

MHM
5-20-03

FILED	LODGED
RECEIVED	COPY
MAY 20 2003	
CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
DEPUTY	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

In re the Extradition of:	}	CR 03-0061-M
Arturo Orozco "N" a.k.a. Arturo Orozco Zapiain,	}	ORDER
Defendant.	}	

This matter arises on Defendant's Motion to Quash Provisional Arrest Warrant and Release Defendant (doc. #8), filed on April 23, 2003. The Government opposes release on any combination of conditions and asserts that the undersigned Magistrate Judge does not have jurisdiction to quash the provisional arrest warrant. Defendant was present and represented by counsel, Donna Lee Elm, at the May 6, 2003 oral argument. The Government was represented by AUSA Reid Pixler. The proceedings were electronically recorded.

For the reasons set forth on the record at the oral argument, the Court **FINDS** that although a United States Magistrate Judge has jurisdiction to conduct extradition proceedings in the District of Arizona,¹ a magistrate judge does not have jurisdiction to rule upon a case-dispositive motion, such as, a motion for summary judgment or a motion to involuntarily

¹ See, 18 U.S.C. §3184; Local Rule 1.17(d)(20), Rules of Practice for the United States District Court for the District of Arizona; Austin v. Healy, 5 F.3d 598 (2nd Cir. 1993).

13

1 dismiss a case. See, 28 U.S.C. §636(b)(1); United States v. Jose Francisco Reyna-Tapia,
2 Nos. 01-10415, 01-10416 (9th Cir. May 9, 2003)(slip. op.).² Moreover, even if a local
3 district rule were to authorize a magistrate judge to rule on a case-dispositive extradition
4 motion, it would be unconstitutional as “inconsistent with the Constitution and laws of the
5 United States.” See, Hajek v. Burlington Northern R. R. Co., 186 F.3d 1105 (9th Cir.
6 1999)(local district rule that failure to timely demand reassignment was deemed to be a
7 waiver and consent to magistrate judge jurisdiction in a civil case held invalid to obtain
8 consent under Article III, Section 1 of the Constitution and the Federal Rules of Civil
9 Procedure). Defendant does not argue that extradition proceedings are quasi-civil in nature
10 nor have the parties consented to magistrate judge civil jurisdiction pursuant to 28 U.S.C.
11 §636(c)(1).

12 The Court **FURTHER FINDS** that the provisional arrest warrant, Complaint and
13 extradition of Defendant pursuant to the extradition treaty between the United States and
14 Mexico, signed May 4, 1978, 31 UST 5059, are so inextricably intertwined that dismissal of
15 the subject arrest warrant may be tantamount to dismissal of the Complaint issued pursuant
16 to 18 U.S.C. §3187. If the arrest warrant for Defendant, although executed, were dismissed,
17 it may result in the dismissal, or form the basis for a dismissal, of the subject Complaint, to
18 which the Government objects. Thus, Defendant's motion may be deemed, in effect, a case-
19 dispositive motion over which the undersigned does not have jurisdiction. This portion of the
20 motion will be referred to a district judge for ruling.

21 Defendant's motion also seeks the release of Defendant on conditions pending the
22 extradition hearing before Magistrate Judge Mort Sitver on July 1, 2003. The Government
23 opposes his release. Both counsel proceed by proffer and argument.

25 ² "The Federal Magistrates Act . . . provides that certain matters (for example, non-
26 dispositive pretrial matters) may be referred to a magistrate judge for decision, (footnote
27 omitted) while certain other matters (such as case-dispositive motions, petitions for writs of
28 habeas corpus) may be referred only for evidentiary hearing, proposed findings, and
recommendations.(footnote omitted)." *Id.* at 6103.

1 The Court **FURTHER FINDS** that a magistrate judge has jurisdiction to consider
2 releasing a defendant detained on a provisional arrest warrant and complaint seeking
3 extradition to a foreign country pursuant to 18 U.S.C. §3187. See, Local Rule 1.17(7) and
4 (20).

5 It is well-settled that, unlike the situation for domestic crimes, in foreign
6 extradition cases, there is a presumption against bail. Wright v. Henkel, 190 U.S. 40, 63, 23
7 S.Ct. 781, 786, 47 L.Ed. 948 (1903); Beaulieu v. Hartigan, 554 F.2d 1, 2 (1st Cir.1977);
8 United States v. Leitner, 784 F.2d 159, 160 (2d Cir.1986); Salerno v. United States, 878 F.2d
9 317, 318 (9th Cir.1989); In the Matter of Extradition of Russell, 647 F.Supp. 1044, 1048
10 (S.D.Tex.1986), *aff'd*, 805 F.2d 1215 (5th Cir.1986); United States v. Taitz, 130 F.R.D. 442,
11 444 (S.D.Cal.1990). The rationale for distinguishing pretrial release in extradition cases
12 from domestic criminal cases in which pretrial liberty is the norm is that extradition
13 proceedings involve the Government's overriding foreign relations interest in complying with
14 treaty obligations and producing extradited persons. United States v. Leitner, *supra*; United
15 States v. Taitz, *supra*; United States v. Messina, 566 F.Supp. 740, 742 (E.D.N.Y.1983). As
16 the Taitz court explained, "[i]f the United States were to release a foreign fugitive pending
17 extradition and the defendant absconded, the resulting diplomatic embarrassment would have
18 an effect on foreign relations and the ability of the United States to obtain extradition of its
19 fugitives." Taitz, *supra*, 130 F.R.D. at 444; United States v. Hills, 765 F.Supp. 381, 385 (E.D.
20 Mich. 1991).

21 "This 'special circumstances' requirement creates a different standard for
22 extradition cases than for federal criminal cases, where bail is granted unless the judicial
23 officer determines that release will not reasonably assure the appearance of the defendant as
24 required. 18 U.S.C. § 3146(a). The additional showing required in extradition belies [the
25 defendant's] claim that bail is one of the remedies and recourses of United States law to
26 which an extraditee is entitled." Kamrin v. United States, 725 F.2d 1225, 1228 (9th
27 Cir.1984), *cert. denied*, 469 U.S. 817, 105 S.Ct. 85, 83 L.Ed.2d 32 (1984); Hu Yau-Leung
28

1 v. Soscia, 649 F.2d 914, 920 (2d Cir.1981), cert. denied, 454 U.S. 971, 102 S.Ct. 519, 70
2 L.Ed.2d 389 (1981) (citing, Wright v. Henkel, supra, 190 U.S. at 62, 23 S.Ct. at 786,
3 Beaulieu v. Hartigan, supra, 554 F.2d at 2; United States v. Williams, 611 F.2d 914 (1st
4 Cir.1979)).

5 After considering the proffers and arguments of counsel, the Court **FURTHER**
6 **FINDS** that the absence of Defendant being a flight risk, Defendant's desire to take the
7 dental board examination, that Defendant may have naturalization proceedings pending, and
8 that the criminal charge in Mexico is a bailable offense do not, individually or collectively,
9 constitute special circumstances to warrant Defendant's release from custody at this time.

10 Accordingly,

11 **IT IS ORDERED** bifurcating the subject motion and referring Defendant's
12 Motion to Quash Provisional Arrest Warrant (doc. #8-1) to the Clerk for random assignment
13 to a United States District Judge for ruling.

14 **IT IS FURTHER ORDERED** that Defendant's bifurcated Motion for Release
15 (doc. #8-2) is **DENIED**.

16 DATED this 16th day of May, 2003.

17
18 

19 _____
20 Lawrence O. Anderson
21 United States Magistrate Judge
22
23
24
25
26
27
28