**FOR PUBLICATION**

**IN THE SUPERIOR COURT**
**FOR THE**
**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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| **IN RE THE EXTRADITION MATTER OF** | **CRIMINAL CASE NO. 08-0030 C** |
| **KAZUYOSHI MIURA (d.o.b. 07/27/1947)** | **ORDER DENYING EXTRADITEE'S MOTION FOR BAIL MODIFICATION** |

## I. Introduction

THIS MATTER came before the Court for a hearing on June 19, 2008 at 10:00 a.m. in Courtroom 220A on Mr. Kazuyoshi Miura's application for release on bail pending a determination on his proposed petition for a writ of habeas corpus before the Commonwealth Superior Court. The applicant ("Miura") appeared with counsel Bruce Berline, Esq., Mark B. Hanson, Esq., and William Fitzgerald, Esq. Assistant Attorneys General Jeffery L. Warfield, Sr., and Mike Nisperos, as well as Chief Prosecutor Kevin Lynch, appeared on behalf of the Commonwealth to oppose the application for bail. After consideration of the legal memoranda filed by the parties and the arguments of counsel at the hearing on this matter, and upon review of the applicable law, the Court issued its ruling denying bail in this matter for the reasons stated on the record and set forth more fully in the following written decision.

## II. Factual and Procedural Background

Miura is currently in the custody of the CNMI Department of Corrections (DOC) on a Governor's Arrest Warrant awaiting extradition to the State of California. The warrant was issued on

March 12, 2008 by Governor Benigno R. Fitial in response to a formal demand for rendition by the Governor of California and served on Miura the same day while he was in custody at DOC on the prerequisition warrant previously issued by this Court. At that time, Miura was held without bail because the CNMI's Criminal Extradition statute does not permit bail for a prisoner who is being held prior to arrest on a warrant from the Governor if the prisoner is charged in the demanding state with a crime punishable in that state by death or life imprisonment. 6 CMC § 6917. Miura is sought by the State of California on charges of murder and conspiracy to commit murder, which are punishable in that state by death or life imprisonment. Cal. Penal Code §§ 182, 187(a), 190.

At a status conference on May 28, 2008, Miura reaffirmed his intention to challenge his extradition by way of a habeas corpus petition to the Court and also indicated that he would apply for release on bail. He explained that he has retained legal counsel in California and is simultaneously challenging the State of California's actions against him in the demanding state forum.

On May 30, 2008, Miura filed an application for bail together with a legal memorandum, declaration of counsel and supporting exhibits. The Commonwealth filed an opposition to the bail application on June 4th and supplemental exhibits on June 5th. At the June 6, 2008 motion hearing, the Court granted Miura's request for a continuance, which was without objection by the Commonwealth, to June 19, 2008. The Court further ordered counsel to submit supplemental memoranda on the specific issue of the availability of bail in the context of extradition proceedings, with particular reference to the CNMI's statute and the extradition cases of *Michigan v. Doran*, 439 U.S. 282, 99 S.Ct. 530 (1978), *Puerto Rico v. Branstad*, 483 U.S. 219, 107 S.Ct. 2802 (1987), *In re Walton*, 99 Cal.App.4th 934 (Cal.App. 2002), *People v. Superior Court (Ruiz)*, 187 Cal.App.3d 686 (Cal.App. 1986) or any of the decisional law cited at 13 ALR5th 118 (1994) concerning the availability of bail for individuals detained on a governor's warrant of arrest.

A day prior to the June 19th hearing, Miura filed a 16-page supplemental reply memorandum, together with a declaration of counsel attaching 39 pages of exhibits and a 9-page declaration by California attorney and proffered expert on Japanese law William Bernard Cleary to support Miura's contention that he has a compelling defense to the charges under California law. The motion was heard by the Court on June 19, 2008.

## III. Issue

Whether bail is available to Miura, a person held for extradition, after the issuance of the CNMI governor's arrest warrant and pending pursuit of Miura's habeas corpus remedy when the person is charged by the demanding state with an offense punishable by death or life imprisonment under the laws of the demanding state of California.

## IV. Analysis

The provisions of the Commonwealth's Criminal Extradition laws at 6 CMC §§ 6916-17 permit bail for a person detained on a fugitive warrant, a warrant issued prior to a governor's warrant, unless the person is charged by the requesting state with an offense punishable under the laws of that state by death or life imprisonment. The statute does not address the subject of bail in connection with the detention of a person arrested pursuant to a Governor's Warrant of Arrest. *See*, 6 CMC §§ 6911, 6913. These provisions exactly mirror the Uniform Criminal Extradition Act (U.C.E.A.). The federal Extradition Act at 18 U.S.C. § 3182 does not mention bail at all. This leaves the issue of the availability of bail subject to judicial determination in states that have adopted the Uniform Act. There is no controlling decisional law interpreting the CNMI's extradition statute.

The vast majority of courts applying the uniform provisions, however, have held that bail is simply not available to a person detained on a Governor's Warrant pending review of the detainee's petition for habeas corpus. *People v. Superior Court (Ruiz)*, 187 Cal.App.3d 686, 689 (Cal.App.1986) (citing majority rule); 13 A.L.R.5th 118 (1994). The rationale is that the extradition law imposes a duty on the asylum state to make the accused available to the authorities of requesting state and that the

statutes that define this special proceeding do not provide for bail. *Meechaicum v.Fountain*, 696 F.2d 790, 792 (10th Cir.1983); *See*, *In re Iverson*, 376 A.2d 23, 24 (Vt. 1977) (holding common law inherent power of court to permit bail inapplicable to special proceeding for extradition). These courts have reasoned that the limited availability of bail in cases of individuals held on a fugitive warrant is not reasonably imputed to extend to the period when the fugitive is held on a Governor's Warrant of Arrest, when the executives of the respective states have formally committed their interests. *Emig v. Hayward*, 703 P.2d 1043, 1050 (Utah 1985); *State v. J.M.W.*, 936 So.2d 555, 563 (Ala.Crim.App. 2005).

The relatively few courts that have taken the view that bail is available after a governor's warrant is issued have done so on the basis of a general right to bail found in the state's constitution, state statutes permitting bail in habeas corpus proceedings, or on the inherent or equitable power of the court to grant bail in criminal cases. *Carino v. Watson*, 370 A.2d 950, 951-952 (Conn. 1976); 13 A.L.R.5th 118. The cases Miura relied upon have also done so only in cases that did not involve a charge punishable by death or life imprisonment. Typically, these courts address the issue in terms of comity or conflict of laws (e.g., whether the charged offense is a "bailable" one in both states) and emphasize the 5th Amendment liberty interest of the accused. *See*, *In re Basto*, 500 A.2d 736, 738-740 (N.J.Super. 1985), aff'd *on other grounds* at 531 A.2d 355 (N.J. 1987). The common rationale underlying the alternative position of these courts is the notion that the fugitive's *detention* by the asylum state's authorities raises a 5th Amendment concern that is imminent for its courts, thus requiring the court of the asylum state to rule upon the propriety of the continued detention according to the state's own laws. *Petition of Upton*, 439 N.E.2d 1216, 1221 (Mass. 1982); *State ex rel. Jensen*, 279 N.W.2d 120, 123 (Neb. 1979).

The minority rationale may have lost some persuasiveness following the modern line of U.S. Supreme Court decisions on interstate extradition beginning with *Michigan v. Doran*, 439 U.S. 282, 99 S.Ct. 530, 58 L.Ed.2d 521 (1978) and extending through *California v. Superior Court of California*

*(Smolin)*, 482 U.S. 400, 107 S.Ct. 2433, 96 L.Ed.2d 332 (1987), *Puerto Rico v. Branstad*, 483 U.S. 219, 107 S.Ct. 2802, 97 L.Ed.2d 187 (1987) and *New Mexico ex rel. Ortiz v. Reed*, 524 U.S. 151, 118 S.Ct. 1860, 141 L.Ed.2d 131 (1998). These opinions make clear that extradition is an executive function implemented through special proceedings in which the role of the asylum state court is strictly limited. Noting that the extradition law once served as a battleground in the conflict over slavery leading to the Civil War and that the statute had been judicially misconstrued in the process, the Supreme Court expressly reattached the federal Extradition Act to Article IV by declaring "the commands of the Extradition Clause are mandatory, and afford no discretion to the executive officers or courts of the asylum State." *Branstad*, 483 U.S. at 227. Relying upon *Branstad*, a California appellate court ruled that bail was unavailable to the accused fugitive held on a Governor's warrant pursuant to California's statute prohibiting bail and, moreover, that its asylum state courts had no power to consider *any* assertions based upon the constitutional rights of the accused insofar as such claims were unnecessary to the determination of *Doran*'s "four 'readily verifiable questions'."[1] *In re Walton*, 99 Cal.App.4th 934, 948 (Cal.App. 2002).

Miura argues that his present situation presents special circumstances that make the minority position on the availability of bail particularly compelling and also support his release on bail. Essentially, he maintains that his challenge to the California charges currently underway in that state is demonstrably likely to succeed and that there is a strong possibility that the California warrant will be quashed and the state's rendition request will be recalled. He argues that this proceeding will become moot if he is successful and that fairness demands that he be conditionally released on bail to permit his

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[1] "Once the governor has granted extradition, a court considering release on habeas corpus can do no more than decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive. These are historic facts readily verifiable." *Michigan v. Doran*, 439 U.S. 282, 289, 99 S.Ct. 530 (1978). It is noteworthy in the present context that the Michigan Supreme Court's error in *Doran* was its conclusion that "because a significant impairment of liberty occurred" when Michigan authorities detained a fugitive for extradition, it was therefore compelled to inquire as to the sufficiency of the demanding state's charges. 439 U.S. at 285.

unimpeded participation in his legal challenges, citing *United States v. Salerno*, 481 U.S. 739, 107 S.Ct. 2079, 95 L.Ed.2d 697 (1987). He also relies upon the *international* extradition cases of *Wright v. Henkel*, 190 U.S. 40, 23 S.Ct. 781, 47 L.Ed. 948 (1903) in which the Supreme Court left open the possibility of "special circumstances" allowing for bail in international cases, and *Parretti v. United States*, in which the Ninth Circuit twice published and ultimately withdrew its opinions embracing a broad view of the power of the courts to grant bail in international extradition cases. *Parretti v. United States*, 122 F.3d 758, 780 (9th Cir. 1997), *withdrawn at* 143 F.3d 508 (9th Cir. 1998).

The Court has previously indicated that it is disinclined to accept analogies between interstate and international extradition matters because the two subjects are governed by different precedent and legal doctrines and are founded on separate statutes and constitutional provisions.[2] It is also committed to avoiding any exercise that would conflict with the command of the U.S. Supreme Court that interstate extradition remain "a summary and mandatory executive proceeding." *Michigan v. Doran*, *supra*, 439 U.S. at 288. The majority of state courts regard the determination of bail as a matter essentially within the jurisdiction of the demanding state and that the delay caused by any challenge to extradition cannot confer upon the fugitive a right to bail in the asylum state. *Emig v. Hayward*, *supra*, 703 P.2d at 1050. The precise question presented in this case is whether Miura is entitled to consideration for release on bail in a special proceeding for extradition when there is no statutory provision for bail after a governor's warrant has issued and when Miura is charged with offenses punishable by death or life imprisonment.

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[2] See, *Lascelles v. Georgia*, 148 U.S. 537, 545-546, 13 S.Ct. 687, 689, 37 L.Ed. 549 (1893) (Extradition Clause, not interstate comity or agreement, is "exclusive source" of authority for interstate extradition); also 2 RONALD D. ROTUNDA & JOHN E. NOWAK, TREATISE ON CONSTITUTIONAL LAW, § 12.7 (4th ed. Thomson/West update 2008) (distinguishing "extradition" of U.S. Const. Art. IV, § 2, cl. 2. from the "full faith and credit" of Art. IV, § 1, and the "privileges and immunities" of Art. IV, § 2, cl. 1). In *Lascelles*, the Supreme Court considered the procedures of international extradition and interstate rendition to be *different in kind*, remarking that cross-over arguments represented a "fallacy" that "involves the confusion of two essentially different things." *Lascelles v. Georgia*, 148 U.S. at 545-546. Unlike the process of delivering a fugitive to a foreign sovereign, "In the matter of interstate rendition, however, there is the binding force and obligation, not of contract, but of the supreme law of the land..." *Id.*

It is not necessary to adopt the rationale of either the majority or minority position on the general availability of bail in such cases. In this case, Miura did not qualify for release on bail pursuant to 6 CMC §§ 6916-17 because he is charged with murder and conspiracy to commit murder in California, where the penalties for these offenses include death or life imprisonment. Even in the minority of U.C.E.A. jurisdictions where courts have allowed bail for individuals held on a governor's warrant of arrest, the courts generally do not construe the statutes to permit the release on bail of an individual who would not have qualified for release under the provisions applicable to their detention on a fugitive warrant. *Petition of Upton*, 439 N.E.2d at 1220 ("If bail is to be denied to a person so charged at that early stage of the rendition process, both reason and the terms of [the statute] require that it should be denied at habeas corpus stages of the proceeding."); also, *Carino v. Watson*, 370 A.2d at 952; *Wayans v. Woolfe*, 300 A.2d 44, 45 (Conn.Super. 1972); 13 A.L.R.5th 118, § 18.

The Court has found only one decision from the minority jurisdiction directly supporting the Miura's position that an extraditee facing a charge punishable by death or life imprisonment, such as murder in the first degree, may be admitted to bail. *Strachan v. Soloff*, 554 N.Y.S.2d 565, 566 (N.Y.App.Div. 1990) (holding that state procedures for habeas corpus prevailed over the extradition statute, so that the latter's inhibition to the possibility of bail "no longer applied" once the petition is filed). This Court, however, is not persuaded by the reasoning of *Strachan* insofar as it neglects the distinction between special proceedings for extradition and other proceedings that arise from the operation of the asylum state's criminal laws. The U.S. Supreme Court has clearly defined the parameters of state discretion in the matter of extradition. Miura's argument that his situation presents special circumstances that allow for bail, supported by voluminous exhibits that include transcripts of his proceedings before a California court and copies of California statutes, also misses the mark.

"In case after case we have held that claims relating to what actually happened in the demanding State, the law of the demanding State, and what may be expected to happen in the demanding State

when the fugitive returns are issues that must be tried in the courts of that State, and not in those of the asylum State." *New Mexico ex rel. Ortiz v. Reed*, *supra*, 524 U.S. at 153. Over twenty years ago, the U.S. Supreme Court made it clear that:

> [t]he language, history, and subsequent construction of the Extradition Act make clear that Congress intended extradition to be a summary procedure. As we have repeatedly held, extradition proceedings are "to be kept within narrow bounds"; they are "emphatically" not the appropriate time or place for entertaining defenses or determining the guilt or innocence of the charged party. (citations omitted). Those inquiries are left to the prosecutorial authorities and courts of the demanding State, whose duty it is to justly enforce the demanding State's criminal law- subject, of course, to the limitations imposed by the Constitution and laws of the United States.

*California v. Superior Court (Smolin),* 482 U.S. at 407-408; 107 S.Ct. at 2438. In the *California* case, the U.S. Supreme Court noted the special circumstances facing the Smolins that resembled in some respects those of Miura as argued by the defense in this case. Prior to reversing the California Supreme Court's decision, it stated:

> [w]e are not informed by the record why it is that the States of California and Louisiana are so eager to force the Smolins halfway across the continent to face criminal charges that, at least to a majority of the California Supreme Court, *appear meritless*. If the Smolins are correct, they are not only innocent of the charges made against them, but also victims of a possible abuse of the criminal process. **But, under the Extradition Act, it is for the Louisiana courts to do justice in this case, not the California courts:** "surrender is not to be interfered with by the summary process of habeas corpus upon speculations as to what ought to be the result of a trial in the place where the Constitution provides for its taking place."

*Id.* at 412. (emphasis added). Accordingly, for the same reason, under the Extradition Act, it is for the California courts to do justice in this case based upon its substantive law and procedures, not the CNMI courts. Interpreting the omission of any provision for bail in the CNMI's extradition statute as an implied acknowledgement of the Court's discretion to allow bail, or to find special circumstances for the exercise of the Court's inherent powers or the application of Commonwealth rules of criminal procedure on the basis of an assessment of the merits of the California charges, would constitute an unjustifiable

judicial interference with the "summary and mandatory executive proceeding" contemplated by the extradition law.

## V. Conclusion

If bail must be denied to a person who preliminarily appears to be one charged with an offense punishable by death or life imprisonment at the early stage of the rendition process prescribed at 6 CMC § 6917, both reason and the overwhelming majority of judicial decisions interpreting the comparable criminal extradition laws of other states require that it should be denied at habeas corpus stages of the proceeding. Accordingly, Miura's motion for bail modification is hereby DENIED.

The Court, with the consultation of counsel for the parties, set the following deadlines for Miura to file his petition for a writ of habeas corpus: the petition for a writ of habeas corpus shall be filed and served pursuant to 6 CMC § 6911 by **July 25, 2008**; the Commonwealth and/or the agent of the State of California may file an opposition brief no later than **August 8, 2008**; and petitioner Miura may file a reply brief no later than **August 22, 2008**. A hearing on the petition is hereby set for **September 12, 2008 at 10 a.m. in Courtroom 220A.**

IT IS SO ORDERED this 25th day of June, 2008.

RAMONA V. MANGLONA, Associate Judge