The Aftermath of Matimak Trading Co. v. Khalily: Is the American Legal System Ready for Global Interdependence

Bradford Williams

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The Aftermath of Matimak Trading Co. v. Khalily: Is the American Legal System Ready for Global Interdependence

Cover Page Footnote
International Law; Commercial Law; Law
I. Introduction

Beginning with the ratification of the United States Constitution and Congressional enactment of the Judiciary Act of 1789, there has been an awareness that state courts might not fairly adjudicate the claims of foreign citizens out of prejudice or because of localized concerns.\(^1\) The Framers believed that the federal courts, removed from local pressures, would be impartial tribunals from which foreign nationals could receive justice, thereby reducing the threat of international conflict.\(^2\)

As Alexander Hamilton noted, the denial or perversion of justice by the sentences of courts, as well as in any other manner, is with reason classed among the just causes of war, it will follow that the federal judiciary ought to have cognizance of all causes in which the citizens of other countries are concerned.\(^3\)

Because of these concerns regarding bias in the state courts, when a citizen of a foreign state decides to sue an American citizen in the United States, federal courts have the power to hear the controversy under 28 U.S.C. § 1332(a)(2), otherwise known as

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\(^2\) See Biancheria, *supra* note 1, at 207.

the alienage jurisdiction provision. As noted above, the primary reason for granting federal district courts alienage jurisdiction was to prevent the eruption of international crises out of perceived injustices done to foreign nationals in state courts. But, with the emergence of semi-autonomous entities and the growth of stateless individuals, federal courts have been forced to decide how broadly to read § 1332(a)(2). The Second Circuit faced this issue when a Hong Kong corporation invoked alienage jurisdiction in the case of Matimak Trading Company v. Khalily.

In Matimak the Second Circuit held that a federal district court lacked jurisdiction to hear a breach of contract action brought by a Hong Kong corporation against two New York defendants. Specifically, the Second Circuit found that the plaintiff was stateless and held that stateless parties cannot invoke § 1332(a)(2). In reaching this decision, however, the Second Circuit undermined the policy goal underlying alienage jurisdiction: to avoid international conflicts by providing a neutral forum for foreign citizens to litigate their claims against American citizens. By denying Hong Kong corporations a juridicial identity in federal court, the Second Circuit may offend three

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4 See Iran Handicraft & Carpet Export Ctr. v. Marjan Int’l Corp., 655 F. Supp. 1275, 1276 (S.D.N.Y. 1987), aff’d, 868 F.2d 1267 (2d Cir. 1988); Sadat v. Mertes, 615 F.2d 1176, 1182 (7th Cir. 1980) (per curiam). Section 1332(a)(2) provides a federal district court with original jurisdiction over all civil actions where the amount in controversy exceeds a required sum and the litigants are “citizens of a State and citizens or subjects of a foreign state.” 28 U.S.C. § 1332(a)(2) (1994). (The amount in controversy requirement was raised from $50,000 to $75,000 after the action in Matimak was brought. See 28 U.S.C.A. 1332 (Supp. 1997).) The power of Congress to confer this jurisdiction upon the federal courts is found in Article III, Section 2 of the United States Constitution, which extends the federal judicial power to all cases “between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.” U.S. Const. art. III, § 2, cl. 1.

5 See Matimak Trading Co. v. Khalily, 118 F.3d 76, 82-83 (2d Cir. 1997).

6 See generally id. at 79-81 (reviewing several alienage jurisdiction cases where the meaning of “foreign state” was at issue).

7 118 F.3d 76 (2d Cir. 1997).

8 See id. at 88.

9 See id. at 86.

10 See id. at 87; infra notes 171-77 and accompanying text (discussing the policy goals underlying alienage jurisdiction and their erosion under the Matimak decision).
major players in international finance and commerce: Hong Kong, the People's Republic of China, and the United Kingdom.\textsuperscript{11} The decision may also harm American standing in the global community, where international law condemns the denial of an individual's right to a nationality.\textsuperscript{12} At the very least, Matimak underscores the increasing complexity of the alienage jurisdiction doctrine in an era of global interdependence.

Part II of this Note will describe the facts and procedural history of the Matimak case and review the majority and dissenting opinions.\textsuperscript{13} Part III will examine prior case law discussing the scope of alienage jurisdiction,\textsuperscript{14} while Part IV will consider the significance of the Second Circuit's holding in this context.\textsuperscript{15} Lastly, Part V will conclude that precedent compelled the Second Circuit to prohibit Hong Kong corporations from invoking alienage jurisdiction, despite the possibility that the decision will erode the policy behind § 1332(a)(2).\textsuperscript{16} Furthermore, because the judiciary does not have the authority to expand the doctrine of alienage jurisdiction,\textsuperscript{17} the executive and legislative branches must accept the responsibility of modernizing this doctrine—if it is ever to be done.

II. Statement of the Case

\textit{A. The Facts and Procedural History}

Matimak Trading Co. ("Matimak"), a Hong Kong corporation with its principal place of business in the former British protectorate, filed suit against Albert Khalily and D.A.Y. Kids

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\item See Matimak, 118 F.3d at 88 (Altimari, J., dissenting); \textit{infra} notes 174-77 and accompanying text (discussing possible international conflicts resulting from the Matimak decision).
\item See Biancheria, supra note 1, at 200-03; \textit{infra} notes 185-87 and accompanying text (discussing American standing in the international community and possible harm to this standing when federal courts deny access to stateless entities).
\item See \textit{infra} notes 18-60 and accompanying text.
\item See \textit{infra} notes 61-143 and accompanying text.
\item See \textit{infra} notes 144-87 and accompanying text.
\item See \textit{infra} notes 188-92 and accompanying text.
\item See \textit{infra} notes 191-92 and accompanying text.
\end{enumerate}
Sportswear Inc., two New York corporations, in the United States District Court for the Southern District of New York. In its complaint, Matimak alleged breach of contract. Since the suit did not involve a federal question, Matimak alleged that the district court had diversity jurisdiction in this case under the alienage provision. Matimak argued that 28 U.S.C. § 1332(a)(2), which grants the federal courts diversity jurisdiction to hear cases involving “citizens of a State and citizens or subjects of a foreign state,” provided the district court with jurisdiction to adjudicate its claims. The district court, however, questioned its own power to hear the case under § 1332(a)(2). The court considered briefs on the issue of its own jurisdiction, then ruled in August 1996 that Hong Kong did not qualify as a foreign state for purposes of alienage jurisdiction. Because Matimak could not claim to be a citizen or subject of a foreign state, the district court dismissed the action.

B. The Second Circuit's Decision

In examining the lower court's dismissal of Matimak's action, the Second Circuit considered three arguments advanced in support of the lower court taking alienage jurisdiction over this breach of contract suit: (1) Hong Kong has been recognized by the United States as a de facto foreign state; (2) Hong Kong's previous status as a British Dependent Territory qualified Matimak as a citizen of the United Kingdom when it filed suit; and (3) the phrase “citizen or subject of a foreign state” in § 1332(a)(2) meant to encompass all litigants who are not citizens of the United States,

18 See Matimak Trading Co. v. Khalily, 118 F.3d 76, 78 (2d Cir. 1997).
19 See id.
20 See id. at 78-79; see also supra note 4 (discussing the source of alienage jurisdiction).
22 See Matimak, 118 F.3d at 78.
23 See id. at 78-79.
24 See id.
thus permitting Matimak to claim alienage jurisdiction.\textsuperscript{25}

The Second Circuit began its opinion with Matimak’s contention that the United States considered Hong Kong to be a de facto foreign state.\textsuperscript{26} Relying on precedent, the court held that the executive branch of the United States government is responsible for formally recognizing territorial entities as foreign states.\textsuperscript{27} To this extent, neither party disputed that the executive had not formally recognized Hong Kong as a foreign state.\textsuperscript{28} Matimak, however, argued that Hong Kong’s economic and diplomatic ties to the United States evidenced de facto recognition by the executive branch.\textsuperscript{29} The Second Circuit found this argument unpersuasive.\textsuperscript{30} The court narrowly defined the doctrine of de facto recognition, limiting it only to those territorial entities whose formal recognition as a sovereign is imminent.\textsuperscript{31} Because Hong Kong was to be governed by the People’s Republic of China after June 30, 1997, the Second Circuit could find no evidence that the executive branch had recognized Hong Kong as a de facto foreign state.\textsuperscript{32} Relying on the United States-Hong Kong Policy Act of 1992 and an amicus brief filed by the Justice Department, the court declared that the United States had no intention of

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  \item \textsuperscript{25} See id. at 79. The dissent raised this third argument, although Matimak did not. See id. at 89 (Altimari, J., dissenting). Therefore, as the majority believed, the matter “merit[ed] serious consideration.” Id. at 79.
  \item \textsuperscript{26} See id. at 80.
  \item \textsuperscript{27} See id. (citing Iran Handicraft & Carpet Export Ctr. v. Marjan Int'l Corp., 655 F. Supp. 1275, 1277 (S.D.N.Y. 1987), aff'd, 868 F.2d 1267 (2d Cir. 1988); 13B CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3604 (2d ed. 1984)).
  \item \textsuperscript{28} See id. at 80.
  \item \textsuperscript{29} See id. The Second Circuit first defined the doctrine of de facto recognition in 1954. See Murarka v. Bachrack Bros., 215 F.2d 547 (2d Cir. 1954). In dictum, then-Circuit Judge John Harlan stated that a territorial entity could be considered a foreign state for purposes of alienage jurisdiction despite not being formally recognized as a sovereign by the United States government. See id. at 552. To be considered a de facto foreign state under Judge Harlan’s theory, a territorial entity must have relations with the United States such that, for all intents and purposes, it is determined to be a sovereign state by the executive branch. See id. at 551-52.
  \item \textsuperscript{30} See Matimak, 118 F.3d at 80-82.
  \item \textsuperscript{31} See id. at 80.
  \item \textsuperscript{32} See id. at 80-82.
\end{itemize}
recognizing Hong Kong as either a formal or de facto sovereign. As its second argument, Matimak alleged that it was a British citizen for purposes of § 1332(a)(2), because, when it filed its complaint, Hong Kong was a British Dependent Territory. The Second Circuit rejected this argument. Noting the legal principle that foreign states should be allowed to determine who are their citizens or subjects, the court found that the United Kingdom had not extended citizenship to corporations organized in Hong Kong. It then characterized Matimak as a stateless entity which could not gain access to the federal courts under alienage jurisdiction.

The majority then turned to the dissent’s assertion that the federal courts have alienage jurisdiction in cases involving state citizens and all aliens, including stateless persons. The majority found nothing in the plain language or the legislative history of either the Constitution or § 1332(a)(2) to suggest such a broad reading. Moreover, the majority noted that the purpose of

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33 See id. at 81-82. In pertinent part, the United States-Hong Kong Policy Act of 1992 reads:

The People’s Republic of China and the United Kingdom of Great Britain and Northern Ireland have agreed that the People’s Republic of China will resume the exercise of sovereignty over Hong Kong on July 1, 1997. Until that time, the United Kingdom will be responsible for the administration of Hong Kong.


34 See Matimak, 118 F.3d at 85-86.

35 See id.

36 See id. In an amicus brief, the Justice Department argued that Matimak should be considered a British citizen for purposes of alienage jurisdiction. See id. at 86. It asserted that “ultimate sovereign authority” over the appellant resided in the British Crown because the appellant was governed by the Hong Kong Companies Ordinance, which was “modeled” on the British Companies Act of 1948 § 406. Id. The majority found this association to be “too attenuated.” Id. Instead, it gave effect to the British Companies Act which excluded Hong Kong companies from British citizenship. See id. at 85-86.

37 See id. at 86. The Second Circuit described a stateless entity as a party which has no nationality: “a stateless person—the proverbial man without a country—cannot sue a United States citizen under alienage jurisdiction.” Id. (citing, among others, Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088, 1092 (9th Cir. 1983); Sadat v. Mertes, 615 F.2d 1176, 1183 (7th Cir. 1980) (per curiam)).

38 See Matimak, 118 F.3d at 86.

39 See id. at 86-88.
alienage jurisdiction—to avoid “entanglements” with foreign states by ensuring that their citizens could file suit against American citizens in a neutral forum—would not be furthered by giving the federal courts alienage jurisdiction over stateless individuals. The majority reasoned that “there is no danger of foreign entanglements, as there is no sovereign with whom the United States could . . . become entangled.” Having rejected the arguments made by Matimak and the dissenting judge, the majority affirmed the district court’s dismissal of the case.

C. The Dissent

In contrast to the majority’s narrow view of alienage jurisdiction, the dissent in Matimak interpreted the alienage jurisdiction provision to allow Matimak access to the federal judiciary. The dissent would have held that § 1332(a)(2) provides alienage jurisdiction for all aliens and foreigners, including stateless entities. As the dissent reasoned, the power of the federal courts to hear alienage jurisdiction cases arises from Article III, Section 2, Clause 1 of the Constitution. In codifying this power, the First Congress used the terms “aliens” and “foreigners” as opposed to “citizens” and “subjects.” According to the dissent, the use of these terms by the First Congress, which included many of the participants at the Constitutional Convention, signified the intent of the Framers to empower the federal courts to hear cases involving state citizens and any non-U.S. party.

40 See id. at 87.
41 Id.
42 See id. at 88.
43 See id. at 89-92 (Altinari, J., dissenting).
44 See id. at 89 (Altinari, J., dissenting).
45 See id. (Altinari, J., dissenting). For more information about Article III, see supra note 4.
46 See id. (Altinari, J., dissenting).
dissent noted that "the idea of statelessness was not in the contemplation of the Framers and it is likely that the Framers envisioned 'citizens or subjects of foreign states' to be anyone who is not a United States citizen." Although Congress had since amended § 1332(a)(2) to include "citizens" and "subjects" rather than "aliens" and "foreigners," the dissent argued that the Framers did not intend this amendment to limit the scope of alienage jurisdiction.

Even if the dissent had agreed with the majority that § 1332(a)(2) did not extend the federal courts' alienage jurisdiction to stateless entities, the dissent would have found subject matter jurisdiction in the case by finding that Matimak was not stateless. The dissent advanced two alternative arguments in support of this finding. First, the dissent argued that Hong Kong should have been considered a " 'foreign state' for the limited purpose of alienage diversity jurisdiction." Second, the dissent argued that Matimak should have been viewed as a British citizen in determining whether it could invoke the district court's alienage jurisdiction.

In justifying its position that Hong Kong should have been considered a foreign state for the purpose of alienage jurisdiction, the dissent pointed to trade organizations, tariff agreements, and international conventions to which Hong Kong subscribed. To the dissent, Hong Kong's participation in these organizations and agreements illustrated that both the United States and the

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48 Matimak, 118 F.3d at 89 (Altimari, J., dissenting).
49 See id. (Altimari, J., dissenting). Judge Altimari noted that "nowhere is there an indication that such an amendment intended to limit jurisdiction." Id. (Altimari, J., dissenting).
50 See id. at 92 (Altimari, J., dissenting).
51 See id. at 88 (Altimari, J., dissenting).
52 Id. at 92 (Altimari, J., dissenting).
53 See id. (Altimari, J., dissenting).
54 See id. at 90 (Altimari, J., dissenting). When the complaint was filed, Hong Kong was a contracting party to the General Agreement of Tariffs and Trade, and was a member of the following international organizations: Organization for Economic Cooperation and Development, the World Trade Organization, the Asia Pacific Economic Cooperation, and the Asian Development Bank. See id. (Altimari, J., dissenting).
international community had recognized Hong Kong’s limited political autonomy.\(^{55}\)

The majority not only rejected the international recognition of Hong Kong as “a limited purpose autonomous entity,” but also “reject[ed] the argument that a Hong Kong corporation may be recognized as a ‘citizen or subject’ of the United Kingdom.”\(^{56}\) The dissent reasoned that, at the very least, the majority should have acknowledged Matimak as a British citizen because at the time the complaint was filed Hong Kong was a British Dependent Territory whose law emanated from the British monarch.\(^{57}\) Despite British statutory language which purported to deny British citizenship to Hong Kong corporations, the dissent argued that the framers of British law did not intend to render these entities stateless.\(^{58}\) Furthermore, the executive branch of the United States had made it known that it did not recognize Hong Kong as a de facto state, but would consider Matimak a citizen of the United Kingdom.\(^{59}\) For these reasons, the dissent found that Matimak was not stateless and that the district court erred in dismissing Matimak’s action.\(^{60}\)

### III. Background Law

The decision in *Matimak* effectively barred Hong Kong corporations in particular and stateless entities in general from litigating non-federal questions in the Second Circuit. In reaching this determination, the Second Circuit wrestled with what it called a “shoal strewn area of the law.”\(^{61}\) The Second Circuit struggled to

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\(^{55}\) See id. (Altimari, J., dissenting).

\(^{56}\) Id. (Altimari, J., dissenting).

\(^{57}\) See id. at 90-91 (Altimari, J., dissenting).

\(^{58}\) See id. at 89 (Altimari, J., dissenting). The dissent noted that “the exclusion by British law of such companies was not intended to create a ‘stateless corporation.’ Indeed, the opposite is true. The Companies Act of 1985 ensures ‘a home’ for companies by providing that corporate nationality be associated with the country in which it was registered.” Id. (Altimari, J., dissenting).

\(^{59}\) See id. at 91 (Altimari, J., dissenting); see also supra note 36 (discussing the Justice Department’s argument that, because Matimak was incorporated under a Hong Kong statute which was roughly based on British law, the company should be considered a British citizen).

\(^{60}\) See Matimak, 118 F.3d at 92 (Altimari, J., dissenting).

\(^{61}\) Id. at 79 (quoting National Petrochemical Co. of Iran v. M/T Stolt Sheaf, 860
interpret prior case law addressing three difficult issues: (1) what constitutes a foreign state;\textsuperscript{62} (2) who decides whether a party is a citizen or subject of a foreign state;\textsuperscript{63} and (3) whether alienage jurisdiction should be construed to give stateless parties access to the federal courts.\textsuperscript{64}

\textit{A. What is a Foreign State?}

Under the Restatement (Third) of the Foreign Relations Law of the United States, a territorial entity, in order to be classified a foreign state, must have its own government which commands a defined territory and a permanent population.\textsuperscript{65} This governing body must also "engage[] in, or [have] the capacity to engage in, formal relations with other such entities."\textsuperscript{66} In determining if a territory has met the requirements for formal state recognition, the federal courts have generally deferred to the political branches of government.\textsuperscript{67} Problems arise, however, when litigants claim to be citizens of territories that have limited political autonomy but are not formally recognized by the United States government.\textsuperscript{68} In such cases, federal courts have on occasion applied the doctrine of de facto recognition to bring litigants within the jurisdiction of the court.\textsuperscript{69}

The Second Circuit first considered the doctrine of de facto recognition in the case of \textit{Murarka v. Bachrack Bros.}\textsuperscript{70} In

\begin{itemize}
\item \textsuperscript{62} See \textit{id.} at 79-85.
\item \textsuperscript{63} See \textit{id.} at 85-86.
\item \textsuperscript{64} See \textit{id.} at 86-88.
\item \textsuperscript{65} See \textit{RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES} § 201 (1987).
\item \textsuperscript{66} \textit{Id.}
\item \textsuperscript{68} See Morgan Guar. Trust Co. v. Republic of Palau, 924 F.2d 1237 (2d Cir. 1991); Bowoon Sangsa Co. v. Micronesian Indus. Corp., 720 F.2d 595 (9th Cir. 1983); \textit{Balos}, 701 F. Supp. 744; \textit{Chang}, 506 F. Supp. 975.
\item \textsuperscript{69} See, e.g., \textit{Murarka v. Bachrack Bros.}, 215 F.2d 547, 552 (2d Cir. 1954).
\item \textsuperscript{70} 215 F.2d 547 (2d Cir. 1954).
\end{itemize}
Murarka, an Indian business partnership filed suit in federal court against a New York corporation. The suit was originally filed in July 1947, one month before India was to receive its independence from the United Kingdom. The district court dismissed without prejudice the original claim because it could find no evidence to support the plaintiffs' assertion that they were British citizens. The court reopened the case after the plaintiffs alleged Indian citizenship. By this time, India had been formally recognized as a sovereign state by the executive branch. On appeal to the Second Circuit, the defendant challenged the district court's subject matter jurisdiction, arguing that the plaintiffs had not provided evidence that they were citizens or subjects of a recognized foreign state at the time of the original filing.

The Second Circuit ruled for the plaintiff on the jurisdictional issue, holding that the suit commenced when the amended complaint had been filed, by which time India had been recognized as a foreign state. But in dicta, then-Circuit Judge Harlan raised the possibility that alienage jurisdiction would have existed even if the court had found that the suit began with the original filing. Though India had not been granted formal independence in July 1947, Judge Harlan argued that the United States government considered it to be a de facto foreign state. As he noted, "Unless form rather than substance is to govern, we think that in every substantial sense . . . India had become an independent international entity and was so recognized by the United States." This assertion had the support of a State Department communiqué which described America's effort to

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71 See id. at 549.
72 See id. at 552.
73 See id. at 550.
74 See id.
75 See id. at 552.
76 See id. at 550.
77 See id. at 552.
78 See id.; see also supra note 29 (discussing the conferral of de facto foreign state status upon a territorial entity).
79 See Murarka, 215 F.2d at 552.
80 Id.
recognize India's interim government through the acceptance of India's first ambassador to the United States.  

Ten years after Murarka, the United States Supreme Court decided Banco Nacional de Cuba v. Sabbatino, a case which hinged on a foreign government's standing to file suit in the federal courts. Sabbatino revolved around Fidel Castro's revolutionary government in Cuba. The plaintiff, a nationalized Cuban bank acting in the interest of the Cuban government, alleged that the defendants, an American brokerage house and an American receiver for a company incorporated in Cuba, had converted a shipment of sugar. The plaintiff sought to enjoin the receiver from exercising any control over the shipment's proceeds and demanded recovery of such proceeds.

On appeal, the Supreme Court considered whether the plaintiff could file suit in federal court since the United States had severed diplomatic relations with Cuba, and Cuba prohibited American citizens from seeking relief in its courts. The Court noted that generally a foreign government would be denied access to the federal courts only when it was at war with the United States or where the executive branch had not recognized its legitimacy. Acknowledging the serious political ramifications associated with the severance of diplomatic relations, the Supreme Court nevertheless concluded that the two governments had not reached a level of animus that should preclude Cuban nationals from seeking relief in the federal courts. In addition, the Court explained that it was not required to rule on the issue of whether Cuba had been recognized by the executive branch because "even

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81 See id. The State Department accepted India's first ambassador to the United States in February 1947, five months before the plaintiff filed its complaint. See id. Although the ambassador's credentials had been signed by the British government, Judge Harlan noted that the significance of his reception by the United States had not been lessened. See id.


83 See id. at 403-06.

84 See id. at 406.

85 See id. at 408, 410.

86 See id. at 409.

87 See id. at 410.
the most inhospitable attitude on the matter does not dictate denial of standing here."88 The Supreme Court further supported its reasoning by noting that the United States government advocated granting nationalized Cuban corporations access to the federal courts.89

Twenty-four years after Sabbatino, the United States District Court for the Southern District of New York decided that alienage jurisdiction could be based on a party's citizenship in a foreign state which had been taken over by an unrecognized revolutionary government. In Iran Handicraft and Carpet Export Center v. Marjan International Corp.,90 an Iranian corporation filed a breach of contract suit against a New York company while Iran was in the midst of a revolution.91 The Iranian party amended its complaint several months after the United States failed to recognize the new Islamic government of Iran.92 The defendant moved to dismiss the case for lack of alienage jurisdiction.93 It argued that the plaintiff did not have standing to litigate in the federal courts because it was a citizen of a foreign state whose government had not been recognized by the executive.94 The district court refuted this argument by distinguishing between recognizing a foreign state

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88 Id. at 411 n.12.
89 See id. at 411. The Court observed that the Second Circuit, while it heard the Sabbatino case, relied on two State Department letters which purportedly stated that the executive branch did not object to the Cuban corporation filing suit in federal court. See id. at 407. The Second Circuit, in Calderone v. Naviera Vacuba S/A, 325 F.2d 76 (2d Cir. 1963), also held that a nationalized Cuban company could sue in federal court, despite the severance of relations between the United States and Cuba. See id. at 77. The court reached this decision because the Justice Department, in filing an amicus brief to the United States Supreme Court during the Sabbatino controversy, counseled that nationalized Cuban corporations should be permitted to litigate in the federal judicial system. See id.
91 See id. at 1276. After Shah Mohammed Reza Pahlevi's government was toppled in early 1979, the United States recognized the new revolutionary leadership, headed by Prime Minister Mehdi Bazargan. See id. Later, militant forces led by the Ayatollah Khomeini overthrew Bazargan's government. See id. The United States did not recognize Khomeini's regime. See id.
92 See id.
93 See id.
94 See id.
and recognizing the legitimacy of a foreign government.\(^9^5\) As the court noted: "Once the United States recognizes an entity as a sovereign state, ... a subsequent withdrawal of recognition of that state's government does not effect a change in the underlying recognition of the state as an international juridical entity."\(^9^6\) The court found evidence that the executive branch continued to recognize Iran as an "independent sovereign nation" despite its refusal to formally accept the country's revolutionary government.\(^9^7\) Therefore, the court held that the plaintiff could invoke alienage jurisdiction.\(^9^8\)

As the cases cited above show, to be considered a foreign state, a territory must have relations with the United States government such that the executive branch considers it a sovereign nation.\(^9^9\)

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\(^9^5\) See id. at 1277.

\(^9^6\) Id. at 1281.

\(^9^7\) Id. at 1280-81. In ruling that the United States continued to recognize Iran as a sovereign state, the district court relied on State Department responses to queries put forth by the defendant New York corporation. See id. at 1280 n.4. The defendant, looking for clarification on Iran’s diplomatic status, asked the State Department if the United States recognized Iran’s new Islamic government and if relations between the two had been severed. See id. The State Department answered that the United States had not recognized the Khomeini regime and that the United States did not have diplomatic relations with Iran. The district court observed, however, that the State Department did not acknowledge whether the executive branch continued to recognize Iran as a foreign state. See id. According to the court, this omission proved that the State Department drew a distinction between recognizing a government and recognizing a foreign state. See id.

\(^9^8\) See id. at 1281.

\(^9^9\) See Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 408-11 (1964); Murarka v. Bachrack Bros., 215 F.2d 547, 552 (2d Cir. 1954); Iran Handicraft & Carpet Export Ctr. v. Marjan Int’l Corp., 655 F. Supp. 1275, 1277 (S.D.N.Y. 1987), aff’d, 868 F.2d 1267 (2d Cir. 1988). This definition of foreign state assumes that the territory in question is independent. Independence can be illustrated in the context of trust territories. For example, the Ninth Circuit, in Bowoon Sangsa Co. v. Micronesian Indus. Corp., 720 F.2d 595 (9th Cir. 1983), ruled that the courts of a trust territory, which was administered by the United States, could not be considered foreign because the residents of the trust territory failed to ratify a Compact of Free Association that would have ended American sovereignty over the territory. See Bowoon Sangsa, 720 F.2d at 599-602. By failing to have the Compact ratified, the trust territory assured that, for the recognizable future, it would continue to be closely associated with the United States. See id. at 602. As the Ninth Circuit stated, "although Palau is moving towards independence, we hold that the courts of Palau cannot be considered ‘foreign’ ... until Palau obtains a status approximating complete independence." Id. at 602.
Once the executive recognizes a foreign state, that state’s citizens may invoke § 1332(a)(2). Moreover, courts hold this to be true even after the executive has severed relations with a foreign state’s government. More problematic is the doctrine of de facto recognition, defined in the Second Circuit by Judge Harlan’s opinion in Murarka. Because the doctrine was formulated in dictum, it is not entirely clear how broadly courts should apply de facto recognition. Subsequent courts, however, have limited its application by holding that, to be recognized as a de facto foreign state, a territorial entity’s recognition must be “imminent and inevitable.”

B. What Authority Determines the Citizenship of an Alien?

The plain language of § 1332(a)(2) suggests that any non-United States citizen who would invoke alienage jurisdiction must be either a subject or a citizen of a foreign state. In establishing a party’s citizenship under this rule, the federal courts have deferred to the sovereign state which governs the party’s place of domicile. As Judge Harlan noted in Murarka: “It is the undoubted right of each country to determine who are its nationals, and it seems to be general international usage that such a determination will usually be accepted by other nations.”

The United States District Court for the Southern District of New York applied this principle in Windert Watch Co. v. Remex

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100 See Iran Handicraft, 655 F. Supp. at 1280-81.

101 See id. at 1281 (holding that once the executive branch has conferred foreign state status upon a territorial entity, such standing cannot be withdrawn simply because the United States no longer recognizes the legitimacy of the state’s government).

102 Morgan Guar. Trust Co. v. Republic of Palau, 924 F.2d 1237, 1246 (2d Cir. 1991) (holding that a trust territory could not be considered a de facto foreign state because it would not be receiving its political independence in the foreseeable future); see also Bank of Haw. v. Balos, 701 F. Supp. 744, 747 (D. Haw. 1988) (holding that an island, though still technically a trust territory, is a de facto foreign state because its trustee has proclaimed it a sovereign state).


105 Murarka, 215 F.2d at 553.
Electronics Ltd. In that case, the court rejected the notion that Hong Kong corporations were citizens of the United Kingdom solely because of the island's status as a British colony. Since the United Kingdom had statutorily refused to extend the privileges of British citizenship to Hong Kong businesses, the court ruled that entities incorporated there could not claim to be British citizens.

Like the Windert Watch court, the Seventh Circuit faced the task of ascertaining the citizenship of a corporate litigant whose place of incorporation was a British Dependent Territory. In Wilson v. Humphreys Ltd., the court held that a business organized in the Cayman Islands could be brought into federal court under § 1332(a)(2). Although ambiguous in its reasoning, the court concluded that the defendant company qualified as a British citizen. To support this assertion, the Seventh Circuit pointed to a British statute that purportedly conferred British citizenship upon citizens of the Dependent Territories. The court, however, did not discuss whether there was any statutory language that might disqualify a Caymanian business from British citizenship.

The Second Circuit in Windert Watch and the Seventh Circuit in Wilson reached opposite conclusions about the alleged British citizenship of corporate litigants organized in British Dependent Territories. Yet both courts based their decisions upon the

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107 See id. at 1246.
108 See id.; see also supra notes 36, 58 (discussing the British Companies Acts of 1948 and 1985).
109 916 F.2d 1239 (7th Cir. 1990).
110 See id. at 1242-43.
111 See id. at 1242.
112 See id. The Court relied on the British Nationality Act, 1981, section 51(3)(a)(iii) to come to the conclusion that the United Kingdom had granted British citizenship upon the defendant, a Cayman Islands corporation. See id.
114 See supra notes 106-13 and accompanying text.
apparent will of the British government. Thus, just as Judge Harlan before them, both courts respected the power of a sovereign state to define its own citizenry.

C. Can Stateless Entities Gain Access to Federal Courts via § 1332(a)(2)?

The Second Circuit in Matimak acknowledged that the stateless individual is a twentieth century phenomenon. Thus, the First Congress could not have anticipated the stateless individual when it codified alienage jurisdiction. The federal courts, therefore, have been unable to rely on the explicit guidance of the founders of the United States concerning the juridical status of stateless persons. As a result, the federal courts have enforced the plain language of § 1332(a)(2), thereby denying stateless parties the power to invoke alienage jurisdiction.

In Sadat, the plaintiff, a dual-national of the United States and Egypt, was residing in Egypt when his complaint was filed in federal district court. The district court, however, refused to hear the matter, citing a lack of subject matter jurisdiction. The Seventh Circuit affirmed the trial court’s decision. As part of its

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115 See supra notes 106-13 and accompanying text.
116 See supra notes 105-13 and accompanying text.
117 See Matimak, 118 F.3d at 87.
118 See id. (quoting Blair Holdings Corp. v. Rubinstein, 133 F. Supp. 496, 501 (S.D.N.Y. 1955) ("problems associated with [statelessness] are of recent vintage"); Biancheria, supra note 1, at 210 (noting that the Framers would have been unaware of the phenomenon of stateless entities).
119 See Matimak, 118 F.3d at 87. The Second Circuit noted, “The basic assumption of the framers—if indeed it was ever valid—no longer holds true: not every ‘foreigner’ is a citizen or subject of some foreign state.” Id.
120 See Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088 (9th Cir. 1983); Sadat v. Mertes, 615 F.2d 1176 (7th Cir. 1980) (per curiam); Blair Holdings Corp. v. Rubinstein, 133 F. Supp. 496 (S.D.N.Y. 1955); Medvedieff v. Cities Serv. Oil Co., 35 F. Supp. 999 (S.D.N.Y. 1940).
121 615 F.2d 1176 (7th Cir. 1980) (per curiam).
122 See id. at 1178, 1183-84.
123 See id. at 1178.
124 See id. at 1189.
ruling, the Seventh Circuit held that the plaintiff could not invoke alienage jurisdiction because of his dual citizenship.\textsuperscript{125} The court noted that the "paramount purpose" for having alienage jurisdiction was to avoid entanglements with foreign states over the treatment of their nationals in our state courts.\textsuperscript{126} Since the plaintiff was also an American citizen, the Seventh Circuit found it unlikely that the Egyptian government would complain about plaintiff's treatment in any of our court systems.\textsuperscript{127} Therefore, the court found it unnecessary to extend alienage jurisdiction over his claim.\textsuperscript{128}

In addition, the Seventh Circuit ruled that the plaintiff could not litigate the case in federal court under § 1332(a)(1), which provides diversity jurisdiction in a case involving United States citizens who are domiciled in different states.\textsuperscript{129} Although the plaintiff could claim American citizenship, the court held that his domicile was in Egypt, precluding him from invoking § 1332(a)(1).\textsuperscript{130} Through its ruling in Sadat, the Seventh Circuit rendered the plaintiff stateless for the purpose of litigating in federal court.

Similarly, in the case of Coury v. Prot,\textsuperscript{131} the Fifth Circuit also ruled that only the American citizenship of a dual national will be recognized for the purposes of alienage jurisdiction.\textsuperscript{132} The court held that an American citizen cannot invoke alienage jurisdiction, even if they are domiciled in a foreign country.\textsuperscript{133} Furthermore, the court noted that an American citizen who is domiciled in a foreign country cannot invoke diversity jurisdiction under § 1332(a)(1) because he cannot claim to be a "state" citizen.\textsuperscript{134} Therefore, like the Seventh Circuit in Sadat, the Fifth Circuit rendered stateless
those Americans who happen to have dual citizenship and are domiciled in a foreign country.

The Ninth Circuit reached a similar result in Kantor v. Wellesley Galleries, Ltd. In Kantor, a Soviet immigrant filed suit in federal court, alleging diversity jurisdiction. Unlike the plaintiff in Sadat, the plaintiff in Kantor was not a dual citizen; he was a citizen of no country. His domicile was in New York, but he was neither a citizen of the United States nor a citizen of the Soviet Union, which had revoked his citizenship when he emigrated. Finding him stateless, the Ninth Circuit asserted that "[f]ederal courts are without authority to hear suits having as their jurisdictional basis the alienage of a person who has no nationality." The Ninth Circuit, therefore, found no basis for the lower court to hear the claim.

In addition to finding that prior case law required enforcing the plain language of § 1332, the Second Circuit in Matimak also found that precedent required deference to the executive branch in determining whether Hong Kong should be considered a formal or de facto foreign state. The case law, though not entirely clear, seemed to imply that de facto recognition could be granted to a territorial entity only when that entity’s political independence is impending. As to the argument that Matimak should have been considered a British citizen, precedent required the court to honor the United Kingdom’s judgment in evaluating the citizenship of those who reside in its Dependent Territories. Lastly, the case law suggested that stateless entities could not invoke alienage

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135 704 F.2d 1088 (9th Cir. 1983).
136 See id. at 1089. The plaintiff alleged subject matter jurisdiction under § 1332(a)(1). See id.
137 See id. at 1090.
138 Id. at 1092.
139 See id. at 1090-92.
140 See supra notes 65-102 and accompanying text (discussing which institution determines whether a territorial entity is a foreign state for purposes of § 1332(a)(2)).
141 See supra notes 70-81, 102 and accompanying text (discussing de facto recognition).
142 See supra notes 103-16 and accompanying text (discussing how to determine the citizenship of foreigners).
IV. Significance of the Case

The Second Circuit, in announcing that Hong Kong corporations did not have standing to invoke alienage jurisdiction, relied upon precedent and the plain language of § 1332(a)(2).

But the decision has raised two troubling issues: (1) whether the Second Circuit’s decision is consistent with the policy rationale behind alienage jurisdiction, and (2) whether the Framers really intended to limit alienage jurisdiction to citizens and subjects of foreign states. The decision also obscures alienage jurisdiction’s relation to international law. Therefore, courts and commentators must ask whether the Second Circuit’s reading of § 1332(a)(2) conforms to international law and, if it does not, what effect this will have on American relations within the international community.

Professor Kevin Johnson has argued that the Framers provided for alienage jurisdiction, in part, to prevent commercial disputes from erupting over the failure of state courts to give effect to the claims of foreign citizens. In particular, Johnson cited the Framers’ experience with the refusal of state legislatures and courts to enforce the debt collection provision of the 1783 Treaty

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143 See supra notes 117-34 and accompanying text (discussing the exclusion of stateless parties from federal courts).

144 See Matimak Trading Co. v. Khalily, 118 F.3d 76, 79-88 (2d Cir. 1997).

145 See id. at 88 (Altimari, J., dissenting).

146 See id. at 89 (Altimari, J., dissenting).

147 See Biancheria, supra note 1, at 200-03 (arguing that, because international law is part of our national law, stateless entities must be allowed to invoke alienage jurisdiction since the international community has determined that every person has a right to a nationality).

148 See infra notes 171-77, 185-87 (discussing international law’s effect on alienage jurisdiction and its consequences for American foreign policy).

149 See Johnson, supra note 1, at 7-20. As Johnson explained, “Adverse foreign relations consequences, resulting from the perception of foreign governments that the state courts were biased, clearly influenced the Framers. A desire to ensure, and increase, the flow of capital from Britain and other nations into the United States, with its fledgling economy, did as well.” Id. at 20.
of Paris. Under the Articles of Confederation, the federal government did not have the ability to enforce the treaty provisions. As a result, some states deployed legal barriers to the collection of debts by British creditors. The failure of the states to honor the claims of British citizens concerned many of the Framers, who feared British retaliation either by armed confrontation or by a refusal to invest in the United States. As Johnson noted: "A fear existed . . . that the nation would be unable to attract much needed capital absent easier enforcement of commercial obligations owed to foreign citizens by U.S. citizens. A national court system was considered one solution." The states’ unwillingness to adjudicate fairly the claims of British creditors impressed upon the Framers the necessity of alienage jurisdiction.

At first glance, the Matimak case would appear to be the archetypal controversy for which alienage jurisdiction was created. The plaintiff was a company incorporated in Hong Kong, which has nearly twelve billion dollars invested in the United States. Indeed, Hong Kong is America’s twelfth-largest trading partner. Its importance to international finance and commerce cannot be doubted. Nevertheless, the Second Circuit held that Hong Kong corporations can not invoke alienage jurisdiction in federal courts. That is, for non-federal question suits, these international

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150 See id. at 8. As part of the agreement to cease hostilities between the newly-formed United States and the United Kingdom, the United States agreed not to obstruct the collection of private debts owed to British creditors. See id. (citing Treaty of Peace, Sept. 3, 1783, U.S.-Gr. Brit., art. 4, 8 Stat. 80, 82).

151 See id.


153 See Johnson, supra note 1, at 8-12.

154 Id. at 8.

155 See id. at 7-20.

156 See Matimak Trading Co. v. Khalily, 118 F.3d 76, 81 (2d Cir. 1997).

157 See id.

158 See id. at 88 (Altimari, J., dissenting).
businesses are excluded from litigating in federal court.\footnote{159} Perhaps of even greater importance, \textit{Matimak} could be cited by other circuits, paving the way for further restrictions on the presence of Hong Kong businesses in the federal courts.\footnote{160} In rendering this decision, the Second Circuit recognized Hong Kong's financial power and its limited autonomy in economic matters, but was nevertheless compelled by precedent to deny its corporations juridical identities.\footnote{161}

Legal precedent supported the decision in \textit{Matimak} at each stage of the Second Circuit's analysis. The Second Circuit found legal precedent standing against Matimak's argument that Hong Kong should be considered a de facto foreign state for purposes of \textsection{1332(a)(2)}.\footnote{162} As a general legal principle, it had been established that federal courts were to defer to the executive branch in determining if a territorial entity was in fact a foreign state.\footnote{163} The Second Circuit found no evidence that the executive branch recognized Hong Kong as a formal or de facto foreign state.\footnote{164} In particular, the court applied the de facto recognition doctrine narrowly, arguing that it should be used only in circumstances where territorial entities have yet to be formally recognized, but will be in the near future.\footnote{165} Because Hong Kong would be administered by the Chinese government after June 30,

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\begin{enumerate}
\item \textit{See id.} (Altimari, J., dissenting).
\item \textit{But see} Wilson v. Humphreys Ltd, 916 F.2d 1239 (7th Cir. 1990) (holding that a business incorporated in the Cayman Islands, a British Dependent Territory, could be brought into federal court through \textsection{1332(a)(2)}; Tetra Fin. (HK) Ltd., v. Shaheen, 584 F. Supp. 847 (S.D.N.Y. 1984) (criticizing as “hypertechnical” the decision in Windert Watch Co. v. Remex Elecs. Ltd., 468 F. Supp. 1242 (S.D.N.Y. 1979) (holding that a Hong Kong corporation could not invoke alienage jurisdiction)).
\item \textit{See Matimak}, 118 F.3d at 79-82 (citing precedent for deferring to the executive branch when deciding if a territorial entity is a foreign state and finding that the executive branch had not conferred formal or de facto recognition upon Hong Kong).
\item \textit{See id.} at 80-82.
\item \textit{See Matimak}, 118 F.3d at 80-82.
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\end{footnotesize}
1997, it did not qualify as a de facto foreign state.\footnote{See Matimak, 118 F.3d at 80.}

Legal precedent also stood against Matimak in its contentions that it should have been considered a British citizen and, alternatively, that all non-U.S. citizens should qualify for alienage jurisdiction under the language of § 1332(a)(2).\footnote{See Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088 (9th Cir. 1983) (holding that a stateless person cannot invoke alienage jurisdiction); see also Windert Watch Co. v. Remex Elecs. Ltd, 468 F. Supp. 1242 (S.D.N.Y. 1979) (holding that the United Kingdom had not conferred British citizenship upon Hong Kong corporations). But see Tetra Fin. (HK) Ltd. v. Shaheen, 584 F. Supp. 847 (S.D.N.Y. 1984) (criticizing the Windert decision for being "hypertechnical").} Concerning Matimak’s alleged British citizenship, the Second Circuit applied the principle enunciated in \textit{Murarka}: A court must respect the power of a foreign state to name its own citizens.\footnote{See Matimak, 118 F.3d at 85 (noting that “[w]e begin with the truism that a foreign state is entitled to define who are its citizens or subjects”).} It being undisputed that the United Kingdom had passed a statute which excluded Hong Kong corporations from British citizenship, the Second Circuit prohibited Matimak from claiming British citizenship for the purposes of alienage jurisdiction.\footnote{See id. at 85-86.} Lastly, the court pointed to the plain language of § 1332(a)(2) and to the holdings of several earlier cases in claiming that stateless parties cannot assert alienage jurisdiction.\footnote{See id. at 86-88.}

Precedent, however, cannot shield the \textit{Matimak} decision from criticism. The Second Circuit noted that the primary reason for the existence of alienage jurisdiction is to prevent foreign conflicts that may result from perceived injustices done to foreign nationals in state courts.\footnote{See id. at 82-83.} In addition, Johnson has argued that the Framers introduced alienage jurisdiction with the apparent intention of avoiding the negative commercial effects that could arise when the legal claims of foreign citizens are not given effect.\footnote{See supra notes 149-55 and accompanying text (discussing the underlying reasons why the Framers introduced alienage jurisdiction into both the Constitution and the Judiciary Act of 1789).} In precluding Hong Kong corporations from invoking § 1332(a)(2),
the Second Circuit has hindered, not furthered, these policy goals.\textsuperscript{173}

Since Hong Kong corporations must bear the threat of biased state courts when litigating contractual issues in the United States, American corporations could face retaliatory actions in the courts of Hong Kong.\textsuperscript{174} And, as the dissent in \textit{Matimak} noted, Britain still has Dependent Territories.\textsuperscript{175} If the dissent was correct in asserting that the United Kingdom did not intend to render Hong Kong businesses stateless, the British government could read \textit{Matimak} as a threat to companies that reside in their remaining colonies.\textsuperscript{176} To counter this threat, Britain might withhold from some American businesses access to its own courts.\textsuperscript{177} Finally, by interpreting the de facto recognition doctrine narrowly, the Second Circuit may have offended China, which had an interest in the protection of Hong Kong corporations as their future sovereign.

In addition to undermining the rationale behind alienage jurisdiction and possibly exposing American corporations to retaliatory restrictions, \textit{Matimak} could also be criticized for applying the plain language of § 1332(a)(2) instead of ascertaining the Framers' actual intent as to who could invoke alienage jurisdiction.\textsuperscript{178} In a recent article, one commentator has argued that

\textsuperscript{173} See \textit{Matimak}, 118 F.3d at 88 (Altimari, J., dissenting) (noting that “because the quintessence of alienage diversity jurisdiction is being challenged today, we risk antagonizing two world forces—the United Kingdom and China”).

\textsuperscript{174} See generally id. (Altimari, J., dissenting) (wondering if foreign courts will remain open for American corporations). The Framers enacted § 1332(a)(2), in part, so that economic growth could be fostered between the Republic and other foreign powers. \textit{See Johnson}, supra note 1, at 13-14. In contrast to the Framers' intent, the decision in \textit{Matimak} could make trade with Hong Kong difficult. See generally \textit{Matimak}, 118 F.3d at 88 (Altimari, J., dissenting) (explaining that the “United States cannot act without regard to the concerns of the rest of the world”).

\textsuperscript{175} See \textit{Matimak}, 118 F.3d at 88. (Altimari, J., dissenting).

\textsuperscript{176} See id. (Altimari, J., dissenting). Colonies remaining under British control include Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, and St. Helena. See id. at 88 n.1.

\textsuperscript{177} See id. (Altimari, J., dissenting).

\textsuperscript{178} But see id. at 87-88 (arguing that the legislative history of the Judiciary Act of 1789 does not suggest that stateless parties are to be included within the alienage jurisdiction provision, particularly when the Framers could not have anticipated the stateless individual phenomenon).
§ 1332(a)(2) should be read to include stateless parties.\textsuperscript{179} This commentator asserts that the Founding Fathers intended for all non-U.S. citizens to be able to enter federal court under the doctrine of alienage jurisdiction.\textsuperscript{180} The strongest argument for this position rests in the original language of the Judiciary Act of 1789.\textsuperscript{181} In codifying § 1332(a)(2), Congress initially used the term "aliens" without any limiting language.\textsuperscript{182} Such terminology suggests that any and all non-U.S. entities could invoke alienage jurisdiction.\textsuperscript{183} Although the statute was later amended, this commentator argues that the courts' jurisdictional power was not limited.\textsuperscript{184}

As a second argument supporting the interpretation of § 1332(a)(2) to include stateless parties, the article contends that the international community has recognized the right of all individuals to have a nationality.\textsuperscript{185} Since it has been established that international law is encompassed in United States law,\textsuperscript{186} this commentator argues that § 1332(a)(2) should be interpreted to give effect to the international norm that a party should not be rendered stateless.\textsuperscript{187} By ruling that Matimak could not invoke alienage jurisdiction, the Second Circuit rendered the Hong Kong corporation stateless. In so doing, it ignored recognized principles of international law, perhaps weakening America's standing in the

\textsuperscript{179} See Biancheria, supra note 1.

\textsuperscript{180} See id. at 210-11.

\textsuperscript{181} See id. The First Congress enacted the Judiciary Act of 1789, which created alienage jurisdiction. See id. at 211.

\textsuperscript{182} See id. at 211.

\textsuperscript{183} See id. at 210-11.

\textsuperscript{184} See id. at 211.

\textsuperscript{185} See id. at 200-02. For proof of the international community's support for the elimination of statelessness, Biancheria cites to, among others, Second Report on the Elimination or Reduction of Statelessness, [1953] 2 Y.B. Int'l L. Comm'n 196, U.N. Doc. A/CN.4/75 (discussing the problem of statelessness and how it should be eliminated or reduced) and Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948) (declaring that "everyone has a right to a nationality"). See id. at 200 n.21, 201 n.23.

\textsuperscript{186} See Biancheria, supra note 1, at 199-200. Biancheria cites The Paquette Habana, 175 U.S. 677, 700 (1900) (declaring that international law is recognized as part of our law and that the courts must administer it). See id.

\textsuperscript{187} See id. at 203.
The Second Circuit faced a rather perplexing task in deciding *Matimak*. Although precedent supported the result, the court, by denying alienage jurisdiction to Hong Kong corporations, may have undermined the basis for enacting § 1332(a)(2). 188 With the emergence of a global economy, harmonious relations with Hong Kong and its Chinese caretakers should be a priority. Yet, the Second Circuit eschewed any desire that Hong Kong, as a semi-autonomous entity, might have had for its companies to adjudicate their claims in neutral forums. 189 It also acted contrary to international law, without regard to the consequences it might have on American foreign relations, when it ruled that stateless entities could not invoke alienage jurisdiction. 190

In defense of the Second Circuit, however, American foreign policy should not be the purview of the federal judiciary. 191 It is generally recognized that deference should be given to the executive branch in ascertaining which territorial entities are foreign states. 192 Therefore, if the executive and legislative branches disagree with the Second Circuit’s decision, the onus should be on them to clarify which entities can invoke alienage jurisdiction. To give Hong Kong companies access to our federal courts, the political branches could amend the United States-Hong Kong Policy Act to state unequivocally that Hong Kong, for purposes of § 1332(a)(2), is a foreign state. As to the problem of stateless entities, if the federal government wants to recognize that all parties have a right to a nationality, then § 1332(a)(2) could be amended to include these parties. If § 1332(a)(2) cannot be modified to include stateless entities because of constitutional limitations, the federal government may be forced to initiate a

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189 See id. at 90 (Altimari, J., dissenting).
190 See supra notes 185-87 and accompanying text (discussing international law’s denunciation of statelessness).
191 See *Matimak*, 118 F.3d at 79-80.
192 See id.
constitutional amendment which would allow stateless parties to invoke alienage jurisdiction. Anything short of these political actions will leave the federal courts relying on precedent that does not reflect the need for broader alienage jurisdiction in an increasingly global economy.

BRADFORD WILLIAMS