

09-4305-cv

United States Court of Appeals
for the
Second Circuit

JONATHAN NNEBE, ALEXANDER KARMANSKY, individually and
on behalf of all others similarly situated, KHARIRUL AMIN, EDUARDO
AVENAUT, NEW YORK TAXI WORKERS ALLIANCE, individually
and on behalf of all others similarly situated,

Plaintiffs-Appellants,

—v.—

MATTHEW DAUS, CHARLES FRAZIER, JOSEPH ECKSTEIN, ELIZABETH BONINA,
THE NEW YORK CITY TAXI AND LIMOUSINE COMMISSION,
THE CITY OF NEW YORK, CHARLES FRASER,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

**BRIEF FOR THE ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND
AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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TABLE OF CONTENTS

	Page
INTEREST OF THE <i>AMICUS CURIAE</i>	1
INTRODUCTION	1
ARGUMENT	3
A. Driving on the Edge of Poverty.....	3
B. The Myth of Dangerous Taxi Drivers.....	5
CONCLUSION	8

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Armstrong v. Manzo</i> , 380 U.S. 545 (1965).....	3
<i>Fuentes v. Shevin</i> , 407 U.S. 67 (1972).....	2
<i>Joint Anti-Fascist Refugee Committee v. McGrath</i> , 341 U.S. 123 (1951).....	2
<i>Kwong Hai Chew v. Colding</i> , 344 U.S. 590 (1953).....	2
<i>Mathews v. Diaz</i> , 426 U.S. 67 (1976).....	2
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976).....	3, 5
<i>Sniadach v. Family Fin. Corp. of Bay View</i> , 395 U.S. 337 (1969).....	4

STATUTES AND RULES

Fed. R. App. P. 32(a)(5).....	9
Fed. R. App. P. 32(a)(6).....	9
Fed. R. App. P. 32(a)(7)(B)	9
Fed. R. App. P. 32(a)(7)(B)(iii)	9
Local Rule 29.1(b)	1

OTHER AUTHORITIES

Richard B. Saphire, <i>Specifying Due Process Values: Toward a More Responsive Approach to Procedural Protection</i> , 127 U. Pa. L. Rev. 111 (1978).....	2
---	---

TABLE OF AUTHORITIES

Page(s)

OTHER AUTHORITIES

Risk Factors and Protective Measures for Taxi and Livery Drivers, May 2000, available at <http://www.osha.gov/OSHAfacts/taxi-livery-drivers.pdf>.6

INTEREST OF THE *AMICUS CURIAE*

Founded in 1974, the Asian American Legal Defense and Education Fund (AALDEF) is a national organization that protects and promotes the civil rights of Asian Americans.¹ By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all.

New York's cabdrivers are overwhelmingly immigrants and disproportionately East Asian. As noted in plaintiffs-appellants brief, 89 percent of New York's cabdrivers were born outside the United States. The largest group, 43 percent of the total, hails from South Asia, principally India, Pakistan, and Bangladesh. AALDEF has an interest in ensuring the constitutional rights of these individuals – and the interests of those who depend upon them – and thus has an important interest in the outcome of this litigation.

INTRODUCTION

New York's yellow taxis are as much this city's signature as its famous skyline. Driving those taxis has long served as an opportunity for hardworking

¹ Pursuant to the Disclosure provision of Local Rule 29.1(b), AALDEF states that (1) no party's counsel authored the brief in whole or in part; (2) no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and (3) no person other than amicus curiae, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief.

immigrants to eke out a better life for themselves here in the United States. But as a majority immigrant workforce – with all the attendant prejudices, stereotypes, and societal handicaps – cabdrivers as a group are especially in need of the Due Process protections secured by the Fifth and Fourteenth Amendments of the United States Constitution.

Due Process protects everyone in this country, even noncitizens. *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953). Notice and the opportunity to be heard is an essential aspect of that protection. As Justice Frankfurter famously explained about Due Process: “No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and the opportunity to meet it. Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done.” *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 171-72 (1951) (Frankfurter, *J.*, concurring).²

To accomplish this function, the Supreme Court has insisted that notice and the opportunity to be heard must be granted in a ““meaningful time and in a meaningful manner.”” *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (quoting

² See also Richard B. Saphire, *Specifying Due Process Values: Toward a More Responsive Approach to Procedural Protection*, 127 U. Pa. L. Rev. 111, 117-25 (1978).

Armstrong v. Manzo, 380 U.S. 545, 552 (1965)). The familiar framework of *Mathews v. Eldridge*, 424 U.S. 319 (1976) particularizes this principle.

Here, the District Court paid lip service to the *Mathews* factors and the general rule requiring pre-deprivation notice. But the opinion took too stringent a view of the individual cabdriver's interests at issue and far too indulgent a view of the City's claims. Absent from the District Court's opinion was a realistic picture of the life and livelihood of a New York cabdriver. With this brief, we hope to supply critical context for the Court's *Mathews v. Eldridge* analysis in assessing the suspension policy's severity.

First, the lower court downplayed the devastating nature of these (majority unfounded) suspensions. We illustrate here this unique workforce's vulnerability to even "temporary" deprivation of employment. Second, we address the lower court's sinister depiction of the "perilous situation" endured by taxi passengers. As shown below, the district court got it backwards: statistics show that it is the passenger who endangers the cabdriver, not the other way round.

ARGUMENT

A. Driving on the Edge of Poverty.

The District Court glossed over the devastating ramifications of the TLC's suspension policy at various points of its analysis, such as assessing the adequacy

of the post-deprivation hearing. It is vital, however, for the Court to grasp fully the consequences of these suspensions.

The majority of New York's taxi drivers rely on the job as their primary source of income. They often earn the sole income for large families in a city where the cost of living significantly exceeds the national average. Although taxi drivers generally work 10-12 hour shifts (and 60-70 hours per week), their working conditions differ radically from those of other full-time workers in the United States. The job provides no healthcare; no paid time off (even for emergencies or illness); no unemployment insurance; no retirement or pension plans; no compensation for loss of income due to vehicle breakdowns, robbery, or passengers running out without paying. The lack of health insurance in particular means that drivers often cannot give serious attention to an illness until it becomes an emergency, resulting in a high incidence of health problems.

Against this backdrop, the severe consequences of a license-suspension should be self-evident. The typical cabdriver lacks a cushion of savings to tide his family over until (as occurs in the vast majority of cases) the charges against him are dismissed. Suspension can mean that there is no money for rent, food, or utilities. "The result is that a [suspension] may as a practical matter drive a wage-earning family to the wall." *Sniadach v. Family Fin. Corp. of Bay View*, 395 U.S. 337, 341-42 (1969).

The harshness of the rule cannot be understated. Even when arrested, most wage-earners are able to continue to work, to draw a salary and support their families, while the charges are sorted out. Cabdrivers, however, are immediately deprived of their livelihood. The TLC’s suspension policy means that a cabdriver charged (but not convicted, of course) with, say, fraud, will be deprived of his livelihood for months, and his family suddenly thrown into economic crisis or ruin – regardless of whether the charges have *anything* to do with the cabdriver’s job, and regardless of the fact that charges forming the basis of suspensions result in convictions fewer than 10% of the time. That makes no sense.

B. The Myth of Dangerous Taxi Drivers.

Baseless stereotypes about the threat posed by cabdrivers distorted the District Court’s analysis of the second *Mathews* factor. SPA-13. The District Court weighed the government’s interest in this factor so strongly that it deemed acceptable the absence of a pre-deprivation hearing. SPA-12. In particular, the court invoked the TLC’s function of “ensuring the safety of the taxi-riding public and maintaining the public’s trust in the safety of cabdrivers,” *id.*, and then darkly elaborated:

A taxi passenger is in a uniquely vulnerable position, in a confined space with a stranger who may lock the doors, block egress, and limit the passenger’s ability to summon police assistance. Passengers consent to what would otherwise be a perilous situation because a TLC license reflects the TLC’s opinion that the licensee meets the

standard of fitness for licensure set forth in the TLC Rules. Accordingly, the TLC has a strong interest in ensuring both that the passengers are not placed in a vulnerable position with potentially dangerous drivers and in ensuring that the public perceive the taxi industry to be safe. (Fraser Decl. ¶ 11).

The reality is far different. Taxi driving is one the most dangerous jobs in the nation. A taxi driver is sixty times more likely to be killed on the job than the average American worker.³ Taxi drivers are also among those with the highest rates of nonfatal assault, exceeded only by the rate of assaults on police and private security guards. Rarely does a month pass in this city without the report of a violent crime – robbery, assault, murder – committed against a driver.

These grim numbers are hardly surprising. A taxi driver toils daily with his or her back to strangers, carrying large sums of money, and is obliged to drive to any part of the city at any hour. It is the taxi *driver* who is in the “uniquely vulnerable position.”

At the same time, New York’s cabdrivers are subjected to intense regulatory and law enforcement scrutiny – to a much more intrusive degree than that of other New Yorkers. *See, e.g.*, Plaintiffs-Appellants’ Br. at 31 (observing that Taxi passengers see the driver’s name, photograph, and license number, as well as the

³ U.S. Dep’t of Labor, *Risk Factors and Protective Measures for Taxi and Livery Drivers*, May 2000, available at <http://www.osha.gov/OSHAfacts/taxi-livery-drivers.pdf>.

cab's medallion number, and the city's 24-hour 311 number; how the NYPD assigns special units to monitor cabs; the TLC has its own inspector force; cabs are equipped with GPS devices; and law enforcement authorities have drivers' fingerprints on file).

Cabdrivers are less likely be arrested and less likely to be convicted of a crime than are members of the New York population as a whole.⁴ And incidents in which a cabdriver committed a crime against a passenger are virtually unheard of. The district court's vividly imagined scenario in which a cabdriver harms a passenger is just that – imagined. It cannot support the pre-hearing deprivation at issue in this case.

⁴ Approximately 1 in 33 people are arrested in the state of New York. Assuming about 95,000 taxi drivers (including yellow cabs and for hire vehicles), one would expect nearly 2,900 arrests annually, but in fact the statistics reflect about one sixth that number.

CONCLUSION

For the foregoing reasons and those set forth in the brief of plaintiffs-appellants, the district court's order granting summary judgment to the defendants-appellees should be reversed.

Respectfully submitted.

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CERTIFICATE OF COMPLIANCE WITH RULE 32(A)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 1584 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in Times New Roman 14-point type for text and footnotes.

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