Obtaining Bail in International Extradition Cases

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Among the many challenges posed in defending an international extradition case,[1] one of the most significant comes up in the earliest stage of the extradition proceeding: obtaining the defendant's release on bail.

The importance and value of securing an extradition defendant's release on bail cannot be overstated. As in a domestic criminal case, release on bail materially enhances the defendant's ability to assist in the preparation and conduct of the defense. Additionally, certain countries will not accord the defendant credit for time served in the United States while awaiting extradition.

Extradition law strongly disfavors release on bail, even under circumstances in which a federal or state court would readily release a defendant on analogous domestic charges. The standard for release on bail in an extradition case is onerous: in addition to showing that he or she is not a flight risk or a danger to the community, the extradition defendant must establish that "special circumstances" exist to justify release on bail.

This article explores the "special circumstances" doctrine in extradition law, and identifies the circumstances that courts have recognized as sufficiently "special" to warrant release on bail, as well as the circumstances that courts have considered and rejected as insufficiently "special" to warrant release on bail.

The Initiation Of Extradition Proceedings

Extradition proceedings are governed by statute,[2] case law, and the applicable treaty. Extradition proceedings begin when the government files a complaint (usually sworn to by an Assistant U.S. Attorney) in the U.S. district court, most commonly seeking provisional arrest with a view to extradition. The complaint often contains only sketchy information, the gist of which is that a specified foreign country (the "requesting country") has delivered a diplomatic note to the U.S. Department of State, and that the diplomatic note indicates that an arrest warrant has been issued in the requesting country; that the client has been accused (or in some cases, is suspected) of having committed one or more crimes, in violation of various provisions of the criminal code of the requesting country; that the crimes fall within the extradition treaty between the United States and the requesting country; that the alleged conduct is criminal in both the United States and the requesting country; and that the accused is known or believed to be residing in the district. The complaint will also contain basic identifying information regarding the accused.[3]

The complaint will be assigned to an "extradition magistrate." An extradition magistrate is a creature of statute,[4] and is most commonly a U.S. magistrate

judge. Occasionally, U.S. district judges have sat as extradition magistrates, acting outside of their Article III capacity.[5]

On the basis of the complaint, the extradition magistrate will issue a warrant of arrest, and, following execution of the warrant, will conduct an arraignment. The government will ask the court to set a date for the extradition hearing sufficiently far out to allow time for the requesting government to prepare and submit a formal request for extradition. At the arraignment the defense attorney can ask the court to set a date for a bail hearing. The client will get a bail hearing, but there is no requirement that the hearing be held within three days, as the Bail Reform Act does not apply to extradition proceedings.[6] Indeed, no statute provides for bail in extradition cases.

A very important preliminary issue is whether, under the terms of the applicable extradition treaty, the defendant may be detained without probable cause, or whether the treaty requires the requesting government to establish probable cause at the provisional arrest stage. If the latter, the next inquiry will be whether the requesting government has made the requisite showing.[7]

If the treaty does not require a showing of probable cause at the provisional arrest stage, the defendant may be detained without probable cause pending the extradition hearing.[8] This appears to be abhorrent to basic principles of due process, and raises serious issues under the Fourth, Fifth and Eighth Amendments to the U.S. Constitution. Yet, courts — with certain exceptions, discussed below — have been unreceptive to constitutional arguments in extradition cases. Courts have continued to detain individuals without making a finding of probable cause, on the ground that U.S. foreign relations may be adversely affected if the accused is released on bail and then fails to appear.[9]

Hurdles to Bail in Extradition Cases

As a matter of policy, the U.S. Department of Justice instructs prosecutors to "vigorously oppose bail" in international extradition cases.[10] While this policy might not always be followed, consent to bail is not ordinarily given. Most likely, defense counsel will have to convince the extradition magistrate to release the defendant on bail.

Federal case law imposes significant hurdles to bail that are not present in domestic criminal cases. The first fundamental principle is that there is a presumption against bail in extradition cases. This is so regardless of the nature of the alleged offense. It makes no difference if the case involves international terrorism, a commercial dispute, or something in between. The presumption against bail applies in all cases.[11]

The accused has the burden of establishing lack of risk of flight and lack of danger to the community and, in many courts, must do so by "clear and convincing" evidence.[12] The factors considered in assessing risk of flight and danger to the community are comparable to those considered in domestic criminal cases; indeed, some courts look to the (non-binding) Bail Reform Act for guidance in that regard.[13]

A second fundamental principle is that, to obtain bail, counsel needs to show not only that the defendant is neither a risk of flight nor a danger to the community but also "special circumstances" warranting the defendant's release on bail.[14] The client might be completely harmless, may have strong and compelling ties to the community, and could post a substantial package of assets to secure a bond, but the defense must still show "special circumstances" to obtain release on bail.

Although the "special circumstances" requirement applies at all stages of the extradition process,[15] certain courts have indicated that the standard for granting bail at the provisional arrest stage is more "liberal" than the standard following the submission of the formal extradition request.[16]

Conversely, if the accused has already been certified as extraditable, there is disagreement whether, as a matter of law, bail is available at all. Most courts hold that it is available,[17] while some courts hold, based upon their interpretation of the extradition statute, that post-certification bail is unavailable as a matter of law.[18]

While some courts refer to the absence of risk of flight and danger to the community as "threshold" determinations of, or "conditions precedent" to, the "special circumstances" analysis,[19] there is no universally accepted sequence in which courts evaluate risk of flight, danger to the community, and existence of "special circumstances." Courts have expressed differing preferences in that regard.[20]

Origin of the 'Special Circumstances' Requirement

The "special circumstances" requirement originated in a remark in a 1903 U.S. Supreme Court opinion, *Wright v. Henkel*.[21] An extradition defendant had sought bail in the Circuit Court for the Southern District of New York, and the Circuit Court had denied bail, on the basis that no statute expressly authorized bail in extradition cases.[22] On appeal, the Supreme Court affirmed the denial of bail based on the record before it. In addition to an absence of statutory authority for bail in extradition cases, the Court found that international legal and diplomatic considerations weighed against granting bail:

> The demanding government, when it has done all that the treaty and the law require it to do, is entitled to the delivery of the accused on the issue of the proper warrant, and the other government is under obligation to make the surrender; an obligation which it might be impossible to fulfill if release on bail were permitted. The enforcement of the bond, if forfeited, would hardly meet the international demand; and the regaining of the custody of the accused obviously would be surrounded with serious embarrassment.[23]

Nevertheless, the Court rejected the contention that bail could never be granted in an extradition case: "We are unwilling to hold that the Circuit Courts possess no power in respect of admitting to bail other than as specifically vested by statute, or that . . . those courts may not in any case, and *whatever the special circumstances*, extend that relief."[24] The Court thus acknowledged the availability of bail in an extradition case, albeit only under unspecified "special circumstances."

Thus was born the "special circumstances" requirement. Resting on this slender reed — a passing observation that was, at best, dictum — is more than a century of nearly unwavering jurisprudence, largely to the detriment of extradition defendants. A century of expansion of due process rights in the area of domestic criminal

law would surely warrant a fresh look at the "special circumstances" requirement for bail in an extradition case. Yet, with a few notable exceptions discussed below, courts have remained time-bound and have continued to impose the vague and conclusory "special circumstances" requirement without regard to progress in domestic criminal law.[25]

Development of the 'Special Circumstances' Dictum

Since *Wright*, the Supreme Court has not addressed the subject of bail in extradition proceedings. Six years after *Wright* was decided, the "special circumstances" dictum was further developed by Judge Learned Hand, then a U.S. district judge. In *In re Mitchell*,[26] Judge Hand wrote that "special circumstances" permit bail "only in the most pressing circumstances, and when the requirements of justice are absolutely peremptory."[27] He found special circumstances where the accused needed to prepare for and attend a state court civil trial, already underway, in which his "entire fortune" was at stake.[28]

During the next *65* years, there were only a handful of reported bail decisions in extradition proceedings.[29] A likely explanation for the paucity of reported case law is that during that period of time, decisions by magistrate judges (or by their predecessor "U.S. commissioners") were usually not reported in the federal reporters. Unlike today, there were no electronic databases that recorded these decisions.

Starting in the mid-1970s, reported decisions on bail in extradition cases started to appear with increasing regularity. Guided by little more than the words "special circumstances" in *Wright*, and by Judge Hand's observations in *Mitchell*, courts have taken a scattershot approach to determining whether special circumstances exist in any given case. Not only have there been inconsistent rulings among federal circuits, there have even been inconsistent rulings within federal districts.[30] One district court has complained that the lack of a precise formulation of the "special circumstances" standard has resulted in an "incoherent" approach to bail in extradition cases.[31] Another district court has disparaged the elastic quality of the special circumstances standard by invoking Humpty Dumpty's explanation that "when I use a word … it means just what I choose it to mean — neither more nor less."[32]

While the case law in this area surely lacks uniformity, several broad principles have gained universal or near-universal acceptance. First, to be considered "special," the circumstances must be "extraordinary and not factors applicable to all defendants facing extradition[.]"[33] This principle precludes the argument that the accused's need to assist in the preparation of the defense is a special circumstance, as this argument could be made on behalf of any extradition defendant.[34] Second, the defendant bears the burden of establishing special circumstances. Some courts require this showing by clear and convincing evidence,[35] while in other courts a preponderance of the evidence suffices.[36] Third, special circumstances are not confined to those previously recognized in the case law.[37] As a result, there is opportunity for creativity as well as diligence on the part of defense counsel in identifying circumstances so special that they have never arisen in any reported decision.

Application of the 'Special Circumstances' Requirement

What, then, are "special circumstances"? Unfortunately, the answer is not clear-cut. The inconsistent application of the standard makes the bail determination unpredictable.

A substantial and growing body of case law holds that special circumstances need not be evaluated individually; a confluence of circumstances, no single one of which is sufficient to carry the day, can collectively give rise to special circumstances and establish a right to bail.[38] Indeed, in cases in which no single circumstance stands out as sufficiently "special," this collective approach may be fruitful. As extradition specialist Linda Friedman Ramirez wrote in her article for *The Champion* magazine, the bail issue, however daunting, "should not be considered a lost cause. Practitioners must weave the factual and procedural infirmities of the case into a showing of special circumstances."[39]

While the collective approach may prove effective, it is important to know which individual factors have been recognized by courts, at least in principle, as constituting "special circumstances." Certain circumstances have gained widespread acceptance, while others have garnered support on a more limited scale.

1. High Probability of Success on the Merits

First among the widely accepted special circumstances is "the raising of substantial claims upon which the [defendant] has a high probability of success" in establishing that he or she should not be extradited.[40]

While the prerequisites for extradition in any given case depend upon the terms of the treaty between the United States and the requesting country, the government must ordinarily show (1) the existence of a valid extradition treaty between the requesting country and the United States; (2) that the defendant in custody is the person sought in the extradition request; (3) that each crime for which the defendant is sought is an extraditable offense under the treaty (including a requirement that the conduct at issue be criminal in both countries); and (4) that probable cause exists

for each of the offenses set forth in the extradition request.[41] Treaty-based defenses vary, but can include passage of the statute of limitations, double jeopardy, and the political offense exception to extradition.[42]

In extradition proceedings, the defendant generally may not offer evidence that contradicts the requesting country's proof. This "Rule of Non-Contradiction" can present a formidable obstacle at the bail hearing to establishing a high likelihood of success.[43] At a minimum, however, the defendant may offer evidence that provides an innocent explanation for the facts alleged by the requesting government, or evidence that negates or obliterates the requesting government's evidence.[44] The distinction between impermissible contradiction on the one hand, and permissible negation or obliteration on the other, is quite murky.[45]

These impediments notwithstanding, if the defense attorney can demonstrate at the bail hearing that there is a high probability that the government will not be able to meet its burden on one or more elements needed for extraditability, or that there is a strong defense to extradition, the extradition magistrate might release the client on bail.

Apart from a high probability of success in the extradition proceeding, a high probability of success on the merits in the requesting country has also been deemed a special circumstance by some courts.[46]

2. Unusually Prolonged or Delayed Extradition Proceedings

Another factor that has long been recognized as a special circumstance is where the extradition proceedings have extended, or are projected to extend, for an unusually long time, especially as a result of the complexity of the case or due to prosecutorial setbacks in the requesting country.[47] This issue arose in two early cases. In *McNamara v. Henkel*,[48] the court noted that if the requesting government "is not ready to proceed" on the day scheduled for the extradition hearing, that could constitute a special circumstance.[49] In *In re Gannon*,[50] a two-month delay of the extradition hearing to wait for identification witnesses to arrive was part of a set of facts that gave rise to special circumstances.[51]

More recent case law has developed this concept further. To be deemed a special circumstance, the length must indeed be "unusual."[52] Likewise, courts might not find that special circumstances exist where the defendant caused the delay or prolongation of the extradition hearing.[53]

In some courts, the prolongation or delay must be of the extradition hearing itself; an anticipated lengthy post-certification challenge to a finding of extraditability is not considered a special circumstance.[54] Other courts, however, take into account the projected length of post-certification proceedings to determine whether a special circumstance exists.[55] One court considered the fact that the defendant had already been incarcerated for nearly five years on an immigration matter, coupled with the U.S. government's two-year delay in initiating extradition proceedings and the likelihood that the extradition proceedings would be protracted, in finding special circumstances and granting bail.[56]

3. Lack of 'Diplomatic Necessity for Denying Bail'

Some courts have found that the lack of "diplomatic necessity for denying bail" constitutes a special circumstance.[57] This terminology may be confusing, as a determination of "diplomatic necessity" would ordinarily be made by the political branches of government, not by the judiciary. However, a review of the cases reveals that a finding of lack of "diplomatic necessity for denying bail" is essentially a finding that the requesting government should not be heard to object to the defendant's release on bail, due either to (1) certain general practices of the requesting government, or (2) the behavior of the requesting government in this case.

For example, some courts have held that a special circumstance exists if bail would be available (a) to a person sought for extradition in the requesting country on the same offense as the defendant, or (b) to the defendant if he or she were already in the requesting country.[58] These courts have reasoned that the requesting country should not object to the defendant's receiving the same treatment in the United States as he or she would receive in the requesting country.[59] Other courts have rejected this reasoning and have ruled that the availability of bail in the requesting country does not constitute a special circumstance.[60]

In a related vein, some courts have held that a foreign government's delay in bringing charges or requesting

extradition, in conjunction with other factors, is a special circumstance, as the delay implies that the requesting government does not view the prosecution or extradition of this individual as a priority.[61] However, other courts have held that such delay is not a special circumstance.[62]

Finally, at least one court has ruled that the requesting country's lack of opposition to bail may be taken into account, along with other factors, in finding special circumstances.[63]

4. Other Circumstances Sometimes Recognized As 'Special'

The rest of the "special circumstances" jurisprudence is spotty and case-specific. The Ninth Circuit and the lower courts within it have been the most progressive in finding special circumstances.[64] Although there is no consensus among courts, at least some courts have held the following circumstances to be "special," standing alone, or in combination with other circumstances:

- *Health Issues.* "A serious *deterioration* of health while incarcerated,"[65] or a serious medical condition that cannot be treated in prison,[66] may be considered a special circumstance. But minor health concerns, or even serious health issues that can be treated in prison, have generally not been recognized as special circumstances.[67]

- *Juvenile Status.* In one case, the fact that the defendant was under 18 and that there was no suitable detention facility for juveniles was deemed a special circumstance.[68]

- *Religious Practice.* The lack of materials or facilities for religious practice at the place of detention has been held to be a special circumstance, in conjunction with other factors.[69]

- *Need to Attend to Other Legal Proceedings.* The need to participate in another legal proceeding, related or unrelated to the extradition case, has occasionally been held to be a special circumstance.[70] Most courts, however, have refused to release the defendant to attend to other litigation, usually finding that there is no urgent need to participate in the other matter.[71]

- *Ability to Provide Medical Services to the Public.* Where the defendant is a physician, courts have differed on whether the benefit to society in allowing the defendant to be out on bail and providing medical services to patients is a special circumstance.[72] A desire to take the dental boards has been held not to be a special circumstance.[73]

- *Assistance to the U.S. Military or Law Enforcement.* In one case, the fact that the defendant had provided valuable assistance to U.S. military and law enforcement was held to be a special circumstance.[74]

- *Widespread Communal Support.* In a case involving a member of the Provisional IRA, the Ninth Circuit found as a special circumstance the fact that the defendant had the "sympathy and concern of many Americans," and thus releasing him on bail would engender "harmony" between the respective factions.[75] In a later case, a popular Olympic wrestling coach was released on bail based in part upon widespread communal support.[76]

- *Nature of the Offense Charged.* As noted above, the nature of the offense charged plays a role in courts that hold that availability of bail in the requesting country is a special circumstance. In one case, the non-violent nature of the offense charged was considered, along with other factors, a special circumstance.[77] In other cases, the nature of the offense charged has been held not to be a special circumstance,[78] though relevant to the issues of risk of flight and danger to the community.[79]

- *Acquittal in the Requesting Country.* In some countries, an acquittal may be appealed. As a result, the U.S. extradition proceeding may continue even after there has been an acquittal. Such an acquittal in the requesting country has been held to constitute a special circumstance.[80]

- *Fact That Crime Occurred in the United States.* In one case, the fact that the alleged criminal conduct occurred principally in the United States was deemed a special circumstance, in conjunction with other factors.[81]

- *Parity of Treatment With a Co-Defendant Who Had Been Released on Bail.* The Ninth Circuit has deemed parity in treatment with a co-defendant who has been released on bail to have "some claim" to being considered a special circumstance.[82] The First Circuit has rejected this as a special circumstance.[83]

- *Availability of Bail in the United States for Charged Offense.* In combination with other factors, courts have occasionally found this to be a special circumstance.[84]

5. Circumstances Not Usually Considered 'Special'

Courts have usually held that the following circumstances do not qualify as special circumstances, although there have been some exceptions, noted below:

- *Lack of Risk of Flight or Danger to the Community.* Most courts have held that these are not special circumstances, but rather, separate requisites for obtaining bail.[85] But some courts have held that these are special circumstances, in conjunction with other factors.[86]

- *Discomfort of Detention.* Courts do not find anything "special" about the fact that prisons are uncomfortable,[87] although one court made passing mention of the undesirable characteristics of the prison population in releasing a medical doctor on bail.[88]

- *Financial or Emotional Hardship.* Being incarcerated inherently creates financial and emotional hardships on the accused and on his or her family. Courts are generally unsympathetic to defendants who claim this is a "special" circumstance.[89] But in a small number of cases, courts have taken into account family situations in finding the existence of special circumstances.[90]

- *Failure to Receive Credit for Time Served in a U.S. Prison.* The fact that the requesting government will not afford credit for time in U.S. custody is not a special circumstance.[91]

- *United States Citizenship.* U.S. citizenship is not a special circumstance,[92] although it should be given consideration on the issue of risk of flight.

- *Lack of a Prior Criminal Record.* Courts do not view this as a special circumstance.[93]

- *Good Character of the Defendant.* Courts have refused to find special circumstances where the defendant provided letters of reference attesting to his good character, as well as offers from friends to post bond.[94] But in one case, the court took into account, as part of a collection of facts giving rise to special circumstances, the fact that the defendant had acted responsibly with respect to the matter at issue.[95]

- *The Need to Attend to Governmental Responsibilities.* In a case where the defendant was a high-ranking foreign government official who needed to be released from custody in order to attend to his governmental duties, the court refused to find special circumstances.[96]

- *Tactics or Motivation of the Requesting Government.* These are not recognized as special circumstances, even where the requesting government's conduct is considered "unusual" or "suspicious."[97]

- *Efforts by the Defendant to Reach a Compromise With the Requesting Government.* This has not been recognized as a special circumstance in published opinions, although it appears there are unpublished decisions that have found this to be a special circumstance.[98]

Judicial Efforts to Conform the Law of Bail To Modern Constitutional Principles

The resilience and universal acceptance of the "special circumstances" requirement is surprising, especially considering its origins. The special circumstances rule, which is used as justification for depriving individuals (including U.S. citizens) of liberty pending extradition, sometimes without probable cause, has flourished, with little analysis to support it. Courts apply the rule in almost knee-jerk fashion, seldom addressing its fairness, wisdom, or continued viability in the face of contemporary constitutional doctrine.

Two notable efforts to challenge the harshness of the "special circumstances" requirement and to make the law of bail more consistent with constitutional principles are worthy of mention.

The first took place in the District of Massachusetts, where two prominent U.S. district judges, Joseph Tauro and Robert Keeton, each attempted to bring the law of bail into line with modern constitutional doctrine.[99] Judge Tauro accepted the continued viability of the "special circumstances" requirement, but held that the requirement "must be viewed, in the light of modern concepts of fundamental fairness, as providing a district judge with flexibility and discretion in considering whether bail should be granted."[100] Granting bail, he found special circumstances in the combined facts that the defendant had already been detained for two months, that there was an issue regarding the identification of the defendant, and that the defendant was a good bail risk and was not a danger to the community.[101] In another case, Judge Keeton went further. In the context of provisional arrest, he found no basis in the pertinent treaty, or in any statute or constitutional principle, for detaining an accused without a determination of probable cause. Granting bail, Judge Keeton based his decision on his con-

clusions that (a) the extradition statute[102] did not explicitly or implicitly require a showing of special circumstances in the provisional arrest context, and (b) even if the requirement was applicable, the fact that the arrest was provisional was, in and of itself, a factor that weighed heavily in establishing special circumstances.[103] These decisions were major breakthroughs, but they were short-lived. One was vacated, and the other reversed, by the First Circuit.[104]

A second attempt to conform the law of bail to modern constitutional standards occurred in the Ninth Circuit. In *United States v. Parretti*,[105] the court of appeals ruled that issuance of a warrant for provisional arrest without a determination of probable cause violated the warrant clause of the Fourth Amendment.[106] The court further held that in the absence of risk of flight or danger to the community, it was a violation of the Due Process Clause of the Fifth Amendment to detain an accused prior to the extradition hearing.[107] The court refused to make an exception to these rights for the purpose of complying with international treaties. Unfortunately, while his appeal was pending, Mr. Parretti, who had been released on bail, fled the country. The court of appeals issued an *en banc* decision, based upon the fugitive disentitlement doctrine, withdrawing its earlier decision.[108] The precedential effect of *Parretti* remains unresolved within the Ninth Circuit,[109] as well as without.[110]

If Bail Is Denied

If bail is denied, counsel should make sure the order specifies that the denial is without prejudice. Circumstances can change, and a lack of special circumstances during the early stage of the extradition proceeding does not foreclose the possibility that subsequent developments, in the case or outside it, may give rise to special circumstances.[111]

A magistrate judge's order denying bail is reviewable by a district court via a habeas corpus petition.[112] Standards of review vary. In some courts, the standard is whether the magistrate judge acted within his or her "sound discretion."[113] Other courts look to whether the extradition magistrate had "reasonable grounds" for the determination.[114] Finally, some courts grant *de novo* review.[115]

A magistrate judge's order granting bail may be reviewable via direct appeal to the district court,[116] although in a decision later vacated as moot, the Eleventh Circuit held that such an order was not reviewable via direct appeal to the district court.[117]

The decision of the district court, either way, is an appealable "final decision" within the meaning of 28 U.S.C. § 1291.[118]

Conclusion

The legal standards governing bail in an extradition case are onerous. It is time for courts to reassess the "special circumstances" requirement in light of contemporary constitutional principles. But as long as courts continue to adhere to this requirement, it is incumbent on defense counsel to exercise diligence and creativity in identifying and presenting special circumstances that, individually or collectively, will convince the court to release the defendant on bail.

Notes

1. *See generally* Jacques Semmelman & Karen Snell, *Defending the International Extradition Case*, The Champion, June 2006, at 20; Linda Friedman Ramirez, *Evolving Extradition: Extradition Defense in the 21st Century*, The Champion, September/October 2009, at 44.

2. 18 U.S.C. § 3181 *et seq*.

3. *See* Semmelman & Snell, *supra* note 1, at 20-21.

4. 18 U.S.C. § 3184.

5. *See, e.g.*, In re Atta, 706 F. Supp. 1032, 1034 (E.D.N.Y. 1989); In re Demjanjuk, 612 F. Supp. 544, 546 (N.D. Ohio 1985).

6. *See, e.g.*, United States v. Wroclawski, 574 F. Supp. 2d 1040, 1044 (D. Ariz. 2008) ("Wroclawski I") *later proceeding at* Wroclawski v. United States, 634 F. Supp. 2d 1003, 1004 (D. Ariz. 2009) ("Wroclawski II"); In re Mironescu, 296 F. Supp. 2d 632, 634 (M.D.N.C. 2003); In re Molnar, 182 F. Supp. 2d 684, 687 (N.D. Ill. 2002).

7. *See* Caltagirone v. Grant, 629 F.2d 739, 744-45 (2d Cir. 1980). *Cf.* In re Russell, 647 F. Supp. 1044, 1050-51 (S.D. Tex. 1986), *aff'd*, 805 F.2d 1215, 1217-18 (5th Cir. 1986).

8. M. Cherif Bassiouni, International Extradition: United States Law and Practice 847-49 (5th ed. 2007).

9. *Id.* at 847-49.

10. U.S. Department of Justice, U.S. Attorneys' Manual, Title 9, Criminal Resource Manual § 618, available at http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00618.htm.

11. United States v. Kin-Hong, 83 F.3d 523, 524 (1st Cir. 1996); Martin v. Warden, 993 F.2d 824, 827 (11th Cir. 1993); Salerno v. United States, 878 F.2d 317, 317 (9th Cir. 1989); *Russell*, 805 F.2d at 1216; United States v. Leitner, 627 F. Supp. 739, 741 (E.D.N.Y. 1986), *aff'd*, 784 F.2d 159, 160 (2d Cir. 1986).

12. United States v. Ramnath, 533 F. Supp. 2d 662, 665-66 (E.D. Tex. 2008) (citing cases); In re Patel, 2008 U.S. Dist. LEXIS 28399, at *3 (D. Or. Apr. 4, 2008).

13. Gullers v. Bejarano, 2009 U.S. Dist. LEXIS 7174, at *10-11 (S.D. Cal. Feb. 2, 2009); *Ramnath*, 533 F. Supp. 2d at 667; In re Santos, 473 F. Supp. 2d 1030, 1040-41 (C.D. Cal. 2006).

14. *Kin-Hong*, 83 F.3d at 524; *Martin*, 993 F.2d at 827; *Salerno*, 878 F.2d at 317; *Russell*, 805 F.2d at 1216; *Leitner*, 784 F.2d at 160.

15. United States v. Williams, 611 F.2d 914, 914 (1st Cir. 1979); *Wroclawski II*, 634 F. Supp. 2d at 1004; In re Sidali, 899 F. Supp. 1342, 1351-52 (D.N.J. 1995); United States v. Hills, 765 F. Supp. 381, 385 (E.D. Mich. 1991); United States v. Messina, 566 F. Supp. 740, 742 (E.D.N.Y. 1983).

16. *Leitner*, 784 F.2d at 160; In re Saldana, 2009 U.S. Dist. LEXIS 58434, at *6 (W.D. Tenn. Jul. 9, 2009); *Molnar*, 182 F. Supp. 2d at 689; United States v. Tang Yee-Chun, 657 F. Supp. 1270, 1271 n.2 (S.D.N.Y. 1987); *Messina*, 566 F. Supp. at 742.

17. Parretti v. United States, 122 F.3d 758, 764 n.6 (9th Cir. 1995); Yau-Leung v. Soscia, 649 F.2d 914, 916, 920 (2d Cir. 1981); Beaulieu v. Hartigan, 554 F.2d 1, 1-2 (1st Cir. 1977); Greci v. Birknes, 527 F.2d 956, 957 (1st Cir. 1976); Peroff v. Hylton, 542 F.2d 1247, 1249 (4th Cir. 1976); *Wroclawski II*, 634 F. Supp. 2d at 1006; In re Harshbarger, 2009 U.S. Dist. LEXIS 19646, at *9 (M.D. Pa. Mar. 12, 2009); *Sidali*, 899 F. Supp. at 1351-52; Freedman v. United States, 437 F. Supp. 1252, 1255 (N.D. Ga. 1977).

18. In re Markey, 2010 U.S. Dist. LEXIS 14390, at *11 (N.D. Ind. Feb. 18, 2010); *see also* 18 U.S.C. § 3184.

19. *Saldana*, 2009 U.S. Dist. LEXIS 58434, at *7 (citing cases); Garcia v. Benov, 2009 U.S. Dist. LEXIS 75455, at *11 (C.D. Cal. Apr. 13, 2009); In re Valles, 2002 U.S. Dist. LEXIS 26710, at *3 (S.D. Tex. May 13, 2002); *Molnar*, 182 F. Supp. 2d at 687.

20. *Compare* In re Nacif-Borge, 829 F. Supp. 1210, 1216 (D. Nev. 1993) *with* United States v. Taitz, 130 F.R.D. 442, 445 (S.D. Cal. 1990). *See also Ramnath*, 533 F. Supp. 2d at 665 n.3.

21. 190 U.S. 40 (1903).

22. In re Wright, 123 F. 463, 464 (C.C.S.D.N.Y. 1903).

23. *Wright v. Henkel*, 190 U.S. at 62.

24. *Id.* at 63.

25. *See* Bassiouni, *supra* note 8, at 847-48.

26. 171 F. 289 (S.D.N.Y. 1909) (L. Hand, J.).

27. *Id.* at 289.

28. *Id.* at 290.

29. *See* Jimenez v. Aristiguieta, 314 F.2d 649 (5th Cir. 1963); Artukovic v. Boyle, 107 F. Supp. 11 (S.D. Cal. 1952), *rev'd*, 211 F.2d 565 (9th Cir. 1954); In re Klein, 46 F.2d 85 (S.D.N.Y. 1930); In re Gannon, 27 F.2d 362 (E.D. Pa. 1928); McNamara v. Henkel, 46 F.2d 84 (S.D.N.Y. 1912).

30. *Compare Nacif-Borge*, 829 F. Supp. at 1221 (special circumstances exist if bail is available to persons in the requesting country charged with the offense for which the requesting country seeks the extradition of the defendant) *with* In re Siegmund, 887 F. Supp. 1383, 1386-87 (D. Nev. 1995) (declining to follow *Nacif-Borge*).

31. *Nacif-Borge*, 829 F. Supp. at 1213-14.

32. *Molnar*, 182 F. Supp. 2d at 688 n.1 (quoting LEWIS CARROLL, ALICE'S ADVENTURES IN WONDERLAND (1865)).

33. *Nacif-Borge*, 829 F. Supp. at 1216; *see also* In re Smyth, 976 F.2d 1535, 1535 (9th Cir. 1992); In re Gonzalez, 52 F. Supp. 2d 725, 735 (W.D. La. 1999); *Saldana*, 2009 U.S Dist. LEXIS 58434, at *8; *Wroclawski II*, 634 F. Supp. 2d at 1008.

34. *Smyth*, 976 F.2d at 1535; Koskotas v. Roche, 931 F.2d 169, 175 (1st Cir. 1991); *Russell*, 805 F.2d at 1217; *Hills*, 765 F. Supp. at 387-88. *But cf. Sidali*, 899 F. Supp. at 1351 (special circumstances existed where the defendant was in a "precarious physical condition" and faced "the extraordinary task of re-assembling events that occurred almost a quarter century ago.").

35. *See Patel*, 2008 U.S. Dist. LEXIS 28399, at *3; *Gonzalez*, 52 F. Supp. 2d at 735; In re Mainero, 950 F. Supp. 290, 294 (S.D. Cal. 1996); *Nacif-Borge*, 829 F. Supp. at 1214-15.

36. *See Garcia v. Benov*, 2009 U.S. Dist. LEXIS 75455, at *10; *Santos*, 473 F. Supp. 2d at 1036 n.4.

37. *See* United States v. Castaneda-Castillo, 2010 U.S. Dist. LEXIS 86084, at *18-19 (D. Mass. Aug. 17, 2010); *Saldana*, 2009 U.S. Dist. LEXIS 58434, at *6; *Wroclawski II*, 634 F. Supp. 2d at 1006; *Santos*, 473 F. Supp. 2d at 1036; *Gonzalez*, 52 F. Supp. 2d at 736; Beaulieu v. Hartigan, 430 F. Supp. 915, 917 (D. Mass. 1977), *vacated*, 554 F.2d 1, 2 (1st Cir. 1977).

38. *See, e.g.*, *Castaneda-Castillo*, 2010 U.S. Dist. LEXIS 86084, at *21, *27-28; *Wroclawski II*, 634 F. Supp. 2d at 1006; In re Huerta, 2008 U.S. Dist. LEXIS 48524, at *2-3 (S.D. Tex. Jun. 23, 2008); *Ramnath*, 533 F. Supp. 2d at 666; *Valles*, 2002 U.S. Dist. LEXIS 26710, at *4; *Molnar*, 182 F. Supp. 2d at 689; In re Morales, 906 F. Supp. 1368, 1373 (S.D. Cal. 1995); *Nacif-Borge*, 829 F. Supp. at 1216.

39. FRIEDMAN RAMIREZ, *supra* note 1, at 45.

40. *See Salerno*, 878 F.2d at 317; *Huerta*, 2008 U.S. Dist. LEXIS 48524, at *3; *Gonzalez*, 52 F. Supp. 2d at 735. *See also Santos*, 473 F. Supp. 2d at 1038-1040.

41. Semmelman & Snell, *supra* note 1, at 23.

42. Semmelman & Snell, *supra* note 1, at 22, 25.

43. Jacques Semmelman, *The Rule of Non-Contradiction in International Extradition Proceedings: A Proposed Approach to the Admission of Exculpatory Evidence*, 23 FORDHAM INT'L L.J. 1295, 1303-1310 (2000); Semmelman & Snell, *supra* note 1, at 24.

44. Semmelman, *supra* note 43, at 1303-06, 1310-28; Semmelman & Snell, *supra* note 1, at 24. *See also Gonzalez*, 52 F. Supp. 2d at 738-41.

45. Semmelman, *supra* note 43, at 1297-98; Semmelman & Snell, *supra* note 1, at 24.

46. *See* In re Garcia, 615 F. Supp. 2d 162, 171 (S.D.N.Y. 2009); *Ramnath*, 533 F. Supp. 2d at 676, 680-82.

47. United States v. Kirby, 106 F.3d 855, 863 (9th Cir. 1996); *Castaneda-Castillo*, 2010 U.S. Dist. LEXIS 86084, at *19, *28-33; In re Chapman, 459 F. Supp. 2d 1024, 1026-1027 (D. Haw. 2006); *Morales*, 906 F. Supp. at 1374, 1375; *Taitz*, 130 F.R.D. at 446. *But cf. Nacif-Borge*, 829 F. Supp. at 1219 (finding delay unlikely in a tax evasion case).

48. 46 F.2d 84 (S.D.N.Y. 1912).

49. *Id.* at 84.

50. 27 F.2d 362 (E.D. Pa. 1928).

51. *Id.* at 362, 364.

52. *Kin-Hong*, 83 F.3d at 525; *Ramnath*, 533 F. Supp. 2d at 676.

53. In re Zhenly Ye Gon, 2009 U.S. Dist. LEXIS 96023, at *9-10 (D.D.C. Oct. 15, 2009); *Ramnath*, 533 F. Supp. 2d at 676; In re Rovelli, 977 F. Supp. 566, 569 (D. Conn. 1997); *see also Kin-Hong*, 83 F.3d at 525. *But cf. Kirby*, 106 F.3d at 863; *Castaneda-Castillo*, 2010 U.S. Dist. LEXIS 86084, at *30.

54. *Cf. Gullers*, 2009 U.S. Dist. LEXIS 7174, at *5.

55. *Kirby*, 106 F.3d at 863; *Kin-Hong*, 83 F.3d at 524; *Salerno*, 878 F.2d at 317; *Taitz*, 130 F.R.D. at 445-46.

56. *Castaneda-Castillo*, 2010 U.S. Dist. LEXIS 86084, at *3, *24, *29. *But cf.* Hababou v. Albright, 82 F. Supp. 2d 347, 352 (D.N.J. 2000).

57. *Castaneda-Castillo*, 2010 U.S. Dist. LEXIS 86084, at *23-28; *Chapman*, 459 F. Supp. 2d at 1027; *Morales*, 906 F. Supp. at 1374; *Taitz*, 130 F.R.D. at 446. *Cf. In re Garcia*, 615 F. Supp. 2d at 171-72 (rejecting, on the facts, defendant's contention that there was no diplomatic necessity).

58. *See Castaneda-Castillo*, 2010 U.S. Dist. LEXIS 86084, at *26-28; *Wroclawski II*, 634 F. Supp. 2d at 1008-09; *Morales*, 906 F. Supp. at 1375-77; *Nacif-Borge*, 829 F. Supp. at 1220-21; *Taitz*, 130 F.R.D. at 446-47; *Gannon*, 27 F.2d at 362.

59. *See, e.g.*, *Taitz*, 130 F.R.D. at 446-47.

60. *See In re Garcia*, 615 F. Supp. 2d at 172; In re Kim, 2004 U.S. Dist. LEXIS 12244, at *6 (C.D. Cal. Jul. 2, 2004); In re Sacirbegovic, 280 F. Supp. 2d 81, 86-87 (S.D.N.Y. 2003); In re Sutton, 898 F. Supp. 691, 694-95 (E.D. Mo. 1995); *Siegmund*, 887 F. Supp. at 1385-87; In re Rouvier, 839 F. Supp. 537, 540-41 (E.D. Ill. 1993).

61. *Castaneda-Castillo*, 2010 U.S. Dist. LEXIS 86084, at *23-26; *Wroclawski II*, 634 F. Supp. 2d at 1008; *Chapman*, 459 F. Supp. 2d at 1027.

62. *In re Garcia*, 615 F. Supp. 2d at 172; *Ramnath*, 533 F. Supp. 2d at 673; In re Bravo, 2008 U.S. Dist. LEXIS 13823, at *2 (S.D. Fla. Feb. 25, 2008); In re Ernst, 1998 U.S. Dist. LEXIS 710, at *41 (S.D.N.Y. Jan. 27, 1988); In re Harrison, 2004 U.S. Dist. LEXIS 9183, at *26 (S.D.N.Y. May 21, 2004).

63. In re Sacirbegovic, 2004 U.S. Dist. LEXIS 12353, at *4, *5, *7 (S.D.N.Y. Jul. 2, 2004).

64. *See, e.g.*, *Kirby*, 106 F.3d at 863-65; *Wroclawski II*, 634 F. Supp. 2d at 1006-09; *Wroclawski I*, 574 F. Supp. 2d at 1044-45; *Santos*, 473 F. Supp. 2d at 1034-43; *Chapman*, 459 F. Supp. 2d at 1026-28; *Morales*, 906 F. Supp. at 1373-77; *Nacif-Borge*, 829 F. Supp. at 1213-21; *Taitz*, 130 F.R.D. at 444-47.

65. *Salerno*, 878 F.2d at 317 (emphasis added); see also *Sidali*, 899 F. Supp. at 1346, 1351; *Kin-Hong*, 83 F.3d at 524.

66. *Huerta*, 2008 U.S. Dist. LEXIS 48524, at *11-12.

67. United States v. Nolan, 2009 U.S. Dist. LEXIS 111299, at *6-7 (N.D. Ill. Dec. 1, 2009); *In re Pelletier*, 2009 U.S. Dist. LEXIS 113100, at *3, *10 (S.D. Fla. Nov. 16, 2009); Bolanos v. Avila, 2009 U.S. Dist. LEXIS 87991, at *10-11 (D.N.J. Sept. 24, 2009); United States v. Latulippe, 2008 U.S. Dist. LEXIS 110099, *3-4 (D.N.H. Jul. 3, 2008) (not for publication); *Huerta*, 2008 U.S. Dist. LEXIS 48524, at *6; United States v. Glantz, 1994 U.S. Dist. LEXIS 5448, at *7 (S.D.N.Y. Apr. 28, 1994); *Rouvier*, 839 F. Supp. at 541, 542; In re Hamilton-Byrne, 831 F. Supp. 287, 290-91 (S.D.N.Y. 1993); *Nacif-Borge*, 829 F. Supp. at 1216-17. *But cf. Taitz*, 130 F.R.D. at 446.

68. *Yau-Leung*, 649 F.2d at 920.

69. *Taitz*, 130 F.R.D. at 446.

70. In re Bowey, 147 F. Supp. 2d 1365, 1368 (N.D. Ga. 2001) (related); *Mitchell*, 171 F. at 290 (unrelated).

71. *Russell*, 805 F.2d at 1217; *Hills*, 765 F. Supp. at 386-87; *Hababou*, 82 F. Supp. 2d at 351-52; *Glantz*, 1994 U.S. Dist. LEXIS 5448, at *5-6; In re Koskotas, 127 F.R.D. 13, 18 (D. Mass. 1989), *later proceeding at* Koskotas v. Roche, 740 F. Supp. 904, 918-19 (D. Mass. 1990).

72. *Compare Ramnath*, 533 F. Supp. 2d at 685 *with* In re Heilbronn, 773 F. Supp. 1576, 1581-82 (W.D. Mich. 1991).

73. In re Orozco, 268 F. Supp. 2d 1115, 1117 (D. Ariz. 2003).

74. *Wroclawski II*, 634 F. Supp. 2d at 1008.

75. *Kirby*, 106 F.3d at 865-66.

76. *Wroclawski II*, 634 F. Supp. 2d at 1009.

77. *Taitz*, 130 F.R.D. at 446.

78. *Siegmund*, 887 F. Supp. at 1387; *Nacif-Borge*, 829 F. Supp. at 1219-20.

79. *Leitner*, 784 F.2d at 160-61; *Siegmund*, 887 F. Supp. at 1387; *Nacif-Borge*, 829 F. Supp. at 1219-20; *Messina*, 566 F. Supp. at 745.

80. United States v. Zarate, 492 F. Supp. 2d 514, 515 (D. Md. 2007). *See also Sidali*, 899 F. Supp. at 1351-52.

81. *Sacirbegovic*, 2004 United States Dist. LEXIS 12353, at *6.

82. *Kirby*, 106 F.3d at 863.

83. *Williams*, 611 F.2d at 915.

84. *Sacirbegovic*, 2004 U.S. Dist. LEXIS 12353, at *6-7; *Gannon*, 27 F.2d at 362.

85. *Salerno*, 878 F.2d at 318; *Leitner*, 784 F.2d at 161; *In re Garcia*, 615 F. Supp. 2d at 173; *Santos*, 473 F. Supp. 2d at 1035; *Orozco*, 268 F. Supp. 2d at 1117; *Valles*, 2002 U.S. Dist. LEXIS 26710, at *3; *Molnar*, 182 F. Supp. 2d at 687; *Hababou*, 82 F. Supp. 2d at 352; *Ernst*, 1998 U.S. Dist. LEXIS 710, at *41; *Hills*, 765 F. Supp. at 385-86; *Taitz*, 130 F.R.D. at 444-45.

86. *Wroclawski II*, 634 F. Supp. 2d at 1007; *Chapman*, 459 F. Supp. 2d at 1027; *Sidali*, 899 F. Supp. at 1351-52; *Russell*, 647 F. Supp. at 1049-50, *aff'd*, 805 F.2d at 1217. *Cf. Mitchell*, 171 F. at 289.

87. *Williams*, 611 F.2d at 915; *In re Garcia*, 615 F. Supp. 2d at 173-74; *Klein*, 46 F.2d at 85.

88. *Ramnath*, 533 F. Supp. 2d at 685.

89. *Saldana*, 2009 U.S. Dist. LEXIS 58434, at *8; *Bravo*, 2008 U.S. Dist. LEXIS 13823, at *3; In re Martinov, 2006 U.S. Dist. LEXIS 87389, at *3 (N.D. Iowa Dec. 1, 2006); *Molnar*, 182 F. Supp. 2d at 688; Lo Duca v. United States, 1995 U.S. Dist. LEXIS 21155, at *46-49 (E.D.N.Y. Jul. 12, 1995); *Glantz*, 1994 U.S. Dist. LEXIS 5448, at *7; *Russell*, 647 F. Supp. at 1049, *aff'd*, 805 F.2d at 1217.

90. *Ramnath*, 533 F. Supp. 2d at 685; *Molnar*, 182 F. Supp. 2d at 689.

91. *See Kirby*, 106 F.3d at 863.

92. *Russell*, 805 F.2d at 1216-17; *In re Garcia*, 615 F. Supp. 2d at 173; *Bravo*, 2008 U.S. Dist. LEXIS 13823, at *3; *Sacirbegovic*,

280 F. Supp. 2d at 84-85; *see also Martin*, 993 F.2d at 824, 825, 828; *Leitner*, 784 F.2d at 160-61.

93. *Leitner*, 784 F.2d at 161; *Martinov*, 2006 U.S. Dist. LEXIS 87389, at *2; United States v. Luevano de Loera, 2006 U.S. Dist. LEXIS 35653, at *8 (N.D. Ind. May 31, 2006); *Nacif-Borge*, 829 F. Supp. at 1220.

94. *Nacif-Borge*, 829 F. Supp. at 1220; *Saldana*, 2009 U.S. Dist. LEXIS 58434, at *9; *Leitner*, 627 F. Supp. at 741; *Russell*, 647 F. Supp. at 1049-50.

95. *Bowey*, 147 F. Supp. 2d at 1368.

96. In re Borodin, 136 F. Supp. 2d 125, 128-32 (E.D.N.Y. 2001).

97. *Ramnath*, 533 F. Supp. 2d at 672; *Nacif-Borge*, 829 F. Supp. at 1218; *see also Glantz*, 1994 U.S. Dist. LEXIS 5448, at *8-9.

98. *Nacif-Borge*, 829 F. Supp. at 1218 (citing unpublished decisions).

99. United States v. Williams, 480 F. Supp. 482 (D. Mass. 1979); *Beaulieu*, 430 F. Supp. 915.

100. *Beaulieu*, 430 F. Supp. at 917.

101. *Id.* at 919-20.

102. 18 U.S.C. § 3184.

103. *Williams*, 480 F. Supp. at 485-87.

104. *Williams*, 611 F.2d at 915 (reversing); *Beaulieu*, 554 F.2d at 2 (vacating).

105. 122 F.3d 758 (9th Cir. 1995).

106. *Id*. at 770-76.

107. *Id*. at 776-81.

108. Parretti v. United States, 143 F.3d 508, 511 (9th Cir. 1998) (en banc).

109. *Compare Kim*, 2004 U.S. Dist. LEXIS 12244, at *3 n.1 (agreeing with the government that *Parretti* is not the law in Ninth Circuit) *with* In re Sainez, 2008 U.S. Dist. LEXIS 9573, at *61-62 (S.D. Cal. Feb. 8, 2008) (treating *Parretti* reasoning as viable but distinguishing on the facts) *and* Manta v. Chertoff, 2007 U.S. Dist. LEXIS 17165, at *12-16 (S.D. Cal. Mar. 12, 2007) (similar).

110. *Compare Rovelli*, 977 F. Supp. at 567 (declining to follow *Parretti*) *with* In re Orellana, 2000 U.S. Dist. LEXIS 10380, at *20-26 (S.D.N.Y. Jul. 26, 2009) (following *Parretti*).

111. *See, e.g., Patel*, 2008 U.S. Dist. LEXIS 28399, at *6; *Wroclawski I*, 574 F. Supp. 2d at 1040; *Sacirbegovic*, 2004 U.S. Dist. LEXIS 12353, *1-9; *Sidali*, 899 F. Supp. at 1352; *Sutton*, 898 F. Supp. at 696.

112. *See Caltagirone*, 629 F.2d at 743; *Borodin*, 136 F. Supp. 2d at 126-27; *Siegmund*, 887 F. Supp. at 1384-85; *Russell*, 647 F. Supp. at 1047; *Koskotas*, 740 F. Supp. at 918.

113. *Beaulieu*, 554 F.2d at 1.

114. *Koskotas*, 740 F. Supp. at 918; *Russell*, 647 F. Supp. at 1047.

115. *Garcia v. Benov*, 2009 U.S. Dist. LEXIS 75455, at *11-12; *Hills*, 765 F. Supp. at 384 n.3.

116. *Messina*, 566 F. Supp. at 741; *see also Kirby*, 106 F.3d at 862.

117. United States v. Ghandtchi, 697 F.2d 1037, 1037-38 (11th Cir. 1983), *vacated as moot*, 705 F.2d 1315, 1316 (11th Cir. 1983). *See also In re Krickmeyer*, 518 F. Supp. 388, 389 (S.D. Fla. 1981).

118. *Kirby*, 106 F.3d at 859-60. *Cf. Kin-Hong*, 83 F.3d at 523; *Smyth*, 976 F.2d at 1535-6; *Leitner*, 784 F.2d at 160; *Yau-Leung*, 649 F.2d at 915; *Caltagirone*, 629 F.2d at 742-43. ■

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