

NOV 09 2000

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,)

Criminal Case No. 00-00028-001

Plaintiff)

v.)

ORDER DENYING MOTION
TO DISMISS COUNT I

LIU, Jun Wei, also known as)
"A-Wei," *et al.*,)

Defendants)

THIS MATTER came before the court on November 2, 2000, for hearing of several of defendant Liu's pre-trial motions. Plaintiff appeared by and through Assistant U.S. Attorney David T. Wood; defendant Liu appeared by and through his attorney, G. Anthony Long.

At the conclusion of the hearing, the court ruled from the bench on all

98

1 motions except defendant Liu's motion to dismiss count I of the indictment,
2 charging defendant Liu with violation of 18 U.S.C. §§ 2 and 1955.¹
3

4 Liu argued in his written memoranda and at the hearing that § 1955 is
5 unconstitutional under United States v. Morrison, 120 S.Ct. 1740 (2000),
6 United States v. Lopez, 115 S.Ct. 1624 (1995), and United States v. Faasse, 227
7 F.3d 660 (6th Cir. 2000). In sum, defendant Liu cites Morrison, Lopez, and
8 Faasse to support his argument that while it is true that Congress may regulate
9 intrastate activities that substantially affect interstate commerce, Lopez, 115
10 S.Ct. at 1629-1630, Congress exceeded its authority when it enacted § 1955 and
11 made it a federal offense to engage in a gambling enterprise which is illegal
12 under a particular state or territorial law. As characterized by defendant,
13 "Section 1955 does not regulate the business of gambling, instead, it regulates
14 violations of state law."
15

16
17 Initially, the court notes that none of the three cases cited by defendant
18 Liu involved consideration of 18 U.S.C. § 1955. In Morrison, the Supreme
19
20
21

22 1

23
24 Defendant Liu states that his motion as to Count II has been mooted by
25 the filing of a superseding indictment on November 1, 2000. (In the
26 superseding indictment the allegations of violation of 18 U.S.C. §§ 2 and 1955
appear as Count II. This order is also intended to address any like argument
made by defendant as to Count II of the superseding indictment.)

1 Court agreed with the Fourth Circuit that Congress had exceeded its regulatory
2 authority under the Commerce Clause when it enacted 42 U.S.C. § 13981, the
3 “Violence Against Women Act.” In short, the Court held that gender-
4 motivated crimes are not, in any sense, “economic activity” which Congress
5 can regulate. In Lopez the Court considered the constitutionality of 18 U.S.C.
6 § 922(q)(1)(a), popularly known as the “Gun-Free Schools Act.” The Court
7 struck down the statute as beyond Congress’ Commerce Clause authority
8 because possession of a gun in a local school zone is not economic activity that
9 substantially affects interstate commerce. Finally, in Faasse, the Sixth Circuit
10 held that Congress does not have the power to “criminalize” the failure to obey
11 a state child support order when the State itself has declined to make failure to
12 pay child support a crime. There, a Michigan state court ordered Faasse to pay
13 child support. Faasse was later arrested in California for violation of 18 U.S.C.
14 § 228, the “Child Support Recovery Act.” Faasse was sentenced by a federal
15 magistrate judge and appealed to the United States District Court for the
16 Western District of Michigan, which affirmed his six- month prison sentence
17 and restitution of \$28,438.35. In striking down the law, the Sixth Circuit
18 found it “troubling” that Congress had attempted to regulate through criminal
19 law obligations owed by one family member to another, especially when the
20
21
22
23
24
25
26

1 federal crime (violation of 18 U.S.C. § 228) for which Faasse was convicted in
2 federal court was not a violation of state criminal law in Michigan.
3

4 In contradistinction to these cases stands twenty-five years of
5 unsuccessful challenges to the constitutionality of 18 U.S.C. § 1955. In that
6 regard, this court is bound by the law of the Ninth Circuit as set out in United
7 States v. Sacco, 491 F.2d 995 (9th Cir. 1974) (*en banc*). There, the court upheld
8 18 U.S.C. § 1955 against precisely the challenge made by defendant Liu here;
9 that is, that § 1955 is unconstitutional because it has no substantial relation to
10 interstate commerce.² The Ninth Circuit stated that the only questions for a
11
12
13

14 2

15 Other courts have also addressed this argument and found it wanting. In
16 United States v. Cappetto, 502 F.2d 1351, 1356, (7th Cir. 1974), the court
17 stated:

18 This court and other courts of appeals have held that Section 1955
19 is authorized by the commerce clause. United States v. Hunter,
20 478 F.2d 1019, 1020-1021 (7th Cir. 1973), *cert. denied*, 414 U.S. 857,
21 94 S.Ct. 162, 38 L.Ed.2d 107 (1973); United States v. Becker, 461
22 F.2d 230, 233-234 (2d Cir. 1972); United States v. Riehl, 460 F.2d
23 454, 458 (3rd Cir. 1972); United States v. Ceraso, 467 F.2d 653,
24 657-658 (3rd Cir. 1972); United States v. Harris, 460 F.2d 1041,
25 1043-1049 (5th Cir. 1972), *cert. denied*, 409 U.S. 877, 93 S.Ct. 128,
26 34 L.Ed.2d 130 (1972); Schneider v. United States, 459 F.2d 540,
541-542 (8th Cir. 1972), *cert. denied*, 409 U.S. 877, 93 S.Ct. 129, 34
L.Ed.2d 131 (1972); United States v. Sacco, 491 F.2d 995, 999-1001
(9th Cir. 1974). These cases demonstrate that Congress had power
to determine that the class of activities described in Section 1955
adversely affects interstate commerce and, based upon that finding,

1 court to ask when this sort of objection is raised is whether Congress had a
2 rational basis for finding that the regulated activity affected commerce and, it if
3 had such a basis, whether the means selected to regulate the activity were
4 reasonable and appropriate. *Id.* at 999. The Ninth Circuit considered both
5 questions and answered them in the affirmative, *id.* at 999-1000, and stated that
6 its role in considering whether Congress had acted constitutionally was then
7 “concluded.” A similar analysis and result obtain here: Section 1955 represents
8 a constitutional exercise of Congress’s legislative power.

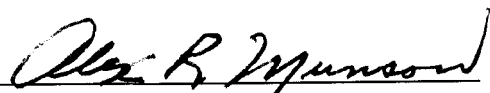
12 Finally, the court finds that an analysis using the Lopez criteria does not
13 change its decision that § 1955 is constitutional. Here, unlike in Lopez, illegal
14 gambling is the focus of the criminal statute in question, and that activity does
15 involve commerce and is an economic enterprise. Lopez, 115 S.Ct. at 1624.
16 Second, and again unlike Lopez, the statute in question here does contain an
17 express jurisdictional element that has an explicit connection with or effect on
18 interstate commerce. *Id.* Third, unlike the legislative history of 18 U.S.C. §
19 922(q) under consideration in Lopez, the legislative history of § 1955 reveals
20 that Congress made special findings that illegal gambling substantially affects
21 interstate commerce. Sacco, 491 F.2d at 999 n.5, 1000-1001. Lastly, the Lopez
22
23
24
25
26

to prohibit those activities.

1 Court found that gun possession on a school ground was "in no sense an
2 economic activity that might, through repetition elsewhere, substantially affect
3 any sort of interstate commerce." *Id.* at 1634. Manifestly, such a conclusion
4 cannot be made about the effect of illegal gambling on interstate commerce. In
5 considering 18 U.S.C. § 1955, Congress specifically found the effect on
6 interstate commerce by illegal gambling operations to be direct and significant,
7 due to the use of facilities of interstate commerce to obtain odds and make and
8 accept bets, because money derived from or used in illegal gambling moves in
9 interstate commerce or the facilities thereof, because the paraphernalia used in
10 gambling often moves through interstate commerce, and because such illegal
11 gambling enterprises affect interstate commerce in that they are often facilitated
12 by the corruption and bribery of State or local officials. Sacco, 491 F.2d at 999.

13
14
15
16
17
18 Accordingly, for the foregoing reasons defendant Liu's motion to dismiss
19 Count I is denied.

20
21 DATED this 9th day of November, 2000.

22
23
24
25
26

ALEX R. MUNSON
Judge