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BY _____

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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

IN THE MATTER OF THE
EXTRADITION OF

CHRISTOHER PHILIP AHN,

A Fugitive from the
Government of Kingdom of Spain.

No. 2:19-MJ-01523

GOVERNMENT'S REQUEST FOR DETENTION
PENDING EXTRADITION PROCEEDINGS;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
JOHN J. LULEJIAN; [PROPOSED] ORDER

1 Plaintiff, United States of America, by and through its counsel
2 of record, the United States Attorney, hereby submits its request for
3 detention pending further extradition proceedings.
4

5 Dated: April 19, 2019

Respectfully submitted,

6 NICOLA T. HANNA
United States Attorney

7 LAWRENCE S. MIDDLETON
8 Assistant United States Attorney
9 Chief, Criminal Division

10 /s/ John J. Lulejian

11 JOHN J. LULEJIAN
Assistant United States Attorney

12 Attorneys for Complainant
13 UNITED STATES OF AMERICA
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. PROCEDURAL BACKGROUND**

3 This is an extradition matter. The fugitive, CHRISTOPHER PHILIP
4 AHN ("AHN"), has been arrested pursuant to a warrant based on a
5 request for his provisional arrest with a view towards his
6 extradition submitted by the Kingdom of Spain ("Spain"). AHN is the
7 subject of a warrant of arrest from Spain, issued on April 12, 2019,
8 by Judge Jose de la Mata Amaya of the Central Court of Investigation
9 No. 5, National High Court, in Madrid, Spain, for (1) Breaking and
10 Entering, in violation of Articles 202 and 203 of the Spanish Penal
11 Code; (2) Illegal Restraint, in violation of Articles 163 and 165 of
12 the Spanish Penal Code; (3) Threats, in violation of Articles 169 and
13 171 of the Spanish Penal Code; (4) Robbery with Violence and
14 Intimidation, in violation of Articles 237, 241, and 242 of the
15 Spanish Penal Code; (5) Causing Injuries, in violation of Article 147
16 of the Spanish Penal Code; and (6) Criminal Organization, in
17 violation of Article 570 bis of the Spanish Penal Code. The United
18 States submits that detention of AHN is appropriate, and moves for
19 such detention.

20 **II. ARGUMENT**

21 Like the extradition process as a whole, the determination of
22 whether to release a fugitive on bail is sui generis. The federal
23 statutes governing extradition in the United States, 18 U.S.C.
24 §§ 3181 et seq., do not provide for bail. Further, the Bail Reform
25 Act, 18 U.S.C. §§ 3141 et seq., does not apply because an extradition
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1 proceeding is not a criminal case.¹ See Kamrin v. United States, 725
2 F.2d 1225, 1228 (9th Cir. 1984); In re Extradition of Perez-Cueva,
3 No. 16-MJ-0233, 2016 WL 884877, at *1 (C.D. Cal. Mar. 7, 2016).
4 Rather, case law provides that bail should be granted in an
5 extradition proceeding "only in the most pressing circumstances, and
6 when the requirements of justice are absolutely peremptory." United
7 States v. Leitner, 784 F.2d 159, 160 (2d Cir. 1986) (quoting In re
8 Mitchell, 171 F. 289, 289 (S.D.N.Y. 1909) (Hand, J.)).

9 **A. Applicable Law**

10 1. A Strong Presumption Against Bail Governs in an
11 International Extradition Proceeding

12 Unlike in domestic criminal cases, "[t]here is a presumption
13 against bail in an extradition case." Salerno v. United States, 878
14 F.2d 317, 317 (9th Cir. 1989); see also United States v. Snyder, No.
15 13-7082-mj, 2013 WL 1364275, at *2 (D. Ariz. Apr. 3, 2013) (noting
16 that presumption against bail in extradition is "well-established").
17 The Supreme Court established this presumption against bail in Wright
18 v. Henkel, explaining that when a foreign government makes a proper
19 request pursuant to a valid extradition treaty, the United States is
20 obligated to deliver the person sought after he or she is
21 apprehended:

22 The demanding government, when it has done all that the
23 treaty and the law require it to do, is entitled to the
24 delivery of the accused on the issue of the proper warrant,
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26 ¹ The Bail Reform Act applies only to "offenses" in violation
27 of United States law that are triable in the courts of the
28 United States. See 18 U.S.C. §§ 3141(a), 3142, 3156(a)(2). Here,
AHN is not charged with an "offense" within the meaning of 18 U.S.C.
§ 3156, but rather with offenses committed in violation of the law of
the requesting state, Spain.

1 and the other government is under obligation to make the
2 surrender; an obligation which it might be impossible to
3 fulfill if release on bail were permitted. The enforcement
4 of the bond, if forfeited, would hardly meet the
5 international demand; and the regaining of the custody of
6 the accused obviously would be surrounded with serious
7 embarrassment.

8 190 U.S. 40, 62 (1903); accord Jimenez v. Aristiguieta, 314 F.2d 649,
9 653 (5th Cir. 1963) ("No amount of money could answer the damage that
10 would be sustained by the United States were the appellant to be
11 released on bond, flee the jurisdiction, and be unavailable for
12 surrender, if so determined. The obligation of this country under
13 its [extradition] treaty with Venezuela is of paramount
14 importance."); United States ex rel. McNamara v. Henkel, 46 F.2d 84,
15 84-85 (S.D.N.Y. 1912) (presentation of forfeited bail to foreign
16 nation "is ridiculous, if not insulting").

17 The prudential reasons for this presumption against bail in
18 international extradition cases are clear and compelling. When, as
19 here, a requesting country meets the conditions of the Treaty, the
20 United States has an "overriding interest in complying with its
21 treaty obligations" to deliver the fugitive. In re Extradition of
22 Garcia, 615 F. Supp. 2d 162, 166 (S.D.N.Y. 2009); see also Wright,
23 190 U.S. at 62. It is imperative that the United States be regarded
24 in the international community as a country that honors its
25 agreements in order to be in a position to demand that other nations
26 meet their reciprocal obligations to the United States. Such
27 reciprocity would be defeated if a fugitive flees after being
28 released on bond. See In re Extradition of Martinelli Berrocal, 263

1 F. Supp. 3d 1280, 1306 (S.D. Fla. 2017) ("[O]ur Executive Branch has
2 a vested interest in enforcing our own treaty obligations for fear
3 that other treaty partners will refrain from doing so in the future.
4 And a difficult but necessary measure in carrying out that
5 responsibility is to secure a wanted individual and surrender him or
6 her to the foreign jurisdiction.").

7 2. Fugitives Must Be Detained Unless They Establish
8 "Special Circumstances" and also Demonstrate that They
9 Are Neither a Flight Risk Nor a Danger to the
10 Community

11 In light of the strong presumption against bail established in
12 Wright and its progeny, fugitives may not be released on bail unless
13 they demonstrate that (1) they are neither a flight risk nor a danger
14 to the community, and (2) "special circumstances" warrant their
15 release. See, e.g., In re Extradition of Antonowitz, 244 F. Supp. 3d
16 1066, 1068 (C.D. Cal. 2017); In re Extradition of Mainero, 950 F.
17 Supp. 290, 294 (S.D. Cal. 1996). "This 'special circumstances'
18 standard is much stricter than the 'reasonable assurance' of
19 appearance standard made applicable to domestic criminal proceedings
20 by the Bail Reform Act." In re Extradition of Kin-Hong, 913 F. Supp.
21 50, 53 (D. Mass. 1996). Further, the burden of showing "special
22 circumstances" rests upon the fugitive. See, e.g., Salerno, 878 F.2d
23 at 317-18.

24 In evaluating a fugitive's risk of flight in the extradition
25 context, courts have considered, among other things, the fugitive's
26 financial means, ties with foreign countries, and incentive to flee
27 based on the severity of the offense. See, e.g., Martinelli
28 Berrocal, 263 F. Supp. 3d at 1304; In re Extradition of Beresford-

1 Redman, 753 F. Supp. 2d 1078, 1091 (C.D. Cal. 2010) (finding that
2 fugitive facing serious charges in foreign country had both
3 "incentive and ability to flee" and therefore presented flight risk);
4 In re Extradition of Patel, 08-430-MJ-HUBEL, 2008 WL 941628, at *2
5 (D. Or. Apr. 4, 2008) (considering fact that fugitive had "more than
6 sufficient assets available with which to flee"). Crucially, the
7 "special circumstances" inquiry is separate from considerations of
8 danger to the community or risk of flight. See, e.g., Perez-Cueva,
9 2016 WL 884877, at *2 (special circumstances must exist in addition
10 to absence of risk of flight). "Even a low risk of flight" is not a
11 circumstance sufficiently "unique" to constitute a special
12 circumstance. Leitner, 784 F.2d at 161; see also Salerno, 878 F.2d
13 at 317-18 (lack of flight risk "is not a criteria for release in an
14 extradition case"). Conversely, a fugitive who poses a danger to the
15 community or a risk of flight should be denied bail, even in the face
16 of special circumstances. See In re Extradition of Siegmund, 887 F.
17 Supp. 1383, 1384 (D. Nev. 1995).

18 "Special circumstances must be extraordinary and not factors
19 applicable to all defendants facing extradition." Mainero, 950 F.
20 Supp. at 294 (citing In re Extradition of Smyth, 976 F.2d 1535, 1535-
21 36 (9th Cir. 1992)). Courts have considered and rejected a lengthy
22 list of would-be special circumstances, including:

- 23 • The complexity of the pending litigation, see, e.g., United
24 States v. Kin-Hong, 83 F.3d 523, 525 (1st Cir. 1996);
- 25 • The fugitive's need to consult with an attorney and/or
26 participate in pending litigation, see, e.g., Smyth, 976
27 F.2d at 1535-36;

- 1 • The fugitive's character, background, and/or ties to the
2 community, see, e.g., In re Extradition of Noeller, No. 17
3 CR 664, 2017 WL 6462358, at *5 (N.D. Ill. Dec. 19, 2017);
4 Beresford-Redman, 753 F. Supp. 2d at 1089; In re
5 Extradition of Sidali, 868 F. Supp. 656, 658 (D.N.J. 1994);
- 6 • The fact that the fugitive may have been living openly,
7 see, e.g., Leitner, 784 F.2d at 160-61; In re Extradition
8 of Pelletier, No. 09-mc-22416, 2009 WL 3837660, at *1, 3-4
9 (S.D. Fla. Nov. 16, 2009);
- 10 • Discomfort, special dietary needs, or medical concerns that
11 can be attended to while incarcerated, see, e.g., In re
12 Extradition of Noeller, 2017 WL 6462358, at *8-9;
13 Martinelli Berrocal, 263 F. Supp. 3d at 1301-02; In re
14 Extradition of Kyung Joon Kim, No. 04-CV-3886, 2004 WL
15 5782517, at *5 (C.D. Cal. July 1, 2004);
- 16 • United States citizenship or the pendency of naturalization
17 or other immigration proceedings, see, e.g., Antonowitz,
18 244 F. Supp. 3d at 1072; Knotek, 2016 WL 4726537, at *7; In
19 re Extradition of Orozco, 268 F. Supp. 2d 1115, 1117 (D.
20 Ariz. 2003);
- 21 • The fugitive's professional status, see, e.g., Pelletier,
22 2009 WL 3837660, at *3-4 (allegedly well-respected
23 businessman); In re Extradition of Heilbronn, 773 F. Supp.
24 1576, 1581-82 (W.D. Mich. 1991) (highly-trained doctor);
- 25 • The availability of electronic monitoring, see, e.g., In re
26 Extradition of Rovelli, 977 F. Supp. 566, 569 (D. Conn.
27 1997);

- Ordinary delay or delay occasioned by the fugitive in the course of extradition proceedings, see, e.g., Salerno, 878 F.2d at 318; Antonowicz, 244 F. Supp. 3d at 1070; and
- The availability of bail for the same offense in the requesting country, see, e.g., Antonowicz, 244 F. Supp. 3d at 1070; Kyung Joon Kim, 2004 WL 5782517, at *2; Siegmund, 887 F. Supp. at 1386-87.

While in certain exceptional cases some of the above may have been deemed a "special circumstance," courts generally determine "special circumstances" to exist based on a confluence of factors, as opposed to any single consideration. Such findings are highly case-specific and within the discretion of the Court, mindful of the strong presumption against bail and future reciprocity of other countries at stake.

B. Analysis

The Court should detain AHN without bond. As an initial matter, AHN is a significant flight risk. According to the information provided by Spanish authorities, AHN fled immediately after committing the attack on the Embassy of the Democratic People's Republic of Korea ("the Embassy"), evading police in either an official vehicle stolen from the Embassy or with co-conspirator, ADRIAN HONG CHANG ("HONG CHANG"), in an Uber, using a fraudulent account registered under one of HONG CHANG's aliases. (See Docket No. 1 at ¶¶ 6(j)-(k).) The fact that AHN has already sought to evade prosecution in Spain is indicative of his risk of flight in the United States. Cf. United States v. Botero, 604 F. Supp. 1028, 1035

1 (S.D. Fla. 1985) ("In the context of determining whether a defendant
2 poses a substantial risk of flight, this Court does not find any
3 meaningful distinction between a person who left the country when he
4 learned of pending charges and one who already outside the country
5 refuses to return to face these charges. The intent is the same—the
6 avoidance of prosecution.") (citing Jhirad v. Ferrandina, 536 F.2d
7 478, 483 (2d Cir. 1976)).

8
9 In addition, AHN has a strong incentive to flee, as he faces a
10 significant prison sentence - of potentially more than ten years - if
11 he is extradited and convicted in Spain of the six crimes for which
12 his extradition is sought. See, e.g., Perez-Cueva, 2016 WL 884877,
13 at *3 (seriousness of allegations against fugitive "mitigates against
14 release on bail"); In re Extradition of Shaw, No. 14-MC-81475, 2015
15 WL 521183, at *9 (S.D. Fla. Feb. 6, 2015) ("[T]he Defendant is facing
16 serious criminal sanctions in Thailand, which fact provides him with
17 a strong incentive to flee."); In re Extradition of Adame, Misc. H-
18 13-287, 2013 U.S. Dist. LEXIS 41682, at *7-8 (S.D. Tex. Mar. 25,
19 2013) (the fugitive "has virtually no incentive to appear at his
20 extradition hearing, where, due to the Government's low burden of
21 proof, there is a significant risk that he will be formally
22 extradited to Mexico"). Hence, further flight from the United States
23 to yet another country or to an underground location in the United
24 States is a reasonable assumption.

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27 AHN also presents a danger to the community. He is accused of
28 participating in a brazen attack on diplomatic personnel in Spain.

1 AHN and his accomplices violently assaulted and physically restrained
2 their victims, using knives, machetes, iron bars, imitation handguns,
3 shackles, and cables. (See Docket No. 1 at ¶ 6.) Multiple victims
4 reported having bags thrown over their heads, and at least one victim
5 reported being threatened with iron bars and imitation handguns.
6 (See id. at ¶¶ 6(d), (h).) Following the attack of the Embassy, HONG
7 CHANG told the Federal Bureau of Investigation that AHN was one of
8 the members of the group who participated in the attack on the
9 Embassy and was a former United States Marine.² (See id. at ¶ 6(n).)
10 In addition, when the United States Marshals Service arrested AHN on
11 April 18, 2019, they discovered, concealed in his waistband, a fully
12 loaded Springfield Armory XD Sub-Compact model .40-caliber
13 semiautomatic pistol and a second magazine with ten .40-caliber
14 rounds of ammunition, for which he claimed he had a conceal-carry
15 permit.³ (See Lulejian Decl. at ¶ 3.) Given the serious and violent
16 nature of AHN's alleged crimes, his military training, and his
17 familiarity and access to firearms, the community both in the United
18 States and abroad would be at risk were he to be released. Further,
19 allowance of bail in any amount would not guarantee AHN's presence in
20 court and would invite the possibility of embarrassing the United
21 States in the conduct of its foreign affairs.
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26 ² Spanish authorities have provided photographs of AHN
27 outside of the Embassy on the day of the attack. (See Decl. of John
28 J. Lulejian, dated 04/19/2019 ("Lulejian Decl."), at ¶ 2, Ex. A.)

³ The Marshals have determined that AHN does has a valid
conceal-carry permit. (See Lulejian Decl. at ¶ 3.)

1 AHN's risk of flight and danger to the community are each
2 sufficient reasons for the Court to deny any forthcoming application
3 for bail. However, even if the Court were satisfied that HONG CHANG
4 is not a flight risk and poses no danger to the community here or
5 abroad, the government is unaware of any "special circumstances" that
6 would justify bail in this case.
7

8 Should, however, the Court be inclined to grant bail in this
9 case, the government respectfully requests that the Court submit
10 special written findings as to those specific matters that are found
11 to constitute "special circumstances." Moreover, in order to protect
12 the ability of the United States to meet its treaty obligations to
13 the Government of Spain, the United States also requests that the
14 Court notify the parties within a reasonable amount of time in
15 advance of any contemplated release order.

16 **III. CONCLUSION**

17 For the foregoing reasons, the United States respectfully
18 requests that AHN be detained pending resolution of this extradition
19 proceeding.
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I, John J. Lulejian, declare as follows:

1. I am an Assistant United States Attorney and am one of the attorneys assigned to prosecute In re Extradition of Ahn, Case No. 2:19-MJ-01523. I make this declaration in support of the Government's Request for Detention Pending Extradition Proceedings.

2. On or about April 19, 2019, I received copies of security camera photographs that I understand the United States Department of Justice, Office of International Affairs, received from Spain, true and correct copies of which are attached hereto as Exhibit A. I am informed and believe that Spain has represented that these security camera photographs are of CHRISTOPHER PHILIP AHN ("AHN") outside of the Embassy of the Democratic People's Republic of Korea, on February 22, 2019, on the day of the attack.

3. I am informed and believe that when the United States Marshals Service arrested AHN on April 18, 2019, they discovered, concealed in his waistband, a fully loaded Springfield Armory XD Sub-Compact model .40-caliber semiautomatic pistol and a second magazine with ten .40-caliber rounds of ammunition, for which he claimed he had a conceal-carry permit.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 19th day of April, 2019, at Los Angeles,
California.

/s/John J. Lulejian
JOHN J. LULEJIAN

EXHIBIT A





