



Hostage-Taking Statute Covers Kidnapping for Ransom Abroad

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In the midst of a rash of kidnappings, a U.S. citizen living in Haiti was seized and held for ransom. In *United States v. Noel*, the U.S. Court of Appeals for the Eleventh Circuit (Eleventh Circuit) recently [upheld](#) the conviction of one of the kidnappers under the federal hostage-taking statute. The [statute](#) condemns “whoever, whether inside or outside the United States . . . detains . . . another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained . . .” It applies outside the U.S. if either the offender or the victim is a U.S. citizen; the offender later travels, or is brought, to the U.S.; or the targeted “governmental organization” is the U.S. Government.

As noted below, Noel raised several challenges on appeal. He contended that: (1) the government should have been required to prove that he knew his victim was an American citizen; (2) Congress only intended the statute to apply terrorist misconduct; (3) Congress lacked the constitutional authority to enact the statute; (4) Congress did not intend the statute to apply to street crimes committed abroad by foreign nationals; and (5) the Fifth Amendment’s Due Process Clause bars U.S. prosecution of the defendant.

Knowledge

In *United States v. Noel*, the defendant argued to no avail that his conviction required proof that he knew that the victim was a U.S. national. The Supreme Court has [said](#) that, “a defendant generally must know the facts that make his conduct fit the definition of the offense.” Nevertheless, as the Eleventh Circuit [pointed out](#), the general rule ordinarily does [not apply](#) to separate jurisdictional requirements, like the hostage-taking statute’s alternative requirement that the victim be a U.S. citizen. Thus, prosecutors could convict Noel without proving that he knew his victim was a U.S. citizen.

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Terrorism

Noel [argued](#) also that Congress intended the statute to outlaw only acts of terrorism as demonstrated by the [statute's](#) listing of governmental organizations as target victims. As further evidence of Congress's intent to confine the statute to terrorism cases, Noel noted that the statute was originally enacted under the caption "Terrorism" in omnibus legislation. In addition, Congress has identified the hostage-taking statute, but not the kidnapping-for-ransom statute, as one of the federal crimes of terrorism. The Eleventh Circuit conceded that "a primary focus of the statute is on acts of terrorism," but it [held](#) that the plain language of the statute, which defines its scope, "encompasses the events for which Noel was convicted" as well.

Legislative Authority

Congress enjoys [only](#) that legislative authority that can be traced back to the Constitution. Noel [contended](#) that Congress did not have the power to make his conduct a crime because his conduct does not fall within the reach of one of Congress' most obvious extraterritorial prerogative, the power "[t]o define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations." The Eleventh Circuit found it unnecessary to address Noel's law-of-nations argument because of another of Congress's constitutional powers. The Constitution [grants](#) Congress the power to enact laws necessary and proper to carry into effect the authority it vests in the President, one of which is the authority to make treaties. The court [held](#) that Congress's passage of the hostage-taking statute in order to implement the International Convention Against the Taking of Hostages constituted a valid exercise of its constitutional authority under the Necessary and Proper Clause.

Run of the Mill Street Crimes

The Eleventh Circuit's reference to the treaty power as the source of Congress's authority to enact the hostage-taking statute might suggest support for Noel's argument that Congress did not intend to outlaw his conduct. The Supreme Court has cautioned against overbroad application of statutes enacted to implement a treaty. In *Bond v. United States*, the Court declined to apply the statute implementing the chemical weapons treaty to a woman's chemical assault upon her husband's paramour. The decision in *Bond* grew out of a concern over unintended federal intrusions upon the law enforcement prerogatives of the states. On other occasions, such as in *RJR Nabisco v. European Community*, the Supreme Court has expressed comparable concern over the federal government's unintended intrusions upon the law enforcement prerogatives of other nations within their own territory. If Noel pressed that contention, however, the Eleventh Circuit found it insufficient for it [held](#) that the plain language of the statute covered Noel's conduct.

Due Process

As the Eleventh Circuit [understood](#) Noel's argument, due process is a matter of whether the accused had notice that a particular form of misconduct, committed outside the United States, would subject him to prosecution in the United States. The court [cited](#) case law for the proposition that condemnation of conduct within of a multilateral treaty, like the International Convention Against the Taking of Hostages, to which both the United States and Haiti are parties, provides "global notice [to the citizens of any party] that certain generally condemned acts are subject to prosecution by any party to the treaty." Therefore, the court [observed](#), "[h]is own country having signed the Treaty, the global notice of the Treaty clearly extends to Noel."

Congressional Options

Congress remains free to confirm, reject, or modify the work of the Eleventh Circuit in *United States v. Noel* by enacting clarifying amendments of the hostage-taking statute.
