No. _____

In The
Supreme Court of the United States

JOHN E. HAMILTON,

Petitioner,

v.

HAROLD W. CLARKE, Director,
Virginia Department of Corrections,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Under our extradition treaty with Poland, *Agreement between the United States of America and the Republic of Poland on the Application of the Extradition Treaty,* U.S.-Pol., July 10, 1996, T.I.A.S. No. 10-201.17, *Amended June 9, 2006*, Article 19, the "Rule of Specialty," provides that an individual not be "detained, prosecuted, sentenced, or punished" by the requesting state for offenses not included in the extradition grant. The questions presented are:

1) Whether an individual defendant has standing to assert a rule of specialty violation. The United States courts of appeal have been in conflict for over forty-five years: three have answered no, six yes, and three have not resolved the issue.

2) Whether the rule of specialty only prohibits the requesting state from "charging" a defendant with crimes different from those for which he was extradited, as the district court found in this case, or whether it also prohibits sentencing and punishing a defendant, as the text of the treaty suggests.

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THE OPINIONS BELOW

The opinion of the federal district court is unpublished. App. 3. The June 26, 2018, order denying Hamilton's petition for a certificate of appealability is unpublished. App. 1. The July 24, 2018, order denying Hamilton's petition for rehearing is unpublished. App. 56. The December 7, 2016, order of the Supreme Court of Virginia denying Hamilton's petition for appeal is unpublished. App. 39. The June 10, 2015, order of the state habeas court denying and dismissing Hamilton's state habeas petition is unpublished. App. 40.

JURISDICTION

The federal district court denied and dismissed Hamilton's federal habeas petition on December 29, 2017. The United States Court of Appeals for the Fourth Circuit denied Hamilton's petition for a certificate of appealability on June 26, 2018, and denied his timely petition for rehearing on July 24, 2018. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISIONS

The United States Constitution's Sixth Amendment provides:

> "In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence."

The United States Constitution Article VI, clause 2 provides:

> "[A]ll Treaties made . . . under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby."

STATEMENT OF THE CASE

On August 17, 2009, John Hamilton was charged with five single counts of sexual abuse of five different children (one count per child) and entered a plea agreement to those charges with the prosecution. Hamilton was granted bond, traveled to Europe and failed to appear for his plea hearing. A bench warrant and international arrest warrant were issued for Hamilton who was detained then in Poland. The United States, with the support of the prosecutor, sent a formal request to Poland for the extradition of Hamilton. That request listed as the basis for his extradition the five charges to which Hamilton had agreed to plead guilty and the facts upon which they were based. Under Article 19, the "Rule of Specialty," in the treaty governing extradition between the United States and Poland, Hamilton could not be "*detained, prosecuted, sentenced, or punished*" except for an offense for which extradition was granted or a different offense based on the same facts on which extradition was granted.

Hamilton pled guilty to the five charges and at sentencing the prosecutor lamented that because of the extradition treaty they couldn't charge Hamilton

with additional counts, but put on witnesses to describe other crimes purportedly attributable to Hamilton and argued for a higher sentence because of those other crimes against the five children and because he fled to Europe. In imposing sentence, the trial court exceeded the high end of the discretionary Virginia guidelines by over four times, and because the judge exceeded the guidelines, the court was required to provide a written reason. The court wrote "Defendant molested five different children *repeatedly* over the course of approximately 15 years and *fled to Europe*." (emphasis added). Because the extradition treaty listed only five charges, one count against each child, and did not list any charges for his failure to appear in court, the prosecution's argument and the court's sentence relying on "repeatedly" and "fled to Europe" violated the rule of specialty. Because trial counsel never read the extradition treaty, they never objected or raised the issue on appeal.

On September 24, 2014, Hamilton filed a timely state petition for writ of habeas corpus raising for the first time, *inter alia*, ineffective assistance of counsel for trial counsel's failure to object to the violation of the rule of specialty. The state habeas court never held an evidentiary hearing and on June 4, 2015, entered an order denying habeas relief. The court assumed "arguendo that Hamilton has standing to bring a claim" under the treaty. App. 47. The court found that counsel was not ineffective because counsel argued for leniency and "counsel 'is not ineffective merely because he overlooks one strategy while vigilantly pursuing another.'" App. 47. The court also found that Hamilton was not prejudiced because "[m]ultiple sources of evidence

are admissible during sentencing." App. 47. Hamilton timely appealed and on December 7, 2016, the Supreme Court of Virginia denied Hamilton's discretionary petition for appeal without reasons.

Hamilton filed a timely federal habeas petition. *Hamilton v. Clarke*, No. 1:17cv245, Dkt. 1. On December 29, 2017, the district court entered an order denying and dismissing Hamilton's petition and declining to issue a certificate of appealability. App. 3. The district court did not adopt the state court's unreasonable decision for dismissing the treaty claim, but instead ignored the treaty language and found that the rule of specialty merely prohibits requesting states "[from] those for which he was extradited." App. 28 (emphasis added). Hamilton filed a timely notice of appeal, and a petition for a certificate of appealability and the Fourth Circuit denied the petition and denied Hamilton's request for rehearing without explanation.

ARGUMENT

1) Whether an Individual Defendant has Standing to assert a rule of specialty violation.

The United States courts of appeal have been in conflict for over forty-five years on whether a defendant has standing to raise a violation of the rule of specialty. *United States v. Lopesierra-Gutierrez*, 708 F.3d 193, 206 (D.C. Cir. 2013) (collecting cases); *see Fiocconi v. Attorney Gen. of United States*, 462 F.2d 475, 479 (2d Cir. 1972) (finding no standing). This Court should resolve the circuit split on standing, as it did with the Vienna

Convention. *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 371 (2006).

Three courts of appeals have declined to find an individual has standing because "only an offended nation can complain about the purported violation of an extradition treaty." *United States v. Kaufman*, 874 F.2d 242, 243 (5th Cir. 1989) ((per curiam) (denying petition for rehearing and suggestion for rehearing en banc); *see United States v. Stokes*, 726 F.3d 880, 888 (7th Cir. 2013); *United States v. Suarez*, 791 F.3d 363, 367 (2d Cir. 2015). It appears that at least the state of Maryland joins these three circuit courts.[1] The Fourth Circuit has not resolved the issue, but has expressed skepticism that an individual has standing and appears to be closer to the "no" camp. *See Abel v. Shearin*, Civil Action No. RWT-11-3366, 2014 U.S. Dist. LEXIS 79237, at *18-19 (D. Md. June 10, 2014) (citing *United States v. Al-Hamdi,* 356 F.3d 574 n.13 (4th Cir. 2004) (expressing skepticism that a treaty between nations created individual rights); *United States v. Molina-Chacon*, 627 F. Supp. 1253, 1264 (E.D.N.Y 1986) (recognizing that doctrine of specialty is privilege of the asylum state)). The First Circuit has not resolved the issue but appears closer to the "yes" camp. *United States v. Georgiadis*, 819 F.3d 4, 9 n.4 (1st Cir. 2016); *see also United States v. Lopesierra-Gutierrez*, 708 F.3d at 206 (D.C. Cir. 2013) (declining to resolve the issue). The remaining six circuit

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[1] *Abel v. Shearin*, Civil Action No. RWT-11-3366, 2014 U.S. Dist. LEXIS 79237, at *29 (D. Md. June 10, 2014) (noting that the state court found Abel lacked standing the raise the rule of specialty).

courts have found an individual has standing, largely based on this Court's reasoning in *United States v. Rauscher*, 119 U.S. 407 (1886). *United States v. Fontana*, 869 F.3d 464, 468 (6th Cir. 2017); *see United States v. Thomas*, 322 F. App'x 177, 180 (3d Cir. 2009); *United States v. Lomeli*, 596 F.3d 496, 500 (8th Cir. 2010); *United States v. Cuevas*, 847 F.2d 1417, 1426-27 n. 23 (9th Cir. 1988); *United States v. Levy*, 905 F.2d 326, 328 n.1 (10th Cir. 1990); *United States v. Valenica-Trujillo,* 573 F.3d 1171, 1178 (11th Cir. 2009).

In this case the state court noted that the issue of standing was unresolved, and rather than addressing standing, the state court dismissed the claim on its merits. In *Rauscher*, 119 U.S. 407, this Court noted that if a treaty contains provisions that confer rights upon citizens, then they are capable of enforcement "as between private parties in the courts . . . ." *Id.* at 418. The Court found that the Constitution makes treaties the law of the land, just as statutes, and thus such enforcement of a treaty right by a private citizen should be no different than if the right had been conferred by statute. *Id.* at 419. This Court should resolve the issue by finding that individual defendants have standing to assert violations of the rule of specialty.

2) Whether the rule of specialty only prohibits the requesting state from "*charging*" a defendant with crimes different from those for which he was extradited, as the district court found in this case, or whether it also prohibits sentencing and punishing a defendant, as the text of the treaty suggests.

Several courts have found that the rule of specialty "governs prosecutions, not evidence," *Lopesierra-Gutierrez*, 708 F.3d at 206, under the theory that the purpose of the rule is to prohibit indiscriminate prosecutions. *Leighnor v. Turner*, 884 F.2d 385, 389 (8th Cir. 1989). Similarly, the district court in this case found that the rule of specialty merely prohibits requesting states "from *charging* the defendant with crimes different [from] those for which he was extradited." App. 28 (emphasis added). The language of many treaties has changed since those that only prohibited detentions and prosecutions that are not included in the extradition request. In 2006, the United States and Poland amended the rule of specialty to provide that an individual not be "detained, prosecuted, *sentenced, or punished"* by the requesting state for offenses not included in the extradition grant. "It is an ancient and sound rule of construction that each word in a statute should, if possible, be given effect. An interpretation that needlessly renders some words superfluous is suspect." *Crandon v. United States*, 494 U.S. 152, 171 (1990). If the language "sentenced, or punished" is to be given meaning, then the rule of specialty must govern evidence as well as prosecutions. This is important to the United States and Poland because the objective of

the "rule of specialty is to insure that the treaty is faithfully observed by the contracting parties." *United States v. Valencia-Trujillo*, 573 F.3d 1171, 1180 (11th Cir. 2009).

These unresolved questions take on extra importance because they involve both the individual rights of United States citizens in courts in this country as well as the reciprocal rights of the signatory countries in the treatment of individuals they extradite to other countries. *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 367-68 (2006) (Breyer, J., dissenting); *see Fiocconi*, 462 F.2d at 479 (a breach of the treaty involves not just individual rights but "international consequences."). And the United States and Poland ratified the treaty "with the expectation that it would be interpreted according to its terms." *Id.* at 346 (Roberts, C.J., *citing* 1 Restatement (Third) of Foreign Relations Law of the United States § 325(1) (1986) ("An international agreement is to be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose".)). This Court should grant this petition and determine that Hamilton has standing and that the rule of specialty in this case precluded Virginia from presenting evidence and argument not included in the extradition request, and that trial counsel was ineffective for failing to object based on the plain language of the rule of specialty.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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