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Folder Title:

Ireland-Deportees/Extradition Cases, 1996

Staff Office-Individual:

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. memo	Alan Kreczko to Anthony Lake re: Irish Extraditees (3 pages)	02/14/1996	P1/b(1) KBH 6/14/2023
001b. letter	Kreczko to Solicitor General Drew Days (2 pages)	02/14/1996	P1/b(1) KBH 6/14/2023
002. email	Mary Peters to Nancy Soderberg re: Prisoner Transfer/Extradition (1 page)	02/14/1996	P1/b(1) KBH 6/14/2023
003a. memo	[Duplicate of 001a] (3 pages)	02/14/1996	P1/b(1) KBH 6/14/2023
003b. letter	[Duplicate of 001b] (2 pages)	02/14/1996	P1/b(1) KBH 6/14/2023

COLLECTION:

Clinton Presidential Records
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FOLDER TITLE:

Ireland-Deportees/Extradition Cases, 1996

2011-0355-F

rs1663

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



Irish american unity conference

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Springhill Community House

TO: NANCY SODERBERG - NSC
FROM: NOREEN WALSH
NATIONAL VICE PRESIDENT IAUC
DATE: SEPTEMBER 25, 1996
RE: DEPORTATION CASES/EXTRADITION BAIL

Nancy, the House-Senate Conference Committee passed an immigration bill yesterday containing measures that will expedite the deportation of the seven remaining families we have been discussing. Today, the House passed the legislation 305-123 and it now rests with the Senate and then the President for signature. It could be debated for two days and voted on or it can be included in the continuing resolution bill which Congress must pass before October 1 to prevent a government shutdown.

A provision in the bill which we've been opposed to is the exception for relief from deportation which is radically and narrowly defined to include only "extremely exceptional, very unusual circumstances." In other words, the existence of an American-born spouse and child, which is true in most of these seven remaining cases, is not grounds for relief. This will close the door on many of these families.

The Megahey case was put before the BIA yesterday and they have thirty days to make a decision. If this bill is passed and signed before the thirty days, Gabe, Patricia, and their two young daughters can lose their case and be deported, most likely over the next few weeks - just prior to election.

Mike Maggio, the immigration attorney working with the IAUC on these cases is extremely concerned. We ask if there is any way to push the BIA to give a decision within the next day or two so the Megahey's can get through. As I stated last month, this family is well known and highly respected in the tri-state area.

The three men in California facing extradition are awaiting an imminent decision. They were granted bail last December and have been out under house arrest since that time. The Justice Department appealed their bail and the decision is due "late September" - now. Their trial begins November 4. They must be left out on bail.

Nancy, both these issues would not bode well among the Irish-American communities across this country if a bad decision comes forward. With the election drawing near, I'd like to protect the President as well as these families.

Thank you for any help or support you can offer and please call if you can.

Walla 9th
To Bill D -
What is
the promise?
Status?
cc map
Nancy

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

0516

February 5, 1996

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ALEXANDER VERSHBOW *AV*
FROM: MARY ANN PETERS *MAP*
SUBJECT: Presidential Reply to Representative McNulty

Representative McNulty wrote to ask the President to intervene with Sir Patrick Mayhew to have the case of three men, in prison in connection with the murder of two soldiers, referred to the Court of Appeals. The reply says that we cannot assess particular cases, but we hope HMG will restore a more normal criminal justice system as the situation normalizes.

Concurrences by: Alan Kreczko *AK* Bill Danvers *BD*

RECOMMENDATION

That you sign the memorandum to the President at Tab I.

Attachments

Tab I Memorandum to the President
Tab A Draft Reply to Representative McNulty
Tab B Incoming Correspondence

THE WHITE HOUSE
WASHINGTON

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
JOHN HILLEY

SUBJECT: Reply to Representative McNulty on Northern
Ireland Legal Case

Purpose

To respond to Representative McNulty.

Background

Representative McNulty wrote asking you to use your good offices with Northern Ireland Secretary Sir Patrick Mayhew to have the case of three men sentenced to life imprisonment referred to the Court of Appeals.

RECOMMENDATION

That you sign the letter to Representative McNulty at Tab A.

Attachments

Tab A Draft Reply to Representative McNulty
Tab B Incoming Correspondence

cc: Vice President
Chief of Staff

THE WHITE HOUSE

WASHINGTON

Dear Mike:

Thank you for your recent letter raising the case of Messrs. Kelly, Kane and Timmons, who were sentenced to life imprisonment in connection with the murders of two British Army corporals who blundered into an IRA funeral in 1988.

We continue to monitor the civil rights situation in Northern Ireland, where emergency legislation is still in effect. We are not in a position to assess the merits of particular cases but have made known to the British Government our hope that as the situation in Northern Ireland normalizes, a more normal criminal justice system will be restored.

Sincerely,

The Honorable Michael R. McNulty
House of Representatives
Washington, D.C. 20515-3221

COMMITTEE ON INTERNATIONAL RELATIONS

SUBCOMMITTEE:
INTERNATIONAL ECONOMIC POLICY
AND TRADE

WASHINGTON OFFICE:
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WASHINGTON, D.C. 20515-3221
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MICHAEL R. McNULTY
CONGRESS OF THE UNITED STATES
21ST DISTRICT, NEW YORK

January 23, 1996

The President
The White House
Washington, D.C.

Dear Mr. President:

As you may know, two British army corporals, serving in Northern Ireland, were murdered in March 1988 after blundering into a funeral of an IRA member in Belfast.

Sean Kelly, Patrick Gerard Kane, and Michael John Timmons - known as the Casement Park Accused--attended that funeral. They were subsequently arrested, tried in a non-jury trial, and sentenced to life imprisonment, although they were never charged with the murders.

Amnesty International as well as the Lawyers Alliance for Justice in Ireland question the fairness of the judicial process that led to the conviction of Messrs. Kelly, Kane, and Timmons, whose appeals have been dismissed.

Since a number of legal issues have been raised in these cases--including the misapplication of the law of common purpose--I urge you, Mr. President, to use your good offices in calling upon Sir Patrick Mayhew, Q.C., Secretary of State for Northern Ireland, to refer this matter to the Court of Appeals for reconsideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Mike", written over a horizontal line.

Michael R. McNulty
MEMBER OF CONGRESS

MRM:cms

0516
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5/26

THE WHITE HOUSE
WASHINGTON

January 26, 1996

MEMORANDUM FOR ANDREW SENS
NSC Executive Secretariat

FROM: SUSAN BROPHY 
SUBJECT: Presidential Correspondence

Attached are copies of letters sent to the President from various members of Congress. Since these letters address national security issues, we would appreciate your assistance in drafting a response.

Thank you very much for your assistance. If you have any questions, please feel free to call Jocelyn Jolley at x7500.

The following is a brief description of these letters:

- 1) Rep. Toby Roth (R-WI), concerning export control law; and
- 2) Rep. Michael McNulty (D-NY), concerning the unfair treatment of of Irishmen, Sean Kelly, Patrick Gerard Kane, and Michael John Timmons.

Attachments

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

June 26, 1996

ACTION

MEMORANDUM FOR NANCY E. SODERBERG

FROM: MARY ANN PETERS ~~MS~~
SUBJECT: Letter to Noreen A. Walsh

Noreen A. Walsh, National Vice President of the Irish American Unity Conference, wrote to the President on issues related to Ireland. Your response on behalf of the President is at Tab A.

Concurrence by: John Sparks ~~JS~~

RECOMMENDATION

That you sign the letter at Tab A.

Attachment

Tab A Letter to Noreen Walsh
Tab B Incoming correspondence

THE WHITE HOUSE

WASHINGTON

July 11, 1996

Dear Noreen:

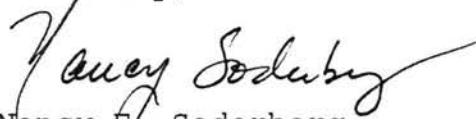
On behalf of the President, I am replying to your letters on issues related to Ireland.

On the first issue, the participation of Senator Mitchell in the talks now underway in Belfast, we are pleased that the Senator is playing an active role as chairman of the plenary sessions. He will also chair the subcommittee on the decommissioning issue. We certainly agree that Senator Mitchell and his colleagues, General de Chastelain and Mr. Holkeri, are once again making a major contribution to the peace process.

On the extradition of Irish national Jimmy Smyth, I understand that there are several steps in the judicial process yet to be taken before the District Court issues an order certifying Smyth's extraditability. The Secretary of State will make a decision on the surrender of Mr. Smyth only after a judicial finding of extraditability has been issued. Please be assured that we will examine all aspects of the case before making such a decision.

I appreciate hearing the IAUC's views on these issues. I will try to arrange another conference call to discuss the peace process with key Irish Americans in the near future. At present, our efforts remain focused on the restoration of the cease-fire, which is critical for the future of the peace process.

Sincerely,



Nancy E. Soderberg
Deputy Assistant to the President
for National Security Affairs

Ms. Noreen A. Walsh
Irish American Unity Conference
National Press Building
529 14th Street, N.W., Suite 837
Washington, D.C. 20045

TAB B



Irish
American
Unity
Conference

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National Press Building
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Washington, D.C. 20045
1-800-947-4282
Phone: 202-662-8830
Fax: 202-662-8831

SENT VIA FAX

June 24, 1996

President William Jefferson Clinton
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. President:

The IAUC just received word that the supreme court has refused to review the case of Jimmy Smyth, an Irish national in California. This case now falls back on the prior court decision, which is extradition.

The US/UK Supplementary Extradition Treaty was designed specifically for Joe Doherty and one other in 1986 under President Reagan's administration with then Prime Minister Margaret Thatcher.

Irish Americans across this country fought long and hard for Joe Doherty's freedom and in the end, his extradition from this country in the middle of the night was one of the main factors which cost both Dick Thornburgh and George Bush their elected seats.

On October 28, 1992, Ray Flynn, Boston Mayor wrote, *"I have said many times on the campaign trail that the Doherty case will help bring about the defeat of George Bush. For it was Bush surrogate Dick Thornburgh who first fell victim to this country's backlash against the Bush Administration. The voters in Pennsylvania remembered Thornburgh's shabby treatment of Joe Doherty and they ousted him from public office. ...He [Bill Clinton] believes that due process should prevail on extradition cases involving Irish political prisoners, free of foreign government interference."*

Jimmy Smyth's case, a highly emotional one, is now in a similar position as that of Joe Doherty's. We are also in a delicate time with the IRA and who knows what will happen if Jimmy is sent back to the hands of the British?

June 24, 1996

Page 2

In April of 1992, you stated that *"there would be no more Joe Doherty cases in this country."* At this time, the extradition cannot go forward until the Secretary of State signs the order. Mr. Christopher does have the option to refuse to sign.

Fundamentally, this is a human rights issue and Jimmy's life will be in jeopardy if sent back. U.S. courts ruled that his life would be in danger.

This issue falls directly under your authority.

Sincerely,



Noreen A. Walsh
National Vice President
7 Duncan Place
Nutley, NJ 07110
(201)235-5368-work
(201)661-1235-home

cc: P. Van Son - State Dept
N. Soderberg - NSC



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SENT VIA FAX

June 11, 1996

President William Jefferson Clinton
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. President:

This afternoon, the IAUC learned that the Unionists are expressing hard-lined opposition against George Mitchell chairing the all-party talks for peace in Northern Ireland. If the Unionists are allowed to use their "veto" and bar Mitchell from the talks, this would be a direct insult to the United States.

Both the London and Dublin governments agreed to this point. The personal time and work you have spent on this issue with your administration cannot be lost. Mr. Mitchell is vital in keeping the talks honest and also in helping secure a second cease-fire by the IRA. We ask you to please stand firm on this issue.

The United States **must** be involved to secure peace in Ireland. We ask that you immediately call on the British government to stop the Unionist demand to unseat Mr. Mitchell.

Sincerely,

Noreen A. Walsh
National Vice President

(201)235-5368

February 14, 1996

ACTION

MEMORANDUM FOR ANTHONY LAKE

FROM: ALAN KRECZKO *AK*
SUBJECT: Irish Extraditees**DECLASSIFIED
PER E.O. 13526**
2011-0355-F (1.36)
KBM 4/11/2023Issue

Whether to send the attached letter to DOJ concerning appeal of a district court's decision to grant bail to three IRA members being extradited to the United Kingdom. Jack Quinn concurs in the letter. If we want to influence the DOJ position, we must submit our views Thursday, as DOJ must make its appeal decision on Friday. (I could not send this memo to you earlier because we have been seeking reconfirmation by the U.K. Embassy that it continued not to object to bail in the aftermath of the IRA bombing of last Friday. They did so Wednesday afternoon.)

Background

The U.K. is seeking the extradition of three IRA members. The three escaped from Maze prison in Northern Ireland in a mass and violent prison breakout in 1983. One of the three had been convicted of murder; the second, of possession of a bomb; the third, of several offenses, including felony murder arising from a bombing. The three fled to the United States at various times after the jailbreak. They were arrested here in or after 1992, pursuant to a U.K. arrest warrant and extradition request. They had been held in California prison since then, pending an extradition hearing, until the district court in late December granted their request for bail. (Two were released on \$500,000 bond; one, on \$1 million bond.)

Gerry Adams wrote the President urging the individuals be released on bail, pending their extradition hearing. The President declined to intervene with DOJ, which strongly opposed bail. The district court recently granted bail to all three. DOJ/Criminal division wants to appeal, but needs the approval of the Solicitor General. The case is being followed by Irish-American groups. The SG needs to decide on Friday whether to appeal.

~~CONFIDENTIAL~~Reason: 1.5(b)
Declassify on: 2/14/01

DOJ/Criminal Analysis (elaborated at Tab II)

The district court got it wrong.

The Supreme Court has held that the ordinary presumption against bail does not apply in extradition cases. Instead, the Court has held that bail should be denied in extradition cases unless the extraditee can demonstrate "special circumstances." The Court fashioned this rule primarily for foreign policy reasons -- if an individual were released on bail and then skipped, the USG would be in violation of its treaty obligation to produce the individual. DOJ obviously strongly supports this Supreme Court holding, as should we. It enables us to fulfill our treaty obligations, and it positions us to press other countries to deny bail in extradition cases of importance to us.

What constitutes sufficient "special circumstances" to entitle an individual to bail is not clear in case law. However, it was intended to be a narrow concept and has generally been so applied by the courts. Courts have said the special circumstances must be "extraordinary," "when the requirements of justice are absolutely peremptory." Examples would include situations where the individual is seriously ill.

In this case, the district court found "special circumstances" in four factors: (1) the fact that bail had been permitted in a similar extradition case (Smyth); (2) the long period of time defendants have been jailed awaiting their extradition hearings; (3) the fact such time would not be credited by the U.K. against their prison sentence in the U.K.; and (4) the fact that one U.S. district court has found the extradition statute unconstitutional.

DOJ/Criminal (correctly, in my view) finds all of these unpersuasive: (1) the analogous bail case cited by the judge is not that analogous, (2) the defendants have been in jail a long time because they requested a delay in their hearing; (3) the U.K. does not give credit for time served awaiting extradition when a prisoner escapes from prison (there has to be some penalty for breaking out of prison); and (4) other courts have not let a single district court decision on constitutionality reverse long-standing bail practice.

Moreover, DOJ/Criminal considers the individuals a serious flight risk, even with the bail conditions imposed.

DOJ/Criminal has an additional reason for wanting to appeal. Courts in the Ninth Circuit have been whittling away at established case law concerning bail in extradition cases, particularly by expanding the concept of "special circumstances." They want a Ninth Circuit ruling that reverses that trend. While DOJ/Criminal advocates appeal, it acknowledges that it is a close

question. The case is not a sure win (IRA extradition cases have drawn vociferous dissents in the Ninth Circuit), particularly in view of the time the individuals have served already in jail. A loss at the Ninth Circuit level will encourage the trend DOJ is seeking to reverse. Even though the delay was of their own making, judges are going to be uncomfortable with the fact that these individuals have been in jail for two years without an extradition hearing.

My Analysis

DOJ/Criminal is right that the district court got it wrong. They are also right to be looking for a case to take to the Ninth Circuit to stop the erosion of established case law in this area.

But, in my view, this is the wrong case to take up. It is far from a sure winner, and a loss will be very damaging to extradition law and practice.

Moreover, one of the key reasons for denying bail -- foreign policy -- does not appear to be present in this case. The State Department informs us that the U.K. Embassy has indicated that it is satisfied with the bail conditions, does not consider the individuals a serious flight risk given the bail, and does not intend to make an issue over whether to appeal. The State Department has confirmed that this remains the U.K. view after the Friday IRA bombing. (DOJ/crim says that it continues to hear through police channels that the U.K. wants bail denied, but we are entitled to rely on the embassy for statements of U.K. position.)

I therefore think we should discourage DOJ from appealing this case. However, we would need to accept that if there is no appeal, the individuals, who have been convicted of serious crimes and who have already fled prison once, may skip bail. I would, therefore, make sure any letter from us acknowledges that DOJ, not we, must evaluate the flight risk.

Concurrence by: Mary Ann Peters *by AK*

RECOMMENDATION

That you authorize me to send the attached letter to the Justice Department

Approve _____ Disapprove _____

Attachments

Tab I Letter to the Solicitor General
Tab II Justice Analysis

~~CONFIDENTIAL~~

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

DECLASSIFIED
PER E.O. 13526
2011-0355-F (2.37)
KBM 7/11/2023

Dear Solicitor General Days:

I am writing to convey our view, which has been coordinated with the Counsel to the President, on the issue of whether the USG should appeal the granting of bail to three extradition defendants in In the Matter of Extradition of Artt, Brennan & Kirby. (U)

The Supreme Court determined in Wright v. Henkel that there is no presumption of bail in extradition cases and that bail will be granted only under "special circumstances." Wright v. Henkel, 190 U.S. 40 (1903). This holding is grounded in our important foreign relations interest in fulfilling extradition obligations. Moreover, its application is important to our ability on a reciprocal basis to urge other countries to deny bail in extradition cases of interest to us. (U)

We agree that the district court erred in its application of the "special circumstances" doctrine to this case, for the reasons identified in the Criminal Division's memorandum. We also understand that there has been other erosion of this important doctrine by courts in the Ninth Circuit, and that it would be useful to have a Ninth Circuit decision reestablishing the proper principles to be applied to bail requests in extradition cases. (U)

Nonetheless, our sense is that this is the wrong case to use for that purpose. As the Criminal Division memorandum notes, this is a close call. The case is not a sure winner on appeal, particularly taking into account the length of time the individuals have, for whatever reason, been in jail. A loss at the Ninth Circuit level will reinforce exactly the trends we are seeking to reverse. (U)

One additional fact contributes substantially to our view. The Supreme Court's holding in Wright is based primarily on foreign policy grounds, namely the foreign policy reaction if we fail to produce an individual under our extradition treaty. However, other courts have noted that where this consideration is not dominant, bail may be granted without any damage to the Wright principle. (See, e.g. United States v. Messina, 566 F. Supp. 740, at 742 (1983): "One court surveyed the more contemporary

~~CONFIDENTIAL~~

Reason: 1.5(b)

Declassify on: 2/14/01

reported cases and reported that "granting of bail pending completion of the extradition proceedings has been the rule rather than the exception." (cites omitted). The mere frequency with which bail has been granted, however, may not indicate any change in the test of Wright v. Henkel. It may be due to lack of strong opposition by the government in particular cases, perhaps after consultation with officials of the requesting government.") (U)

In this case, we understand from the State Department that the embassy of the United Kingdom, the requesting State, has indicated that it is satisfied with the bail conditions, that it considers the flight risk minimal in this case given the bail imposed, and that it does not intend to make an issue of the appeal. While we understand that Justice Department officials may be hearing things differently through law enforcement channels, we believe we are entitled to rely on the statements of the embassy for the position of the United Kingdom. Given the foreign policy underpinning of Wright v. Henkel, we believe that the position of the United Kingdom should be relevant to our own analysis of whether to appeal this case for misapplication of the "special circumstances" doctrine. (U)

We understand, however, that in reaching your decision you must also take into account factors such as flight risk which we are not in a position to evaluate. (U)

Sincerely,

Alan Kreczko
Special Assistant to the President
and Legal Adviser

The Honorable Drew S. Days III
Solicitor General
Department of Justice
Room 5143
10th and Constitution, N.W.
Washington, D.C. 20530

Memorandum

Subject

Date

In the Matter of Extradition of Artt,
Brennan, & Kirby; Nos. CR 92-0151, 93-0032,
94-0086 (N.D. Calif. Dec. 20, 1995)

JCK:RSL:PMStemler

To

From

The Solicitor General

JCK
John C. KeeneyActing Ass't Attorney General
Criminal Division

TIME

Notices of appeal are due for filing on February 19 (Artt and Brennan) and 27 (Kirby), 1996. Sara Criscitelli (4-0040) is handling this case for the United States.

RECOMMENDATIONS

The Criminal Division and the United States Attorney recommend appeal. The Department of State defers to the Department of Justice.

QUESTION PRESENTED

Whether "special circumstances" exist warranting the release of three IRA members, who were convicted and sentenced in Northern Ireland for various terrorist offenses, pending their extradition hearing in San Francisco.

STATEMENT AND DISCUSSION

The Criminal Division adopts the attached memorandum prepared by its Office of International Affairs. For the reasons stated in that memorandum, we recommend appeal. Pertinent papers are attached.



U. S. Department of Justice
Criminal Division

Washington, D.C. 20530

To: Patty Stemler
Appellate Section

From: Frances Fragos Townsend
Sara Criscitelli
Office of International Affairs

RE: In the Matter of Extradition of Artt, Brennan, & Kirby
Nos. CR 92-0151, 93-0032, 94-0086 (MISC) CAL
N.D. Cal.

TIME

The orders of the district court setting conditions for release of Kevin Barry John Artt and Pol Brennan were entered on December 20, 1995. Brennan was released on January 3, 1996, and Artt on January 10, 1995. The district court set conditions for the release of Terence Damien Kirby on December 27, 1995, and Kirby was released on January 3, 1996. Treating the December 20 and December 27 orders as grants of habeas relief, the time for filing our notices of appeal will expire on February 19 and 27, 1995.

RECOMMENDATION

The Office of International Affairs recommends appeal. The United States Attorney agrees. The Department of State defers entirely to the Department of Justice.

FACTS

The United Kingdom (Northern Ireland) has requested the extradition of three individuals under the US/UK Extradition Treaty and the Supplementary Extradition Treaty.¹ Their cases

¹ The original extradition treaty contained a then-standard exception for political offenses. In the late 1970's and early 1980's, courts were denying extradition of IRA terrorists on the ground that theirs was a political offense. In 1985 the parties negotiated a Supplementary Treaty that eliminated the political offense exception for certain violent crimes.

The Senate Foreign Relations Committee was uneasy about ratifying the Supplementary Treaty. As a compromise, in 1986 it drafted a provision (Article 3(a)), which the parties accepted

2

are consolidated in the Northern District of California (Legge, J.). We set forth an extensive factual background to put the decision releasing respondents on bail (which relied in large part on the delay in the proceedings) in context.

1. Each of the three respondents, convicted of one or more republican (i.e., IRA-related) terrorist offenses, escaped in a mass and violent prison breakout from the Maze Prison in Northern Ireland in September 1983. At the time of the escape, Kevin Barry John Artt had recently been sentenced to life imprisonment for the murder of the deputy governor of the Maze prison; Pol Brennan was serving a 16 year sentence for possession of a bomb (for which, with good time credits, he has about three and a half years remaining); and Terence Damien Kirby was serving a life sentence based on convictions for two separate incidents: causing explosions of a nature likely to endanger human life and for a felony murder related to the bombing, and possession of a firearm and explosives with intent to injure (for which, with good time credits, he has about seven years remaining). After arriving in the United States and living under false identities, Brennan and Kirby married American citizens. Artt was married at the time of his arrest in Northern Ireland and in escaping left behind his wife and son.

James Joseph Smyth, another Maze fugitive, was arrested in June 1992 in San Francisco on a passport fraud charge, though shortly thereafter we executed a provisional arrest warrant for his extradition. His criminal case was assigned to District Judge Barbara Caulfield, who then consolidated the extradition case when it was filed. Artt was arrested in San Diego the same day as Smyth, also initially on a U.S. passport fraud charge. His case was transferred to the Northern District of California, where the passport fraud charge was assigned to District Judge Charles Legge and the extradition case to another judge in the district.

Judge Caulfield's early rulings regarding bail, scope of the

and the Senate ratified, that provides a defense to extradition if the fugitive established by a preponderance of the evidence that the request for his extradition was made to try or punish him on account of his race, religion, nationality, or political opinions, or that if surrendered he would be prejudiced at his trial or punished, detained, or restricted in his personal liberty on account of his race, religion, nationality, or political opinion. Article 3(b) allows either side to appeal a decision based on Article 3(a).

Article 3(a) defense, and discovery were very favorable to Smyth.² Shortly after Judge Caulfield first ordered Smyth released on bond in July 1992, Artt filed a Notice of Related Cases in which he contended that, because his extradition and passport fraud cases involved substantial common issues of law and fact, they should be consolidated, and he moved that the cases be transferred to Judge Caulfield. While the motion to consolidate the criminal and extradition cases was granted, his request for reassignment to Judge Caulfield was denied, and the consolidated case was assigned to Judge Legge.

Brennan was arrested in January 1993. His case was also assigned to District Judge Legge and consolidated with Artt's case.

In May 1993 (shortly before the Smyth hearing was scheduled to begin) Artt, this time joined by Brennan, again moved to transfer and consolidate his case with Smyth's, in part on grounds of trial efficiency. The court denied that motion as well.

Following denial of that motion, and notwithstanding that it signified that he was prepared to proceed immediately, Artt then requested that his case be stayed pending resolution of all the

² Smyth contended that the second prong of Article 3(a)--whether, if surrendered, the fugitive would be punished, detained, or restricted in his personal liberty on account of his race, religion, nationality, or political opinion--applies to likely treatment the fugitive would face after his release from custody on the charge for which his extradition is sought. Judge Caulfield agreed to that interpretation of Article 3(a) and ordered broad discovery directed at that issue, admitted a wealth of testimony and other evidence pertinent only to post-release treatment of Catholics in Northern Ireland, and ultimately denied extradition based in large part on her conclusion that after Smyth's release from custody he would be impermissibly punished, detained, and restricted in his personal liberty. Judge Caulfield's interpretation of the treaty was broader than the initial views of either Judge Legge or Judge Jensen.

Judge Caulfield also had liberal views on bail. In July 1992 she ordered Smyth's release on \$1.5 million bond, secured by approximately \$500,000 in real property, finding a "special circumstance" in Smyth's need to consult with his attorney. On the government's appeal, the court of appeals reversed. Judge Caulfield then held a several-day evidentiary hearing on Smyth's application for bail based on his likelihood of success on the merits (though she never actually ruled on that issue). In July 1993 she again released Smyth because of a medical condition. The government again appealed, and the Ninth Circuit summarily reversed.

issues in Smyth. Artt's counsel suggested that the Court should "perhaps simply set some date in the future for resolving discovery disputes, and at that point in . . . that future date perhaps would be a time to set dates for the hearings on Brennan and Artt, assuming the Smyth case is done by that time or at some point." 6/3/93 Tr. 9. Brennan's counsel also requested a delay; he stated that he needed "to take a look at an investigation plan and a discovery plan which I would then try to work out both with the Court in terms of ex parte orders and with [the prosecutor] and see what we can agree upon." Id. at 11.

After further colloquy, the Court stayed each case pending trial of the Smyth case. Id. at 16. Neither respondent objected. Some discussion then occurred concerning investigation and whether it also would be suspended pending resolution of the Smyth case. Id. at 18. The Court, mindful that CJA funds were sorely strained at that time, replied that that was up to defense counsel, but that before the defense asked the government to pay for an investigation the defense would have to show that the investigation was necessary at that time and there also would have to be funds available. Id. Brennan took no further steps to investigate the case; Artt apparently moved in camera and ex parte to permit his investigation to proceed.

The Smyth extradition hearing took place from Sept.-November 1993. It took almost a year from the conclusion of the hearing until the court issued its decision. On September 15, 1994, in an extensive opinion Judge Caulfield denied Smyth's extradition and ordered his immediate release from custody. 863 F. Supp. 1137 (N.D. Ca. 1994). The government appealed pursuant to Article 3(b) of the Supplementary Treaty. We did not also seek to undo the release order; instead, we negotiated with Smyth's counsel that the same persons that had earlier pledged \$1.5 million (see n.2) again secure his release pending appeal.

While the Smyth decision was pending in the district court, Kirby was arrested (February 24, 1994). His case was assigned to District Judge Lowell Jensen (N.D. Cal.). Unlike Judge Legge, Judge Jensen was unwilling to delay matters pending Smyth and proceeded to make scope and initial discovery rulings. His rulings disagreed with Judge Caulfield's interpretation of the Article 3(a) defense. However, in response to successive motions by Kirby, Judge Jensen recused himself in April 1995.³

³ Kirby moved twice for Judge Jensen's recusal because of an alleged appearance of partiality, arguing first that as a DOJ official Jensen testified in 1985 before the Senate Foreign Relations Committee in support of the Supplementary Treaty and then that he had supervised the FBI in 1983 when the Maze escape occurred and the FBI was alerted by British officials to be on the lookout for the escapees. Though Judge Jensen vehemently

Thereafter, Kirby's case was assigned to Judge Sandra Brown Armstrong. Kirby promptly moved to have the case consolidated with those of Artt and Brennan. This motion was granted and the case was reassigned, again, to Judge Legge and consolidated with Artt and Brennan. Kirby promptly argued that Judge Jensen's rulings on scope and discovery be given no effect since he had recused himself.

In short, nothing much happened in these cases between June 3, 1993, when Judge Legge denied the motion to consolidate Artt's and Brennan's extradition cases with Smyth, and October 13, 1994, almost a month after the Smyth decision. On that date, Judge Legge, sua sponte, ordered a status conference in the Brennan and Artt cases; up to that point, neither Artt nor Brennan filed any pleading or made any noticeable effort to move the case along (other than an in camera request by Artt to permit investigation to proceed).

After a pretrial conference on November 4, 1994, Judge Legge set a briefing schedule agreeable to the parties on the scope of the upcoming extradition hearing, to be followed by another hearing in early January 1995, investigations to be conducted in February 1995. Judge Legge also ordered that the extradition hearing would begin on April 10, 1995. December 1, 1995, Scheduling Order. Following that order, in a memorandum on the scope of Article 3(a) filed in February 1995, Artt requested that Judge Legge withhold a ruling on scope until the Ninth Circuit decided Smyth, then pending before it. Artt's Further Memorandum Regarding Scope, p. 3. Judge Legge declined Artt's suggestion that he defer this critical threshold ruling and tentatively made a scope ruling that, though not as expansive as Judge Caulfield's interpretation, was broader than the government urged.

Despite the Judge's intentions that the case proceed apace, discovery inched forward only slowly; for example, Artt made his first discovery request by a letter dated March 31, 1995. Not surprisingly, the investigation/discovery/hearing schedule did not survive. In May 1993 Judge Legge set another schedule, whereby investigation and discovery would be concluded in the summer and the extradition hearing was scheduled to begin on November 13, 1995. (That schedule, too, soon fell by the wayside.) Judge Legge has most recently stated, again insisting that it is etched in cement, that the hearing will begin in mid-June and has gone so far as to block out a month on his calendar in preparation for it.

disagreed that he had any prior knowledge of Kirby or involvement in the FBI's unsuccessful lookout for the escapees, he granted the second recusal motion based on a recent Ninth Circuit decision.

2. On December 18, Judge Legge found special circumstances justifying the release of all three respondents, who had each been in custody since his arrest, pending the extradition hearing that is currently scheduled for June 1996.⁴

a. Judge Legge first found the length of the delay thus far to be a special circumstance. Although he had previously noted that the delay had been mostly at the request of the respondents (see Tr. 8), at this time he declined to attribute "fault" to any party; he stated that respondents had attempted to secure the benefit of the favorable rulings in Smyth and that he also had failed to move the cases forward. 12/18/95 Tr. 53-54. However, Judge Legge concluded, "the defendants have been in custody for a long time, and we're looking forward to another six months. And although I certainly do not think that any constitutional provisions have been violated, I think time is a very heavy factor here." Id. at 54.⁵

b. Judge Legge's second factor was "parity with Mr. Smyth's case." Id. at 54. Because Smyth is out on bail, he determined, it would only be fair to treat these respondents the same. Id. at 54-55.⁶

⁴ Artt and Kirby are each released on \$500,000 bond. Artt's release is secured by \$100,000 in property pledged by five co-signors, supporters in Irish nationalist movement; Brennan, whose wife has access to greater assets, is secured by \$500,000 in property pledged by family members and Irish nationalist supporters. Kirby, whose history arguably proves he is a greater flight risk, is released on a \$1 million bond, secured by \$500,000 in property. Artt is committed to the custodianship of two persons in Northern California; Brennan and Kirby are committed to the custody of their wives. Each is subjected to electronic monitoring, is allowed only to move between home and work (assuming it is lawful for them to be employed) and lawyers and court. Each is limited to travel within the counties comprising the Northern District of California and is barred from applying for a passport.

⁵ The reference to constitutional violations was in response to the defense arguments that the continued incarceration violated due process.

⁶ The Ninth Circuit reversed Smyth on July 29, 1995, and ordered that Smyth's extradition be certified. The court of appeals did not order that Smyth be taken into custody, however. Before the mandate issued, the government moved in district court that Smyth's bail be revoked. Judge Caulfield having resigned the bench, the application was presented to the duty judge, who for various reasons (including concern that the district court had no jurisdiction to consider the application before the

c. As a third special circumstance, Judge Legge noted that if returned to Northern Ireland respondents will probably not receive credit for their time in U.S. custody. Id. at 55.

d. Judge Legge identified the district court's decision in Lobue v. Christopher, 898 F. Supp. 65 (D.D.C. 1995), as a fourth special circumstance. Although he disagreed with Lobue and denied respondents' motion to dismiss the extradition on the ground that the statute is unconstitutional, Judge Legge stated that Lobue "is at least a cloud on the extradition proceedings, all extradition proceedings under the statute that's involved here." Id. at 55.

3. Apart from special circumstances, we also argued that the three men were flight risks. In particular, we noted that they had participated in a violent prison escape after their convictions and that they had not simply escaped prison but also fled their country, abandoning family and friends, and that they had successfully managed to hide out in the United States. In addition to these facts common to all three, Artt and Kirby have additional risk factors. Artt in particular has no family ties within the U.S. (having abandoned his wife and child in Northern Ireland, he fathered at least one child in the U.S., and though purportedly a devoted father to his young daughter he did not live with her or her mother). Kirby was at Smyth's girlfriend's house in June 1992 when Smyth was arrested, but presented false identification that deceived the arresting FBI agents. He then apparently fled Northern California for six months and, with the assistance of his wife, hid out somewhere in the Boston area, returning to San Francisco only when he felt more confident that he had not been detected. Judge Legge made no findings with respect to flight risk.

mandate issued) denied the motion. With authorization by the Solicitor General, the government then moved the panel to revoke Smyth's bond. The panel denied the motion.

Smyth filed a timely petition for rehearing en banc, which was pending at the time of respondents' bail hearing (the petition was not denied until January 5, 1996). Consequently, at the time Judge Legge found "parity" with Smyth, the mandate had not yet issued, and Smyth was at liberty even though the district court's denial of extraditability has been reversed.

Judge Legge thus got the facts wrong. District Judge Fern Smith, the duty judge who heard our motion following the appellate decision, did not "grant" Smyth bail, she merely denied the government's motion to have Smyth's bail revoked. Judge Legge also missed the point that the last decision by the district court in the case was that Smyth was not extraditable, since though the court of appeals reversed that decision, its mandate had not yet issued.

DISCUSSION

The Office of International Affairs does not regard this as a sure win, and we recognize that a published loss in this case could affect bail and extradition cases in the future. In addition, the cases have political overtones that are not likely to escape at least four judges on the Ninth Circuit (Judges Noonan, Reinhardt, Pregerson, and O'Scannlain, all of whom vociferously dissented from the denial of rehearing en banc in Smyth). On the other hand, we don't really have a principled reason to not challenge these orders, the delay has been respondents' own doing, they have already been indisputably convicted of terrorist offenses for which their extradition is sought, and the reaction of our treaty partner if they should flee would be substantial. On balance, we recommend appeal.

1. The law regarding bail in extradition cases is settled. As the Ninth Circuit, echoing the Supreme Court, has made clear, "[t]here is a presumption against bail in an extradition case and only 'special circumstances' will justify bail." Salerno v. United States, 878 F.2d 317, 317 (9th Cir. 1989), quoting Wright v. Henkel, 190 U.S. 40, 63 (1903). The anti-bail presumption applies even if the fugitive is not a flight risk. Salerno, 878 F.2d at 317-318; Kamrin v. United States, 725 F.2d 1225, 1228 (9th Cir. 1984).⁷

⁷ These propositions are also settled in other circuits. See, e.g., Martin v. Warden, 993 F.2d 824, 827 (11th Cir. 1993); Sahaqian v. United States, 864 F.2d 509, 514 n.6 (7th Cir. 1988), cert. denied, 489 U.S. 1087 (1989); In re Extradition of Rouvier, 839 F. Supp. 537, 539 (N.D. Ill. 1993); In re Extradition of Hamilton-Byrne, 831 F. Supp. 287, 290 (S.D.N.Y. 1993); United States v. Hills, 765 F. Supp. 381, 384 n.5 (E.D. Mich. 1991). The reason for the presumption and for the denial of bail is the "serious embarrassment" that would attend international relations were the United States unable to deliver the accused to the requesting state. Wright v. Henkel, 190 U.S. at 62. "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." United States v. Taitz, 130 F.R.D. 442, 444 (S.D. Cal. 1990).

The anti-bail presumption is thus contrary to the presumption that favors pre-trial bail in domestic prosecutions. Beaulieu v. Hartigan, 554 F.2d 1, 2 (1st Cir. 1977) ("Unlike the situation for domestic crimes, there is no presumption favoring bail. The reverse is rather the case"). That is so because in an ordinary criminal case, if the defendant is released and flees before trial he thwarts our courts' ability to enforce our criminal laws. The potential harm is balanced against the

Given both the strong anti-bail presumption in international extradition and the compelling justifications for it, the exceptions to this presumption are narrowly carved. "Previous cases have limited 'special circumstances' to situations where 'the justification is pressing as well as plain,' or 'in the most pressing circumstances, and when the requirements of justice are absolutely peremptory.'" United States v. Williams, 611 F.2d 914, 915 (1st Cir. 1979) (per curiam), citing In re Mitchell, 171 F. 289, 290 (S.D.N.Y. 1909) (L. Hand, J.); see also Martin v. Warden, 993 F.2d at 828 n.4. In slightly different terms, the Ninth Circuit explained that the justification for release pending extradition must be both "extraordinary" and "important." In re Extradition of Smyth, 976 F.2d 1535, 1536 (9th Cir. 1993). Assuming that the fugitive demonstrates sufficient "special circumstances," he is nonetheless not entitled to release if there is an actual, rather than a presumed, risk of his flight.

Cases do not readily define when a circumstance is sufficiently "special" to permit bail, but instead seem to operate on the notion that you know them when you see them. As a consequence, courts frequently resort to ad hoc determinations, which then become precedent for subsequent bail decisions. To the extent that one can generalize, courts seem to find special circumstances only in situations unique to the fugitive and that demonstrate that if he is not released he will face some sort of particular financial, emotional, or physical peril.

defendant's presumption of innocence and his Eighth Amendment right. When the person is wanted by a foreign country, however, the harm that flows from his flight is significantly compounded. Flight thwarts the requesting state's ability to enforce its laws, but more importantly it also subjects the United States to embarrassment and possibly greater damage to our foreign policy by rendering us unable to meet our treaty obligation to another sovereign state. See, e.g., Wright v. Henkel, 190 U.S. at 62; In re Klein, 46 F.2d 85 (S.D.N.Y. 1930) (noting the "grave risk of frustrating the efforts of the executive branch of the government to fulfill treaty obligations"). Not only are there greater potential consequences of flight, but the fugitive's rights and protections are fewer: an extraditable fugitive does not receive the panoply of constitutional protections and presumptions given to persons charged with a U.S. offense.

The Ninth Circuit recently departed from this settled law, though in an unpublished decision that is without precedential value. In Parretti v. United States, a panel of the court of appeals rejected as unconstitutional the presumption against bail in international extradition cases. The panel then ordered the release of Parretti pending extradition on the ground that he presented no risk of flight. The government filed a conditional petition for rehearing en banc, pinning its request on whether the court of appeals decides to publish Parretti.

Specifically with respect to the circumstances relied on here, judges have discussed delay in proceedings, but generally do not grant bail on that ground, and no decision to our knowledge has granted bail where the delay was attributable to the fugitive himself. No judge to our knowledge has granted bail as "parity" because another similarly situated person was released on bail (and one case -- Williams, 611 F.2d at 915 -- rejected that ground). No judge has ordered a person's release on the ground that he would not get credit in the requesting state for time served. Though two courts to our knowledge have agreed that Lobue is a special circumstance, neither rested the bail decision primarily on Lobue and one was decided during the period of time in which the Lobue injunction barring all surrenders was in effect. And many more courts have declined to release persons because of Lobue.

2. Against the backdrop of the presumption against bail in international extradition and the need for narrowly carved "special circumstances," we recommend appeal of the decision releasing these respondents.

a. Delay. This is the most difficult basis to overcome, since there are some cases in which delay is recognized as a special circumstance, though we are not aware of any case in which release is awarded because of past, and not likely prospective, delay.⁸ However, there are a couple of reasons why the district court's order is vulnerable on this ground.

First and most importantly, the past delay was due entirely to respondents' strategic decisions to not proceed until Smyth was decided.⁹ In Bail Reform Act cases, whether delay requires

⁸ See, e.g., Salerno v. United States, 878 F.2d 317 (unusual delay in the appeal process can be a special circumstance, relying on United States v. Bell, 820 F.2d 980 (9th Cir. 1987) (parole revocation case, finding that delay in the appeal process can be an "exceptional circumstance" warranting bail)); United States v. Williams, 611 F.2d at 915 (delayed extradition hearing could be a basis for special circumstances); United States v. Taitz, 130 F.R.D. 442 (D. Nev. 1990).

⁹ Artt attempted to argue to the district court that the delay was caused both by factors beyond his control and also because of the government's failure to comply with the court's May 1995 discovery orders. Judge Legge disagreed that the government had deliberately and wrongfully withheld discovery materials; it also declined to order further discovery and to grant the remedies that respondents sought (requiring the government to provide a privilege log, among other things), and it agreed with the government that the range of materials demanded by respondents were not relevant to the extradition

release is decided at least in part by considering whether the government is responsible for the delay. E.g., United States v. Gelfuso, 838 F.2d 358, 359 (9th Cir. 1988). The only responsibility that could be attributed to the government is its failure to vigorously oppose respondents' strategic efforts to postpone their extradition hearings until after Smyth resolved all the difficult legal issues.¹⁰

The potential for continued delay is to a large respect also a matter within the control of respondents. With no explanation, respondents have thus far failed to adhere to the investigation and deposition schedule previously set by the district court. The court has now set mid-June for the start of the extradition hearing. Between now and that date, counsel for respondent Artt wants at least one more investigative trip to Northern Ireland and then another trip to take depositions of possibly between 10-20 witnesses there; counsel for respondents Brennan and Kirby anticipate taking depositions in Northern Ireland of 6-12 witnesses.

Nor have the three respondents faced the same period of delay. Artt was arrested in June 1992 and Brennan was arrested seven months later, in late January 1993. Kirby was not arrested until late February 1994, 21 months after Artt and 14 months after Brennan. In short, Artt spent 30 months in custody by the time of the hearing; Brennan was in custody for 23 months; and Kirby was in custody for nine months. Of the time spent by Artt and Brennan, some was thereafter credited to US convictions for passport fraud, for which Artt served 10 months and Brennan served seven months, and to Brennan's concurrent seven month sentence for being a felon in possession of a firearm.

b. Parity with James Smyth. We have only found one case in

proceeding. He thus undercut the factual ground for that part of Artt's claim.

¹⁰ After unsuccessfully moving to consolidate his case with Smyth's, Artt purposefully sought to postpone his hearing in order to gain the benefit of what he predicted would be favorable rulings and indeed a favorable outcome in Smyth. Brennan took the same tack. Kirby made a tactical decision to seek Judge Jensen's recusal after Judge Jensen declined to order discovery or interpret Article 3(a) to permit a defense to extradition based on likely post-release treatment -- a view that Judge Jensen acknowledged disagreed with Judge Caulfield's interpretation of the treaty in Smyth. After Judge Jensen recused himself, Kirby's case bounced around until it was consolidated with the other two cases, which as we have shown previously were stalled in accordance with the tactical decisions of the fugitives to await a favorable outcome in Smyth.

which "parity" was an issue, and the court held that it did not justify release. In Williams, 611 F.2d at 915, the court of appeals explained that the fact that the fugitive's brother had been released on bail was not a sufficient "special circumstance" to justify his release.

Nor are respondents similarly situated to Smyth. They did not win on the merits in the district court. Smyth, on the other hand, was released by the district court after it decided against his extraditability. To be sure, the court of appeals reversed the district court and found that Smyth should be certified extraditable, and notwithstanding that finding neither the district court nor the panel would order revocation of bail. However, as of the date of the instant bail hearing the Ninth Circuit had not issued a mandate and Smyth's rehearing petition was pending before it.¹¹

c. Denial of Credit for Time Served. As a matter of policy, the United Kingdom grants credit for time served in foreign custody facing extradition when the fugitive has not yet been convicted in the UK courts. If the person escapes after conviction, however, the UK will not credit his sentence for time served pending extradition. The theory seems to be that once the prisoner is sentenced, the government (not the prisoner) has the right to set conditions for service of sentence, including the determination where he will serve his sentence. Because respondents escaped after conviction, under current UK practice they will not receive credit for the time spent in US custody.

It does not appear that US fugitives who escape after sentencing and are extradited from other countries are statutorily entitled to credit for time served in the requested state prior to extradition. 18 U.S.C. 3585(b) states only that "a defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences--" (emphasis added). At least two states decline to credit time spent fighting extradition after the sentence has been imposed, and federal courts have denied habeas relief in those instances, instead recognizing the legitimacy of the states' policy. Beauchamp v. Murphy, 37 F.3d 700, 705 (1st Cir. 1994), cert. denied, 115 S.Ct. 1365 (1995) (Massachusetts denied credit to escapee captured in Illinois for time spent contesting extradition); Boutwell v. Nagle, 861 F.2d 1530, 1531-32 (11th Cir. 1988), cert. denied, 490 U.S. 1099 (1989) (Alabama denied 31 months credit to escapee captured in Washington State for time spent contesting extradition); cf. Pernell v. Rose, 486 F.2d 301 (6th Cir. 1973) (Tennessee refused to credit time served by pre-trial escapee in

¹¹ On January 5, 1996, the court of appeals denied the rehearing petition.

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Ohio pending extradition).

d. Lobue as a special circumstance. More than for any other presently-held extraditee, the "cloud" over the constitutionality of the extradition statute should not require respondents' release. It cannot reasonably be disputed that by the time they are likely to be surrendered the alleged constitutional infirmity in Lobue -- which no decision, including Lobue itself, held deprives an extradition court of jurisdiction to consider the extradition request -- will be long resolved. If Smyth provides any guide, the consolidated hearing in this case will take at least four weeks and most likely more than that. While we would not expect Judge Legge to match Judge Caulfield's 10-month deliberative time, even if he were to decide the case by the end of July (a virtually impossible scenario, given that the hearing will not begin until mid-June and will likely require a mid-hearing continuance to permit the government to rebut the as-yet unrevealed defense case), it seems certain that at least two of the respondents will appeal. Smyth, though remarkably expedited, took nine months from the date of the notice of appeal to the panel's decision, and it was more than five months until the court denied rehearing.

Several courts have considered, and rejected, Lobue as a basis for releasing persons on bail pending their extradition hearings. E.g., Cherry v. Warden, Metropolitan Corrections Center, 1995 WL 598986 (S.D.N.Y., Oct. 11, 1995); In the Matter of Extradition of Sutton, 898 F. Supp. 691 (E.D. Mo. 1995). Two magistrates have gone the other way. In In the Matter of Extradition of Sidali, 899 F. Supp. 1342 (D.N.J., Sept. 22, 1995), a magistrate granted bail after certifying Sidali extraditable. The factors cited in support of his bail release included Sidali's ill health and the class-wide injunction against surrenders that was in effect in Lobue (which was subsequently stayed by the court of appeals). In In the Matter of Extradition of Jaime Morales, 1995 WL 646608 (S.D. Cal., Oct. 26, 1995), the magistrate found several "special circumstances," including delay by Mexico and likelihood of success on the merits, as well as Lobue. Thus, no magistrate finds Lobue alone to be a sufficient basis, and in any event it should not justify release at this stage since we are a long way away from being able to surrender respondents.

Pertinent papers are attached.

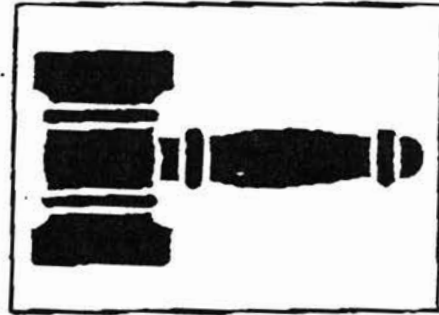
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NSC/LGL ADVISER
CRM APPELLATE

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PHONE NUMBER: 202-514-0000
FAX NUMBER: 202-514-0080

DATE: _____
TO: Patty Stender 4-8232
FROM: Sark C.
SUBJECT: Artt advise
MESSAGE: _____

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1 MOST ALL OTHER EXTRADITIONS.

from Nov. 21, 1995

2 BUT, BE THAT AS IT MAY, IT'S NOT THE STATUTE THAT GIVES
3 THE SECRETARY OF STATE OR THE ATTORNEY GENERAL THE POWER FOR
4 SUBSEQUENT REQUESTS FOR EXTRADITION. IT'S REALLY SOMETHING
5 TOTALLY APART FROM THE SECRETARY OF STATE'S DECISION.

6 ALSO I AM IMPRESSED BY THE FACT THAT AT LEAST WITH
7 RESPECT TO THIS PARTICULAR TREATY ANY DECISION ON THE MERITS BY
8 ME OR BY ANY OF MY BROTHERS AND SISTERS, ARE APPEALABLE WITHIN
9 THE JUDICIAL SYSTEM. THE SECRETARY OF STATE DOES NOT SIT AS A
10 COURT OF APPEAL OVER THE DISTRICT COURT.

11 SO FOR THOSE REASONS, WITHOUT ANSWERING ALL OF THE
12 SCHOLARSHIP THAT HAS BEEN PRESENTED BY THE PARTIES, I AM GOING
13 TO DENY THE DEFENSE MOTION FOR DISMISSAL OF THE EXTRADITION
14 TREATY AND FOR IMMEDIATE RELEASE.

15 I DO WANT TO ADD ONE COMMENT, HOWEVER, ABOUT THE TIME.
16 NOW, ARGUMENT HAS BEEN MADE ABOUT TIME DELAY. IT'S A VERY
17 VALID ARGUMENT, AND IT'S ONE THAT HAS BEEN CONCERNING ME FOR
18 SOME TIME.

19 I DO NOTE, HOWEVER, THAT IN THIS CASE, THESE CASES,
20 PLURAL, MANY OF THE DELAYS HAVE COME AT THE REQUEST OF THE
21 DEFENDANTS.

22 WE HAVE BEEN, I THINK -- I AM NOT POSITIVE OF THE
23 RECORD -- BUT I THINK MOSTLY AT THE REQUEST OF THE DEFENDANTS
24 AWAITING THE RESULTS OF THE SMYTH DECISION. AND I THINK THE
25 REMEDY FOR THE DELAY IS TO GET THINGS BACK ON TRACK.

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CRM APPELLATE

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES A. LEGGE, JUDGE

IN THE MATTER OF THE REQUESTED
EXTRADITION OF KEVIN BARRY
JOHN ARTT

NO. CR 92-0151 (MISC) CAL

IN THE MATTER OF THE REQUESTED
EXTRADITION OF POL BRENNAN

NO. CR 93-0032 (MISC) CAL

IN THE MATTER OF THE REQUESTED
EXTRADITION OF TERENCE DAMIEN KIRBY

NO. CR 94-0086 (MISC) CAL

SAN FRANCISCO, CALIFORNIA
MONDAY - 12/18/95

APPEARANCES:

FOR THE UNITED STATES AND
THE UNITED KINGDOM:

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BY: MARK ZANIDES
ASSISTANT U.S. ATTORNEY

**DISK
ENCLOSED**

DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530
BY: SARA CRISCITELLI
ASSISTANT DIRECTOR, OFFICE OF
INTERNATIONAL AFFAIRS

FOR THE RESPONDENT KEVIN
BARRY JOHN ARTT:

MORRISON & FOERSTER
345 CALIFORNIA STREET
SAN FRANCISCO, CA 94104
BY: JAMES J. BROSNAHAN
JENNIFER H. SMALL
MARK W. DANIS
ATTORNEYS AT LAW

FOR THE RESPONDENT POL
BRENNAN:

LAW OFFICE OF JAMES LARSON
632 COMMERCIAL STREET - 3RD FLOO
SAN FRANCISCO, CA 94111
BY: JAMES LARSON
ATTORNEY AT LAW

(APPEARANCES CONTINUED ON NEXT PAGE)

REPORTED BY:

JO ANN BRYCE, CSR #3321
OFFICIAL REPORTER

COMPUTERIZED TRANSCRIPTION BY XSCRIBE

1 BE HARD TO GET THAT DONE IN THE NEXT FEW DAYS.

2 MR. LARSON: DO YOU WANT AN UPDATE ON MR. BRENNAN'S
3 REPORT?

4 THE COURT: I THINK WE BETTER.

5 MR. LARSON: OKAY.

6 THE COURT: I THINK WE BETTER.

7 ALL RIGHT. WE'LL BE IN ADJOURNMENT FOR 10 MINUTES AND
8 THEN COME BACK AND PICK UP THE REST OF OUR AGENDA.

9 (RECESS TAKEN AT 11:00 A.M.)

10 (PROCEEDINGS RESUMED AT 11:10 A.M.)

11 THE COURT: ALL RIGHT. THE SECOND ISSUE ON OUR AGENDA
12 IS THE DEFENSE MOTION FOR APPLICATION FOR A CERTIFICATION OF
13 ORDER FOR INTERLOCUTORY APPEAL.

14 MR. BROSNAHAN: THANK YOU, YOUR HONOR.

15 WE HAVE SUBMITTED TO YOUR HONOR MATERIALS ON THIS. I
16 THINK I CAN BE FAIRLY BRIEF. I BELIEVE AND I ASSERT AT THE
17 BEGINNING TO BE OF MAXIMUM HELP TO THE COURT AND TO FOCUS IT
18 MAYBE EVEN FOR THE GOVERNMENT THAT THIS IS A FAIRLY
19 STRAIGHTFORWARD QUESTION, MORE SO THAN I THINK WE ALL THOUGHT
20 WHEN WE WERE HERE LAST TIME, BECAUSE THE ORDER INVOLVES A
21 CONTROLLING QUESTION OF LAW. THERE ISN'T ANY QUESTION ABOUT
22 THAT.

23 YOUR HONOR SAID A MOMENT AGO THAT YOU THOUGHT AT LEAST
24 LOBUE PRESENTS A CLOUD OVER THIS CASE. IF THE NINTH CIRCUIT
25 WERE TO HOLD WITH JUDGE LAMBERTH, THEN CERTAINLY IT WOULD BE A

57

1 RESPONDING TO THE RECOMMENDATIONS, BY THE TIME WE GET THEM A
2 HEARING EITHER BEFORE ME, OR BEFORE A MAGISTRATE JUDGE WHICH MAY
3 WELL GET APPEALED TO ME, I JUST DON'T KNOW THAT THIS IS GOING TO
4 GET DONE IN THE NEXT FEW DAYS.

5 SO I THINK THIS IS AS FAR AS I CAN GO TODAY. AND WHAT
6 I WILL SUGGEST IS THAT PERHAPS BY THE END OF THE HEARING TODAY,
7 MAYBE YOU CAN THINK ABOUT IT ENOUGH TO SUGGEST DATES AND
8 PROCEDURES AND SUGGEST IT BY THE END OF TODAY. IF NOT, THEN I
9 WILL, MYSELF, BE AVAILABLE THE REMAINDER OF THIS WEEK TO CONDUCT
10 ANY FURTHER HEARING WITH RESPECT TO THE TERMS AND CONDITIONS OF
11 BAIL.

12 MR. LARSON: YOUR HONOR, THERE WERE TWO PRIOR STUDIES
13 DONE BY PRETRIAL SERVICES WITH RESPECT TO MR. BRENNAN.

14 THE COURT: I DON'T HAVE THEM IN FRONT OF ME NOW.

15 MR. LARSON: SO I'LL MAKE SURE THOSE GET TO THE COURT.

16 THE COURT: HAS ANYTHING BEEN DONE WITH RESPECT TO MR.
17 KIRBY?

18 MR. EISENBERG: NO, YOUR HONOR, BUT WE WILL -- WHEN WE
19 SET A DATE FOR IT, WE WILL DO THAT.

20 THE COURT: ALL RIGHT. SO GET YOUR HEADS TOGETHER AS
21 THE REST OF THIS HEARING GOES ON TODAY, AND MAYBE WE CAN SUGGEST
22 SOME TIMING.

23 I, OF COURSE, WOULD PREFER THAT THIS GO BEFORE A
24 MAGISTRATE JUDGE. ON THE OTHER HAND, BECAUSE OF THE SERIOUSNESS
25 OF THE MATTER, I'M PREPARED TO HEAR IT MYSELF, BUT IT'S GOING TO

1 SPECIAL CIRCUMSTANCES.

2 NOW, WE THEN HAVE TO PROCEED TO THE SECOND LEVEL OF
3 THE INDIVIDUAL ELIGIBILITY FOR MR. ARTT, MR. BRENNAN AND MR.
4 KIRBY FOR BAIL ON WHAT CONDITIONS.

5 I HAVE THIS REPORT ON MR. ARTT, WHICH I JUST RECEIVED
6 THIS MORNING, AND I SEE THE RECOMMENDATION ON THE LAST PAGE
7 WHICH, YOU KNOW, IS A GOOD FIRST STEP BUT, UNFORTUNATELY, IT
8 WON'T BE THE WHOLE STEP. WE NEED TO BE MORE CONCERNED WITH
9 FINANCIAL SECURITY, MAYBE A FEW OTHER CONDITIONS TOO.

10 I DON'T EVEN HAVE THAT WITH RESPECT TO MR. BRENNAN OR
11 MR. KIRBY, AND I GATHER FROM THE GOVERNMENT'S BRIEF THAT IT IS
12 GOING TO MAKE MORE OF AN ARGUMENT ON MR. KIRBY BEING A FLIGHT
13 RISK THAN THE OTHERS.

14 NOW, MAYBE I'M MISREADING THE TONE OF THE BRIEF, BUT
15 THAT IS, INDEED, THE WAY I READ IT. SO FOR THOSE REASONS,
16 THERE'S GOING TO HAVE TO BE FURTHER HEARINGS ON THE EXACT TERMS
17 AND CONDITIONS OF BAIL.

18 I THINK THAT PRETRIAL SERVICES IS GOING TO HAVE TO
19 TAKE A FIRST CUT AT THIS FOR MR. BRENNAN AND MR. KIRBY AS THEY
20 DID WITH MR. ARTT, THEN IT'S GOING TO HAVE TO COME BEFORE A
21 JUDGE. AND THE INITIAL QUESTION THERE IS WHETHER IT'S GOING TO
22 BE A MAGISTRATE JUDGE OR IT'S GOING TO BE ME.

23 I DOUBT THAT THIS IS GOING TO GET DONE IN THE NEXT FEW
24 DAYS. I DOUBT THAT. IT SEEMS TO ME BY THE TIME WE GET PRETRIAL
25 SERVICES' RECOMMENDATIONS, BY THE TIME WE GET THE GOVERNMENT

1 DEGREE OF PARITY HERE, I THINK, IS APPROPRIATE WITH THESE
2 INDIVIDUALS.

3 I THINK ALSO THE FACTOR OF NO CREDIT FOR TIME SERVED
4 IS IMPORTANT BECAUSE IN MOST CRIMINAL PROCEEDINGS WE HAVE WHERE
5 PEOPLE ARE IN CUSTODY PRETRIAL, THEY DO RECEIVE CREDIT AT THE
6 END. IF THEY PLEAD GUILTY OR ARE CONVICTED, THEY DO RECEIVE
7 CREDIT FOR THE TIME THAT THEY HAVE SERVED, BUT NOT IN THIS CASE
8 APPARENTLY.

9 I BELIEVE THE LOBUE DECISION DOES ALSO PRESENT SOME
10 SPECIAL CIRCUMSTANCES, ALTHOUGH AT A PRIOR HEARING I EXPRESSED
11 MY DISAGREEMENT WITH LOBUE. IT IS AT LEAST A CLOUD ON THE
12 EXTRADITION PROCEEDINGS, ALL EXTRADITION PROCEEDINGS UNDER THE
13 STATUTE THAT'S INVOLVED HERE.

14 A FEW OTHER COMMENTS ON SPECIAL CIRCUMSTANCES. I
15 APPRECIATE MR. DANIS' COMMENTS ABOUT THE IRISH GOVERNMENT BEING
16 INTERESTED IN WHAT THEY'RE DOING WITH THEIR RELEASEES, BUT
17 THERE'S REALLY NOTHING BEFORE ME ON THAT. I REALLY CAN'T TAKE
18 THAT INTO CONSIDERATION.

19 TO MAKE A LONG STORY SHORT, BAIL HAS BEEN GRANTED IN
20 EXTRADITION CASES. I THINK THESE, BECAUSE OF THE SPECIAL
21 CIRCUMSTANCES I HAVE NOW ENUMERATED, ARE ONES WHERE THERE ARE
22 SPECIAL CIRCUMSTANCES HERE.

23 OTHER ARGUMENTS WERE MADE IN THE BRIEFS THAT WERE NOT
24 ADDRESSED HERE IN ORAL ARGUMENT BUT I DON'T THINK I NEED TO
25 ELABORATE ON THOSE, BECAUSE I'VE STATED THE REASONS FOR THE

1 ADDITION THE PASSPORT VIOLATIONS AND SEQUENCING THOSE
2 PROCEEDINGS, SO IT'S UNDERSTANDABLE.

3 I THINK MR. ZANIDES IS CORRECT, THAT A LOT OF THE
4 DEFENSE POSITION HERE, ALTHOUGH I CAN'T QUOTE CHAPTER AND VERSE,
5 WAS TO TRY TO GET BENEFIT OF FAVORABLE RULINGS THAT WERE BEING
6 MADE IN THE SMYTH CASE. THAT'S VERY UNDERSTANDABLE. IT'S A
7 VALID DEFENSE TACTIC, AND I DON'T FAULT ANYBODY FOR IT.

8 FOR ALL OF OUR REASONS HERE, HOWEVER, WE'RE HERE AT
9 THE END OF 1995. THE DEFENDANTS HAVE BEEN IN CUSTODY FOR A LONG
10 TIME, AND WE'RE LOOKING FORWARD TO ANOTHER SIX MONTHS. AND
11 ALTHOUGH I CERTAINLY DO NOT THINK THAT ANY CONSTITUTIONAL
12 PROVISIONS HAVE BEEN VIOLATED, I THINK TIME IS A VERY HEAVY
13 FACTOR HERE.

14 I ALSO THINK THAT, AS I MENTIONED, SOME DEGREE OF
15 PARITY WITH MR. SMYTH'S CASE IS APPROPRIATE; THAT IS, MR. SMYTH
16 IS -- I DON'T KNOW THE CIRCUMSTANCES OF HIS INDIVIDUAL CASE, OF
17 COURSE, EXCEPT WHAT I READ IN THE OPINION, BUT HE CERTAINLY
18 STANDS IN A SIMILAR SITUATION WITH THE OTHER THREE HERE; THAT
19 IS, ESCAPED AT THE SAME TIME, CAME HERE TO THE UNITED STATES,
20 LIVED IN CALIFORNIA, THEN WAS DISCOVERED AND EXTRADITION
21 PROCEEDINGS INITIATED.

22 FOR WHATEVER REASON, JUDGE SMITH GRANTED MR. SMYTH
23 BAIL, EVEN AFTER THE NINTH CIRCUIT HAD OR HAS DETERMINED, I
24 GUESS IT'S STILL ON PETITION FOR REHEARING, BUT THE PANEL IN THE
25 NINTH CIRCUIT DETERMINED THAT HE SHOULD BE EXTRADITED. SO SOME

Baldwin, Kenneth

*Put in &
work*

From: Peters, Mary A.
To: Baldwin, Kenneth; Kessinger, Jodi; Kreczko, Alan J.
Cc: /R, Record at A1; Baker, James E.
Subject: RE: Irish prisoners [UNCLASSIFIED]
Date: Monday, February 05, 1996 9:44AM

I have weighed in with State on this.

From: Kreczko, Alan J.
To: Baldwin, Kenneth; Kessinger, Jodi; Peters, Mary A.
CC: /R, Record at A1; Baker, James E.
Subject: Irish prisoners [UNCLASSIFIED]
Date: Saturday, February 03, 1996 12:54 PM

Please pass to NS

One aspect of Irish cases are Irish who are in jail in the US and who would like to serve their sentences instead in Ireland, under the US-Ireland prisoner transfer treaty. I understand there are six or seven such cases.

DOJ mentioned to me that they have approved one case, and are consulting State Department on the others. According to DOJ, the others present close questions. DOJ ordinarily looks at a number of factors in assessing prisoner transfers. In these cases, several factors apparently favor prisoner transfer. Troublesome factor is "seriousness of crime" since the cases apparently involve terrorist offenses. However, DOJ has written to State that Ireland has said transfer of these individuals could promote the peace process. DOJ has asked State for its view of that assertion.

My sense is that if State provides a strong response on the peace process, DOJ will approve the prisoner transfers. Impact on the peace process is clearly a foreign policy issue where it is perfectly appropriate for NSC to weigh in with State with our view.

Smyth?

THE WHITE HOUSE

WASHINGTON

Standard deportation language

Dear Representative Roukema:

Thank you for your letter requesting a humanitarian review of Irish national deportation cases and a reassessment of Administration policy with respect to those cases. My response has been delayed because this issue has been subjected to a thorough revision.

I am aware that concerns have been expressed that certain Irish nationals are being unfairly singled out for deportation under our immigration laws. I have relayed these concerns to the Justice Department, and I know that Members of Congress and of the Irish American community have done so as well. The Attorney General directed the FBI and INS to review the handling of these deportation cases. Based upon that review, she has concluded that the cases have been handled appropriately and in accordance with established guidelines. I have asked the Attorney General to remain alert to these concerns, and I am sure that she will.

The application of our immigration law depends upon the facts of each case. In some cases, equitable factors, such as the presence of an American child, may provide a basis for suspension of deportation or other relief. In other cases, however, the Executive branch may have little discretion to permit an alien to adjust status. For example, Congress has by statute determined that an alien who has "engaged in a terrorist

activity" or committed a "crime involving moral turpitude," such as murder or attempted murder, is eligible for suspension of deportation only in very limited circumstances. Accordingly, these cases necessarily require fact-dependent inquiries on a case-by-case basis.

I appreciate your warm words about my role in facilitating the Irish peace process. I assure you I will continue to support the efforts of those who are working for a lasting peace despite the tragic break in the cease-fire.

Sincerely,

The Honorable Marge Roukema
House of Representatives
Washington, D.C. 20515-3305

THE WHITE HOUSE

WASHINGTON

Language used before Smyth's extradition

Dear Representative Kennedy:

On behalf of the President, I am replying to your letter concerning the extradition case of Irish national Jimmy Smyth. The Secretary of State, as authorized by statute, will review Mr. Smyth's case before making a decision on whether or not to issue a warrant of surrender. In doing so, he will weigh the equities of the case and all relevant foreign relations considerations.

I appreciate hearing your views on this issue. Please be assured that we will conduct a thorough examination of this case.

Sincerely,

Anthony Lake
Assistant to the President
for National Security Affairs

The Honorable Joseph P. Kennedy, II
House of Representatives
Washington, D.C. 20515-2108



Irish American Unity Conference

EBS/EAP

Smyth
78-98

83

10 parole after 10
67%

National Office:
National Press Building
529 14th Street N.W., Suite 837
Washington, D.C. 20045
1-800-947-4282
Phone: 202-662-8830
Fax: 202-662-8831

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TO: Nancy Soderburg - NSC
FROM: Noreen Walsh
National Vice President
DATE: August 19, 1996

Nancy, attached is the statement Jimmy Smyth sent out before he left. I thought you may want to see it.

I tried to call yesterday and got your answering machine. The President will need immediate confidence-building measures among the Irish American community to help alleviate Saturday's extradition and the MacBride upset. What comes to mind immediately are the following "domestic" issues:

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Paul O'Dwyer
NYC Commissioner to UN, Retired

Mary Borecz Piko, Esq.

Stephen A. Somerstein, Esq.

Fr. Desmond Wilson, Director
Springhill Community House

→ The three remaining men in California. They had their bail appealed and were in court 8/15. Leave them out until their trial in November. They aren't going anywhere and are staying put. Kevin Art has been denied a work permit and been under house arrest since his release. He can only see his daughter (7 yr. old) once a month.

→ The Megaghey deportation case. Their attorney Mike Maggio submitted an excellent/stong brief to INS in June. If the BIA's decision comes out shortly with a win - a lot of influence will run off it. This is a situation that can be dealt with - it is all politics. His wife Patricia was pregnant when I brought them in to see you last November. They have two young daughters and Gabe is a grandfather, in the U.S. for 21 years. He's not wanted by anyone and is not a member - or ever was - of the IRA.

→ If the deportation cases can be resolved and settled quietly without going into political asylum where the constant appeals by Justice make a mockery of the entire process.

A few people you may want to include on the conference call along with Frank Durkan, Bruce Morrison, etc. are:

Andy Somers (WI) 1(608)276-8397
Mike Cummings (NY State) 1(518)473-6828
Bob Linnon (FL) 1(802)228-6083 (staying in VT)

I will be at my desk most of the day.

To Have
CE MAPS
Can we do
any of this?
Mr.

Can he
get a
work
permit?

Guilty of
trying to
send some
to IRA

What
are
details?

[Handwritten signature]

201 235
5308

*File prison
cc Krenke*

United States Department of State

Washington, D.C. 20520

February 5, 1996

*NES - FYI**AP*

Ms. Sylvia Royce
Chief, International Prisoner
Transfer Unit
Office of Enforcement Operations
U.S. Department of Justice
1001 G Street, N.W.
Washington, D.C. 20530

Dear Ms. Royce:

This is response to your letter of January 25, 1996 in which you requested the opinion of this office as to whether the transfer of certain listed Irish nationals to Ireland would aid the on-going peace process in Northern Ireland. The concerned prisoners are presently serving sentences in U.S. jails after having been convicted in the U.S. of various offenses which they committed in furtherance of Provisional Irish Republican Army (PIRA) goals. The proposal is to transfer them to Ireland under the terms of the Convention on the Transfer of Sentenced Persons to which both the United States and Ireland are a party.

It is the opinion of this office that transfer of the mentioned prisoners could be of assistance to the peace process. Republican prisoners in the U.K., Ireland, and the U.S. played an important role in giving consent to the PIRA ceasefire. Loyalist prisoners played a similar role with respect to the their ceasefire. The proposed transfer is consistent with the confidence building measures mentioned in the recent report by the International Body on Decommissioning Paramilitary Arms in Ireland. This body was chaired by former U.S. Senate Majority Leader Mitchell. Although the report was addressing the British and Irish governments when referring to "continued action by the Governments on prisoners" to "bolster trust," action by the U.S. to transfer these prisoners closer to their families also may help build this trust, thereby reinforcing the prisoner's commitment to the ceasefire.

Sincerely,

Paul B. van Son
Officer-in-Charge
Ireland/Northern Ireland
Affairs

Joshi, M. Kay

From: Peters, Mary A.
To: Soderberg, Nancy E.
Cc: /R, Record at A1
Subject: Two Ireland Issues [CONFIDENTIAL]
Date: Wednesday, February 07, 1996 9:08PM

TOKB
Hold with
things in Ireland
meeting

1. On Tuesday I attended, in your stead, a second meeting on scheduling Ireland-related events. The first meeting, which was held a couple of weeks ago, was called by Ann Stock especially to discuss the St Patrick's Day party and who should come. I have since submitted a draft guest list to her (copy e-mailed to you). The Tuesday meeting was chaired by Alexis and was devoted to prioritizing the upcoming Ireland events. Apparently Harold Ickes has said there is too much time being spent on Irish events. The decision was not to have the President participate in a Project Children dinner (but send a video) or the American Ireland Fund dinner.

The group recommended that the POTUS do the shamrock presentation/bilateral and the St Pat's event that night, as well as the reception in NY on 3/11 (Niall O'Dowd event) that he had already accepted. But I heard from Marilyn DiG today that even the shamrock presentation/bilat is being treated as if it were a political event and subject to cancellation. I told the group that it has been done every year and that the President has already confirmed it to Bruton. (He did, in the letter we just sent.)

2. More on the "Chicago" Conference:

--In her latest cable to you urging a decision on this (Dublin 448) JKS argues strongly for a Chicago venue. May be too late to change without ticking off Richard Daley...

--FYI - Commerce's London rep is not enthusiastic about the conference (no surprise, the Brits aren't wild about it either). He has pointed out to Chuck that there will be conference in Toronto on trade and investment in NI and Ireland also in June. However, it is possible to time ours so that it is either right before or right after the Toronto one and businessmen won't have to make two trips.

--It is becoming clearer that the concept for the conference is for a very commercial event, built around what is called "precision matchmaking" --- kind of like computer dating -- where potential business partners are pre-screened for possible interest in doing business together. Everyone agrees that that should be the focus, not the political or social side. I do not think the President should attend, though he could send a message via Ron Brown.

--Chuck Meissner is in favor of an event for just NI and the border counties, but the concept that Dublin is pushing has an all-Ireland dimension. The GOI is very anxious that it be all-Ireland. The Commerce guy in Dublin makes a case for including the South because of interest in the U.S. in doing business there.

Kessinger, Jodi

From: Peters, Mary A.
To: Soderberg, Nancy E.
Cc: /R, Record at A1
Subject: Prisoner Transfers/Extradition [CONFIDENTIAL]
Date: Wednesday, February 14, 1996 2:34PM

DECLASSIFIED
PER E.O. 13526
2011-0355-F (2.38)
KSH 7/11/2023

There are two issues -- the direct transfer of prisoners in U.S. jails back to Ireland as requested under the international convention Ireland signed last fall, and the possible transfer back to Ireland of prisoners we are preparing to extradite back to the UK.

On the first issue, one prisoner has already been transferred and five others are awaiting a USG decision. DOJ had recommended against the transfer BUT were prepared to bow to State if State would write a letter saying their transfer would help the peace process. State did that and the transfer would probably have been approved, but for the bombing. State has now asked DOJ not to do anything for the present. They have not rescinded the letter, just asked that no action be taken immediately. I think this was the right call, since Justice is looking for ways to react to the bombing and might make a negative decision on the transfers if it took action now.

I also talked about the second question with State, on a close hold basis. Legally this would be a 2-step process, with the 4 prisoners extradited back to the UK as step 1, and then a UK decision taken to transfer them under the international convention to Ireland as step 2. We would have to reach advance political agreement with the UK that they would implement step 2. Unlikely to get that now since it would be politically untenable in the UK to transfer these escapees to Ireland after the bombing, when HMG hadn't even approved the transfer of better behaved prisoners before the bombing. Home Secretary Michael Howard is the most hardline of Tories and would fight hard against making any such deal with us. But we could talk to HMG about being more forthcoming on transfers of other prisoners now, especially since Dublin has not been "soft" on the bombing.

Baldwin, Kenneth

*Hand
for Alan's
meetings.*

From: Peters, Mary A.
To: Baldwin, Kenneth; Kessinger, Jodi; Kreczko, Alan J.
Cc: /R, Record at A1; Baker, James E.
Subject: RE: Irish Deportees [UNCLASSIFIED]
Date: Monday, February 05, 1996 9:36AM

Re option 2, the Government of Ireland does take the position that not deporting these guys would help the peace process. Would almost certainly do so formally with DOJ.

From: Kreczko, Alan J.
To: Baldwin, Kenneth; Kessinger, Jodi
CC: /R, Record at A1; Baker, James E.; Peters, Mary A.
Subject: Irish Deportees [UNCLASSIFIED]
Date: Saturday, February 03, 1996 11:05 AM

Please pass to NS:

Nancy,

I had intended to put together a memo for POTUS on Irish deportees issue after meeting with Irish Union's lawyer, in case he had any new ideas. However, that meeting has been postponed for another week and I doubt it is going to produce anything in any event. Given TL and your (and my) interest in getting on with this, I set out below what I see as the realistic options. I'd like to meet for a few minutes at beginning of next week to get some further guidance from you on what you would like to see in the memo to POTUS.

Option 1 -- Status Quo

POTUS letter says law provides little flexibility and must be applied even-handedly. Says AG has reviewed cases and found no basis for accusation Irish are being singled out. Also says AG has assured him these cases will be handled fairly. INS proceeds with its handling of cases, which means some of the Irish will be deported, some not, on a case-by-case basis.

Option 2 - Drop all these deportations.

This is Bruce Morrisson's preferred option. He informed me that INS' own regs. identify factors which would lead INS not to pursue a deportation. He quoted one factor: cases where "because of sympathetic factors in the case, a large amount of adverse publicity will be generated which will result in a disproportionate amount of Service time being spend in responding to such publicity or justifying actions". This sounding very applicable, I asked him to send me the INS regs. PROBLEM: I read the regs. The next factor reads "whether or not the individual is a member of a class of deportable aliens whose removal has been given a high enforcement priority, (e.g. dangerous criminal, large-scale alien smugglers, narcotic drug traffickers, terrorists, war criminals, habitual immigration violators." Bruce acknowledges that Congress and Administration have made removal of terrorists a priority. He says that without taking a personal view on the matter, "there is room to argue about whether these are terrorists".

Question -- is there a foreign policy basis for not pursuing the deportations? would Ireland or UK say it would serve peace process if these individuals were not deported? That could provide a better basis for AG not proceeding. Of course, AG would want to hear that directly and in writing, presumably from SecState or POTUS.

Option 3 - Tell DOJ to attach greater weight to presence of American children, length of stay, in determining "serious hardship".

There are some procedural complications concerning this option, but I believe they can be overcome. Problem I see with this option is more fundamental. FIRST PROBLEM: Predicate for so directing DOJ has not been established. That is, INS practice already identifies presence of American child and length of time in US as factors to be considered, and no one is out there arguing that as a general matter, INS gives insufficient weight to these factors. INS handles many cases where American children are present; there is

an organized immigration bar that fights INS on those cases; but there is no general claim of a problem here. SECOND PROBLEM: It is not clear what this will accomplish with respect to the Irish cases. Only three of the cases involve individuals who have been here for more than ten years. It is only in those three cases that the statute permits a weighing of circumstances to suspend deportation. Changing the weight accorded to presence of American children will have no effect on the other eight deportations, since they have been here less than 10 years and are statutorily ineligible for suspension of deportation. Moreover, even with the three, it is not clear that changing the weight for American children will change the result. McGahey is a good case. He has American kids and he has been here for 15 years. On the other hands, he is convicted of a serious crime -- attempted export of stingers -- while he was here. Not clear that telling DOJ to give more weight to presence of American kids will change the outcome for McGahey. THIRD PROBLEM: This direction to DOJ will impact hundreds of deportation cases not involving Irish in an unforeseen way, without any showing that there is a general problem.

not
rec.
remission

RECOMMENDATION:

Absent a strong foreign policy rationale for not pursuing the deportations, I favor option 1, perhaps with a modification that would go part of the way toward option 3. That would be for the POTUS to add a sentence to his letter to Congress saying, "I have asked AG to monitor these cases to ensure that within the constraints of our law, appropriate consideration is being given to the fact that some of these individuals may have American children."

This would accomplish several things:

- it would demonstrate that we are sensitive to this concern.
- it would ensure that these cases received high level review at DOJ, and make sure that when they reviewed these cases, they focused on American kids factor.
- would not have unintended effects on other cases.

However, this option would not guarantee that Irish would not be deported. Someone like McGahey may still end up deported.

I think DOJ would go along with this approach. If you found this sufficient, it would simplify memo to POTUS.

Baldwin, Kenneth

From: Kreczko, Alan J.
To: Baldwin, Kenneth; Kessinger, Jodi
Cc: /R, Record at A1; Baker, James E.; Kreczko, Alan J.; Peters, Mary A.
Subject: IRA extradition [UNCLASSIFIED]
Date: Saturday, February 03, 1996 12:42PM

Please pass to NS

In addition to the Irish prison transfers, and the Irish deportees, we have the Irish extradition case. Three IRA members who broke out of Maze prison are facing extradition to the UK. A district court has granted them bail; DOJ/Criminal would like to appeal. We have an opportunity to influence the decision. A draft action memo and recommended letter to DOJ is attached. I have provided a copy to Jack Quinn as well. I'd appreciate your comments early in the week. Because of court deadlines, we should decide by the end of the week whether we want to say anything to DOJ on this case. (Particularly interested in your view of whether we can rely on the statement of the UK embassy officer -- see memo below -- which gives us our strongest basis for weighing in with DOJ.)

<<File Attachment: BAIL.DOC>>

Who said
in Brit Sal

SUBJECT: Irish Extraditees

Issue

Whether to send the attached letter to DOJ concerning appeal of a district court's decision to grant bail to three IRA members being extradited to the United Kingdom.

Backgroun

The UK is seeking the extradition of three IRA members. The three escaped from Maze prison in Northern Ireland in a mass and violent prison breakout in 1983. One of the three had been convicted of murder; the second, of possession of a bomb; the third, of several offenses, including felony murder arising from a bombing. The three fled to the US at various times after the jailbreak. They were arrested here in or after 1992, pursuant to a UK arrest warrant and extradition request. They had been held in California prison since then, pending an extradition hearing, until the distict court in late December granted their request for bail. (Two were released on \$500,000 bond; one, on \$1 million bond.)

Gerry Adams wrote the President urging the individuals be released on bail, pending their extradition hearing. The President declined to intervene with DOJ, which strongly opposed bail. The district court recently granted bail to all three. DOJ/Criminal division wants to appeal but needs that approval of the Solicitor General. The case is being followed by Irish-American groups.

DOJ/Criminal ANALYSIS

The district court got it wrong.

The Supreme Court has held that the ordinary presumption against bail does not apply in extradition cases. Instead, the Court has held that bail should be denied unless the extraditee can demonstrate "special circumstances". The Court fashioned this rule primarily for foreign policy reasons -- if an individual were released on bail and then skipped, the USG would be in violation of its treaty obligation to produce the individual. DOJ obviously strongly supports this Supreme Court holding, as should we. It enables us to fulfill our treaty obligations, and it positions us to press other countries to deny bail in extradition cases of importance to us.

What constitutes sufficient "special circumstances" to entitle an individual to bail is not clear in case law. However, it was intended to be a narrow concept and has generally been so applied

by the courts. Courts have said the special circumstances must be "extraordinary", "when the requirements of justice are absolutely peremptory". Examples would include situations where the individual is seriously ill.

In this case, the district court found "special circumstances" in four factors: (1) the fact that bail had been permitted in a similar extradition case (Smyth); (2) the long period of time defendants have been jailed awaiting their extradition hearings; (3) the fact such time would not be credited by the UK against their prison sentence in the UK; and (4) the fact that one US district court has found the extradition statute unconstitutional. ?

DOJ/Criminal (correctly, in my view) finds all of these unpersuasive. (1) the analogous bail case cited by the judge is not that analogous, (2) the defendants have been in jail a long time because they requested a delay in their hearing; (3) the UK does not give credit for time served awaiting extradition when a prisoner escapes from prison (there has to be some penalty for breaking out of prison); and (4) other courts have not let a single district court decision on constitutionality reverse long-standing bail practice.

Moreover, DOJ/Criminal considers the individuals a serious flight risk, even with the bail conditions imposed.

DOJ/Criminal has an additional reason for wanting to appeal. Courts in the Ninth Circuit have been whittling away at established case law concerning bail in extradition cases, particularly by expanding the concept of "special circumstances". They want a Ninth Circuit ruling that reverses that trend.

While DOJ/Criminal advocates appeal, it acknowledges that it is a close question. The case is not a sure win (IRA extradition cases have drawn vociferous dissents in the Ninth Circuit), particularly in view of the time the individuals have served already in jail. A loss at the Ninth Circuit level will encourage the trend DOJ is seeking to reverse. Even though the delay was of their own making, judges are going to be uncomfortable with the fact that these individuals have been in jail for two years without an extradition hearing.

My Analysis

DOJ/Criminal is right that the district court got it wrong. They are also right to be looking for a case to take to the Ninth Circuit to stop the erosion of established case law in this area.

But, in my view, this is the wrong case to take up. It is far from a sure winner, and a loss will be very damaging to extradition law and practice.

Moreover, one of the key reasons for denying bail -- foreign policy -- does not appear to be present in this case. The State Department informs us that the UK embassy has indicated that it is satisfied with the bail conditions and does not intend to make an issue over whether to appeal. (DOJ/crim says that it continues to hear through police channels that the UK wants bail denied, but I think we are entitled to rely on embassy for statements of UK position.)

I therefore think we should discourage DOJ from appealing this case. However, we would need to accept that if there is no appeal, the individuals, who have been convicted of serious crimes and who have already fled prison once, may skip bail. I would therefore make sure any letter from us acknowledges that DOJ, not we, must evaluate the flight risk.

RECOMMENDATION

That you authorize me to send the attached letter to the Justice Department

_____ approve _____ disapprove

Dear SG

I am writing to convey our view, which has been coordinated with the Counsel to the President, on the issue of whether the USG should appeal the granting of bail to three extradition defendants in In the Matter of Extradition of Artt, Brennan & Kirby.

The Supreme Court determined in Wright v. Henkel that there is no presumption of bail in extradition cases and that bail will be granted only under "special circumstances". Wright v. Henkel, 190 U.S. 40 (1903). This holding is grounded in our important foreign relations interest in fulfilling extradition obligations. Moreover, its application is important to our ability on a reciprocal basis to urge other countries to deny bail in extradition cases of interest to us.

We agree that the district court erred in its application of the "special circumstances" doctrine to this case, for the reasons identified in the Criminal Division's memorandum. We also

understand that there has been other erosion of this important doctrine by courts in the Ninth Circuit, and that it would be useful to have a Ninth Circuit decision reestablishing the proper principles to be applied to bail requests in extradition cases.

Nonetheless, our sense is that this is the wrong case to use for the purpose. As the Criminal Division memorandum notes, this is a close call. The case is not a sure winner on appeal, particularly taking into account the length of time the individuals have, for whatever reason, been in jail. A loss at the Ninth Circuit level will reinforce exactly the trends we are seeking to reverse. We would look for a stronger case.

On additional fact contributes substantially to our view. The Supreme Court's holding in Wright is based primarily on foreign policy grounds, namely the foreign policy reaction if we fail to produce an individual under our extradition treaty. However, other courts have noted that where this consideration is not dominant, bail may be granted without any damage to the Wright principle. (See, eg. United States v. Messina, 566 F. Supp. 740, at 742 (1983): "One court surveyed the more contemporary reported cases and reported that "granting of bail pending completion of the extradition proceedings has been the rule rather than the exception". (cites omitted). The mere frequency with which bail has been granted, however, may not indicate any change in the test of Wright v. Henkel. It may be due to lack of strong opposition by the government in particular cases, perhaps after consultation with officials of the requesting government.")

In this case, we understand from the State Department that the embassy of the United Kingdom, the requesting State, has indicated that it is satisfied with the bail conditions and does not intend to make an issue of the appeal. While we understand that Justice Department officials may be hearing things differently through law enforcement channels, we believe we are entitled to rely on the statements of the embassy.

We understand that in reaching your decision you must take into account factors such as flight risk which we are not in a position to evaluate. However, we do believe that the statement of the United Kingdom should be relevant to our own analysis of whether to appeal this case, particularly given the underpinning of Wright v. Henkel. Moreover, we believe the statement of the UK embassy would likely be very significant -- and adverse to our position -- before the Ninth Circuit.

Sincerely,

THE WHITE HOUSE
WASHINGTON

March 18, 1996 86 MAR 18 P7:20

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
JOHN HILLEY
JACK QUINN

SUBJECT: Irish National Deportation Cases

To Alan
MTP
pls see
COTUS comment
at end
~

Purpose

To respond to various Members of Congress regarding a policy reassessment of deportation cases involving Irish nationals.

Background

Writing before the end of the ceasefire, the Members argue that a reassessment of Irish deportation cases would give further impetus to the peace process and be commended by Irish Americans. The Members do not identify specific cases but argue that all involve individuals married to Americans, frequently with American children, who would be entitled to relief but for their involvement in the Irish struggle.

As the Members suggest, this is a significant issue for Irish Americans. They are concerned that Irish nationals are being singled out for discriminatory application of our deportation laws, perhaps because of a close working relationship between the FBI and the U.K. security services. Irish-American groups have aired those concerns with us and directly with the Attorney General. A three-member congressional delegation has also met with the AG; one congressional letter suggests a similar meeting with you.

We and the AG have taken the inquiries seriously. The AG has attempted to reassure Members and the Irish-American community that there is no discriminatory policy against Irish nationals. (Statistically, the number of removals from the United States for nationals of Ireland and the U.K. in 1995 is small in absolute terms and in comparison to the total number of removals for all countries.) She directed the INS and FBI to review the case files of IRA members under deportation to ensure that is the case

cc: Vice President
Chief of Staff

and is convinced the individuals are being treated fairly under our law.

Our immigration law, however, provides little flexibility concerning ~~aliens who have been convicted of serious crimes or who have engaged in terrorist activity.~~ Marriage to an American ~~an~~ the presence of an American ~~C 1~~ may be a factor in such a deportation case in extreme circumstances, but they are not an automatic basis for relief.

We have held off responding to the congressional letters while we reviewed the cases thoroughly with DOJ and INS. And we will continue to look for ways to handle these cases, consistent with our immigration laws, that contribute to the peace process. (In fact, ~~three of the eleven cases cited most frequently by Irish-American groups have now been resolved favorably; the others remain at various stages of the deportation process.~~) However, at this point we have found no appropriate basis for blanket relief for these individuals.

RECOMMENDATION

That you sign the attached response to the Members of Congress.

Attachments

Tab A Response to Members of Congress
Tab B Incoming Congressional Letters

Maybe Marriage + Kids
Long Stay + less serious
offenses can provide some
relief — keep on top of

Maybe marriage and kids
long stay + less serious
offenses can provide some
relief — keep on top of.

NS copy

Baldwin, Kenneth

From: Kreczko, Alan J.
To: Baldwin, Kenneth; Kessinger, Jodi
Cc: /R, Record at A1; Baker, James E.; Peters, Mary A
Subject: Extradition [UNCLASSIFIED]
Date: Thursday, February 15, 1996 1:20PM

Please pass to NES

Nancy,

You may want to think again about whether to proceed with package 0971, letter to DOJ re appeal of bail for IRA extraditees, in light of the second bomb. I think the legal analysis in it remains correct, and it is very clear in leaving the decision to DOJ. Nonetheless, you need to consider whether you want us to be perceived to be intervening on behalf of the three IRA members. While our communication with DOJ would be confidential and protected, I think it is safe to assume that if DOJ decided not to pursue the appeal, someone in the DOJ/criminal side or the FBI will blame it on us.

We do, however, need to decide today whether or not to send the letter.

TZ -

This is tricky. If we send letter, DOJ probably will not appeal. On substance they shouldnt. But awkward to have WH weighing in after 2 IRA bombs. Absent our intervention, DOJ will probably appeal (+ may well lose.)

Option 1:

Don't send letter, DOJ appeals.

Opt. 2:

Send letter; DOJ appeals, we can appeal 3rd person in march if want to crack down. (2 have hearing on Tues. Others are later). Let's discuss Fri. am.

NS

~~CONFIDENTIAL~~

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

0971

February 14, 1996

ACTION

MEMORANDUM FOR ANTHONY LAKE

FROM: ALAN KRECZKO *AK*
SUBJECT: Irish Extraditees

**DECLASSIFIED
PER E.O. 13526**
2011-0355-F (2.39)
KRM 4/11/2023

Issue

Whether to send the attached letter to DOJ concerning appeal of a district court's decision to grant bail to three IRA members being extradited to the United Kingdom. Jack Quinn concurs in the letter. If we want to influence the DOJ position, we must submit our views Thursday, as DOJ must make its appeal decision on Friday. (I could not send this memo to you earlier because we have been seeking reconfirmation by the U.K. Embassy that it continued not to object to bail in the aftermath of the IRA bombing of last Friday. They did so Wednesday afternoon.)

Background

The U.K. is seeking the extradition of three IRA members. The three escaped from Maze prison in Northern Ireland in a mass and violent prison breakout in 1983. One of the three had been convicted of murder; the second, of possession of a bomb; the third, of several offenses, including felony murder arising from a bombing. The three fled to the United States at various times after the jailbreak. They were arrested here in or after 1992, pursuant to a U.K. arrest warrant and extradition request. They had been held in California prison since then, pending an extradition hearing, until the district court in late December granted their request for bail. (Two were released on \$500,000 bond; one, on \$1 million bond.)

Gerry Adams wrote the President urging the individuals be released on bail, pending their extradition hearing. The President declined to intervene with DOJ, which strongly opposed bail. The district court recently granted bail to all three. DOJ/Criminal division wants to appeal, but needs the approval of the Solicitor General. The case is being followed by Irish-American groups. The SG needs to decide on Friday whether to appeal.

~~CONFIDENTIAL~~

Reason: 1.5(b)

Declassify on: 2/14/01

DOJ/Criminal Analysis (elaborated at Tab II)

The district court got it wrong.

The Supreme Court has held that the ordinary presumption against bail does not apply in extradition cases. Instead, the Court has held that bail should be denied in extradition cases unless the extraditee can demonstrate "special circumstances." The Court fashioned this rule primarily for foreign policy reasons -- if an individual were released on bail and then skipped, the USG would be in violation of its treaty obligation to produce the individual. DOJ obviously strongly supports this Supreme Court holding, as should we. It enables us to fulfill our treaty obligations, and it positions us to press other countries to deny bail in extradition cases of importance to us.

What constitutes sufficient "special circumstances" to entitle an individual to bail is not clear in case law. However, it was intended to be a narrow concept and has generally been so applied by the courts. Courts have said the special circumstances must be "extraordinary," "when the requirements of justice are absolutely peremptory." Examples would include situations where the individual is seriously ill.

In this case, the district court found "special circumstances" in four factors: (1) the fact that bail had been permitted in a similar extradition case (Smyth); (2) the long period of time defendants have been jailed awaiting their extradition hearings; (3) the fact such time would not be credited by the U.K. against their prison sentence in the U.K.; and (4) the fact that one U.S. district court has found the extradition statute unconstitutional.

DOJ/Criminal (correctly, in my view) finds all of these unpersuasive: (1) the analogous bail case cited by the judge is not that analogous, (2) the defendants have been in jail a long time because they requested a delay in their hearing; (3) the U.K. does not give credit for time served awaiting extradition when a prisoner escapes from prison (there has to be some penalty for breaking out of prison); and (4) other courts have not let a single district court decision on constitutionality reverse long-standing bail practice.

Moreover, DOJ/Criminal considers the individuals a serious flight risk, even with the bail conditions imposed.

DOJ/Criminal has an additional reason for wanting to appeal. Courts in the Ninth Circuit have been whittling away at established case law concerning bail in extradition cases, particularly by expanding the concept of "special circumstances." They want a Ninth Circuit ruling that reverses that trend. While DOJ/Criminal advocates appeal, it acknowledges that it is a close

question. The case is not a sure win (IRA extradition cases have drawn vociferous dissents in the Ninth Circuit), particularly in view of the time the individuals have served already in jail. A loss at the Ninth Circuit level will encourage the trend DOJ is seeking to reverse. Even though the delay was of their own making, judges are going to be uncomfortable with the fact that these individuals have been in jail for two years without an extradition hearing.

My Analysis

DOJ/Criminal is right that the district court got it wrong. They are also right to be looking for a case to take to the Ninth Circuit to stop the erosion of established case law in this area.

But, in my view, this is the wrong case to take up. It is far from a sure winner, and a loss will be very damaging to extradition law and practice.

Moreover, one of the key reasons for denying bail -- foreign policy -- does not appear to be present in this case. The State Department informs us that the U.K. Embassy has indicated that it is satisfied with the bail conditions, does not consider the individuals a serious flight risk given the bail, and does not intend to make an issue over whether to appeal. The State Department has confirmed that this remains the U.K. view after the Friday IRA bombing. (DOJ/crim says that it continues to hear through police channels that the U.K. wants bail denied, but we are entitled to rely on the embassy for statements of U.K. position.)

I therefore think we should discourage DOJ from appealing this case. However, we would need to accept that if there is no appeal, the individuals, who have been convicted of serious crimes and who have already fled prison once, may skip bail. I would, therefore, make sure any letter from us acknowledges that DOJ, not we, must evaluate the flight risk.

Concurrence by: Mary Ann Peters *by AK*

RECOMMENDATION

That you authorize me to send the attached letter to the Justice Department

Approve _____ Disapprove _____

Attachments

Tab I Letter to the Solicitor General

Tab II Justice Analysis

~~CONFIDENTIAL~~

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

DECLASSIFIED
PER E.O. 13526
2011-0355-F (2.40)
KBH 4/11/2023

Dear Solicitor General Days:

I am writing to convey our view, which has been coordinated with the Counsel to the President, on the issue of whether the USG should appeal the granting of bail to three extradition defendants in In the Matter of Extradition of Artt, Brennan & Kirby. (U)

The Supreme Court determined in Wright v. Henkel that there is no presumption of bail in extradition cases and that bail will be granted only under "special circumstances." Wright v. Henkel, 190 U.S. 40 (1903). This holding is grounded in our important foreign relations interest in fulfilling extradition obligations. Moreover, its application is important to our ability on a reciprocal basis to urge other countries to deny bail in extradition cases of interest to us. (U)

127.
4 We agree that the district court erred in its application of the "special circumstances" doctrine to this case, for the reasons identified in the Criminal Division's memorandum. We also understand that there has been other erosion of this important doctrine by courts in the Ninth Circuit and that it would be useful to have a Ninth Circuit decision reestablishing the proper principles to be applied to bail requests in extradition cases. (U)

Nonetheless, our sense is that this is the wrong case to use for that purpose. As the Criminal Division memorandum notes, this is a close call. The case is not a sure winner on appeal, particularly taking into account the length of time the individuals have, for whatever reason, been in jail. A loss at the Ninth Circuit level will reinforce exactly the trends we are seeking to reverse. (U)

One additional fact contributes substantially to our view. The Supreme Court's holding in Wright is based primarily on foreign policy grounds, namely the foreign policy reaction if we fail to produce an individual under our extradition treaty. However, other courts have noted that where this consideration is not dominant, bail may be granted without any damage to the Wright principle. (See, e.g., United States v. Messina, 566 F. Supp. 740, at 742 (1983): "One court surveyed the more contemporary

~~CONFIDENTIAL~~

Reason: 1.5(b)

Declassify on: 2/14/01

reported cases and reported that "granting of bail pending completion of the extradition proceedings has been the rule rather than the exception." (cites omitted). The mere frequency with which bail has been granted, however, may not indicate any change in the test of Wright v. Henkel. It may be due to lack of strong opposition by the government in particular cases, perhaps after consultation with officials of the requesting government.") (U)

In this case, we understand from the State Department that the embassy of the United Kingdom, the requesting State, has indicated that it is satisfied with the bail conditions, that it considers the flight risk minimal in this case given the bail imposed and that it does not intend to make an issue of the appeal. While we understand that Justice Department officials may be hearing things differently through law enforcement channels, we believe we are entitled to rely on the statements of the embassy for the position of the United Kingdom. Given the foreign policy underpinning of Wright v. Henkel, we believe that the position of the United Kingdom should be relevant to our own analysis of whether to appeal this case for misapplication of the "special circumstances" doctrine. (U)

We understand, however, that in reaching your decision you must also take into account factors such as flight risk which we are not in a position to evaluate. (U)

Sincerely,

Alan Kreczko
Special Assistant to the President
and Legal Adviser

The Honorable Drew S. Days III
Solicitor General
Department of Justice
Room 5143
10th and Constitution, N.W.
Washington, D.C. 20530

Memorandum

Subject

Date

In the Matter of Extradition of Artt,
Brennan, & Kirby; Nos. CR 92-0151, 93-0032,
94-0086 (N.D. Calif. Dec. 20, 1995)

JCK:RSL:PMStemler

To

From

The Solicitor General

JCK
John C. Keeney
Acting Ass't Attorney General
Criminal Division
PM

TIME

Notices of appeal are due for filing on February 19 (Artt and Brennan) and 27 (Kirby), 1996. Sara Criscitelli (4-0040) is handling this case for the United States.

RECOMMENDATIONS

The Criminal Division and the United States Attorney recommend appeal. The Department of State defers to the Department of Justice.

QUESTION PRESENTED

Whether "special circumstances" exist warranting the release of three IRA members, who were convicted and sentenced in Northern Ireland for various terrorist offenses, pending their extradition hearing in San Francisco.

STATEMENT AND DISCUSSION

The Criminal Division adopts the attached memorandum prepared by its Office of International Affairs. For the reasons stated in that memorandum, we recommend appeal. Pertinent papers are attached.



U. S. Department of Justice
Criminal Division

Washington, D.C. 20530

To: Patty Stemler
Appellate Section

From: Frances Fragos Townsend
Sara Criscitelli
Office of International Affairs

RE: In the Matter of Extradition of Artt, Brennan, & Kirby
Nos. CR 92-0151, 93-0032, 94-0086 (MISC) CAL
N.D. Cal.

TIME

The orders of the district court setting conditions for release of Kevin Barry John Artt and Pol Brennan were entered on December 20, 1995. Brennan was released on January 3, 1996, and Artt on January 10, 1995. The district court set conditions for the release of Terence Damien Kirby on December 27, 1995, and Kirby was released on January 3, 1996. Treating the December 20 and December 27 orders as grants of habeas relief, the time for filing our notices of appeal will expire on February 19 and 27, 1995.

RECOMMENDATION

The Office of International Affairs recommends appeal. The United States Attorney agrees. The Department of State defers entirely to the Department of Justice.

FACTS

The United Kingdom (Northern Ireland) has requested the extradition of three individuals under the US/UK Extradition Treaty and the Supplementary Extradition Treaty.¹ Their cases

¹ The original extradition treaty contained a then-standard exception for political offenses. In the late 1970's and early 1980's, courts were denying extradition of IRA terrorists on the ground that theirs was a political offense. In 1985 the parties negotiated a Supplementary Treaty that eliminated the political offense exception for certain violent crimes.

The Senate Foreign Relations Committee was uneasy about ratifying the Supplementary Treaty. As a compromise, in 1986 it drafted a provision (Article 3(a)), which the parties accepted

are consolidated in the Northern District of California (Legge, J.). We set forth an extensive factual background to put the decision releasing respondents on bail (which relied in large part on the delay in the proceedings) in context.

1. Each of the three respondents, convicted of one or more republican (i.e., IRA-related) terrorist offenses, escaped in a mass and violent prison breakout from the Maze Prison in Northern Ireland in September 1983. At the time of the escape, Kevin Barry John Artt had recently been sentenced to life imprisonment for the murder of the deputy governor of the Maze prison; Pol Brennan was serving a 16 year sentence for possession of a bomb (for which, with good time credits, he has about three and a half years remaining); and Terence Damien Kirby was serving a life sentence based on convictions for two separate incidents: causing explosions of a nature likely to endanger human life and for a felony murder related to the bombing, and possession of a firearm and explosives with intent to injure (for which, with good time credits, he has about seven years remaining). After arriving in the United States and living under false identities, Brennan and Kirby married American citizens. Artt was married at the time of his arrest in Northern Ireland and in escaping left behind his wife and son.

James Joseph Smyth, another Maze fugitive, was arrested in June 1992 in San Francisco on a passport fraud charge, though shortly thereafter we executed a provisional arrest warrant for his extradition. His criminal case was assigned to District Judge Barbara Caulfield, who then consolidated the extradition case when it was filed. Artt was arrested in San Diego the same day as Smyth, also initially on a U.S. passport fraud charge. His case was transferred to the Northern District of California, where the passport fraud charge was assigned to District Judge Charles Legge and the extradition case to another judge in the district.

Judge Caulfield's early rulings regarding bail, scope of the

and the Senate ratified, that provides a defense to extradition if the fugitive established by a preponderance of the evidence that the request for his extradition was made to try or punish him on account of his race, religion, nationality, or political opinions, or that if surrendered he would be prejudiced at his trial or punished, detained, or restricted in his personal liberty on account of his race, religion, nationality, or political opinion. Article 3(b) allows either side to appeal a decision based on Article 3(a).

Article 3(a) defense, and discovery were very favorable to Smyth.² Shortly after Judge Caulfield first ordered Smyth released on bond in July 1992, Artt filed a Notice of Related Cases in which he contended that, because his extradition and passport fraud cases involved substantial common issues of law and fact, they should be consolidated, and he moved that the cases be transferred to Judge Caulfield. While the motion to consolidate the criminal and extradition cases was granted, his request for reassignment to Judge Caulfield was denied, and the consolidated case was assigned to Judge Legge.

Brennan was arrested in January 1993. His case was also assigned to District Judge Legge and consolidated with Artt's case.

In May 1993 (shortly before the Smyth hearing was scheduled to begin) Artt, this time joined by Brennan, again moved to transfer and consolidate his case with Smyth's, in part on grounds of trial efficiency. The court denied that motion as well.

Following denial of that motion, and notwithstanding that it signified that he was prepared to proceed immediately, Artt then requested that his case be stayed pending resolution of all the

² Smyth contended that the second prong of Article 3(a)--whether, if surrendered, the fugitive would be punished, detained, or restricted in his personal liberty on account of his race, religion, nationality, or political opinion--applies to likely treatment the fugitive would face after his release from custody on the charge for which his extradition is sought. Judge Caulfield agreed to that interpretation of Article 3(a) and ordered broad discovery directed at that issue, admitted a wealth of testimony and other evidence pertinent only to post-release treatment of Catholics in Northern Ireland, and ultimately denied extradition based in large part on her conclusion that after Smyth's release from custody he would be impermissibly punished, detained, and restricted in his personal liberty. Judge Caulfield's interpretation of the treaty was broader than the initial views of either Judge Legge or Judge Jensen.

Judge Caulfield also had liberal views on bail. In July 1992 she ordered Smyth's release on \$1.5 million bond, secured by approximately \$500,000 in real property, finding a "special circumstance" in Smyth's need to consult with his attorney. On the government's appeal, the court of appeals reversed. Judge Caulfield then held a several-day evidentiary hearing on Smyth's application for bail based on his likelihood of success on the merits (though she never actually ruled on that issue). In July 1993 she again released Smyth because of a medical condition. The government again appealed, and the Ninth Circuit summarily reversed.

Thereafter, Kirby's case was assigned to Judge Sandra Brown Armstrong. Kirby promptly moved to have the case consolidated with those of Artt and Brennan. This motion was granted and the case was reassigned, again, to Judge Legge and consolidated with Artt and Brennan. Kirby promptly argued that Judge Jensen's rulings on scope and discovery be given no effect since he had recused himself.

In short, nothing much happened in these cases between June 3, 1993, when Judge Legge denied the motion to consolidate Artt's and Brennan's extradition cases with Smyth, and October 13, 1994, almost a month after the Smyth decision. On that date, Judge Legge, sua sponte, ordered a status conference in the Brennan and Artt cases; up to that point, neither Artt nor Brennan filed any pleading or made any noticeable effort to move the case along (other than an in camera request by Artt to permit investigation to proceed).

After a pretrial conference on November 4, 1994, Judge Legge set a briefing schedule agreeable to the parties on the scope of the upcoming extradition hearing, to be followed by another hearing in early January 1995, investigations to be conducted in February 1995. Judge Legge also ordered that the extradition hearing would begin on April 10, 1995. December 1, 1995, Scheduling Order. Following that order, in a memorandum on the scope of Article 3(a) filed in February 1995, Artt requested that Judge Legge withhold a ruling on scope until the Ninth Circuit decided Smyth, then pending before it. Artt's Further Memorandum Regarding Scope, p. 3. Judge Legge declined Artt's suggestion that he defer this critical threshold ruling and tentatively made a scope ruling that, though not as expansive as Judge Caulfield's interpretation, was broader than the government urged.

Despite the Judge's intentions that the case proceed apace, discovery inched forward only slowly; for example, Artt made his first discovery request by a letter dated March 31, 1995. Not surprisingly, the investigation/discovery/hearing schedule did not survive. In May 1993 Judge Legge set another schedule, whereby investigation and discovery would be concluded in the summer and the extradition hearing was scheduled to begin on November 13, 1995. (That schedule, too, soon fell by the wayside.) Judge Legge has most recently stated, again insisting that it is etched in cement, that the hearing will begin in mid-June and has gone so far as to block out a month on his calendar in preparation for it.

disagreed that he had any prior knowledge of Kirby or involvement in the FBI's unsuccessful lookout for the escapees, he granted the second recusal motion based on a recent Ninth Circuit decision.

2. On December 18, Judge Legge found special circumstances justifying the release of all three respondents, who had each been in custody since his arrest, pending the extradition hearing that is currently scheduled for June 1996.⁴

a. Judge Legge first found the length of the delay thus far to be a special circumstance. Although he had previously noted that the delay had been mostly at the request of the respondents (see Tr. 8), at this time he declined to attribute "fault" to any party; he stated that respondents had attempted to secure the benefit of the favorable rulings in Smyth and that he also had failed to move the cases forward. 12/18/95 Tr. 53-54. However, Judge Legge concluded, "the defendants have been in custody for a long time, and we're looking forward to another six months. And although I certainly do not think that any constitutional provisions have been violated, I think time is a very heavy factor here." Id. at 54.⁵

b. Judge Legge's second factor was "parity with Mr. Smyth's case." Id. at 54. Because Smyth is out on bail, he determined, it would only be fair to treat these respondents the same. Id. at 54-55.⁶

⁴ Artt and Kirby are each released on \$500,000 bond. Artt's release is secured by \$100,000 in property pledged by five co-signors, supporters in Irish nationalist movement; Brennan, whose wife has access to greater assets, is secured by \$500,000 in property pledged by family members and Irish nationalist supporters. Kirby, whose history arguably proves he is a greater flight risk, is released on a \$1 million bond, secured by \$500,000 in property. Artt is committed to the custodianship of two persons in Northern California; Brennan and Kirby are committed to the custody of their wives. Each is subjected to electronic monitoring, is allowed only to move between home and work (assuming it is lawful for them to be employed) and lawyers and court. Each is limited to travel within the counties comprising the Northern District of California and is barred from applying for a passport.

⁵ The reference to constitutional violations was in response to the defense arguments that the continued incarceration violated due process.

⁶ The Ninth Circuit reversed Smyth on July 29, 1995, and ordered that Smyth's extradition be certified. The court of appeals did not order that Smyth be taken into custody, however. Before the mandate issued, the government moved in district court that Smyth's bail be revoked. Judge Caulfield having resigned the bench, the application was presented to the duty judge, who for various reasons (including concern that the district court had no jurisdiction to consider the application before the

c. As a third special circumstance, Judge Legge noted that if returned to Northern Ireland respondents will probably not receive credit for their time in U.S. custody. Id. at 55.

d. Judge Legge identified the district court's decision in Lobue v. Christopher, 898 F. Supp. 65 (D.D.C. 1995), as a fourth special circumstance. Although he disagreed with Lobue and denied respondents' motion to dismiss the extradition on the ground that the statute is unconstitutional, Judge Legge stated that Lobue "is at least a cloud on the extradition proceedings, all extradition proceedings under the statute that's involved here." Id. at 55.

3. Apart from special circumstances, we also argued that the three men were flight risks. In particular, we noted that they had participated in a violent prison escape after their convictions and that they had not simply escaped prison but also fled their country, abandoning family and friends, and that they had successfully managed to hide out in the United States. In addition to these facts common to all three, Artt and Kirby have additional risk factors. Artt in particular has no family ties within the U.S. (having abandoned his wife and child in Northern Ireland, he fathered at least one child in the U.S., and though purportedly a devoted father to his young daughter he did not live with her or her mother). Kirby was at Smyth's girlfriend's house in June 1992 when Smyth was arrested, but presented false identification that deceived the arresting FBI agents. He then apparently fled Northern California for six months and, with the assistance of his wife, hid out somewhere in the Boston area, returning to San Francisco only when he felt more confident that he had not been detected. Judge Legge made no findings with respect to flight risk.

mandate issued) denied the motion. With authorization by the Solicitor General, the government then moved the panel to revoke Smyth's bond. The panel denied the motion.

Smyth filed a timely petition for rehearing en banc, which was pending at the time of respondents' bail hearing (the petition was not denied until January 5, 1996). Consequently, at the time Judge Legge found "parity" with Smyth, the mandate had not yet issued, and Smyth was at liberty even though the district court's denial of extraditability has been reversed.

Judge Legge thus got the facts wrong. District Judge Fern Smith, the duty judge who heard our motion following the appellate decision, did not "grant" Smyth bail, she merely denied the government's motion to have Smyth's bail revoked. Judge Legge also missed the point that the last decision by the district court in the case was that Smyth was not extraditable, since though the court of appeals reversed that decision, its mandate had not yet issued.

DISCUSSION

The Office of International Affairs does not regard this as a sure win, and we recognize that a published loss in this case could affect bail and extradition cases in the future. In addition, the cases have political overtones that are not likely to escape at least four judges on the Ninth Circuit (Judges Noonan, Reinhardt, Pregerson, and O'Scannlain, all of whom vociferously dissented from the denial of rehearing en banc in Smyth). On the other hand, we don't really have a principled reason to not challenge these orders, the delay has been respondents' own doing, they have already been indisputably convicted of terrorist offenses for which their extradition is sought, and the reaction of our treaty partner if they should flee would be substantial. On balance, we recommend appeal.

1. The law regarding bail in extradition cases is settled. As the Ninth Circuit, echoing the Supreme Court, has made clear, "[t]here is a presumption against bail in an extradition case and only 'special circumstances' will justify bail." Salerno v. United States, 878 F.2d 317, 317 (9th Cir. 1989), quoting Wright v. Henkel, 190 U.S. 40, 63 (1903). The anti-bail presumption applies even if the fugitive is not a flight risk. Salerno, 878 F.2d at 317-318; Kamrin v. United States, 725 F.2d 1225, 1228 (9th Cir. 1984).⁷

⁷ These propositions are also settled in other circuits. See, e.g., Martin v. Warden, 993 F.2d 824, 827 (11th Cir. 1993); Sahaqian v. United States, 864 F.2d 509, 514 n.6 (7th Cir. 1988), cert. denied, 489 U.S. 1087 (1989); In re Extradition of Rouvier, 839 F. Supp. 537, 539 (N.D. Ill. 1993); In re Extradition of Hamilton-Byrne, 831 F. Supp. 287, 290 (S.D.N.Y. 1993); United States v. Hills, 765 F. Supp. 381, 384 n.5 (E.D. Mich. 1991). The reason for the presumption and for the denial of bail is the "serious embarrassment" that would attend international relations were the United States unable to deliver the accused to the requesting state. Wright v. Henkel, 190 U.S. at 62. "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." United States v. Taitz, 130 F.R.D. 442, 444 (S.D. Cal. 1990).

The anti-bail presumption is thus contrary to the presumption that favors pre-trial bail in domestic prosecutions. Beaulieu v. Hartigan, 554 F.2d 1, 2 (1st Cir. 1977) ("Unlike the situation for domestic crimes, there is no presumption favoring bail. The reverse is rather the case"). That is so because in an ordinary criminal case, if the defendant is released and flees before trial he thwarts our courts' ability to enforce our criminal laws. The potential harm is balanced against the

Given both the strong anti-bail presumption in international extradition and the compelling justifications for it, the exceptions to this presumption are narrowly carved. "Previous cases have limited 'special circumstances' to situations where 'the justification is pressing as well as plain,' or 'in the most pressing circumstances, and when the requirements of justice are absolutely peremptory.'" United States v. Williams, 611 F.2d 914, 915 (1st Cir. 1979) (per curiam), citing In re Mitchell, 171 F. 289, 290 (S.D.N.Y. 1909) (L. Hand, J.); see also Martin v. Warden, 993 F.2d at 828 n.4. In slightly different terms, the Ninth Circuit explained that the justification for release pending extradition must be both "extraordinary" and "important." In re Extradition of Smyth, 976 F.2d 1535, 1536 (9th Cir. 1993). Assuming that the fugitive demonstrates sufficient "special circumstances," he is nonetheless not entitled to release if there is an actual, rather than a presumed, risk of his flight.

Cases do not readily define when a circumstance is sufficiently "special" to permit bail, but instead seem to operate on the notion that you know them when you see them. As a consequence, courts frequently resort to ad hoc determinations, which then become precedent for subsequent bail decisions. To the extent that one can generalize, courts seem to find special circumstances only in situations unique to the fugitive and that demonstrate that if he is not released he will face some sort of particular financial, emotional, or physical peril.

defendant's presumption of innocence and his Eighth Amendment right. When the person is wanted by a foreign country, however, the harm that flows from his flight is significantly compounded. Flight thwarts the requesting state's ability to enforce its laws, but more importantly it also subjects the United States to embarrassment and possibly greater damage to our foreign policy by rendering us unable to meet our treaty obligation to another sovereign state. See, e.g., Wright v. Henkel, 190 U.S. at 62; In re Klein, 46 F.2d 85 (S.D.N.Y. 1930) (noting the "grave risk of frustrating the efforts of the executive branch of the government to fulfill treaty obligations"). Not only are there greater potential consequences of flight, but the fugitive's rights and protections are fewer: an extraditable fugitive does not receive the panoply of constitutional protections and presumptions given to persons charged with a U.S. offense.

The Ninth Circuit recently departed from this settled law, though in an unpublished decision that is without precedential value. In Parretti v. United States, a panel of the court of appeals rejected as unconstitutional the presumption against bail in international extradition cases. The panel then ordered the release of Parretti pending extradition on the ground that he presented no risk of flight. The government filed a conditional petition for rehearing en banc, pinning its request on whether the court of appeals decides to publish Parretti.

Specifically with respect to the circumstances relied on here, judges have discussed delay in proceedings, but generally do not grant bail on that ground, and no decision to our knowledge has granted bail where the delay was attributable to the fugitive himself. No judge to our knowledge has granted bail as "parity" because another similarly situated person was released on bail (and one case -- Williams, 611 F.2d at 915 -- rejected that ground). No judge has ordered a person's release on the ground that he would not get credit in the requesting state for time served. Though two courts to our knowledge have agreed that Lobue is a special circumstance, neither rested the bail decision primarily on Lobue and one was decided during the period of time in which the Lobue injunction barring all surrenders was in effect. And many more courts have declined to release persons because of Lobue.

2. Against the backdrop of the presumption against bail in international extradition and the need for narrowly carved "special circumstances," we recommend appeal of the decision releasing these respondents.

a. Delay. This is the most difficult basis to overcome, since there are some cases in which delay is recognized as a special circumstance, though we are not aware of any case in which release is awarded because of past, and not likely prospective, delay.⁸ However, there are a couple of reasons why the district court's order is vulnerable on this ground.

First and most importantly, the past delay was due entirely to respondents' strategic decisions to not proceed until Smyth was decided.⁹ In Bail Reform Act cases, whether delay requires

⁸ See, e.g., Salerno v. United States, 878 F.2d 317 (unusual delay in the appeal process can be a special circumstance, relying on United States v. Bell, 820 F.2d 980 (9th Cir. 1987) (parole revocation case, finding that delay in the appeal process can be an "exceptional circumstance" warranting bail)); United States v. Williams, 611 F.2d at 915 (delayed extradition hearing could be a basis for special circumstances); United States v. Taitz, 130 F.R.D. 442 (D. Nev. 1990).

⁹ Artt attempted to argue to the district court that the delay was caused both by factors beyond his control and also because of the government's failure to comply with the court's May 1995 discovery orders. Judge Legge disagreed that the government had deliberately and wrongfully withheld discovery materials; it also declined to order further discovery and to grant the remedies that respondents sought (requiring the government to provide a privilege log, among other things), and it agreed with the government that the range of materials demanded by respondents were not relevant to the extradition

release is decided at least in part by considering whether the government is responsible for the delay. E.g., United States v. Gelfuso, 838 F.2d 358, 359 (9th Cir. 1988). The only responsibility that could be attributed to the government is its failure to vigorously oppose respondents' strategic efforts to postpone their extradition hearings until after Smyth resolved all the difficult legal issues.¹⁰

The potential for continued delay is to a large respect also a matter within the control of respondents. With no explanation, respondents have thus far failed to adhere to the investigation and deposition schedule previously set by the district court. The court has now set mid-June for the start of the extradition hearing. Between now and that date, counsel for respondent Artt wants at least one more investigative trip to Northern Ireland and then another trip to take depositions of possibly between 10-20 witnesses there; counsel for respondents Brennan and Kirby anticipate taking depositions in Northern Ireland of 6-12 witnesses.

Nor have the three respondents faced the same period of delay. Artt was arrested in June 1992 and Brennan was arrested seven months later, in late January 1993. Kirby was not arrested until late February 1994, 21 months after Artt and 14 months after Brennan. In short, Artt spent 30 months in custody by the time of the hearing; Brennan was in custody for 23 months; and Kirby was in custody for nine months. Of the time spent by Artt and Brennan, some was thereafter credited to US convictions for passport fraud, for which Artt served 10 months and Brennan served seven months, and to Brennan's concurrent seven month sentence for being a felon in possession of a firearm.

b. Parity with James Smyth. We have only found one case in

proceeding. He thus undercut the factual ground for that part of Artt's claim.

¹⁰ After unsuccessfully moving to consolidate his case with Smyth's, Artt purposefully sought to postpone his hearing in order to gain the benefit of what he predicted would be favorable rulings and indeed a favorable outcome in Smyth. Brennan took the same tack. Kirby made a tactical decision to seek Judge Jensen's recusal after Judge Jensen declined to order discovery or interpret Article 3(a) to permit a defense to extradition based on likely post-release treatment -- a view that Judge Jensen acknowledged disagreed with Judge Caulfield's interpretation of the treaty in Smyth. After Judge Jensen recused himself, Kirby's case bounced around until it was consolidated with the other two cases, which as we have shown previously were stalled in accordance with the tactical decisions of the fugitives to await a favorable outcome in Smyth.

which "parity" was an issue, and the court held that it did not justify release. In Williams, 611 F.2d at 915, the court of appeals explained that the fact that the fugitive's brother had been released on bail was not a sufficient "special circumstance" to justify his release.

Nor are respondents similarly situated to Smyth. They did not win on the merits in the district court. Smyth, on the other hand, was released by the district court after it decided against his extraditability. To be sure, the court of appeals reversed the district court and found that Smyth should be certified extraditable, and notwithstanding that finding neither the district court nor the panel would order revocation of bail. However, as of the date of the instant bail hearing the Ninth Circuit had not issued a mandate and Smyth's rehearing petition was pending before it.¹¹

c. Denial of Credit for Time Served. As a matter of policy, the United Kingdom grants credit for time served in foreign custody facing extradition when the fugitive has not yet been convicted in the UK courts. If the person escapes after conviction, however, the UK will not credit his sentence for time served pending extradition. The theory seems to be that once the prisoner is sentenced, the government (not the prisoner) has the right to set conditions for service of sentence, including the determination where he will serve his sentence. Because respondents escaped after conviction, under current UK practice they will not receive credit for the time spent in US custody.

It does not appear that US fugitives who escape after sentencing and are extradited from other countries are statutorily entitled to credit for time served in the requested state prior to extradition. 18 U.S.C. 3585(b) states only that "a defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences--" (emphasis added). At least two states decline to credit time spent fighting extradition after the sentence has been imposed, and federal courts have denied habeas relief in those instances, instead recognizing the legitimacy of the states' policy. Beauchamp v. Murphy, 37 F.3d 700, 705 (1st Cir. 1994), cert. denied, 115 S.Ct. 1365 (1995) (Massachusetts denied credit to escapee captured in Illinois for time spent contesting extradition); Boutwell v. Nagle, 861 F.2d 1530, 1531-32 (11th Cir. 1988), cert. denied, 490 U.S. 1099 (1989) (Alabama denied 31 months credit to escapee captured in Washington State for time spent contesting extradition); cf. Pernell v. Rose, 486 F.2d 301 (6th Cir. 1973) (Tennessee refused to credit time served by pre-trial escapee in

¹¹ On January 5, 1996, the court of appeals denied the rehearing petition.

13

Ohio pending extradition).

d. Lobue as a special circumstance. More than for any other presently-held extraditee, the "cloud" over the constitutionality of the extradition statute should not require respondents' release. It cannot reasonably be disputed that by the time they are likely to be surrendered the alleged constitutional infirmity in Lobue -- which no decision, including Lobue itself, held deprives an extradition court of jurisdiction to consider the extradition request -- will be long resolved. If Smyth provides any guide, the consolidated hearing in this case will take at least four weeks and most likely more than that. While we would not expect Judge Legge to match Judge Caulfield's 10-month deliberative time, even if he were to decide the case by the end of July (a virtually impossible scenario, given that the hearing will not begin until mid-June and will likely require a mid-hearing continuance to permit the government to rebut the as-yet unrevealed defense case), it seems certain that at least two of the respondents will appeal. Smyth, though remarkably expedited, took nine months from the date of the notice of appeal to the panel's decision, and it was more than five months until the court denied rehearing.

Several courts have considered, and rejected, Lobue as a basis for releasing persons on bail pending their extradition hearings. E.g., Cherry v. Warden, Metropolitan Corrections Center, 1995 WL 598986 (S.D.N.Y., Oct. 11, 1995); In the Matter of Extradition of Sutton, 898 F. Supp. 691 (E.D. Mo. 1995). Two magistrates have gone the other way. In In the Matter of Extradition of Sidali, 899 F. Supp. 1342 (D.N.J., Sept. 22, 1995), a magistrate granted bail after certifying Sidali extraditable. The factors cited in support of his bail release included Sidali's ill health and the class-wide injunction against surrenders that was in effect in Lobue (which was subsequently stayed by the court of appeals). In In the Matter of Extradition of Jaime Morales, 1995 WL 646608 (S.D. Cal., Oct. 26, 1995), the magistrate found several "special circumstances," including delay by Mexico and likelihood of success on the merits, as well as Lobue. Thus, no magistrate finds Lobue alone to be a sufficient basis, and in any event it should not justify release at this stage since we are a long way away from being able to surrender respondents.

Pertinent papers are attached.

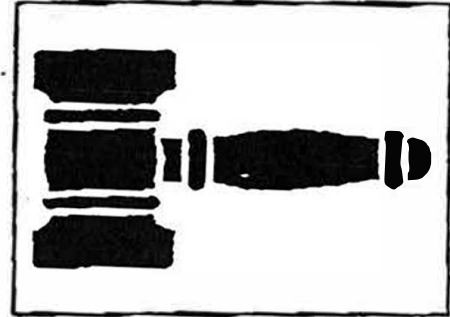
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ODAG
OIA DOJ CRIM

NSC/LGL ADVISER
CRM APPELLATE

016
001

DEPARTMENT OF JUSTICE
OFFICE OF INTERNATIONAL AFFAIRS
CRIMINAL DIVISION
1400 NEW YORK AVENUE, NW
SUITE 5100 - BOND BLDG.
WASHINGTON, DC 20005



PHONE NUMBER: 202-514-0000
FAX NUMBER: 202-514-0080

DATE: _____
TO: Patty Stember 4-8232
FROM: Sara C.
SUBJECT: Artt advise
MESSAGE: _____

TOTAL NUMBER OF PAGES (INCLUDING THIS ONE): 9

TRANSMITTED BY: _____

for page 6 Ha - Transcript

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1 MOST ALL OTHER EXTRADITIONS.

from Nov. 21, 1995

2 BUT, BE THAT AS IT MAY, IT'S NOT THE STATUTE THAT GIVES
3 THE SECRETARY OF STATE OR THE ATTORNEY GENERAL THE POWER FOR
4 SUBSEQUENT REQUESTS FOR EXTRADITION. IT'S REALLY SOMETHING
5 TOTALLY APART FROM THE SECRETARY OF STATE'S DECISION.

6 ALSO I AM IMPRESSED BY THE FACT THAT AT LEAST WITH
7 RESPECT TO THIS PARTICULAR TREATY ANY DECISION ON THE MERITS BY
8 ME OR BY ANY OF MY BROTHERS AND SISTERS, ARE APPEALABLE WITHIN
9 THE JUDICIAL SYSTEM. THE SECRETARY OF STATE DOES NOT SIT AS A
10 COURT OF APPEAL OVER THE DISTRICT COURT.

11 SO FOR THOSE REASONS, WITHOUT ANSWERING ALL OF THE
12 SCHOLARSHIP THAT HAS BEEN PRESENTED BY THE PARTIES, I AM GOING
13 TO DENY THE DEFENSE MOTION FOR DISMISSAL OF THE EXTRADITION
14 TREATY AND FOR IMMEDIATE RELEASE.

15 I DO WANT TO ADD ONE COMMENT, HOWEVER, ABOUT THE TIME.
16 NOW, ARGUMENT HAS BEEN MADE ABOUT TIME DELAY. IT'S A VERY
17 VALID ARGUMENT, AND IT'S ONE THAT HAS BEEN CONCERNING ME FOR
18 SOME TIME.

19 I DO NOTE, HOWEVER, THAT IN THIS CASE, THESE CASES,
20 PLURAL, MANY OF THE DELAYS HAVE COME AT THE REQUEST OF THE
21 DEFENDANTS.

22 WE HAVE BEEN, I THINK -- I AM NOT POSITIVE OF THE
23 RECORD -- BUT I THINK MOSTLY AT THE REQUEST OF THE DEFENDANTS
24 AWAITING THE RESULTS OF THE SMYTH DECISION. AND I THINK THE
25 REMEDY FOR THE DELAY IS TO GET THINGS BACK ON TRACK.

1 BE HARD TO GET THAT DONE IN THE NEXT FEW DAYS.

2 MR. LARSON: DO YOU WANT AN UPDATE ON MR. BRENNAN'S
3 REPORT?

4 THE COURT: I THINK WE BETTER.

5 MR. LARSON: OKAY.

6 THE COURT: I THINK WE BETTER.

7 ALL RIGHT. WE'LL BE IN ADJOURNMENT FOR 10 MINUTES AND
8 THEN COME BACK AND PICK UP THE REST OF OUR AGENDA.

9 (RECESS TAKEN AT 11:00 A.M.)

10 (PROCEEDINGS RESUMED AT 11:10 A.M.)

11 THE COURT: ALL RIGHT. THE SECOND ISSUE ON OUR AGENDA
12 IS THE DEFENSE MOTION FOR APPLICATION FOR A CERTIFICATION OF
13 ORDER FOR INTERLOCUTORY APPEAL.

14 MR. BROSNAHAN: THANK YOU, YOUR HONOR.

15 WE HAVE SUBMITTED TO YOUR HONOR MATERIALS ON THIS. I
16 THINK I CAN BE FAIRLY BRIEF. I BELIEVE AND I ASSERT AT THE
17 BEGINNING TO BE OF MAXIMUM HELP TO THE COURT AND TO FOCUS IT
18 MAYBE EVEN FOR THE GOVERNMENT THAT THIS IS A FAIRLY
19 STRAIGHTFORWARD QUESTION, MORE SO THAN I THINK WE ALL THOUGHT
20 WHEN WE WERE HERE LAST TIME, BECAUSE THE ORDER INVOLVES A
21 CONTROLLING QUESTION OF LAW. THERE ISN'T ANY QUESTION ABOUT
22 THAT.

23 YOUR HONOR SAID A MOMENT AGO THAT YOU THOUGHT AT LEAST
24 LOBUE PRESENTS A CLOUD OVER THIS CASE. IF THE NINTH CIRCUIT
25 WERE TO HOLD WITH JUDGE LAMBERTH, THEN CERTAINLY IT WOULD BE A

1 RESPONDING TO THE RECOMMENDATIONS, BY THE TIME WE GET THEM A
2 HEARING EITHER BEFORE ME, OR BEFORE A MAGISTRATE JUDGE WHICH MAY
3 WELL GET APPEALED TO ME, I JUST DON'T KNOW THAT THIS IS GOING TO
4 GET DONE IN THE NEXT FEW DAYS.

5 SO I THINK THIS IS AS FAR AS I CAN GO TODAY. AND WHAT
6 I WILL SUGGEST IS THAT PERHAPS BY THE END OF THE HEARING TODAY,
7 MAYBE YOU CAN THINK ABOUT IT ENOUGH TO SUGGEST DATES AND
8 PROCEDURES AND SUGGEST IT BY THE END OF TODAY. IF NOT, THEN I
9 WILL, MYSELF, BE AVAILABLE THE REMAINDER OF THIS WEEK TO CONDUCT
10 ANY FURTHER HEARING WITH RESPECT TO THE TERMS AND CONDITIONS OF
11 BAIL.

12 MR. LARSON: YOUR HONOR, THERE WERE TWO PRIOR STUDIES
13 DONE BY PRETRIAL SERVICES WITH RESPECT TO MR. BRENNAN.

14 THE COURT: I DON'T HAVE THEM IN FRONT OF ME NOW.

15 MR. LARSON: SO I'LL MAKE SURE THOSE GET TO THE COURT.

16 THE COURT: HAS ANYTHING BEEN DONE WITH RESPECT TO MR.
17 KIRBY?

18 MR. EISENBERG: NO, YOUR HONOR, BUT WE WILL -- WHEN WE
19 SET A DATE FOR IT, WE WILL DO THAT.

20 THE COURT: ALL RIGHT. SO GET YOUR HEADS TOGETHER AS
21 THE REST OF THIS HEARING GOES ON TODAY, AND MAYBE WE CAN SUGGEST
22 SOME TIMING.

23 I, OF COURSE, WOULD PREFER THAT THIS GO BEFORE A
24 MAGISTRATE JUDGE. ON THE OTHER HAND, BECAUSE OF THE SERIOUSNESS
25 OF THE MATTER, I'M PREPARED TO HEAR IT MYSELF, BUT IT'S GOING TO

1 SPECIAL CIRCUMSTANCES.

2 NOW, WE THEN HAVE TO PROCEED TO THE SECOND LEVEL OF
3 THE INDIVIDUAL ELIGIBILITY FOR MR. ARTT, MR. BRENNAN AND MR.
4 KIRBY FOR BAIL ON WHAT CONDITIONS.

5 I HAVE THIS REPORT ON MR. ARTT, WHICH I JUST RECEIVED
6 THIS MORNING, AND I SEE THE RECOMMENDATION ON THE LAST PAGE
7 WHICH, YOU KNOW, IS A GOOD FIRST STEP BUT, UNFORTUNATELY, IT
8 WON'T BE THE WHOLE STEP. WE NEED TO BE MORE CONCERNED WITH
9 FINANCIAL SECURITY, MAYBE A FEW OTHER CONDITIONS TOO.

10 I DON'T EVEN HAVE THAT WITH RESPECT TO MR. BRENNAN OR
11 MR. KIRBY, AND I GATHER FROM THE GOVERNMENT'S BRIEF THAT IT IS
12 GOING TO MAKE MORE OF AN ARGUMENT ON MR. KIRBY BEING A FLIGHT
13 RISK THAN THE OTHERS.

14 NOW, MAYBE I'M MISREADING THE TONE OF THE BRIEF, BUT
15 THAT IS, INDEED, THE WAY I READ IT. SO FOR THOSE REASONS,
16 THERE'S GOING TO HAVE TO BE FURTHER HEARINGS ON THE EXACT TERMS
17 AND CONDITIONS OF BAIL.

18 I THINK THAT PRETRIAL SERVICES IS GOING TO HAVE TO
19 TAKE A FIRST CUT AT THIS FOR MR. BRENNAN AND MR. KIRBY AS THEY
20 DID WITH MR. ARTT, THEN IT'S GOING TO HAVE TO COME BEFORE A
21 JUDGE. AND THE INITIAL QUESTION THERE IS WHETHER IT'S GOING TO
22 BE A MAGISTRATE JUDGE OR IT'S GOING TO BE ME.

23 I DOUBT THAT THIS IS GOING TO GET DONE IN THE NEXT FEW
24 DAYS. I DOUBT THAT. IT SEEMS TO ME BY THE TIME WE GET PRETRIAL
25 SERVICES' RECOMMENDATIONS, BY THE TIME WE GET THE GOVERNMENT

1 DEGREE OF PARITY HERE, I THINK, IS APPROPRIATE WITH THESE
2 INDIVIDUALS.

3 I THINK ALSO THE FACTOR OF NO CREDIT FOR TIME SERVED
4 IS IMPORTANT BECAUSE IN MOST CRIMINAL PROCEEDINGS WE HAVE WHERE
5 PEOPLE ARE IN CUSTODY PRETRIAL, THEY DO RECEIVE CREDIT AT THE
6 END. IF THEY PLEAD GUILTY OR ARE CONVICTED, THEY DO RECEIVE
7 CREDIT FOR THE TIME THAT THEY HAVE SERVED, BUT NOT IN THIS CASE
8 APPARENTLY.

9 I BELIEVE THE LOBUE DECISION DOES ALSO PRESENT SOME
10 SPECIAL CIRCUMSTANCES, ALTHOUGH AT A PRIOR HEARING I EXPRESSED
11 MY DISAGREEMENT WITH LOBUE. IT IS AT LEAST A CLOUD ON THE
12 EXTRADITION PROCEEDINGS, ALL EXTRADITION PROCEEDINGS UNDER THE
13 STATUTE THAT'S INVOLVED HERE.

14 A FEW OTHER COMMENTS ON SPECIAL CIRCUMSTANCES. I
15 APPRECIATE MR. DANIS' COMMENTS ABOUT THE IRISH GOVERNMENT BEING
16 INTERESTED IN WHAT THEY'RE DOING WITH THEIR RELEASEES, BUT
17 THERE'S REALLY NOTHING BEFORE ME ON THAT. I REALLY CAN'T TAKE
18 THAT INTO CONSIDERATION.

19 TO MAKE A LONG STORY SHORT, BAIL HAS BEEN GRANTED IN
20 EXTRADITION CASES. I THINK THESE, BECAUSE OF THE SPECIAL
21 CIRCUMSTANCES I HAVE NOW ENUMERATED, ARE ONES WHERE THERE ARE
22 SPECIAL CIRCUMSTANCES HERE.

23 OTHER ARGUMENTS WERE MADE IN THE BRIEFS THAT WERE NOT
24 ADDRESSED HERE IN ORAL ARGUMENT BUT I DON'T THINK I NEED TO
25 ELABORATE ON THOSE, BECAUSE I'VE STATED THE REASONS FOR THE

1 ADDITION THE PASSPORT VIOLATIONS AND SEQUENCING THOSE
2 PROCEEDINGS, SO IT'S UNDERSTANDABLE.

3 I THINK MR. ZANIDES IS CORRECT, THAT A LOT OF THE
4 DEFENSE POSITION HERE, ALTHOUGH I CAN'T QUOTE CHAPTER AND VERSE,
5 WAS TO TRY TO GET BENEFIT OF FAVORABLE RULINGS THAT WERE BEING
6 MADE IN THE SMYTH CASE. THAT'S VERY UNDERSTANDABLE. IT'S A
7 VALID DEFENSE TACTIC, AND I DON'T FAULT ANYBODY FOR IT.

8 FOR ALL OF OUR REASONS HERE, HOWEVER, WE'RE HERE AT
9 THE END OF 1995. THE DEFENDANTS HAVE BEEN IN CUSTODY FOR A LONG
10 TIME, AND WE'RE LOOKING FORWARD TO ANOTHER SIX MONTHS. AND
11 ALTHOUGH I CERTAINLY DO NOT THINK THAT ANY CONSTITUTIONAL
12 PROVISIONS HAVE BEEN VIOLATED, I THINK TIME IS A VERY HEAVY
13 FACTOR HERE.

14 I ALSO THINK THAT, AS I MENTIONED, SOME DEGREE OF
15 PARITY WITH MR. SMYTH'S CASE IS APPROPRIATE; THAT IS, MR. SMYTH
16 IS — I DON'T KNOW THE CIRCUMSTANCES OF HIS INDIVIDUAL CASE, OF
17 COURSE, EXCEPT WHAT I READ IN THE OPINION, BUT HE CERTAINLY
18 STANDS IN A SIMILAR SITUATION WITH THE OTHER THREE HERE; THAT
19 IS, ESCAPED AT THE SAME TIME, CAME HERE TO THE UNITED STATES,
20 LIVED IN CALIFORNIA, THEN WAS DISCOVERED AND EXTRADITION
21 PROCEEDINGS INITIATED.

22 FOR WHATEVER REASON, JUDGE SMITH GRANTED MR. SMYTH
23 BAIL, EVEN AFTER THE NINTH CIRCUIT HAD OR HAS DETERMINED, I
24 GUESS IT'S STILL ON PETITION FOR REHEARING, BUT THE PANEL IN THE
25 NINTH CIRCUIT DETERMINED THAT HE SHOULD BE EXTRADITED. SO SOME

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

YES APPROVED
0821 2/16

February 14, 1996

ACTION

MEMORANDUM FOR NANCY SODERBERG

FROM: ALAN KRECZKO AK

SUBJECT: Prisoner Transfer: Silvia Baraldini

Issue

Whether to authorize DOJ to respond negatively to PM Dini's request to the President for Italian national Baraldini to be transferred to Italy under our Prisoner Transfer Treaty.

Background

Last November, Italian PM Dini wrote the President asking USG concurrence in the transfer of Italian national Baraldini to Italian prison (Tab III). We asked DOJ for its views; DOJ noted that Dini had also raised the case with the AG and that it was under review.

After canvassing various law enforcement components, DOJ came back with a negative recommendation, based largely on the seriousness of Baraldini's offenses, the likelihood the Italians would release her without completion of her sentence, and the absence of particularly strong humanitarian considerations (although DOJ does acknowledge the imprisonment here works humanitarian hardship since her Italian elderly mother cannot easily visit her here). (DOJ views at Tab II). Ms. Baraldini was a member of a criminal organization known as the "Family" which had as a goal the support of a terrorist organization called the Republic of New Africa. From 1976 through 1982, members of the "Family" planned and committed a series of armored truck robberies, bank robberies and murders. Baraldini was convicted of criminal conspiracy for her role and sentenced to 40 years.

The case has over time generated substantial public interest in Italy, and the Government of Italy has on three previous occasions requested her prison transfer. DOJ has each time denied the request.

DOJ had asked that we hold off responding to Dini because of a concern that a negative response on Baraldini would prejudice on-going DOJ efforts to get Italy to extradite someone to us. However, Ambassador Bartholomew now recommends that DOJ answer his letter at a mid-level, in Justice-to-Justice channels and that we do so promptly. State Department concurs.

Concurrence by: Mary Anne Peters ^{AK} and Steve Simon ^{AK}

RECOMMENDATION

That you authorize me to clear DOJ's negative response (Tab I) on Baraldini's prisoner transfer.

Approve _____ Disapprove _____

Attachments

Tab I Draft Justice Response
 Tab II Department of Justice Views
 Tab III Incoming Correspondence from PM Dini

**DRAFT****U. S. Department of Justice****Criminal Division***Office of the Deputy Assistant Attorney General**Washington, D.C. 20530*

Ministero di Grazia e Giustizia
Via Arenula, 70
00186 Rome, Italy

Dear

Understanding that the continued imprisonment of Silvia Baraldini in the United States is a matter of great concern to the people and the government of Italy, I regret to advise you that I have denied Ms. Baraldini's most recent request to transfer to Italy under the Convention on the Transfer of Sentenced Persons.

After meeting with Prime Minister Dini on October 10, 1995, Attorney General Reno instructed the Department of Justice to examine anew Ms. Baraldini's request to transfer to Italy. The Department of Justice conducted a complete review of all relevant factors, and determined that the United States should not, at this time, approve the transfer of Ms. Baraldini to Italy. The humanitarian considerations urged by Prime Minister Dini, both in his meeting with the Attorney General and in his more recent letter to President Clinton, were given full consideration in reaching this decision. However, these factors were outweighed by the nature of the offenses for which Ms. Baraldini was convicted.

Ms. Baraldini was a member of a terrorist organization that advocated the overthrow of the United States government by violent means. To further the goals of this organization, she was involved in the attempted robbery of an armored car, and she kidnapped two prison guards when she and her colleagues planned and carried out the escape from prison of a fellow terrorist. In 1984, as a result of these activities, Ms. Baraldini was convicted of crimes involving attempted armed robbery, kidnapping and conspiracy. She was sentenced to 40 years in prison, and the sentencing judge specifically recommended that she not be considered for parole.

In evaluating requests to transfer pursuant to the Convention, the United States always attaches great importance to the severity of the offenses for which the prisoner stands

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convicted, and the impact on public confidence in the American criminal justice system that would result from an early release of a serious and violent offender in his home country after transfer. We are also concerned that the transfer of such an offender would send the wrong message to the far too many people throughout the world who use violence in support of ideological goals. While, in all cases, we are mindful of humanitarian concerns, we do not believe that those concerns alone should dictate a decision to transfer. I am certain that you share this concern and that Italy is also reluctant to transfer serious criminals whose transfer would greatly offend the sensibilities of the Italian people.

Despite the differences between our two countries on this matter, I would like to express again our appreciation for the harmonious relationship that exists between our countries in our many other areas of mutual concern. Our ability to work together has produced outstanding results with respect to many other criminal justice issues. Please be assured of our continuing cooperation.

Sincerely,

John C. Keeney
Acting Assistant Attorney General

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II

FACSIMILE COVER SHEET

U.S. Department of Justice
Office of Enforcement Operations
Criminal Division, P.O. Box 7600
Washington, DC 20044-7600

Date: 2/7/96 Number of Pages (Including the Cover): 27*
*Part 1

To: Alan Kreczko
National Security Council

Phone: (202) 456-9111 FAX: (202) 456-9110

From: Maureen Killion

Phone: (202) 514-6809 FAX: (202) 514-9003

Message:

Attached please find background materials on the applica-
tion of Silvia Baraldini and the decision made by Acting
Assistant Attorney General John C. Keeney on December 19,
1995. Also included is a DRAFT letter to Ministero di
Grazia e Giustizia notifying Italy of the decision. We
are awaiting advice from our representative in Rome as to
whom we should address the letter.

If there is a problem with this transmission, please
call me on (202) 514-9213. Thank you



U. S. Department of Justice
Criminal Division

Washington, D.C. 20530

DEC 19 1995

MEMORANDUM

To: John C. Keeney
Acting Assistant Attorney General

From: *JOH* Frederick D. Hess
Director
Office of Enforcement Operations

Subject: Silvia Baraldini Prisoner Transfer

The Government of Italy has recently submitted to the United States a fourth request to transfer Silvia Baraldini, an Italian national incarcerated in the Federal Correctional Institution in Danbury, Connecticut, to Italy pursuant to the Council of Europe Convention on the Transfer of Sentenced Persons (the Convention).¹ Three previous requests have been denied by the United States. Denial of Baraldini's transfer has been a matter of great concern to the Italian government over the last few years and has been raised by Italy with previous American Presidents and Attorneys General. Italian Prime Minister Dini renewed Italy's request for Baraldini's transfer when he met with the Attorney General on October 10, 1995. At that time, the Attorney General assured Prime Minister Dini that the Department of Justice would review anew Baraldini's request, giving full consideration to all of the factors advanced in favor of her transfer. The Attorney General also promised Mr. Dini that the Department's decision would be rendered on an expedited basis before the end of 1995.

We have carefully reviewed again all of the appropriate transfer considerations, including Baraldini's health, conduct, the status of her co-defendants and the concerns of the Federal

¹ Italy's current request is attached at tab A.

Bureau of Investigation (FBI) and the United States Attorneys for the Eastern and Southern Districts of New York, whose offices prosecuted Baraldini. Our review, which is detailed below, does not support a recommendation of transfer at this time.²

I. BACKGROUND

In 1984, Baraldini and her co-defendants were convicted in the Southern District of New York on RICO charges stemming from their operation of a terrorist organization known as the "Family", whose members advocate the overthrow of the United States government by violent means. The indictment charged the defendants with "... robberies and attempted robberies of armored trucks, the murders of guards and police officers at the scene of those crimes, and the use of the money obtained from those robberies to support enterprise members and to maintain safe houses." United States v. Ferguson, 758 F.2d 843, 852 (2d Cir. 1985). Baraldini was charged with, and convicted on, two substantive RICO counts and one count of RICO conspiracy.³ Baraldini was sentenced to 40 years on the RICO violations. The sentencing judge recommended that she not be considered for parole. Following the RICO conviction, Baraldini was called before a grand jury in the Eastern District of New York to testify about her knowledge of the FALN, a Puerto Rican terrorist organization. Her refusal to testify before the grand jury resulted in a contempt conviction and a sentence of three years to be served consecutively to the 40-year RICO sentence. Baraldini's mandatory release date is July 29, 2008.

II. PRIOR TRANSFER REQUESTS

Baraldini first applied for transfer on October 2, 1989. On December 19, 1990, that request was denied by Robert S. Mueller, III, the Assistant Attorney General for the Criminal Division, for the following reasons: (1) the extremely serious and violent nature of Baraldini's crimes; (2) Baraldini's continued refusal to cooperate with law enforcement authorities; (3) Baraldini's lack of remorse for any of her crimes; and (4) the Department of

² As you know, transfer decisions have been delegated by the Attorney General to the Senior Associate Director and Director of the Office of Enforcement Operations. However, because of the interest of the highest levels of the Italian government and the corresponding sensitive foreign policy considerations involved in the Baraldini requests, the Department has agreed that the matter will be reviewed by the Assistant Attorney General of the Criminal Division.

³ See the November 2, 1993 Memorandum from Gerald Shur to Assistant Attorney General Jo Ann Harris for a detailed overview of Baraldini's terrorist activities (attached at tab B).

Justice's belief that, should she be released, Baraldini would immediately return to the pursuit of criminal activities detrimental to the United States.

On January 25, 1992, the Italian government requested that the Department reconsider its previous decision denying Baraldini's transfer request. On September 25, 1992, Baraldini's request for reconsideration was again denied by Mr. Mueller. At the time, the Department stressed to the Italian government that none of the circumstances surrounding the previous denial had changed. In addition, it was noted that Baraldini has substantial ties to the United States. Although an Italian national, Baraldini has resided in the United States since August 7, 1961, when she was 13 years old, and was married to an United States citizen.

On March 22, 1994, Italian President Oscar Luigi Scalfaro submitted to President Clinton a humanitarian appeal in support of Baraldini's transfer. The appeal was forwarded to Jo Ann Harris, the Assistant Attorney General of the Criminal Division, for review and consideration. The Italian Ambassador and Baraldini's mother each met with Ms. Harris to present humanitarian considerations. After reviewing the matter in its entirety, Ms. Harris denied the request on December 21, 1994, stressing the importance of preserving the deterrent effect of severe punishment of those convicted of aiding and abetting murders, particularly when police officers are among the victims. Ms. Harris agreed to reconsider the request in December 1995.

III. ISSUES RAISED IN BARALDINI TRANSFER REQUESTS

The United States Attorneys for the both the Southern and Eastern Districts of New York and the FBI have long expressed vigorous opposition to transferring Baraldini to Italy. When we received the current request, we asked both United States Attorneys' Offices and the FBI to take another look at the Baraldini case and tell us whether their opposition to Baraldini's transfer has diminished. It has not. Both United States Attorneys and the Bureau feel as strongly today that Baraldini not be allowed to transfer as they did when Baraldini made her first request in 1989. Their resistance stems from both the heinous nature of Baraldini's crimes and the enormous effort on behalf of the United States to prosecute her and her co-defendants. The six defendants whose sentences were at least equal to, or greater than, Baraldini's remain incarcerated. None has been paroled. Indeed, according to the United States Attorney for the Eastern District of New York, if Baraldini were sentenced today for the same offenses, it is likely that she would receive a life sentence, without the benefit of parole, especially in the wake of the terrorist bombings of the World Trade Center and the Oklahoma City Federal Building.

In opposing Baraldini's current request, the United States Attorney for the Eastern District of New York has stated that "[t]he transfer of Baraldini to Italy would ... send the following message to those from foreign countries who would seek to import terror into the United States: Do not be concerned about the specter of life imprisonment for your acts of terror in the United States or against American citizens abroad. Even if you are caught and convicted for terrorist activities, over time, America will forget the terror you inflicted and will let you go home, years before your sentence is complete". The United States Attorney for the Southern District of New York agrees completely with that sentiment, stating also that "Baraldini has done nothing to warrant leniency from the Government of the United States," as she has consistently refused to cooperate with the government in its investigations of the terrorist acts of her associates.⁴ Opposition to Baraldini's transfer is shared by the local police departments whose officers were killed or wounded as a result of the "Family's" criminal activities, as well as by relatives and friends of the victims.⁵ Moreover, the FBI believes that Baraldini maintains her ties to violent, terrorist organizations.⁶

One of the most serious impediments to Baraldini's transfer continues to be the fact that in all probability she would serve little of her remaining sentence in Italy. In denying Baraldini's last request, Ms. Harris informed the Italian Director of Penal Affairs, Vittorio Mele, that if Italy would provide the United States with a "binding assurance that Ms. Baraldini, upon her return to Italy, would serve the remainder of her United States sentence in a penal institution similar to that in which she is currently incarcerated, I would reconsider her application to transfer."⁷

⁴ Attached at tabs C and D, respectively, are letters from The Honorable Zachary Carter and Mary Jo White, United States Attorneys for the Eastern and Southern Districts of New York in response to Baraldini's current transfer request. The FBI's response is attached at tab E.

⁵ The victim impact statement prepared in response to Baraldini's original transfer request is attached at tab F.

⁶ That belief is supported by an anonymous letter received by the American Embassy in Rome on August 27, 1995, indicating that the armed elements of the former Communist Party of Italy are attempting to arrange Baraldini's escape from FCI Danbury.

⁷ See the December 21, 1994 letter from Jo Ann Harris to Vittorio Mele, attached as tab G. (emphasis added)

To date, the Italian government has not provided any such assurance. In its most recent request, Italy has ignored Ms. Harris's precondition to a possible favorable reconsideration of Baraldini's request and has stated only that "[o]n applying the Convention on the transfer of sentenced persons, no reduction of sentence will be requested" by the government of Italy. This assurance, however, is not terribly comforting because, under Article 10 of the Convention, the Italian courts have the right to review the American sentence and apply the term of years that would govern the same offenses under Italian law. According to Article 10, if the sentence is deemed "by its nature or duration incompatible" with Italian law, an Italian court is free to impose any sentence that does not lengthen Baraldini's American sentence. The Italian government has been unable to provide any guarantee or prediction regarding the likely sentence to be imposed by the Italian courts. However, because the Italian government has already indicated that it does not understand the length of Baraldini's sentence since "she was not personally involved in murder,"⁸ and the high degree of public sentiment in Italy favoring Baraldini, it is likely that the sentence imposed by the Italian courts would not approximate Baraldini's remaining time to be served in the United States.⁹

Recognizing that it cannot refute the seriousness of Baraldini's offenses and the profound concern of the United States that she serve out her sentence in a prison similar to the Federal Correctional Institute at Danbury, Connecticut, where she is currently incarcerated, Italy focuses its request instead on humanitarian grounds, concentrating on Baraldini's health and the deprivation of "human solidarity" she is subjected to by being incarcerated so far from home and her aging mother. Baraldini's health has frequently been raised as a basis for a humanitarian transfer to Italy. In 1988, while incarcerated, Baraldini was operated on for uterine cancer at the Mayo Clinic and received follow-up treatment. An August 1990 CAT scan was negative and the cancer remains in remission. In August 1992, the late Judge Falcone of the Italian Ministry of Justice visited Baraldini in prison, determined that she was being adequately cared for, and

⁸ See the Resolution from the European Parliament dated November 22, 1994 (attached at tab H).

⁹ Under Article 12 of the Convention, Italy could also grant "pardon, amnesty or commutation" of Baraldini's sentence. Given the fact that, by Italy's own admission, Baraldini's plight "arouses deep feelings of involvement on the part of Italian public opinion [and is] a matter of great interest for the Italian Parliament," a decision by Italy to pardon Baraldini or commute her sentence to time served in the United States is certainly a realistic possibility. See page 1 of Italy's request at tab A.

agreed that the issue of her health should be removed from further discussion. In September 1994, Vittorio Mele, the Italian Director of Penal Affairs visited Baraldini in prison and expressed no concern to the United States regarding her current medical condition. The most recent response by the Bureau of Prisons (BOP) to our inquiries about Baraldini's medical condition states that she is considered to be completely cured. Although no future cancer prognosis can be guaranteed, it is believed that Baraldini's cancer will not recur. Her continued well being, however, is based, in part, on ~~the~~ her cooperation in following post treatment instructions and having follow-up examinations. Please note that our recent inquiry of BOP further revealed that Baraldini has failed to keep four appointments for gynecological examinations.¹⁰

The Italian government has often raised the deprivation of visits by Baraldini's mother as a reason for her transfer. Baraldini's mother, who resides in Italy, is in ill health and cannot regularly visit her daughter here in prison. Mrs. Baraldini did, however, visit her daughter at Danbury in December 1994. While the Department of Justice is generally sympathetic to the difficulty Baraldini's incarceration in the United States has posed for her mother, granting a transfer for this reason alone would seem to undermine one of the stated purposes of the Convention, which is to further the rehabilitation of the offender, as well as ignore the very serious nature of the crimes for which Baraldini was convicted and her complete lack of remorse or repentance. Although Baraldini's imprisonment far away from her mother in Italy is, no doubt, a hardship for both of them, we believe that the factors associated with the serious offenses for which Baraldini was convicted outweigh this humanitarian consideration.

IV. CONCLUSION

After our most recent review of this matter, the factors considered by Ms. Harris in denying Baraldini's prior requests remain equally valid today. At the present time, we are unaware

¹⁰ July 7, 1995, August 7, 1995, October 4, 1995, and October 15, 1995.

of any mitigating circumstances that would result in a different decision. Accordingly, we recommend that you deny the request to transfer Baraldini.¹¹

Attachments

¹¹ According to Michael De Feo, the Senior Counsel for International Law Enforcement, the Italian government will, in all likelihood, invoke the dispute resolution mechanism contained in Article 23 of the Convention if Baraldini's transfer request is again denied. Article 23 states that the Crime Problems Committee of the Council of Europe "shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise" from a transfer dispute. Since Article 23 merely provides a forum for mediation and not adjudication, Mr. De Feo believes that the United States should view any Article 23 procedure as "a relatively harmless way for Italy to satisfy domestic pressures." We concur with Mr. De Feo's assessment. It is clear that the Italian government is under considerable public pressure to secure Baraldini's transfer. It is important for Italian officials to push the United States to transfer Baraldini. However, Italy acknowledges the seriousness of Baraldini's crimes, and does not appear to view her imminent transfer as realistic.

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III

Kreczko, Alan J.

From: Simon, Steven N.
To: Kreczko, Alan J.
Cc: /R, Record at A1
Subject: RE: Dini Letter on Baraldini case [CONFIDENTIAL]
Date: Monday, October 02, 1995 8:04PM

Thanks. Who is going to do the reply from POTUS?

From: Kreczko, Alan J.
To: Simon, Steven N.
CC: /R, Record at A1; Baker, James E.
Subject: FW: Dini Letter on Baraldini case [CONFIDENTIAL]
Date: Friday, September 29, 1995 11:34 AM

Steve,

Andy called me about sending this to DOJ. I said OK, but as it concerned a particular case, WH guidelines required it to be handled through designated Counsel-DOJ channel. Dana Biehl has not been authorized for that purpose. I had Andy send it to Mark Richards, and will follow-up with him.

From: Vershbow, Alexander R.
To: Clarke, Richard A.
CC: /R, Record at A1; Gardner, Anthony; Kreczko, Alan J.; Peters, Mary A.
Subject: Dini Letter on Baraldini case [CONFIDENTIAL]
Date: Tuesday, September 19, 1995 02:55 PM

Dick - Will you take action? No political intervention appropriate, I presume

Alan/Tony/MAP - FYI

PREC: PRIORITY CLASS: ~~CONFIDENTIAL~~ DTG:191505Z SEP 95

FM: PALAZZO CHIGI

TO: WHITE HOUSE

~~CONFIDENTIAL~~ (EYES ONLY) VIA MERCURY CHANNEL

FROM PRIME MINISTER LAMBERTO DINI

TO PRESIDENT WILLIAM J. CLINTON

DEAR PRESIDENT CLINTON,

I WISH TO RAISE, ONCE AGAIN, THE CASE OF THE ITALIAN NATIONAL,
SILVIA BARALDINI, WHO IS SERVING A LONG PRISON TERM IN THE UNITED
STATES AS A PARTY TO TERRORIST CRIMES.

AS YOU KNOW, ON VARIOUS OCCASIONS IN THE PAST THE ITALIAN

AUTHORITIES HAVE REQUESTED THE AMERICAN AUTHORITIES TO ALLOW SILVIA BARALDINI TO SERVE HER SENTENCE IN HER OWN COUNTRY.

THERE ARE HUMANITARIAN GROUNDS FOR SUCH A REQUEST, MAINLY THE FACT THAT MRS BARALDINI IS IN A POOR STATE OF HEALTH. MOREOVER, IT IS UNANIMOUSLY ACKNOWLEDGED THAT SHE DOES NOT POSE A THREAT, HER CONDUCT IN PRISON HAS GIVEN NO REASON TO COMPLAIN, AND SOME OF HER ACCOMPLICES TO THE CRIME - IN WHICH SHE DIRECTLY CAUSED NO BLOODSHED - ARE ALREADY ON PAROLE ON VARIOUS GROUNDS.

THE ITALIAN PARLIAMENT RECENTLY ONCE AGAIN VOICED THE WIDESPREAD CONCERN AMONG THE ITALIAN PUBLIC OPINION REGARDING THE FATE OF MRS BARALDINI. WITH A HUGE MAJORITY IT ADOPTED A MOTION COMMITTING THE GOVERNMENT TO TAKE STEPS TO HAVE HER TRANSFERRED TO AN ITALIAN PENITENTIARY.

TO THIS END, THE ITALIAN MINISTRIES OF JUSTICE AND FOREIGN AFFAIRS ARE ABOUT TO ADDRESS A NEW SPECIFIC REQUEST TO THE UNITED STATES AUTHORITIES.

I AM THEREFORE WRITING TO YOU, MR PRESIDENT, TO REITERATE THE SENSITIVE ASPECTS - OF WHICH I AM CERTAIN YOU ARE WELL AWARE - OF A SITUATION THAT SHOULD BE RESOLVED IN THE INTERESTS OF BOTH OUR COUNTRIES, AND WHICH DEMANDS A CONSTRUCTIVE APPROACH.

A POSITIVE OUTCOME TO THIS CASE WOULD BE IN FACT PERFECTLY CONSISTENT WITH THE FLOURISHING AND VALUABLE COOPERATION THAT EXISTS BETWEEN ITALY AND THE UNITED STATES ON JUDICIAL MATTERS AND COMBATING DRUGS, TERRORISM AND TRANSNATIONAL ORGANISED CRIME, BOTH AT BILATERAL AND G7 LEVEL.

IT WOULD ALSO ENHANCE FURTHER THE COOPERATION IN THIS FIELD BETWEEN THE UNITED STATES AND THE EUROPEAN UNION, AT A TIME WHEN ITALY PREPARES TO TAKE OVER THE PRESIDENCY OF THE COUNCIL OF THE EU.

IT IS IN THIS SPIRIT OF COOPERATION - WHICH YOU CERTAINLY SHARE - THAT I WOULD LIKE TO ASK FOR YOUR PERSONAL INTERVENTION TO ALLOW THE CONTACTS THAT WILL BE PROMPTLY ESTABLISHED BETWEEN THE ITALIAN AND UNITED STATES AUTHORITIES TO SETTLE THE WHOLE ISSUE TO OUR MUTUAL SATISFACTION.

PLEASE ACCEPT, MR PRESIDENT, THE EXPRESSION OF MY BEST REGARDS.

YOURS SINCERELY

LAMBERTO DINI

#0001

Revised 12/3/94

**IRISH POLITICAL PRISONERS CURRENTLY BEING DETAINED
IN THE UNITED STATES OF AMERICA OR PENDING TRIAL,
EXTRADITION, OR DEPORTATION PROCEEDINGS**

The following is a listing of the cases Irish political prisoners currently pending in the U.S., indicating the relief sought in each case.

The cases fall into the broad categories of extradition, deportation and conviction of criminal charges. Among the forms of relief being sought are: adjustment of status, political asylum, transfer to the Republic of Ireland, and the dropping of charges.

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KEVIN BARRY ARTT

Subject: Extradition warrant from UK pending
Currently held without bail.

Desires: Reasonable bail
Denial of extradition
Political asylum

Court: Federal District Court
Northern District of CA.
Judge Charles A. Legge

Attorney: William Goodman and David Calloway
832 Sansome Street
San Francisco, CA 94111
(415) 421-6140

Born September 18, 1959

Native Northern Ireland

Marital Status Single
One son

Present Address Bur. Prisons # 33030198
Federal Correctional Institute
675 8th Street
Camp Brooks
Dublin, CA. 94568

PAUL BRENNAN

Subject: 1. Extradition warrant to U.K. pending
2. Passport violation
3. Firearms violation
Currently held without bail

BRENNAN (Cont.)

Desires Reasonable bail
Denial of extradition
Political asylum

Court Federal District Court
Northern District of CA.
Judge Charles A. Legge

Attorney James Karson
632 Commercial Street
San Francisco, CA. 94111
(415) 788-1666

Native: Northern Ireland

Marital Status Married to U.S. citizen,
Joanna Volz

Present Address No. DF13
Oakland City Jail
611 Broadway DF13
Oakland, CA. 94607

TERENCE DAMIEN KIRBY

Subject Extradition warrant from UK pending
Currently held without bail

Desires Reasonable bail
Denial of extradition
Political asylum

Court Federal District Court
Northern District of California
Docket No. CR 940086 Misc. DLJ

Attorney Gilbert Eisenberg
632 Commercial Street
San Francisco, CA. 94111
(415) 433-3476

Born July 1, 1956

Native Northern Ireland

Marital Status Married to U.S. citizen,
Colleen Dolan, one child

Present Address Bur. Prison No. 885-33-011
Federal Correctional Institute
Pleasanton, CA.

JAMES J. SMYTH

Subject 1. Extradition warrant from UK -
denied - government appealing to the 9th
Circuit
2. Deportation

Seeking Drop appeal
Political asylum

Court Immigration and Naturalization
Court, San Francisco, CA.
Judge DiConstanzo

Attorney Karen Snell (Extradition)
450 Golden Gate Avenue
San Francisco, CA. 94102
(415) 556-7712

James Byrne (INS)
Byrne, Ingleheart & Byrne
785 Market Street
San Francisco, CA. 94103
(415) 777-4444

Born April 11, 1954

Native Northern Ireland

Marital Status Married to U.S. citizen,
Margaret Lynch

Present address 1719 42nd Avenue
San Francisco, CA. 94122

JAMES BARR

Subject Deportation, Immigration
Judge granted political asylum,
Government is currently appealing
to the Board of Immigration Appeals

Desires Adjustment of Status
Political asylum

Court Immigration & Naturalization
Philadelphia, PA.
Case No. A27043351

ARR (Cont.)

Attorney

Daniel McElhatton
Timby, Brown & Timby
1818 Market Street
Philadelphia, PA. 19103

Marital Status

Married to U.S. citizen,
Mary Ellen Grogan, one child

Current Address

2651 Bevedere Rd.
Philipsberg, N.J. 08865

PAUL CORNELIUS CAMPBELL

Subject

Deportation after being
granted working visas
Political Asylum granted by
Immigration Judge for himself,
wife Mary and children Nartin &
Gerard
Government is appealing to the
Board of Immigration Appeals

Desires

Government to withdraw appeal
Political asylum

Court

Immigration and Naturalization Court
San Francisco, CA.
File Nos. 70 451 157
71 625 750
72 059 441
72 059 442

Attorney

James M Byrne
Byrne, Igleart & Byrne
785 Market Street
San Francisco, CA. 94103
415) 777-4444

Native

Northern Ireland

Marital Status

Wife Mary and two of three children also
seeking asylum

NOEL M. GAYNOR

Subject Deportation, free on \$50,000
cash bail
Decision adverse to Gaynor,
presently on appeal to Board of
Immigration Appeals

Desires Adjustment of status
Political asylum

Court Immigration & Naturalization Court
Buffalo, N.Y.
Judge: William P. Green Jr.
Docket No. A29-T19270

Attorney James Harrington
1620 Statler Towers
Buffalo, N.Y. 14202
(716) 853-3700

Born December 23, 1953

Native Northern Ireland

Marital Status Married to U.S. citizen,
Colleen Connelly

RICHARD JOHNSON

Subject Conviction "Conspiracy
to violate Arms Export Control Act,"
"Manufacture and export of materials for
the discharge of bombs," "Conspiracy to
injure and destroy British military
helicopters," "Possession and control
of property used and intended for use
in the destruction of British military
helicopters."
Sentence 120 months, Anticipated
release date October 19, 1999

Desires Transfer to camp
Government initiated motion
for re-sentencing
Government consent to habeus
corpus petition
Executive Clemency

Court Federal District Court
Boston, MA.
Judge Mazone
Docket No. 174-038 DEL

JOHNSON (Cont)

Attorney Allen M. Dershowitz
Harvard School of Law
Cambridge, MA. 02138
(617) 495-4617

Born July 6, 1948

Native U.S.

Marital Status Single

Present Address Bureau of Prisons # 17422-038
Federal Correctional Institute,
Allenwood,
P.O. Bx. 2000
Unit 1 -A
White Deer, PA. 17887

EAMONN PETER McGUIRE

Subject Convicted of "Conspiracy
to violate Arms Export Control Act,"
"Conspiracy to destroy British military
Helicopters," and "Possession of
property in aid of a foreign
government"
Sentenced to 70 months
anticipated release date December 31,
1997

Desires Transfer to the Republic of
Ireland to complete sentence

Court Federal District Court
Boston, MA.
Judge A. David Mazzone

Attorney Richard Bachman
One Center Plaza
Boston. MA. 02108
(617) 227- 2070

Born December 14, 1936

Native Republic of Ireland

Marital Status Single

Present Address Bur. Prison No. 19986-038
F.C.I. Allenwood Med.
P.O. Bx. 2000
White Deer, PA. 17887

MARTIN P. QUIGLEY

Subject Convicted of "conspiracy to violate Arms Export Control Act," "Conspiracy to injure British military helicopters," "Possession of property in aid of a foreign government" Sentenced to eight years anticipated release date November 18, 1996

Desires Transfer to Republic of Ireland to complete his sentence

Court Federal District Court
Boston, MA.
Judge A. David Mazzone

Attorney Richard Bachman
One Center Plaza
Boston, MA. 02108
(617) 227-2070

Born September 9, 1962

Native Republic of Ireland

Marital Status Single

Present Address Bureau of Prisons No. 41066-066
Unit 3-A Federal Correctional Institute
Allenwood
PO Bx 2000
White Deer, PA 17887

MICHAEL MARTIN

Subject Extradition from UK to US for "Conspiracy to violate Arms Export Control Act" - currently held without bail

Desires Withdrawal of extradition request, dropping of charges

Attorney Gareth Peirce
B.M. Birnberg & Co.
14 Inverness Street
London NW1 7HJ
England
Phone 71-911-0166

MARTIN (Cont)

Michael Dowd
429 Park Avenue
New York, N.Y. 10022
(212) 751-1640

Native

Republic of Ireland

KEVIN MCKINLEY

Subject

Convicted in Florida of
"Conspiracy to violate Arms Export
Control Act" - served four years
Appeal on further conspiracy
charges pending

Desires

Dropping of charges
Political asylum

Court

Federal District Court
Tucson, Arizona
Appeal pending in 9th Circuit

Attorney

David Shannon
97 East Congress Street
Tucson, AZ 85701
(602) 670-6521

Born

October 3, 1956

Native

Northern Ireland

Marital Status

Divorced

Present address

7031 East Edgemont
Tucson, AZ 85710

SEAMUS MOLEY

Subject

Convicted in Florida of
"Conspiracy to violate Arms Export
Control Act" - served four years
Appeal on further conspiracy
charges pending

Desires

Dropping of charges
Political asylum

Court

Federal District Court
Tucson, AZ.
Appeal pending in the 9th Circuit

MOLEY (Cont)

Attorney Jesse Smith
100 North Stone Avenue
Tucson, AZ 85701
(602) 623-8343

Born February 7, 1959

Native Northern Ireland

Marital Status Single

Present Address 609 East Waverly Street
Tucson, AZ 85705

PATRICK J. MAGUIRE

Subject Deportation
Free on own recognizance

Desires Adjustment of Status
Political asylum

Court Immigration & Naturalization Court
18 Rector Street
Newark, N.J. 07102
Judge Ann S. Garcy
Docket No. A21 517 966

Attorney Brian Neary
190 Moore Street
Hackensack, N.J. 07601
(201) 488-9544

Born May 20, 1952

Marital Status Married to Green Card holder,
Mary Maguire, four children,
all U.S. born

Present address 180 Prospect Avenue
Dumont, N.J.

GERARD McGEOUGH

Subject Guilty plea to "Conspiracy to transport
firearms (with obliterated serial
numbers) in violation of foreign
commerce laws."
Sentenced to three years
Anticipated release date July 14, 1996

McGEOUGH (Cont)

Desires Parole hearing with immediate
release date
Government consent to motion to reduce
sentence
Political asylum
Executive clemency

Court U.S. District Court
Eastern District of New York
Judge Charles Sifton
Indictment No. 82 Cr. 00327 (CPS)

Attorney David Lewis
225 Broadway
New York, N.Y. 10007
(212) 285-2290

Born September 2, 1958

Native Northern Ireland

Marital Status Single

Present Address Bur. Prison # 37768-053
Unit CR Federal Corrections Institute
Fairton
P.O. Box 420
Fairton, N.J. 08820

GABRIEL MEGAHEY

Subject Deportation

Desires Adjustment of status
Withholding of deportation
Suspension of deportation
Political asylum

Court Immigration & Naturalization Court
26 Federal Plaza
New York, N.Y.
Judge Iskra
Index No. A 21 086 281

Attorney Martin Galvin
181 East 161 Street
Bronx, N.Y. 10451
(718) 992-1400

Born February 21, 1943

Native Northern Ireland

MEGAHEY (Cont)

Marital Status

Married to U.S. citizen,
Patricia McDonnell, one child

Present address

3021 Corlear Avenue
Bronx, N.Y.

MATTHEW M. MORRISON

Subject

Deportation
Application for adjustment of status
denied, Appeal to Board of Immigration
Appeals pending

Desires

Adjustment of Status
Political asylum

Court

Immigration & Naturalization Court
St. Louis, MO.

Attorney

Lillian Fernandez
1215 Pine Street
St. Louis, MO. 63103
(314) 621-3743

Born

November 1, 1955

Native

Northern Ireland

Marital Status

Married to U.S. citizen,
Frances Brodsrick, two children

Present address

6742 Chamberlin
St. Louis, MO. 63130

BRIAN PEARSON

Subject

Deportation

Desires

Adjustment of status
Political asylum

Court

Immigration & Naturalization Court
26 Federal Plaza
New York, N.Y.
I.N.S. No. A72472870

Attorney

James O'Malley
O'Malley & Johnson
299 Broadway
New York, N.Y. 10005
(212) 766-2274

PEARSON (Cont)

Born May 22, 1951

Native Northern Ireland

Marital status Married to U.S. citizen,
Dores Pearson, one child

Present address 143 Forrest Avenue
Pearl River, N.Y. 10965

WILLIAM (LIAM) QUINN

Status Convicted of murder in the UK
after extradition from U.S., serving
life sentence

Desires Credit for 6 years served in U.S.
prior to extradition
Transfer to the Republic of Ireland to
serve remainder of sentence

Attorney Gareth Peirce
H.M. Birnberg & Co.
14 Inverness Street
London NW1 7HJ
England
71- 911-0166

Native U.S. and Irish citizen