

### **Roger C. S. Lin et al. v. United States of America**

1. In consideration that Taiwan was **not** ceded to "China" in the San Francisco Peace Treaty (SFPT) of 1952, it is clear that Taiwan is not part of the Republic of China (ROC), and there is no legal basis to recognize native Taiwanese persons as ROC citizens. Up to the present day, Taiwan remains as *conquered territory* of the United States of America, of which no final disposition has ever been made.
2. Based on the above rationale, between October 2005 and April 2006, Dr. Roger C. S. Lin and members of the Taiwan Nation Party made a number of attempts to apply for United States passports through the American Institute in Taiwan ("AIT," the United States' *de facto* embassy on Taiwan). The AIT not only failed to respond to these actions, it denied these native Taiwanese persons physical entry to its premises, and refused to accept their passport application forms.
3. According to the INA § 360, 8 U.S.C. § 1503, "any person" who is "denied" a "right or privilege as a national of the United States" "by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States," has a cause of action for declaration of nationality. Based on the relevant provisions of the INA, the Administrative Procedure Act, and the Declaratory Judgment Act, Dr. Lin and his fellow human-rights activists filed a Complaint for Declaratory Relief against the United States of America in the US District Court for the District of Columbia on Oct. 24, 2006.
4. In this lawsuit, the Plaintiffs challenged that they should enjoy the Fifth and Fourteenth Amendment rights against deprivation of life, liberty, or property, with due process of law; the Eighth Amendment right against cruel and unusual punishment in the form of deprivation of a recognized nationality; and the First Amendment right to petition the government for a redress of grievances.
5. In the March 18, 2008, District Court decision, the judge consented that the "Plaintiffs have essentially been persons without a state for almost 60 years," and further held that "The last completely clear statement of authority over Taiwan came from General MacArthur in 1945. One can understand and sympathize with Plaintiffs' desire to regularize their position in the world." Despite this recognition of the plight of the native Taiwanese people, the District Court judge ruled that the Plaintiffs' suit raised policy questions which the US Constitution has textually committed to coordinate branches of government, and therefore dismissed the lawsuit based on the political question doctrine.
6. An Appeal was filed with the US Court of Appeals, in Washington D.C. Dr. Lin and the other Appellants stressed that the District Court had totally ignored the historical reality that as the *conqueror* of Taiwan during the period of WWII in the Pacific, under the customary laws of warfare the USA will be the (principal) occupying power of Taiwan. Moreover, this indisputable fact is specifically set down in Article 23(a) of the SFPT, and further confirmed by Article 4(b), which recognizes the jurisdiction of the United States Military Government over Taiwan.
7. This status of *principal occupying power*, as a matter of law, is still existent today. Quite inequitably, the District Court refused to determine the *legal effects of this indisputable legal fact* and declare whether the SFPT gives Appellants the specific rights sought to be declared in their Complaint.
8. Moreover, by glossing over specific details of the Complaint, the District Court deliberately tried to avoid having to make any of the specific declarations sought. This was due to the judge's erroneous observation that resolution of the lawsuit would require the Court to determine a "quintessential political question." Under this line of reasoning, the District Court ignored settled federal jurisprudence allowing judicial determinations of the *legal effects* of United States laws, policies, and actions upon persons in territories and lands abroad.
9. In the April 7, 2009, Court of Appeals decision, the judges found that "America and China's tumultuous relationship over the past sixty years has trapped the inhabitants of Taiwan in political purgatory. During this time the people on Taiwan have lived without any uniformly recognized government. In practical terms, this means they have uncertain status in the world community which infects the population's day-to-day lives. This pervasive ambiguity has driven Appellants to try to concretely define their national identity and personal rights."
10. Noting that the "Complaint has emphasized that this is a human rights case which presents a straightforward question of treaty and statutory interpretation, well within the Article III powers of the court . . ." the judges nevertheless held that the political question doctrine deprives federal courts of jurisdiction, based on prudential concerns, over cases which would normally fall within their purview, and therefore affirmed the judgment of the District Court.

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