

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

Filed 12:10 AM

OCT 3 2003  
*A. Bender*  
DEPUTY CLERK U.S. DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA

UNITED STATES OF AMERICA, :

v. :

Case No. 5:02-CR-27 (CAR)

DWIGHT D. YORK, a/k/a :  
MALAKAI Z. YORK, :  
ISA MUHAMMAD, and :  
ISA ALIHAD MAHDI, :

Defendant. :

***ORDER ON DEFENDANT'S MOTION TO DISMISS  
FOR LACK OF JURISDICTION***

Defendant Malakai York has moved this Court to dismiss the indictment against him, on the grounds that the Court lacks jurisdiction over him. In support of his motion, Defendant argues that he is immune from prosecution under the Foreign States Immunity Act, 28 U.S.C. § 1602, *et. seq.*, that he is immune from prosecution as a foreign head of state, and that the Court has no jurisdiction because "jurisdiction exists with sovereign native American Indians/indigenous people." These arguments are without merit.

The Foreign States Immunity Act (FSIA) has no relevance to the present case, because "the FSIA addresses neither head-of-state immunity, nor foreign sovereign immunity in the criminal context." United States v. Noriega, 117 F.3d 1206, 1212 (11<sup>th</sup> Cir. 1997). The FSIA is addressed specifically to civil cases.

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Defendant's claim of head-of-state immunity is based upon his contention that he is the Chief of the Yemassee Indian Tribe, "an indigenous tribe to Native America." (Defendant's Motion to Dismiss, Tab 142, at p. 15). Whether a person is to be recognized as a the head of a state is a matter subject to the determination of the Executive Branch of the United States government. Lafontant v. Aristide, 844 F. Supp. 128, 132 (E.D. N.Y. 1994). Head-of-state immunity "extends only to the person the United States government acknowledges as the official head-of-state. Recognition of a government and its officers is the exclusive function of the Executive Branch." Id. There is no evidence before the Court that any agency or branch of the United States government has ever recognized the Yemassee Indian tribe as a foreign sovereign, or that it has recognized Defendant as the head of any state.

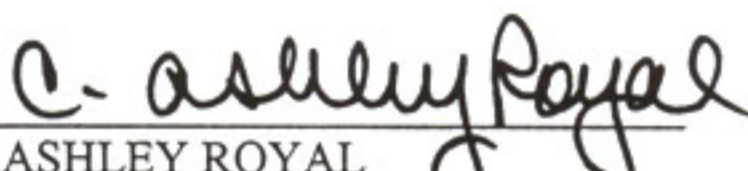
Courts in the Eleventh Circuit have indicated that where the Executive Branch neither expressly acknowledges nor expressly denies head-of-state immunity, it may be necessary for a Court to "make an independent determination regarding immunity." United States v. Noriega, 117 F.3d at 1212. To support his claim of immunity, Defendant concedes that the Yemassee tribe he claims to lead is not recognized by the federal Bureau of Indian Affairs, and therefore that "it can only be surmised that the Yemassee have been left out of the republic on purpose, making the tribe a foreign state for jurisdictional purposes." This argument is without merit. Beyond the unsworn descriptions of Defendant's lineage and descent in Defendant's motion, there is no evidence that the group of followers Defendant purports to lead are in any way a sovereign state worthy of recognition by the United States government or any other government or state.



With regard to Defendant's final argument, that he is subject only to the jurisdiction of an unspecified tribal authority, Defendant has conceded that the "Yemassee Tribe of Native Americans" is not a body recognized by the United States government as an Indian tribe. There is no evidence that Defendant's compounds in New York or Georgia have ever been recognized as Indian reservations. In the absence of such recognition, Defendant is entitled to no special status. He is subject to the same laws as any other citizen, resident, or visitor to the United States.

Accordingly, Defendant's Motion to Dismiss is **DENIED**.

SO ORDERED this 31<sup>st</sup> day of October, 2003.

  
C. ASHLEY ROYAL  
UNITED STATES DISTRICT JUDGE  
MIDDLE DISTRICT OF GEORGIA