Application No. A- _____

IN THE SUPREME COURT
OF THE UNITED STATES

MIROSLAV FEJFAR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To
The United States Court Of Appeals
For The Ninth Circuit

APPLICATION FOR STAY OF PROCEEDINGS

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Application For Stay Of Proceedings

To The Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

The petitioner, Miroslav Fejfar, respectfully moves for a stay of the mandate of the Ninth Circuit Court of Appeals, pursuant to Supreme Court Rules 22 and 23 and 28 U.S.C. § 2101(f), pending this Court's consideration of his petition for a writ of certiorari, which is being filed contemporaneously with this motion. On August 13, 2018, the Ninth Circuit denied his motion to stay the mandate, so the petitioner has exhausted available remedies before addressing this application to the Circuit Justice for the Ninth Circuit pursuant to Supreme Court Rule 23.3. App. 26.

This Court "has settled upon three conditions that must be met" before a Circuit Justice may issue a stay pending the disposition of a petition for a writ of certiorari: "There must be a reasonable probability that certiorari will be granted (or probable jurisdiction noted), a significant possibility that the judgment below will be reversed, and a likelihood of irreparable harm (assuming the correctness of the applicant's position) if the judgment is not stayed." *Barnes v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1302, (1991) (Scalia, J., in chambers) (citing *Times–Picayune Publishing Corp. v. Schulingkamp*, 419 U.S. 1301, 1305 (1974) (Powell, J., in chambers)). The petition raises two issues for this Court's review:

> Whether the plain language of the relevant statutes and the Due Process Clause prohibit extradition of an alien who has claimed in immigration court a reasonable fear of persecution but had not yet been provided with the opportunity to be heard on his asylum claim; and

> Based on the reasoning in *Animal Sci. Prod., Inc. v. Hebei Welcome Pharm. Co.*, 138 S. Ct. 1865 (2018), whether a federal extradition court's inquiry into foreign criminal procedural law is not narrowly circumscribed because the same reasons the Court provided against according conclusive effect to a foreign government's statements on the meaning and interpretation of its domestic law fully apply in the extradition context.

The first issue raises an important question of federal law that the Ninth Circuit resolved in conflict with the plain statutory language of 8 U.S.C. § 1231(b)(3), procedural due process, and international norms embraced by every other country. The second also raises an important question of federal law: the intervening opinion of this Court in *Animal Science* that, after the issuance of the Ninth Circuit's opinion, should supersede the lower courts' refusal to address the merits of the petitioner's foreign law arguments. The latter issue could be resolved with grant of certiorari, vacation of the lower court opinion, and remand for consideration in light of *Animal Science* or with a decision for full review on the merits. On both issues, Mr. Fejfar satisfies each of the prerequisites for a stay of the mandate pending resolution of the petition.

A. The Summary Of Reasons For Granting A Writ Of Certiorari Establish A Reasonable Probability That Certiorari Will Be Granted.

Under 8 U.S.C. § 1231(b)(3), a statute enacted pursuant to human rights treaties, Congress prohibited removal of aliens who establish reasonable fear of persecution in their home countries. Miroslav Fejfar, a citizen of the Czech Republic, applied for withholding of removal under this statute, asserting that he was being targeted for his anti-corruption stances. Three days before his long-scheduled immigration hearing on his asylum claims, Mr. Fejfar was arrested, then conditionally released, to face extradition proceedings related

to a 2001 sentence of three years imposed in the Czech Republic. The immigration judge wrote a detailed explanation of why the extradition case did not resolve the pending immigration issues, but, after reversal by the Board of Immigration Appeals (BIA), the lower courts effectively permitted the extradition proceeding to trump Mr. Fejfar's right to a hearing on disputed issues. In denying relief, the Ninth Circuit decided two important federal questions of constitutional and internationally significant magnitude warrant review in this Court.

First, the Ninth Circuit decided that an alien who has asserted in immigration court a reasonable fear of persecution may be extradited without the opportunity to be heard on his asylum claim, despite the plain language of statutes implementing international human rights treaties prohibiting refoulement – deporting persons to another country where they face persecution or torture. In doing so, the courts below accepted the general understanding from *Barapind v. Reno*, 225 F.3d 1100 (9th Cir. 2000), that extradition trumps asylum. But this understanding is wrong. This Court should address the exceptionally important question of whether due process and plain statutory language require a hearing on asylum rights before extradition. This case presents an ideal opportunity to resolve this issue of great weight for three reasons:

- First, the misinterpretation of *Barapind* has led to the United States being viewed internationally as the only country that prioritizes extradition over its domestic statutes protecting rights against non-refoulement, despite every

other country – including the Czech Republic – providing priority to non-refoulement over extradition either by statute or judicial opinion.[1]

- Second, the plain language of the withholding of removal statute, especially as construed to avoid the constitutional problems of extinguishment of statutory rights without an opportunity to be heard, demonstrates that *Barapind* is being incorrectly construed as giving priority to extradition over asylum, when a close reading of the case demonstrates no such holding was reached.[2]

- Third, because Mr. Fejfar is presently conditionally released, this case can be decided with the "more studied attention" that courts require for the important and complex issues at the intersection of asylum and extradition, rather than in emergency litigation by an indefinitely detained alien.[3]

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[1] Sibylle Kapferer, United Nations High Commissioner for Refugees, Department of International Protection, *The Interface between Extradition and Asylum*, at 94-100 (November 2003) (UNHCR).

[2] *Barapind*, 225 F.3d at 1114 n.7 ("We do not comment on the propriety of the BIA's determination that the issuance of an extradition warrant renders moot any pending asylum application because, as we state below, that issue is not properly before us.").

[3] *Sandhu v. Reno*, No. 96-5245, 1996 LEXIS 24130, at *3-4 (D.C. Cir. Aug. 9, 1996) ("[T]here are many issues relating to the intersection of the asylum and extradition laws and to our treaty obligations that deserve more studied attention from appellate courts than is possible to give on emergency stay motions.").

This Court should grant certiorari to decide the exceptionally important issue of the due process and statutory rights created by non-refoulement laws for the wide range of aliens facing summary removal proceedings.

Second, this Court should assure that the reasoning of its recent opinion in *Animal Science* is correctly applied. Each of the lower courts ignored the Czech law experts proffered by the petitioner to demonstrate that Mr. Fejfar was not covered by the extradition treaty because the five-year negative prescription period passed. In the Ninth Circuit's decision, the court completely deferred to the Czech Republic's assertions in response to Mr. Fejfar's argument that his extradition was time-barred under Czech law, relying on Ministry of Justice representations and not even including the Czech cases upon which it purported to rely. Only after the Ninth Circuit's decision did this Court decide *Animal Science*, in which this Court held that a "federal court should accord respectful consideration to a foreign government's submission, but is not bound to accord conclusive effect to the foreign government's statements." 138 S. Ct. at 1869. Despite being raised in the petition for rehearing, the Ninth Circuit failed to reconsider its ruling in light of this Court's intervening authority. This Court should grant certiorari, vacate the panel decision, and remand for consideration in light of *Animal Science*, or, in the alternative, reach the merits and hold that *Animal Science* applies to extradition proceedings.

B. There Is A Significant Possibility of Reversal Upon Grant Of The Writ Of Certiorari.

The reasons that there is a reasonable probability that certiorari would be granted largely establish the significant possibility of reversal. This Court generally begins its analyses with the plain words of the relevant statutes: in this case, the words are mandatory and foreclose removal to another country where persecution is feared. The constitutional analysis provided by the immigration judge in her initial opinion demonstrates exactly why, if extradition trumps asylum, the constitutional opportunity to be heard on an important statutory and treaty-based right will be forever lost. The weight of international authority, both by statute and judicial decision, strongly supports priority for asylum proceedings, especially given the lack of reciprocity on the issue with the Czech Republic. As elaborated in the petition, the lower courts' reliance on *Barabind* is unlikely to be repeated by this Court.

There is also a significant possibility of reversal based on the intervening authority in *Animal Science*. The application of this Court's reasoning to extradition proceedings is seamless: the lower courts abdicated their judicial role in deciding contested matters by simply deferring to the foreign country's executive authority without even attempting to make an independent assessment, despite the petitioner's presentation of expert testimony and claims that the foreign lawyers asserted inconsistent positions in the proceedings before the federal court. With the period of negative prescription that nine years of good

behavior more than establishes, the extradition treaty simply does not apply to the petitioner.

C. There Is A Likelihood Of Irreparable Harm If The Mandate Is Not Stayed.

Irreparable harm will ensue if the mandate is not stayed pending Mr. Fejfar's filing of a certiorari petition. If he is removed, he will lose the opportunity to meaningfully litigate his issues and will be exposed to the persecution he seeks to avoid. "[A]ssuming the correctness of the applicant's position," as this Court must in considering an application for a stay, *Barnes*, 501 U.S. at 1302, the likelihood of irreparable harm that this Court must consider is no less than Mr. Fejfar's extradition and potential mistreatment and persecution. As the immigration judge held, the asylum claims in immigration court are entirely different from the issues addressed in the extradition proceedings. App. 22-23. Those claims have never had their day in court. In contrast, the likelihood that the government would be prejudiced by additional consideration for a few more months is low when Mr. Fejfar received his sentence in the Czech Republic seventeen years ago. Without the stay of the mandate, the extradition process will likely render moot Mr. Fejfar's significant statutory and constitutional claims.

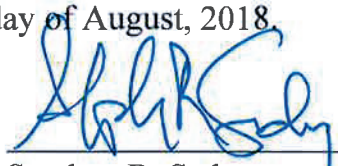
Further, while on conditional release, Mr. Fejfar has demonstrated he presents no risk of flight or danger to the community as he seeks to vindicate his statutory and constitutional rights against refoulement. He has been in complete compliance with his conditions of release. There is no legitimate urgency regarding the execution of a foreign

sentence imposed in 2001 that outweighs Mr. Fejfar's opportunity to vindicate his rights. The denial of the requested stay will result in irreparable harm to the petitioner.

CONCLUSION

For the foregoing reasons, petitioner respectfully moves for a stay of the mandate in the court of appeals pending this Court's disposition of the petition for writ of certiorari.

Respectfully submitted this 13th day of August, 2018.



Stephen R. Sady
Attorney for Petitioner

FILED

MAY 30 2018

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MIROSLAV FEJFAR, Petitioner-Appellant, v. UNITED STATES OF AMERICA, Respondent-Appellee.	No. 17-35987 D.C. No. 3:17-cv-00191-MC MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael J. McShane, District Judge, Presiding

Argued and Submitted May 15, 2018
San Francisco, California

Before: THOMAS, Chief Judge, FRIEDLAND, Circuit Judge, and ZILLY,** District Judge.

Petitioner Miroslav Fejfar challenges the district court's denial of his petition for writ of habeas corpus. Because the parties are familiar with the factual and procedural history of the case, we need not recount it here. We have

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Thomas S. Zilly, United States District Judge for the Western District of Washington, sitting by designation.

jurisdiction pursuant to 28 U.S.C. § 2253(a). We review the district court's denial of a habeas petition challenging certification of an extradition order de novo. *McKnight v. Torres*, 563 F.3d 890, 892 (9th Cir. 2009). We review the denial of a stay for abuse of discretion. *See Nken v. Holder*, 556 U.S. 418, 433 (2009).

By letter dated December 1, 2016 the Ministry of Justice of the Czech Republic informed the United States Department of Justice that Fejfar has already challenged the validity of the 2006 order before courts in the Czech Republic, including the Constitutional Court. The Constitutional Court of the Czech Republic held that Fejfar's sentence was not statute-barred for lapse of time. Judicial inquiry into foreign criminal procedural issues is limited in the extradition context. *See, e.g.*, *Blaxland v. Commonwealth Dir. of Pub. Prosecutions*, 323 F.3d 1198, 1208 (9th Cir. 2003); *Grin v. Shine*, 187 U.S. 181, 187 (1902). The district and magistrate judges rejected Fejfar's claims after a thorough analysis of the validity of the 2006 order. We see no error in their conclusion, particularly given the narrowly circumscribed nature of our review.

Given the circumstances of this case, the BIA's decision to administratively close Fejfar's immigration case pending the outcome of his extradition proceedings does not violate Fejfar's due process or First Amendment rights. *Cf. Barapind v. Reno*, 225 F.3d 1100,1106-08 (9th Cir. 2000). Under the Attorney General's

recent decision in *In re Castro-Tum*, 27 I&N Dec. 271 (A.G. May 17, 2018), Fejfar may seek to reopen his administratively closed immigration proceedings for re-calendaring. However, given the context of the case, the district court did not abuse its discretion in denying a stay of extradition proceedings.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Miroslav Fejfar,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 3:17-cv-191-MC

OPINION AND ORDER

MCSHANE, Judge:

Miroslav Fejfar, a citizen of the Czech Republic residing in the United States, brings this petition for writ of *habeas corpus*, challenging Magistrate Judge Papak's certification of an extradition request to send Mr. Fejfar back to the Czech Republic. Because Judge Papak did not err in certifying the request for extradition, and did not err in declining to stay certification, the petition is DENIED.

PROCEDURAL AND FACTUAL BACKGROUND[1]

It is undisputed that in April 2001, despite his claims that law officials framed him, Mr. Fejfar was convicted in a Czech court of extortion and inducement to commit the offense of endangering the safety of the public. On July 31, 2001, the Municipal Court in Prague dismissed

[1] Having provided extensive briefings both here and before Judge Papak, the parties are well aware of the facts. As most of the facts are not in dispute, I include only a brief factual background here.

Mr. Fejfar's appeal and affirmed his three year sentence. The parties agree that under Czech law, the execution of Mr. Fejfar's sentence had a statute of limitations of five years. It is the tolling of this limitation period that is at the heart of the extradition proceedings challenged by Mr. Fejfar. In September 2001, the Czech trial court issued an order to deliver Mr. Fejfar to prison to enforce the sentence. For reasons unclear—and any possible reasons are immaterial to the issues presented—the Czech police never arrested Mr. Fejfar.

The parties agree that absent any tolling, Mr. Fejfar's April 2001 sentence would lapse in April 2006. The issue of tolling centers on whether a January 2006 order, issued by a clerk in the Czech trial court, "interrupted" (i.e., tolled) the limitations period.[2] Mr. Fejfar argues that because the 2006 order was unsealed and issued by a clerk rather than a judge, it did not interrupt the limitations period and Mr. Fejfar's sentence lapsed in April 2006. On the other hand, if the 2006 order interrupted (and thus restarted) the limitations period, the parties agree that Mr. Fejfar's sentence has not lapsed.

In 2010, the Czech court issued an international arrest warrant for Mr. Fejfar. On June 11, 2012, the Department of Homeland Security initiated a removal proceeding against Mr. Fejfar for overstaying his visa. Two months later, the Czech government formally requested Mr. Fejfar's extradition pursuant to the extradition treaty between it and the United States.

Mr. Fejfar conceded his removability in the immigration proceedings and filed for asylum on January 23, 2013. On March 31, 2016, the United States filed a petition for Mr. Fejfar's arrest with a view towards extradition. On September 22, 2016, the Board of

[2] As discussed below, the Czech equivalent to a statute of limitations provides that the limitation period does not include any time the person is abroad, and "shall be interrupted[] if the court takes steps to enforce a sentence to which the limitation period is related[.]" Ex. U at 13. "Interruption of the limitation period starts a new limitation period." *Id.* Mr. Fejfar traveled to, and has remained in, the United States as of June, 2009.

Immigration Appeals (BIA) administratively closed Mr. Fejfar's removal proceeding in the immigration court pending resolution of his extradition proceeding.[3]

On December 5, 2016, Judge Papak presided over a hearing concerning the contested certification for extradition. Mr. Fejfar argued his sentence had lapsed and, in the alternative, that Judge Papak should stay extradition pending the outcome of either: (1) his asylum proceedings; or (2) his ongoing challenge in Czech courts that his sentence had lapsed. Judge Papak rejected Mr. Fejfar's claims and certified the extradition request to the Secretary of State. This petition for writ of *habeas corpus* followed.

STANDARD OF REVIEW

Review of a certification of extradition is only possible through a writ of *habeas corpus*. *Valencia v. Limbs*, 655 F.2d 195, 197 (9th Cir. 1981). The scope of *habeas* review of an extradition order is very narrow and this Court shall not rehear what the magistrate court has already decided. *Fernandez v. Philips*, 268 U.S. 311, 312 (1925). Rather, the reviewing court inquires only into whether the Judge certifying extradition had jurisdiction over the case and whether the evidence provided created a reasonable inference that the fugitive was guilty of an offense included in the Treaty. *Id.* When conducting a habeas corpus review for extradition purposes, factual findings are reviewed for clear error, while legal conclusions are reviewed *de novo*. *Santos v. Thomas*, 830 F.3d 987, 1001 (9th Cir. 2016) (*en banc*).

DISCUSSION

Here, it is undisputed that the magistrate judge had jurisdiction over Mr. Fejfar's extradition proceeding and that the convictions are extraditable offenses pursuant to Article II of

[3] As discussed below, the BIA automatically stays, as a matter of course, all immigration proceedings pending extradition proceedings. The Ninth Circuit upheld this practice in *Barapind v. Reno*, 225 F.3d 1100 (9th Cir. 2000).

the Treaty.[4] 18 U.S.C. § 3184. Mr. Fejfar argues only that Judge Papak erred in certifying the extradition request because his sentence had lapsed and he therefore has no sentence left to serve. In the alternative, Mr. Fejfar argues Judge Papak: 1) violated his due process rights by certifying the request for extradition before Mr. Fajfer adjudicated his immigration proceedings; and 2) erred by declining to stay the extradition proceedings pending resolution of either Mr. Fejfar's immigration claims, or his ongoing litigation in the Czech Republic.

I. The statute of limitations for Mr. Fejfar's sentence has not lapsed

The parties agree that if Mr. Fejfar's conviction lapsed, it cannot serve as the basis for extradition under the treaty.[5] The parties also agree that if the 2006 order issued by the clerk "interrupted" the April 2001 conviction, Mr. Fejfar's limitation period resets as of 2006 and his limitations argument fails.

Because the 2006 order was unsealed, Mr. Fejfar takes the position that it was invalid and cannot serve as an "interruption" of the 2001 conviction.[6] In support of this argument, Mr. Fejfar provides several expert reports from Czech attorneys, scholars, and judges, offering their thoughts on the 2006 order's impact on the 2001 conviction. While the arguments raised are

[4] Under Article II of the Treaty, "a crime or offense shall be an extraditable crime or offense if it is punishable under the laws of the Requesting and Requested States by deprivation of liberty for a maximum period of more than one year or by a more severe penalty. A crime or offense shall also be an extraditable crime or offense if it consists of an attempt or conspiracy to commit, or participation in the commission of, an extraditable crime or offense. Where the request is for enforcement of the sentence of a person convicted of an extraditable crime or offense, the deprivation of liberty remaining to be served must be at least four months."

[5] Article V of the 1925 Treaty between the U.S. and Czechoslovakia states, "A fugitive criminal shall not be surrendered under the provisions hereof, when, lapse of time or other lawful cause, according to the laws of either of the countries within the jurisdiction of which the crime or offense was committed, the criminal is exempt from prosecution or punishment for the offense for which the surrender is asked."

[6] It is unclear if Mr. Fejfar continues to argue that because a clerk, rather than a judge, issued the 2006 order, it is invalid. Regardless, that argument fails for the same reasons discussed below.

interesting, they were already made to, and rejected by, multiple Czech courts during Mr. Fejfar's earlier appeals.[7]

Under Czech law, the statute of limitations is "interrupted . . . if the court takes steps to enforce a sentence to which the limitation period is related[.]" Ex. U at 13. "Interruption of the limitation period starts a new limitation period." *Id.* The record contains several exchanges regarding the statute of limitations between the United States Department of Justice and the Ministry of Justice of the Czech Republic.[8] On November 2, 2015, the Ministry of Justice stated:

> The limitation period was interrupted by issuing the order of 5 September 2001 that the person must be delivered for the execution of the sentence and on 8 October 2001 when the competent court bided the convict to start serving the prison sentence within the determined time limit. Consequently, the period was also interrupted on 18 January 2006 when the competent court issued the order that the person must be delivered for the execution of the sentence . . . .

Ex. U at 12-14.

In briefings before Judge Papak, "Mr. Fejfar argued that the 2006 order was invalid because it was not issued under seal and was signed by a clerk as opposed to a judge. Therefore, the 2006 Order could not have interrupted the statute of limitations, meaning Mr. Fejfar's sentence had expired." Br. in Supp. at 19 (internal citation omitted). In response to this argument, the government asked the Ministry of Justice to provide further guidance regarding the 2006 order. On December 1, 2016, on the eve of oral argument before Judge Papak, the Ministry provided further clarification. Ex. X. In that letter, the Ministry of Justice stated:

> **On 5 September 2001**, the District Court for Prague 8 issued the **Order to deliver Mr. Fejfar to prison** (hereinafter "the Order of 2001"). The Order was issued **under the court seal and was signed by a court clerk** named Karolina Skrickova. Its Czech copy is attached.

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[7] Mr. Fejfar recently raised another challenge based on his interpretation of a recent opinion from the Constitutional Court in the Czech Republic. Pet.'s Br. in Supp., 2. This litigation, now at the appellate level, is ongoing.

[8] The correspondence from the Ministry of Justice has been translated into English.

> Pursuant to Section 11(1)(j) of the Act of 189/1994 Collection of Laws, on Court Clerks, **a court clerk, after previous authorization from a chairing judge, can independently take measures to ensure enforcement of sentences of imprisonment**. Thus, according to the Czech laws, **orders to deliver person to prison do not have to be signed by a judge** as they are only "technical" measures aiming at execution of a judgment that imposed a sentence of imprisonment (nevertheless, such measures are still valid reasons to interrupt the limitation period). Therefore, the "real" reason why the person should be delivered to prison is the judgment. The order to deliver a person to prison is just a measure to ensure execution of such a judgment, i.e. execution of the sentence.
>
> Orders to deliver person to prison must, as the defense attorney correctly claims, be issued under seal. As it is possible to see in the attachment, **the Order of 2001 to deliver Mr. Fejfar to prison was issued under the court seal.**
>
> **The Order of 2001 is still valid**. The documents issued on 18 January 2006, including the new Order to deliver Mr. Fejfar to prison (also as "the Order of 2006"), reflect only a change of address of Mr. Fejfar. They do not cancel the previous Order of 2001, just inform about Mr. Fejfar's new address in a district Kolin (previously Prague). As these documents were not issued under the seal, they cannot cancel the previous Order of 2001.

Ex. X at 2 (bold in original).

Seizing on the last sentence above—"As these [2006] documents were not issued under the seal, they cannot cancel the previous Order of 2001"—Mr. Fejfar argues:

> The 2006 Order is invalid and did not interrupt the statute of limitations. Therefore, Mr. Fejfar's five-year statute of limitations has long run, he no longer has any sentence to serve, and he is not subject to extradition under the terms of the treaty.

Br. in Supp. at 20.

For several reasons, Mr. Fejfar's argument fails. First, under Czech law, a statute of limitations is "interrupted . . . if the court takes steps to enforce a sentence to which the limitation period is related[.]" Ex. U at 13. While Mr. Fejfar argues the court must take "valid steps to enforce a sentence," the Czech law merely states the limitation is interrupted "if the court takes steps to enforce a sentence[.]" While the 2006 order was clearly a "step" taken by the court, only one versed in Czech law could know if the statute required a "valid" step. Second, as noted by

the December 1, 2016 letter from the Ministry of Justice, "orders to deliver a person to prison," such as the 2006 order to deliver Mr. Fejfar's to prison, "are only 'technical' measures aiming at execution of a judgment . . . (nevertheless, such measures are still valid reasons to interrupt the limitation period)."[9] Ex. X at 2. Third, the letter explicitly states Mr. Fejfar's sentence "**is not statute-barred for lapse of time**." Ex. X at 2 (emphasis in original). Fourth, Mr. Fejfar presented this argument to Czech courts and those courts rejected the arguments. Ex. X at 1 (noting Constitutional Court of the Czech Republic explicitly held Mr. Fejfar's sentence of imprisonment is not time-barred).

Additionally, Mr. Fejfar's argument fails because it asks this Court to reject his sentence based on a technical argument advanced under the intricacies of Czech law. Courts reviewing certificates of extradition have rejected arguments that "savor of technicality." *Bingham v. Bradley*, 241 U.S. 511, 517 (1916). In rejecting a "technical" challenge to the Russian criminal code in upholding a certification of extradition, the Court explained:

> In the construction and carrying out of such treaties the ordinary technicalities of criminal proceedings are applicable only to a limited extent. . . . Care should doubtless be taken that the treaty be not made a pretext for collecting private debts, wreaking individual malice, or forcing the surrender of political offenders; but where the proceeding is manifestly taken in good faith, a technical noncompliance with some formality of criminal procedure should not be allowed to stand in the way of a faithful discharge of our obligations.

Grin v. Shine, 187 U.S. 181, 184-85 (1902).

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[9] At oral argument, Judge Papak pointed out to Mr. Fejfar's attorney the "jump" she made between the Ministry's statement that the 2006 order did not "cancel" the 2001 order, to the argument that the 2006 order was therefore "invalid." Ex. V at 15-16. Judge Papak correctly noted, "Well, there's a jump you made there that I didn't. I saw—I mean, I saw all of this, but I—I didn't see—I didn't read in [the Ministry's December 2016 letter], with the clarity you're suggesting, that the order of 2006 was therefore invalid. What it says is they do not cancel the previous order; just inform about new address. As these documents were not issued under seal, they cannot cancel the previous order. Cancellation isn't the issue, I don't think. I mean, the issue was—the question was whether the order, as issued, serves to satisfy the interruption provision of the statute. Whether or not it cancelled the 2001 order or not, I'm not sure that's—that's at issue. And once again, that leads me to [the government's] question of should I be going there? This is arcane. It's translated into English. It's not always clear what's being said. Is this—can I read this the way you want it to read? Because it—the language that you've just quoted [] isn't in here. It doesn't say the 2006 order is invalid, that I can see." *Id.*

Again, this Court is not well-versed in Czech law and is ill-equipped to decide rather arcane and technical matters found in the Czech Collection of Laws. Czech courts are more suited to consider such arguments, and those courts have repeatedly concluded Mr. Fejfar's 2001 sentence is not time-barred. Like other courts rejecting technical-based limitations arguments to avoid extradition, "this Court will not question the reliability or trustworthiness of a judicial decree from a foreign nation." *In re Extradition of Jimenez*, 2014 WL 7239941 (D. Md. Dec. 16, 2014).

Judge Papak did not err in finding that the 2006 order reset the five year limitations period. Mr. Fejfar's travel abroad to the United States in 2009 tolled, and continues to toll, the limitations period.

II. The certification for extradition does not infringe on Mr. Fejfars' rights

A. The certification for extradition does not violate Mr. Fejfar's due process rights

Mr. Fejfar argues Judge Papak violated his due process rights by certifying extradition prior to the adjudication of Mr. Fejfar's immigration claims. This argument is meritless. The BIA administratively closed Mr. Fejfar's immigration case pending the outcome of the extradition proceedings pursuant to BIA policy. *See Barapind v. Reno*, 225 F.3d 1100, 1107 (9th Cir. 2000) (describing practice). The court in *Barapind* upheld the practice, holding:

> The resolution of the extradition case has no preclusive effect over the disposition of the asylum application, and the BIA reasonably concluded that the Secretary of State's determination of whether to issue an extradition warrant should not be confined by collateral attacks resulting from the pendency of the asylum application.[10] Therefore, the BIA acted reasonably and within the scope of its authority under § 3.1(d)(1) in holding Barapind's asylum proceedings in abeyance pending the completion of the extradition process.

Id. at 1114.

[10] "Once the magistrate has certified to the Secretary of State that the individual is extraditable and any habeas review has concluded, the Secretary in her discretion may determine whether the alien should be surrendered to the custody of the requesting state based on humanitarian or other concerns." *Barapind*, 225 F.3d at 1105.

Barapind forecloses Mr. Fejfar's due process claim. Judge Papak did not err in certifying extradition before the resolution of Mr. Fejfar's immigration claims.

B. Judge Papak did not err by declining to stay the extradition proceedings pending resolution of Mr. Fejfar's immigration claims or his litigation in the Czech Republic.

Mr. Fejfar argues Judge Papak erred by not granting a stay of his extradition proceedings pending the resolution of either his immigration claims or his ongoing litigation in the Czech Republic. A stay is not a matter of right, but an exercise of judicial discretion, highly dependent on the facts of the particular case at hand. *Nken v. Holder*, 566 U.S. 418, 433 (2009). The party requesting a stay must prove that his individual circumstances justify an exercise of that discretion. *Id.* at 433-34. Here, the circumstances do not justify a stay.

To warrant a stay of his extradition proceedings pending the resolution of his other legal proceedings, Mr. Fejfar must show that: (a) he is likely to succeed on the merits of his other legal proceedings; (b) he will suffer irreparable harm absent a stay; (c) granting a stay will not substantially injure the other parties in the proceeding; and (d) granting a stay is in the public interest. *Id.* at 434.

While Mr. Fejfar seeks a stay in order to proceed with his immigration claims, those immigration claims are "separate and independent" from the extradition proceedings. *Barapind*, 225 F.3d at 1104-05. Additionally, as discussed above, Judge Papak did not err in certifying the extradition order. Therefore, the public interest is not served by staying the valid extradition application from the Czech Republic. *See Artukovic v. Rison*, 784 F.2d 1354, 1356 (9th Cir. 1986) ("We note that the public interest will be served by the United States complying with a valid extradition application from [the requesting country] under the treaty. Such proper

compliance promotes relations between the two countries, and enhances efforts to establish an international rule of law and order.").

For similar reasons, Judge Papak did not err by denying Mr. Fejfar's request for a stay while he proceeds with litigation in the Czech Republic challenging the 2006 order. Mr. Fejfar also fails to demonstrate he is likely to succeed on the merits of his new legal challenge. As noted, several Czech courts have rejected Mr. Fejfar's argument that the 2006 order failed to interrupt the limitations period. Ex. X at 1.

CONCLUSION

Because Magistrate Judge Papak did not err in certifying the request for extradition, and did not err in declining to stay certification, the petition is DENIED.

IT IS SO ORDERED.

DATED this 6th day of December, 2017.

/s/Michael J. McShane
Michael J. McShane
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

3:16-MC-00183

IN THE MATTER OF THE EXTRADITION OF MIROSLAV FEJFAR

CERTIFICATION AND COMMITTAL FOR EXTRADITION

CASE UNDER SEAL

Having held an extradition hearing on December 5, 2016, and after considering the evidence, in particular, the certified and authenticated documents submitted by the Government of the Czech Republic, and the pleadings and the arguments of both counsel, the Court finds and certifies to the Secretary of State as follows:

1. This Court has jurisdiction over, and the undersigned is authorized to conduct, extradition proceedings pursuant to Title 18 U.S.C. § 3184.

2. This Court has personal jurisdiction over Miroslav Fejfar (the "Fugitive") found and arrested on April 11, 2016, in this District pursuant to a complaint filed by the United States in response to the request of the Government of the Czech Republic for the arrest and extradition of the Fugitive.

3. The extradition treaty between the United States and the Government of the Czech Republic, formally described as the Extradition Treaty between the United States of America and Czechoslovakia for the Extradition of Fugitives from Justice, U.S.-Czech., July 2, 1925, 44 Stat. 2367 (the "1925 Treaty"), as amended by the Supplementary Treaty Between the United States of America and Czechoslovakia, U.S.-Czech., Apr. 29, 1935, 49 Stat. 3253 (the "1935 Supplementary Treaty"); and the Second Supplementary Treaty on Extradition Between

the United States of America and the Czech Republic, U.S.-Czech., May 16, 2006, S. Treaty Doc. No. 109-14 (2006) (the "2006 Second Supplementary Treaty") (collectively, the "Treaty") entered into force on February 1, 2010, and was in full force and effect at all times relevant to this action.

4. The Miroslav Fejfar sought by the Czech Republic authorities and the Miroslav Fejfar arrested in this District for extradition and brought before this Court are one and the same person.

5. The Fugitive has been convicted and sentenced in the Czech Republic to three years in prison for extortion in violation of Section 235(1) of the Czech Criminal Code of 1961, and inducement in violation of Section 10(1)(b) of the Czech Criminal Code of 1961 to commit the offense of endangering the safety of the public under Section 179(1) of the Czech Criminal Code 1961. The Government of the Czech Republic has jurisdiction over this criminal conduct;

6. The above-referenced Treaty between the United States and the Czech Republic, pursuant to Article II of the Treaty, as replaced by Article 2 of the 2006 Second Supplementary Treaty between the United States and the Czech Republic, encompasses the offenses for which the Fugitive has been convicted and sentenced and for which extradition is sought for service of sentence.

7. The Government of the Czech Republic submitted documents that were properly authenticated and certified in accordance with the terms of the Treaty. Those documents include the pertinent text for the crimes with which the Fugitive has been convicted and sentenced.

8. There is probable cause to believe that the Fugitive before this Court, the same person identified in the extradition request from the Government of the Czech Republic, was tried and convicted for the offenses for which extradition is sought.

9. The evidence before this Court is sufficient to justify the Fugitive's committal for felony charges had the offenses for which he was convicted and sentenced occurred in the United States. This finding rests upon the documents submitted by the Government of the Czech Republic in this matter, including the Extradition Request dated 8/16/2012 from Czech Republic Ministry of Justice with attached (a) International Arrest Warrant for Miroslav Fejfar dated 6/25/2010, (b) the picture of fugitive Fejfar, (c) the judgment and proceedings in the District Court of Prague dated 4/20/2001, (d) appeal proceedings in the Municipal Court of Prague dated 7/31/2001, (e) the Supplement to Extradition Request dated 9/16/2015, (f) the Supplement to Extradition Request dated 11/2/2015 discussing the Czech Republic provisions on the lapse of sentences, and (g) the Supplement to Extradition Request dated 12/1/2016 further discussing the Czech Republic provisions on the lapse of sentences.

10. Fugitive argues that the Czech Republic's statute of limitations on the enforcement of sentences is a defense to extradition here. The parties acknowledge that Fugitive's three-year sentence, imposed on April 20, 2001, is subject to a five-year statute of limitations. Under Czech law, this limitation period can be tolled by several events. For the reasons set forth in the United States' Memorandum of Law in Support of Extradition and Reply to Opposition of Extradition and Motion for Stay and, in particular, on the December 1, 2016 letter from the Ministry of Justice of the Czech Republic, Government Exhibit #4, I find that the limitation period in this case was tolled by the issuance of various court orders, including an order issued on January 18, 2006, an international arrest warrant, and Fugitive's flight to the United States, and, therefore, Fugitive's three-year sentence is not time barred. Fugitive's argument that the January 18, 2006 reissuance of his three-year commitment order could not extend the statute of limitations because a clerk rather than a judge signed the order and because

the order lacked a certain seal is unavailing. This issue has been litigated by Fugitive, unsuccessfully, in the Czech district court and it is not for this court to opine on a foreign court's interpretation of its own law.

11. Fugitive also argues that extradition is precluded because his criminal conviction was for a "political offense." Fugitive must establish the essential elements of the political offense exception by a preponderance of the evidence and he has failed to do so here. For the reasons set forth in the United States' Memorandum of Law in Support of Extradition and Reply to Opposition of Extradition and Motion for a Stay, a ruling that Fugitive is subject to being extradited to the Czech Republic cannot be denied on the basis of the political offense exception.

12. Finally, Fugitive requests, in the alternative, that this court stay these extradition proceedings pending either resolution of his litigation in the United States Immigration Court or potential appeal of litigation regarding his sentence in the Czech Republic. I find, for the reasons set forth in the United States' Memorandum of Law in Support of Extradition and Reply to Opposition of Extradition and Motion for Stay, that a stay of proceedings in light of pending or potential litigation in the Immigration Court or the Czech Republic is inappropriate and Fugitive's request for a stay is denied.

THEREFORE, pursuant to 18 U.S.C. § 3184, and the above findings and conclusions of law, I certify the extradition of the Fugitive, Miroslav Fejfar, to the Czech Republic, on all offenses for which extradition was requested, continue the previous order of release on the same conditions , pending further decision on extradition and surrender by the Secretary of State pursuant to 18 U.S.C. § 3186.

I further order that the Department of Justice forward a certified copy of this Certification and Committal for Extradition, together with a copy of the evidence presented in this case,

including the formal extradition documents received in evidence and any testimony received in this case, to the Secretary of State.

Dated this 19th day of January, 2017.

PAUL PAPAK
United States Magistrate Judge

File: A200 877 703 – Portland, OR

Date: SEP 22 2016

In re: Miroslav FEJFAR a.k.a. Mirek Fejfar

IN REMOVAL PROCEEDINGS

INTERLOCUTORY APPEAL

ON BEHALF OF RESPONDENT: Pro Se[1]

ON BEHALF OF DHS: Sarah K. Barr
Assistant Chief Counsel

The Department of Homeland Security (DHS) has filed an interlocutory appeal from the Immigration Judge's July 18, 2016, decision denying DHS's motion for administrative closure. The respondent, a native and citizen of the Czech Republic, is currently in extradition proceedings and opposes administrative closure of his removal proceedings in Immigration Court (I.J. at 1-2). The DHS argues that administrative closure is warranted until the conclusion of the respondent's extradition proceedings (I.J. at 2; DHS Notice of Appeal). The Board may administratively close removal proceedings, even if a party opposes, if it is otherwise appropriate under the circumstances. *See Matter of Avetisyan*, 25 I&N Dec. 688, 690 (BIA 2012). We find it appropriate to exercise our jurisdiction in this circumstance and address the DHS's appeal. Considering the filings now before the Board, we will sustain the DHS appeal and order the proceedings administratively closed. *See generally Barapind v. Reno*, 225 F.3d 1100 (9th Cir. 2000); *Matter of Perez-Jimenez*, 10 I&N Dec. 309 (BIA 1963).

If either party to this case wishes to reinstate the proceedings, a written request to reinstate the proceedings may be made to the Board. The Board will take no further action in the case unless a request is received from one of the parties. The request must be submitted directly to the Clerk's Office, without fee, but with certification of service on the opposing party. The proceedings are administratively closed and the record is returned to the Immigration Court without further action. Accordingly, the following orders will be entered.

ORDER: The interlocutory appeal is sustained and the July 18, 2016, decision of the Immigration Judge is vacated.

FURTHER ORDER: The removal proceedings are administratively closed.

Ellen Rubowitz
FOR THE BOARD

[1] A courtesy copy of this order will be sent to the respondent's attorney before the Immigration Court, Philip Smith, Esquire.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
PORTLAND, OREGON

In the Matter of

Miroslav FEJFAR,

Respondent.

File Number: **A 200-877-703**

IN REMOVAL PROCEEDINGS

Charges: INA § 212(a)(6)(A)(i): Present without admission or parole

Application: DHS motion for administrative closure

On Behalf of Respondent:
Philip Smith
Nelson | Smith, PLLC

On Behalf of ICE:
Sarah K. Barr
Assistant Chief Counsel

RULING OF THE IMMIGRATION JUDGE

I. Introduction and Procedural History

The Department of Homeland Security ("DHS") initiated these proceedings against Respondent, Miroslav Fejfar, by filing a Notice to Appear ("NTA") against him with the Immigration Court in Portland, Oregon on June 11, 2012. The NTA alleged that Respondent is a native and citizen of the Czech Republic who entered the United States in Los Angeles, California, on or about June 12, 2009 as a nonimmigrant B1/B2 visitor with authorization to remain in the United States for a temporary period not to exceed November 11, 2009. The NTA further alleged that Respondent remained in the United States beyond November 11, 2009 without authorization. Based on these allegations, DHS charged Respondent with being subject to removal under section 237(a)(1)(B) of the Immigration Nationality Act ("INA" or "Act"), as an alien who remained in the United States for a time longer than permitted.

Respondent conceded removability at a master calendar hearing on October 31, 2012. He filed an application for asylum and related relief at his next master calendar hearing on January 23, 2013. The case was set for a final merits hearing on April 14, 2016.

Respondent was taken into custody by the U.S. Marshals Service on April 11, 2016, pursuant to a provisional arrest warrant and complaint charging him with being a fugitive from the Czech Republic, and sought extradition pursuant to the extradition treaty between the United States and the Czech Republic and 18 U.S.C. § 3184. Respondent is now in extradition proceedings.

Upon hearing of Respondent's apprehension, DHS filed a motion to administratively close proceedings on April 12, 2016. In its motion, DHS argued that administrative closure is warranted until the conclusion of the extradition proceedings. Respondent opposes administrative closure. For the foregoing reasons, I decline to administratively close proceedings.

II. Discussion

The Immigration Judge and the Board have the authority, in the exercise of independent judgment and discretion, to administratively close proceedings under appropriate circumstances, even if a party opposes. *Matter of Avetisyan*, 25 I&N Dec. 688, 694 (BIA 2012). When evaluating a request for administrative closure, the Immigration Judge or the Board can weigh all relevant factors presented in the case, including but not limited to: (1) the reason administrative closure is sought; (2) the basis for any opposition to administrative closure; (3) the likelihood the respondent will succeed on any petition, application, or other action he or she is pursuing outside of removal proceedings; (4) the anticipated duration of the closure; (5) the responsibility of either party, if any, in contributing to any current or anticipated delay; and (6) the ultimate outcome of removal proceedings. *Id.* at 696.

DHS seeks administrative closure because extradition proceedings are pending against Respondent. DHS cites *Matter of Perez-Jimenez*, 10 I&N Dec. 309 (BIA 1963), in which the BIA held that removal proceedings be held in abeyance pending extradition proceedings against a respondent where the Immigration Judge's decision could have a null effect on extradition.

Respondent argues that *Perez-Jimenez* was decided decades prior to the ratification of the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment ("Convention Against Torture" or "CAT"). G.A. Res. 39/64, 39 U.N. GAOR Supp. No. 51. Respondent argues that a grant of withholding of removal pursuant to the Convention Against Torture would prohibit the government from returning Respondent to a country where his life or freedom would be threatened, and thus, the result of the removal proceedings would not be moot if extradition is ordered. Respondent also argues that administrative closure of his case will deny him the opportunity for adjudication of his withholding of removal under INA § 241(b)(3) claim.

DHS, in its response, argues that there are a number of safeguards in the extradition proceedings to ensure that Respondent will be able to assert defenses to his extradition. DHS points out that the U.S.-Czech extradition treaty contains a political offense exception clause which will give Respondent the opportunity to argue the alleged political character of his prosecution within the context of extradition proceedings. DHS also argues that Respondent will have an adequate opportunity to seek protection under the Convention Against Torture in extradition proceedings because the CAT and its implementing regulations are binding domestic law, and thus the Secretary of State must consider any claim under the CAT before extradition can occur. 22 C.F.R. § 95.2 – 95.4; *see Trinidad y Garcia v. Thomas*, 683 F.3d 952, 956-57 (9th Cir. 2012)(finding that the process by which the Secretary of State considers an extraditee's claim under the CAT did not violate his due process rights under the Fifth Amendment).

After weighing all of the relevant factors, the Court finds that administrative closure of the matter over Respondent's objection would be improper. *Avetisyan*, 25 I&N Dec. at 696. As a preliminary matter, the Court notes that the forum and nature of extradition proceedings is "separate and apart" from removal proceedings under the INA. *Matter of McMullen*, 17 I&N Dec. 542, 548 (BIA 1980), rev'd on other grounds, 658 F.2d 1312 (9th Cir. 1981), on remand, *Matter of McMullen*, 19 I&N Dec. 90 (BIA 1984), aff'd, 788 F.2d 591 (9th Cir. 1986).

The law governing asylum and withholding of removal was established by the INA and was amended by the Refugee Act of 1980. 8 U.S.C. §§ 1158 and 1231(b)(3). "In enacting the Refugee Act, Congress sought to bring United States refugee law into conformity with the 1967 United Nations Protocol Relating to the Status of Refugees ... to which the United States acceded in 1968." *Barapind v. Reno*, 225 F.3d 1100, 1106 (9th Cir. 2000) (citing U.N. Protocol Relating to the Status of Refugees art. 33, Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. 6577); *Matter of Acosta*, 19 I. & N. Dec. 211, 219 (BIA 1985) (same). Removal proceedings are initiated by the Department of Homeland Security and begin with the filing of a Notice to Appear with a U.S. Immigration Court. 8 C.F.R. §§ 1239.1; 239.1(a). Once a respondent expresses fear of persecution or harm upon return to his or her country of origin, the Immigration Judge must advise the respondent that he or she may apply for asylum and withholding of removal. *See* 8 C.F.R. § 1240.11(c)(1)(i)–(ii). When the respondent applies for relief, the Immigration Judge must, after conducting an evidentiary hearing, decide whether the respondent has established that he or she is a refugee as defined under INA 101(a)(42) or that he or she is entitled to protection under the Convention Against Torture. 8 C.F.R. §§ 1240.11(c)(3); 1208.13; 1208.16; 1208.17.

Extradition from the United States, on the other hand, is a diplomatic process that is initiated by a request from the nation seeking extradition directly to the Department of State. *Prasoprat v. Benov,* 421 F.3d 1009 (9th Cir. 2005). Extradition is governed by 18 U.S.C. § 3184, which, in this case, turns on the bilateral extradition treaty between the United States and the Czech Republic. *See Treaty Between the United States & Czechoslovakia for the Extradition of Fugitives from Justice*, 44 Stat 2367 (Mar. 29, 1926). After an extradition request from another country has been evaluated by the State Department to determine whether it is within the scope of the relevant extradition treaty, a United States Attorney files a complaint with a federal district court seeking an arrest warrant for the person sought to be extradited. *Prasoprat*, 421 F.3d at 1011. A magistrate or judge must hold a hearing to determine whether (1) the crime is extraditable, and (2) there is probable cause to sustain the charge. *Id.* If both these conditions are satisfied, the inquiring magistrate judge must certify the individual as extraditable to the Secretary of State and issue a warrant. *Id.* The real party in interest in the extradition proceeding is the Czech Republic, not the United States, as it is in removal proceedings. *See Matter of McMullen*, 17 I&N Dec. at 548.

When an extraditee asserts a claim under the CAT, the extradition magistrate lacks discretion in an extradition hearing to inquire into the conditions that might await a fugitive upon return to the requesting country. 18 U.S.C.A. § 3184. Rather, under the "rule of non-inquiry," it is the role of the Secretary of State, not the courts, to determine whether extradition should be denied on humanitarian grounds or on account of the treatment that the fugitive is likely to receive upon his return to the requesting state. *Prasoprat*, 421 F.3d at 1016. The Secretary of State exercises executive discretion as to final the extradition decision. 18 U.S.C.A. § 3184.

First, although the Court and the Secretary of State are both bound by the CAT, the processes for reviewing these decisions differ significantly. When an Immigration Judge renders a decision regarding an alien's claim for withholding of removal under the CAT, the decision may be appealed to the BIA, and then to the Ninth Circuit, where the decision will be reviewed for clear error. 8 C.F.R. § 1003.1(d)(3)(i); *Ridore v. Holder*, 696 F.3d 907, 916 (9th Cir. 2012). In extradition proceedings, the ability to review the Secretary's CAT decision is much more limited. The rule of non-inquiry that prohibits courts from determining whether extradition should be denied on humanitarian grounds does not prevent an extraditee from seeking habeas corpus review of the Secretary's decision. *Prasoprat*, 421 F.3d at 1016. The alien's due process interest in habeas review is fully vindicated, however, if the Secretary provides a declaration that she has complied with her obligations. *Trinidad y Garcia*, 683 F.3d. at 957. Beyond this, the Ninth Circuit declines to conduct any greater judicial review of the Secretary's extradition decision. *Id.* Thus, denying Respondent the opportunity to raise his CAT claim within removal proceedings severely limits his ability to seek review of the decision rendered.

Second, although there is a forum within extradition proceedings to raise a claim under the CAT, there is no forum to raise a claim of withholding of removal under the INA. The INA requires that the Immigration Judge withhold deportation of an alien who demonstrates that his or her "life or freedom would be threatened" on account of a race, religion, nationality, particular social group or political opinion if he or she is removed. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 (1987). To qualify for this relief, the alien must demonstrate that it is "more likely than not that the alien would be subject to persecution" in the country to which he would be returned. *Id.* This is a lower standard than that of relief under the Convention Against Torture, where the respondent must show that it is more likely than not that he or she will be tortured upon removal to the home country. 8 C.F.R. § 1208.16(c)(2). "Torture is more severe than persecution." *Nuru v. Gonzales*, 404 F.3d 1207, 1224 (9th Cir. 2005). Thus, Respondent will be held to a higher standard for withholding of removal under the CAT during extradition proceedings than he would be for withholding under the INA in removal proceedings.[1]

"[A]n alien who faces [removal] is entitled to a full and fair hearing of his claims and a reasonable opportunity to present evidence on his behalf." *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000). Respondent seeks adjudication of his withholding of removal claims under the INA and the CAT in removal proceedings. Although Respondent may be able to assert similar defenses in his extradition proceedings as he would in removal proceedings, the nature of the proceedings, the availability of relief, and the opportunities for judicial review of such determinations are markedly different. For these reasons, the Court declines to administratively close the proceedings over Respondent's objections. Thus, in my judgment and discretion, I deny DHS's motion.

[1] DHS argues that an Immigration Judge's order withholding removal under the INA will have no binding effect on the Department of States' ability to effectuate extradition. DHS did not provide any authority to support such an assertion, and the Court's independent research was unable to determine whether this assertion is substantiated.

RULING

IT IS HEREBY ORDERED that DHS' motion for administrative closure is DENIED.

7-18-16
Date

Andrea Sloan
Immigration Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MIROSLAV FEJFAR, Petitioner-Appellant, v. UNITED STATES OF AMERICA, Respondent-Appellee.	No. 17-35987 D.C. No. 3:17-cv-00191-MC District of Oregon, Portland ORDER

Before: THOMAS, Chief Judge, FRIEDLAND, Circuit Judge, and ZILLY,* District Judge.

The panel has unanimously voted to deny the petition for panel rehearing and rehearing en banc. The full court has been advised of Petitioner-Appellant's petition for rehearing en banc, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35.

The petition for panel rehearing or rehearing en banc is DENIED.

* The Honorable Thomas S. Zilly, United States District Judge for the Western District of Washington, sitting by designation.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MIROSLAV FEJFAR, Petitioner-Appellant, v. UNITED STATES OF AMERICA, Respondent-Appellee.	No. 17-35987 D.C. No. 3:17-cv-00191-MC District of Oregon, Portland ORDER

Before: THOMAS, Chief Judge, FRIEDLAND, Circuit Judge, and ZILLY,* District Judge.

Petitioner-Appellant's motion to stay the mandate pending petition for a writ of certiorari in the United States Supreme Court is DENIED.

* The Honorable Thomas S. Zilly, United States District Judge for the Western District of Washington, sitting by designation.

Application No. A- _____

IN THE SUPREME COURT
OF THE UNITED STATES

MIROSLAV FEJFAR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To
The United States Court Of Appeals
For The Ninth Circuit

CERTIFICATE OF SERVICE AND MAILING

I, Stephen R. Sady, counsel of record and a member of the Bar of this Court, certify that pursuant to Rule 29.3, service has been made of the within APPLICATION FOR STAY OF PROCEEDINGS on the counsel for the respondent by depositing in the United States Post Office, in Portland, Oregon on August 13, 2018, first class postage prepaid, an exact and full copy thereof addressed to:

Noel Francisco
Solicitor General of the United States
Room 5616
Department of Justice
950 Pennsylvania Ave., N. W.
Washington, DC 20530-0001

Geoffrey Barrow, Assistant U.S. Attorney
1000 S.W. Third Avenue, Suite 600
Portland, OR 97204

Christopher Jackson Smith, Trial Attorney
DOJ - U.S. Department of Justice
Room 1706
950 Pennsylvania Ave., N.W.
Washington, DC 20530

Kelly A. Zusman, Assistant U.S. Attorney
1000 S.W. Third Avenue, Suite 600
Portland, OR 97204

Further, the original and ten copies were mailed to the Honorable Scott S. Harris, Clerk of the United States Supreme Court, by depositing them in a United States Post Office Box, addressed to 1 First Street, N.E., Washington, D.C., 20543, for filing on this 13th day of August, 2018, with first-class postage prepaid.

Dated this 13th day of August, 2018.

Stephen R. Sady
Attorney for Petitioner

Subscribed and sworn to before me this 13th day of August, 2018.

OFFICIAL STAMP
MITZI JOANNE MILLER
NOTARY PUBLIC-OREGON
COMMISSION NO. 932282
MY COMMISSION EXPIRES SEPTEMBER 14, 2018

Notary Public of Oregon