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2 **FOR PUBLICATION**

miura

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

6 **IN RE THE EXTRADITION MATTER OF) CRIMINAL CASE NO. 08-0030 C**
7 **)**
8 **KAZUYOSHI MIURA (d.o.b. 07/27/1947)) ORDER DENYING PETITIONER'S**
9 **) APPLICATION FOR**
10 **) WRIT OF HABEAS CORPUS; AND**
11 **) DENYING MOTION TO STAY**
12 **EXTRADITION**

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15 **I. Introduction**

16 THIS MATTER came before the Court for a hearing on September 12, 2008 at 10:00 a.m. in
17 Courtroom 220A on Mr. Kazuyoshi Miura's application for a writ of habeas corpus before the
18 Commonwealth Superior Court pursuant to 6 CMC § 6911. The applicant ("Miura") appeared with
19 counsel Bruce Berline, Esq., Mark B. Hanson, Esq., and William Fitzgerald, Esq. Assistant Attorneys
20 General Jeffery L. Warfield, Sr. and Mike Nisperos, appeared on behalf of the Commonwealth to
21 oppose the petition. After consideration of the legal memoranda filed by the parties, the arguments of
22 counsel at the hearing on this matter, and upon review of the applicable law, the Court issued its oral
23 ruling denying Miura's application for the reasons stated on the record and set forth more fully in the
24 following written decision. Following the Court's ruling on the petition for writ of habeas corpus,
Petitioner orally moved for a stay of execution of the Court's decision pursuant to 6 CMC § 7107
pending Petitioner's appeal of the Court's decision, which was denied. Petitioner, however, was
permitted to file at the hearing a written Notice of Appeal with respect to the decision of the Court.

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1 **II. Factual and Procedural Background**

2 Miura is currently in the custody of the Department of Corrections (DOC) in Saipan, Northern
3 Mariana Islands, on a Governor's Arrest Warrant awaiting extradition to the State of California.¹ The
4 warrant was issued on March 12, 2008 by the Honorable Benigno R. Fitial, Governor of the
5 Commonwealth of the Northern Mariana Islands ("Governor's Warrant"), in response to a formal
6 demand for rendition by California Governor Arnold Schwarzenegger to arrest the petitioner and make
7 him available to the authorities of that state for extradition to face charges of murder and conspiracy to
8 commit murder in California. See 6 CMC §§ 6902, 6908.

9 On March 13, 2008, the Court issued an order setting a hearing in consultation with the parties'
10 counsel for the petitioner's initial appearance on the Governor's Arrest Warrant. At petitioner's initial
11 appearance on the Governor's Warrant, he was advised of his rights pursuant to 6 CMC § 6911. After
12 he entered a general denial, Petitioner challenged the Governor's Warrant and so the Court set briefing
13 deadlines and a hearing date of May 28, 2008 for his petition for a writ of habeas corpus. However,
14 pursuant to the stipulation of the parties, the May 28th date was converted to a status conference, and the
15 matter was set for a bail modification hearing on June 19, 2008. At the conclusion of the bail
16 modification hearing, the Court set a new briefing schedule for a writ for habeas corpus based on the
17 parties' stipulation and set the matter for a hearing on September 12, 2008 at 10:00 a.m.

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21 ¹ Petitioner was initially placed under arrest in Saipan by Commonwealth authorities on February 22, 2008 based on
22 information that he was the subject of an outstanding felony arrest warrant issued in 1988 in California. Petitioner's
23 challenge to the lawfulness of his arrest and detention under the Commonwealth's extradition law were rejected by the Court,
24 and a Prerequisite Warrant was issued on March 7, 2008, remanding the petitioner to the further custody of DOC and
setting a status conference hearing. Prior to the status conference hearing, the Governor's Warrant was served on the
petitioner on March 12, 2008, and pursuant to 6 CMC § 6916, the Court's warrant was superseded by the Governor's
Warrant and petitioner remains in custody under the authority of the Governor of the Commonwealth. The Governor's
Warrant did not rely on the 1988 California felony warrant, but instead relied upon a Felony Warrant for Extradition and
Amended Felony Complaint for Extradition issued on February 25, 2008 which recalled and reissued the 1988 warrant.

1 **III. Issues**

2 1. Whether this Court should grant Petitioner Miura's application for a writ of habeas corpus
3 challenging his arrest and continued detention pursuant to the CNMI Governor's Warrant on his claim
4 that his arrest is a violation of his due process rights under the United States Constitution.

5 2. At the habeas corpus hearing, Petitioner Miura raised for the first time the issue of whether
6 his concurrent challenge to the procedural and constitutional sufficiency of the demanding state's
7 criminal charges against him that is pending within the forum of the demanding state, or the merits or
8 the likelihood of success of such challenge, is relevant and critical to the asylum state court's
9 determination of whether the extraditee stands "substantially charged" under the laws of the demanding
10 state for the purpose of deciding the sufficiency of a formal request for rendition.

11 **IV. Analysis**

12 This is an interstate extradition case in which Miura has been arrested pursuant to a Governor's
13 Warrant. This Court has previously elaborated on the foundations, history and nature of the extradition
14 laws governing this matter and will avoid repetition of the same. (See, *Order Denying Def's Mot. to*
15 *Dismiss and for Release*, Mar. 14, 2008; *Order Denying Extraditee's Motion for Bail*, June 25, 2008).

16 Under the mandate of the Extradition Clause of Article IV of the United States Constitution and the
17 federal Extradition Act at 18 U.S.C. § 3182, and in accordance with the provisions of 6 CMC §§ 6916-
18 17, extradition is "a summary and mandatory executive proceeding" in which the role and discretion of
19 the Court is strictly limited. *Michigan v. Doran*, 439 U.S. 282, 288, 99 S.Ct. 530, 535, 58 L.Ed.2d 521
20 (1987). In *Doran*, the U.S. Supreme Court limited the subject matter that may properly be considered
21 by the courts on an extraditee's petition for habeas corpus to the following:

22 "Once the governor has granted extradition, a court considering release on habeas corpus
23 can do more than decide: (a) whether the extradition documents on their face are in
24 order; (b) whether the petitioner has been charged with a crime in the demanding state;
25 (c) whether the petitioner is the person named in the request for extradition; and (d)
26 whether the petitioner is a fugitive. These are historic facts readily verifiable."

27 *Doran*, 439 U.S. at 289, 99 S.Ct. at 530.

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1 As stated in the oral decision announced at the habeas corpus hearing, this Court agrees with the
2 arguments of the Commonwealth as stated in its Opposition brief and incorporates it as a part of this
3 decision. In particular, this Court agrees that:

4 The Commonwealth Extradition Act provides in 6 C.M.C. § 6902 that the CNMI
5 Governor arrest and deliver up to the executive authority of any state any person charged
6 within that state with treason, felony or other crime, who has fled from justice and is
7 found within the Commonwealth. The Commonwealth Act goes on to lay out the
8 requirements that must be met before a demand for extradition from a state shall be
9 recognized. 6 C.M.C. § 6903 provides that

7 “(a)...no demand for the extradition of a person charged with or
8 convicted of crime in a state shall be recognized by the Governor
9 unless in writing alleging that the accused was present in the
10 demanding state at the time of the commission of the alleged crime
11 and that thereafter he or she fled from that state. The demand shall be
12 accompanied by:

- 10 1. A copy of an indictment found;
- 11 2. A copy of an information supported by an affidavit filed in the
12 state having jurisdiction of the crime;
- 13 3. A copy of an affidavit made before a magistrate in that state
14 together with a copy of any warrant which was issued thereon;
15 or
- 16 4. A copy of a judgment or of a sentence imposed in the
17 execution thereof together with a statement by the executive
18 authority of the demanding state that the person claimed has
19 escaped from confinement or has broken the terms of his or her
20 bail, probation or parole.

16 (b) The indictment, information or affidavit made before the
17 magistrate must substantially charge the person demanded with having
18 committed a crime under the law of that state and the copy must be
19 authenticated by the executive authority making the demand, which
20 shall be prima facie evidence of its truth.

18 In this case, all of the requirements of 6 C.M.C. § 6903 have been fulfilled. After
19 Miura was arrested in Saipan, Governor Schwarzenegger, on March 5, 2008, sent a
20 formal written requisition to the Commonwealth stating that Miura stands charged under
21 the laws of California with Murder and Conspiracy to Commit a Crime and that he was
22 present in California when the crimes were committed and he has since fled from the
23 justice of California thereby satisfying the initial requirements of 6 C.M.C. § 6903(a).
24 Furthermore, the demand was accompanied by an Amended Felony Complaint for
Extradition including an affidavit from Detective Rick Jackson made before Judge Norm
Shapiro wherein Judge Shapiro found probable cause that Miura had committed these
offenses. Judge Shapiro then issued a felony arrest warrant for Miura and a certified
copy of the same was attached to Governor’s Schwarzenegger’s request for extradition in
which he certified these documents as being authentic thereby satisfying the requirements
of 6 C.M.C. § 6903(a)(3) and (b).

1 After receipt of the request from California, Governor Fitial issued a Governor's
2 Arrest Warrant, pursuant to 6 C.M.C. § 6908, indicating that Miura was in California on
3 November 18, 1981 when the offenses of murder and conspiracy to commit murder were
4 committed and that he subsequently fled that jurisdiction. CNMI law enforcement then
executed the Governor's Warrant upon Miura who now is challenging extradition not
based upon any defect in Governor's Warrant per se, but rather that California law
precludes his prosecution.

5 Opposition to Petition for Writ of Habeas Corpus, Sept. 8, 2008, at 3-5.

6 Petitioner's admissions and the uncontested evidence included within the supporting
7 documentation and admitted at prior hearings in this matter establish that he is the same Kazuyoshi
8 Miura named in the extradition documents. Petitioner objects to being called a "fugitive" because he
9 claims to have never left the state of California for the purpose of fleeing from prosecution, but does not
10 contest the factual basis for his designation as a "fugitive" for purposes of extradition. For these
11 purposes, a fugitive is one who is present in a state at the time of the commission of a crime, is charged
12 by that state for the crime, and is later found in another state. *Appleyard v. Massachusetts*, 203 U.S.
13 222, 27 S.Ct. 122, 51 L.Ed. 161 (1906).

14 In his written application for a writ of habeas corpus, Miura challenged the legality of his arrest
15 and continued detention on a Governor's Warrant based upon the remaining subject of potential review
16 left open by *Doran*; i.e., that he has not been charged with a crime in the demanding state of California.
17 This argument is premised upon the claim that Petitioner has already been convicted for the same
18 offenses based on the same facts and circumstances in Japan so that the California charges are barred
19 constitutionally and by California's current statutes. Petitioner concedes that neither the Governor nor
20 this Court may consider and apply the law of California directly to determine the sufficiency of the
21 California charges. 6 CMC § 6921; *See*, 439 U.S. at 288. Instead, it is argued that the commencement of
22 parallel proceedings in both jurisdictions, concurrently challenging the underpinnings of California's
23 demand for extradition make this case unique and distinguishable by raising the question of whether
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1 petitioner truly stands “substantially charged” with a crime in California at this time.² This Court does
2 not accept the proposition that the sum of prior law on the subject of extradition must be discarded on
3 the circumstances presented, and adheres in this case to both the subject matter, and to the standards,
4 consigned to it by the extradition laws.

5 In *Price v. Pitchess*, 556 F.2d 926, 927 (9th Cir. 1977), the Ninth Circuit Court of Appeals
6 addressed a claim of double jeopardy violation asserted to defeat extradition in a habeas corpus
7 proceeding and concluded that it cannot be raised before a court sitting in the asylum state. In *Price*,
8 petitioner Price was criminally charged in the state of Utah, but he successfully moved to suppress
9 evidence and had the case dismissed. He thereafter left the state. Utah subsequently charged him again
10 for a different criminal offense based on the same facts and circumstances as the first case, and an arrest
11 warrant was issued. Price was located in California, and so Utah authorities filed a fugitive complaint,
12 and the Governor of Utah granted an extradition requisition. The Governor of California issued an
13 extradition warrant, and after a full hearing by California’s extradition officer, he was ordered
14 extradited. Price then attempted to obtain habeas corpus relief from the California courts and by
15 certiorari before the United States Supreme Court. His petitions were denied. Price then filed his
16 habeas corpus petition in the California federal district court, which also denied Price’s petition. On
17 appeal to the Ninth Circuit, Price contended that he could not properly be deemed to be a “fugitive from
18 justice” for purposes of California’s extradition law because Utah was barred from charging him with a
19 crime under the double jeopardy clause of the U.S. Constitution. *Id.* at 928. The Ninth Circuit held that
20 the district court did not err in refusing to consider Price’s double jeopardy contention and affirmed the
21 denial of the petition. *Id.* In its reasoning, the Ninth Circuit noted that

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23 ² Petitioner contends that the constitutional dimension of his protection from double jeopardy and what he characterizes as
24 the readily determinable fact that his current charges violate that protection, must affect the determination of *whether or not*
he currently stands charged in California. “Because the re-prosecution of Mr. Miura in California is barred by the immunity
provisions of [California’s Double Jeopardy Statute], Mr. Miura does not stand substantially charged with a crime in the State
of California and cannot and should not be extradited to California.” (Appl. For Writ of Habeas Corpus, p. 9).

1 All previous attempts to raise the Bill of Rights in habeas corpus proceedings before
2 federal courts sitting in the asylum state have been unsuccessful. In each instance, the
3 underlying reason for *refusing to hear petitioner's constitutional claim* has been the
4 need to preserve the scheme of interstate rendition set forth in both the Constitution and
the statutes that Congress has enacted to implement the Constitution, which scheme
"contemplates the prompt return of a fugitive from justice as soon as the state from which
he fled demands him."

5 *Id.* (emphasis added) (citations omitted)

6 The Ninth Circuit explained the guiding principle as follows:

7 It is fundamental to our federal system that **neither the courts of the asylum state, nor**
8 **the federal courts sitting in that state, seek to determine the constitutionality of**
9 **prosecution in the state from which a fugitive has fled.** It is for the courts of the
charging state in the first instance to adjudicate the merits of appellant's claim.

10 *Id.*, quoting, *Woods v. Cronvich*, 396 F.2d 142, 143 (5th Cir. 1968) (*emphasis added*).

11 This Court agrees, finding that petitioner does in fact stand charged with a crime in the State of
12 California and that the Governor of the Commonwealth therefore has the authority and the duty to detain
13 petitioner for extradition to the State of California. 6 CMC § 6902. Petitioner argues in the alternative
14 that California's delay in seeking to bring him to justice on charges of a crime committed in 1988 is
15 fundamentally unfair and that this Court should declare that California has forfeited its right to prosecute
16 petitioner by its delay. For the same reasons, the Court finds no basis in the constitutional or statutory
17 law of extradition for such a ruling.

18 At the actual hearing on the application, petitioner maintained that his concurrent challenge to
19 the California charges in that state is demonstrably likely to succeed and that there is a strong possibility
20 that the California warrant will be quashed and the Governor's Warrant will no longer have any
21 evidence that he stands substantially charged with a crime. Furthermore, the California court presently
22 reviewing the legality of the Reissued Arrest Warrant and Felony Complaint has indicated an intention
23 of issuing a ruling in two weeks, and so Petitioner argues that this Court should therefore refrain from
24 entering its decision until the California court enters a decision that may make this extradition
proceeding moot. This Court disagrees.

1 The U.S. Supreme Court has made it clear that *“surrender is not to be interfered with by the*
2 *summary process of habeas corpus upon speculations as to what ought to be the result of a trial in the*
3 *place where the Constitution provides for its taking place.”* *California v. Superior Court (Smolin)*, 482
4 U.S. 400, 412; 107 S.Ct. 2433, 2441 (1987). (emphasis added). In this case, this Court cannot protract
5 this summary process proceeding upon speculations as to what the California court will decide. This
6 Court must make its decision based on the evidence as it exists at the time of this hearing on the writ of
7 habeas corpus.

8 **V. Conclusion**

9 Petitioner’s contention as to the illegality of his arrest and continued detention in Saipan under
10 the Governor’s Warrant is premised on his own challenge to the constitutionality of the California
11 prosecution by moving to quash the warrant and the felony complaint for extradition, thereby raising the
12 question as to whether or not he stands substantially charged with a crime. The mere fact that he is
13 concurrently challenging the validity of the California warrant in the California court does not make the
14 warrant invalid when this Court considers the limited matters pertaining to the Governor’s Warrant.
15 Petitioner’s concurrent challenge in California does not affect the matters to be considered and the
16 established standard for considering them in this extradition proceeding. Petitioner’s alternative
17 argument that California forfeited any right to now demand his extradition twenty years after the
18 original warrant was issued also fails as a constitutional claim that must be raised in the demanding
19 state, not here in the asylum state. Based on the foregoing, Petitioner Miura’s Application for a Writ of
20 Habeas Corpus pursuant to 6 CMC § 6911 is hereby DENIED.

21 Accordingly, Petitioner Kazuyoshi Miura may be extradited pursuant to the Governor’s Warrant
22 that commands the arrest, detention, extradition and conveyance of Kazuyoshi Miura to the designated
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1 agents of the Los Angeles Police Department authorized to receive, convey, and transport Mr.
2 Kazuyoshi Miura to California to be dealt with according to their laws.³

3 Petitioner's oral motion to stay the extradition pursuant to 6 CMC § 7107 is also DENIED.

4 IT IS SO ORDERED this 15th day of September, 2008.

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7 RAMONA V. MANGLONA, Associate Judge

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³ The demanding State of California may inform the asylum state Northern Mariana Islands that the detainee is no longer wanted in the demanding state. *In re Gilchrist*, 134 Cal.App.3d 867, 871 (1982). Furthermore, "[t]he demanding state may terminate extradition proceedings at any time prior to the return of the prisoner." *People v. Thompson* (Colo. 1990) 793 P.2d 1173, 1176.