UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

In the Matter of the Extradition of	)	
	)	Misc. No. 5:24-MJ-0081 (ML)
James Patrick Dempsey	)	

MEMORANDUM OF EXTRADITION LAW AND REQUEST FOR DETENTION PENDING EXTRADITION PROCEEDINGS

The United States, in fulfilling its extradition treaty obligations to Germany, requests that the fugitive in this case, James Patrick Dempsey ("Dempsey"), be detained until the conclusion of the extradition process. This memorandum summarizes the framework of extradition law in the United States and argues that Dempsey should be detained because he cannot overcome the strong presumption against bail in international extradition cases. Specifically, Dempsey cannot meet his burden to show that he poses no risk of flight, no danger to the community, *and* that special circumstances warrant his release.

BACKGROUND

Germany has requested Dempsey's extradition so that he can face prosecution for aggravated murder, in violation of Section 211 of the German Criminal Code. On June 24, 2022, Judge Berger of the Stuttgart Lower Court in Germany issued a warrant for Dempsey's arrest. According to the information Germany has provided:

Details of the Offense

Between June 8, 1978, and June 11, 1978, a 35-year-old woman named Bärbel Gansau ("Gansau" or the "victim") was murdered in her apartment in Ludwigsburg, Germany. She lived on the ground floor of her apartment building. The apartment's windows were visible from a

nearby sidewalk. The ledge of the window into the victim's bathroom in the apartment was only 100 centimeters high (approximately 39 inches above the ground outside). Witnesses told investigators that Gansau had a habit of leaving her bathroom window open to allow her cats to enter and leave the apartment freely.

Forensic analysis reflects that while Gansau was asleep in her bed, a perpetrator attacked her with a knife. The intruder stabbed the victim 37 times. The victim sustained injuries to her neck, left arm, right thumb, left leg, and right upper leg. The intruder also stabbed Gansau in the center of her chest, piercing her pericardium, which investigators regarded as the main cause of death. The nature of the wounds reflected that Gansau did not expect the attack and was unable to mount a defense against it.

In 1978, after the murder, investigators collected a fingerprint from the aforementioned bathroom window frame. The fingerprint's position indicates that an individual entered Gansau's apartment from the outside, through this bathroom window.

Gansau's neighbor in Ludwigsburg, Hugo Rehberg, together with the victim's friend's husband, Robert Burright, discovered the victim's body. The body was naked and prone diagonally on her bed, toward the foot of the bed, with slightly spread legs, the tips of her feet resting on the carpet underneath the bed, and dragging traces of blood toward the foot of the bed. She was covered partially with a bedspread, but her legs were partly exposed, and her arms and head were fully exposed, with the arms raised above her head and bent slightly so the hands touched. The bedspread covered the majority of the stab wounds she sustained, as most of the wounds were on her upper body and the covered portions of her legs. There were large areas of blood on the bed cover, some of which were still wet, and a large pool of blood on the pillow at

the head of the bed. The victim's underwear was found under the body and had been cut through. Blood and a discharge were found on the bed sheet between her legs.

The victim's apartment was discovered in disarray following the murder. Her handbag was on the floor with its contents emptied. The window shutters were pulled up and the bathroom window was ajar. Various clothes and objects had been emptied from closets in the hallway and living room. The main door to the apartment was locked twice from the inside, and the key was in the lock. Investigators found three unique fingerprints in the victim's apartment, including the one found on the bathroom window frame.

Investigators interviewed witnesses, including Gansau's neighbors, friends, and acquaintances. The victim was known to frequent non-commissioned officers' clubs for American soldiers stationed at a U.S. Army base in Ludwigsburg. A close friend, Rosemarie Baumann, stated that she had accompanied Gansau, on occasion, and that the victim was attracted to American men. The victim had maintained acquaintances with American soldiers, as well as sexual relationships with some. Investigators identified several soldiers with whom she had been intimate; authorities obtained their fingerprints for comparison to the ones found in the victim's apartment, however, all the soldiers identified had alibis, and ultimately investigators could not identify a suspect at that time. Investigators found no evidence that the victim had prior consensual sexual contact with Dempsey, and he was not fingerprinted as part of the investigation in 1978.

Identification of Dempsey as the alleged perpetrator

In 2020, investigators reopened the investigation into Gansau's murder, due to changes in forensic technology. Investigators sent the fingerprint evidence, due to their continuing suspicion that the murderer was an American soldier, to an FBI liaison officer in Berlin, to compare with the

database in the United States. On January 29, 2021, the FBI notified the German investigators that the fingerprints corresponding from the victim's bathroom window frame matched Dempsey's fingerprints in the U.S. database.

The FBI provided Germany with information about Dempsey's current address and background. Between November 1976 and December 1978, Dempsey was a soldier in the U.S. Army. He was stationed in Germany from late 1977 to late 1978 in Ludwigsburg as part of the 34th Battalion. Army records reflect that during his time in the Army, Dempsey developed a drinking problem and became aggressive under the influence of alcohol, resulting in alcohol rehabilitation for six days, beginning June 1, 1978, in Stuttgart-Bad Cannstatt. Dempsey was discharged from the Army in 1978. He continued to have problems with alcohol, including a charge in the United States in 1979, for driving under the influence and unauthorized use of a vehicle. Investigators conducted identification procedures incident to Dempsey's arrest at the time.

On April 14, 2021, the FBI conducted a trash pull at Dempsey's residence in the United States to assist the German investigation. The FBI provided evidence obtained through the trash pull to German investigators.

The German investigators used DNA trace analysis on several skin and sperm samples obtained at the crime scene. In particular, semen from the bedsheet recovered from between the victim's legs was analyzed and found to be a pure trace with a male one-person pattern. In 2022, German police investigators compared this DNA from the crime scene to the male DNA found in the trash pull from Dempsey's U.S. residence. Forensic testing indicated that the semen, as well

as some skin samples from the crime scene, matched Dempsey's DNA found in the trash pull. Investigators determined that the likelihood of a match was 1 in 270 quadrillion.

The United States, in accordance with its obligations under its extradition treaty with Germany (the "Treaty")[1] and pursuant to 18 U.S.C. §§ 3181 *et seq.*, filed a complaint in the instant matter, seeking a warrant for Dempsey's provisional arrest with a view toward his extradition to Germany. United States Magistrate Judge Miroslav Lovric issued an arrest warrant on February 9, 2024 and Dempsey was arrested on February 13, 2024. Dempsey is currently in the custody of the U.S. Marshals Service.

ARGUMENT

I. LEGAL FRAMEWORK OF EXTRADITION PROCEEDINGS

A. The limited role of the Court in extradition proceedings

Extradition is a means by which a fugitive is returned to a foreign country, typically pursuant to a treaty, to face criminal charges or to serve a sentence. In the United States, extradition is primarily an executive function, with a limited role for the judiciary under 18 U.S.C. § 3184. Pursuant thereto, the judicial officer's inquiry is confined to whether: (1) the judicial officer is

[1] *See* Treaty Between the United States of America and the Federal Republic of Germany Concerning Extradition, U.S.-F.R.G., June 20, 1978, T.I.A.S. No. 9785 (the "1978 Treaty"), *as amended by* the Supplementary Extradition Treaty with the Federal Republic of Germany, U.S.-F.R.G., Oct. 21, 1986, S. TREATY DOC. NO. 100-6 (1987) (the "1986 Supplementary Treaty"), *and* the Second Supplementary Treaty to the Treaty Between the United States of America and the Federal Republic of Germany Concerning Extradition, U.S.-F.R.G., Apr. 18, 2006, S. TREATY DOC. NO. 109-14 (2006) (the "2006 Supplementary Treaty"; collectively, the "Treaty").

authorized to conduct the extradition proceeding; (2) the Court has jurisdiction over the fugitive; (3) the applicable extradition treaty is in full force and effect; (4) the treaty covers the crimes for which extradition is sought; and (5) probable cause exists to believe that the fugitive committed the offenses. *See id.*; *see also Skaftouros v. United States*, 667 F.3d 144, 154-55 (2d Cir. 2011). "If the judicial officer answers these questions in the affirmative, he or she 'shall certify' the extraditability of the fugitive to the Secretary of State." *Cheung v. United States*, 213 F.3d 82, 88 (2d Cir. 2000) (quoting 18 U.S.C. § 3184).

After a fugitive is certified as extraditable, the Secretary of State (the "Secretary") decides whether to surrender the fugitive to the requesting country. *See* 18 U.S.C. §§ 3184, 3186; *see also, e.g.*, *Lo Duca v. United States*, 93 F.3d 1100, 1103-04 (2d Cir. 1996). "This bifurcated procedure reflects the fact that extradition proceedings contain legal issues peculiarly suited for judicial resolution, such as questions of the standard of proof, competence of evidence, and treaty construction, yet simultaneously implicate questions of foreign policy, which are better answered by the executive branch." *United States v. Kin-Hong*, 110 F.3d 103, 110 (1st Cir. 1997).

B. The requirements for certification

1. Authority of the Court over the proceedings

The extradition statute authorizes proceedings to be conducted by "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." 18 U.S.C. § 3184. Both magistrate judges and district judges may render a certification under Section 3184. *See Austin v. Healey*, 5 F.3d 598, 601-02 (2d Cir. 1993); *see also* Local Crim. R. 59.1(a)(2)(B) (authorizing magistrate judges to conduct extradition proceedings pursuant to 18 U.S.C. § 3184).

2. Jurisdiction over the fugitive

The Court has jurisdiction over a fugitive, such as Dempsey, who is found within its jurisdictional boundaries. *See* 18 U.S.C. § 3184 ("[A judge] may, upon complaint made under oath, charging any person found within his jurisdiction . . . issue his warrant for the apprehension of the person so charged.").

3. Treaty in full force and effect

Section 3184 provides for extradition in specifically defined situations, including whenever an applicable treaty or convention for extradition is in force. At the extradition hearing, the United States will provide a declaration from the Office of the Legal Adviser of the U.S. Department of State attesting that the Treaty is in full force and effect.

4. Crime covered by the Treaty

Extradition treaties create an obligation for the United States to surrender fugitives under the circumstances the treaty sets forth. Here, Article 1 of the 1978 Treaty provides for the extradition of individuals charged with, or convicted of, an extraditable offense. Article 2 of the 1978 Treaty, as amended by Article 1 of the 1986 Supplementary Treaty, provides that an offense is extraditable if "punishable under the laws of both Contracting Parties." 1986 Supplementary Treaty, art. 2(a)(1).

In assessing whether the Treaty covers the offense for which Germany has requested extradition, the Court should examine the description of criminal conduct that Germany has provided and decide whether that conduct would be criminal under U.S. federal law, the law of the State in which the hearing is held, or the law of a preponderance of the states, had the offense occurred here. The Court "must review the applicable treaty and construe its language liberally."

Kiss v. Niagara Cty. Jail (Head), No. 16-CV-1011-FPG, 2018 WL 2766102, at *3 (W.D.N.Y. June 8, 2018) (citation omitted). "The law does not require that the name by which the crime is described in the two countries shall be the same; nor that the scope of the liability shall be coextensive, or, in other respects, the same in the two countries. It is enough if the particular act charged is criminal in both jurisdictions." *Collins v. Loisel*, 259 U.S. 309, 312 (1922); *see also, e.g., In re Pena-Bencosme*, 341 F. App'x 681, 684 (2d Cir. 2009) (stating that dual criminality requirement satisfied if "the *conduct* of the accused . . . falls within the proscription of American criminal law") (emphasis in original, internal quotation marks and citations omitted).

5. Probable cause that the fugitive committed the offense

To certify the matter to the Secretary, the Court must find probable cause to believe that Dempsey committed the offense for which Germany seeks extradition. *See, e.g.*, *Cheung*, 213 F.3d at 88. It is well-established that "the function of the extraditing magistrate is not to decide guilt or innocence but merely to determine whether there is 'competent legal evidence which . . . would justify [the fugitive's] apprehension and commitment for trial if the crime had been committed'" here. *Shapiro* v. *Ferrandina*, 478 F.2d 894, 900-91 (2d Cir. 1973) (quoting *Collins*, 259 U.S. at 315; *see also, e.g.*, *Austin*, 5 F.3d at 603 ("the order of extraditability expresses no judgment on [the fugitive's] guilt or innocence."); *In re Extradition of Mujagic*, 990 F. Supp. 2d 207, 219–20 (N.D.N.Y. 2013) "[T]he requesting country need only produce enough evidence to justify holding the [fugitive] to answer the charges pending against him." (internal quotation marks and citations omitted).

C. An extradition hearing follows unique procedures

Extradition hearings are neither criminal nor civil proceedings. *See, e.g.*, *Austin*, 5 F.3d at 603 ("We have repeatedly noted, for example, that an extradition hearing is not a criminal prosecution: the order of extraditability expresses no judgment on [the fugitive]'s guilt or innocence."). "By design, 'the procedural framework of international extradition gives to the demanding country advantages most uncommon to ordinary civil and criminal litigation.'" *Skaftouros*, 667 F.3d at 155 (quoting *First Nat'l City Bank v. Aristeguieta*, 287 F.2d 219, 226 (2d Cir. 1960)). A summary of those advantages appears below.

1. Extradition Hearings Rely on Written Submissions and Do Not Require Live Witnesses

Neither the Federal Rules of Criminal Procedure nor the Federal Rules of Evidence apply in extradition proceedings. *See* Fed. R. Crim. P. 1(a)(5)(A) ("Proceedings not governed by these rules include . . . the extradition and rendition of a fugitive."); Fed. R. Evid. 1101(d)(3) ("These rules—except for those on privilege—do not apply to . . . miscellaneous proceedings such as extradition or rendition."); *see also, e.g.*, *Skaftouros*, 667 F.3d at 155 n.16. Hearsay evidence is admissible at an extradition hearing. *See, e.g.*, *Collins*, 259 U.S. at 317 (stating that "unsworn statements of absent witnesses may be acted upon by the committing magistrate"); *Simmons v. Braun*, 627 F.2d 635, 636 (2d Cir. 1980); *In re Ryan*, 360 F. Supp. 270, 273 (E.D.N.Y.), *aff'd*, 478 F.2d 1397 (2d Cir. 1973) ("A determination of probable cause in an extradition proceeding may rest entirely upon hearsay."). Accordingly, a certification of extraditability properly rests on the authenticated documentary evidence and information the requesting government provides. *See, e.g.*, *Harshbarger v. Regan*, 599 F.3d 290, 294 (3d Cir. 2010) (finding that Canadian law

enforcement officers' affidavits were competent proof and "provided ample evidence of probable cause"); *Bovio v. United States*, 989 F.2d 255, 259-60 (7th Cir. 1993) (relying on statement of Swedish investigator); *Emami v. U.S. Dist. Court for the N. Dist. of Cal.*, 834 F.2d 1444, 1450-52 (9th Cir. 1987) (relying on affidavit of German prosecutor); *United States v. Amabile*, 14-M-1043, 2015 WL 4478466, at *9 (E.D.N.Y. July 16, 2015) ("[T]he certificate of extradition may be based on written statements provided by a foreign prosecutor, investigator or judge."); *Suyanoff v. Terrell*, No. 12-cv-05115, 2014 WL 6783678, at *8 (E.D.N.Y. Dec. 2, 2014) ("[W]ritten summaries of evidence, including witness testimony, are both permitted and frequently utilized in establishing probable cause within the extradition context") (citations omitted); *In re Extradition of Chan Hon-Ming*, 06-M-296, 2006 WL 3518239, at *7 (E.D.N.Y. Dec. 6, 2006) (relying on detective's affirmation setting forth the "major facts and evidence uncovered by the Hong Kong Police"). Extradition treaties do not require, or even anticipate, the testimony of live witnesses at the hearing. *See, e.g.*, *Bingham v. Bradley*, 241 U.S. 511, 517 (1916); *Shapiro*, 478 F.2d at 902.

2. Limitations on fugitives' defenses in extradition proceedings

Because an extradition hearing is not a criminal trial, a fugitive's defenses in extradition proceedings are heavily circumscribed. For example, a fugitive has: (1) no Sixth Amendment right to a speedy extradition, *see, e.g.*, *Yapp v. Reno,* 26 F.3d 1562, 1565 (11th Cir. 1994); (2) no Fifth Amendment protection against successive extradition proceedings, *see, e.g.*, *In re Extradition of McMullen*, 989 F.2d 603, 612-13 (2d Cir. 1993); (3) no ability to invoke the exclusionary rule, *see, e.g.*, *Simmons*, 627 F.2d at 636-37; (4) no right to confront accusers, *see, e.g.*, *Bingham,* 241 U.S. at 517; (5) no right to invoke defenses that "savor of technicality," *see id.*; (6) no right to introduce

affirmative defenses, *see, e.g.*, *Charlton v. Kelly*, 229 U.S. 447, 461 (1913); and (7) no right to discovery, *see, e.g.*, *Messina v. United States*, 728 F.2d 77, 80 (2d Cir. 1984).

Relatedly, a fugitive's right to present evidence is severely constrained. "In the exercise of the extraditing judge's discretion, a fugitive may be permitted to offer explanatory testimony, but may not offer proof which contradicts that of the demanding country." *Id.* Accordingly, "evidence of alibi or of facts contradicting the demanding country's proof or of a defense such as insanity may properly be excluded from the Magistrate's hearing." *Shapiro*, 478 F.2d at 901. "[S]tatements [that] would in no way explain . . . or . . . obliterate the government's evidence, but would only pose a conflict of credibility . . . should properly await trial in [the country seeking extradition]." *Id.* at 905 (internal quotation marks omitted).

3. Rule of non-inquiry

All matters a fugitive may raise as defenses to extradition, other than those related to the requirements for certification, are for the Secretary to consider, and not the court. *See* 18 U.S.C. §§ 3184, 3186. This comports with the long-held understanding that surrendering a fugitive to a foreign government is "purely a national act . . . performed through the Secretary[]." *See In re Kaine*, 55 U.S. 103, 110 (1852); *see also Ahmad v. Wigen*, 910 F.2d 1063, 1066-67 (2d Cir. 1990).

II. DEMPSEY SHOULD BE DETAINED

Just as extradition hearings follow unique procedures, the determination of whether to release a fugitive on bail is also *sui generis*. The federal statutes governing extradition, 18 U.S.C. §§ 3181 *et seq.*, do not provide for bail. Further, the Bail Reform Act, 18 U.S.C. §§ 3141 *et seq.*,

does not apply because an extradition proceeding is not a criminal prosecution.[2] *See, e.g.*, *Austin*, 5 F.3d at 603; *Borodin v. Ashcroft*, 136 F. Supp. 2d 125, 128 (E.D.N.Y. 2001). Rather, bail should be granted in an extradition proceeding "only in the most pressing circumstances, and when the requirements of justice are absolutely peremptory." *United States v. Leitner*, 784 F.2d 159, 160 (2d Cir. 1986) (quoting *In re Mitchell*, 171 F. 289, 289 (S.D.N.Y. 1909) (Hand, J.)).

A. Applicable law

1. A strong presumption against bail governs in international extradition proceedings

Unlike in domestic criminal cases, "there is a presumption against bail in extradition cases." *Id.*; *see also, e.g., In re Extradition of Martinelli Berrocal*, 263 F. Supp. 3d 1280, 1284 (S.D. Fla. 2017). The Supreme Court established this presumption against bail in *Wright v. Henkel*, explaining that when a foreign government makes a proper request pursuant to a valid extradition treaty, the United States is obligated to deliver the fugitive:

> The demanding government, when it has done all that the treaty and the law require it to do, is entitled to the delivery of the accused on the issue of the proper warrant, and the other government is under obligation to make the surrender; an obligation which it might be impossible to fulfill if release on bail were permitted. The enforcement of the bond, if forfeited, would hardly meet the international demand; and the regaining of the custody of the accused obviously would be surrounded with serious embarrassment.

190 U.S. 40, 62 (1903).

Where, as here, a requesting country meets the Treaty's conditions, the United States has an "overriding interest in complying with its treaty obligations" to deliver the fugitive. *In Re*

[2] The Bail Reform Act applies only to "offenses" in violation of U.S. law that are triable in U.S. courts. *See* 18 U.S.C. §§ 3141(a), 3142, and 3156(a)(2). Here, Dempsey is not accused of an "offense" within the meaning of 18 U.S.C. § 3156, but rather of an offense that violates German law.

Extradition of Garcia, 615 F. Supp. 2d 162, 166 (S.D.N.Y. 2009); *see also Wright*, 190 U.S. at 62. It is important that the United States be regarded in the international community as a country that honors its agreements in order to be in a position to demand that other nations meet their reciprocal obligations to the United States. *See e.g., Martinelli Berrocal*, 263 F. Supp. 3d at 1294 ("No amount of money could answer the damage that would be sustained by the United States were the [fugitive] to be released on bond, flee the jurisdiction, and be unavailable for surrender, if so determined.") (quoting *Jimenez v. Aristiguieta*, 314 F.2d 649, 653 (5th Cir. 1963)). Such reciprocity would be defeated if a fugitive flees after being released on bond.

Further, while forfeiture of bail in domestic criminal cases is designed to compensate, at least in part, the party that is seeking the accused's presence for trial, forfeiture of bail in international extradition cases due to the failure of the fugitive to appear would leave Germany without either remedy or compensation. Given the United States' overriding interest, and the presumption against bail, "release on bail in extradition cases should be an unusual and extraordinary thing." *Borodin*, 136 F. Supp. 2d at 128 (internal quotation marks and citations omitted).

2. Fugitives must be detained unless they establish "special circumstances" and also demonstrate that they are neither a flight risk nor a danger to the community

Given the strong presumption against bail, a fugitive may not be released on bail unless he demonstrates that: (1) he is not a flight risk; (2) he is not a danger to the community; *and* (3) "special circumstances" warrant release. *See, e.g.*, *Leitner*, 784 F.2d at 160; *Martinelli*, 263 F.

Supp. 3d at 1292.[3] "This 'special circumstances' standard is much stricter than the 'reasonable assurance' of appearance standard made applicable to domestic criminal proceedings by the Bail Reform Act." *In re Extradition of Kin-Hong*, 913 F. Supp. 50, 53 (D. Mass. 1996).

In evaluating a fugitive's risk of flight in the extradition context, courts have considered, among other things, the fugitive's financial means, ties with foreign countries, and incentive to flee based on the severity of the offense. *See, e.g.*, *In re Extradition of Beresford-Redman*, 753 F. Supp. 2d 1078, 1091 (C.D. Cal. 2010) (finding that fugitive facing serious charges in foreign country had the "incentive and ability to flee" and therefore presented a flight risk); *In re Extradition of Patel*, 08-430–MJ–HUBEL, 2008 WL 941628, at *2 (D. Or. Apr. 4, 2008) (considering that fugitive, a physician, had "more than sufficient assets available with which to flee").

Crucially, the special circumstances inquiry is separate from considerations of danger to the community or risk of flight. "Even a low risk of flight" is not a circumstance sufficiently "unique" to constitute a special circumstance. *Leitner*, 784 F.2d at 161; *see also, e.g.*, *Borodin*, 136 F. Supp. 2d at 130 ("Absence of risk of flight is not a legally cognizable 'special circumstance' justifying release from bail.") (citing cases); *United States v. Tang Yee–Chun*, 657 F. Supp. 1270,

[3] Several courts have required fugitives to meet this burden with clear and convincing evidence, reasoning that the presumption against bail in extradition cases justifies a heightened standard of proof. *See, e.g., In re Extradition of Patel*, No. 08-mj-430, 2008 WL 941628, at *1 (D. Or. Apr. 4, 2008); *In re Extradition of Mainero*, 950 F. Supp. 290, 294 (S.D. Cal. 1996). Others have applied a preponderance standard. *See, e.g., Extradition of Santos*, 473 F. Supp. 2d 1030, 1035 n.4 (C.D. Cal. 2006). Still others have found it unnecessary to resolve the issue because of the difficulty of satisfying either standard. *See, e.g., In re Extradition of Perez-Cueva*, No. 16-0233, 2016 WL 884877, at *2 (C.D. Cal. Mar. 7, 2016).

1272 (S.D.N.Y. 1987). Conversely, a fugitive who poses a danger to the community or a risk of flight should be denied bail, even in the face of special circumstances.

Special circumstances must be extraordinary and not factors applicable to all fugitives facing extradition. *See, e.g.*, *Extradition of Smyth*, 976 F.2d 1535, 1535-36 (9th Cir. 1992). Courts have considered and rejected a lengthy list of claimed special circumstances, including:

- COVID-19. *See, e.g.*, *In re Extradition of Rollo*, No. 20-80746-MC-UNA/BER, at 3-4, 7 (S.D. Fla. May 28, 2020) at 3-4 (COVID-19 not "special circumstance" when no evidence that jail "is unable to provide adequate medical treatment should [fugitive] contract COVID-19"); *Risner v. Fowler*, 3:19- cv-03078, 2020 WL 2110579, at *7 (N.D. Tex. May 1, 2020); *Valentino v. United States Marshal*, 4:20-cv-304, 2020 WL 1950765, at *2 (S.D. Tex. Apr. 15, 2020);

- The complexity of the pending litigation, *see, e.g.*, *United States v. Kin-Hong*, 83 F.3d 523, 525 (1st Cir. 1996); *Tang Yee-Chun*, 657 F. Supp. at 1271-72;

- The fugitive's need to consult with an attorney and/or participate in pending litigation, *see, e.g.*, *Smyth*, 976 F.2d at 1535-36;

- The fugitive's character, background, or ties to the community, *see, e.g.*, *Leitner*, 784 F.2d at 160-61; *In re Extradition of Beresford-Redman*, 753 F. Supp. 2d 1078, 1089-90 (C.D. Cal. 2010); *Duran v. United States*, 36 F. Supp. 2d 622, 628 (S.D.N.Y. 1999); *In re Extradition of Rovelli*, 977 F. Supp. 566, 568 (D. Conn. 1997);

- That the fugitive may have been living openly, *see, e.g.*, *Leitner*, 784 F.2d at 160-61;

- Discomfort, special dietary needs, or medical concerns that can be attended to while incarcerated, *see, e.g.*, *Garcia*, 615 F. Supp. 2d at 173-74; *In re Extradition of Hamilton-Byrne*, 831 F. Supp. 287, 290-91 (S.D.N.Y. 1992);

- U.S. citizenship or the pendency of naturalization or other immigration proceedings, *see, e.g.*, *In re Extradition of Antonowicz*, 244 F. Supp. 3d 1066, 1072 (C.D. Cal. 2017); *In re Extradition of Knotek*, No. 13-9204, 2016 WL 4726537, at *3, 7 (C.D. Cal. Sept. 8, 2016); *In re Extradition of Sacirbegovic*, 280 F. Supp. 2d 81, 84 (S.D.N.Y. 2003); *In re Extradition of Orozco*, 268 F. Supp. 2d 1115, 1117 (D. Ariz. 2003);

- The fugitive's professional status, *see, e.g.*, *Borodin*, 136 F. Supp. 2d at 127, 131 (State Secretary of the Union of Russia and Belarus); *In re Extradition of Pelletier*, No. 09-22416, 2009 WL 3837660, at *3-4 (S.D. Fla. Nov. 16, 2009) (businessman); *In re Extradition of Heilbronn*, 773 F. Supp. 1576, 1581-82 (W.D. Mich. 1991) (highly-trained doctor);

- The availability of electronic monitoring, *see, e.g.*, *Rovelli*, 977 F. Supp. at 569;

- Ordinary delay or delay occasioned by the fugitive in the course of extradition proceedings, *see, e.g.*, *Antonowicz*, 244 F. Supp. 3d at 1070; *In re Klein*, 46 F.2d 85, 85 (S.D.N.Y. 1930); and

- Availability of bail for the same offense in the requesting country, *see, e.g.*, *Garcia*, 615 F. Supp. 2d at 172.

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 Court's discretion, mindful of the strong presumption against bail and the reasons therefor.

B. Analysis

The Court should deny bail because Dempsey poses a flight risk and a danger to the community, and there do not appear to be any special circumstances that can overcome the strong presumption against bail.

Dempsey poses a significant flight risk because he has a history of evading justice and because the instant extradition proceedings, charging him with murder in a foreign jurisdiction, heighten his incentive to flee further. More specifically, now that Dempsey is aware that Germany seeks his extradition, he has strong incentive to flee again, whether to a third country or simply to hide at a location anywhere within the United States. As noted above, the upcoming extradition proceedings are limited in scope and afford Dempsey few rights, and the government's burden to

establish extraditability is relatively light. *See, e.g.*, *In re Extradition of Garcia*, 761 F. Supp. 2d 468, 483 (S.D. Tex. 2010) (finding that fugitive "has virtually no incentive to appear at his extradition hearing, where, due to the Government's low burden of proof, there are significant risks that he will be formally extradited"); *In re Extradition of Adame*, Misc. H-13-287, 2013 U.S. Dist. LEXIS 41682, at *7-8 (S.D. Tex. Mar. 25, 2013) (same). Further, the German murder charge against Dempsey carries a potential ten-year prison sentence, due to the severity of the crime.[4] *See, e.g.*, *In re Extradition of Shaw*, No. 14–MC–81475, 2015 WL 521183, at *9 (S.D. Fla. Feb. 6, 2015) ("[T]he [fugitive] is facing serious criminal sanctions in Thailand, which fact provides him with a strong incentive to flee."). Accordingly, no combination of bail conditions or promises can ensure Dempsey's appearance before this Court and the United States' ability to fulfill its treaty obligations to Germany. The flight risk Dempsey poses is, alone, fatal to any bail application.

In addition to being a flight risk, Dempsey poses a significant danger to the community. Dempsey has been charged with murder. The extradition request from Germany describes a brutal killing of a defenseless woman, following a break-in. The evidence provided also points to a

[4] The submissions from Germany anticipates that Dempsey would be tried as a "young adult" (aged 18 but not yet 21) due to his age at the time of the alleged murder offense.

sexually depraved component of the crime. The materials from Germany indicate that Dempsey poses a great danger to the community and should not be released from custody.

Even if the Court were satisfied that Dempsey poses neither flight risk nor danger to the community, the United States is unaware of any "special circumstances" that would justify bail in this case.[5]

CONCLUSION

For the foregoing reasons, the United States requests that Dempsey be detained until the conclusion of the extradition process.

United States Attorney

By: /s/ *Stephen C. Green*
Stephen C. Green
Assistant United States Attorney

[5] Should, however, the Court be inclined to grant bail, the United States respectfully requests that the Court submit special written findings as to those specific matters that are found to constitute "special circumstances." Moreover, to protect the United States' ability to meet its treaty obligations to the Government of Germany, the United States requests that the Court notify the parties within a reasonable amount of time in advance of any contemplated release order.