BIA both took judicial notice of the fact that the regime headed by President Jean-Claude (“Baby Doc”) Duvalier ended on February 6, 1986, and that the new government had ordered the Ton Ton Macoutes disbanded.” (726)

Appeals to Statute & Precedent:

- **8 U.S.C. §1101(a)(42)(A):** well-founded fear of persecution on account of protected ground
- **8 U.S.C. §1253(h)(1):** clear probability of future persecution
- ***Bolanos-Hernandez v. INS*, 767 F.2d 1277, 1283 & n. 11 (9th Cir.1984):** subjective component of refugee status test & objective component; conscious choice to remain politically neutral constituted a political opinion

- ***Hernandez-Ortiz v. INS*, 777 F.2d 509, 513 (9th Cir.1985)**: Subjective test = genuine fear; persecution because of difference that the persecutor refuses to tolerate (at 516); persecution bcz gov't attributed political opinions to alien
- ***Argueta v. INS*, 759 F.2d 1395 (9th Cir.1985)**: death threats based on mistaken belief that alien was guerilla fighter = persecution for political opinion
- ***Diaz-Escobar v. INS*, 782 F.2d 1488, 1492 (9th Cir.1986)**: Objective test = "credible, direct, and specific evidence in the record" re. future persecution
- ***Cardoza-Fonseca v. INS*, 767 F.2d 1448, 1453 (9th Cir.1985), *aff'd*, 480 U.S. 421 (1987)**: evidentiary facts of persecution may be supported by documentary evidence or credible testimony
- ***Kovac v. INS*, 407 F.2d 102, 107 (9th Cir.1969)**: defining persecution; "imposition of substantial economic disadvantage upon an alien for reasons of race, religion or political opinion may support application for withholding of deportation" (727)
- ***Lazo-Majano v. INS*, 813 F.2d 1432, 1435 (9th Cir. 1987)**: "In that case as in this, the essentially political nature of the alien's predicament is apparent given the superior status and political power of the government security forces, enforced through threats and actual violence, coupled with the reasonable belief that denunciations by such officers will carry considerable weight." (728)

Dicta:

- Petitioner "was tangibly harmed, both physically and in his ability to earn a livelihood." (727)
- "The extortion and other lawlessness inflicted by the Ton Ton Macoutes on Desir thus amounted to more than arbitrary, personal actions undertaken independent of the Duvalier regime. Instead, such actions were tactics whereby the Duvalier regime systematically exercised its authority by way of terror and intimidation." (727-28)
- "The relationship between victim and persecutor is especially significant in situations where the petitioner may not have overtly given any expression to his opinions, but because of particular acts or circumstances, certain opinions are attributed to him." (728)
- "We must view Desir as possessing a political opinion because his persecutors, the Ton Ton Macoutes, both attributed subversive views to Desir and treated him as a subversive." (729)
- "Upon remand, Desir will have the opportunity to demonstrate facts regarding the treatment of persons like himself in post-Duvalier Haiti." (730)