

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN THE MATTER OF THE EXTRADITION
OF JORGE LUIS SOSA MEJUTO, a/k/a
“GEORGE LOUIS SOSA MEJUTO”

Case No. 14-m-515

**CERTIFICATION OF EXTRADITION
AND ORDER OF COMMITMENT**

This case is before the Court on a complaint filed on May 19, 2014, by the United States Attorney for the Eastern District of Pennsylvania (“the Government”), acting on behalf of the Kingdom of Spain, pursuant to its request for the arrest of Jorge Luis Sosa Mejuto, a/k/a “George Louis Sosa Mejuto” (“Sosa Mejuto”) for purposes of extradition. See Doc. 1. The Government seeks extradition of Sosa Mejuto to serve a sentence for negligent homicide imposed in Spain in 2009. Also before the Court are the Government’s memoranda in support of its extradition complaint and in opposition to bail (Docs. 2 and 7), and Sosa Mejuto’s memorandum in opposition to extradition (Doc. 6). On June 6, 2014, the Court conducted a hearing at which it considered the authenticated documents submitted by the Kingdom of Spain in accordance with 18 U.S.C. Section 3190 as well as the arguments of counsel. The Government’s request for extradition will be granted for the reasons set forth below.

I. PROCEDURAL HISTORY

Sosa Mejuto is a United States citizen and also a Spanish national.¹ In 2008 in Vigo, Spain, the car he was driving struck another vehicle which in turn collided with an oncoming vehicle resulting in the death of a husband and wife and injuries to a passenger. He and the other driver were charged with negligent homicide and other charges, and put on trial.

According to the witness testimony and other evidence as reviewed by the trial judge and later by the appellate court, just after midnight on January 12, 2008, Sosa Mejuto and the other defendant were driving in separate cars and were engaged in a road race, going well over the posted speed limit, and as the other driver's car started to overtake his, Sosa Mejuto swerved sharply and struck the other vehicle, causing it to move into the oncoming lane and strike the decedents' car. Both defendants were under the influence of alcohol and other substances at the time. The Honorable Ana María Lorenzo Carou, Senior Judge of Criminal Court No. 1 of Vigo, issued a ruling on December 18, 2009, which reviewed the evidence in detail as well as the arguments of the defendants' attorneys. According to her written decision, Sosa Mejuto was convicted

¹Sosa Mejuto's status as a United States citizen is not a bar to his extradition. See Annex (Integrated Text of the Provisions of the Bilateral Extradition Treaty and the U.S.-EU Extradition Agreement That Shall Apply Upon Entry Into Force of This Instrument) ("Annex") Article IV ("Neither of the Contracting Parties shall be bound to deliver up its own nationals, but the Executive Authority of the United States and the competent authority of Spain . . . shall have the power to deliver them up if, in their discretion, it be deemed proper to do so."); 18 U.S.C. § 3196 (if the applicable treaty does not obligate the United States to extradite its citizens, "the Secretary of State may, nevertheless, order the surrender to that country of a United States citizen . . . if the other requirements of that treaty or convention are met").

of two counts of negligent homicide and one count each of injuries through serious negligence and reckless driving, and was sentenced to prison for a period of three years and nine months.² The decision was upheld on appeal in an opinion dated May 12, 2010, by the Provincial Court of Pontevedra. The Clerk of the Criminal Court No. 1 of Vigo has certified that Sosa Mejuto has not served his sentence. His counsel represented at the hearing that Sosa Mejuto returned to the United States while his appeal was pending.

Sosa Mejuto was recently arrested in Berks County, Pennsylvania, for illegal drug possession.³ This extradition complaint followed when his presence became known to the Spanish authorities. An extradition warrant was issued by United States Magistrate Judge Lynne Sitarski, after which Sosa Mejuto was brought before the Court for his extradition hearing which took place on June 6, 2014. As noted, he was represented by counsel at the hearing.

II. GOVERNING STANDARDS

This matter is governed by Chapter 209 of Title 18 of the United States Code. See 18 U.S.C. § 3181 et seq. As set forth in the notes to section 3181, there is a bilateral extradition treaty currently in force between the United States and Spain, and Chapter 209 is the pertinent enabling legislation as to this and other extradition treaties. Section 3184 provides that

²There are two places in the English translation of the court documents that state that the sentence imposed was six years and nine months, rather than three years and nine months. However, review of the original Spanish documents confirms that the reference to six years is in error, as the Government has pointed out. See Doc. 7 at 3 n.3.

³Berks County is within the Eastern District of Pennsylvania. See 28 U.S.C. § 118(a).

Whenever there is a treaty . . . for extradition between the United States and any foreign government . . . any magistrate judge authorized so to do by a court of the United States . . . may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty . . . issue his warrant for the apprehension of the person . . . that he may be brought before such . . . magistrate judge, to the end that the evidence of criminality may be heard and considered. . . . If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty . . . he shall certify the same . . . to the Secretary of State . . . ; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender is made.

18 U.S.C. § 3184. “Extradition is an executive rather than a judicial function . . . [therefore] a court may conduct only a limited inquiry following a complaint seeking extradition.” Hoxha v. Levi, 465 F.3d 554, 560 (3d Cir. 2006) (citing Sidali v. INS, 107 F.3d 191, 194 (3d Cir. 1997)). This inquiry is limited to determining whether the judicial officer has authority to order the extradition, whether the offense charged is covered by the applicable treaty and whether that treaty is in force, and whether there is sufficient evidence to support a finding of probable cause as to the charge for which extradition is sought. Id. (citing Sidali, 107 F.3d at 195; Fernandez v. Phillips, 268 U.S. 311, 312 (1925)). When a prior conviction is at issue, a court’s probable cause determination may be based solely upon the existence of a judgment of conviction in the requesting country. See, e.g., Sidali, 107 F.3d at 196; United States v. Spatola, 925 F.2d 615, 618 (2d Cir. 1991).

The Nota Verbal issued by the Spanish Embassy to the United States Department of State invokes “Article 3 (2) of the Extradition Treaty between the European Union and the United States of America of June 25, 2003, for the application of the Extradition Treaty between Spain and the United States of American dated May 29, 1970, and related Supplementary Treaties” The requesting documents set forth the relevant provisions of these treaties providing for bilateral extradition between the United States and Spain. For an offense to be extraditable, it must be punishable under the laws in both countries by deprivation of liberty for a period of more than one year, or in the case of a sentenced person the sentence imposed must be greater than four months, although the offenses do not need to be in the same category of offenses or describe the offense by the same terminology. See Annex Article II A, C.

III. DISCUSSION

A. Extradition

Sosa Mejuto does not dispute that he is the person named in the extradition warrant or that he was convicted and sentenced as set forth in the official court documents submitted with the Government’s complaint. Nor does he dispute that there is a valid extradition treaty between the United States and Spain that is in force through appropriate enabling legislation, or that this Court has jurisdiction of his person and to order extradition. Rather, he opposes extradition on three grounds, and these will be addressed in turn.

1. No Treaty with Galicia

Sosa Mejuto argues that he was tried and sentenced in Galicia, which is an autonomous community separate and apart from the Kingdom of Spain, and that because there is no extradition treaty between the United States and Galicia, his extradition is not authorized. The Government argues that Galicia is a part of Spain for these purposes. Neither side has submitted any law to support their position.⁴

As counsel pointed out at the hearing, the original documents of Sosa Mejuto's conviction contain two seals, one Spanish and one Galician. Government counsel equates the relationship between Galicia and Spain with the relationship between Pennsylvania and the United States, in that the region/state has a government of its own but is subordinate to the national government with respect to national issues such as extradition. There is no indication from any of the documents presented that Galicia is not part of Spain for these purposes, whether or not it has some measure of autonomy. The courts defer to the executive branch with respect to political questions surrounding the validity of a treaty. See Hoxha, 465 F.3d at 562 (deferring to United States government's recognition of valid treaty with Albania despite change in Albanian government since treaty's adoption). Additionally, the general rule is that treaties should be construed liberally so as to give effect to the intent of the contracting parties. See

⁴According to the Central Intelligence Agency's World Factbook, Galicia is one of seventeen autonomous communities of Spain, which are listed as administrative divisions within the Spanish government. Spain has a single chief of state (king) and a single head of government (president). The autonomous communities have courts which are identified as subordinate to Spain's highest court. See <https://www.cia.gov/library/publications/the-world-factbook/geos/sp.html>.

Valentine v. United States ex rel. Neidecker, 299 U.S. 5, 10 (1936). Both United States and Spanish authorities view the conviction at issue as an extraditable offense pursuant to the treaty between them, and the Court sees no reason not to defer to their views in Sosa Mejuto's case.

2. Dual Criminality

Sosa Mejuto argues that the dual criminality requirement of the extradition treaty is not met here. Specifically, he argues that the Spanish law permits conviction for conduct that is merely negligent, whereas Pennsylvania recognizes criminal liability for a negligent homicide only where the degree of negligence arises to recklessness or gross negligence. The Government argues that the laws are sufficiently similar for purposes of extradition.

As previously noted, the treaty at issue requires that an offense be punishable under the laws in both countries to be extraditable, but need not fall into the same category or be described by the same terminology. See Annex Article II A, C.⁵ Under the doctrine of dual criminality as this treaty language is commonly referred to, the accused is extraditable only if the alleged criminal conduct is considered criminal under the laws of both the requesting and the surrendering nations. See, e.g., Clarey v. Gregg, 138 F.3d 764, 765 (9th Cir. 1998). The crimes do not have to be identical in elements or punishment, and it is sufficient if both nations punish acts of the same general character.

⁵The treaty also requires either that the offense be punishable by more than one year in prison in each country or, if sentence has been imposed, that such sentence be greater than four months. There is no dispute that this element of the treaty is met in this instance.

See id. (“Although some analogy is required . . . differences between statutes aimed at the same category of conduct do not defeat dual criminality.”); United States v. Riviere, 924 F.2d 1289, 1302-03 (3d Cir. 1991).

Sosa Mejuto was convicted of negligent homicide, which is also referred to in the English translation of Judge Lorenzo Carou’s opinion as “homicide with serious negligence.” The elements of this offense are set forth on the eleventh page of the English translation of the judge’s decision; the performance of an action without due diligence, the objective and subjective foreseeability of death, and the production of the result of death causally connected to the negligent action performed. The judge also discussed the level of negligence necessary to classify it as “serious,” describing it for example as when the most elementary rules of precaution and caution are breached. In reflecting on the evidence in light of these elements, the judge stated as follows: “[T]he fact that the road accident that gave rise to these proceedings was caused by a criminally reproachable negligence by both defendants is unquestionable.”

The offense of which Sosa Mejuto was convicted has an obvious corollary in Pennsylvania. Pennsylvania outlaws criminal homicide, and classifies one level of criminal homicide as involuntary manslaughter. 18 Pa. C.S.A. § 2501(b). “A person is guilty of involuntary manslaughter when, as a direct result of the doing of an unlawful act in a reckless or grossly negligent manner, or the doing of a lawful act in a reckless or grossly negligent manner, he causes the death of another person.” Id. § 2504(a). Pennsylvania also defines the offense of homicide by vehicle as “[a]ny person who recklessly or with gross negligence causes the death of another person while engaged in

the violation of any law . . . applying to the operation or use of a vehicle” 75 Pa. C.S.A. § 3732(a). These two provisions are applicable in cases similar to Sosa Mejuto’s, when reckless driving results in death. See, e.g., Commonwealth v. Carroll, 936 A.2d 1148 (Pa. Super. 2007) (affirming denial of pretrial habeas relief and remanding for trial in case of defendant charged with homicide by vehicle and involuntary manslaughter where evidence at preliminary hearing was that defendant and friends were traveling in separate vehicles on wet evening beyond speed limit “messaging around” and trying to get ahead of each other when one driver lost control of vehicle resulting in deadly collision with oncoming vehicle). Moreover, similar to the Spanish judge’s discussion with respect to Spanish law, the Pennsylvania Supreme Court has confirmed that gross negligence and recklessness encompass a heightened standard in comparison to negligence necessary for civil tort liability. See Commonwealth v. Huggins, 836 A.2d 862, 867-68 (Pa. 2003) (reinstating charge of involuntary manslaughter for driver of van filled with children who was driving in excess of speed limit when he fell asleep at wheel).

Accordingly, although Spain and Pennsylvania’s offenses are not titled or defined identically, they clearly both punish criminally negligent acts of drivers resulting in death. This similarly is sufficient to meet the dual criminality requirement.

3. Validity of the Conviction

Sosa Mejuto also argues that his prosecution in Spain was tainted by racism and other improprieties, implying that he is innocent of the charge of which he was convicted and did not receive a fair trial. He attaches to his memorandum copies of media reports from

Galicia both recent and from the time of trial referring to him as “Makelele,” which he characterizes as a racial epithet. This name was used by one of the witnesses at trial. At the hearing, Sosa Mejuto’s counsel conceded that this Court does not have the authority to test the validity of his conviction in the context of an extradition proceeding. Counsel represented that he would try to raise these arguments on his client’s behalf with the State Department and/or via a habeas corpus petition. Whether either of these avenues is proper, it is clearly not within the province of this Court to look behind the facially valid record of Sosa Mejuto’s conviction, sentence and appeal. Even if it were, all that has been presented is media articles which obviously do not constitute evidence of unfairness or bias in the trial.

B. Bail

As noted previously, section 3184 states that a judge ordering extradition “shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender is made.” 18 U.S.C. § 3184. There is no entitlement to or presumption in favor of bail in extradition cases; rather the general rule is that bail should be denied except based upon a showing of special circumstances. See Wright v. Henkel, 190 U.S. 40, 61-62 (1903). Special circumstances may include delay in the extradition proceedings, serious health concerns of the defendant, or substantial claims against extradition in which the defendant has a high degree of success. See United States v. Kin-Hong, 83 F.3d 523, 524 (1st Cir. 1996).

Sosa Mejuto argues that he should be permitted bail pending his extradition, although he does not present any basis for his request other than his arguments on the

merits addressed previously. Certainly the fact that he left Spain after he was convicted and sentenced but while his appeal was pending is not in his favor. He has not presented any special circumstances supporting bail, and therefore the Court will order that Sosa Mejuto be detained pending extradition.

IV. CONCLUSION

Accordingly, having carefully reviewed the evidence presented, including the diplomatic note from the Embassy of Spain dated January 10, 2014, requesting the extradition of Sosa Mejuto, and considering the arguments of both counsel, the Court is satisfied that the request should be granted and finds as follows:

1. The undersigned judicial officer is authorized under Title 18, United States Code, Section 3184, to conduct an extradition hearing.
2. The Court has personal jurisdiction over the fugitive, Jorge Luis Sosa Mejuto, and subject matter jurisdiction over the case.
3. There is currently in force an extradition treaty between the Government of the United States and the Kingdom of Spain. The treaty was signed on December 17, 2004, and entered into force on February 1, 2010.
4. On December 18, 2009, Sosa Mejuto was convicted of two counts of negligent homicide under Articles 142, 152, and 380 of the Spanish Criminal Code. He received a sentence of three years and nine months' imprisonment which he has not served. A warrant for Sosa Mejuto's arrest was issued on August 10, 2011.

5. The negligent homicide charges of which Sosa Mejuto was convicted are encompassed by Article II of the extradition treaty because they are punishable under the laws of the United States and Spain by a term of imprisonment which exceeds one year.

6. Spain seeks the extradition of Sosa Mejuto so that he can start serving his sentence of three years and nine months.

7. In compliance with Sections C and F of Article X of the treaty, the Spanish authorities submitted a copy of the judgment imposed on December 18, 2009, against Jorge Luis Sosa Mejuto, bearing a certificate from the Ministry of Justice. This Court finds that there is probable cause to believe that Jorge Luis Sosa Mejuto, the fugitive before this Court, is the same person who was convicted of the offenses for which his extradition is sought.

Based on the foregoing findings, the Court concludes that Jorge Luis Sosa Mejuto is subject to extradition and surrender for the offenses for which extradition was requested, and hereby certifies this finding to the Secretary of State as required under Title 18, United States Code, Section 3184.

IT IS THEREFORE ORDERED that a certified copy of this Certification of Extraditability and Order of Commitment be forwarded without delay by the Clerk to the Department of State, to the attention of the Office of the Legal Adviser;

AND IT IS FURTHER ORDERED that Jorge Luis Sosa Mejuto be committed to the custody of the United States Marshal for this District pending final disposition of this matter by the Secretary of State and surrender to designated agents of the Government of Spain.

/s/ELIZABETH T. HEY

HONORABLE ELIZABETH T. HEY
UNITED STATES MAGISTRATE JUDGE

Date: June 13, 2014