

conducted at Linda House Karaoke and Gift Shop in Garapan. In the ensuing litigation, Defendant Wang moved the Court in February 1998 to compel the government to produce all the information it had in its possession having to do with all prosecutions under Public Law 8-14 in order to set up a motion to dismiss based on unequal enforcement of the law as against Asian non-resident women. This Court denied the motion to compel by finding that the Defendant failed to satisfy the threshold requirement that the government had declined to prosecute similarly situated suspects of other races.¹

On May 13, 1997, Defendant Wang moved the Court to dismiss her case on a gender-based claim of selective prosecution, to wit, that no men have ever been prosecuted for violating Public Law 8-14.

III. ISSUES

1. Whether Defendant Wang has met her burden of showing a prima facie case that others similarly situated have not been prosecuted?

IV. ANALYSIS

A. Selective Prosecution

Defendant Wang asserts that her case must be dismissed on grounds of selective prosecution because the government routinely discriminates on the basis of gender in bringing prosecutions under Public Law 8-14.

Selective prosecution claims are judged on ordinary equal protection standards. Wayte v. United States, 470 U.S. 598, 608, 105 S.Ct. 1524, 1531, 84 L.Ed.2d 547 (1985). In order to succeed on a claim of selective prosecution, the Defendant must demonstrate two facts. First, she must provide evidence that persons similarly situated have not been prosecuted. Second, she must [p. 3] show that the decision to prosecute was made on the basis of an unjustifiable standard such

¹ The motion to compel was based in large part on an article entitled "Sex trade in the CNMI", Marianas Variety and Views, January 22, 1998. The article consisted of a local reporter's first-hand account of prostitution on the island. The same article is also cited in the instant motion.

as race, or that the prosecution was intended to prevent her exercise of a fundamental right. United States v. Aguilar, 871 F.2d 1436, 1474 (9th Cir. 1989), *cert. denied*, 111 S.Ct. 751 (1991); United States v. Schoolcraft, 879 F.2d 64, 68 (3rd Cir. 1989). The Defendant bears the burden of proof for both factors. Schoolcraft, *supra*. If the court finds that the Defendant has failed to make a prima facie case as to the first element, it need not address the second one. United States v. Pleasant, 730 F.2d 657, 663 (11th Cir. 1984).

In the instant case, Defendant Wang asserts that the government regularly discriminates on the basis of gender in bringing prosecutions under Public Law 8-14. However, as Plaintiff correctly points out, Public Law 8-14 is comprised of several statutes which make illegal the act of prostitution as well as other prostitution-related offenses such as promoting prostitution.² Defendant Wang has only been charged with the violation of one statute under Public Law 8-14, to wit, 6 CMC § 1344 which prohibits the promotion of prostitution.³ This Court is not persuaded by Defendant Wang's attempt to bootstrap her selective prosecution argument by noting, for example, that the public defender's office has never defended a man for prostitution. An individual charged with committing the act of prostitution is not similarly situated to an individual charged with promoting prostitution. As such, this Court finds that Defendant Wang has no standing to assert any selective prosecution claims based on other statutes under Public Law 8-14 with which she has not been charged.

Aside from her lack of standing, Defendant has failed to meet the burden of proof that others similarly situated (i. e." men") have not been prosecuted. In fact, at oral argument Plaintiff introduced evidence that the government is prosecuting men for promoting prostitution. For example, Plaintiff [p. 4] offered the ongoing criminal case of CNMI v. Jun-Guo Dong⁴ which

² Public Law 8-14 is codified in 6 CMC, Div. 1, Article 3. "Prostitution"(6 CMC §§ 1341-1348). The individual statutes are as follows: §1341 "Definitions"; § 1342 "Prohibition"; § 1343 "Prostitution"; § 1344 "Promoting Prostitution"; § 1345 "Permitting Prostitution"; § 1346 "Penalties"; § 1347 "Promoting or Permitting Prostitution"; § 1348 "Enforcement".

³ Defendant Wang has also been charged with Withholding Documents in violation of 3 CMC § 4437(f). However, this charge is not the subject of the instant motion.

⁴ CNMI Criminal Case No. 93-121.

involves a male defendant being prosecuted for promoting prostitution. It should also be noted that counsel for the Defendant in Dong is from the same office as Ms. Wang's counsel. As such, counsel for Defendant Wang had information from within his own office that the government is prosecuting men for promoting prostitution.

Because this Court finds that Defendant Wang has failed to make a prima facie showing that others similarly situated have not been prosecuted, it will not address the second element of selective prosecution argument. *See Pleasant, supra.*

V. CONCLUSION

For all of the reasons stated above, Defendant Wang's Motion to Dismiss is **DENIED**.

So ORDERED this 1st day of June, 1998.

/s/ Timothy H. Bellas
TIMOTHY H. BELLAS, Associate Judge