

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION

No. 2:15-mj-1021

*IN RE* REQUEST BY SPAIN ) **UNITED STATES' MOTION FOR**  
FOR THE EXTRADITION OF ) **DETENTION, AND SUPPORTING**  
INOCENTE ORLANDO MONTANO MORALES ) **MEMORANDUM**

The United States of America, acting on behalf of the Government of Spain, hereby moves for the detention of fugitive Inocente Orlando Montano Morales (“Montano Morales”), pending the extradition proceedings in this matter.

**BACKGROUND**

On April 8, 2015, at the request of the Government of Spain and pursuant to the Extradition Treaty between the United States and Spain (“the Treaty”) and 18 U.S.C. § 3184, the United States filed an Extradition Complaint as to Montano Morales.

Montano Morales is currently incarcerated at Rivers Correctional Institute in Winton, North Carolina, where he is serving a federal sentence imposed in the District of Massachusetts for immigration fraud. He is expected to complete his term of incarceration on April 15, 2015, at which point he will be taken into custody by the United States Marshal on the arrest warrant in this matter. An initial appearance has been scheduled for April 16, 2015, in Greenville.

The Spanish authorities seek to prosecute Montano Morales for the 1989 terrorist murders in El Salvador of five Spanish Jesuit priests. In this matter, the United States acts on behalf of the Spanish government in accordance with the United States’ Treaty obligations. Spain has submitted a formal request for the arrest, extradition, and surrender of Montano Morales, supported by appropriate documents, to the United States Department of State. By statute, this Court must hold a hearing to consider the evidence of criminality presented by Spain

and to determine whether it is “sufficient to sustain the charge under the provisions of the proper treaty or convention.” 18 U.S.C. § 3184; *see Peroff v. Hylton*, 542 F.2d 1247, 1249 (4th Cir. 1976). If the Court finds the evidence sufficient, it must “certify the same” to the Secretary of State, who will decide whether to surrender the fugitive “according to the stipulations of the treaty.” 18 U.S.C. § 3184.<sup>1</sup>

It is well established that, except in extraordinary circumstances, international fugitives must be detained during the pendency of their extradition proceedings, due to the obvious flight risks that such cases present and to ensure the United States’ ability to comply with its Treaty obligations. Thus, for the reasons discussed below, the United States requests that Montano Morales be detained pending the hearing on the certification of his extradition pursuant to 18 U.S.C. § 3184.<sup>2</sup>

## **ARGUMENT**

### **1. There Is No Statutory Authorization For Bail Or Conditional Release.**

The federal statute governing extradition from the United States to foreign countries, 18 U.S.C. §§ 3181 *et seq.*, does not provide for bail. Nor is bail authorized in extradition matters by the Bail Reform Act, 18 U.S.C. §§ 3141 *et seq.*, which applies only to defendants charged with a

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<sup>1</sup> After the Court has completed its “limited inquiry, the Secretary of State conducts an independent review of the case to determine whether to issue a warrant of surrender.” *Martin v. Warden, Atlanta Penitentiary*, 993 F.2d 824, 829 (11th Cir. 1993). The Secretary’s options include “reviewing *de novo* the judge’s findings of facts and conclusions of law, refusing extradition on a number of discretionary grounds, including humanitarian and foreign policy considerations, granting extradition with conditions, and using diplomacy to obtain fair treatment for the fugitive.” *Mironescu v. Costner*, 480 F.3d 664, 666 (4th Cir. 2007).

<sup>2</sup> In addition to the reasons for detention discussed below, Montano Morales has no expectation of ever again being at liberty in the United States. This is so because, as part of the plea agreement underlying the conviction for which he is now incarcerated, he agreed to the entry of a Judicial Order of Removal (Exhibit 1). Based on the Judicial Order of Removal, Montano Morales is the subject of an immigration detainer.

criminal offense “which is in violation of an Act of Congress and is triable in any court established by Act of Congress.” 18 U.S.C. § 3156(a)(2). Here, Montano Morales is charged with the terrorist murders of five Spanish Jesuit priests *under Spanish law*. The Bail Reform Act, therefore, does not apply to extradition matters such as this one. See *Kamrin v. United States*, 725 F.2d 1225, 1227-1228 (9th Cir. 1984); *In re Extradition of Molnar*, 182 F. Supp. 2d 684, 687 (N.D. Ill. 2002) (“[B]ecause an extradition proceeding is not a criminal case, the Bail Reform Act of 1984 does not govern, nor is its presumption in favor of bail a part of extradition proceedings”).

**2. There Is A Strong Presumption Against Release In International Extradition Proceedings.**

The Supreme Court has long held that bail should not ordinarily be granted in international extradition proceedings. Rather, bail should be granted only under the most unusual circumstances, due to the United States’ obligation under its extradition treaties to deliver the fugitive to the requesting country. *Wright v. Henkel*, 190 U.S. 40 (1903) (affirming detention without bail of a fugitive sought by Great Britain for defrauding a corporation of which he was a director). As the Supreme Court explained in *Wright*:

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.

*Id.* at 62.

Thus, courts have held that there is a strong presumption against release in international

extradition cases. See *United States v. Liu Kin-Hong*, 83 F.3d 523, 524 (1st Cir. 1996); *Martin v. Warden*, 993 F.2d 824, 827 (11th Cir. 1993). This presumption may be rebutted only if the fugitive can demonstrate the existence of “special circumstances.” See *Salerno v. United States*, 878 F.2d 317 (9th Cir. 1989); *Sahagian v. United States*, 864 F.2d 509, 514 n.6 (7th Cir. 1988); *United States v. Leitner*, 784 F.2d 159, 160 (2d Cir. 1986); *Beaulieu v. Hartigan*, 554 F.2d 1 (1st Cir. 1977).

The reasons for the presumption against release in extradition cases are obvious and compelling. A person sought for an extraditable offense is an international fugitive from justice. The fact that he faces extradition to a foreign state where criminal charges are pending is, by itself, a strong incentive for him to flee. Where, as here, the person sought is not a citizen or permanent resident of the United States, the risk of flight is even greater.

Moreover, when the United States has a treaty obligation to produce an extraditable fugitive, it has a duty to take the necessary legal steps to meet that obligation, which includes maintaining custody of the fugitive pending his extradition. This serves not just the interests of the requesting nation, but also the interests of the United States. As one court has explained:

[E]xtradition cases involve an overriding national interest in complying with treaty obligations. If the United States were to release a foreign fugitive pending extradition and the defendant absconded, the resulting diplomatic embarrassment would have an effect on foreign relations and the ability of the United States to obtain extradition of its fugitives.

*Molnar*, 182 F. Supp. 2d at 687.

**3. Montano Morales Poses A Risk Of Flight And Cannot Establish A “Special Circumstance” Justifying Release.**

A fugitive charged with crimes in another country – such as Montano Morales – is by definition absent from that jurisdiction. Here, there can be no question that, if released on bail,

Montano Morales would pose as serious risk of flight. Indeed, his prior conviction for perjury and immigration fraud demonstrates that he cannot be trusted to abide by any conditions of release. Moreover, Montano Morales has no legal immigration status in the United States and is subject to a Judicial Order of Removal requiring his immediate removal to El Salvador, but for the pendency of this extradition proceeding. He thus has every incentive to flee and no incentive to remain in the United States.

But even if Montano Morales were able to demonstrate that he is not a flight risk – which in light of the pending Spanish charges and his prior criminal conduct in the United States he cannot establish - this by itself is not a special circumstance that would allow for his release. *See Salerno*, 878 F.2d at 317; *Matter of Extradition of Russell*, 805 F.2d 1215, 1217 (5th Cir. 1986); *Leitner*, 784 F.2d at 161; *United States v. Williams*, 611 F.2d 914, 915 (1st Cir. 1979). Mindful of the overriding foreign relations interest in extradition matters, federal courts take a very limited view of what constitutes sufficient “special circumstances” to overcome the presumption against release. *See Molnar*, 182 F. Supp. 2d at 687 (providing partial list of factors that the courts have found *not* to be “special circumstances” including a significant bond and an unblemished record; the fugitive being a highly trained doctor available to administer to the public; the need to consult with counsel and assist in gathering evidence to support defense; the discomfort of sitting in jail; severe financial and emotional hardships; and advanced age or infirmity)). Thus, for example, situations where special circumstances were found include the raising of substantial claims upon which the fugitive has a high probability of success, an unusual delay in the appeal process, and the absence of suitable holding facilities for a juvenile – none of which are present in this case. *See Salerno*, 878 F.2d at 317 (citing cases); *Hu Yau-Leung v. Soscia*, 649 F.2d 914, 920 (2d Cir. 1981). Here, even assuming Montano Morales were

able to convince the Court that he does represent a risk of flight, he cannot establish any “special circumstance,” in light of the case law, that would justify his release.

**CONCLUSION**

Montano Morales cannot demonstrate that he does not represent a substantial risk of flight, nor can he establish any “special circumstance” that would justify his release pending this Court’s determination of his extraditability. Accordingly, Montano Morales should be detained during the pendency of this proceeding.

Respectfully submitted this 15<sup>th</sup> day of April, 2015.

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	Criminal No. 12-10044-DPW
	)	
INOCENTE ORLANDO MONTANO	)	
	)	
Defendant.	)	

ORDER OF STIPULATED JUDICIAL REMOVAL

Pursuant to the authority created by section 374(a)(3) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009 (September 30, 1996), codified at Title 8, United States Code, Section 1228(c)(5), and upon the parties' agreement to the entry of a stipulated judicial order of removal, it is hereby ordered that the defendant, Inocente Orlando Montano (A94 757 911) be removed from the United States. The court finds that Inocente Orlando Montano is removable under 8 U.S.C. §1227(a)(1)(B), as an alien who is present in violation of law, and also under 8 U.S.C §1227(a)(2)(A)(iii), as an alien who has been convicted of an aggravated felony, specifically an offense of perjury for which the term of imprisonment is at least one year, under 8 U.S.C. 1101(a)(43)(S). The court directs that, after his release from the period of incarceration he is currently serving, Inocente Orlando Montano be taken into custody by the United States Immigration and Customs Enforcement and removed to El Salvador or to any other country as prescribed by the immigration laws of the United States of America.

  
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 DOUGLAS P. WOODLOCK  
 UNITED STATES DISTRICT JUDGE

Entered: January 13, 2015