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IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 18-2529

[Filed July 15, 2019]

NERINGA VENCKIENE, *Petitioner-Appellant*,	)
v.	)
UNITED STATES OF AMERICA, *Respondent-Appellee*.	)

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:18-CV-3061 — **Virginia M. Kendall**, *Judge*.

ARGUED NOVEMBER 27, 2018 —
DECIDED JULY 15, 2019

Before BAUER, HAMILTON, and BARRETT, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Lithuania seeks extradition of petitioner Neringa Venckiene from the United States to prosecute her for several alleged offenses arising from a custody battle over Venckiene's

niece. After a hearing pursuant to 18 U.S.C. § 3184, a magistrate judge certified Venckiene as extraditable and the Secretary of State granted the extradition. Venckiene moved the magistrate judge for a temporary stay of her extradition, which was granted. She then filed a petition for a writ of habeas corpus in the district court challenging both the magistrate judge's certification order and the Secretary's decision. She also asked the district court to stay her extradition, but the district court denied that request.

In her habeas corpus petition, Venckiene claims the magistrate judge erred in two ways: failing to apply the political offense exception in the Lithuania-United States extradition treaty to her case, and finding probable cause that she was guilty of the offenses charged. Venckiene also claims that the Secretary of State's decision to grant the extradition violated her constitutional right to due process and failed to consider that Venckiene might be subject to what we have called "particularly atrocious procedures or punishments," see *In re Burt*, 737 F.2d 1477, 1487 (7th Cir. 1984), if she is returned to Lithuania.

This appeal challenges directly only the district judge's denial of Venckiene's request to extend the stay of her extradition, but that challenge necessarily implicates the merits of her habeas petition. We affirm the district court's denial of a stay. In Part I, we explain the extradition process, including the applicable treaty provisions and the limited scope of the judicial role. In Part II, we summarize what we know about events in Lithuania leading to this case. In Part III, we review the United States legal proceedings

thus far. In Part IV, we analyze the legal issues presented, considering in P art IV-A Venckiene's challenges to the magistrate judge's order and in Part IV-B her challenges to the Secretary's decision, and finally in Parts IV-C and IV-D other factors relevant to Venckiene's stay request.

I. *The Extradition Process*

A. *The Lithuania-U.S. Extradition Treaty*

International extradition is first and foremost a creature of treaties. Under the extradition treaty between the United States and Lithuania, an offense is extraditable "if it is punishable under the laws in both States by deprivation of liberty for a period of more than one year or by a more severe penalty." Extradition Treaty, Lithuania-United States, art. II, § 1, March 31, 2003, T.I.A.S. No. 13166. The treaty makes an exception, however, "if the offense for which extradition is requested is a political offense," art. IV, § 1, a term not defined in the treaty. The treaty also specifies what the requesting party must provide to obtain extradition of a person accused of an extraditable offense:

> 3. A request for extradition of a person who is sought for prosecution also shall include:
>
> (a) a copy of the warrant or order of arrest issued by a judge, court, or other authority competent for this purpose;
>
> (b) a copy of the charging document; and
>
> (c) such information as would provide a reasonable basis to believe that the person

> sought committed the offense for which extradition is sought.

Art. VIII, § 3.

B. *The Judicial Role in Extradition*

The judicial branch plays a central but limited role in the extradition process, as laid out in statutes and case law. See 18 U.S.C. §§ 3184–3195; *Burgos Noeller v. Wojdylo*, 922 F.3d 797, 802 (7th Cir. 2019); *Eain v. Wilkes*, 641 F.2d 504, 508 (7th Cir. 1981). The process begins when a foreign government makes a formal request to the United States government through diplomatic channels. That request is forwarded to the Department of Justice, which then ordinarily files a complaint and seeks an arrest warrant from a judge. *Burgos Noeller*, 922 F.3d at 802.

The person targeted by the request is entitled to a hearing before a judge pursuant to 18 U.S.C. § 3184. The scope of inquiry at this hearing is limited: "the 'judicial officer's inquiry is confined to the following: whether a valid treaty exists; whether the crime charged is covered by the relevant treaty; and whether the evidence marshaled in support of the complaint for extradition is sufficient under the applicable standard of proof.'" *Skaftouros v. United States*, 667 F.3d 144, 154–55 (2d Cir. 2011), quoting *Cheung v. United States*, 213 F.3d 82, 88 (2d C ir. 2000). If the judge finds that these three conditions have been satisfied and the accused is extraditable, the judge *must* certify the extradition to the Secretary of State. The court has no discretion. See *Burgos Noeller*, 922 F.3d at 803; *Santos v. Thomas*, 830 F.3d 987, 992 (9th Cir. 2016) (en banc).

"The Secretary of State has 'sole discretion to determine whether or not extradition should proceed further with the issuance of a warrant of surrender.'" *Burgos Noeller*, 922 F.3d at 803, quoting *Eain*, 641 F.2d at 508; see 18 U.S.C. § 3186. In making this decision, the Secretary is authorized to consider factors that United States federal courts in extradition cases cannot take into account. The executive branch has sole authority to consider issues like the political motivations of a requesting country and whether humanitarian concerns justify denying a request. See *Burgos Noeller*, 922 F.3d at 808; *Hoxha v. Levi*, 465 F.3d 554, 563 (3d Cir. 2006).

Generally, the Secretary of State's extradition decision is not subject to judicial review. This circuit and others, however, have recognized an exception through which courts can, at least in theory, consider claims that "the substantive conduct of the United States in undertaking its decision to extradite … violates constitutional rights." *Burt*, 737 F.2d at 1484; see also *Martin v. Warden*, 993 F.2d 824, 829 (11th Cir. 1993) (recognizing that constitutional rights are superior to treaty obligations, but finding no violation of constitutional rights in long-delayed extradition request); *Plaster v. United States*, 720 F.2d 340, 349 (4th Cir. 1983) (recognizing constitutional claims but vacating grant of writ of habeas corpus). We said in *Burt*:

> Generally, so long as the United States has not breached a specific promise to an accused regarding his or her extradition and bases its extradition decisions on diplomatic

> considerations without regard to such constitutionally impermissible factors as race, color, sex, national origin, religion, or political beliefs, and in accordance with such other exceptional constitutional limitations as may exist because of particularly atrocious procedures or punishments employed by the foreign jurisdiction, those decisions will not be disturbed.

737 F.2d at 1487 (internal citations omitted) (affirming denial of writ of habeas corpus).

Under the applicable statutes, the accused may not appeal directly a judge's order to certify her for extradition, but case law has long recognized a limited form of appellate review through a petition for a writ of habeas corpus. See *Collins v. Miller*, 252 U.S. 364, 368–69 (1920); *Burgos Noeller*, 922 F.3d at 803; *Eain*, 641 F.2d at 508; *In re Assarsson*, 635 F.2d 1237, 1240–41 (7th Cir. 1980).

In such habeas corpus cases, however, courts generally may consider only "whether the magistrate had jurisdiction, whether he offence charged is within the treaty and, by a somewhat liberal extension, whether there was any evidence warranting the finding that there was reasonable ground to believe the accused guilty," i.e., probable cause. *DeSilva v. DiLeonardi*, 125 F.3d 1110, 1112 (7th Cir. 1997) (reversing writs of habeas corpus), quoting *Fernandez v. Phillips,* 268 U.S. 311, 312 (1925). Under this probable cause standard, the judge must "determine whether there is competent evidence to justify holding the accused to await trial." *Sidali v. I.N.S.*, 107 F.3d

191, 199 (3d Cir. 1997), quoting *Peters v. Egnor*, 888 F.2d 713, 717 (10th Cir. 1989). It is not the magistrate's role, however, "to determine whether the evidence is sufficient to justify a conviction." *Id.* That is the job of the requesting country's courts.

II. *The Events in Lithuania*

In applying political offense exceptions to extradition treaties, factual details matter, so we review events in some detail. Neringa Venckiene worked as a judge in Lithuania from 1999 until 2012. Her brother was Drasius Kedys. Kedys had a daughter with his then-girlfriend Laimute Stankunaite. As of 2008, the couple had separated and Kedys had full custody of their daughter, Venckiene's niece. Sometime in 2008, when she was four years old, the girl told her grandmother that she was being sexually abused by three men. The men were eventually identified as public officials: Andrius Usas, an assistant to the Speaker of the Lithuanian parliament, Jonas Furmanavicius, a Kaunas Regional Court Judge, and Vaidas Milinis, the President of the Kaunas Regional Court.

Law enforcement authorities were notified about the girl's claims, but according to Venckiene, "the case was purposefully delayed, investigations and complaints were ignored, and the case shifted hands for months." In response to these delays, Venckiene wrote a book about the pedophilia case and its stagnated investigation entitled *Drasius's Hope to Save the Girl*. Venckiene believes that what her niece experienced was part of a larger pedophilia network in Lithuania. She thinks that the Lithuanian network is related to a

pedophilia scandal that took place in Latvia in 2000 and in which several highranking officials participated.

On October 5, 2009, Furmanavicius and Stankunaite's sister were murdered. Lithuanian authorities suspected Kedys of committing these crimes, but Kedys himself disappeared soon after that. His body was eventually discovered on the bank of a lagoon. The government declared his death accidental, caused by alcohol-induced asphyxiation, but Venckiene asserts that an independent criminologist found no alcohol in Kedys's system**.** Venckiene was awarded custody of his daughter, her niece, pending resolution of the pedophilia case. In June 2010, Usas was also found murdered.

Venckiene continued to criticize corruption in Lithuania. On November 17, 2010, in a conversation with journalists, she publicly condemned the Lithuanian court system for its corruption. She asserts that the chairman of the Lithuanian Judicial Council censured her for her comments and subjected her to ethical hearings based on a charge of insulting or humiliating the court. She further asserts that a pretrial investigation into whether she had actually broken any laws through these comments was discontinued in January 2011 after the prosecutor found no evidence to suggest that she had broken the law. Venckiene says, however, that in February 2011, the head of the Judicial Council successfully petitioned to extend the statute of limitations on this charge of "humiliating the court." In 2012, these comments were cited to support revoking Venckiene's judicial immunity. According to Lithuania, at some point in

2010, Venckiene also conducted illegal surveillance on public individuals she suspected of pedophilia and Stankunaite.

On December 16, 2011, a court ordered Venckiene to return her niece to the custody of her niece's mother, Kedys's former girlfriend, Stankuanaite. The court ordered the transfer on two separate occasions. Both times the girl refused to go with her mother. On March 23, 2012, Stankunaite came to Venckiene's home with a bailiff and about 25 police officers to execute the court's order and take back her daughter. The attempt was unsuccessful, and the girl was traumatized by the incident. A video recording of the attempted seizure was posted to the internet and received national attention. The story alerted the public to the pedophilia incidents. Hundreds of people began camping out around Venckiene's home to help protect the girl.

On May 17, 2012, the police again attempted to remove the girl from Venckiene's home. The criminal charges against Venckiene relevant to this appeal are based on the events of that date. Venckiene describes the encounter as violent. She says that officers broke down her door and physically removed her niece from her lap before covering the girl's face with a blanket soaked in psychotropic substances intended to subdue her. Venckiene reports that she and several protesters went to the hospital seeking treatment for injuries inflicted by the officers. The police officers who executed the custody transfer described Venckiene as aggressive and hysterical. They said that she refused to allow the officers to communicate with the girl and even punched one officer in the face.

After her niece was removed, Venckiene became more outspoken. She published another book, *Way of Courage*, which covered the pedophilia case and leveled criticisms against the Lithuanian judicial system, prosecution, and courts. On June 26, 2012, Venckiene's judicial immunity was revoked. She then resigned from her judicial position and became politically active. Her second book had inspired the creation of Way of Courage, a political party that organized protests, circulated petitions, and fostered dialogues on internet forums and blogs. Venckiene became the face of the party during its campaign for the October 2012 parliamentary election in Lithuania. Way of Courage won seven seats in the election; Venckiene was elected the party's chair. Venckiene's political tenure was short-lived. The prosecutor general petitioned the Lithuanian parliament to remove Venckiene's parliamentary immunity so that she could be arrested for charges related to the May 17th removal of her niece. Venckiene's parliamentary immunity was in fact removed on April 13, 2013.

At some point in 2012, Venckiene was notified that she was suspected of several criminal offenses. Venckiene refused to accept formal service of process and went into hiding. On April 8 , 2013, Venckiene flew from Germany to the United States. She applied for asylum immediately and has since been living and working in Illinois.

III. *Legal Proceedings in the United States*

About five years after Venckiene fled to the United States, Lithuania formally requested her extradition under the treaty. The United States government filed

a complaint in the Northern District of Illinois and obtained a warrant for Venckiene's arrest. She was arrested on February 13, 2018. The complaint charged Venckiene with the following offenses:

1. Complicity in committing a criminal act (unlawful collection of information about a person's private life, i.e., stalking), in violation of Lithuania Criminal Code Article 25;

2. Unlawful collection of information about a person's private life, i.e., stalking, in violation of Lithuania Criminal Code Article 167;

3. Hindering the activities of a bailiff, in violation of Lithuania Criminal Code Article 231;

4. Failure to comply with a court's decision not associated with a penalty, in violation of Lithuanian Criminal Code Article 245;

5. Causing physical pain, in violation of Lithuania Criminal Code 140(1); and

6. Resistance against a civil servant or a person performing the functions of public administration, in violation of Lithuania Criminal Code Article 286.

Magistrate Judge Daniel Martin held an extradition hearing pursuant to 18 U.S.C. § 3184 and certified Venckiene as extraditable for offenses three through six. The judge found no probable cause to support the

first two charges. Venckiene was committed to the custody of the U.S. Marshal pending the Secretary of State's decision on her extradition and surrender.

On February 23, 2018, the same day Judge Martin certified Venckiene for extradition, the government sent Venckiene's attorney a letter saying that Venckiene could seek review of the magistrate judge's order through a petition for a writ of habeas corpus. The letter noted that if a habeas petition were filed, Venckiene would not need to file a motion to stay the Secretary of State's review of her case. The Secretary's review, the letter explained, would be suspended automatically upon the filing of the petition. His review would resume only if and after the district court denied the petition. Absent such a habeas filing, the letter continued, the Secretary would proceed and render a decision.

The court sent the extradition documents to the Secretary of State three days later, on February 26, 2018. On the same day, Venckiene filed a motion to stay certification of her extradition proceedings pending the resolution of the habeas corpus petition that she intended to file. The government objected on the ground that a stay was unnecessary. The government argued that the Secretary of State would not issue a warrant of surrender until at least 30 days after the entry of the extradition certification order, which meant that Venckiene had 30 days to file a habeas petition, thereby automatically suspending the Secretary's review. The magistrate judge denied Venckiene's motion to stay.

Venckiene submitted additional materials to the Secretary of State, but she did not file a petition for a writ of habeas corpus. On April 20, 2018, the Secretary of State decided to surrender Venckiene for extradition. The Secretary did not provide specific reasons for his choice. His letter to Venckiene's counsel said that he had conducted "a review of all pertinent information, including pleadings and filings submitted on behalf of Ms. Venckiene."

Two days later, on April 25, 2018, Venckiene filed another motion asking the magistrate judge to stay certification of her extradition or to set an additional hearing. The government opposed the motion. Venckiene filed a petition for a writ of habeas corpus in the district court on April 30, 2018. Her petition challenges both the magistrate judge's order certifying her extradition and the Secretary of State's decision to allow her extradition to proceed. On May 1, 2018, the magistrate judge granted a temporary stay of Venckiene's extradition through May 10, 2018. On May 7, 2018, Venckiene filed a separate stay motion that asked the district court to extend the stay granted by the magistrate judge. The district court determined that Venckiene was not likely to succeed on the merits of her habeas petition and that none of the remaining stay factors supported her position. The district court therefore denied the motion to extend the stay. *Venckiene v. United States*, 328 F. Supp. 3d 845, 869 (N.D. Ill. 2018).

IV. *Legal Analysis*

In deciding whether to stay a federal court decision (other than a money judgment) while review proceeds,

on appeal or otherwise, courts consider the merits of the moving party's case, whether the moving party will suffer irreparable harm without a stay, whether a stay will injure other parties interested in the proceeding, and the public interest. See *Nken v. Holder*, 556 U.S. 418, 428 (2009); *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). The standard calls for equitable balancing, much like that required in deciding whether to grant a preliminary injunction or a temporary restraining order. See *Hilton*, 481 U.S. at 777–78 (explaining that stronger showings on some factors can offset weaker showings on others).

We review the district court's denial of the stay for an abuse of discretion. See *Nken*, 556 U.S. 418, 433 (2009); *Judge v. Quinn*, 612 F.3d 537, 557 (7th Cir. 2010) (affirming denial of preliminary injunction). We review findings of fact for clear error. See *Vo v. Benov*, 447 F.3d 1235, 1240 (9th Cir. 2006) ("Mixed questions are reviewed de novo, though . . . if the determination is essentially factual . . . it is reviewed under the clearly erroneous standard.") (internal citation and quotation omitted). Also, as a general rule, if a district court bases an exercise of discretion on a legal error, it turns out to abuse its discretion. E.g., *Costello v. BeavEx, Inc.*, 810 F.3d 1045, 1057 (7th Cir. 2016), quoting *Messner v. Northshore University HealthSystem*, 669 F.3d 802, 811 (7th Cir. 2012); see also *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990) ("A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence.").

We focus first on whether Venckiene is likely to prevail on the merits of her habeas corpus petition, which challenges the magistrate judge's certification order on two grounds and the Secretary of State's extradition decision on two grounds. Venckiene argues that the magistrate judge erred because she is entitled to protection under the political offense exception to the Lithuania-United States extradition treaty, and because Lithuania failed to demonstrate probable cause that she committed the crimes for which extradition is sought. Venckiene contends that the Secretary of State's decision to surrender her to Lithuania was in error because it failed to consider adequately the evidence she produced indicating that she would be subject to "atrocious procedures and punishments" if returned, and because the process through which the decision was made violated her right to due process. Venckiene also argues that the courts should stay her extradition based on proposed legislation pending in Congress. After addressing the merits, we consider the remaining stay factors. We agree with the district court that Venckiene is not likely to prevail on the merits of her challenges, and the other factors also weigh against granting a stay.

A. *Challenges to the Magistrate Judge's Certification Order*

As noted above, there is no specific statutory mechanism for appellate review of a magistrate judge's decision to certify extradition under 18 U.S.C. § 3184, but federal courts have long endorsed the use of a petition for a writ of habeas corpus to obtain such review. Typically, habeas corpus petitions challenging

a magistrate judge's certification order are filed before the Secretary of State renders an extradition decision, and the Secretary typically waits to make a decision until the habeas process has run its course. Here the sequence was reversed, but we are not aware of a statute or precedent barring consideration of a habeas corpus petition filed after the Secretary of State's decision. See *Venckiene v. United States*, 328 F. Supp. 3d 845, 863 (N.D. Ill. 2018). At a minimum, the habeas court may consider the findings under § 3184 that must be made to give the Secretary the power to order extradition.

1. *Likelihood of Success on the Merits—Political Offense Exception*

Lithuania's extradition treaty with the United States provides that extradition "shall not be granted if the offense for which extradition is requested is a political offense." Extradition Treaty, Lithuania-U.S., art. IV, § 1, March 31, 2003, T.I.A.S. No. 13166. This so-called "political offense exception" is common in extradition treaties and is not defined in this treaty. United States federal courts interpreting extradition treaties have typically recognized two types of political offenses: "pure" political offenses and "relative" political offenses.

Pure political offenses are crimes like treason, sedition, and espionage, acts "directed against the state but which contain[] none of the elements of ordinary crime." *Eain v. Wilkes*, 641 F.2d 504, 512 (7th Cir. 1981). "A 'relative' political offense is one in which a common crime is so connected with a political act that the entire offense is regarded as political." *Id.*, quoting

Garcia-Mora, *The Nature of Political Offenses: A Knotty Problem of Extradition Law*, 48 Virginia L. Rev. 1226, 1230–31 (1962). Venckiene argues that the charges she faces amount to relative political offenses. Whether an offense qualifies as political under this exception is reviewable on habeas corpus as part of the question of whether the offense charged is within the terms of the governing extradition treaty. *Vo*, 447 F.3d at 1240. It is a mixed question of law and fact. *Id.*

This treaty, like others, leaves courts with the task of identifying political offenses, and especially "relative" political offenses. See *Quinn v. Robinson*, 783 F.2d 776, 793–805 (9th Cir. 1986) (overview of relative political offenses). Federal courts have adopted a two-pronged test for identifying qualifying relative political offenses. "Known as 'the incidence test,' it asks whether (1) there was a violent political disturbance or uprising in the requesting country at the time of the alleged offense, and if so, (2) whether the alleged offense was incidental to or in the furtherance of the uprising." *Ordinola v. Hackman*, 478 F.3d 588, 597 (4th Cir. 2007); see *Eain*, 641 F. 2d at 518 ("limit[ing] such offenses to acts committed in the course of and incidental to a violent political disturbance such as a war, revolution or rebellion"). The second prong of this test uses both subjective and objective inquiries. Courts must evaluate the intentions and motives of the accused as well as the objectively political nature of the acts underlying the charged offense conduct. See *Ordinola*, 478 F.3d at 600.

We have noted before that the judiciary's role in the political offense exception is an "anomaly in the

American law of extradition." *Eain*, 641 F.2d at 513. Under the settled and general rule of non-inquiry, "[i]n extradition, discretionary judgments and matters of political and humanitarian judgment are left to the executive branch." *Burgos Noeller*, 922 F.3d at 802; see *Hoxha v. Levi*, 465 F.3d 554, 563 (3d Cir. 2006). The rule of non-inquiry is critical to the continued operation of bilateral extradition treaties between the United States and foreign governments. The rule "prevent[s] extradition courts from engaging in improper judgments about other countries' law enforcement and judicial procedures" and "'serves interests of international comity by relegating to political actors the sensitive foreign policy judgments that are often involved in the question of whether to refuse an extradition request.'" *Burgos Noeller*, 922 F.3d at 808, quoting *Hoxha*, 465 F.3d at 563.

Despite the general rule of non-inquiry, treaties and 18 U.S.C. § 3184 effectively require courts to consider at least some political issues related to extradition. Whether the requesting country has charged the accused with a crime covered by the treaty is a legal issue for the courts to decide. When a treaty has an exception for political offenses, courts can and sometimes must decide whether the charged crime is so political in nature as to apply the exception. We recognize that there is a political dimension to the charges against Venckiene, at least in the colloquial sense. As the concept of a relative political offense has been defined over many decades of case law, however, the charges against her do not qualify as relative political offenses.

A "violent political disturbance or uprising" is a prerequisite to finding a relative political offense. See *Koskotas v. Roche*, 931 F.2d 169, 171 (1st Cir. 1991); *Ordinola*, 478 F.3d at 596–97; *Vo*, 447 F.3d at 1240–41; *Meza v. United States Attorney General*, 693 F.3d 1350, 1359 (11th Cir. 2012); *In re Manea*, 2018 WL 1110252, at *25 (D. Conn. March 1, 2018). To prove this element of the incidence test, Venckiene relies on her and others' resistance to the political and judicial corruption that arose out of her niece's allegations of sexual abuse. This resistance, she contends, evolved into protests, petitions, and publications that culminated in the formation and political success of the Way of Courage political party. Venckiene notes that the resistance resulted in the deaths of four people under suspicious circumstances—three connected to the pedophilia allegations, plus her brother Kedys. Venckiene also points out that she and her family sustained injuries during the assault on her home that led to her niece's removal.

The information Venckiene has provided does not establish a "violent political disturbance or uprising." We have described sufficient resistance events as "war, revolution or rebellion." *Eain*, 641 F. 2d at 518. Although these are not the only acts that satisfy the first prong of the incidence test, they provide guideposts for assessing whether other claimed disturbances or uprisings fall within the general range of qualifying political events. Venckiene's and Way of Courage's actions are exercises in democratic freedom. Protesting and petitioning a corrupt government are certainly political acts, but they are not comparable to war, revolution, or rebellion. It is unclear whether the

deaths Venckiene points to were in fact incidents of political violence. Little to nothing in the record describes the circumstances of the deaths of the three people tied to the pedophilia allegations, and the cause of Kedys's death is in dispute. As for the assault on Venckiene's home, although this event resulted in minor injuries, it was an isolated incident focused on issues of custody under family law. Venckiene's resistance to a court order awarding custody of a child to her mother, her efforts to fight corruption, and the Way of Courage's win of seven seats in the Lithuanian legislature cannot be described as a "violent struggle for control of the country." *Ordinola*, 478 F.3d at 599.

The types of events that other circuits have determined to qualify as "violent political disturbance[s] or uprising[s]" are not comparable to what Venckiene describes. For example, in *Ordinola v. Hackman*, the Fourth Circuit considered the conflict between the Peruvian government and the Shining Path, "a 'highly organized guerrilla organization with a Maoist communist ideology dedicated to the violent overthrow of Peru's democratic government and social structure.'" 478 F.3d at 591, quoting *Sotelo-Aquije v. Slattery*, 17 F.3d 33, 35 (2d Cir. 1994). The conflict had placed about "50 percent of Peruvian territory and approximately 65 percent of the country's population… under a state of national emergency." *Ordinola*, 478 F.3d at 599 (internal citation and quotation omitted). The court had little trouble describing this situation "as a 'political revolt, an insurrection, or a civil war.'" *Id.*, quoting *Ornelas v. Ruiz*, 161 U.S. 502, 511 (1896). Similarly, in *Barapind v. Enomoto*, the Ninth Circuit had "no real doubt that the crimes Barapind [was]

accused of committing occurred during a time of violent political disturbance in India" where there had been "[t]ens of thousands of deaths and casualties . . . as Sikh nationalists clashed with government officers and sympathizers in Punjab." 400 F.3d 744, 750 (9th Cir. 2005) (internal citation omitted) (alteration in original). "Substantial violence was taking place, and the persons engaged in the violence were pursuing specific political objectives." *Id.*

Even if we were convinced that Venckiene had shown the existence of a "violent political disturbance or uprising," the political offense exception still would not apply because she has not shown that the charged offenses were "incidental to or in furtherance of the uprising." The magistrate judge based his certification of Venckiene's extradition on four charged offenses, all of which stem from the events of M ay 17, 2012, when officers removed Venckiene's niece from her home by force. Venckiene is charged with disobeying a court's orders to transfer custody of her niece, hindering law enforcement's efforts to transfer custody, hitting her niece's mother to whom custody was being transferred, and hitting one of the officers effecting the transfer. The political offense exception requires "a direct link between the perpetrator [of the offenses], a political organization's political goals, and the specific act[s]." *Eain*, 641 F.2d at 521. Courts must look at both the subjective and objective nature of the alleged offenses, "although the objective view must usually carry more weight." *Ordinola*, 478 F.3d at 600. We cannot conclude that the charged offenses were objectively political within the meaning of the political offense exception.

We accept Venckiene's assertions that her actions leading to the charges were motivated at least in part by political goals**.** But from an objective viewpoint, we do not think the charged offenses can be deemed political. "[A] political motivation does not turn every illegal action into a political offense." *Id.*; see *Escobedo v. United States*, 623 F.2d 1098, 1104 (5th Cir. 1980) ("An offense is not of a political character simply because it was politically motivated"). For decades federal courts have applied the incidence test, usually resulting in decisions finding that the political offense exception did not apply. *Eain*, 641 F.2d at 518; see also *id.* at 520–23 ("The definition of 'political disturbance,' with its focus on organized forms of aggression such as war, rebellion and revolution, is aimed at acts that disrupt the political structure of a State[,]" political offense exception did not apply under incidence test where petitioner's bombing was not incidental to political upheaval in Israel at time); *Sindona v. Grant*, 619 F.2d 167, 173 (2d Cir. 1980) (fraudulent bankruptcy is not subject to exception even where "it resulted from political maneuverings and [was] pursued for political reasons"); *Escobedo*, 623 F.2d at 1101, 1104 (under incidence test, petitioner's offenses—attempting to kidnap the Cuban Consul in Mexico and killing another man in the process—did not qualify him for political offense exception: "An offense is not of a political character simply because it was politically motivated"); *Koskotas*, 931 F.2d at 172 (political offense exception did not apply where petitioner "characterize[es] as a violent uprising what plainly is an electoral conflict tainted by allegations of political corruption"); *Ordinola*, 478 F.3d at 599 (political offense exception did not apply where offenses

"occurred during the course of a violent political uprising" but "were not in furtherance of quelling the uprising").

To avoid a slippery slope, United States courts have confined the exception for relative political offenses to exceptional circumstances qualitatively different from the facts here. The political offense exception in the extradition treaty with Lithuania "cannot be read to protect every act . . . simply because the suspect can proffer a political rationale for the action." *Ordinola*, 478 F.3d at 600.

The narrow scope of relative political offenses is also evident from *Ornelas v. Ruiz*, in which the Supreme Court considered Mexico's extradition request for Inez Ruiz, a member of a band of armed men who attacked, captured, and killed Mexican soldiers and civilians. 161 U.S. at 510. A commissioner reviewed the case and certified Ruiz for extradition. The district court hearing the case on habeas review reversed, concluding that Ruiz's acts fit the political offense exception in the Mexico-U.S. extradition treaty. *Id.* at 504, 506, 510. The Supreme Court reversed, framing its review narrowly as whether "the commissioner had no choice, on the evidence, but to hold, in view of the character of the foray, the mode of attack, the persons killed or captured, and the kind of property taken or destroyed" that Ruiz's offenses were political. *Id.* at 511. The Fourth Circuit has explained that the Supreme Court's analysis in *Ruiz* suggests that, "To determine whether a particular offense is political under the Treaty, we must look to the totality of the circumstances, focusing on such particulars as the mode of the attack and the

identity of the victims," and that a reviewing habeas court should overturn a judicial officer's determination that the political offense exception does not apply only when the offense in question is obviously objectively political. *Ordinola*, 478 F.3d at 601.

The totality of the circumstances does not help Venckiene. Most immediately, her alleged actions that led to the charges were efforts to stop law enforcement from removing her niece from her custody pursuant to a court order. The injuries she allegedly inflicted were on a police officer executing his orders to remove the child and on the child's mother to whom custody was being transferred. Venckiene's actions that day were not objectively those of someone furthering a political agenda. These charged offenses describe actions that were personal, not political. Venckiene has failed to demonstrate that she is likely to succeed in showing that the charges against her are subject to the political offense exception in the extradition treaty.

2. *Likelihood of Success on the Merits—Probable Cause*

The magistrate judge certified Venckiene's extradition based on four of the six Lithuanian charges: hindering the activities of a bailiff; failing to comply with a court's decision not associated with a penalty; causing physical pain; and resisting against a civil servant or a person performing the functions of public administration. A reviewing court on habeas would evaluate the magistrate judge's probable cause decisions under a deferential standard. The issue would be only "whether there [was] any competent evidence to support [his] finding." *Burgos Noeller*, 922

F.3d at 807, quoting *Bovio v. United States*, 989 F.2d 255, 258 (7th Cir. 1993) (alteration in original). Based on the evidence Lithuania provided to support its extradition request, it would be difficult to find that the magistrate judge erred in finding probable cause for these four offenses.

Lithuania submitted statements of multiple witnesses describing Venckiene's alleged offenses. The bailiff who attempted to carry out the court's custody transfer order explained that when officers arrived at Venckiene's house, she had erected obstacles around her home. She refused to remove them when the officers announced their presence. The bailiff further reported that once the officers entered the home, Venckiene refused to allow them to communicate with her niece. The statement said Venckiene was shouting and clutching her niece while kicking the girl's mother. The bailiff said that officers restrained Venckiene and gave the girl to her mother, who carried her out of the room. When Venckiene was released, the bailiff said, she punched a police officer twice. An Officer Gasauskas provided a statement saying that Venckiene punched him twice on the right side of his face. Another officer submitted a statement describing the punches he had observed. Lithuania also provided a summary of medical records describing Officer Gasauskas's injuries. Based on these submissions, the magistrate judge had competent evidence to find probable cause that Venckiene committed these four crimes for which extradition has been approved.

Venckiene argues that she presented evidence sufficient to refute the charges against her and thus to

defeat probable cause. She asserts that a videotape of the May 17th incident does not show her punching a police officer. She also provided the district court with a translated transcript of the video. Her evidence, however, does not defeat the showing of probable cause, either as a matter of law or a matter of fact.

The law has long been clear that an extradition hearing "is not a trial." *Charlton v. Kelly*, 229 U.S. 447, 461 (1913). The requesting country is not required to try its case in a United States court. Also, extradition proceedings are not governed by the Federal Rules of Evidence or Criminal Procedure. See Fed. R. Evid. 1101(d)(3); Fed. R. Crim. P. 1(a)(5)(A). In extradition cases, courts have long tried to police a fuzzy boundary between explanatory evidence, which is permitted, and contradictory evidence, which is beside the point. See *Burgos Noeller*, 922 F.3d at 807. "An accused in an extradition hearing has no right to contradict the demanding country's proof or to pose questions of credibility as in an ordinary trial, but only to offer evidence which explains or clarifies that proof." *Eain*, 641 F.2d at 511; see *Charlton*, 229 U.S. at 461 ("To have witnesses produced to contradict the testimony for the prosecution is obviously a very different thing from hearing witnesses for the purpose of explaining matters referred to by the witnesses for the government"); *Collins v. Loisel*, 259 U.S. 309, 316–17 (1922) (reaffirming distinction drawn in *Charlton*). Federal courts have reframed this distinction as between prohibited contradictory evidence and admissible explanatory evidence. Explanatory evidence "explains away or completely obliterates probable cause." *Santos v. Thomas*, 830 F.3d 987, 992 (9th Cir. 2016) (en banc),

quoting *Mainero v. Gregg*, 164 F.3d 1199, 1207 n.7 (9th Cir. 1999), superseded by statute on other grounds, Pub. L. No. 105-277, § 2242.

As a matter of fact, the video and transcript Venckiene provided do not explain away or obliterate probable cause. As the district court noted, the video and transcript end before Venckiene is alleged to have punched the officer. Even if the video had ended later and did not depict Venckiene punching a police officer, it still would not refute probable cause as to the other three charges. The video does not show that she did not "hinder the activities of a bailiff" or "fail[] to comply with a court's decision." Quite the opposite, the video and transcript provide substantial support for the charges that Venckiene attempted to prevent law enforcement from entering her home and seizing her niece to execute the court order. Thus, Venckiene also failed to show she is likely to succeed on this challenge to the magistrate judge's certification order.

B. *Challenges to The Secretary of State's Certification Order*

The most unusual feature of this case is Venckiene's challenge to the decision of the Secretary of State. She argues that the Secretary's order violated her constitutional rights in two respects: that she will face "atrocious procedures and punishments" in Lithuania, and that she had a due process right to a hearing before the Secretary and to a meaningful explanation of his reasons for denying her the relief she sought.

Venckiene bases her "atrocious procedures" claim on language in *In re Burt*, 737 F.2d 1477, 1487 (7th Cir.

1984). As noted, we wrote in *Burt* that habeas corpus review of extraditions could, at least in theory, consider the Secretary of State's extradition decisions for the limited purpose of assessing whether these decisions violated constitutional rights. More specifically, courts may evaluate whether the executive's decisions were properly made "without regard to such constitutionally impermissible factors as race, color, sex, national origin, religion, or political beliefs, and in accordance with such other exceptional constitutional limitations as may exist because of particularly atrocious procedures or punishments employed by the foreign jurisdiction." *Id.* In *Burt* itself, however, we did not find any such constitutional violations. Nor have we found such constitutional violations in other extradition cases. While *Burt* and decisions in other circuits have recognized the possibility of such claims, we have not found other appellate decisions actually granting relief from extradition on such a theory.

Burt thus authorizes some limited review of the executive branch's extradition decision to ensure that the Secretary of State did not overlook the constitutionally inhumane conditions a petitioner may be subjected to if returned to a requesting nation. However, these constitutional and humanitarian exceptions are in some tension with the established rule of non-inquiry and the Supreme Court's more recent guidance in a similar context in *Munaf v. Geren*, 553 U.S. 674 (2008).[1]

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[1] Also, it is not clear that at least the national origin and political beliefs of the subject of an extradition request are irrelevant, let alone unconstitutional, considerations. Nationality is often

In extradition hearings, to decide whether to certify an accused for extradition, the rule of non-inquiry bars courts "from investigating the fairness of a requesting nation's justice system, and from inquiring into the procedures or treatment which await [the] surrendered fugitive in the requesting country." *United States v. Kin-Hong*, 110 F.3d 103, 110 (1st Cir. 1997) (internal citations and quotations omitted). After judicial certification of an extradition, the executive branch "exercises broad discretion and may properly consider factors affecting both the individual defendant as well as foreign relations." *Sidali v. I.N.S.*, 107 F.3d 191, 195 n. 7 (3d Cir. 1997). Applying the rule of non-inquiry and *Burt*'s "atrocious procedures and punishments" exceptions simultaneously would seem to produce the peculiar result of barring federal courts from considering humanitarian issues *before* the Secretary of State makes the decision to extradite but allowing courts to consider the same concerns *after* the executive branch has weighed in, despite the absence of any recognized procedural channel for judicial review of the Secretary's decision, which may involve delicate and difficult political and foreign policy choices.

The Supreme Court's decision in *Munaf v. Geren*, 553 U.S. 674 (2008), casts further doubt on the continued validity or at least the scope of *Burt*'s

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relevant under extradition treaties (with different standards and procedures for nationals of the requesting nation as opposed to other persons). The subject's political beliefs might also be deemed relevant to the political and foreign policy considerations. Imagine the possible differences in the United States government's responses to requests to extradite a member of Shining Path in Peru vs. a Chinese dissident.

constitutional and humanitarian exceptions. In *Munaf*, the Court considered the habeas corpus petitions of two U.S. citizens challenging their detention by the Multinational Force-Iraq, the international coalition force operating in Iraq. Both men were accused of committing crimes in Iraq. *Id.* at 679. The Court held that United States courts had jurisdiction over these habeas corpus petitions but that courts could not exercise their jurisdiction to enjoin the Multinational Force-Iraq from transferring the petitioners to Iraqi custody or from allowing the petitioners to be tried in Iraqi courts. *Id.* at 690–92. Citing *Neely v. Henkel*, 180 U.S. 109 (1901), the Court concluded: "it is for the political branches, not the Judiciary, to assess practices in foreign countries and to determine national policy in light of those assessments." *Id.* at 700–01.

One of the petitioners argued that the Court should prevent his transfer because his "transfer to Iraqi custody is likely to result in torture." 553 U.S. at 700. The Court rejected this argument: "Such allegations are of course a matter of serious concern, but in the present context that concern is to be addressed by the political branches, not the judiciary." *Id.* "The Executive Branch" the Court continued, "may, of course, decline to surrender a detainee for many reasons, including humanitarian ones." *Id.* at 702. But: "The Judiciary is not suited to second-guess such determinations—determinations that would require federal courts to pass judgment on foreign justice systems and undermine the Government's ability to speak with one voice in this area." *Id.*

Although *Munaf* did not deal with extradition directly, it certainly offers guidance to courts in carrying out their limited role in the extradition context, teaching that the judiciary should refrain from encroaching upon the executive's political and humanitarian decisions regarding foreign justice systems.

This case does not require us to decide the outer boundaries for the executive branch's judgment regarding Venckiene's extradition. Assuming that the district court can review the Secretary of State's decision at all as part of the habeas case, Venckiene has not provided sufficient evidence that she could likely succeed. Given the above concerns regarding *Burt*'s constitutional and humanitarian exceptions, we emphasize that courts at least need to give wide latitude to the political and foreign policy dimensions of the executive's extradition decisions. Whatever the scope of the constitutional exception recognized in theory in *Burt*, the exception is not an invitation to federal courts to impose the United States Constitution on foreign jurisdictions.

Burt's list of reviewable claims does not encompass Venckiene's claim that the Secretary of State's decision-making process violated her right to due process of law. Like the district court, however, we are persuaded by Fourth and Fifth Circuit cases supporting the position that a challenge like Venckiene's is reviewable, at least in principle. In *Peroff v. Hylton*, 563 F.2d 1099 (4th Cir. 1977), and *Escobedo v. United States*, 623 F.2d 1098 (5th Cir. 1980), the Fourth and Fifth Circuits considered habeas

corpus petitions raising due process challenges to the Secretary of State's extradition decisions. In *Peroff*, the Fourth Circuit agreed to consider the petition of an accused arguing that he was denied due process by the Secretary of State's refusal to conduct a hearing prior to issuing his warrant of extradition. 563 F.2d at 1102. In *Escobedo*, the Fifth Circuit heard a petitioner's argument that the discretion given to the executive branch under the relevant treaty violated due process because "no standards are provided to guide the exercise of this discretion." 623 F.2d at 1104–05. The court ultimately rejected the due process challenge on the merits. *Id.* at 1106.

Both cases indicate that a federal court exercising its habeas corpus power can at least consider a petitioner's argument challenging the executive branch's extradition process on due process grounds. The government has provided no case in which a court declined to hear this type of extradition due process challenge. Given this lack of contrary authority, we are not inclined to say that a Secretary of State's extradition decision is *never* reviewable on due process grounds, let alone grounds of racial or religious bias, for example.Alhough the circumstances in which federal courts could and should overturn the highly discretionary decision of the Secretary of State should be rare, we need not say here that judicial review is never available. The courts have a duty to protect people and our fundamental principles of justice in the unlikely event that the executive makes an extradition decision based blatantly on impermissible characteristics like race, gender, or religion. We therefore consider Venckiene's due process challenge in

this appeal, reviewing the Secretary of State's extradition decision to determine the likelihood that Venckiene's due process claim would succeed on habeas corpus review.

1. *Likelihood of Success on the Merits—"Atrocious Procedures and Punishments"*

Venckiene offers three reasons why she believes she will be subjected to particularly atrocious procedures or punishments if returned to Lithuania. First, she points to the fact that Lithuania retroactively extended the statute of limitations for a charge of "humiliating the court" so that she could be tried for this offense despite the old limitations period having lapsed. This argument cannot succeed. In *Neely v. Henkel*, the Supreme Court specifically held that claims related to the *ex post facto* clause of the Constitution cannot serve as a basis to prevent extradition. 180 U.S. 109, 122 (1901) ("provisions of the Federal Constitution relating to the writ of *habeas corpus*, bills of attainder, *ex post facto* laws, trial by jury for crimes, and generally to the fundamental guaranties [sic] of life, liberty, and property embodied in that instrument…those provisions have no relation to crimes committed without the jurisdiction of the United States against the laws of a foreign country").

The same logic also defeats Venckiene's second argument regarding the *ex post facto* revocation of her judicial and parliamentary immunities. Such differences between our nation and a requesting nation's justice systems are not reasons that legally bar extradition and are not reasons for the judiciary to

question the foreign policy judgment of the executive branch.

Venckiene's third argument is that if she is returned to Lithuania she will face deplorable conditions in the country's jails and prisons. In support, she provided numerous articles and decisions of courts in other nations that declined to extradite people to Lithuania because of the conditions of detention. E.g., Edwina Brincat, *Court turns down Lithuanian request to extradite Maltese man*, Times of Malta, May 18, 2017, https://timesofmalta.com/articles/view/court-turns-down-lithuanian-request-to-extradite-maltese-man.648339; *Lithuanian extradition request turned down by High Court*, RTÉ, April 15, 2013, https://www.rte.ie/news/2013/0415/381541-lithuanian-extradition-request-turned-down/; *Savenkovas v. Lithuania*, Application No. 871/02 (European Court of Human Rights 2009) http://en.efhr.eu/2010/02/11/case-savenkovas-v-lithuania-application-no-87102-2009/; *Abu Zubaydah v. Lithuania*, Application No. 46454/11 (European Court of Human Rights 2018), https://www.refworld.org/cases,ECHR,5b0fde3e4.html. She also cited the U.S. State Department's Country Reports on Human Rights Practices in Lithuania. The 2018 report notes that "Some prison and detention center conditions [in Lithuania] did not meet international standards." *Lithuania 2018 Human Rights Report*, Bureau of Democracy, Human Rights, and Labor, United States Dept. of State, at 2 (2018), https://www.state.gov/wp-content/uploads/2019/03/LITHUANIA-2018-HUMAN-RIGHTS-REPORT.pdf. The 2017 Report came to same conclusion. *Lithuania 2017 Human Rights Report*, Bureau of Democracy,

Human Rights, and Labor, United States Department of State, at 2 (2017), https://www.state.gov/wp-content/uploads/2019/01/Lithuania.pdf. The reports refer to complaints of confined spaces, improper hygiene, poor food, and substandard sanitary condition among others. *Id.*

Although Venckiene's suggestions are troubling, as were the concerns raised in *Munaf v. Green* about dangers to the petitioners if they were remanded to Iraqi custody, they do not persuade us that Venckiene would be likely to succeed on her habeas corpus claim asserting a risk of particularly atrocious procedures and punishments if extradition goes forward. To an extent, *Burt*'s "atrocious procedures" exception asks American courts to evaluate foreign nations' criminal justice systems based on United States constitutional standards. As explained, this exception is therefore in tension with the Supreme Court's guidance in *Munaf v. Geren*, instructing that "it is for the political branches, not the judiciary, to assess practices in foreign countries and to determine national policy in light of those assessments." 553 U.S. at 700–01.

In this case, we do not need to decide definitively whether *Munaf* voided the "atrocious procedures" exception in *Burt*. Venckiene has not provided us with the type of specific and detailed evidence that a court would need to be able to assess whether Lithuanian prison conditions generally constitute "atrocious punishment." We say this as members of a judicial system that often encounters credible, specific, and detailed claims that particular jails, prisons, and immigrant detention centers in the United States fail

to meet United States constitutional or international standards. Without much more specific evidence of atrocious conditions that Venckiene is likely to experience if she is extradited, we are confident that blocking this extradition on such grounds, after the executive has already approved it, would go beyond the scope of our role in the extradition process.

2. *Likelihood of Success on the Merits—Due Process*

Although the Fourth and Fifth Circuit cases, *Peroff* and *Escobedo*, found that federal courts may consider due process challenges to the executive's extradition decision, they also held that the level of process due was minimal. In *Peroff*, the Fourth Circuit explained that Peroff had no right to a hearing before the Secretary of State: "A person facing interstate extradition has no constitutional right to notice or a hearing before the governor who acts upon the extradition request. *Marbles v. Creecy*, 215 U.S. 63 (1909). The need for flexibility in the exercise of Executive discretion is heightened in international extradition proceedings which necessarily implicate the foreign policy interests of the United States." 563 F.2d at 1102. The court continued:

> In enacting legislation pertaining to international extradition and in approving the extradition treaty now in effect between The United States and Sweden, Congress has not sought to prescribe the procedures by which the Executive's discretionary determination to extradite should be exercised. It would be manifestly improper for this Court to do so.

Id. at 1102–03. In *Escobedo*, the Fifth Circuit rejected petitioner's due process challenge to the executive's extradition discretion, emphasizing similarly that it was not the judiciary's role "to prescribe the procedures by which the Executive exercises its discretion[.]" 623 F.2d at 1106.

We agree with this reasoning. As the Fifth Circuit explained in *Escobedo*, United States citizens and others present in the United States may not be "whisked away to a foreign country for trial by Executive whim." 623 F.2d at 1105. An extradition case does not reach the Secretary of State unless a United States judicial officer finds under 18 U.S.C. § 3184 that the person is properly and legally extraditable under the standards of the applicable treaty. Those legal questions are for the courts, and the accused has ample procedural protections in the decision-making on those questions.

The same cannot be said about the foreign policy and humanitarian judgments left to the executive branch. As noted, the Secretary of State exercises broad discretion in extradition decisions. The judiciary has no authority to impose requirements on this decision-making process that go beyond the scope of what is required under the Constitution. Based on these decisions and the fact that Venckiene can cite no case in which a court found a right to a hearing, let alone a due process violation, in the executive portion of the extradition process, Venckiene is not likely to be successful on the merits of her due process argument.

C. *Pending Congressional Bills*

The last issue on the merits is Venckiene's argument that her extradition should have been stayed because of legislation that had been introduced in the 115th Congress. She relies on H.R. 6218 and H.R. 6257, together titled the "Give Judge Venckiene Her Day in Court Act." If enacted, either bill would have excluded Venckiene from the scope of the Lithuania-U.S. extradition treaty and allowed her to remain in the United States until her pending asylum application is decided.

Venckiene cites no legal authority for her suggestion that pending legislation should entitle her to a stay, much less that the district court abused its discretion in not granting her motion to stay on these grounds. The processes of the courts take time, and even with the time the case has been pending in this court, no legislation passed in the now-adjourned 115th Congress. Federal courts apply duly enacted laws; they do not try to guess which bills may or may not be enacted into law. Venckiene is not likely to succeed on the merits of this claim in her habeas petition.

D. *Remaining Stay Factors*

The remaining *Nken/Hilton* factors on stays pending appeal do not indicate that the district court abused its discretion in denying Venckiene's motion to stay her extradition. Venckiene argues that she is entitled to a stay because she will suffer irreparable harm in the absence of a stay, there is no harm to Lithuania in delaying her extradition, and the public interest favors affording her a full opportunity to

litigate her extradition claims. We disagree with these assertions. Venckiene is correct that if we affirm the district court's denial of her motion to stay, she will be extradited to Lithuania and her pending claims will be moot. This is the harm facing every petitioner who lacks meritorious habeas corpus claims challenging an impending extradition. And Venckiene will still have an opportunity to challenge the charges against her. That opportunity must come in the Lithuanian justice system, not ours. The harm Venckiene will suffer from the denial of the stay is certainly lessened by the fact that she will still have her day in court. See *Artukovic v. Rison*, 784 F.2d 1354, 1356 (9th Cir. 1986) (reviewing a petitioner's emergency order to stay his extradition and finding that the hardship petitioner will suffer from denial of the motion—extradition to Yugoslavia and mootness of his claims—"is tempered by [petitioner's] ability to defend himself at trial in Yugoslavia").

Venckiene argues that her ability to be heard in a Lithuanian court does little to diminish the harm she will suffer without a stay. She provided the court with letters from people in Lithuania who believe her physical safety would be at risk if she is returned to Lithuania. However, as explained above, these important humanitarian considerations are left to the executive branch. Further, in this case, we have already considered the likely merits of Venckiene's claim that extradition is improper on the ground that Lithuania would use atrocious procedures and punishments. This argument is unlikely to be successful on habeas corpus review; it does not counsel in favor of granting a stay. To the extent these letters

and Venckiene contend that she will be subject to physical harm from sources outside of the Lithuanian government, these are humanitarian arguments that are in the purview of the Secretary of State in extradition proceedings.

Because the government is the party opposing Venckiene's motion, we consider the third and fourth *Nken/Hilton* factors—harm to the opposing party and the public interest—as one. *Nken v. Holder*, 556 U.S. 418, 435 (2019). For extradition treaties to operate successfully, each party must comply with their terms and be able to trust that the other party will do the same. Failure to comply with foreign nations' proper extradition requests threatens to erode the effective force of these treaties. If other countries lose confidence that the United States will abide by its treaties, the United States risks losing the ability to obtain the extraditions of people who commit crimes here and flee to other countries. It is within the public interest for this country to be able to try those who commit crimes here within our justice system. That requires the United States to maintain good faith with foreign nations.

The district court did not abuse its discretion in denying Venckiene's motion to stay her extradition. The order of the district court is

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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FINAL JUDGMENT

July 15, 2019

Before: WILLIAM J. BAUER, Circuit Judge
DAVID F. HAMILTON, Circuit Judge
AMY C. BARRETT, Circuit Judge

No. 18-2529	NERINGA VENCKIENE, Petitioner - Appellant v. UNITED STATES OF AMERICA, Respondent - Appellee
Originating Case Information:	
District Court No: 1:18-cv-03061 Northern District of Illinois, Eastern Division District Judge Virginia M. Kendall	

The judgment of the District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered on this date.

form name: **c7_FinalJudgment**(form ID: **132**)

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

18 C 3061

Judge Virginia M. Kendall

[Filed July 12, 2018]

NERINGA VENCKIENE,	)
	)
Petitioner,	)
	)
v.	)
	)
UNITED STATES OF AMERICA,	)
	)
Respondent.	)
	)

MEMORANDUM OPINION AND ORDER

The Republic of Lithuania has requested the extradition of Neringa Venckiene pursuant to the Extradition Treaty between the United States and Lithuania to face criminal charges pending against her in her native country. Consistent with the extradition process set forth in 18 U.S.C. § 3184, Magistrate Judge Daniel Martin held a hearing and entered an order certifying Venckiene as extraditable, *see In re Extradition of Neringa Venckiene,* No. 18 CR 56 (N.D.

Ill. Feb. 21, 2018), after which the Secretary of State reviewed the matter and issued a warrant for her surrender to the Lithuanian government. (*Id.* at Dkt. 29, Ex. A). On April 30, 2018, Venckiene filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. §2241, seeking review of Judge Maitin's Order certifying her as extraditable and the Secretary of State's authorization of her surrender. (Dkt. 1). On May 7, 2018, Venckiene filed a Motion for Extension of Stay, seeking to stay her surrender until after her habeas petition has been decided. (Dkt. 9). Venckiene's Petition and Motion raise serious issues concerning the United States' extradition process and propriety of her native country's political and judicial systems. However, given the narrow scope of habeas review in extradition proceedings and the burdensome showing required to obtain a stay, this Court's authority to provide Venckiene the relief sought in her Motion is quite limited. Of course, in addressing the issues raised by Venckeine's Petition and Motion, this Court must respect the right of sovereign nations to enact and enforce their own criminal laws and the principle of comity underpinning the mutual legal assistance treaties entered between nations to facilitate international rule of law and the very protection of those rights. For the following reasons, Venckiene's Motion for Extension of Stay (Dkt. 9) is denied.

BACKGROUND

I. Request for Extradition and Arrest

On January 26, 2018, the Government filed a Criminal Complaint before Magistrate Judge Weisman requesting that the court issue a warrant for the arrest

of Neringa Venckiene in accordance with 18 U.S.C. § 3184 and the Extradition Treaty between the United States and the Republic of Lithuania (the "Treaty"). (*See USA v. Venckiene,* No. 18 CR 56 (N.D. Ill.) at Dkt. 1). The Complaint stated that the Government of Lithuania had submitted a formal request through diplomatic channels for the extradition of Venckiene pursuant to the Treaty to face charges issued against her for the following offenses allegedly committed in Lithuania:

1. complicity in committing a criminal act (unlawful collection of information about a person's private life, *i.e.,* stalking), in violation of Lithuania Criminal Code Article 25;

2. unlawful collection of information about a person's private life, *i.e.,* stalking, in violation of Lithuania Criminal Code Article 167;

3. hindering the activities of a bailiff, in violation of Lithuania Criminal Code Article 231;

4. failure to comply with a court's decision not associated with a penalty, in violation of Lithuanian Criminal Code Article 245;

5. causing physical pain, in violation of Lithuania Criminal Code 1a0(1); and

6. resistance against a civil servant or a person performing the functions of public

> administration, in violation of Lithuania Criminal Code Article 286.

(*Id.*).

Judge Weisman issued the arrest warrant the same day. (*Id.* at Dkt. 3). On February 13, 2018, Venckiene was arrested and appeared before Magistrate Judge Rowland. (*Id.* at Dkt. 9).

II. Proceedings before Magistrate Judge Martin

On February 21, 2018, Magistrate Judge Martin held an extradition hearing and, that same day, issued an Order granting the Government's extradition request and finding the Treaty encompassed the crimes charged, the warrants and documents provided by the Government of Lithuania in support of its request for extradition were properly authenticated, and the commission of two of the crimes charged—"hindering the activities of a judge, prosecutor, pre-trial investigation officer, lawyer, or bailiff" and "resistance against a civil servant or a person performing the functions of public administration for which extradition is sought"—was established by probable cause that would justify commitment for trial if the offense had been committed in the United States. (*Id.* at Dkt. 14). The Order indicated that the hearing lasted two hours. (*Id.*).

On February 23, 2018, Judge Martin issued a Certification and Committal for Extradition, certifying Venckiene as extraditable for the following offenses: hindering the activities of a bailiff, failure to comply with a court's decision not associated with a penalty, causing physical pain, and resistance against a civil

servant or a person performing the functions of public administration. (*Id.* at Dkt. 18). The Certification and Committal also committed Venckiene to the custody of the U.S. Marshals pending the Secretary of State's decision on extradition and surrender. (*Id.*). That same day, the Government sent Venckiene's attorney a letter, notifying him of the next steps in the extradition process. (*Id.* at Dkt. 24-1). The letter also notified Venckiene's counsel that the Secretary may make its decision at any time after Certification, that surrender typically takes place within two months if the extradition request is granted, and that Judge Martin's Certification was not directly appealable but Venckiene could seek limited review of the Certification by filing a habeas petition in the district court. (*Id.*). The letter explained further:

> If a habeas petition is filed, the Secretary will suspend review of the extradition matter, and will resume review only when and if the district court denies the petition. Consequently, there is no need to obtain any form of stay, provided that the habeas petition has been filed. However, the Secretary will proceed with the decision-making absent such filing.

(*Id.*).

On February 26, 2018, the court mailed a copy of the Certification and Committal for Extradition and all documents filed on the docket to the Secretary of State. That same day, Venckiene filed a Motion to Stay certification of the extradition pending the filing and resolution of a habeas petition, stating that she wished to file a habeas petition challenging the court's

probable cause findings and, in the alternative, arguing that the offenses charged were subject to the "political offense" exception to the Treaty. (*Id.* at Dkt. 20). The Government objected on the grounds that a stay would not be necessary because the Secretary of State would not issue a warrant until at least 30 days after the entry of the Certification Order, during which time Venckiene could seek habeas relief, thereby automatically suspending the Secretary's review of the extradition matter, or submit additional materials to the Secretary of State for consideration. (*Id.* at Dkt. 24). On March 7, 2018, Judge Martin denied Venckiene's Motion to Stay. (*Id.* at Dkt. 25).

Venckiene submitted materials to the Secretary of State but did not file a habeas petition. (*Id*. at Dkt. 29).

On April 20, 2018, the Secretary of State authorized Venckiene's surrender pursuant to the Treaty. (*Id.* at Dkt. 29, Ex. A). Venckiene's counsel was notified of the decision by letter dated April 23, 2018. (*Id*.). The Secretary did not specify the reasons for its decision in the letter but stated the decision was based on "a review of all pertinent information, including pleadings and filings submitted on behalf of Ms. Venckiene" up to and including April 19, 2018. (*Id*.).

On April 25, 2018, Venckiene filed a Motion to Stay Extradition before Judge Martin, requesting that the court stay certification of the extradition order or set a hearing at which she could present additional evidence in support of the requested stay. (*Id*. at Dkt. 29). The Government opposed the motion, arguing primarily that Venckiene essentially sought a stay of her surrender (not of the court's certification) and that the

court no longer had jurisdiction to stay Venckiene's surrender following the Secretary of State's decision. (*Id*. at Dkt. 31). The Government explained that courts typically only exercised authority to issue a stay in extradition proceedings pursuant to habeas corpus proceedings initiated *before* the Secretary issued its extradition determination (which did not occur in Venckiene's case) and that the Government knew of no reported case in which the court issued a stay *following* the Secretary of State's determination. (*Id*.).

Venckiene's noticed up her Motion before Judge Martin for May 1, 2018. (*Id*. at Dkt. 30). Prior to that date, on April 30, 2018, Venckiene filed a Petition for a Writ of Habeas Corpus in this Court. At the May 1 hearing, in light of Venckiene's habeas petition, Judge Martin granted Venckiene's Motion to Stay Extradition only through and including May 10, 2018—the earliest date the matter could be brought before this Court. (*Id*. at Dkt. 33; *see also* Dkt. 9).

III. Proceedings before this Court

As stated above, Venckiene filed a Petition for a Writ of Habeas Corpus in this Court on April 30, 2018. (Dkt. 1). The Petition requests that the Court prevent her extradition to Lithuania for the following reasons: the offenses charged fall under the "political offense" exception of the Treaty; the Magistrate Judge erred in finding probable cause existed as to two of the offenses; and the extradition scheme violates due process to the extent the Secretary can make its determination without providing any basis for its ruling. (*Id*.).

On May 7, 2018, Venckiene filed a Motion for Extension of Stay to extend the stay issued by Judge Martin until such time that her habeas petition can be heard or, in the alternative, to set a briefing schedule and a hearing date on the requested stay. (Dkt. 9). The Government opposed the Motion on essentially the same grounds it opposed Venckiene's prior motion before Judge Martin: that the Court has no authority to review the substance of the Secretary of State's extradition determination or to review Judge Martin's certification order now that the Secretary has made its decision; if the Court has authority to review the Secretary of State's extradition determination, Venckiene cannot show a due process flaw in the U.S. extradition scheme; and if the Court has authority to review Judge Martin's certification order, Venckiene cannot make a strong showing she is likely to succeed on the merits of her habeas petition. (Dkt. 11).

The Court held a hearing on Venckiene's Motion on May 10, 2018 and ordered Petitioner to file a reply in support of her Motion for Extension of Stay. (Dkt. 12). The Court held another hearing on the fully-briefed Motion on June 28, 2018. (Dkt. 26). In response to the Court's questions at the June 28 hearing, Venckiene raised additional arguments in support of her Motion and Petition, including that the Secretary of State allegedly based its determination on a constitutionally impermissible basis and that two Congressmen had introduced separate bills that if passed would prevent Venckiene's extradition until her pending asylum case was heard. (*See* Dkt. 30). The Court directed Venckiene to present these new arguments in a supplemental

brief to the Court. Venckiene filed her supplemental brief on July 5, 2018. (*Id.*).

DISCUSSION

In her habeas petition, Venckiene challenges both the Secretary of State's extradition determination and Judge Martin's Order certifying her as extraditable. Venckiene must show first that this Court has authority at this stage to review either ruling. If the Court finds that it can hear Venckiene's habeas petition on either ground, it must then decide whether to stay Venckiene's extradition until such petition is heard. Venckiene also argues that her extradition should be stayed until Congress votes on the two pending bills that would prevent her extradition until her asylum case is heard.

The Court considers four factors in determining whether to grant a stay: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder,* 556 U.S. 418, 426 (2009) (quoting *Hilton v. Braunskill,* 481 U.S. 770, 776 (1987)).[1] The first two factors are the "most critical." *Id.* A stay is not a matter of right, "even if irreparable injury might otherwise result." *Id.* at 433 (quoting *Virginian R. Co. v. United States,* 272 U.S. 658, 672

[1] These are the "traditional" stay factors. *Nken,* 566 U.S. at 425-26. The parties do not dispute that these factors govern Venckiene's Motion.

(1926)). The party requesting a stay "bears the burden of showing that the circumstances justify an exercise of [the court's] discretion." *Id.* at 433-34.

I. The Secretary of State's Extradition Determination

Title 18 U.S.C. § 3184 provides the following extradition scheme where a treaty for extradition exists between the United States and a foreign government: the Government files a complaint in federal court charging a person with having committed crimes covered by the applicable treaty in the jurisdiction of the foreign government, the magistrate judge issues a warrant for that person's arrest and hears evidence as to the charges, and if the magistrate judge "deems the evidence sufficient to sustain the charge[s]," he "shall certify [his or her findings] . . . to the Secretary of State." 18 U.S.C. § 3184. The Secretary of State then decides whether to surrender the individual to the requesting foreign government. *Matter of Assarsson,* 670 F.2d 722, 725 (7th Cir. 1982) (citing 18 U.S.C. § 3186)). "If the case is certified to the Secretary for completion of the extradition process it is in the Secretary's sole discretion to determine whether or not extradition should proceed further with the issuance of a warrant of surrender." *Eain v. Wilkes,* 641 F.2d 504, 508 (7th Cir. 1981); *see also DeSilva v. DiLeonardi,* 125 F.3d 1110, 1113 (7th Cir. 1997) ("A certificate of extradition is no different from a search warrant or an order approving a deportation: it authorizes, but does not compel, the executive branch of government to act in a certain way."); *In re Extradition of Fulgencio Garcia,* 188 F. Supp. 2d 921, 924 (N.D. Ill. 2002) ("The

final decision on whether or not to extradite the fugitive is reserved to the Secretary of State."); *Martin v. Warden, Atlanta Pen,* 993 F.2d 824, 829 (11th Cir. 1993) ("Extradition ultimately remains an Executive function. After the courts have completed their limited inquiry, the Secretary of State conducts an independent review of the case to determine whether to issue a warrant of surrender.")

Under the rule of non-inquiry, the Secretary of State has sole authority to consider other factors such as the requesting state's political motivations, whether the requesting state's justice system is fair, and whether the request should be denied on humanitarian grounds. *Eain,* 641 F.2d at 513 (7th Cir. 1981) ("It is the settled rule that it is within the Secretary of State's sole discretion to determine whether or not a country's requisition for extradition is made with a view to try or punish the fugitive for a political crime, *i.e.,* whether the request is a subterfuge."); *Matter of Extradition of Noeller,* No. 17- CR 664, 2018 WL 1027513, at *7 (N.D. Ill. Feb. 23, 2018) ("[T]he Secretary of State should address a fugitive's contentions that an extradition request is politically motivated, that the requesting state's justice system is unfair, or that extradition should be denied on humanitarian grounds."). Magistrate judges are precluded from considering such factors. *See, e.g., In re Extradition of Salas,* 161 F. Supp. 2d 915, 927 (N.D. Ill. 2001) ("The prevailing case law is to the effect that an extradition detainee's claim that he will be mistreated, denied a fair trial, deprived of his constitutional and human rights, or even deprived of his life if returned to the requesting sovereign is not a proper matter for consideration by

the certifying Magistrate Judge. It is the function of the Secretary of State to determine whether extradition should be denied on humanitarian *grounds*."); *Martin,* 993 F.2d at 829 (11th Cir. 1993) ("The Secretary exercises broad discretion and may properly consider myriad factors affecting both the individual defendant as well as foreign relations which an extradition magistrate may not."). "This practice is consistent with the long-held understanding that the surrender of a fugitive to a foreign government is 'purely a national act . . . performed through the Secretary of State.'" *Matter of Extradition of Noeller,* 2018 WL 1027513, at *7 (quoting *In re Kaine,* 55 U.S. 103, 110 (1852)). It is also vital to the very concept behind mutual legal assistance treaties, the purpose of which is to facilitate cooperation between nations in order to protect the sovereignty of each, to the extent possible without violating respective constitutional beliefs.

Accordingly, the Secretary of State's extradition determination is generally not subject to judicial review. *See, e.g., Martin,* 993 F.2d at 829 ("The Secretary of State's decision is not generally reviewable by the courts."); *Escobedo v. United States,* 623 F.2d 1098, 1105 (5th Cir. 1980) ("Assuming that the magistrate's decision is in favor of extradition, the Executive's discretionary determination to extradite the fugitive ... is not generally subject to judicial review. The ultimate decision to extradite is a matter within the exclusive prerogative of the Executive in the exercise of its powers to conduct foreign affairs."). However, the Seventh Circuit has recognized as a narrow exception to this general rule that the Executive's conduct in making its extradition

determination is subject to some constitutional constraints. *See Matter of Burt,* 737 F.2d 1477, 1484 (7th Cir. 1984) ("[F]ederal courts undertaking habeas corpus review of extraditions have the authority to consider . . . the substantive conduct of the United States in undertaking its decision to extradite if such conduct violates constitutional rights."). The court in *Matter of Burt* explained:

> Generally, so long as the United States has not breached a specific promise to an accused regarding his or her extradition and bases its extradition decisions on diplomatic considerations without regard to such constitutionally impermissible factors as race, color, sex, national origin, religion, or political beliefs, and in accordance with such other exceptional constitutional limitations as may exist because of particularly atrocious procedures or punishments employed by the foreign jurisdiction, those decisions will not be disturbed.

Id. at 1487. Other courts have also recognized constitutional limitations on the Executive's discretion in extradition proceedings. *See, e.g., Martin,* 993 F.2d at 829 ("The United States' actions in reviewing a request for extradition are, of course, subject to the constraints of the Constitution."); *Plaster v. United States,* 720 F.2d 340, 349 (4th Cir. 1983) (The Secretary of State and the President "may not choose to extradite an individual where such extradition would, in the opinion of the judiciary, violate the individual's constitutional rights.").

Venckiene challenges the constitutionality of the Secretary of State's determination on three grounds. First, Venckiene alleges that the extradition scheme violated her procedural due process rights because the Secretary of State did not specify the basis for its determination. Second, Venckiene alleges that she "is being punished for her political beliefs, *e.g.,* her criticism of the Lithuanian government and judiciary." (Dkt. 29 at ¶ 13). Third, Venckiene argues that Lithuania employs particularly atrocious procedures inimical to the constitutional protections of the United States. (*Id*. at ¶ 12). Venckiene raised the second and third grounds for the first time in the supplemental briefing filed after the Court's June 28 hearing.

1. Procedural Due Process

Venckiene's procedural due process claim does not fall within the narrow reviewable categories listed in *Matter of Burt* because it does not allege that the Secretary of State based its decision on constitutionally impermissible factors, *i.e.,* her race, sex, or political beliefs, or that Lithuania employs particularly atrocious procedures or punishments. Venckiene does not cite to any case law to support her procedural due process claim or to show that the Secretary of State's determination is subject to such claim.[2]

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[2] In the Jurisdiction section of her habeas petition, Venckiene cites to cases standing for the narrow principle that the Secretary of State's extradition determination is subject to judicial review on a habeas petition where the petitioner seeks relief under the Convention Against Torture (CAT) or Foreign Affairs Reform and Restructuring Act (FARR Act). *See, e.g., Prasoprat v. Benov,* 622 F. Supp. 2d 980, 983-87 (C.D. Cal. 2009) (CAT provided for judicial

However, there is case law supporting the position that this Court can hear a procedural due process challenge to the Secretary of State's determination. In *Matter of Burt,* the petitioner alleged that the executive branch violated his due process rights under the Fifth Amendment by filing a complaint to extradite him 15 years after initially deciding not to do so. 737 F.2d at 1484. There, however, the petitioner challenged the decision to file the complaint, not the final decision to surrender the individual to the foreign nation.[3] The Fourth Circuit's decision in *Peroff v. Hylton* and the Fifth Circuit's decision in *Escobedo v. United* States are more on point here. 563 F.2d 1099, 1102 (4th Cir. 1977); 623 F.2d 1098, 1105 (5th Cir. 1980).

In *Peroff v. Hylton,* the petitioner filed a habeas petition challenging the Secretary of State's decision to grant extradition alleging he was denied due process by the Secretary of State's refusal to conduct a hearing prior to issuing the warrant of extradition. 563 F.2d at

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review of Secretary's extradition decision); *Hoxha v. Levi,* 465 F.3d 554, 564 (3d Cir. 2006) (finding that challenge to extradition under FARR was not ripe until the Secretary had ruled). These cases have no bearing on Venckiene's Petition or Motion because she has not made any claim for relief under the CAT or FARR Act.

[3] The court in *Matter of Burt* held that it was appropriate for the court to hear the petitioner's due process challenge to the executive branch's actions in the extradition proceedings but ultimately found that the executive branch had not violated petitioner' due process rights because it was not fundamentally unfair when the government "as extraditer [] makes decisions responsive to diplomatic concerns that may secondarily affect the accused's ability to respond to criminal charges brought by a foreign state." 737 F.2d at 1486.

1102. In *Escobedo,* the petitioner filed a habeas petition and argued, among other things, that the discretion provided to the executive branch under the applicable treaty violated due process because it provided no standards to guide the exercise of discretion. 623 F.2d at 1104-05. In both cases, the court heard and decided the petitioner's due process challenge, suggesting this Court has the authority to do the same here. The Court finds these cases persuasive.

However, this does not help Venckiene much because both courts also rejected the petitioner's arguments. In *Peroff,* the petitioner argued that the Secretary of State's exercise of discretion constituted an "administrative determination" and, therefore, that the Secretary violated his right to due process by denying him a "fair hearing" before issuing the warrant of extradition. 563 F.2d at 1102. The court held that a person facing extradition has no constitutional right to notice or hearing before the Secretary of State, explaining:

> Although limited judicial review is available by way of a petition for habeas corpus relief, matters involving extradition have traditionally been entrusted to the broad discretion of the executive. A person facing interstate extradition has no constitutional right to notice or a hearing before the governor who acts upon the extradition request. The need for flexibility in the exercise of Executive discretion is heightened in international extradition proceedings which necessarily implicate the foreign policy

> interests of the United States. Thus, while Congress has provided that extraditability shall be determined in the first instance by a judge or magistrate, [] the ultimate decision to extradite is ordinarily a matter within the exclusive purview of the Executive. Peroff has no statutory right to the hearing he seeks; indeed, agency actions involving "the conduct of . . . foreign affairs functions" are expressly exempted from the hearing requirements set out in The Administrative Procedure Act.

563 F.2d at 1102-03 (emphasis added). The court explained further that the hearing before the magistrate judge and habeas corpus review afforded to the petitioner satisfied the requirements of procedural due process. *Id.* Similarly, in *Escobedo,* the court refused to "prescribe the procedure by which the Executive exercises its discretion" in extradition proceedings and rejected petitioner's argument that such discretion should be confined within specific standards. 623 F.2d at 1105 (citing *Peroff,* 563 F.2d at 1103). Therefore, while the Court has the authority to hear Plaintiff's procedural due process challenge based on the Secretary's failure to specify the basis for its extradition determination, Venckiene has failed to make a strong showing that she is likely to succeed on that claim.

The remaining factors under *Nken* also favor denying a stay. The irreparable harm Venckiene will suffer if the stay is denied is that, as with any person whose stay of extradition is denied, her outstanding

legal claims pertaining to extradition would become moot. However, that hardship is lessened by the fact that she still may defend herself before the Lithuania courts. *See, e.g., Artukovic v. Rison,* 784 F.2d 1354, 1356 (9th Cir. 1986) ("The possibility of irreparable injury to Artukovic if we deny his motion is evident: his appeal will become moot and will be dismissed since the extradition will have been carried out. The balance of hardships, however, is tempered by Artukovic's ability to defend himself at trial in Yugoslavia.").

Venckiene argues that she also has legitimate concerns for her life and physical safety if she is extradited. However, as explained above, the Secretary of State retains sole discretion over such humanitarian considerations and inquiries into the fairness of the foreign nation's judicial system; the magistrate judge may not consider such factors and the Secretary's decision on those bases is not subject to judicial review. It is also worth noting that this is not a case in which the petitioner faces a lifetime of imprisonment or other serious penalty if convicted upon extradition. Venckiene faces at most three years imprisonment if convicted of the charges pending against her. Although Venckiene claims that she fears for her life, this fear is not a fear that her own Government will kill her but is based instead on threats from outside forces not controlled or under any authority of the Lithuanian government and, therefore, the type of claim more properly brought before an asylum court. Moreover, Venckiene offers only circumstantial evidence of the alleged conspiratorial threat against her. A sovereign nation has the right to weigh the evidence of such claims within its own judicial system, and a United

States district court should not intervene with that analysis.

Regardless, irreparable harm alone is not sufficient to justify a stay; Venckiene must also show a likelihood of success on the merits to obtain a stay and she has failed to do here. *Nken,* 556 U.S. at 438-39 ("When considering success on the merits and irreparable harm, courts cannot dispense with the required showing of one simply because there is a strong likelihood of the other.") (Kennedy J., concurring).

Finally, the Court looks to the third and fourth factors: harm to the opposing party and the public interest. When the Government is the opposing party, these two factors merge. *Id.* at 435. There is always a public interest in prompt execution of removal orders. *Id.* at 436. Additionally, "proper compliance with a valid extradition request promotes relations between the two countries and enhances efforts to establish an international rule of law and order." *Artukovic,* 784 F.2d at 1356. The Court agrees with the Government that "the United States can reasonably expect foreign governments to honor their obligations to the United States only if it honors theirs." (Dkt. 11 at 31). Again, Venckiene argues only that it is in the public interest to grant a stay because Lithuania's request is politically motivated. Venckiene provides no case law to support her position; regardless, as explained above, the Secretary has sole discretion to consider whether the request is politically motivated.

Therefore, the remaining factors also favor denying Venckiene's request for a stay. Venckiene bears the burden of establishing the circumstances justify an

exercise of the Court's discretion in granting a stay. *Nken,* 556 U.S. at 426. She has failed to do so with regard to her procedural due process claim.

2. Constitutionally Impermissible Basis

At the June 28 hearing, the Court asked Venckiene's counsel whether the habeas petition included a challenge to the Secretary of State's determination on the basis that the Secretary based its decision on constitutionally impermissible factors, and Venckiene's counsel represented that they would address this argument in a supplemental brief (Dkt. 30 at 15). In the supplemental brief, Venckiene devotes just one paragraph to this argument and provides no case law in support thereof. Specifically, Venckiene argues that the fact that the Lithuanian government eliminated Venckiene's judicial and parliamentary immunity and initiated the prosecution against her as punishment for exercising what in the United States would be her First Amendment rights is evidence that "Petitioner is being punished for political beliefs, *e.g.,* her criticism of the Lithuanian government and judiciary." (Dkt. 29 at ¶ 13).

Venckiene's argument is not only underdeveloped but confuses the exception set forth in *Matter of Burt* and discussed at the June 28 hearing. Pursuant to *Matter of Burt,* the Secretary of State may not base its extradition determination on constitutionally impermissible factors such as an individual's political beliefs, and the Court has authority to review the Secretary's determination to assess whether such constitutionally impermissible factors played any part in that determination. Venckiene makes no such

argument here. Rather, Venckiene's position as set forth in the supplemental brief focuses on the Lithuanian government's basis for its decision to prosecute her. Under the rule of non-inquiry, the Secretary of State retains sole authority to consider Lithuania's political motivations in requesting Venckiene's extradition and such diplomatic considerations are not subject to judicial review. Therefore, the Court has no authority to hear Venckiene's habeas petition on this basis.

3. Particularly Atrocious Procedures or Punishments

Finally, Venckiene argues that Lithuania employs "particularly atrocious procedures or punishments." Venckiene points to the allegations in her Petition that the government allegedly extended an expired statute of limitations in 2011 in order to continue an investigation into possible charges against her for "humiliating the court" and *ex post facto* eliminated her judicial immunity and parliamentary immunity in order to prosecute her. (Dkt. 29 at ¶ 12). Venckiene also points to excerpts of articles reporting that courts in a handful of countries have denied extradition requests from Lithuania because of inhuman prison conditions, which she contends "would likely rise to the level of an Eighth Amendment violation of American law." (*Id.*).

"It is not the business of our courts to assume the responsibility for supervising the integrity of the judicial system of another sovereign nation." *Sahagian v. United States,* 864 F.2d 509, 514 (7th Cir. 1988). "Such an assumption would directly conflict with the

principle of comity upon which extradition is based." *Id.* Accordingly, the Supreme Court held long ago that a petitioner cannot prevent her extradition simply by alleging that the criminal process she will receive from the requesting country fails to accord with constitutional guarantees. *See, e.g., Esposito v. Adams,* 700 F. Supp. 1470, 1480 (N.D. Ill. 1988) (citing *Neely v. Henkel,* 180 U.S. 109, 122-23 (1901)). In *Neely,* the Supreme Court held that the rights, privileges and immunities guaranteed by the Constitution—such as the fundamental guarantees of life, liberty and property and the provisions relating to *ex post facto* laws, writ of habeas corpus and trial by jury— "have no relation to crimes committed without the jurisdiction of the United States against the laws of a foreign country." 180 U.S. at 122-23; *see also Munaf v. Geren,* 553 U.S. 674, 694-95 (2008) (Iraq had a sovereign right to prosecute petitioners for crimes committed on its soil "whether or not the pertinent criminal process comes with all the rights guaranteed by our Constitution") (citing *Neely,* 180 U.S. at 123); *Matter of Burt,* 737 F.2d at 1485 n.11 ("[F]oreign proceedings are not to be tested by our own constitutional safeguards because those safeguards 'have no relation to crimes committed without the jurisdiction of the United States against the laws of a foreign country.'") (quoting *Neely,* 180 U.S. at 122); *Holmes v. Laird,* 459 F.2d 1211, 1219 (D.C. Cir. 1972) ("[A] surrender of an American citizen required by treaty for purposes of a foreign criminal proceeding is unimpaired by an absence in the foreign judicial system of safeguards in all respects equivalent to those constitutionally enjoined upon American trials.") (citing *Neely,* 180 U.S. at 122). Therefore, "[o]ne who commits a crime in a foreign country 'cannot

complain if required to submit to such modes of trial . . . as the laws of that country may prescribe for its own people, unless a different mode be provided for by treaty.'" *Kamrin v. United States,* 725 F.2d 1225, 1228 (9th Cir. 1984) (quoting *Neely,* 180 U.S. at 122-23). The Treaty between the United States and Lithuania does not protect against extended statutes of limitations, *ex post facto* laws or inhuman prison conditions.

Nonetheless, "like most legal principles, the principle of comity is not without exceptions." *Sahagian,* 864 F.2d at 514. "The Constitution may impose some limitations upon extradition decisions in exceptional cases due to some 'particularly atrocious procedures or punishments employed by the foreign jurisdiction." *Id.* (quoting *Matter of Burt,* 737 F.2d at 1487). But Venckiene fails to assert any claim that rises to this level.

Venckiene's first example of "procedures inimical to the constitutional protections in the United States" relates to an extension of the statute of limitations. Venckiene claims the head of the Judicial Council petitioned to extend the already expired limitations period for a "humiliating the court" charge in order to continue an investigation against her and the petition was granted. Constitutional challenges to the retroactive extension of an already-expired statute of limitations for a criminal offense arise under the *Ex Post Facto* Clause of the Constitution. *See* U.S. Const. art. I, §§ 9, cl. 3 and 10, cl. 1; *see also, e.g., Stogner v. California,* 539 U.S. 607, 610 (2003) (law creating new limitations period that was passed after the prior limitations period expired, thereby authorizing

prosecutions previously barred by passage of time, violated *Ex Post Facto* Clause). However, the Supreme Court in *Neely* specifically identified claims related to *ex post facto* laws as the type of allegation that can*not* serve as a basis to prevent extradition. *See Neely,* 180 U.S. at 122-23 ("provisions relating to ex post facto laws . . . have no relation to crimes committed without the jurisdiction of the United States against the laws of a foreign country."). Venckiene's claims regarding *ex post facto* elimination of her judicial and parliamentary immunities fail for the same reason. Additionally, these allegations demonstrate only that Lithuanian prosecutorial and pretrial practices may not accord with the United States Constitution; they reveal *nothing* about the procedures Venckiene will face at trial or punishments she will upon conviction in Lithuania if the warrant of surrender is executed.

Venckiene next claims that if convicted in Lithuania, she would be subject to inhuman prison conditions that "would likely rise to the level of an Eighth Amendment violation of American law." (Dkt. 29 at ¶ 13). In support of this claim, Venckiene relies only on an exhibit attached to her Reply in Support of her Motion purportedly showing that "numerous other countries have denied extradition requests from Lithuania because of inhuman conditions in Lithuania prisons." (*Id.* at ¶ 12). The exhibit lists various excerpts from Lithuanian news articles, some of which report that a Northern Ireland court in 2013 refused to extradite two individuals in on grounds of poor conditions of detention, a Danish court in 2014 refused to extradite an individual citing inhuman conditions of confinement cells, and a Malta court in 2017 refused to

extradite an individual to Lithuania because the conditions of detention are "equivalent to torture." (Dkt. 15-1). One article excerpt also reports that at some unidentified time, the European Court of Human Rights approved an agreement requiring Lithuania to pay 15 prisoners €100,000 for damages from poor detention conditions. (*Id.)*.[4] Venckiene provides no other evidence of the alleged inhuman conditions of Lithuanian prisons. The Court cannot determine based on these article excerpts alone whether prison conditions in Lithuania would violate the Eight Amendment much less whether they rise to the level of "atrocious" punishment warranting intervention by this Court to prevent her extradition. Additionally, prisoners regularly file and prevail in prison-conditions suits in the United States, yet courts do not assume the United States has violated the prisoners' Eight Amendment rights merely because a damages award is entered against them in such suits. There is similarly no basis to make such an assumption based on one settlement approved by European Human Rights Courts.

Of course, Venckiene need not *prove* her claim at this stage but to obtain the stay requested, she must at least show the claim will likely succeed. Unfortunately,

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[4] The exhibit also listed excerpts from articles that are irrelevant to Venckiene's prison-conditions claim, for example, articles reporting that Russia refused to extradite individuals to Lithuania because it had granted those individuals asylum and articles reporting that Germany and the Ukraine in 2001 and 2015, respectively, each refused to extradite an individual involved in the January Events of 1991 in Lithuania for reasons not related in any way to prison conditions. (Dkt. 15-1).

the claim as alleged is underdeveloped and lacks the sufficient evidentiary support to meet even that burden. It is telling also that Venckiene has not sought relief under the Convention Against Torture—a claim that, if it Venckiene were able to develop it, would surely have been a better strategy for challenging Lithuania's allegedly inhuman prison conditions.

Thus, Venckiene also fails to show a likelihood of success on this third challenge to the Secretary of State's extradition determination. Because the remaining factors also favor denying Venckiene's request for a stay, the Court denies Venckiene's Motion for Extension of Stay on these grounds as well.

Venckiene's Motion for Extension of Stay is denied with regard to all claims challenging the Secretary of State's extradition determination.

II. Judge Martin's Certification Order

Venckiene also challenges Judge Martin's Order certifying her as extraditable on the grounds that the offenses charged fall within the "political offense" exception of the Treaty and that Judge Martin erred in finding probable cause existed. Venckiene must show first that this Court has the authority to review Judge Martin's Order at this stage in the proceedings and second that the circumstances warrant a stay of her surrender until the challenge to Judge Martin's Order in her habeas petition can be heard.

A. The Court's Authority to Review Judge Martin's Certification Order

A magistrate judge's decision in extradition proceedings is not directly appealable. *Bovio v. United States,* 989 F.2d 255, 257 n. 1 (7th Cir. 1993); *see also Eain,* 641 F.2d at 508. A person may only challenge a magistrate's decision by seeking a writ of habeas corpus. *Id.; see also Lindstrom v. Graber,* 203 F.3d 470, 473 (7th Cir. 2000) ("Habeas corpus is the normal method of challenging an extradition order, such an order being unappealable."); *DeSilva,* 181 F.3d at 870 ("Decisions rendered in proceedings under § 3184 are not reviewable on appeal. Instead the person resisting extradition must seek a writ of habeas corpus under 28 U.S.C. § 2241."). However, habeas corpus review of an extradition magistrate's order is limited to determining only "whether the magistrate had jurisdiction, whether the offense charged is within the treaty and, by a somewhat liberal extension, whether there was any evidence warranting the finding that there was reasonable ground to believe the accused guilty." *Eain,* 641 F.2d at 509 (citing *Fernandez v. Phillips,* 268 U.S. 311, 312 (1925)).

Here, Venckiene filed her habeas petition challenging the magistrate's decision *after* the Secretary issued its ruling authorizing her surrender pursuant to the Treaty. Venckiene asserts that this Court has jurisdiction to hear her habeas petition because "[a]lthough Petitioner could have challenged Magistrate Judge Martin's certification ruling through a petition for a writ of habeas corpus immediately, a writ may be sought at any point in the process because

the order is not considered 'final' until the Secretary has rendered decision." (Dkt. 1 at 3). The Government contends that the certification ruling is subject to habeas review only until the Secretary renders its final decision and that the final ruling renders any challenge to the certification ruling moot.

Venckiene's petition raises a rare, if not novel, issue in extradition proceedings. Case law addressing whether the Court has authority to conduct habeas review of a magistrate's ruling at this stage of the extradition process is virtually nonexistent. Venckiene cites only one, non-precedential example of a case in which a court considered a habeas petition challenging the magistrate judge's certification ruling *after* the Secretary issued its ruling. In *De La Rosa Pena v Daniels,* the petitioner filed a habeas petition challenging both the Secretary's extradition determination and the magistrate judge's certification ruling, and the district court considered and decided both issues. No. 13 C 708, 2015 U.S. Dist. LEXIS 175982 (E.D. Tex. Dec. 11, 2015). The Government admits that no court has held that a person can*not* challenge a magistrate judge's certification ruling after the Secretary has made its determination. Instead, it argues that the statutory scheme governing extradition proceedings limits the judiciary's role and that any challenge to the magistrate judge's ruling would be moot at this stage.

Title 18 U.S.C. § 3184 governs extradition proceedings in the United States and provides only a limited role for the magistrate court in the extradition process: to determine whether evidence sufficient to

sustain the charges exists and, if the judge finds that it is, to certify the finding to the Secretary of State. Once the certification is entered, the magistrate court's role ends and the Secretary of State's begins. The Secretary of State then considers the court's ruling and other factors to reach its decision and has full discretion, regardless of the magistrate judge's ruling, to surrender or not surrender the individual to the foreign government. However, § 3184 does not govern the district court's authority to review the magistrate court's ruling or the Secretary of State's decision. Therefore, while the Government is correct that the statutory scheme set forth in 18 U.S.C. § 3184 provides no basis for habeas review of the magistrate's decision after the Secretary of State's decision, there is no reason to believe that it would.

Additionally, contrary to the Government's contention, a challenge to the magistrate court's ruling is not necessarily rendered moot by the Secretary of State's decision. Under the scheme set forth in 18 U.S.C. § 3184, the magistrate judge certifies its ruling and the docket to the Secretary *only if* he or she finds the evidence sufficient to sustain the charges. *See* 18 U.S.C. § 3184 (*If, on such hearing, he deems* the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, or under section 3181(b), *he shall certify* the same, together with a copy of all the testimony taken before him, to the Secretary of State. . . ") (emphasis added). If the individual is not extraditable to begin with, the Secretary of State has no authority to make any decision as to his or her extradition. A challenge on this basis would not attack the substance of the Secretary

of State's decision, which is generally not subject to judicial review except for on limited constitutional grounds, but rather would challenge the Secretary of State's authority to act at all.

It is telling that Venckiene can identify only one example of a court considering a challenge to the magistrate judge's ruling at this stage. But this is likely due to the fact that most parties opt to file a habeas petition before the Secretary of State's decision is issued thereby automatically staying extradition rather than risk receiving an unfavorable decision and having to face the burden Venckiene now faces in moving the Court to enter a stay on her behalf Certainly, Venckiene might have avoided a great deal of trouble had she done so, but she elected to forego the automatic stay in hopes of securing a favorable outcome and quicker release from custody by presenting her arguments directly to the Secretary of State.

Regardless, the only finding the Court can make with certainty is that nothing in the statute, applicable case law, or other authority *prohibits* Venckiene from filing her habeas petition challenging the magistrate judge's ruling until after the Secretary of State makes its determination or the Court from hearing the petition so long as the review is limited only to whether Venckiene was extraditable in the first instance, *i.e.* whether the matter should have been certified to the Secretary of State at all. The question remains, however, as to what effect granting a habeas petition challenging the magistrate judge's ruling would have on the petitioner's extradition status. But the Court

need not address that issue now in considering whether to grant a stay. It is sufficient to find that the Court can consider Venckiene's claims challenging Judge Martin's certification order.

B. Motion to Stay

Habeas corpus review of an extradition magistrate's order is limited to determining "whether the magistrate had jurisdiction, whether the offense charged is within the treaty and, by a somewhat liberal extension, whether there was any evidence warranting the finding that there was reasonable ground to believe the accused guilty." *Eain,* 641 F.2d at 509 (citing *Fernandez,* 268 U.S. at 312). Venckiene argues in her petition that the offenses charged fall within the "political offense" exception of the Treaty and that the magistrate court erred in finding probable cause with respect to certain charges. In assessing the motion for a stay, the Court considers first whether Venckiene has made a strong showing that she is likely to succeed on these claims. "It is not enough that the chance of success on the merits be 'better than negligible,'" *Nken,* 566 U.S. at 434 (quoting *Sofinet v. INS,* 188 F.3d 703, 707 (7th Cir. 1999)); "[m]ore than a mere 'possibility' of relief is required." *Id.*

1. "Political Offense" Exception

The Treaty provides that "Extradition shall not be granted if the offense for which extradition is requested is a political offense."[5] The Treaty does not define

[5] Whether the offenses charged qualify as "political offenses" is a distinct issue from whether the request itself is politically

"political offense." "The operative definition of 'political offenses' under extradition treaties as construed by the United States limits such offenses to acts committed in the course of and incidental to a violent political disturbance such as a war, revolution or rebellion." *Eain,* 641 F.2d at 518.; *see also, e.g., Escobedo,* 623 F.2d at 1104; *Garcia-Guillern v. United States,* 450 F.2d 1189, 1192 (5th Cir. 1971).

Courts generally recognize two forms of political offenses: "pure" political offenses, *i.e.* an "act that is directed against the state but which contains none of the elements of ordinary crime" such as treason, sedition and espionage, and "relative" political offenses, *i.e.,* "common crimes . . . so connected with a political act that the entire offense is regarded a political." *Eain,* 641 F .2d at 512; *see also, e.g., Meza v. U.S. Atty. Gen.,* 693 F.3d 1350, 1359 (11th Cir. 2012); *Nezirovic v. Holt,* 779 F.3d 233, 240 (4th Cir. 2015); *Barapind v. Enomoto,* 400 F.3d 744, 755 (9th Cir. 2005); *Quinn v. Robinson,* 783 F.2d 776, 794 (9th Cir. 1986).

Venckiene argues that the charges against her constitute relative political offenses. To qualify as a "relative" political offense, the offense must satisfy two

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motivated. The magistrate judge decides the former, *see Eain,* 641 F.2d at 513-15 ("[T]he Judicial branch has consistently determined whether or not the "political offense" provision applies to the crime charged . . . [T]he extradition statute requires the magistrate to determine that the crime alleged is listed in the applicable treaty, and that the provision of the treaty relating to political offenses does or does not apply."), while the Secretary retains sole discretion under the rule of non-inquiry (as discussed above) to consider the latter.

prongs: (1) it must have involved an uprising or other violent political disturbance, such as war, revolution or rebellion and (2) must have been incidental to, in the course of, or in furtherance of the alleged uprising. *See Ordinola v. Hackman,* 478 F.3d 588, 611 (4th Cir. 2007) ("Virtually every court to encounter the question of whether the alleged crime is a relative political offense has applied this two-pronged test."); *see, also, e.g., Meza,* 693 F.3d at 1359; *Nezirovic,* 779 F.3d at 240; *Barapind,* 400 F.3d at 755.

Venckiene was a judge in Lithuania from 1999 to 2012. (Dkt. 1 at ¶ 5). In 2008, her brother's four-year-old daughter reported that she had been sexually molested by various individuals in the Lithuanian legislature and judiciary while in her mother's care. (*Id.* at ¶ 7). Venckiene and her brother filed complaints against these individuals, which Venckiene claims were ignored. (*Id.* at ¶ 8). In 2009, two of the accused were shot and killed; soon thereafter, Venckiene's brother's dead body was discovered and Venckiene became the child's legal guardian. (*Id.* at ¶ 9). Venckiene claims the highly publicized pedophilia case ignited a grassroots political movement and anti-graft political party called "Way of Courage." (*Id.* at ¶ 10). Venckiene became the party's voice and eventually the party chair. (*Id.*). In 2010, another accused was found dead. (*Id.* at ¶ 11). In 2011, the Court ordered the child be returned to her mother but the child refused. (*Id.* at ¶ 13). In 2012, officers physically assaulted Venckiene's mother-in-law in an attempt to remove the child from Venckiene's home. (*Id.* at ¶ 14). During a second attempt at transferring the child, 100 protestors gathered at Venckiene's home as 200 police officers descended on

the home. (*Id*. at ¶ 15). The officers forcibly removed the child from Venckiene, injuring Venckiene's right shoulder in the process, and detained a majority of the protesters. (*Id*.) Venckiene was charged with hindering the activities of a bailiff and resisting a civil servant for her actions related to the transfer of the child to her mother. Venckiene also claims that she was the subject of at least one assassination attempt through apparent sabotage of her vehicle. (Dkt. 19 at ¶ 17).

Venckiene argues that the "organized protest against the Lithuanian authorities that overflowed into violence" constitutes an uprising or violent political disturbance and that her alleged hinderance and resistance were incidental to the uprising. (Dkt. 13 at 17).

The Seventh Circuit considered what constitutes an uprising or violent political disturbance for purposes of the "political offense" exception in *Eain v. Wilkes,* 641 F.2d 504 (7th Cir. 1981). Specifically, in *Eain* the Seventh Circuit considered whether the "finding of a 'conflict' is sufficient to establish that there exists . . . 'a violent political disturbance, such as a war, revolution or rebellion.'" 641 F.2d at 519. There, the petitioner was a member of the Palestine Liberation Organization charged by the State of Israel with setting off a bomb in 1979 that killed and injured several civilians. The magistrate had found that a conflict existed in the Middle East after the occupation of Israel in the West bank. *Id.* at 519. In determining whether the "conflict" constituted a sufficient violent political disturbance, the Seventh Circuit struggled to determine what degree of violence would be sufficient:

> An on-going, defined clash of military forces may be significant because that is one backdrop which may bring into sharp relief an individual act of violence. Once the circumstances move away from that context, the judiciary's task of determining what degree or type of violent disturbance permits a successful invocation of the political offense exception becomes more difficult.

Id. at 520. The court ultimately found that the PLO's attempt to destroy the Israeli political structure by targeting civilians should not be considered "a violent political disturbance" because such finding would encourage terrorism. *Id.*

Of course, Venckiene's case is distinguishable from *Eain* because the Way of Courage's activities are not directed at civilians. *Eain* is still instructive, however, because the protest against Lithuanian authorities is far from a "clash of military forces" on the spectrum of violent disturbances. In fact, the only violence Venckiene alleges are the deaths of three of the accused and her brother, injuries to her mother-in-law and her, and the assassination attempt against her.

Other courts have held that showings of greater degrees of violence than Venckiene alleges did *not* constitute an uprising or violent political disturbance, for example, in *Vo v. Benov,* 447 F.3d 1235, 1238 (9th Cir. 2006). The Ninth Circuit has held that the "uprising" component makes the "political offense" exception "applicable only when a certain level of violence exists and when those engaged in that violence are seeking to accomplish a particular objective."

Quinn v. Robinson, 783 F.2d 776, 807 (9th Cir. 1986). "The exception does not apply to political acts that involve less fundamental efforts to accomplish change or that do not attract sufficient adherents to create the requisite amount of turmoil." *Id.*

In *Vo v. Benov,* the petitioner was a member of the Government of Free Vietnam (GFVN), a political party formed to dismantle the Communist dictatorship of Vietnam, and charged with attempting to bomb the Vietnamese embassy in Bangkok. 447 F.3d at 1238. To support his claim that an uprising existed in Vietnam at the time, the petitioner pointed to thousands of signatures on a petition for freedom and a handful of GFVN attacks on the Vietnamese government and claimed that members of GFVN had been murdered and imprisoned for their actions. *Id.* at 1242. Applying *Quinn* and other prior decisions, the Ninth Circuit held that "in order to constitute an uprising, a conflict must involve either some short period of intense bloodshed or an accumulation of violent incidents over a long period of time." *Id.* at 1242. With regard to the petitioner's claim, the court held that the "sum of a few skirmishes with the police, coupled with a handful of explosions and bombing attempts around the Pacific Rim and a keen desire to see the downfall of the communist regime in his native land" did not reach the necessary level of violence to amount to an uprising. *Id.* at 1243; *C.f. Ordinola,* 478 F.3d 588at 599 ("uprising" existed where "Peruvian government and the Shining Path were engaged in a violent struggle for control of the country" and "approximately 50 percent of Peruvian territory and approximately 65 percent of the country's population was under a state of national emergency")

(internal citation omitted); *Barapind,* 400 F.3d at 750 (uprising existed where "tens of thousands of deaths and casualties resulted between the mid-1980s and early 1990s as Sikh nationalists clashed with government officers and sympathizers in Punjab").

Venckiene's allegations of violence are even less than those rejected by the court in *Vo.* The events set forth in Venckiene's Petition were clearly traumatic, and the Court in no way means to minimize the violence and horrendous actions Venckiene's family has endured or the pain they continue to suffer as a result. But the Court cannot consider Venckiene's allegations in a vacuum. The Court is bound by the provisions of the Treaty and is permitted to intervene in the extradition process at this stage only to the narrow extent provided by controlling case law. That case law is clear that for the "political offense" exception to apply, Venckiene must show a much greater degree of violence than she has been able to demonstrate here.

Venckiene cites zero cases supporting her claim that the political party's actions and protests are sufficient to constitute an uprising for purposes of establishing the "political offense" exception. Venckiene fails to meet her burden of showing that she will likely succeed on her claim that the political offense exception applies.

2. Probable Cause

Before certifying a person as extraditable, a magistrate judge "must find probable cause under federal law that the person committed the offense he is charged with by the foreign government." *Bovio,* 989 F.2d at 258 (citing *Eain,* 641 F.2d at 507-08). Judge

Martin found probable cause to believe Venckiene committed two of the offenses charged: hindering the activities of a bailiff and resisting a civil servant or person performing the functions of public administration. On habeas review, the Court reviews the magistrate judge's probable cause finding to determine whether there is "any competent evidence" to support the judge's finding. *Id.* Accordingly, "a magistrate judge's finding of probable cause to support extradition will be upheld if 'there is *any competent evidence* to support her finding.'" *Cheung v. Nicklin,* No. 12 C 9500, 2013 WL 6498553, at *2 (N.D. Ill. Dec. 10, 2013), *aff'd* (Feb. 7, 2014) (emphasis added) (citing *Bovio,* 989 F.2d at 258). "This limited scope of review is commensurate with the limited scope of inquiry in the extradition hearing itself" *Id.* "An extradition hearing is not a plenary trial at which guilt or innocence is decided; rather, it is in the nature of a preliminary examination to determine whether probable cause exists to hold the fugitive for trial in the requesting country." *Id.* (citing *Collins v. Loisel,* 259 U.S. 309, 216)); *see also, e.g., In re Mazur,* No. 06 M 295, 2007 WL 2122401, at *19 (N.D. Ill. July 20, 2007).

To succeed on her habeas claims, Venckiene must show that there was no evidence warranting Judge Martin's probable cause findings. *See, e.g., id.,* at *2 (review of a probable cause finding on habeas petition "is limited to assessing whether there was ***any*** evidence warranting the original finding") (emphasis in original) (internal citations omitted). Moreover, in order for the Court to grant her stay, Venckiene must establish that she will likely be able to make such

showing. Venckiene fails to do so with regard to either charge.

Article 231 of the Lithuania Criminal Code provides,

> 1. A person who, in any manner, hinders a judge, prosecutor, pre-trial investigation officer, lawyer or an officer of the International Criminal Court or of another international judicial institution in performing the duties relating to investigation or hearing of a criminal, civil, administrative case or a case of the international judicial institution or hinders a bailiff in executing a court judgment shall be punished by community service or by a fine, or by restriction of liberty, or by imprisonment for a term of up to two years.
>
> 2. A person commits the act indicated in paragraph 1 of this Article by using violence or another coercion shall be punished by a fine or by arrest or by imprisonment for a term of up to four years.

(Dkt. 1 at 16-17).

Article 286 of the Lithuanian Criminal Code provides:

> A person who, through the use of physical violence or threatening the immediate use thereof, resists a civil servant or another

> person performing the functions of public administration shall be punished by community service or by a fine, or by imprisonment for a term of up to three years.

(Dkt. 1 at 19).

The charges against Venckiene for violating these provisions of the Code are based on the same set of facts: that she refused to comply with court orders to transfer custody of the child to the child's mother including by assaulting an officer at her home during execution of the order. According to the evidence submitted by the Lithuanian government, during the pretrial investigations, the child's mother and the bailiff responsible for effectuating the transfer reported that Venckiene repeatedly failed to turn over the child as ordered and deferred attempts to transfer the child by saying the child did not want to go to her mother. *See, e.g., In re Extradition of Jarosz,* 800 F. Supp. 2d 935, 947 (N.D. Ill. 2011) ("So long as the exhibits submitted by the requesting nation are certified and authenticated in accordance with the relevant statute, the evidence [in an extradition hearing] may come from a prosecutorial report."). The bailiff reported that, when law enforcement arrived at Venckiene's home to take custody of the child, Venckiene had erected obstacles around her home and refused to remove the barricades on her doors when the officers knocked and announced their presence, forcing the officers to use special equipment to enter the home. The bailiff reported further that, once inside, Venckiene refused to allow others to communicate with the child, shouted, held the child with her hands around her waist and

began kicking the child's mother. The bailiff reported also that officers, including an Officer Mind augas Gusauskas, had to take Venckiene's hands off of the child to allow the mother to take the child. Other officers at the scene confirmed the bailiff's account. Gusauskas reported that after the child left the room, Venckiene stood up and punched him twice in the right side of his face. Another officer observed the punches and the injuries were documented by medical records.

Based on this evidence, there was more than sufficient evidence to support Judge Martin's finding of probable cause that Venckiene hindered the bailiff in executing the court's transfer order—*i.e.*, by refusing to turn over the child, barricading the child in her home, preventing the officers from physically removing the child, etc.—and that Venckiene used physical violence to resist a civil servant or other person performing the functions of public administration—*i.e.,* by kicking the child's mother and punching the officer executing the court's order. In other words, Venckiene cannot show that there is *no* evidence supporting the probable cause finding.

Plaintiff argues that a transcript of the events transpiring the day the officials came to Venckiene's house to remove the child negates any finding of probable cause. "Neither the federal rules of evidence, nor the federal rules of criminal procedure apply" in an extradition hearing. *In re Mazur,* 2007 WL 2122401, at *19 (citing *Eain,* 641 F.2d at 508). Generally, "[a]n accused in an extradition hearing has no right to contradict the demanding country's proof or to pose questions of credibility as in an ordinary trial"; "[t]o do

otherwise would convert the extradition into a full-scale trial, which it is not to be." *Eain,* 641 F.2d at 511. However, the accused may present evidence that "obliterates" the probable cause finding. *In re Mazur,* 2007 WL 2122401, at *19. Venckiene argues the transcript "obliterates" the probable cause finding because there is no indication in the transcript that Venckiene kicked the mother or punched the officer.

The transcript does not "obliterate" the probable cause finding. First, the transcript ends as the child is being taken out of the house, before Venckiene allegedly punched the officer. Second, the transcript only reports statements, not actions, between the individuals present. While the transcript *may* capture statements indicating that a physical altercation occurred, that is not necessarily the case and the absence of such statements does not prove that no physical assault occurred. Finally, even if the transcript showed clearly that no physical assault occurred, it far from obliterates the hindering charge because the transcript substantiates the bailiff's claim that Venckiene erected barriers to prevent the officers from entering her house to execute the transfer order. (*See, e.g.,* Dkt. 13 at Ex. 17 ("Bailiff: Police officers are asked to remove the obstacles . . . Please remove the obstacles.")).

Additionally, Venckiene argues for the first time in her supplemental brief that there are videos from the incident that should be collected and produced prior to denying the stay. (Dkt. 29 at ¶ 19). Venckiene provides zero details about these videos, for example, what they will show or how they will make Venckiene more likely

to succeed on her habeas petition, except to say that they are "relevant to explain what happened on the day the offenses occurred." (*Id.*). Without more, this eleventh hour attempt to stay the Court's ruling based on new evidence is unconvincing and, as discussed already, the evidence proffered by the Lithuanian government provides ample support for Judge Martin's probable cause findings. *See, e.g., Peroff,* 563 F.2d at 1101 (Even in light of newly discovered evidence, "the evidence proffered by the Swedish authorities in their request for Peroff's extradition amply supports the original finding of probable cause to believe that Peroff participated in the crimes charged.").

Therefore, Venckiene fails to make a strong showing that she will likely succeed on the merits of her challenges to the magistrate judge's certification order. The remaining stay factors favor denying the motion for a stay for the same reasons discussed above. Venckiene's only irreparable harm—that her outstanding legal claims related to her extradition will become moot—is tempered by the fact that she may still present a defense before the Lithuanian courts and prompt execution of removal orders facilitates international rule of law and promotes public interest.

Venckiene's Motion for Extension of Stay is denied with regard to all claims challenging Judge Martin's Order certifying her as extraditable.

III. Pending Congressional Bills

On June 25, 2018, New Jersey Representative Christopher Smith presented to Congress a bill titled "Give Judge Venckiene Her Day in Court Act" that seeks "the relief of Judge Neringa Venckiene, who the Government of Lithuania seeks on charges related to her pursuit of justice against Lithuanian public officials accused of sexually molesting her young niece." H.R. 6218. Illinois Representative Randy Hultgren introduced an identical bill on June 27, 2018. *See* H.R. 625 7. If enacted, either proposed bill would exclude Venckiene from the Treaty and all other laws allowing for her extradition to Lithuania and allow her free movement and the ability to work in the United States until a final order is issued on her pending asylum application. H.R. 6218; H.R. 6257. Venckiene also submitted a June 9, 2018 letter from Representative Smith, in which Smith states that he expects the bill will move more quickly than a typical private bill because, unlike typical private bills, HR 6218 seeks only to give Venckiene access to the normal political asylum process and not to give her legal permanent status. (Dkt. 31-1). In the letter, Representative Smith states also that he is working with the Judiciary Committee to achieve fast-track processing for the bill. (*Id.*)

Venckiene's stay request based on the pending Congressional bills is subject to the same four-factor analysis under *Nken*. Therefore, Venckiene bears the burden of showing that the pending bills warrant an exercise of the court's discretion in her favor, including by making a strong showing that she is likely to

succeed on the merits, *i.e.,* that her extradition will likely be prevented by the passage of either bill. But Venckiene's brief is devoid of *any* such argument. First, Venckiene provides no precedent—and the Court knows of none—for a court staying execution of a warrant of surrender issued by the Secretary of State until Congress could vote on a pending proposed bill. Second, except for Representative Smith's assurances that the bill will move more quickly than a typical private bill, Venckiene provides no timeline for the voting process. As of July 12, 2018, neither bill had been put to a vote in the House. Third and most importantly, Venckiene fails to address at all the likelihood that either bill will pass the House, pass the Senate, receive approval from the President and become law. Of course, this is undoubtedly because she has no way of making such a prediction. The Court certainly has no way of knowing and will not blindly guess as to when or how Congress will act.

Venckiene fails to address whether, much less make a strong showing as to, the likelihood either bill will prevent her extradition. Because the other stay factors also favor denial for reasons already discussed, the Court denies Venckiene's Motion for Extension of Stay based on the pending Congressional bills.

CONCLUSION

For the reasons stated above, the Court denies Venckiene's Motion for Extension of Stay (Dkt. 9).

Although the Court has ruled on the likelihood Venckiene will succeed on the merits of her habeas petition, the Petition is not yet fully briefed. Because

the Court has found that it has the authority to hear Venckiene's challenges to the Secretary of State's extradition determination and Judge Martin's certification order, the Court directs the parties to submit briefing on Venckiene's pending Petition. Additionally, the Court permits Venckiene to first amend her Petition to include the challenges raised for the first time in her supplemental brief, if so desired.

/s/Virginia M. Kendall
Hon, Virginia M. Kendall
United States District Judge

Date: July 12, 2018

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Case No. 18 CR 56-1

Magistrate Judge Martin

[Filed February 23, 2018]

IN THE MATTER OF THE EXTRADITION OF NERINGA VENCKIENE	)

ORDER

IT IS HEREBY ORDERED, pursuant to 18 U.S.C. § 3184, the above findings, I certify the extradition of the Fugitive, Neringa Venckiene, to Lithuania, on the offenses of hindering the activities of a bailiff; failure to comply with a court's decision not associated with a penalty; causing physical pain; and resistance against a civil servant or a person performing the functions of public administration, and commit the Fugitive to the custody of the United States Marshal pending further decision on extradition and surrender by the Secretary of State pursuant to 18 U.S.C. § 3186.

IT IS FURTHER ORDERED that the Clerk of this Court 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. Enter Certification And Committal For Extradition.

Date: 2/23/2018 /s/Daniel G. Martin
United States Magistrate Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Case No. 18 CR 56-1

Magistrate Judge Martin

[Filed February 21, 2018]

IN THE MATTER OF THE EXTRADITION OF NERINGA VENCKIENE	)

ORDER

Time: 2 hours

IN THE MATTER OF THE EXTRADITION OF NERINGA VENCKIENE, 18 CR 056 (N.D. Ill, E.D. 2018)

This cause having come before the Court on the Government's request for Extradition hearing, it is hereby ordered:

(A) The detainee is charged with a crime or crimes for which there is a treaty for extradition between the United States and the country of Lithuania, the demanding country, 18 U.S.C. Sections 3181, 3184; see also *Collins v. Loisel,* 259 U.S. 309 (1922);

(B) the warrants and documents demanding the detainee's surrender are properly and legally authenticated, 18 U.S.C. Section 3190; and

(C) the commission of two of the four crimes alleged is established by probable cause such as would justify commitment for trial if the offense had been committed in the United States ("dual criminality"), 18 U.S.C. Section 3184, specifically:

As to the offense of "complicity in the commission of a criminal act," there is a finding of no probable cause.

As to the offense of "unlawful collection of information about a person's private life," there is a finding of no probable cause.

As to the offense of "hindering the activities of a judge, prosecutor, pre-trial investigation officer, lawyer, or bailiff," there is a finding of probable cause.

As to the offense of "resistance against a civil servant or a person performing the functions of public administration for which extradition is sought," there is a finding of probable cause. (DECLARATION OF VIRGINIA P. PRUGH, Bates Number 00003).

The detainee has failed to demonstrate "special circumstances," and thus has failed to rebut the strong presumption against bail which governs in an international extradition proceeding.

Date: 2/21/2018 /s/Daniel G. Martin
United States Magistrate Judge

APPENDIX E

[SEAL] United States Department of State
Washington, D.C. 20520
www.state.gov

April 23, 2018

Michael Monico
Carly A. Chocron
Monico & Spevack, Attorneys at Law
20 South Clark Street
Chicago, IL 60603
By Email

Re: Extradition of Neringa Venckiene

Dear Mr. Monico and Ms. Chocron:

The Department of State is in receipt of your communications of March 5, 2018, April 4, 2018, April 18, 2018, and April 19, 2018, regarding the extradition of Nerniga Venckiene to Lithuania.

Following a review of all pertinent information, including pleadings and filings submitted on behalf of Ms. Venckiene in court, on April 20, 2018, the Under Secretary of State for Political Affairs decided to authorize Ms. Venckiene's surrender pursuant to 18 U.S.C. § 3186 and the Extradition Treaty between United States and Lithuania. The materials submitted

to the Department up to and including on April 19, 2018, were considered in making this decision.

Ms. Venckiene may be subject to surrender at any time hereafter. Please consult with the assigned United States Department of Justice attorneys if you have any questions.

Thank you,

/s/Tom Heinemann
Tom Heinemann
Assistant Legal Adviser for
Law Enforcement and Intelligence
U.S. Department of State