

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO

Case No. 89DR477 Division M

MOTION TO INVALIDATE AND RESCIND \$750,000 PERSONAL RECOGNIZANCE BOND

In Re the Marriage of:

SANDRA WILFRED, Petitioner

and

HARMON WILFRED, Respondent.

COMES NOW the respondent, Harmon Wilfred, and moves this Court to issue its order invalidating and rescinding the \$750,000 personal recognizance bond, and as grounds states:

Statement of Facts

1. On April 5, 2000, Canada extradited the respondent in this case, Harmon L. Wilfred, to the United States pursuant to the Treaty on Extradition, United States and Canada, 1976, 27 U.S.T. 983, T.I.A.S. No. 8237 (hereafter "the Treaty"), for the sole purpose of trial of the criminal charges pending against him in El Paso County, Colorado in connection with his alleged abduction to Canada of two of his own children.
2. The following day the El Paso County court before which those charges were pending released him on a \$10,000 cash bond, and permitted him to return to Canada on the condition that he return to El Paso County to attend a May 11, 2000, hearing in his case.
3. In compliance with the terms of his bond and the order of the court, Mr. Wilfred returned to El Paso County on May 10, 2000, to attend the hearing in his case.
4. The following day, he attended the hearing, and was unlawfully arrested by United States Marshals, in violation of Article 12 of the Treaty (the Specialty or Speciality provision), on parental non-support charges pursuant to a federal complaint that had been filed against him the previous day in Denver.

5. After Mr. Wilfred had been unlawfully detained on the federal charges for more than two weeks, the United States Attorney for the District of Colorado, realizing that Mr. Wilfred had been unlawfully detained in violation of the Treaty, requested that the federal complaint against Mr. Wilfred be dismissed and that Mr. Wilfred be released. The federal case against Mr. Wilfred was dismissed May 26, 2000.

6. On May 26, 2000, prior to Mr. Wilfred's actual release by the federal authorities, he was again unlawfully arrested by United States Marshals in violation of Article 12 of the Treaty, this time on the basis of state parental non-support charges that had pending against him in Arapahoe County since 1997, but with respect to which his extradition from Canada had neither been requested nor granted.

7. On May 30, 2000, after he had been unlawfully detained for four days on the Arapahoe County charges, Mr. Wilfred was compelled by the county magistrate before whom he appeared, in a proceeding in which he was not afforded the opportunity to be represented by counsel, to sign a \$750,000 personal recognizance bond in order to secure his release from his unlawful detention. The terms of that bond require him to appear in Arapahoe County on June 29, 2000, for a financial asset examination.

8. Since his release from custody in Arapahoe County, Mr. Wilfred has returned to, and resides at, his home in Stratford, Ontario, Canada.

9. For the reasons set forth below, the personal recognizance bond imposed on Mr. Wilfred, as a condition of his release from his unlawful custody in Arapahoe County, was unlawfully imposed in violation of the Treaty, and must be invalidated and rescinded.

Standing

10. Although the Principle of Specialty is intended to protect the country that extradited a person against violation of the terms of that person's extradition by the country that obtained his extradition, the Supreme Court held more than 100 years ago that the primary means for enforcing this obligation with respect to persons extradited to the United States is by means of legal proceedings brought by the extradited person in federal or state court. *United States v. Rauscher*, 119 U.S. 407, 430-31 (1886). See also *United States v. Levy*, 905 F.2d 326, 328-29 (10th Cir. 1990); *United States v. Puentes*, 50 F.3d 1567, 1571-76 (11th Cir.), cert. denied, 516 U.S. 933 (1995). It further held that an extradited person may challenge an attempt to prosecute or detain him for an offense for which he was not extradited either by means of a pretrial motion or a petition for *habeas corpus* alleging that the court lacks jurisdiction over him because he is present in the United States only for the purpose of being prosecuted for the offense(s) for which he was extradited. *Id.* at 430-31; *Johnson v. Browne*, 205 U.S. 309 (1907); *United States v. Vreeken*, 803 F.2d 1085 (10th Cir. 1985), cert. denied, 479 U.S. 10815 (1987).

Applicable Law

11. Article 12 of the Treaty pursuant to which Mr. Wilfred was extradited provides:

(1) A person extradited under the present Treaty shall not be detained, tried, or punished in the territory of the requesting State¹ for an offense other than that for which extradition has been granted nor be extradited by the State to a third State unless:

(i) He has left the territory of the requesting State and voluntarily returned to it;

(ii) He has not left the territory of the requesting State within thirty days after being free to do so; or

(iii) The requested State has consented to his detention, trial, [or] punishment for an offense other than that for which his extradition was granted or to his extradition to a third State, provided that such other offense is covered by Article 2.²

(2) The foregoing shall not apply to offenses committed after the extradition.

12. This provision, commonly referred to as the "Principle" or "Rule" of "Specialty" or "Speciality", prohibits the country that obtains a person's extradition, and any political subdivision of that country, not only from prosecuting the extradited person for an offense he allegedly committed prior to his extradition, but also from depriving him of his liberty in any way with respect to such an offense.

13. In *Van Cauwenberghe v. Baird*, 486 U.S. 517 (1988), the Supreme Court considered the question of whether a person extradited to the United States could obtain interlocutory review of his claim that he was immune from civil process in connection with a civil law suit brought against him by a private party with respect to the same acts for which he was extradited. In unanimously deciding that the extradited person was not entitled to take an interlocutory appeal in such circumstances, the Court specifically avoided deciding whether the extradited person was immune from the service of civil process. However, in doing so, the Court unanimously held:

¹ The term "State" is used in the Treaty in the international context, and means "nation" or "country", not state or province of one of the parties.

² Article 2 of the Treaty, as amended by the Protocol Amending the Treaty, 1991, T.I.A.S. No. _____, defines the type of offenses for which extradition may be granted.

[T]o the extent that the principle of specialty protects an extradited person from the exercise of coercive power by the receiving state on matters not anticipated by the extradition, the defense of a civil suit does not significantly restrict a defendant's liberty. Service of process merely requires that a defendant appear through an attorney and file an answer to the complaint to avoid default. *There is no possibility that the defendant will be subject to pretrial detention or be required to post bail. The defendant is not even compelled to be present at trial.* We therefore conclude that a right not to stand trial in a civil suit is not an essential aspect of a claim of immunity under the principle of specialty.

Id. at 526 [emphasis added].

14. In view of stated basis of the Supreme Court's opinion, there can be no doubt that if Van Cauwenberghe could have been subjected to pretrial detention or required to post bail in connection with the civil action brought against him, the Court would have held that such detention or bail violated the Specialty provision of the applicable extradition treaty. Indeed, the Supreme Court has long regarded subjecting a person to bond to guaranty his appearance in a judicial proceeding as a serious interference with his liberty "that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and friends" in the same manner as if he had been detained. *United States v. Marion*, 404 U.S. 307, 320 (1971). *See also, e.g., United States v. MacDonald*, U.S. 1, 7-8 (1982) and *Dilligham v. United States*, 423 U.S. 64, 65 (1975) (*per curiam*).

Conclusion

15. In view of the Supreme Court's unanimous opinion in *Van Cauwenberghe*, subjecting an extradited person to bail or a bond to guaranty his presence at a civil proceeding in the United States incontestably violates the Specialty provision of the United States extradition treaty with Canada.³ Consequently, there can be no doubt that this Court must invalidate and rescind the personal recognizance bond Mr. Wilfred was compelled to sign in order to secure his release from his unlawful detention in Arapahoe County.

³ The Supreme Court also held in *Rauscher* that 18 U.S.C. §3192 imposes an additional statutory Specialty obligation on the United States with respect to persons extradited to this country. *Rauscher*, 119 U.S. at 423-24. *See also* 4 M. Abbell & B.A. Ristau, INTERNATIONAL JUDICIAL ASSISTANCE: CRIMINAL (EXTRADITION), Sec. 13-4-2(3) (1997 ed.).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 00-CR-208-WM

ED STATES DISTRICT C...
DENVER, COLORADO

MAY 26 2000

JAMES R. MANSPEKER
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

HARMON LYNN WILFRED,

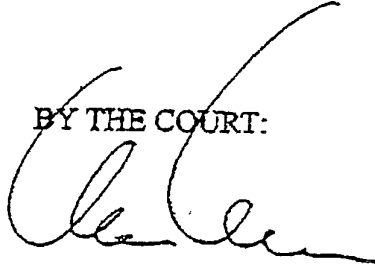
Defendant.

ORDER DISMISSING THE COMPLAINT

Upon the motion of the United States of America and for good cause shown, it is
ORDERED that the Complaint is dismissed.

DATED this 26th day of May, 2000.


BY THE COURT:



WALKER MILLER, Judge
United States District Court

EXHIBIT NOTE

This is the annexure marked "T" referred to in the within affidavit of
HARMON LYNN WILFRED and sworn at Christchurch this 24th day of
February 2006 before me:


.....
A Solicitor of the High Court of New Zealand
(Solicitor to sign in part on Exhibit)

Christina Jane Glubb
Solicitor
Christchurch