

No. 06-\_\_

---

---

IN THE  
**Supreme Court of the United States**

---

MAN-SEOK CHOE,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

---

**On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit**

---

**PETITION FOR A WRIT OF CERTIORARI**

---

MICHAEL RUBIN  
STACEY M. LEYTON  
ALTSHULER, BERZON,  
NUSSBAUM, RUBIN & DEMAIN  
177 Post Street, Suite 300  
San Francisco, CA 94108  
(415) 421-7151

WILLIAM J. GENEGO  
*Counsel of Record*  
NASATIR, HIRSCH,  
PODBERESKY & GENEGO  
2115 Main Street  
Santa Monica, CA 90405  
(310) 399-3259

November 20, 2006

*Counsel for Petitioner Man-Seok Choe*

### QUESTIONS PRESENTED

1. Whether the detention without bail of an extradition defendant who has been found to pose no danger to the community and no flight risk violates the Due Process Clause.

2. Whether courts have misinterpreted *Wright v. Henkel*, 190 U.S. 40 (1903), to require that all extradition defendants be detained without bail, even if they have been found to pose no danger to the community and no flight risk, unless they can demonstrate the existence of additional "special circumstances."

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i
TABLE OF AUTHORITIES .....	iv
PETITION FOR A WRIT OF CERTIORARI .....	1
OPINIONS BELOW.....	1
JURISDICTION .....	2
RELEVANT STATUTORY AND CONSTITUTIONAL PROVISIONS .....	2
STATEMENT.....	2
REASONS FOR GRANTING THE PETITION.....	8
CONCLUSION.....	18
APPENDIX A.....	1a
APPENDIX B .....	3a
APPENDIX C .....	38a
APPENDIX D.....	43a
APPENDIX E .....	44a
APPENDIX F .....	45a
APPENDIX G.....	46a

TABLE OF AUTHORITIES

CONSTITUTION AND CASES	Page
U.S. Const., amend. V .....	<i>passim</i>
<i>Bell v. Wolfish</i> , 441 U.S. 520 (1979).....	12, 13
<i>In re Burt</i> , 737 F.2d 1477 (7th Cir. 1984) .....	17
<i>Carlson v. Landon</i> , 342 U.S. 524 (1952).....	13
<i>Foucha v. Louisiana</i> , 504 U.S. 71 (1992).....	2, 14
<i>Freedman v. United States</i> , 437 F. Supp. 1252 (N.D. Ga. 1977).....	17
<i>In re Gonzalez</i> , 52 F. Supp. 2d 725 (W.D. La. 1999) .....	11
<i>Jones v. United States</i> , 463 U.S. 354 (1983).....	13, 14
<i>Kennedy v. Mendoza- Martinez</i> , 372 U.S. 144 (1963).....	12
<i>In re Kirby</i> , 106 F.3d 855 (9th Cir. 1997) .....	10, 11
<i>Martin v. Warden</i> , 993 F.2d 824 (11th Cir. 1993) .....	10, 11
<i>In re Mitchell</i> , 171 F. 289 (1909).....	11
<i>In re Morales</i> , 906 F. Supp. 1368 (S.D. Cal. 1995).....	11
<i>In re Russell</i> , 805 F.2d 1215 (5th Cir. 1986) .....	10, 17

*Sale*  
8  
*Sch*  
4  
*Uni*  
4  
*Uni*  
8  
*Uni*  
7  
*Un*  
2  
*Un*  
  
*Un*  
  
*Wr*  
  
*Ya*  
  
*Za*  
  
STATU  
18  
18  
18  
28  
28

## TABLE OF AUTHORITIES—Continued

Page		Page
..... <i>passim</i>	<i>Salerno v. United States</i> , 878 F.2d 317 (9th Cir. 1989) .....	7, 11
..... 12, 13	<i>Schall v. Martin</i> , 467 U.S. 253 (1984).....	12, 14, 15
..... 17	<i>United States v. Galanis</i> , 429 F. Supp. 1215 (D. Conn. 1977).....	17
..... 13	<i>United States v. Kin-Hong</i> , 83 F.3d 523 (1st Cir. 1996).....	10
..... 2, 14	<i>United States v. Leitner</i> , 784 F.2d 159 (2d Cir. 1986) .....	10, 11, 17
..... 17	<i>United States v. Salerno</i> , 481 U.S. 739 (1987).....	<i>passim</i>
..... 11	<i>United States v. Taitz</i> , 130 F.R.D. 442 (S.D. Cal. 1990) .....	11
..... 13, 14	<i>United States v. Williams</i> , 611 F.2d 914 (1st Cir. 1979).....	11
..... 12	<i>Wright v. Henkel</i> , 190 U.S. 40 (1903).....	<i>passim</i>
..... 10, 11	<i>Yau-Leung v. Soscia</i> , 649 F.2d 914 (2d Cir. 1981) .....	11
..... 10, 11	<i>Zadvydas v. Davis</i> , 533 U.S. 678 (2001).....	12, 13, 15
..... 11	<b>STATUTES</b>	
..... 11	18 U.S.C. §3142.....	3, 6
	18 U.S.C. §3181.....	16
	18 U.S.C. §3184.....	2, 4, 7
..... 10, 17	28 U.S.C. §1254.....	2
	28 U.S.C. §2241.....	6, 7

## TABLE OF AUTHORITIES—Continued

MISCELLANEOUS	Page
<i>Hearings on H.R. 5227 before the Subcommittee on Crime of the House Committee on the Judiciary, 97th Cong., 2nd Session (1982).....</i>	16
<i>Reform of the Extradition Laws of the United States: Hearings on H.R. 2643 Before the Subcommittee on Crime of the House Committee on the Judiciary, 98th Cong., 1st Session (1983).....</i>	9
M. CHERIF BASSIOUNI, <i>INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE (1996).....</i>	10
Nathaniel A. Persily, <i>International Extradition and the Right to Bail</i> , 34 STAN. J. INT'L L. 407 (1998).....	16
Ann Powers, <i>Justice Denied? The Adjudication of Extradition Applications</i> , TEX. INT'L L.J. 277 (2002).....	9
Siegfried Wiessner, <i>Blessed Be the Ties that Bind: the Nexus Between Nationality and Territory</i> , 56 MISS. L.J. 447 (1986).....	10

§

Pet  
of ce  
CourTh  
emer  
(Pet.  
are u  
tion  
App.  
deni:  
are a

Page

16

9

10

16

9

10

IN THE  
**Supreme Court of the United States**

\_\_\_\_\_  
No. 06-\_\_\_\_  
\_\_\_\_\_

MAN-SEOK CHOE,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

\_\_\_\_\_  
**On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit**

\_\_\_\_\_  
**PETITION FOR A WRIT OF CERTIORARI**  
\_\_\_\_\_

Petitioner Man-Seok Choe respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

**OPINIONS BELOW**

The orders of the Court of Appeals denying Petitioner's emergency motion for bail pending extradition proceedings (Pet. App. 44a) and denying reconsideration (Pet. App. 45a) are unreported. The Magistrate Judge's order denying Petitioner's request for bail pending extradition proceedings (Pet. App. 38a-42a) and civil minutes showing the District Court's denial of review/reconsideration of that order (Pet. App. 43a) are also unreported.

## JURISDICTION

The Court of Appeals' order denying Petitioner's emergency motion for bail pending extradition proceedings was entered June 13, 2006. The Court of Appeals' order denying Petitioner's motion for reconsideration or rehearing was entered August 7, 2006. Justice Kennedy extended the time to file this petition to and including November 20, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

## RELEVANT STATUTORY AND CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the Constitution provides: "No person shall be . . . deprived of life, liberty, or property, without due process of law . . ." The full text of the Fifth Amendment, as well as the statute that authorizes extradition, 18 U.S.C. §3184, are set forth in the petition appendix (Pet. App. 46a-47a).

## STATEMENT

Federal courts have repeatedly misconstrued a 1903 decision of this Court, *Wright v. Henkel*, 190 U.S. 40 (1903), as requiring defendants facing extradition to show "special circumstances" in order to obtain bail, even when a defendant poses *no* danger to society or risk of flight (and would, therefore, be entitled to bail in a non-extradition case). The imposition of this unique requirement upon extradition defendants violates the Due Process Clause and this Court's decisions interpreting that Clause, which preclude the State from depriving individuals not convicted of a crime of their physical liberty except under carefully circumscribed conditions that involve either a risk of flight or a danger to society. See *United States v. Salerno*, 481 U.S. 739, 749, 751-52 (1987); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). It also contrasts sharply with the rule in non-extradition cases,



upheld in *Salerno*, which permits pretrial detention only when the government has proved by clear and convincing evidence that no conditions of release will reasonably assure the defendant's appearance and the safety of the community. 18 U.S.C. §3142(e).

Because the federal courts have uniformly misinterpreted *Wright v. Henkel* to require this result, the unconstitutional detention of extradition defendants who pose no risk of flight will continue unabated in the hundreds of extradition proceedings that take place each year, unless this Court steps in to correct the lower courts' constitutional error.

1. Petitioner Man-Seok Choe is 65 years old and has lawfully resided in the United States for 35 years. Pet. App. 40a. He and his wife of over 30 years have lived at the same house in California since 1999. Petitioner's wife is a naturalized United States citizen, and their son Wilson Choe is a United States citizen by birth. Petitioner, a Korean citizen, applied for United States citizenship in 1999. He was interviewed in 2001 and is awaiting action on his application, as he continues to maintain lawful status as a resident alien. Ex. C at 22-24.<sup>1</sup>

Petitioner has significant ties to the community and owns and operates Cal-Ransom, Inc., a real estate development and property management company. Ex. B at 3. In his individual capacity and through Cal-Ransom he owns or has a majority interest in six commercial properties. He has no criminal record. *Id.*

2. On February 15, 2006, U.S. Marshals appeared unannounced at Petitioner's residence and took him into custody. Clerk's Record ("CR") 3.<sup>2</sup> The warrant authorizing Peti-

---

<sup>1</sup> Cited exhibits are those submitted to the Ninth Circuit in connection with Petitioner's emergency motion for bail.

<sup>2</sup> Citations to the Clerk's Record are to the record of the District Court.

tioner's arrest was based on a complaint filed by the United States Attorney on behalf of the Republic of Korea pursuant to 18 U.S.C. §3184 seeking an order certifying that Petitioner was subject to extradition on three charges: (1) lobbying on behalf of a private company seeking a government contract; (2) payment of a bribe to close an investigation; and (3) leaving the country without proper departure documents. CR 1; Ex. A.

The charges that are the subject of the extradition request all relate to or arise out of Petitioner's lobbying efforts on behalf of a French-owned company, Alsthom Company, in its successful bid to secure from the Korean government the contract for high speed rail cars. Alsthom contracted with Petitioner to act on its behalf in its efforts to secure the rail car contract and agreed to pay Petitioner a commission if its efforts were successful. Ex. A at 3. After the Korean government awarded Alsthom the contract, Alsthom paid Petitioner his commission. Ex. G at 55, 58, 71, 76; Ex. A at 3. Petitioner transferred a portion of his commission to Ki Choon Ho, who had referred Alsthom to him and with whom he had arranged to split the commission. Ex. G at 62, 76.

The transfer of funds from Petitioner's bank account to Ms. Ho's bank account, both in Hong Kong, spurred an investigation. After Korean police questioned Ms. Ho about the transfers, she allegedly made payments to a Korean police officer to have the investigation closed. Ex. G at 78, 82-83; Ex. A at 4. She later claimed that she made this payment with Petitioner's knowledge and support, and had been reimbursed by him for half of the payments. Ex. G at 82.

In April 1998, the Korean Supreme Prosecutor's Office initiated an investigation into Petitioner's receipt of funds from Alsthom. Ex. G at 72; Ex. A at 4. On September 28, 1999, Korean prosecutors obtained a departure prohibition preventing Petitioner from leaving the county without authorization for 30 days. Ex. G at 78, 84, 98. On October 2,

1999, Petitioner, who was unaware of the departure prohibition, was stopped at the Seoul airport as he was attempting to return home to Los Angeles and his passport was seized. Ex. G at 85. On October 29, 1999, Petitioner appeared at the Central Investigation Department at the Supreme Prosecutor's Office and made a statement. Ex. G at 79. Sometime thereafter, and after the departure prohibition had expired, Petitioner departed Korea and returned home to Los Angeles. Ex. G at 85.

3. The day after Petitioner's arrest under the extradition warrant, February 16, 2006, Magistrate Judge Parada ordered him detained without bail on the ground that "[i]n extradition cases . . . only 'special circumstances' will justify bail" and no such circumstances had been shown. Pet. App. 1a.

On April 4, 2006, Petitioner filed an application for review and reconsideration of the order detaining him without bail. CR 15. Petitioner argued both that special circumstances were present justifying his release and that the requirement of special circumstances when an extradition defendant presents no danger to the community or risk of flight violates due process. His wife and son offered to sign an affidavit of surety for over \$1 million dollars fully secured by real property, and Petitioner agreed to submit to electronic monitoring, travel restrictions, and any other court-imposed condition. Pet. App.40a.

On April 6, 2006, Magistrate Judge Goldman held a hearing on Petitioner's bail application. At that hearing, the Magistrate Judge found no flight risk:

In an ordinary bail situation, there's no doubt in my mind that there are conditions or combination of conditions that will ensure this defendant's appearance in court, okay? There's sufficient sureties, there's ties to community, there's no prior criminal record. All of the factors articulated in Section 3142 weigh in favor of this defendant. It's an economic crime. It doesn't pose

a danger to the community. . . . There's not even charges—have been filed, which is even more interesting. What I'm dealing with here is the statutory and the case law requirement of special circumstances.

Pet. App. 7a.<sup>3</sup>

Despite the Magistrate Judge's confidence that conditions could be established to ensure Petitioner's appearance at future proceedings, on April 10, 2006, Magistrate Judge Goldman denied the application for bail. Pet. App. 41a-42a. In his written order, Magistrate Judge Goldman found "that Choe poses no real danger to the community and that conditions of bond could [be] set which would insure Choe's appearance in court when required." Pet. App. 40a. However, he concluded that this Court's decision in *Wright v. Henkel* and corresponding Ninth Circuit precedent required a showing of "special circumstances" warranting release before he could grant bail, even where no flight risk is present. Pet. App. 39a-40a. Consequently, he "reluctantly" denied bail. Pet. App. 40a-41a. The Magistrate Judge also rejected Petitioner's argument that detaining an extradition defendant who poses no risk of flight or danger to the community violated due process. Pet. App. 39a, n.2.

After Petitioner's application for review and reconsideration of the Magistrate Judge's order was denied, CR 21, 22; Ex. C at 20, he filed an application with the District Court seeking review of the order, which he also styled as a habeas petition under 28 U.S.C. §2241. Ex. C; CR 23, 25. Petitioner argued both that he had established special circumstances justifying a grant of bail and that, because he was not a flight risk, his continued detention without bail violated due process. On May 19, 2006 the District Court filed a one-

---

<sup>3</sup> 18 U.S.C §3142, to which the Magistrate Judge referred, governs release of a defendant pending trial in the United States, and does not apply to extradition proceedings.

sentence minute order stating that "bail is denied." Pet. App. 43a. The District Court did not disturb the Magistrate Judge's finding that detention was not required to ensure Petitioner's appearance.

Petitioner filed a notice of appeal on May 22, 2006 and an emergency motion for bail in the Ninth Circuit, in which he argued that the detention without bail of an extradition defendant who is not a flight risk violates due process. On June 13, 2006 the Ninth Circuit issued a one-sentence order denying Petitioner's motion, citing *Wright v. Henkel*, 190 U.S. 40 (1903), and *Salerno v. United States*, 878 F.2d 317 (9th Cir. 1989). Pet. App. 44a.<sup>4</sup> Petitioner filed a motion for reconsideration/rehearing, in which he renewed his due process argument and asked the court to address it. On August 7, 2006, the Ninth Circuit denied that motion. Pet. App. 45a. This petition for certiorari seeks review of these Ninth Circuit orders.

On October 10, 2006, the Magistrate Judge granted Korea's request for Petitioner's extradition and ordered his continued detention. The District Court rejected Petitioner's habeas petition challenging the extradition order on November 7, 2006, and Petitioner filed a notice of appeal two days later. The appeal of the extradition order remains pending, and Petitioner remains in detention in the United States. He has now been in custody for over nine months.

4. The Magistrate Judge had jurisdiction over Petitioner's application for bail under 18 U.S.C. §3184 and federal common law. *Wright v. Henkel*, 190 U.S. at 62-63. The District Court's jurisdiction was additionally based on 28 U.S.C. § 2241.

---

<sup>4</sup> It is not clear from the order whether the Ninth Circuit simply ignored Petitioner's due process argument or erroneously believed that *Wright v. Henkel* foreclosed it.

### REASONS FOR GRANTING THE PETITION

The Ninth Circuit's decision in this case presents a square conflict with Supreme Court precedent and involves a matter of great national concern: whether the Constitution permits a person whose extradition is sought by a foreign state to be detained without bail even if he or she poses no danger to society and no risk of flight. The circuit and district courts have uniformly misinterpreted this Court's 1903 decision in *Wright v. Henkel* to require detention of all extradition defendants, even those who present no danger or flight risk, unless they can demonstrate the existence of "special circumstances." Given the circuit courts' blind allegiance to this accepted, albeit incorrect, understanding of *Wright v. Henkel*, the constitutional protections of the Due Process Clause will continue to be violated unless this Court steps in and grants certiorari.

1. In *Wright v. Henkel*, 190 U.S. 40 (1903), this Court reviewed a lower court ruling that denied release on bail on the ground that no statute granted courts authority to release extradition defendants on bail. The Supreme Court noted that releasing extradition defendants on bail could threaten the government's interest in delivering accused individuals to requesting governments. *Id.* at 62. Nonetheless, and despite the absence of any statutory authority, the Court held that courts could grant bail in extradition cases:

We are unwilling to hold that the circuit courts possess no power in respect of admitting to bail other than as specifically vested by statute, or that, while bail should not ordinarily be granted in cases of foreign extradition, those courts may not in any case, and whatever the special circumstances, extend that relief.

*Id.* at 63. The Court went on to explain, "Nor are we called upon to do so as we are clearly of [the] opinion, on this record, that no error was committed in refusing to admit to bail," so it did not reverse the lower court's order. *Id.* The

Court gave no more specific explanation as to why the record did not support bail.

In *Wright v. Henkel*, this Court gave no indication that by using the phrase "special circumstances" it meant anything other than the particular circumstances or totality of the circumstances present in any given extradition case. Nor did it address the question whether a showing that a defendant posed no risk of flight or danger to society would suffice to establish entitlement to release on bail, or whether a contrary holding would violate the Due Process Clause.<sup>5</sup>

---

<sup>5</sup> Even if this Court in 1903 *had* meant to require a showing of additional "special circumstances" before relief could be granted, there would be adequate reason to question the continued force of such a rule given the dramatic changes in circumstances since *Wright* was issued. At that time, international travel was expensive, time consuming and dangerous; international crimes were unusual; and extradition cases were extremely rare. Now, by contrast, international travel is relatively common, modern telecommunications and the internet make international crime possible without ever traveling abroad, and the rise of international business and expansion of foreign criminal laws have made extraditable offenses far more common. See Ann Powers, *Justice Denied? The Adjudication of Extradition Applications*, TEX. INT'L L.J. 277, 321-22 (2002). Thus, the class of defendants in extradition proceedings presently includes persons with strong ties to the United States, who may be accused of relatively non-serious offenses for which bail would routinely be granted in a purely domestic proceeding. Extradition requests increased from fewer than twenty per year before 1970 to 338 in 1982. *Reform of the Extradition Laws of the United States: Hearings on H.R. 2643 Before the Subcommittee on Crime of the House Committee on the Judiciary*, 98th Cong., 1st Session 34 (1983) (statement of Roger Olsen, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice). While more recent statistics are not available, the numbers have likely continued to rise. See page 16 *infra*.

Moreover, there are heightened reasons for concern about the due process implications of a rule precluding release. Extradited defendants are now commonly subjected to "provisional arrest" procedures pursuant to which they are detained for forty to sixty days based solely on the representations of the requesting country, even before that country has

2. Despite the silence of *Wright v. Henkel* on these key issues, lower courts have uniformly but incorrectly interpreted the decision to require a showing of "special circumstances" before an extradition defendant may be released on bail. See, e.g., *In re Kirby*, 106 F.3d 855, 858 (9th Cir. 1997) ("Over ninety years ago, the Supreme Court recognized that there is a presumption against bail in an extradition case and only 'special circumstances' will justify bail."); *United States v. Kin-Hong*, 83 F.3d 523, 524 (1st Cir. 1996) ("[O]nly 'special circumstances' justify release on bail" in an extradition case); *Martin v. Warden*, 993 F.2d 824, 827 (11th Cir. 1993) ("[A] defendant in an extradition case will be released on bail only if he can prove 'special circumstances'"); *In re Russell*, 805 F.2d 1215, 1216 (5th Cir. 1986) ("Bail should be denied in extradition proceedings absent 'special circumstances.'"); *United States v. Leitner*, 784 F.2d 159, 160 (2d Cir. 1986) ("[B]ail can be granted only in 'special circumstances'").

Thus, even where there is a low risk of flight or danger or the absence of any such risk, courts have construed the Supreme Court precedent to mandate denial of bail unless the defendant can show some additional "special circumstance." See, e.g., *Kin-Hong*, 83 F.3d at 524-25 (reversing grant of bail based on absence of special circumstances, despite district court finding that conditions of release would adequately

---

made a formal extradition request. M. CHERIF BASSIOUNI, INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE 675-77, 682 (1996). And while at the time of *Wright v. Henkel* most extradition treaties excluded United States citizens, many treaties now authorize such extraditions. Siegfried Wiessner, *Blessed Be the Ties that Bind: the Nexus Between Nationality and Territory*, 56 MISS. L.J. 447, 527 n.367, 528 (1986) (citing treaties).

These changes in extradition law and practice, in combination with this Court's expansion of due process protections against unlawful detention since the turn of the century, would provide cause for reconsideration of *Wright v. Henkel* even if, as most lower courts have read it, it did foreclose the circuit court from considering Petitioner's due process claim.



ensure defendant's presence at future proceedings); *Martin*, 993 F.2d at 827 n.4 (Supreme Court and circuit precedent preclude basing release decision on defendant's flight risk); *Salerno v. United States*, 878 F.2d 317, 318 (9th Cir. 1989) (absence of flight risk not criteria for release in extradition case); *Leitner*, 784 F.2d at 160-61 (reversing grant of bail based on absence of special circumstances when magistrate judge found "almost no risk of flight"); *United States v. Williams*, 611 F.2d 914, 915 (1st Cir. 1979) (per curiam) (defendant's "acceptability as a tolerable bail risk" does not justify release on bail).<sup>6</sup>

Furthermore, because these courts have deemed this prohibition on release to be mandated by Supreme Court prece-

---

<sup>6</sup> Other than the uniformly stated rule that the absence of a risk of flight or danger to society does not present a special circumstance, the question of which circumstances would qualify as "special" is wholly unclear. Often cited is Judge Hand's interpretation of *Wright v. Henkel* as precluding bail except "in the most pressing circumstances, and when the requirements of justice are absolutely peremptory." *In re Mitchell*, 171 F. 289, 289 (1909). Examples of circumstances that lower courts have deemed sufficiently pressing include the defendant's youth and resultant absence of a suitable facility to hold him, *Yau-Leung v. Soscia*, 649 F.2d 914, 920 (2d Cir. 1981); likelihood of success at the extradition hearing, *In re Gonzalez*, 52 F.Supp.2d 725, 741 (W.D. La. 1999); the anticipated length of proceedings, lack of danger to the community, health problems caused by incarceration, inability to practice religion in jail, and absence of a diplomatic necessity for denying bail, *United States v. Taitz*, 130 F.R.D. 442, 446 (S.D. Cal. 1990); unusual delay, the release of similarly situated defendants, substantial merits questions and unique political implications, *In re Kirby*, 106 F.3d at 863-65; unusual delay, the availability of bail in the requesting country, and the length of the potential sentence in the requesting country compared to time already spent in custody, *In re Morales*, 906 F. Supp. 1368, 1374-77 (S.D. Cal. 1995); and the need to consult on a "civil suit upon which [the defendant's] whole fortune depends," *In re Mitchell*, 171 F. at 290. It makes little sense that such circumstances—but not the defendant's interest in liberty as protected by the Due Process Clause—would outweigh the government's interest in ensuring the defendant's availability for extradition.

dent, they have failed to address the due process implications of a rule permitting the deprivation of liberty without adequate justification. In the instant case, for example, although Petitioner squarely raised the issue in his initial briefs to the Ninth Circuit and then advanced it as his main argument in his petition for rehearing, the Ninth Circuit simply cited *Wright v. Henkel* and a Ninth Circuit decision applying that precedent as if they foreclosed Petitioner's due process argument.

3. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 754 (1987); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects."). Thus, "the individual's strong interest in liberty" may "be subordinated to the greater needs of society" only "in circumstances where the government's interest is sufficiently weighty." *Salerno*, 481 U.S. at 750-51. Furthermore, because detention for punitive purposes before trial violates the Constitution, *see Salerno*, 481 U.S. at 746, 749; *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 167-69 (1963); *Bell v. Wolfish*, 441 U.S. 520, 536 n.16 (1979), pretrial detention is permitted only when it is for a regulatory purpose and the detention is not "excessive in relation to" that purpose, *Salerno*, 481 U.S. at 747 (internal quotation marks omitted); *Mendoza-Martinez*, 372 U.S. at 169.

Protecting the safety of the community against dangerous individuals and ensuring that criminal defendants will appear at their trials and to serve their sentence are "sufficiently weighty" interests to justify pretrial detention. *See Salerno*, 481 U.S. at 751 (upholding detention when the government proved by clear and convincing evidence that an individual posed "an identified and articulable threat to the individual or the community"); *Schall v. Martin*, 467 U.S. 253, 263-65

(1984) (upholding detention upon showing of “serious risk” juvenile would otherwise commit crime before trial); *Jones v. United States*, 463 U.S. 354, 368 (1983) (upholding commitment of individual found not guilty by reason of insanity in order to treat illness and to protect him and society from potential danger); *Bell*, 441 U.S. at 534 & n.15 (government’s “substantial interest in ensuring that persons accused of crimes are available for trials and, ultimately, for service of their sentences” sufficient to justify pretrial detention); *Carlson v. Landon*, 342 U.S. 524, 542 (1952) (affirming detention of Communists pending deportation proceedings “where there is reasonable apprehension of hurt from aliens charged with a philosophy of violence against this Government”).<sup>7</sup>

Similarly, in extradition cases, Petitioner agrees that the government’s interest in protecting society against dangerous criminals and in ensuring that extradition defendants are available to be turned over to the requesting country if found extraditable are sufficiently weighty to support detention.

However, “the Due Process Clause requires that the nature and duration of [detention] bear some reasonable relation to the purpose for which the individual is [detained].” *Jones*, 463 U.S. at 368 (internal quotation marks deleted); *see also Salerno*, 481 U.S. at 747 (“[T]he incidents of pretrial detention” must not be “excessive in relation to the regulatory goal Congress sought to achieve”). Thus, in *Salerno*—which involved the regulatory interest most closely analogous to that asserted in extradition cases—this Court upheld detention before trial under the Bail Reform Act because, among other things, the Act limited detention to persons charged with certain serious crimes, required a showing of probable cause that the defendant had committed the charged crime, granted

---

<sup>7</sup> However, the Court has “upheld preventive detention based on dangerousness only when limited to specially dangerous individuals and subject to strong procedural protections.” *Zadvydas*, 533 U.S. at 690-91.

defendants prompt hearings, limited the time permitted for detention, and required proof at a full adversary hearing "by clear and convincing evidence that no conditions of release can reasonably assure the safety of the community or any person." 481 U.S. at 747-48, 750; *see also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (characterizing *Salerno* as holding that "in certain narrow circumstances persons who pose a danger to others or to the community may be subject to limited confinement").<sup>8</sup>

By contrast, if there is an ill fit between the purported goal of detention and the manner in which detention is implemented, the asserted regulatory purpose is suspect and the detention violates the Constitution. Thus, for example, while the government's interest in protecting society from the danger posed by individuals acquitted of crimes on grounds of mental illness is substantial, that interest fails to support the continued detention of those individuals once they have regained their mental health or are no longer dangerous. *See Foucha*, 504 U.S. at 82 (law permitting continued detention of insanity acquittees who are not mentally ill but did not prove they are not dangerous violates due process); *Jones*, 463 U.S. at 368 (detention of defendant acquitted on grounds of mental illness no longer justified when defendant regains sanity or is no longer dangerous). Similarly, the government's interest in preventing flight of an individual ordered removed from the United States did not justify continued detention when removal was no longer practically attainable, because the "detention no longer bears a reasonable relation to the purpose for which the individual was committed."

---

<sup>8</sup> While pretrial detention upon a lesser showing was upheld in *Schall v. Martin*, this Court emphasized the unique position of juvenile offenders in light of "the recognition that juveniles, unlike adults, are always in some form of custody" and have lesser liberty interests than adult offenders. 467 U.S. at 265-66. Moreover, the duration of detention was strictly limited. *Id.* at 269-70.

*Zadvydas*, 533 U.S. at 690 (internal quotation marks and brackets omitted).

Confinement before an adjudication of guilt must rest upon the State's regulatory interests, and the incidents of incarceration must support that regulatory purpose. *See Salerno*, 481 U.S. at 747 (reasoning that "incidents or pretrial detention" are not "excessive in relation to the regulatory goal Congress sought to achieve"); *Schall*, 467 U.S. at 270 (noting that conditions of confinement reflect State's regulatory purposes).

In the instant case, when an extradition defendant has been found to pose no flight risk and no danger to society, the government's legitimate regulatory interest in detention has insufficient force to justify the serious deprivation of liberty that detention entails. Regardless of the strength of the government's interest in ensuring a defendant's availability for extradition, that interest is not vindicated by incarcerating someone whose appearance can be assured without detention. Furthermore, the presence or absence of additional "special circumstances" do not bear at all upon this regulatory interest. *Compare Zadvydas*, 533 U.S. at 691-92 (when flight risk justification evaporates because removal not possible, "only special circumstance present is the alien's removable status itself," which does not justify detention). Those circumstances found "special," *see note 6 supra*, do not further either of the government's twin interests in protecting society and minimizing the risk of flight. Pretrial detention of extradition defendants will serve these interests only if release on bail depends on whether a defendant poses a threat of flight or danger, not on whether some unique additional circumstance is present.<sup>9</sup> District courts regularly make deter-

---

<sup>9</sup> If the government's interest in ensuring a defendant's availability for extradition is deemed stronger than its interest in ensuring a domestic criminal defendant's appearance at trial and for sentencing, this Court could consider shifting the burden of proof and requiring extradition

minations regarding risk of flight and danger to the community in cases involving domestic criminal charges, and are well positioned to make those determinations in extradition cases.

For these reasons, the detention of an individual like Petitioner, who has been found to pose no danger to society and no risk of flight, furthers no substantial regulatory purpose and therefore violates the Due Process Clause.

4. The United States has bilateral extradition treaties with over 100 countries, in addition to the many multilateral extradition agreements to which it is a signator. *See* 18 U.S.C. §3181 note (Treaties of Extradition). More than one-quarter of these bilateral treaties were entered after 1990, *see id.*, and extradition of persons from the United States to face charges in foreign countries has become increasingly common.<sup>10</sup> Thus, while recent statistics are largely unavailable, it is likely that the number of defendants currently in extradition proceedings far exceeds the 338 who were the subject of extradition requests in 1982. *See* note 5 *supra*. Many of those extradited are United States citizens. *See Hearings on H.R. 5227 before the Subcommittee on Crime of the House Committee on the Judiciary, 97th Cong., 2nd Session 36*

---

defendants seeking release on bail to make a stronger showing that conditions of release will assure their appearance and ensure community safety than that demanded in domestic criminal cases. However, the strength of this government interest does not support the uniform detention of extradition defendants unless they can show an additional "special circumstance" unrelated to the government's legitimate interest in preventing flight and the commission of additional crimes.

<sup>10</sup> *See* Nathaniel A. Persily, *International Extradition and the Right to Bail*, 34 STAN. J. INT'L L. 407 n. 110 (1998) ("[T]he number of extradition requests increases with the number of extradition treaties into which the United States enters. The proliferation of new countries and U.S. allies in the 1990s has assured a growing supply of extradition requests in recent years and for the near future.").

(1982) (statement of Roger Olsen) (10-20% of individuals extradited to foreign countries are United States nationals); note 5 *supra*.<sup>11</sup>

Like the lower courts in Petitioner's case, federal district courts and courts of appeal in extradition cases are blindly applying what has become viewed as the rule of *Wright v. Henkel*—that "special circumstances" above and beyond the absence of danger or flight risk are required before extradition defendants may be released on bail—without consideration of the due process implications of this rule. This Court's intervention is therefore required to address the conflict between the unexamined special circumstances rule as applied by the lower courts and this Court's due process precedent. Unless this Court grants certiorari in order to clarify the meaning of *Wright v. Henkel* and to address the due process question, the misinterpretation of this Court's precedent will preclude any division among the lower courts from ever emerging, thwarting vindication of extradition defendants' fundamental due process rights.

Moreover, the instant case presents a proper vehicle to address and resolve the issue. Petitioner raised the due process argument at every stage of the proceedings at issue. Because the Magistrate Judge found that Petitioner posed no danger or flight risk, the issue is squarely presented. And unlike many extradition defendants, who are pressured by their continued detention into giving up and submitting to extradition voluntarily before exhausting their legal remedies, Petitioner has remained in the United States while he pursues his appeal of denial of his habeas petition and the instant

---

<sup>11</sup> For examples of extradition cases involving United States citizens, see *In re Russell*, 805 F.2d at 1217; *Leitner*, 784 F.2d at 160; *In re Burt*, 737 F.2d 1477, 1487 (7th Cir. 1984); *Freedman v. United States*, 437 F. Supp. 1252, 1254 (N.D. Ga. 1977); *United States v. Galanis*, 429 F. Supp. 1215, 1217 (D. Conn. 1977).

constitutional challenge to his detention.<sup>12</sup> Rather than waiting for a division of lower courts to emerge—an extremely unlikely prospect in light of the overwhelming lower court interpretation of *Wright v. Henkel*—this Court should grant certiorari to resolve the due process issue.

### CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

MICHAEL RUBIN  
STACEY M. LEYTON  
ALTSHULER, BERZON,  
NUSSBAUM, RUBIN & DEMAIN  
177 Post Street, Suite 300  
San Francisco, CA 94108  
(415) 421-7151

WILLIAM J. GENEGO  
*Counsel of Record*  
NASATIR, HIRSCH,  
PODBERESKY & GENEGO  
2115 Main Street  
Santa Monica, CA 90405  
(310) 399-3259

November 20, 2006

*Counsel for Petitioner Man-Seok Choe*

---

<sup>12</sup> Petitioner's presentation of this issue to the Supreme Court offers an unusual opportunity for this Court to address this important due process concern. Despite the prevalence of circuit court decisions holding that extradition defendants must be detained, petitions for certiorari challenging those decisions are rare. In fact, none of the extradition defendants ordered detained in the circuit court decisions cited in this petition sought certiorari.



it-  
ly  
rt  
nt

r-

# APPENDIX

1  
3  
t  
-  
3  
t

1a

**APPENDIX A**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CRIMINAL MINUTES—GENERAL

[Filed FEB 22, 2006]

Case No. CV-06-1544-R6K (ML6) Date February 16, 2006

Title: UNITED STATES OF AMERICA -  
V- MAN-SEOK CHOE

U.S. DISTRICT JUDGE

PRESENT: THE HONORABLE OSWALD PARADA

MAGISTRATE JUDGE

<u>Maynor Galvez</u>	<u>N/A</u>	<u>06-02</u>
Deputy Clerk	Court Reporter/Recorder	Tape No.

ATTORNEYS PRESENT FOR PLAINTIFFS:  
Daniel O'Brien

ATTORNEYS PRESENT FOR DEFENDANTS:  
David Paek, Esq.  
(Specially appeared for this hearing only-Retained.)

PROCEEDINGS:

ORDER RE: DETENTION AND STATUS CONFERENCE

On February 16, 2006, defendant, Man-Seok Choe, appeared before this Court for an initial appearance. In extradition cases, there is a presumption against bail and only "special circumstances" will justify bail. *See Matter of Requested Extradition of Kirby*, 106 F.3d 855 (9th Cir. 1996). No "special circumstances" have been presented to the Court. Therefore, it is hereby ordered that defendant, Man-Seok Choe, be detained without prejudice.

2a

A status conference shall be held on March 15, 2006, at 11:00 a.m. If the government has filed its formal request for extradition prior to that date and the case is assigned to a different Magistrate Judge, the status conference shall be taken off calendar.

cc: all parties

Initials of Deputy Clerk [illegible]

3a

**APPENDIX B**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

---

CASE NO. CV06-01544-RGK(MLGX)

---

IN RE: THE MATTER OF THE EXTRADITION OF MAN  
SEOK CHOE, A FUGITIVE FROM THE REPUBLIC OF  
CHINA

---

HONORABLE MARC L. GOLDMAN, MAGISTRATE  
JUDGE PRESIDING

---

REVIEW OF RELEASE CONDITIONS  
SANTA ANA, CALIFORNIA  
APRIL 6, 2006

---

Court Deputy/Recorder:

Terri Steele

Transcribed By:

Huntington Court Reporters &  
Transcription, Inc.  
1450 W. Colorado Boulevard  
Suite 100  
Pasadena, California 91105  
(626) 792-7250

APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

DEBRA WONG YANG, UNITED STATES ATTORNEY  
BY: DANIEL J. O'BRIEN  
411 WEST FOURTH STREET, SUITE 8000  
SANTA ANA, CA 92701

ON BEHALF OF THE DEFENDANT:

NASATIR, HIRSCH, PODBERESKY, & GENEGO  
BY: WILLIAM J. GENEGO  
MAIN STREET LAW BUILDING  
2115 MAIN STREET  
SANTA MONICA, CA 90405

[3] THE CLERK: APRIL 6, 2006. U.S.A. VERSUS MAN SEOK CHOE, CASE NO. CV 06-1544-RGK (MLG), HEARING A REVIEW OF RELEASE CONDITIONS ON EXTRADITION MATTER.

(INAUDIBLE) MAGISTRATE JUDGE PRESIDING.

THE COURT: YOU MAY BE SEATED.

THIS IS CASE NO. 6-1544, THE MATTER OF EXTRADITION OF MAN SEOK CHOE. I HOPE I'M PRO-  
NOUNCING THAT RIGHT.

MR. GENEGO: I BELIEVE YOU ARE, YOUR HONOR.

THE COURT: OKAY. THANK YOU.

APPEARANCES, PLEASE.

MR. O'BRIEN: GOOD MORNING, YOUR HONOR.  
DANIEL O'BRIEN ON BEHALF OF THE UNITED STATES.

THE COURT: OKAY.

MR. GENEGO: GOOD MORNING, YOUR HONOR.  
WILLIAM GENEGO, SPELLED G-E-N-E-G-O, ON BE-

HALF OF MR. CHOE, WHO IS PRESENT IN CUSTODY (INAUDIBLE).

THE COURT: OKAY. THANK YOU, SIR.

THIS IS MATTER IS BEFORE THE COURT ON A PETITION FOR A BAIL REVIEW. THE MATTER CAME BEFORE MAGISTRATE JUDGE PARADA IN LOS ANGELES. I'M NOT SURE THE DATE. I CAN'T REMEMBER THE DATE, BUT—

MR. GENEGO: (INAUDIBLE) 16, I BELIEVE.

[4] THE COURT: THANK YOU.

AND JUDGE PARADA ORDERED THAT MR. CHOE BE DETAINED. COUNSEL HAS FILED A MOTION FOR REVIEW. I'VE READ THE MATERIAL. LET ME HEAR FROM COUNSEL.

MR. GENEGO: YOUR HONOR, INITIALLY I'D LIKE TO JUST ADDRESS TWO FACTS IN THE PRETRIAL SERVICES REPORT THAT I BELIEVE ARE IN ERROR. I UNDERSTAND THAT MR. HILL, WHO WAS THE PERSON WHO (INAUDIBLE) IS NOW PRESENT. I DID SPEAK WITH THE PRETRIAL SERVICES OFFICER WHO (INAUDIBLE) THE REPORT, BUT HE WAS UNABLE TO TELL ME THE SOURCE OF THE INFORMATION.

THE TWO PIECES OF INFORMATION IS FIRST OF ALL ON PAGE 5 AND IS (INAUDIBLE) SUPPLEMENTAL REPORT. UNDER (INAUDIBLE) THE EXPENDITURES ON THE RIGHT-HAND SIDE COLUMN.

THE COURT: RIGHT.

MR. GENEGO: THERE'S A RED FIGURE OF \$29,000 WHICH GIVES (INAUDIBLE) A VERY NEGATIVE BALANCE (INAUDIBLE). THEY OWN THE BUILDING. HIS COMPANY OWNS THE BUILDING. THEY DON'T

PAY RENT AT ALL, AND SO I ASKED (INAUDIBLE) CHOE, WHO'S PRESENT IN COURT WITH HIS MOTHER AS WELL, ABOUT THAT FIGURE; AND HE DOESN'T KNOW WHERE IT CAME FROM. MR. CHOE DOESN'T KNOW WHERE IT COME FROM. THEY ACTUALLY RECEIVE RENT EVERY MONTH. IN ANY EVENT, I DON'T THINK IT WOULD ON HIS PERSONAL BALANCE [5] SHEET BECAUSE IT COMES THROUGH THE COMPANY. BUT THAT'S ONE THING.

THE COURT: ALL RIGHT. I'LL ACCEPT THAT AS ACCURATE. I'LL ACCEPT YOUR RESTATEMENT, AND IT REALLY DOESN'T MAKE A WHOLE LOT OF SENSE IN LIGHT OF EVERYTHING ELSE THAT I'VE BEEN PRESENTED SO—

MR. GENEGO: AND THEN ON PAGE 7—THIS WOULD BE AT THE END OF THE FIRST PARAGRAPH UNDER SUMMARY, SLASH, (INAUDIBLE)—THE SENTENCE READS HE HAS A WIFE AND SON, WHO ALSO RESIDE IN THE DISTRICT, PERIOD. IN ADDITION HE HAS EXTENSIVE FINANCIAL HOLDINGS IN THIS DISTRICT AS WELL AS KOREA. I HONESTLY DON'T KNOW WHAT THE SOURCE OF THAT LAST PHRASE IS, "AS WELL AS KOREA." I'VE SPOKEN WITH MR. CHOE. I'VE SPOKEN WITH HIS FAMILY (INAUDIBLE). HE DOES NOT OWN ANYTHING IN KOREA, AND I CAN'T FIND OUT WHAT THE SOURCE OF THAT WAS. BUT I BELIEVE BASED ON WHAT I'VE BEEN TOLD THAT HE DOESN'T OWN ANYTHING IN KOREA.

THE COURT: OKAY. DO YOU HAVE ANY INFORMATION, MR. O'BRIEN, IF HE OWNS ANYTHING IN KOREA?

MR. O'BRIEN: I HAVE NO INFORMATION EITHER WAY WITH RESPECT TO (INAUDIBLE).

THE COURT: OKAY. SO HAVE YOU HAD ANY DIRECT CONTACT WITH KOREAN OFFICIALS IN THIS CASE?

MR. O'BRIEN: NOT PERSONALLY, YOUR HONOR. THE [6] CONTACT (INAUDIBLE) OUR OFFICE OF IMMIGRATION (INAUDIBLE).

THE COURT: OKAY. THANK YOU, SIR.

LET ME SAY A COUPLE OF THINGS, YOU KNOW, IN LOOKING AT THIS PARTICULAR CASE. IN AN ORDINARY BAIL SITUATION, THERE'S NO DOUBT IN MY MIND THAT THERE ARE CONDITIONS OR COMBINATION OF CONDITIONS THAT WILL ENSURE THIS DEFENDANT'S APPEARANCE IN COURT, OKAY? THERE'S SUFFICIENT SURETIES, THERE'S TIES TO COMMUNITY, THERE'S NO PRIOR CRIMINAL RECORD. ALL OF THE FACTORS WHICH ARE ARTICULATED IN SECTION 3142 WEIGH IN FAVOR OF THIS DEFENDANT. IT'S AN ECONOMIC CRIME. IT DOESN'T POSE A DANGER TO THE COMMUNITY. THERE'S NOT EVEN -- FROM WHAT I UNDERSTAND, THERE'S NOT EVEN CHARGES -- HAVE BEEN FILED WHICH IS EVEN MORE INTERESTING.

WHAT I'M DEALING WITH HERE IS THE STATUTORY AND THE CASE LAW REQUIREMENT OF SPECIAL CIRCUMSTANCES. THIS ISSUE HAS COME UP IN OTHER EXTRADITION-TYPE CASES. SO REALLY THE FOCUS FOR ME IN THIS HEARING IS WHAT DOES THAT MEAN AND WHAT SPECIAL CIRCUMSTANCES EXIST IN THIS CASE. AND I'VE READ—I HAVEN'T—I'VE READ YOUR BRIEFS. I HAVEN'T READ THE CASES THAT HAVE BEEN CITED IN YOUR BRIEFS. BUT THE, YOU KNOW, THE PROBLEM APPEARS TO ME OF SPECIAL CIRCUM-



STANCES IS FAIRLY—IS PRETTY NARROWLY DEFINED BY THE COURTS WHICH REALLY TIES THE [7] HANDS OF SOMEONE HERE WHO'S LOOKING AT THE FACTS IN THIS PARTICULAR CASE AND SAYING ORDINARILY I'D SET A BOND, WHICH I WOULD.

SO THAT'S THE FRAMEWORK OF WHERE MY THINKING IS ON THIS, SO I'M GOING TO ASK COUNSEL, BOTH COUNSEL, TO ADDRESS THIS. OKAY.

MR. GENEGO: THANK YOU, YOUR HONOR. VERY HELPFUL.

EVEN THE GOVERNMENT'S BRIEF I THINK STATES THAT THE PRESUMPTION AGAINST BAIL THAT IS REFERRED TO AS THE SPECIAL CIRCUMSTANCES REQUIREMENT IS BASED ON THE NOTION THAT WE WANT TO BE ABLE TO FULFILL OUR (INAUDIBLE) CASE THAT BOTH THE GOVERNMENT AND I CITE, AND THE GOVERNMENT MAKES THAT POINT, AND I THINK IT'S A GOOD ONE. THE DISCONNECT, IF YOU WILL, BETWEEN THAT STATEMENT AND A SPECIAL CIRCUMSTANCES IS THAT, WELL, IF THAT IS WHAT YOU'RE UNDERLYING PURPOSE WAS IN REQUIRING SPECIAL CIRCUMSTANCES YOU WOULD THINK THAT THE SPECIAL CIRCUMSTANCES WOULD SOMEHOW RELATE OR TIE BACK TO THE DEGREE OF CERTAINTY THE PERSON WHO IS GOING TO NOT FLEE. BUT THERE DOES SEEM TO BE A DISCONNECT THERE BECAUSE THEY THEN GO ONTO SAY THAT THAT'S SOMETHING YOU NEED IN ADDITION TO SPECIAL CIRCUMSTANCES. SO IF YOU THINK ABOUT WHY IT CAME ABOUT, I THINK THAT YOU LOOK TO FLIGHT AND THAT WOULD BE SATISFIED HERE. BUT IF THERE'S [8] (INAUDIBLE) CASE ADDRESS THAT, THERE IS ONE SERVING CASE IN

WHICH THE OPINION HAS BEEN WITHDRAWN WHERE THEY WENT THROUGH THE ENTIRE HISTORY OF THE SPECIAL CIRCUMSTANCES (INAUDIBLE).

THE COURT: I REMEMBER THAT (INAUDIBLE).

MR. GENEGO: EXACTLY. AND I ACTUALLY HANDLED THAT CASE (INAUDIBLE).

THE COURT: I THOUGHT YOU DID.

MR. GENEGO: I'M VERY FAMILIAR WITH (INAUDIBLE). IT'S WITHDRAWN OPINIONS, BUT I DID NOT CITE IT.

THE COURT: UH-HUH.

MR. GENEGO: BUT IT DOES HAPPEN ENTIRE HISTORY. THE COURT: I REMEMBER IT'S A CASE BEING OUT THERE THE LAST TIME I DID THIS, BUT I COULDN'T FIND IT SO—

MR. GENEGO: WELL, WHAT HAPPENED WAS THAT MR. PARADE [PHONETIC] FORTUNATELY DECIDED TO GO BACK TO ITALY AND (INAUDIBLE)—

THE COURT: OKAY. WE'RE NOT GOING TO "FLED;" RIGHT?

MR. GENEGO: NO. HE GOT (INAUDIBLE) DUE TO WORK (INAUDIBLE).

THE COURT: OKAY. ALL RIGHT.

MR. GENEGO: SO—WHICH IS UNIMPORTANT.

[9] BUT BE THAT AS IT MAY, IT DOES HAVE A VERY HELPFUL DISCUSSION OF THE HISTORY OF THE SPECIAL CIRCUMSTANCES TEST.

IN THIS CASE I THINK THAT WE DO HAVE SPECIAL CIRCUMSTANCES. I THINK THE COURTS

HAVE COME TO LOOK UPON THIS IN A MORE SORT OF COMMON SENSE WAY. IT STARTED BACK IN 1912, THE U.S. SUPREME COURT CASE, AND THEN HAD NEVER REALLY BEEN EXAMINED CAREFULLY ABOUT WHY WE REQUIRE THIS AND THAT SORT OF DISCONNECT THAT I MENTIONED BEFORE.

BUT I THINK IF YOU LOOK AT THE DISTRICT COURT CASES, THEY HAVE COME TO REALIZE THAT WHAT WE'RE LOOKING AT HERE IS REALLY OUR ABILITY TO SATISFY THE TREATY OBLIGATION AND HAVE NOT BEEN AS RIGOROUS AND PERHAPS (INAUDIBLE) EARLIER YEARS ABOUT HAVING SOME SORT OF DEFINING OR INCREDIBLY SIGNIFICANT SPECIAL CIRCUMSTANCE AND THAT REALLY I THINK WE'VE CITED THE CASE WHERE THEY SAY IT DOESN'T MATTER IF THERE'S WEAK SPECIAL CIRCUMSTANCES AS LONG AS THERE ARE SPECIAL CIRCUMSTANCES. AND IT'S WITH THAT FRAMEWORK THAT I THINK THE COURTS HAVE COME TO ADDRESS THIS BECAUSE WHEN YOU THINK ABOUT IT, THE CRIME IN THIS CASE—AND I'M GOING TO GET BACK TO THAT IN THE MOMENT—HAPPENED BACK IN THE EARLY '90S. HE'S BEEN LIVING IN THE UNITED STATES SINCE THE '70S. HE HAS NOT TRAVELED OUTSIDE THE [10] COUNTRY SINCE 1997, AND HE'S A BUSINESSMAN. HE'S A SUCCESSFUL MAN, AND ALL OF A SUDDEN ONE DAY WITHOUT ANY PRIOR CRIMINAL RECORD HE GETS PULLED OUT OF HIS HOUSE EARLY IN THE MORNING LOCKED IN HANDCUFFS, AND HE CAN'T EVEN PUT ON HIS READING GLASSES THIS MORNING BECAUSE HE'S HANDCUFFED, AND WE HAD TO DO IT FOR HIM. SO WHEN YOU THINK OF WHAT THAT REALLY DOES TO SOMEONE JUST BECAUSE IT'S AN EXTRADITION CASE. AND THAT'S A PRETTY DRASTIC DEPRAVATION OF LIBERTY

THA  
THA  
BEC

SO  
STA  
MO  
WO  
WA  
SPE

E  
A  
ER  
EV  
WE  
HA  
FO  
CC  
IT'  
TE  
DC  
EL  
W.  
M.  
Ba  
M  
Yo  
D.  
TI  
A  
M  
W  
G  
C  
L

THAT SOMEONE UNDERGOES FOR SOMETHING THAT HAPPENED A LONG TIME AGO SIMPLY BECAUSE IT'S ANOTHER COUNTRY.

SO I THINK COURTS HAVE COME TO UNDERSTAND THAT YOU HAVE TO LOOK AT THIS IN A MORE PRACTICAL WAY, AND CERTAINLY THE WORLD IS A FAR DIFFERENT PLACE NOW THEN IT WAS IN 1912 WHEN THEY CAME UP WITH THE SPECIAL CIRCUMSTANCES TEST.

BE THAT AS IT MAY, I THINK THAT WE DO HAVE A HEALTH PROBLEM HERE, AND THE GOVERNMENT SAYS, WELL, WE DON'T HAVE ANY EVIDENCE THAT HIS HEALTH IS DETERIORATING. WELL, THAT'S SORT OF A CATCH 22 BECAUSE HE HAS FILED AND SUBMITTED A MEDICAL REQUEST FOR A MEDICAL EXAM BECAUSE HE HAS TOLD HIS COUNSELOR THAT HE'S GOT A BACK PROBLEM. IT'S BECOME MUCH WORSE. IT'S NOT SOMETHING THAT HE'S MADE UP. I MEAN, THERE'S DOCUMENTED MEDICAL REPORTS—AND WE CAN ELABORATE UPON THOSE, BUT [11] I JUST DIDN'T WANT TO SUBMIT THE ENTIRE HISTORY OF HIS MEDICAL RECORDS. BUT HE HAS A DOCUMENTED BACK CONDITION, AND IT IS NOT A I THINK TOO MUCH OF A STRETCH TO BELIEVE THAT WHEN YOU'RE IN CUSTODY IN THE METROPOLITAN DETENTION CENTER AND YOU'RE NOT GETTING TREATMENT, YOU'RE NOT GETTING EXERCISE, AND YOU'RE PROBABLY HAVE NOT A VERY GOOD MATTRESS PLUS YOU'RE PRETTY STRESSED I WOULD BELIEVE THAT YOUR BACK CONDITION IS GOING TO GET WORSE. AND SO IT'S A MEDICAL CONDITION, AND I THINK THE (INAUDIBLE) AT LEAST HIS REPORTING TO THE OFFICIALS AT MDC

IS CONFIRMATION THAT HIS BACK HAS DETERIORATED. THAT'S A SPECIAL CIRCUMSTANCE.

THE GOVERNMENT ALSO DISPUTES OUR CLAIM THAT A PERSON'S CHARACTER OR BACKGROUND CAN ESTABLISH A SPECIAL CIRCUMSTANCE AND THERE ARE CASES WHICH SUGGEST THAT AT LEAST THE (INAUDIBLE)—

THE COURT: SUGGEST WHAT? WHICH WAY?

MR. GENEGO: THAT CHARACTER MAY BE CONSIDERED. I THINK THE MOLINA [PHONETIC] CASE THAT I CITED. AND I THINK WHAT THEY SAY IS THAT STANDING ALONE PROBABLY NOT ENOUGH, BUT IT'S CERTAINLY SOMETHING THAT THE COURT CAN TAKE INTO CONSIDERATION, AND IN THAT SPIRIT I WOULD OFFER IT AS IN THIS CASE AS WELL BECAUSE I THINK IT DOES PLAY THAT ROLE. HERE'S SOMEONE WHO'S BEEN IN THIS COUNTRY SINCE 1997—

[12] THE COURT: BEFORE THAT; RIGHT? HE'S BEEN IN THE COUNTRY SINCE 1970.

MR. GENEGO: 1970. THAT'S RIGHT.

THE COURT OKAY.

MR. GENEGO: I MISQUOTED. 1970.

HE'S GOT A FAMILY. HE'S APPLIED TO BE A U.S. CITIZEN. HIS WIFE AND HIS SON ARE BOTH U.S. CITIZENS, AND HE HAS BECOME A VERY SUCCESSFUL PERSON OF THE COMMUNITY. AND HE— HIS LOVE FOR THIS COUNTRY IS DEMONSTRATED BY THE WORK HE'S DONE HERE, THE SUCCESS HE'S MADE, THE PROPERTY THAT HE'S OWNED, AND THE BURIAL CITE, AND HE WANTS TO BRING HIS RELATIVES OVER FROM KOREA TO COME BACK HERE AND BE BURIED. AND I'M SURE AS THE

COURT SAW THAT WAS NO SMALL EXPENDITURE THAT THEY PAID FOR THAT GRAVESITE, AND IT'S A PRETTY MAGNIFICENT LOCATION, AND THAT IS ALSO ANOTHER SPECIAL CIRCUMSTANCE THAT I LISTED HERE. AND THE GOVERNMENT SAYS WE HAVE NO AUTHORITY FOR THAT, BUT IN FACT THE CASES SAY THAT THE LIST OF SPECIAL CIRCUMSTANCES IS NOT FINITE THAT EACH CASE IS DIFFERENT AND IF THERE'S SOMETHING THAT IS REALLY EXTRAORDINARY OR SPECIAL ABOUT A CASE, YOU CAN DO THAT. AND I THINK THE GRAVESITE IS CERTAINLY THAT. WHAT GREATER ASSURANCE COULD ONE HAVE THAT THEY ARE NOT GOING TO BE FLEEING THE UNITED STATES THAN TO PUT CLOSE TO THREE QUARTERS OF A MILLION DOLLARS INTO A BURIAL [13] SITE HERE. THIS IS A PRETTY STRONG—AND THIS IS BEFORE HE KNEW ANY ABOUT THIS OF COURSE. IT'S A PRETTY STRONG TESTAMENT TO SOMEONE'S COMMITMENT TO THE COMMUNITY AND NOT FLEE, AND I THINK WOULD GET TO THE HEART THE SPECIAL CIRCUMSTANCES REPORT WHICH IS TO MAKE SURE THAT HE'S GOING TO BE AVAILABLE TO SURRENDER.

ANOTHER SPECIAL CIRCUMSTANCE HERE THAT RELATES TO THAT I SUPPOSE IS EVEN ACCORDING TO THE KOREAN GOVERNMENT HE FLED TO THE UNITED STATES. SO THIS IS WHERE HE WANTS TO BE, NOT KOREA. SO THAT'S ANOTHER FACTOR THAT I THINK PLAYS HERE IN HIS FAVOR MAYBE MORE THAN THE (INAUDIBLE) AREA, BUT NEVERTHELESS IT'S SOMETHING THAT'S ATYPICAL.

THE COURT: LET ME ASK A QUESTION BECAUSE I'M NOT THAT FAMILIAR WITH THE ALLEGATIONS OF THE UNDERLYING CRIMINAL CONDUCT IN

KOREA. WAS HE THERE—WAS HE LIVING THERE AT THE TIME OR, YOU KNOW, WORKING ON THE DEALS OR WAS HE THERE VISITING AND THEN CAME BACK HOME? I MEAN, THERE'S THIS—YOU KNOW, THE GOVERNMENT CAN SAY FLED. DEFENDANT CAN SAY CAME BACK HOME; ALL RIGHT? SO—

MR. GENEGO: THAT'S PRECISELY THE POINT. AND LET ME GET TO THAT POINT BECAUSE I WANT TO TALK ABOUT IT.

THE COURT: ALL RIGHT.

[14] MR. GENEGO: (INAUDIBLE) MR. O'BRIEN CAN AND I'M SURE WILL CORRECT ME IF I MISSPEAK, BUT THIS IS MY UNDERSTANDING OF WHAT THE ALLEGATIONS ARE:

HE'S BEEN LIVING HERE AND HAS HAD A GREEN CARD SINCE 1970. HE CONTINUES TO DO SOME BUSINESS IN KOREA, WHICH HE HAS NOW ENDED. AND IN THE LATE '80S KOREA SAID THEY WERE GOING TO DEVELOP THIS HIGH-SPEED RAIL SYSTEM AND IT WAS GOING TO BE PUT OUT FOR BID. THERE WERE THREE COMPANIES THAT WERE IN THE BID. ONE WAS A FRENCH COMPANY, WHO IS (INAUDIBLE); THERE WAS ALSO THE JAPANESE COMPANY, MITSUBISHI; AND THEN THERE WERE THE GERMAN COMPANY, (INAUDIBLE); ALL OF WHOM WERE GOING TO BID.

THE PRESIDENT OR SOMEONE ASSOCIATED WITH (INAUDIBLE) CAME TO MEET A KOREAN WOMAN WHO WENT TO A FORTUNE TELLER, AND THIS WAS IN THE (INAUDIBLE). AND THEY—THE FORTUNE TELLER SAID SHE SHOULD GO TO MR. CHOE AS THE PERSON TO TALK TO ABOUT BEING YOUR LOBBYIST.

THE COURT: I'M SORRY. YOU KNOW, THIS IS A BILLION DOLLAR DEAL, AND WE'RE DEALING WITH FORTUNE TELLERS HERE SO—

MR. GENEGO: WELL, THAT'S HOW IT—

THE COURT: ALL RIGHT.

MR. GENEGO: THAT'S HOW IT COMES ABOUT.

THE COURT: OKAY.

[15] MR. GENEGO: THAT'S HOW THE RELATIONSHIP BEGINS.

THE COURT: OKAY.

MR. GENEGO: FROM THE FORTUNE TELLER. AND MAYBE SHE KNEW MORE THAN FORTUNES OR MAYBE SHE DID KNOW THE FORTUNES, BUT SHE SAID THIS IS THE MAN THIS IS YOU WANT TO SPEAK, MR. CHOE. SO THIS IS BACK IN 1992, '93 WHEN THEY BEGIN TO—HE BEGINS TO LOBBY, AND AS FAR AS I KNOW, NO ONE SAYS THAT'S A CRIME. AND IT'S CERTAINLY NOT A CRIME HERE, BUT THEY'RE CUTTING BACK A LITTLE BIT. AND IT'S CERTAINLY NOT A CRIME IN KOREA, AND NO ONE ALLEGES THAT THAT'S A CRIME.

WHAT HAPPENS IS HE MAKES AN ARRANGEMENT WITH (INAUDIBLE), WHICH IS THE FRENCH COMPANY, WHERE IF THEY GET THE DEAL, HE GETS 1 PERCENT. STRAIGHT UP. NO ONE DISPUTES THAT. THEY GET THE DEAL, HE GETS 1 PERCENT. IT'S A \$11 MILLION.

(INAUDIBLE) CONTACT. THEY WIRE THAT MONEY FROM THEIR ACCOUNT IN FRANCE TO HIS ACCOUNT IN HONG KONG UNDER HIS NAME, AND HE THEN TAKES SOME OF THAT MONEY AND WIRE TRANSFERS IT TO THE WOMAN WHO FIRST CONTACTED HIM ABOUT THE DEAL, AND I THINK



THAT I MAY HAVE THAT PERSON (INAUDIBLE), BUT HE SPLITS—PARTIALLY SPLITS THAT COMMISSION WITH SOMEONE ELSE. HERE'S WHERE THAT ALLEGED CRIME (INAUDIBLE).

[16] NOW, ALL OF THOSE TRANSFERS ARE DOCUMENTED IN THE PAPERWORK. WE HAVE BANK RECORDS. WE HAVE WIRE TRANSFERS. WE HAVE AMOUNTS. THEY ARREST THE WOMAN I BELIEVE AND ALSO QUESTION THE MAN FROM (INAUDIBLE). THEY ALSO QUESTION MR. CHOE AT ONE POINT.

DURING THOSE CONVERSATIONS, THE WOMAN I BELIEVE SAYS THAT PART OF THEIR PLAN WAS TO PAYOFF ONE OF THE LEGISLATURES SO THAT THEY WOULD BE—FAVORABLE ACTION WAS TAKEN ON BEHALF OF (INAUDIBLE) RATHER THAN THE OTHER TWO COMPANIES. AND THEY IDENTIFIED—SHE IDENTIFIED THE NAME OF THE LEGISLATURE, AND HIS NAME I THINK IS SPELLED HWANG, H-W-A-N-G, I BELIEVE. AND SO THE ALLEGATION AND THEN ALLEGED CRIME IS THAT HE PAID 400,000 WON TO MR. HWANG AND THAT'S THE CRIME. NOT THE LOBBYING, NOT THE SPLITTING OF THE COMMISSION BUT THE \$400,000 (INAUDIBLE).

NOW, INTERESTINGLY—AND AGAIN MR. O'BRIEN WILL CORRECT ME IF I'M WRONG—THERE'S NO SOURCE OF THAT PAYMENT. I MEAN, IT SAID IN THE PAPERS IN THE PROSECUTOR'S SUMMARY THAT MR. HWANG AND DIFFERENT FAMILY MEMBERS GOT DIFFERENT PAYMENTS AMOUNTING TO \$400,000 IN WON, BUT IT'S UNCLEAR WHO PROVIDED THAT INFORMATION AND THERE'S NO DOCUMENTS THAT SUPPORT THAT PART OF THE ALLEGATIONS, WHICH IS REALLY THE CRIME. THE OTHER STUFF IS NOT THE CRIME, WHICH IS DOCUMENTED.

[17]  
THE  
MA'  
THE  
SEN  
WH  
AD.  
TH  
WE  
AN  
ST,  
FO  
PA  
GC  
RE  
BE  
IN  
40  
SC  
W  
I'  
D  
C  
O  
N

C  
U  
C  
F  
T  
V  
C  
I

[17] NOW, ANOTHER INTERESTING THING IS THAT THE TWO PEOPLE WHO PROVIDED THE INFORMATION AND ADMITTED THEY WERE INVOLVED IN THE SCHEME, THEY BOTH GET SUSPENDED SENTENCES. MR. HWANG, WHO'S THE POLITICIAN WHO SUPPOSEDLY GOT THE BRIBE WHO DOESN'T ADMIT IT, HE GETS FIVE YEARS. SO THAT'S— THAT'S ONE—THAT'S THE FIRST CRIME. THAT'S WHERE THE (INAUDIBLE) TO GET THE CONTRACT. AND ON THAT I THINK THAT WE HAVE SUBSTANTIAL LIKELIHOOD OF PREVAILING NOT ONLY FOR THE REASONS THAT I MENTIONED IN MY PAPERS ABOUT THERE BEING NO (INAUDIBLE). BUT GOING BACK OVER THIS, I THINK THAT THERE'S A REAL QUESTION ABOUT PROBABLE CAUSE THERE BECAUSE WE DON'T KNOW THE SOURCE OF THE INFORMATION FOR THE PAYMENT OF \$400,000— 400,000 WON. AND IF IT TURNS OUT THAT THE ONLY SOURCE OF THAT INFORMATION IS THE PEOPLE WHO GOT PROBATION, THERE IS CASE LAW—AND I'LL BRIEF THIS TO THE COURT LATER ON—THAT DOES SAY THAT THE COURT CAN MAKE A CREDIBILITY DETERMINATION, AND I THINK IT'S OBLIGATED TO MAKE A CREDIBILITY DETERMINATION.

SO WE WOULD HAVE TO FIND OUT THE SOURCE OF THAT INFORMATION, AND IF THERE'S DOCUMENTARY RECORDS OF THAT, THEN I STAND CORRECTED. BUT I HAVE NOT SEEN THEM IN THE PAPERS THAT I'VE GONE THROUGH SO FAR. AND IF THAT REMAINS TO BE THE CASE, THEN I THINK WE'VE GOT A SERIOUS ISSUE ABOUT PROBABLE CAUSE. THAT'S ONE CRIME.

[18] THE SECOND CRIME IS HOW THIS WHOLE THING COMES ABOUT SUPPOSEDLY. AND THAT IS

IN 1997. I BELIEVE SOMEONE LOOKED AT A LARGE WIRE TRANSFER GOING INTO HIS ACCOUNT IN HONG KONG. AND THEY WANT TO—THEY THINK IT'S DRUG MONEY BECAUSE IT'S HONG KONG, IT'S 1997, IT'S OVER A MILLION DOLLARS. THEY BEGIN AN INVESTIGATION INTO THAT MONEY. AND THE CRIME THAT OCCURRED THERE SUPPOSEDLY IS THAT MR. CHOE AND THIS OTHER WOMAN WHO WAS INVOLVED IN THE ORIGINAL NEGOTIATIONS SUPPOSEDLY PAYOFF ONE OF THE POLICE OFFICERS TO CLOSE THE INVESTIGATION. AND AGAIN I DON'T SEE ANY DOCUMENTS SUPPORTING THE PAYMENT TO THE POLICE OFFICER. THERE WAS THE ALLEGATION THAT PAYMENTS WERE MADE TO CLOSE DOWN THE INVESTIGATION, BUT—

THE COURT: THIS IS THE—IS—DOES THE PEOPLE'S REPUBLIC OF CHINA OR HONG KONG HAVE EXTRADITION PROCEEDINGS? I MEAN, HOW WOULD THAT BE A KOREAN—

MR. GENEGO: WELL, I THINK WHAT THE IDEA WAS THAT HE PAID THEM OFF IN THE KOREA EVEN THOUGH THE MONEY WENT INTO THE—

THE COURT: OKAY. ALL RIGHT.

MR. GENEGO: —(INAUDIBLE.) I THINK THEY ASSERTED JURISDICTION OVER THE PAYMENT MAYBE BECAUSE WHEN HE CAME INTO THE WOMAN IT WAS \$3 MILLION AND THAT'S HOW THEY GOT TO—I DON'T KNOW THE (INAUDIBLE) —

THE COURT: ALL RIGHT. OKAY.

[19] MR. GENEGO: (INAUDIBLE.)

THE COURT: BUT THAT IS PART OF THE KOREAN INVESTIGATION?

MR. GENEGO: THAT'S EXACTLY RIGHT. I SHOULD HAVE MADE THAT CLEAR.

THE COURT: ALL RIGHT.

MR. GENEGO: IT WAS (INAUDIBLE) HONG KONG AUTHORITIES THAT WERE MAKING THIS.

THE COURT: OKAY.

MR. GENEGO: IT WAS THE KOREAN AUTHORITIES WHO WERE MAKING THE INVESTIGATION. AND ONE THING I DO REMEMBER FROM THE PAPERS IS THAT IT'S SOMEONE ASSOCIATED WITH THE (INAUDIBLE).

THE COURT: OKAY.

MR. GENEGO: SO MAYBE (INAUDIBLE). IN ANY EVENT THE ALLEGATION IS THAT HE PAYS OFF A POLICE OFFICER IN KOREA TO SHUT DOWN THE INVESTIGATION AND TO HAVE IT END THERE. AND THAT AGAIN I DON'T THINK IS SUPPORTED BY ANY DOCUMENTS, AND WE DON'T REALLY KNOW THE SOURCE THE INFORMATION OTHER THAN THE WOMAN WOULD GOT PROBATION. THAT'S MY UNDERSTANDING OF HOW IT IS. AS I SAID, I WANT TO BE CAREFUL OF THAT. I DO NOT CONSIDER MYSELF TO HAVE GONE THROUGH THESE PAPERS AS CAREFULLY AS I WOULD HAVE LIKED BEFORE MAKING THESE CERTIFICATIONS, BUT I'M FAIRLY CONFIDENT THAT THEY ARE SUPPORTED BY THE [20] PAPERS AS I SAID I'M SURE MR. O'BRIEN WILL CORRECT ME.

THE THIRD CRIME IS LEAVING THE COUNTRY AGAINST THE PROHIBITION. AND THERE'S TWO PROBLEMS WITH THAT, AND THE REASON I THINK WE HAVE A SUBSTANTIAL LIKELIHOOD AS TO PREVAILING AS TO THAT PARTICULAR CRIME IS

THAT THIS IS ON PAGE 98 OF THE GOVERNMENT'S FORMAL PAPERS. IT'S THE ACTUAL PROHIBITION AGAINST DEPARTURE. HIS DEPARTURE WAS PROHIBITED FOR ONE MONTH. IT SAYS RIGHT HERE SEPTEMBER 28, 1999, TO OCTOBER 27, 1999. AND THERE'S NOTHING ELSE TO SAY IT EXTENDED BEYOND THAT. SO I DON'T THINK THERE'S ANY PROHIBITION AGAINST HIM LEAVING AFTER THAT TIME. IF THE CRIME IS THAT HE LEFT WITHOUT A PASSPORT BECAUSE THEY DID CONFISCATE HIS PASSPORT WHICH ALSO MEANS THAT HE CAN'T TRAVEL (INAUDIBLE) BUT IF THAT'S THE CRIME, THEN I THINK THERE'S A DUAL CRIMINALITY PROBLEM BECAUSE I DON'T THINK THAT THERE'S A U.S. CRIME THAT SAYS LEAVING THE COUNTRY IS A—

THE COURT: WAS HE CARRYING A KOREAN PASSPORT?

MR. GENEGO: PARDON?

THE COURT: HE WAS CARRYING—HE HOLDS A KOREAN PASSPORT?

MR. GENEGO: (INAUDIBLE.)

THE COURT: SOME KOREAN PASSPORT?

MR. GENEGO: (INAUDIBLE) AT THE TIME. THE [21] ALLEGATION IS THAT HE LEFT THE COUNTRY SOMEHOW WITHOUT A PASSPORT.

THE COURT: OKAY.

MR. GENEGO: AND I DON'T KNOW THAT IT'S—I DON'T THINK IT'S A CRIME AT LEAST AS FAR AS I KNOW IT'S NOT A CRIME TO LEAVE THE UNITED STATES WITHOUT A PASSPORT. YOU CAN CERTAINLY GO TO MEXICO WITHOUT A PASSPORT. YOU CAN GO TO CANADA WITHOUT A PASSPORT.

IT'S HARD TO GET PLACES THERE AFTER YOU DO THAT, BUT I DON'T KNOW THE U.S. CRIME LIKE THAT AND IF SO THERE'S NO DUAL CRIMINALITY. SO I THINK AS TO THAT PARTICULAR PROBLEM, YOU'VE GOT BOTH THE PERIOD OF DEPARTURE ONLY LASTING A MONTH AND THEN YOU ALSO HAVE THE DUAL CRIMINALITY PROBLEM.

AS TO THE OTHER TWO CRIMES, YOU'VE GOT THE QUESTION ABOUT PROBABLE CAUSE AS WELL AS THIS NOT BEING—THERE BEING NO CHARGES FILED ACTUALLY IN KOREA. SO I THINK ALL OF THOSE THINGS CERTAINLY MAKE THIS A CASE IN WHICH—

THE COURT: SO LET ME ASK THIS: IS IT YOUR ARGUMENT THAT THE WEIGHT OF THE EVIDENCE MIGHT BE A SPECIAL CIRCUMSTANCE?

MR. GENEGO: I THINK THAT IT IS AND I THINK THAT SOLARO [PHONETIC], WHICH IS A NINTH CIRCUIT (INAUDIBLE) —

[22] THE COURT: YEAH.

MR. GENEGO: —WHERE THEY TALK ABOUT SUBSTANTIAL LIKELIHOOD IS SOMETHING THAT SHOULD BE—AND IT MAKES SENSE BECAUSE IF THERE IS SOMETHING SERIOUSLY WRONG WITH THE CHARGES EVEN FROM A PRELIMINARY VIEW, THAT WOULD CERTAINLY MAKE IT SEEM MORE FAIR AND RIGHT TO LOOK AT THE CASE DIFFERENTLY AND TO CONSIDER HIM FOR BAIL ASSUMING HE'S NOT A FLIGHT RISK AND A DANGER. SO I THINK THAT DOES MAKE A LOT OF SENSE.

THE OTHER THING THAT SEGUES INTO I BELIEVE IS THE PERIOD OF TIME OF HE'S GOING TO HAVE BE IN CUSTODY. THIS IS GOING TO BE I THINK A

LITTLE DIFFERENT THAN A LOT OF OTHER EX-TRADITION CASES IN THAT THERE'S GOING TO BE ISSUES ABOUT PROBABLE CAUSE, THERE'S GOING TO BE ISSUES ABOUT IMMUNITY, ABOUT DEALS MADE, WHY THESE PEOPLE GOT PROBATION AND THAT'S GOING TO BE—I THINK THAT THERE'S CASE LAW WHICH SUPPORTS THE PROPOSITION THAT WE HAVE THE RIGHT TO AT LEAST LIMITED DISCOVERY AND THAT THE COURT IS ENTITLED TO INFORMATION OR TO AID IN MAKING THE PROPER (INAUDIBLE) DETERMINATION.

SO I WOULD THINK THAT—THIS BASED ON MY EXPERIENCE ANYWAY—THIS IS GOING TO TAKE A LITTLE BIT OF TIME TO LITIGATE AND IS UNLIKELY TO BE RESOLVED IN FIVE MONTHS. BUT EVEN IF YOU JUST TAKE THE FIVE MONTHS, WHEN YOU CONSIDER SOMEONE LIKE MR. CHOE, WHO HAS NEVER [23] BEEN INVOLVED WITH CRIMINAL PROCEEDINGS—

THE COURT: HOW OLD IS MR. CHOE?

MR. GENEGO: 60—HE WAS BORN IN 19—

THE WITNESS: 65.

MR. GENEGO: 65, OKAY. I WASN'T SURE IF IT WAS 65 OR 66.

THE COURT: HE'S 65 YEARS OLD.

MR. GENEGO: 65 YEARS OLD.

THE COURT: OKAY.

MR. GENEGO: HE'S GOT NO CRIMINAL RECORD. HE'S AN OUTSTANDING BUSINESSMAN. I MEAN, FIVE MONTHS FOR SOMEONE LIKE THAT WHO'S GOT A BACK CONDITION IS A PRETTY DRASTIC AND SEVERE DEPRAVATION OF LIBERTY. AND I

KNOW THE GOVERNMENT SAYS, WELL, THE CASE IN WHICH THEY FOUND THAT WAS TWO YEARS. WELL, AGAIN I THINK EACH CASE HAS TO BE ADDRESSED ON ITS INDIVIDUAL MERITS, AND I THINK THAT FOR SOMEONE IN MR. CHOE'S CIRCUMSTANCE TO BE DETAINED IN THE METROPOLITAN DETENTION CENTER WITHOUT ANY CHANCE AT ALL EVEN IF WE COULD LOOK INTO THE FUTURE AND ACTUALLY KNEW THAT HE WAS GOING TO STAY HERE—AND I THINK THAT WE'VE COME PRETTY CLOSE TO THAT ALTHOUGH NOTHING IS EVER CERTAIN—HE STILL HAS TO SIT IN MDC FOR AT LEAST FIVE MONTHS, AND THAT IS A REAL SUBSTANTIAL DEPRAVATION OF HIS LIBERTY, AND I THINK THAT WOULD CONTRIBUTE TO THE COURT'S ABILITY TO FIND SPECIAL [24] CIRCUMSTANCES.

THE COURT: OKAY. MR. O'BRIEN.

MR. O'BRIEN: THERE'S A LOT TO RESPOND TO HERE, BUT I'D LIKE TO FIRST SIMPLY SAY THAT HALF OF WHAT (INAUDIBLE) HERE IS NOT DIRECTED (INAUDIBLE) PROCEEDINGS FROM PROFERS OF EVIDENCE THAT (INAUDIBLE) SUBMITTED TO THE COURT. AND THE EVIDENCE THAT'S BEFORE THE COURT NOW, WHICH I'D LIKE TO PROFFER NOW ARE THE COMPLAINT, AFFIDAVIT (INAUDIBLE) SUBMITTED TO THE COURT (INAUDIBLE) ARREST WARRANT. ALSO THE EXTRADITION PAPER THAT I FILED WITH THE COURT, THE RECENT SUPPLEMENTAL WARRANTS THAT I FILED WITH THE COURT, AND THE THREE (INAUDIBLE).

ALL OF THIS DISCUSSION (INAUDIBLE) COMING FROM DEFENSE COUNSEL ABOUT WHAT THE FACTS WERE (INAUDIBLE) IS NOT IN THE RECORD. NONE OF IT AND THE GOVERNMENT DOESN'T (INAUDI-



BLE) AND LITERALLY THAT WAS ABOUT HALF OF WHAT HIS ARGUMENT WAS BEFORE THE COURT IT DOESN'T EXIST FACTUALLY BEFORE THIS COURT. TAKING THE—

THE COURT: SO WHAT DOES EXIST FACTUALLY BEFORE THE COURT? HOW'S THE COURT EVALUATE IT?

MR. O'BRIEN: I COULD DO IT THIS WAY IN RESPONDING TO THE VARIOUS ARGUMENTS THAT DEFENSE COUNSEL HAS MADE, I COULD REFERENCE EVIDENCE THAT'S BEFORE THE COURT (INAUDIBLE).

THE COURT: WHICH IS THE—

[25] MR. O'BRIEN: THE AFFIDAVIT IN SUPPORT OF THE ARREST WARRANT.

THE COURT: UH-HUH.

MR. O'BRIEN: IT'S IN THE EXTRADITION PAPERS. THE COURT: RIGHT. OKAY.

MR. O'BRIEN: (INAUDIBLE), THE ARREST WARRANT, THE SUPPLEMENTAL ARREST WARRANT, AND OF COURSE THE PRETRIAL SERVICES REPORT.

THE FIRST ISSUE THAT WE'RE DISCUSSING HERE IS WHETHER THERE ARE SPECIAL CIRCUMSTANCES. I UNDERSTAND WHAT THE COURT'S TENTATIVE VIEW IS WITH REGARD TO FLIGHT RISK. I'D LIKE TO SPEAK TO THAT LATER.

THE COURT: I'LL LET YOU.

MR. O'BRIEN: BUT WITH RESPECT TO SPECIAL CIRCUMSTANCES, FIRST OF ALL THE LAW IS CLEAR, AND IT'S NOT GOING BACK TO 1912 (INAUDIBLE). THE SOLARO OPINION WAS ISSUED IN 1989. IT'S VERY CLEAR WHAT THE LAW IS IN THIS

CASE. SPECIAL CIRCUMSTANCES IS NOT FLIGHT RISK. (INAUDIBLE) COMPLETELY SEPARATE ISSUES. SOLARO ALSO INDICATED WHAT TYPE OF CIRCUMSTANCES WOULD CONSTITUTE SPECIAL CIRCUMSTANCES, AND IT'S SIMPLY NOT A PRESUMPTION FOR A BURDEN ISSUE. THE DEFENSE MUST SHOW THE SPECIAL (INAUDIBLE) SPECIAL CIRCUMSTANCES THAT EXIST OUT OF THE USUAL EXTRADITION CASE, AND THIS IS NOTHING BEYOND THE USUAL EXTRADITION CASE BECAUSE THE DEFENSE HAS NOT [26] POINTED OUT ANYTHING SPECIAL HERE. HE'S RELIED UPON FIVE THINGS AND FIVE THINGS ONLY IN HIS BRIEF.

THE FIRST ONE WAS (INAUDIBLE) ISSUE, AND THE GOVERNMENT STATES RIGHT NOW THAT THE GOVERNMENT BELIEVES THAT THERE'S AN EXAGGERATION OF THE DEFENDANT'S MEDICAL CONDITION FOR THE PURPOSES OF THE PROCEEDINGS. SO THOSE OF US WHO HAVE BACK INJURIES READ IN WHAT WAS SUBMITTED IN THE DOCTOR'S REPORT. THIS IS NOT A UNIQUE BACK SITUATIONS. BACK SITUATIONS ARE OFTEN CHRONIC, OFTEN CANNOT BE DEALT WITH, AND PEOPLE HAVE TO LIVE WITH THE PAIN ASSOCIATED WITH THAT. AND I REFERENCED IN THE REPORT WHERE THE DEFENDANT HAS BEEN ON SOMETIMES VICODIN (INAUDIBLE) PRESCRIPTION MEDICATION, SOMETIMES ASPIRIN (INAUDIBLE) TAKING OVER THE COUNTER. HE WAS GIVEN THE OPTION OF INVESTIGATING THE POSSIBLE OF SURGERY, AND HE ELECTED NOT TO PURSUE THAT. AND THEN FOR HIM TO SAY, BASED UPON COUNSEL'S REPRESENTATION AND ONLY COUNSEL'S REPRESENTATION, THAT IT'S MUCH MORE SEVERE NOW SINCE HIS ARREST AND SAY THAT IT'S NOT BEING ADEQUATELY TREATED (INAUDIBLE) PRISON,

THERE'S NO EVIDENCE BEFORE THIS COURT THAT IS NOT OR CANNOT BE ADEQUATELY TREATED BY THE BUREAU OF PRISONS. NONE WHATSOEVER. AND THAT'S NOT TO BAR DEFENSE COUNSEL FROM SUBMITTING DECLARATIONS FROM THE BUREAU OF PRISONS AS TO WHAT'S AVAILABLE (INAUDIBLE) FOR HIM BUT THE COURT KNOWS THAT THE BUREAU OF PRISONS [27] CAN PRESCRIBE THROUGH ITS DOCTORS MEDICATION SUCH AS VICODIN OR OTHER THINGS (INAUDIBLE) THE DEFENDANT TO HANDLE HIS CONDITION.

THE NEXT SPECIAL CIRCUMSTANCE (INAUDIBLE) IS THE CHARACTER AND FAMILY SUPPORT. I THINK I RESPONDED THAT (INAUDIBLE), BUT I DON'T THINK I CAN GO FURTHER THAN THAT THE THINGS THAT HE'S TALKING ABOUT ARE PERTINENT TO FLIGHT BUT THAT IS NOT A SPECIAL CIRCUMSTANCE. AND CASES THAT HE CITED ARE MUCH MORE EGREGIOUS SITUATIONS THAN WHAT WE HAVE HERE. THIS IS NOT AN UNUSUAL EXTRADITION MATTER.

FOR EXAMPLE, I THINK THE TYPICAL (INAUDIBLE) EXAMPLE IS OF DEFENDANT CITED U.S. VERSUS (INAUDIBLE), AND THAT'S SITUATION THE FUGITIVE WAS AN ORTHODOX JEW WHO COULD NOT CARRY ON HIS RELIGION IN THE BUREAU OF PRISONS. THAT WAS OBVIOUSLY A SITUATION THAT IS NOT PRESENT HERE. THE FACILITIES COULD NOT HANDLE THAT SITUATION. PLUS THERE WERE 434 COUNTS OF FRAUD INVOLVED IN THAT CASE, A VERY COMPLEX MATTER THAT WOULD REQUIRE LITIGATING INCREDIBLE AMOUNT OF SEPARATE ALLEGATIONS. THERE WERE QUESTIONS AS TO WHETHER OR NOT (INAUDIBLE) WERE EXTRADITED OR (INAUDIBLE)

QUESTIONS AS TO WHETHER SOUTH AFRICAN LAW WOULD PERMIT (INAUDIBLE) UNDER SUCH SITUATION UNLIKE THE SITUATION HERE WHERE WE (INAUDIBLE) AND THE GOVERNMENT IS ASKING FOR DETENTION. SO ALL OF [28] THESE CASES—AND I DON'T WANT TO REPEAT (INAUDIBLE)—BUT ALL OF THESE SITUATIONS ARE DRAMATICALLY DIFFERENT WITH WHAT THE DEFENDANT IS PROPOSING HERE WHICH IS THAT HE WELL-KNOWN IN THE COMMUNITY AND THAT HE'S GOT A (INAUDIBLE) CHARACTER AND THAT HE'S GOT A LOT OF MONEY AND HE'S SUCCESSFUL AND THINGS OF THAT SORT WHICH MIGHT BE PERTINENT TO FLIGHT RISK, BUT NOT PERTINENT TO SPECIAL CIRCUMSTANCE.

THE BURIAL SITE. AGAIN THAT WOULD BE AN ISSUE THAT WOULD BE PERTINENT TO FLIGHT RISK, BUT IT'S NOT A SPECIAL CIRCUMSTANCE.

THE COURT: I HAVE TO AGREE WITH THAT. THAT IS—THAT RELATES TO HIS TIES TO THE COMMUNICATE AND PROPERTY.

MR. O'BRIEN: THE LENGTH OF TIME IN CUSTODY. THE DEFENDANT HAS BEEN IN CUSTODY FOR SIX WEEKS, AND THERE ARE CASES IN WHICH TWO YEARS, THREE YEARS, YES, WOULD BE A LENGTHY PERIOD OF CUSTODY IN WHICH THE COURT HAS FOUND THAT'S A SPECIAL CIRCUMSTANCE. BUT WE'RE TALKING ABOUT SIX WEEKS NOW. AND AT THE TIME OF THE EXTRADITION HEARING, IT WILL BE APPROXIMATELY FOUR MONTHS. SO THAT'S NOT A SPECIAL CIRCUMSTANCE (INAUDIBLE)

AND THEN FINALLY WE HAVE A SUBSTANTIAL LIKELIHOOD OF PREVAILING ON THE MERITS WHICH THE [29] DEFENDANT DIDN'T (INAUDIBLE)

BUT TODAY IS SUBMITTING IT BASED UPON EVIDENCE THAT'S NOT BEFORE THE COURT.

WHAT IS BEFORE THE COURT IS THAT THERE WERE \$11 MILLION TRANSFERRED TO THE DEFENDANT IN KOREA IN SUPPORT OF HIS BRIBERIES AND THAT WAS THE DEFENDANT'S PROFIT. AND BY THE WAY, WHEN WE TALK ABOUT HOW SUCCESSFUL THE DEFENDANT IS, HE'S SUCCESSFUL PRIMARILY BECAUSE OF THE MONEYS THAT HE MADE THROUGH THE CON. AND I DON'T AGREE WITH THE CHARACTERIZATION OF DEFENSE COUNSEL THAT (INAUDIBLE) MUCH SMALLER PROFIT. HIS TIME ARGUING PROBABLE CAUSE IS AT THE EXTRADITION HEARING WHICH IS SCHEDULED FOR JUNE, AND THE GOVERNMENT WOULD BE PREPARED TO ANSWER ALL OF HIS ISSUES WITH REGARD TO PROBABLE CAUSE.

BUT ONE OF HIS ARGUMENTS WITH RESPECT TO PROBABLE CAUSE WAS THAT, WELL, THE WITNESSES AREN'T CREDIBLE. WELL, THAT'S NOT SOMETHING SHOULD BE INTO THE EQUATION AS TO PROBABLE CAUSE ESPECIALLY WHEN THREE PEOPLE IN THIS CASE WERE ARRESTED, THEY WERE INDICTED, THEY WERE FOUND GUILTY EITHER THROUGH A PLEA AGREEMENT OR THROUGH TRIAL, AND THEY WERE ALL SENTENCED. AND IT'S NOT SIMPLY PROBATIONARY SENTENCES (INAUDIBLE) COOPERATING PEOPLE. THE SENTENCES THAT WERE (INAUDIBLE) IN THIS CASE WERE THAT FOR (INAUDIBLE) 18 MONTHS OF IMPRISONMENT, A SUSPENSION OF HIS EXECUTION FOR TWO [30] YEARS. FOR (INAUDIBLE), FIVE YEARS OF IMPRISONMENT. FOR HWANG, TWO AND A HALF YEARS OF IMPRISONMENT AND SUSPENSION OF HIS EXECUTION FOR FOUR YEARS. AND

THERE IS SETTLEMENT PROCEDURES (INAUDIBLE) IN KOREA WHERE PEOPLE CAN PAY FINES IN EXCHANGE FOR PRISON TIME, AND I'M NOT SURE I UNDERSTAND HOW THE PROCESS ACTUALLY WORKS. THAT'S THE SYSTEM THAT THEY HAVE THERE, AND THAT'S THE WAY (INAUDIBLE) CASES WERE SETTLED AFTERWARD. BUT IT'S NOT SIMPLY A PROBATIONARY SENTENCE, AND IT'S NOT SIMPLY A QUESTION OF CRITICIZING THE CREDIBILITY OF THE WITNESSES. HE'LL HAVE A TRIAL IN KOREA WHERE HE'LL BE ABLE TO ARGUE TO TRY TO (INAUDIBLE) THE WITNESSES. NOW IS NOT THE TIME TO DO THAT. I WOULD ASK THE COURT TO (INAUDIBLE) ON THE ISSUE OF FINDING THAT THERE ARE SPECIAL CIRCUMSTANCES BASED UPON SUBSTANTIAL LIKELIHOOD OF PREVAILING UPON THE MERITS AT THE TIME MANY EXTRA-DITION HEARING WHICH IS SCHEDULED IN JUNE.

I WANT TO TALK A LITTLE BIT ABOUT THE FLIGHT RISK. THE DEFENDANT IS CHARGED NOT ONLY WITH BRIBING A GOVERNMENT OFFICIAL (INAUDIBLE), BUT HE'S ALSO CHARGED WITH BRIBING THE OFFICIALS (INAUDIBLE).

THE COURT: IN KOREA.

MR. O'BRIEN: IN KOREA.

THE COURT: OKAY.

MR. O'BRIEN: (INAUDIBLE) THAT HE BRIBED THE [31] CHIEF OF POLICE TO AVOID PROSECUTION AND THEN LATER WHEN ANOTHER PROSECUTOR WAS ASSIGNED TO THE CASE, THE CASE WAS RE-OPENED, WELL, THAT'S WHEN HE'S PROSECUTED. THE THIRD COUNT HAS TO DO WITH STOWING AWAY HIMSELF, SMUGGLING HIMSELF OUTSIDE THE COUNTRY. HE WAS ORDERED TO STAY IN

KOREA. HE TRIED TO VIOLATE THOSE ORDERS BY LEAVING THE COUNTRY AS A CONSEQUENCE HIS PASSPORT, HIS COMMUNITY PASSPORT WAS SEIZED. AND THEN BY MEANS UNKNOWN SOMEHOW HE WAS ABLE TO SMUGGLE HIS (INAUDIBLE) OUTSIDE THE COUNTRY WITHOUT ANY KIND OF TRAVEL DOCUMENTS AND INTO THE UNITED STATES WITHOUT ANY KIND OF TRAVEL DOCUMENTS. WE DON'T KNOW HOW HE DID THAT.

SO I THINK THE POINT I'M TRYING TO MAKE TO THE COURT IS WHAT LENGTH IS THE DEFENDANT WILLING TO DO TO AVOID PROSECUTION. AND IT'S EASY TO SAY, WELL, YOU KNOW, HE HAD TO BE (INAUDIBLE) IN THE UNITED STATES OF COURSE BECAUSE THE CHARGES AREN'T PENDING AGAINST HIM IN THE UNITED STATES. BUT NOW THAT THE UNITED STATES IS (INAUDIBLE) EXTRADITING HIM, NOW HE HAS A MOTIVE TO FLEE THE UNITED STATES AND HE HAS THE WHEREWITHAL TO ACCOMPLISH THAT THROUGH HIS MILLIONS OF DOLLARS. AND THERE ARE MANY PLACES IN THE WORLD WHERE THE DEFENDANT CAN GO TO WHERE HE CAN LIVE A VERY COMFORTABLE EXISTENCE WITH THAT TYPE OF MONEY WHERE HE'S BASICALLY EVADED ONCE AGAIN THE KOREAN AUTHORITIES IN THIS CASE.

[32] SO IT'S TRUE THAT HE WAS HAPPY TO (INAUDIBLE) HERE AND HAPPY TO HAVE A BURIAL SITE HERE AND ALL OF THESE THINGS WHEN HE THOUGHT HE'D GOTTEN AWAY FROM KOREA, BUT NOW THE SITUATION HAS CHANGED. NOW THE UNITED STATES HAS ARRESTED HIM AND IS COOPERATING PER ITS TREATY OBLIGATIONS WITH KOREA TO SEND HIM TO KOREA AND SO NOW HIS MOTIVES HAVE CHANGED. AND WITH HIS

WHEREWITHAL, HE HAS THE CAPABILITY TO DO THAT PLUS WHEN HE HAS THE CAPABILITY WITHOUT TRAVEL DOCUMENTS AND EXPERIENCE WITHOUT TRAVEL DOCUMENTS TO GET INTO OTHER COUNTRIES AND THERE ARE MANY COUNTRIES IN THE WORLD WHERE THERE ARE NOT EXTRADITION TREATIES (INAUDIBLE).

THERE WAS QUESTION RAISED AS TO WHERE HE WAS WITH—WHETHER SINCE HE'S REALLY BEEN HERE SINCE 1970 OR WHETHER HE WAS RAISED—LIVING IN KOREA AND THE GOVERNMENT DOESN'T HAVE (INAUDIBLE) SO THE GOVERNMENT BELIEVES THAT THE DEFENDANT WAS NOT BEING TOTALLY HONEST WITH THE PRETRIAL SERVICES OFFICER (INAUDIBLE) WAS 1997, AND THE REASON IS THAT ACCORDING TO THE EVIDENCE THAT'S BEFORE THE COURT IN THE EXTRADITION TREATY THAT HE WAS IN KOREA IN 1999 (INAUDIBLE) THAT HE WAS IN KOREA BEING—GIVING A STATEMENT WITH REGARDS TO THIS CASE ON OCTOBER 29, 1999.

THE COURT: WAS THAT SUPPOSEDLY AFTER HE—MR. O'BRIEN: THAT WAS ACCORDING TO THE [33] DEFENDANT THAT AFTER HE WAS LAST IN KOREA BY TWO YEARS. THE COURT: WHEN DOES THE KOREAN GOVERNMENT SAY HE WAS LAST THERE.

MR. O'BRIEN: 1999, OCTOBER—

THE COURT: OKAY. AND THAT'S WHEN HE FLED—

MR. O'BRIEN: AND THEN SOMETIME IN DECEMBER 1999 TO AROUND THAT TIME PERIOD THAT HE SMUGGLED HIMSELF OUT.

THE COURT: OKAY. ALL RIGHT.



MR. O'BRIEN: AND FINALLY CONTRARY TO (INAUDIBLE) IT'S INTERESTING THAT THE DEFENSE SOMEHOW MAKES IT SEEM LESS LIKELY THAT THE DEFENDANT (INAUDIBLE) BASED UPON OTHER PEOPLE'S (INAUDIBLE). I DON'T SEE THE LOGIC IN THAT. IT SEEMS TO ME THAT IN THIS CASE THAT THERE'S A PROSECUTION THAT'S BEEN GOING ON FOR MANY YEARS AND HAS BEEN (INAUDIBLE) BY PROSECUTORS (INAUDIBLE) CASE IS QUITE STRONG AND (INAUDIBLE).

SO I WOULD SUBMIT ON THAT BASIS, YOUR HONOR. I AM SORRY (INAUDIBLE) TO TELL THE TRUTH, IT'S KIND OF DIFFICULT TO CARRY WHEN THE ARGUMENTS THAT HAVE BEEN SUBMITTED TO THE COURT LACK ANY EVIDENTIARY SUPPORT AND ALSO THEY ARE WELL BEYOND THE BRIEFING THAT'S SUBMITTED TO THE COURT IN THIS CASE. I WOULD ASK THE COURT TO (INAUDIBLE) JUDGMENT ON THIS GRANTING (INAUDIBLE) UNTIL THE EXTRADITION HEARING.

[34] THE COURT: OKAY. ANY QUICK RESPONSE?

MR. GENEGO: YES, PLEASE. I WAS CAREFUL TO MENTION THAT I WAS NOT CONFIDENT THAT I'D BEEN THROUGH ALL THE DOCUMENTS, BUT NOTHING THAT I REPRESENTED IS NOT SUPPORTED BY THE EVIDENCE. I MEAN THE FORTUNE TELLER IS ON PAGE 75 OF THE DOCUMENTS. IF YOU GO TO PAGE 76 OF THE DOCUMENTS, THEY'VE GOT THE WIRE TRANSFERS THAT WERE MADE TO THE BANK ACCOUNTS THAT ARE DOCUMENTED. THEN THEY GO ON TO SAY THAT MR. CHOE PAID THIS LEGISLATURE A HUNDRED MILLION WON ON ONE OCCASION AND ONE LOCATION ANOTHER AMOUNT TO HIS SON IN SOME OTHER LOCATION ON ANOTHER—AND SO THERE IS—THIS IS FROM THE

GOVERNMENT'S FORMAL PAPERS. ALL OF THE FACTS THAT I REPRESENTED ABOUT THE CRIME ARE FROM THE FORMAL PAPERS INCLUDING THE PERIOD OF PROHIBITION, WHICH WAS ONE MONTH. I'M HAPPY—AND I DO APOLOGIZE I DIDN'T HAVE A CHANCE TO INCLUDE IT IN MY BRIEF. I'D BE HAPPY TO SUBMIT A SUPPLEMENTAL BRIEF ON THE QUESTION OF SUBSTANTIAL LIKELIHOOD OF SUCCESS HAVING TO DO WITH THE PROBABLE CAUSE AND ADDRESS THAT IN A PRELIMINARY WAY BECAUSE I DON'T THINK HE SHOULD HAVE TO WAIT UNTIL THE ACTUAL HEARING FOR THAT.

THERE'S JUST A COUPLE OTHER THINGS THAT I DID WANT TO MENTION, AND THAT IS AS FAR AS THE RESOURCES ARE CONCERNED, HE SAID HE COULD FLEE AND LIVE COMFORTABLY [35] ELSEWHERE. WELL, THERE'S THE MATTER OF HIS FAMILY AND ALL THAT. BUT WE'RE WILLING TO TIE UP ALL OF HIS ASSETS, AND YOU CAN PUT HIM DOWN FOR ELECTRONIC MONITORING WITH GPS SO YOU KNOW WHERE HE IS AT ALL TIMES. I MEAN, IT'S MUCH BETTER THAN ELECTRONIC MONITORING. HE'LL PAY FOR IT. YOU KNOW WHERE HE IS AT ALL TIMES 24 HOURS A DAY. YOU JUST LOOK ON THE SCREEN. AND THEY NOW HAVE THAT AVAILABLE, AND I BELIEVE—

THE COURT: I'M AWARE OF THAT.

MR. GENEGO: SO WE CAN DO THAT. I MEAN, THAT'S—AND AS FAR AS THE SPECIAL CIRCUMSTANCES ABOUT THE HEALTH, HE HAS REQUESTED MEDICAL ASSISTANCE. HE HAS NOT RECEIVED MEDICAL ASSISTANCE AT THE METROPOLITAN DETENTION CENTER. I CAN CERTAINLY GET A DECLARATION FROM HIM CORROBORATING THAT OR GO THROUGH THE PROCESS OF TRYING TO

CONTACT SOMEONE AT THE METROPOLITAN DETENTION CENTER TO CONFIRM THAT, BUT THAT IS WHAT HE HAS TRIED TO DO (INAUDIBLE) AND HE HASN'T GOTTEN IT. SO I'LL BE HAPPY AGAIN TO MAKE A SUPPLEMENTAL SHOWING WITH DECLARATIONS THAT (INAUDIBLE).

THE COURT: OKAY. I'M NOT GOING TO MAKE A DECISION TODAY. I NEED TO GO BACK THROUGH THE MATERIALS IN GREATER DEPTH, AND I NEED TO READ THE CASES THEMSELVES IN GREATER DEPTH AND DO MY OWN LOOK, AND I HAVEN'T DONE THAT YET. SO THIS JUST CAME UP. SO—AND [36] OBVIOUSLY YOU WANT A DECISION. BOTH SIDES WANT A DECISION AS QUICKLY AS POSSIBLE.

IF THERE'S ANYTHING THAT YOU DO WANT TO SUBMIT YOU THINK WOULD BE HELPFUL, I'LL GIVE YOU TIME TO DO THAT. SO WHY DON'T HE TELL ME WHETHER YOU DO WANT TO SUBMIT SOMETHING BOTH IN TERMS OF—YOU KNOW, THE PROBABLE CAUSE ISSUE IS PROBLEMATIC BECAUSE THAT'S WHAT I HAVE TO DECIDE IN JUNE. I MEAN, I CAN MAKE A PRELIMINARY LOOK. IF YOU WANT TO SUPPORT YOUR ARGUMENT WITH JUST REFERENCES TO THE PLEADINGS, I'LL TAKE A LOOK AT THAT, GIVE YOU THE OPPORTUNITY TO DO THAT. BUT I'M NOT GOING TO MAKE A PROBABLE CAUSE OR LACK OF PROBABLE CAUSE FINDING IN THE CONTEXT OF THIS BAIL REVIEW.

MR. GENEGO: I UNDERSTAND, YOUR HONOR.

THE COURT: ALL RIGHT. IF THERE'S OTHER MEDICAL INFORMATION OR DECLARATIONS YOU WANT TO SUBMIT CONCERNING HIS MEDICAL PROBLEM, I'LL BE GLAD TO LOOK AT THAT TOO. BUT YOU NEED TO TELL ME WHETHER YOU WANT

TO DO THAT AND WHEN YOU WANT TO SUBMIT IT SO I CAN AT LEAST LET EVERYONE KNOW, AND I'LL DECIDE SOMETHING.

MR. GENEGO: I WOULD LIKE TO SUBMIT AND I UNDERSTAND THE COURT IS NOT GOING TO DECIDE THE PROBABLE CAUSE ISSUE UNTIL LATER. I WOULD LIKE TO AT LEAST POINT OUT THE PLACES IN THE PAPERS WHERE I THINK THOSE ISSUES ARE RAISED AND PERHAPS CITE SOME CASE LAW (INAUDIBLE) [37] PROPER ISSUE THAT HAS SOMETHING THAT THE COURT GETS TO EXAMINE AND POINT OUT WHERE THE PEOPLE GOT OFF.

THE COURT: OKAY.

MR. GENEGO: (INAUDIBLE) SENTENCES AND HOW THE WIRE TRANSFERS—THE LEGITIMATE PAYMENTS ARE DOCUMENTED AND THE OTHER ONES ARE NOT.

THE COURT: OKAY. HOW MUCH DO YOU NEED TO DO THAT?

MR. GENEGO: I THINK I CAN PROBABLY DO THAT BY TUESDAY NEXT WEEK.

THE COURT: OKAY. AND HOW MUCH TIME DO YOU WANT TO RESPOND IF YOU WANT TO RESPOND?

MR. O'BRIEN: I DO HAVE TO TELL THE COURT THAT I'M NOT GOING TO BE IN JURISDICTION NEXT WEEK. I'M GOING TO BE OUT OF LOS ANGELES (INAUDIBLE). I WAS PLANNING ON FILING MY PAPERS FOR THE EXTRADITION HEARING TOMORROW AFTERNOON SO THE COURT WILL HAVE THAT.

THE COURT: OKAY. THAT MIGHT BE ENOUGH. THAT'S ENOUGH. I MEAN—

MR. O'BRIEN: I'D ALSO LIKE AN OPPORTUNITY TO RESPOND TO WHAT DEFENSE COUNSEL (INAUDIBLE) SUBMITS ON TUESDAY THEN PERHAPS BY THE END THE FOLLOWING WEEK I CAN HAVE TO RESPOND.

THE COURT: ALL RIGHT.

MR. O'BRIEN: (INAUDIBLE.)

[38] THE COURT: YOU GET YOUR FOUR OR FIVE DAYS. I MEAN, YOU CAN SAY YOU DON'T WANT TO SUPPLY ANYTHING, BUT—

MR. GENEGO: I THINK THAT (INAUDIBLE) I JUST REALLY DON'T WANT TO WAIT THAT LONG. I THINK THAT—

THE COURT: OKAY. I MEAN, IF YOU'RE GOING TO FILE SOMETHING, I'M GOING TO GIVE HIM A CHANCE—A REASONABLE—

MR. GENEGO: (INAUDIBLE) THE RIGHT TO RESPOND TO ANYTHING THAT I WOULD FILE, IT'S JUST THAT I WOULD—I'M TROUBLED BY HAVE TO WAIT ANOTHER—

THE COURT: I UNDERSTAND THAT, AND I'M TROUBLED BY IT TOO, YOU KNOW, AND PARTICULARLY IN LIGHT OF, YOU KNOW, THE BOND CONTEXT. SO LET ME LOOK AT IT ON MY OWN. YOU KNOW, I WOULD HAVE THOUGHT IF THERE WAS ANY OTHER MEDICAL INFORMATION THAT YOU HAD—

MR. GENEGO: THE ONLY THING ABOUT THE MEDICAL INFORMATION IS THE MDC INFORMATION. I CERTAINLY CAN GET IT (INAUDIBLE) ACCORDING TO MR. CHOE AND—

THE COURT: OKAY.

M  
FRO  
  
TH  
OUT  
FOR  
BEF  
  
[39]  
  
TI  
DEF  
  
M  
HOI  
  
T  
JOU

I,  
FOI  
SCI  
TH

/s/             
t

MR. GENEGO: —(INAUDIBLE) PROBABLY GET ONE FROM (INAUDIBLE)—

THE COURT: AND OBVIOUSLY YOU CAN FIND OUT FROM MDC WHETHER HE'S MADE REQUESTS FOR MEDICAL. I MEAN, YOU CAN DO THAT BEFORE—

[39] MR. O'BRIEN: (INAUDIBLE.)

THE COURT: RIGHT. OKAY. AND THEN I'LL GET— DEFINITELY GET SOMETHING OUT NEXT WEEK.

MR. GENEGO: THANK YOU VERY MUCH, YOUR HONOR. THE COURT: OKAY. THANK YOU.

THE CLERK: ALL RISE. COURT IS NOW ADJOURNED.

CERTIFICATE

I, AMY HERMANSON, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

/s/ Amy Hermanson  
AMY HERMANSON

6.16.06  
DATED

APPENDIX C

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

[Filed APR 10, 2006]

---

Case No. CV 06-1544-RGK (MLG)

---

IN THE MATTER OF THE EXTRADITION OF  
MAN-SEOK CHOE

---

ORDER DENYING REQUEST FOR BAIL PENDING  
EXTRADITION PROCEEDINGS

This extradition proceeding was initiated on January 3, 2006 by the filing of a complaint and request for warrant of arrest pursuant 18 U.S.C. § 3184.<sup>1</sup> It was alleged that Man-Seok Choe was subject to extradition to the Republic of South Korea pursuant to the Extradition Treaty between the United States and the Republic of South Korea which entered into force on December 20, 1999. The request for extradition indicates that a warrant has been issued for Choe's arrest by the Republic of South Korea, even though no formal charges have been filed. It further alleges that Choe violated South Korean law by engaging in acts of bribery (both acceptance and offering) related to the award of contracts on high speed trains by the government of South Korea, and then illegally fled from South Korea to the United States to avoid prosecution without valid travel documents.

Choe was arrested on February 15, 2006 and appeared before Magistrate Judge Oswald Parada on February 16, 2006, who ordered that Choe be detained without bond. On

---

<sup>1</sup> The complaint was assigned Case No. 06-M-0001.

March 13, 2006, the government filed a formal request for extradition which was assigned to District Judge R. Gary Klausner and this Magistrate Judge. On March 16, 2006, the court entered an order setting a briefing and hearing schedule. The hearing on extradition is currently set for June 22, 2006.

On April 4, 2006, Choe filed a motion for review of the order of detention entered by Judge Parada. Both parties having submitted briefs prior to the hearing and the court having heard oral argument on April 6, 2006, it is hereby ORDERED, for the reasons stated below, that Man-Seok Choe's motion for review be denied and that he be detained without bond pending further proceedings.

It is well settled that in extradition proceedings, there is a presumption against bail and that bail will be granted only upon a showing of "special circumstances." *Wright v. Henkel*, 190 U.S. 40, 63, 23 S.Ct. 781, 787, 47 L.Ed. 948 (1903); *United States v. Salerno*, 878 F.2d 317 (9th Cir. 1989); *Kamrin v. United States*, 725 F.2d 1225, 1228 (9th Cir. 1984).<sup>2</sup> "Examples of such circumstances include the raising of substantial claims upon which the appellant has a high probability of success, a serious deterioration of health while incarcerated, and unusual delay in the appeal process." *Salerno*, 878 F.2d at 317. Other courts have found special circumstances to exist where release would pose no danger to the community, where detention would result in an inability

---

<sup>2</sup> Choe asserts that the imposition of a higher standard for bail in extradition proceedings than that which is required under the Bail Reform Act of 1984, 18 U.S.C. § 3142, violates his due process rights. This argument is unsupported by either statute or case law. The national interest in complying with treaties has been deemed to warrant different treatment in setting bail in the extradition context. *United States v. Leitner*, 784 F.2d 159, 160 (2nd Cir. 1986); *United States v. Taitz*, 130 F.R.D. 442 (S.D.Cal. 1990). Moreover, the Ninth Circuit has explicitly held that because an extradition proceeding is not a criminal matter, the Bail Reform Act does not govern. *Kamrin*, 725 F.2d at 1227-28.



to carry out the rituals of religion and where the offense for which extradition is sought has foreign policy implications. *Taitz*, 130 F.R.D. at 446; *In the Matter of the Requested Extradition of Kirby*, 106 F.3d 855, 856 (9th Cir. 1996).

The proffered evidence in this case reveals that Choe is 65 years old. He entered the United States in 1970 and is a 35-year legal resident of this country. He maintains his Korean citizenship. Choe has significant family ties to California and prior to his arrest, he was gainfully employed by Cal-Ransom, Inc., a family owned business. He has no criminal record. His wife and son, both of whom reside in the Central District of California, have expressed a willingness to sign an affidavit of surety in an amount in excess of \$1,000,000.00, fully secured by real property. Choe would agree to submit to electronic monitoring, travel restrictions and any other condition imposed by the court.

While the government presented some evidence that Choe might pose a flight risk,<sup>3</sup> this court finds that Choe poses no real danger to the community and that conditions of bond could set which would insure Choe's appearance in court when required. However, the Ninth Circuit has explicitly held that a finding that a detainee is not a flight risk is insufficient in itself to constitute the "special circumstances" warranting release. *Salerno*, 878 F.2d at 318; *Accord United States v. Williams*, 611 F.2d 914, 915 (1st Cir. 1979).

Choe contends that he has established the requisite special circumstances to warrant his release on bail. In addition to his claim that he does not pose a flight risk, he claims that special circumstances have been demonstrated by the making of a *prima facie* showing that there is an absence of probable cause to believe that he engaged in the criminal conduct

---

<sup>3</sup> This evidence includes Choe's flight from Korea while under investigation and without appropriate travel documents, which is one of the criminal offenses alleged in the extradition request.

which he is alleged to have committed in South Korea. He also contends that because no formal charges have been brought in South Korea, he may not be extradited under the terms of the applicable treaty. In addition, he alleges that significant delay will result from the anticipated challenge to the extradition request. Finally, he notes that he is of advanced age and is in poor health, suffering from back pain which is not being properly treated at the Metropolitan Detention Center.

This court reluctantly concludes that these factors, both singularly and in combination, do not give rise to the special circumstances which would warrant the setting of bond. The availability of sureties, as well as Choe's family and community ties, are only relevant to the risk of flight, which is not a factor in this determination. The anticipated delay in challenging the issue of probable cause is purely speculative given that the extradition hearing is scheduled for June 2006. His back problem does not appear to be so severe as to constitute a "special circumstance."<sup>4</sup> Indeed, there is no evidence other than prior conservative treatment, touching upon the back impairment. Finally, Petitioner has not persuaded the Court, at this preliminary stage of the proceedings, that there is a high probability that he would prevail on the merits.

Accordingly, even though the court believes that the risk of flight could be ameliorated by a pledge of property and the imposition of other conditions of bond such as intensive supervision and electronic monitoring, this is not enough under Ninth Circuit precedent to permit the setting of bond. Mr. Choe has failed to demonstrate the existence of any "special circumstance" which would warrant the setting of bond. Accordingly, the motion for bail review is hereby

---

<sup>4</sup> Obviously, if Mr. Choe's medical condition deteriorates, the court would revisit the issue of bail.

42a

DENIED and it is ordered that Mr. Choe be detained pending further proceedings.

Dated: April 10, 2006

/s/ Marc L. Goldman

MARC L. GOLDMAN

United States Magistrate Judge

**APPENDIX D**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

[Filed MAY 19, 2006]

Case No. CV 06-1544-RGK (MLG) Date May 17, 2006

Title: IN THE MATTER OF EXTRADITION OF MAN-  
SEOK CHOE, a Fugitive from the Republic of Korea

Present: The Honorable R. GARY KLAUSNER, UNITED  
STATES DISTRICT JUDGE

<u>Sharon L. Williams</u>	<u>Not Reported</u>	<u>N/A</u>
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:  
Not Present

Attorneys Present for Defendants:  
Not Present

Proceedings: (IN CHAMBERS) REVIEW OF MAGIS-  
TRATE JUDGE'S ORDER DENYING BAIL

After review and consideration of all documents submitted  
in connection with defendant's application for review/  
reconsideration of order setting conditions of release/  
detention pending trial, bail is denied.

IT IS SO ORDERED.

Initials of Preparer: slw

cc: Magistrate Judge Goldman

44a

APPENDIX E

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

[Filed JUN 13, 2006]

---

No. 06-55738

D.C. No. CV-06-01544-RGK  
Central District of California, Los Angeles

---

UNITED STATES OF AMERICA,  
*Plaintiff - Appellee,*

v.

MAN SEOK CHOE,  
a Fugitive from the Republic of Korea,  
*Defendant - Appellant.*

---

ORDER

Before: CANBY, T.G. NELSON and KLEINFELD, *Circuit Judges.*

Appellant's emergency motion for bail pending extradition proceedings is denied without prejudice to renewal should appellant experience a serious deterioration of health and if the district court denies appellant's renewed motion for bail. *See Wright v. Henkel*, 190 U.S. 40, 63 (1903); *Salerno v. United States*, 878 F.2d 317 (9th Cir. 1989).

The district court's detention order is

AFFIRMED.

45a

**APPENDIX F**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

[Filed AUG 7, 2006]

---

No. 06-55738

D.C. No. CV-06-01544-RGK  
Central District of California, Los Angeles

---

UNITED STATES OF AMERICA,  
*Plaintiff - Appellee,*

v.

MAN SEOK CHOE,  
a Fugitive from the Republic of Korea,  
*Defendant - Appellant.*

---

**ORDER**

Before: CANBY, T.G. NELSON and KLEINFELD, *Circuit Judges.*

Appellant's "motion for oder to file motion for reconsideration *nunc pro tunc*" [sic] is granted.

The motion for reconsideration is denied. *See* 9th Cir. R. 27-10.

No further filings shall be accepted in this closed case.

**APPENDIX G****Constitutional and Statutory Provisions**

## United States Constitution, Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## 18 U.S.C. § 3184

Whenever there is a treaty or convention for extradition between the United States and any foreign government, or in cases arising under section 3181(b), any justice or judge of the United States, or any magistrate judge authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, or provided for under section 3181(b), issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or magistrate judge, to the end that the evidence of criminality may be heard and considered. Such complaint may be filed before and such warrant may be issued by a judge or magistrate judge of the United States District Court for the District of Columbia if the whereabouts within the United States of the person charged are not known or, if there is reason to believe the person will shortly enter the United States. If, on such hearing, he deems the evidence

sufficient to sustain the charge under the provisions of the proper treaty or convention, or under section 3181(b), he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

r-  
nt  
al  
ar  
ne  
all  
st  
ut  
or

on  
in  
of  
to  
irt  
on  
nd  
he  
es  
for  
on  
ch  
vi-  
ch  
be  
tes  
uts  
wn  
ter  
nce