

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

UNITED STATES OF AMERICA,	)	CRIMINAL NO: 9:14-000054-002
	)	
vs.	)	
	)	MEMORANDUM IN SUPPORT OF
MARY MOONEY	)	DEFENDANT’S MOTION TO DISMISS
	)	

**FACTUAL BACKGROUND**

On February 11, 2014, the Belize Police at the request of the U.S. Government, arrested the defendant between 4:00 and 4:30 a.m., at a condo in Belize where she was staying alone. Ms. Mooney had been traveling back and forth to and from Belize for a number of years. She had returned to Belize for a short stay and had a return ticket booked for March 9, 2014. A U.S. Marshall was present along with several Belizean police officers. Ms. Mooney was told, “We have a warrant for your arrest.” The Belizean officers showed her a one page warrant issued by the United States. She was then handcuffed and escorted by the U.S. Marshall and the Belize Police to the San Pedro, Belize police office. She was formally arrested, fingerprinted and photographed. Around 7:30 a.m. she was taken to the local airport. The Belize Police along with the U.S. Marshall all boarded a small plane. She was taken to the local Belize City Airport and then driven to the Belize International Airport where she was escorted and held by two Belizean police officers and the U.S. Marshall. When at Belize International Airport she was arrested and fingerprinted by the U.S. Marshall. Ms. Mooney requested several times to call a lawyer and or her family but was denied any phone calls. She was never given her Miranda rights. She was questioned a couple times about

her immigration status, personal information such as family, next of kin, and basic personal questions.

While in San Pedro, Ms. Mooney was told by the Belizean Police that she was being extradited and they were taking her to Belmopan. Ms. Mooney assumed she would be taken to the U.S. Embassy in Belmopan. This was not the case. She was taken on an American Airlines flight to Miami, FL. Ms. Mooney was under the impression that the U.S. Marshall arranged and paid for her flights and the flights of the Belize Police officers from San Pedro to Belize City or from Belize City to Miami but Ms. Mooney was escorted on the flight by two Belizean police officers. No information about who paid for the flights has been forthcoming. Ms. Mooney was escorted on the flight by two Belizean police officers. We assume the U.S. Marshall arranged and paid for the flights of the two Belizean police officers and Ms. Mooney. In Miami, Ms. Mooney was taken off the plane, handcuffed and arrested by two U.S. Officers. It was at this time Ms. Mooney was given her Miranda warnings and asked if she wanted a lawyer. Ms. Mooney requested a lawyer and to make a phone call. She was not allowed any calls but was then driven to Miami Maximum Security Prison and was able to telephone her sister around 5:00 p.m. that day, about 13 hours after her arrest in Belize. She was not given an opportunity to request a lawyer or speak to a lawyer until appearing in court the next day around 3:00 p.m. February 12th. The judge appointed Ms. Mooney a federal public defender. It was only after in court when Ms. Mooney asked the judge to explain what her arrest was about that Ms. Mooney given a copy of the indictment and learned the charges in the indictment. This was the next day after her arrest that she was informed of the charges. Up to that point she had only been given a one page warrant that was given to her by the Belize police.

Information provided by the Government in the discovery did not contain any information regarding Ms. Mooney's departure from Belize. A letter requesting documents regarding Ms. Mooney's removal from Belize was sent to the Government on July 8, 2016. On August 1, 2016 we received document 232-1. This is the only document received that indicated that Ms. Mooney was not extradited. The Government requested an additional week to get documents from Belize but did not produce any additional documents.

“Questionable extradition procedures may also give rise to mitigating circumstances to be considered during sentencing.” *Karake v. United States*, 281 F. Supp. 2d 302, 309 (D.D.C. 2004); see *Bin Laden v. United States*, 156 F. Supp. 2d 359, 367 (S.D.N.Y. 2001). *Karake*, 281 F. Supp. 2d at 309. In *Karake*, the defendants were permitted to discover evidence of cooperation between the United States and Rwandan governments, assurances made to the Rwandan government, and improprieties in the defendant's removal from Rwanda.

The circumstances surrounding Ms. Mooney's removal from Belize are questionable and may give rise to mitigating circumstances. The Government should disclose all communications concerning Ms. Mooney's removal from Belize to establish the true process surrounding of her departure from Belize.

‘[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.’ *Brady*, *supra*, at 87. See also *Giglio v. United States*, 405 U.S. 150, 153–154 (1972).

### **ARGUMENT**

Ms. Mooney was denied effective assistance of counsel. She relied on her attorney to know the laws that he advised her to plead guilty to. She relied on her attorney to advise her, file motions, interview witnesses, and investigate all charges. Plea counsel admitted he was not

familiar with the relevant law, and “had to research” after the plea was entered. He did not interview witnesses, investigate the law or prepare any motions other than to withdraw the plea.

“Counsel has a constitutional duty to make reasonable investigations or to make reasonable decisions that make particular investigation unnecessary .” *Strickland v. Washington*, 466 U.S. 688, 691, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984). The Sixth Amendment requires investigation and preparation, not only to exonerate, but also to secure and protect the rights of the accused. such constitutional rights are granted to the innocent and guilty alike, and failure to investigate and file appropriate motions is ineffectiveness. *Kimmelman v. Morrison*, 477 U.S. 365, 91L.Ed.2d 305, 106 S.Ct. 2574 (1986).

Ms. Mooney was denied due process and fundamental fairness because the U.S. Government circumvented the Treaty between the U.S. and Belize. Her arrest and detention in Belize resulted in a “de facto extradition” or “disguised extradition” due to the U.S. Government's unethical procedures chosen to obtain Ms. Mooney’s arrest. By circumventing the Treaty the Government is trying to deny Ms. Mooney the safeguards of the Treaty and her constitutional rights to a fair process. The essence of a “disguised extradition” claim is that removal proceedings were not instituted to pursue a valid immigration objective, but to procure, on behalf of a foreign state, a person’s return for prosecution. *United States v. Rogan*, 2014 BCSC 1016 (CanLII).

In *United States v. Wilson*, 2013 ONSC 779, meanwhile, the close timing between an arrest warrant in the United States and an inadmissibility report being prepared in Canada raised the notion of an “air of reality” to the possibility that the removal proceedings were a disguised extradition.

The Government did not use any of the legal means available to them to secure Ms. Mooney’s arrest but chose unethical means that deny fundamental fairness of the judicial process. The Government skipped over all the legal remedies for arrest and resorted to disguised extradition

by requesting the Belizean police arrest and detain the defendant and then escort her to the United States.

“In the United States, a different principle is established. Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision. But when the terms of the stipulation import a contract—when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract, before it can become a rule for the Court.” *Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 314 (1829). *See* THE FEDERALIST No. 75 (J. Cooke ed. 1961), 504-505.

The Government's position is that the defendant was not extradited. By entering into an agreement with Belize to deport the defendant to the United States by Belize escort is entering into an agreement with a foreign country that is forbidden by the U.S. Constitution. The only document provided by the Government from Belize notes the reason for deportation was the U.S. warrant for the defendant's arrest from the United States.

United States Constitution forbids individual states from entering into agreements with foreign countries. U.S. Const. art 1 § 10 (“No state shall enter into any Treaty, Alliance, or confederation...No state shall, without the consent of Congress...enter into any agreement or compact with another state, or with a foreign power”);

*See U.S. V Gecas*, 50 F.3d at 1560 11th Cir. 1995 (upholding district court's finding that deportation of the defendant, a suspected Nazi collaborator, was *de facto* extradition because defendant "would be forced to enter a country disposed to prosecute him"). *United States v. Balsys*, 918 F. Supp. 588 (E.D.N.Y. 1996)

*Cf.* Michael J. Bowe, Note, *Deportation as De Facto Extradition: The Matter of Joseph Doherty*, 11 N.Y.L.Sch.J.Int'l Comp.L. 263, 269 (1990). The note distinguishes between extradition and deportation:

International extradition returns an individual present in the United States to a country where the individual is wanted for criminal acts committed in that country or against its citizens. Deportation, on the other hand, removes an alien from the United States because the alien is undesirable or detrimental to the public welfare.

“A treaty is needed in cases of extradition not only to formally bind each nation, but also to provide due process and protect certain fundamental rights of the criminal detainee. “See M. BASSIOUNI, *supra* note 2, at 30-34 M. CHERIF BASSIOUNI, *INTERNATIONAL EXTRADITION & WORLD PUBLIC ORDER* 3 (1974).

“It is undoubtedly true that, where the destination selected is one at which the authorities are anxious to prosecute or punish the deportee for a criminal offence, the deportation may result in a *de facto* extradition. Thus it has become usual to describe such deportation as ‘disguised extradition’, but it would seem advisable to use this term with caution. A true ‘disguised extradition’ is one in which the vehicle of deportation is used with the prime motive of extradition.” United Nations Assembly 10 July 2006, International Law Commission Fifty-eighth session Geneva, 1 May-9 June and 3 July-11 August 2006

"[T]he rights of the requested person should not be sacrificed to the requirements of a more efficient and a speedier administration of justice."CHRISTINE VAN DEN WIINGAERT, *THE POLITICAL OFFENSE EXCEPTION TO EXTRADITION* 29-32 (1980);

Article 13 of the ICCPR requires that an alien lawfully residing in a territory "be allowed to submit the reasons against his expulsion" unless compelling interests of national security require otherwise.

The UDHR contains a provisions prohibiting the imposition of "arbitrary . . . exile." See UDHR, Article 9. It also states that "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations.

United Nations training to Terrorism

These various types of surrender should be considered neither equivalent to extradition nor acceptable and recommended alternatives. Extradition is by far the preferred and recommended method, as it ensures that the sovereignty of States and human rights are respected and does not risk annulment of the procedure as a result of the use of illegal or legally questionable methods. Enabling States to use alternative extradition practices encourages even more violations and undermines the States' respect for international law.

In what is known as disguised extradition, standard forms of surrender are used and diverted from their original purpose to bring about a de facto extradition. Using its immigration laws or police powers, a State will place an individual in a situation where he falls within the control of the authorities of another State wishing to prosecute him. By this expedient, a State uses its immigration laws to deny a foreign national the privilege of entering or staying in that State by means of administrative or legal procedures, such as exclusion, deportation or expulsion and denaturalization. The result of these procedures is that the individual is placed directly or indirectly within the control or reach of agents of the State investigating him. Disguised extradition is not illegal per se under international law, since the individual has not been abducted, but has been surrendered using national administrative or legal procedures. However, certain aspects of these practices do violate international law, for example, when the individual does not have an adequate or prompt legal recourse, or does not have timely access to such recourse before being surrendered to the State seeking him or her, as required by the International Covenant on Civil and Political Rights.”

McNabb v. United States. In McNabb, the Supreme Court gave the judiciary the authority to oversee the criminal justice system. The Court stated that the scope of federal court review is not limited to only matters of law or constitutional violations,

but also includes "the duty of establishing and maintaining civilized standards of procedure and evidence. Ineffective assistance of counsel at the plea stage requires relief.

The process whereby Ms. Mooney was returned to the United States was a “de facto extradition” participated in by the U.S. Government denying Ms. Mooney the safeguards of the United States’ treaty with Belize. Due to the conduct of the U.S. authorities the Defendant’s requested relief should be granted.

Respectfully Submitted,

/s/ George B. Bishop, Jr.

223 East Main Street

P. O. Box 848

Moncks Corner, S. C. 29461

FED I.D. #4797

ATTORNEY FOR DEFENDANT

Moncks Corner, South Carolina

Dated: August 26, 2016

Certificate of Service

I hereby certify that on this date I cause one true copy to the written document to be served in the above-captioned case, via the court's e-noticing system, but if that means failed, then by regular mail, on all parties of record.

/s/ George B. Bishop, Jr.  
George B. Bishop, Jr.