No. 19-313

IN THE SUPREME COURT OF THE UNITED STATES

NERINGA VENCKIENE,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

On Application to Stay the Mandate of the
United States Court of Appeals for the Seventh Circuit

EMERGENCY APPLICATION FOR STAY PENDING DISPOSTION OF PETITION FOR WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDING

All parties to the proceedings are listed in the caption. Neither the Petitioner nor any party is a nongovernmental corporation and therefore there is no parent corporation or any other company owning 10% or more shares of stock.

APPLICATION FOR STAY

TO THE HONORABLE BRETT M. KAVENAUGH, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Seventh Circuit:

Pursuant to this Court's Rule 23.1 and the All Writs Act, 28 U.S.C. § 1651, Petitioner, Neringa Venckiene, makes this emergency application for a stay pending the disposition of her Petition for a Writ of Certiorari. Absent a stay the Seventh Circuit's mandate will issue and Petitioner will be extradited to Lithuania, effectively mooting her petition.

Venckiene sought a stay from the Seventh Circuit. On September 9, 2019, the court denied her request, based on its opinion that Venckiene was not likely to succeed on the merits. *See* Ex. A. Given the nature of the injury Venckiene would suffer, however, the Seventh Circuit agreed to stay issuance of its mandate for thirty (30) days to give her an opportunity to file an emergency motion for a stay in this Court.

Venckiene's petition was distributed for conference on October 11, 2019

ARGUMENT

A. Procedural Facts

1. The Republic of Lithuania has asked the United States to extradite Neringa Venckiene to face criminal charges in her home country. Venckiene has resisted extradition, arguing among other things that the offenses she faces in Lithuania are political

offenses rendering her non-extraditable under both the United States/Republic of Lithuania treaty and the law. After a Magistrate Judge granted the extradition request Venckiene filed a habeas petition in the District Court for the Northern District of Illinois and moved for a stay pending a hearing. The District Court denied her motion. Venckiene thereafter filed an interlocutory appeal to the Seventh Circuit Court of Appeals. On July 15, 2019, the Court of Appeals handed down an opinion affirming the District Court's order.

2. Venckiene asked the Seventh Circuit to stay its mandate pending the filing and disposition of a petition for writ of certiorari in the Supreme Court. On September 9, 2019, the Court of Appeals denied her motion for a stay but, given the fact that Venckiene would end up being extradited if the stay were not issued, provided Venckiene thirty (30) days in which to file an emergency request for a stay in this Court. The habeas petition remains pending in the District Court.

B. Statement of Facts

3. While she was a judge in Lithuania, Venckiene's brother, Drasius Kedys ("Kedys"), had a child out of wedlock with a woman named Laimute Stankunaite ("Stankunaite"). Kedys and Stankunaite were separated at the time of the relevant events and Kedys had been granted full custody. Stankunaite had visiting rights. Sometime in 2008, when she was four (4) years old, the child claimed that during visitations with her mother she had been forced to lay beside Stankunaite and someone named Andrius Usas, an assistant to the Speaker of the Seimas (the Lithuanian parliament), at which time Usas "licked her all over." A psychiatric evaluation concluded the girl was likely telling the truth about this sexual abuse. The child also accused a Kaunas Regional Court Judge named Jonas Furmanavicius ("Furmanavicius"). Around this time, a journal article identified

Usas as a middleman in a regional pedophilia network involving high-ranking officials in both Latvia and Lithuania.

4. Venckiene and Kedys became outspoken critics of the investigation into the pedophilia allegations. In October 2009, Kedys disappeared and Furmanavicius and Stankunaite's sister were shot and killed. Authorities discovered Kedys' dead body on the bank of a lagoon. That same month Usas threatened to use his judicial connections to get Petitioner fired and in March 2010 he made threats against her life. In June 2010, Usas was found dead. There were reports of between five and 13 others associated with the pedophilia scandal who were also killed.

5. Upon Kedys' disappearance a court awarded Petitioner parental custody pending the investigation of the pedophilia allegations with respect to the mother, Stankunaite. The Vilnius District Court found enough evidence existed to indict Stankunaite but never did. In November 2010 Petitioner publicly condemned the court system as corrupt, leading the Chairman of the Judicial Council to subject Petitioner for ethical hearings and censure for "insulting the court." A pretrial criminal investigation into the subject based on her having allegedly "humiliated" the court was discontinued on January 12, 2011, because the prosecutor general found no evidence she violated the law. A month later, though the time limit had already expired, the head of the Judicial Council successfully petitioned to extend the statute of limitations on those proceedings so it could renew the criminal case against her.

6. The highly publicized pedophilia allegations and Kedys' death ignited a grassroots political movement that blossomed into an anti-graft political party called "Way of Courage." Its founders created Way of Courage to oppose political corruption and seek

justice for Kedys and the child. Judge Venckiene assumed the role of party figurehead and Kedys became its martyr. Judge Venckiene also helped organize a group of supporters to hunt for and surveille suspected members of the "pedophile clan" in order to gather information against them. The extradition papers alleged that Judge Venckiene directed the activities of this group, "organizing and ensuring active resistance to handing over her niece and complying with court orders to do so." The house where she and the child stayed was referred to as a "resistance camp" that, according to the arrest warrant, had someone "standing duty."

7. In the meantime, Stankunaite asked for her parental rights to be restored. In September 2010, the Parnevezys District Court suspended Stankunaite's request while potential criminal charges against her based on the pedophilia allegations were still being considered. In December 2011, despite the open criminal investigation and the child's resistance, the Kedainiai District Court ordered Petitioner to transfer her to Stankunaite.

8. Multiple transfer attempts failed because the child would not leave voluntarily. On March 22, 2012, a court bailiff petitioned the Kedainiai District Court for clarification as to whether force could be used on any obstacles in the way of enforcement of the court order. On March 23, 2012, when Petitioner was not at home, Stankunaite arrived at Petitioner's mother's house accompanied by 25 police officers, some wearing masks, to effectuate a transfer. Petitioner's mother was knocked to the ground and Petitioner's aunt was punched in the mouth, and the effort was unsuccessful yet again. A video recording of the incident posted on the internet received national attention. Hundreds of people began camping out on the lawn to protect the little girl. The Lithuanian Chief Judge and Head of the Judicial Council responded by publicly branding Judge Venckiene an "abscess in the

legal system [and] also in the political system" and "that [she is] trouble of the whole state.". He described Judge Venckiene as having assaulted the judicial system.

9. On May 17, 2012, over 200 law enforcement representatives invaded the "resistance camp" where Judge Venckiene and the child were being safeguarded. They waded through over 100 protesters, arrested many, and removed barriers and obstacles. Cameras had been installed on the premises to record the events, but after breaking into the home police turned them off, forcibly disengaged the child as she clung to Petitioner, and then carried her through the crowd and off the premises. Venckiene went to the hospital after officers violently twisted her arms behind her back and injured her shoulder. A transcript from a television show that aired on May 20, 2012, recorded an interview with the Police Commissioner who stated that 80 Capital officers and 140 police officers, primed for riots and massive unrest, had engaged in "the biggest operation in the [sic] Lithuanian history in a civil case." On May 23, 2012, citing Judge Venckiene's supposed incendiary remarks of November 17, 2010, and her alleged "interference" with the transfer on May 17, 2012, the prosecutor general asked parliament to revoke Judge Venckiene's judicial immunity, which Parliament did on June 26, 2012. Having lost her judicial immunity, Venckiene was compelled to resign her judgeship, which she did the next day.

10. Petitioner became more outspoken. She criticized the government's handling of the child's case and other matters relating to government corruption, including weaknesses of the work of the court and law enforcement agencies and the irrational force involved in the transfer of custody. She published a book, Way of Courage, detailing important aspects of the pedophilia case and criticizing the judicial system, prosecution, and courts for their negligence. The Way of Courage political party organized protests,

circulated petitions, and fostered dialogues in internet forums and blogs. Newspapers reported marches and protests, with people carrying signs reading "Do not touch Neringa," "Freedom to the girl," "Freedom to Lithuania," and "Lithuania be happy." People protested in the public square. According to one translated report

> The wounded people were loudly angry about how violence against the child could be tolerated. Anger booms were also directed at the officers, who dared to invade the private house, break the glass door. It was also directed at the nation's President, who tolerated such events.

11. Protests grew and incidents multiplied. In one incident Kedys sympathizers blocked the President's motorcade and harassed her while trapped inside her car. An assassination attempt was made on Judge Venckiene's life by removing the lug nuts from her tires while she attended a campaign rally. Police declined to investigate. Venckiene's young son, a minor at the time, allegedly sang "a distorted version of the anthem of the Republic of Lithuania," a transgression that brought allegations against Venckiene for desecrating state symbols. As one translated article reported it, several members of Venckiene's organized group

> publicly stated that Lithuania needs a putsch or Maidan, and all governments and parliaments need to be blown up and rebuilt. N. Venckiene is alleged to have publicly urged people to violate the sovereignty of the Republic of Lithuania.

12. No longer a judge, Venckiene became more involved with the Way of Courage party, which campaigned on anti-corruption principles and judicial reform. In October 2012 Way of Courage won seven seats in the Seimas and Venckiene was named party chair.

13. On December 28, 2012 the prosecutor general petitioned the Seimas to remove Venckiene's parliamentary immunity and allow for her arrest based on charges

relating to the child's transfer and "humiliating the court." The prosecutor added new allegations not included back in May, that Venckiene allegedly bit and kicked Stankunaite during the removal. Her parliamentary immunity was removed on April 9, 2013. Fearing for her personal safety Petitioner came to the United States with her now 18-year-old son. She applied immediately for asylum and has lived and worked openly and without incident in Crystal Lake, Illinois.

C. Legal Proceedings

14. Approximately five years passed. In 2018 Lithuania formally requested the extradition of Venckiene pursuant to a treaty with the United States. The complaint charged Petitioner with the following offenses:

a) 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;

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

c) Hindering the activities of a bailiff, in violation of Lithuania Criminal Code Article 231;

d) Failure to comply with a court decision not associated with a penalty, in violation of Lithuania Criminal Code Article 245;

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

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

15. Magistrate Judge Daniel Martin held an extradition hearing pursuant to section 3184 and certified Petition as extraditable for offenses three through six, after which Petitioner was committed to the custody of the United States Marshal pending the Secretary of State's decision on her extradition and surrender. Without explanation, on April 20, 2018, the Secretary of State decided to surrender Petitioner for extradition. Petitioner filed a Petition for Habeas Corpus in the District Court challenging both Magistrate Judge Martin and the Secretary of State's decision. She asked the District Court to stay the extradition order while the habeas petition was pending as well as to provide an opportunity for the asylum petition to be ruled upon. In addition, legislation had been introduced in the 115th and 116th Congress that would have excluded Petitioner from extradition.

16. After applying the four (4) factor test articulated in *Nken v. Holder,* 556 U.S. 418, 434 (2009) -- 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 who have an interest in the litigation; and 4) where the public interest lies – the District Court rejected Petitioner's request to extend the stay. Petitioner appealed that denial to the Seventh Circuit Court of Appeals, which affirmed the decision of the District Court.

ARGUMENT

A. Petitioner Has Made a Strong Showing that She is Likely to Succeed on the Merits

The Seventh Circuit denied Venckiene's motion for a stay pending the disposition of her petition for a writ of certiorari:

> ORDER re: 1) Motion to Stay issuance of mandate pending filing and disposition of a petition for certiorari 2) Supplement to motion to stay issuance of mandate. IT IS ORDERED that the motion is DENIED. Neringa Venckiene has not made a

> sufficient showing of a probability of success on her petition for a writ of certiorari. See Galdikas v. Fagan, 347 F.3d 625 (7th Cir. 2003) (Ripple, J., in chambers). Given the nature of the injury Venckiene will suffer, however, IT IS FURTHER ORDERED that the mandate in this case shall not issue for 30 days from the date of this order to give Venckiene the opportunity to seek an emergency stay in the Supreme Court.

Ex. A.

In citing to its own case of *Galdikas v. Fagan,* 347 F.3d 625, the court stated to obtain a stay that Venckiene had to demonstrate a reasonable probability of succeeding on the merits and that she would suffer irreparable injury absent a stay. The court appeared to acknowledge Venckiene would suffer a substantial injury by its denial of the stay, but denied the motion anyway because it did not believe she would prevail on the merits. On the latter point, the court found that Venckiene did not demonstrate a reasonable probability that four justices would vote to grant certiorari and a reasonable possibility that five Justices would vote to reverse the court's judgment. *Citing Nanda v. Bd. of Trs. of the Univ. of Ill.*, 312 F.3d 852, 853, 853-54 (7th Cir. 2002) (Ripple, J., in chambers).

Venckiene raises her motion for stay before this Court. She is subject to extradition to Lithuania, and should she be extradited her underlying case will be rendered moot. Moreover, Lithuania seeks her extradition purportedly to try her for a political offense -- and for political reasons -- as punishment because she spoke out against people of position who may have been affiliated with a pedophilia ring. There is a question as to how safe she will be once extradited and whether she will be treated fairly. Lithuania previously passed multiple enactments directed solely at Venckiene in order to strip her of due process protections she enjoyed at the time of the events for which Lithuania now seeks to try her. They removed her judicial immunity, then her legislative immunity, and extended an

expired statute of limitation, clear bills of attainder, in order to justify this extradition request.

The issue raised on Venckiene's petition for certiorari involve is ripe for Supreme Court review, *to wit*: how to interpret the so-called "political offense" exception to extradition treaties. The United States/Lithuania extradition treaty includes this common exception to extradition, which states that "Extradition shall not be granted for an offense for which extradition is requested is a political offense." Extradition Treaty Between the Government of the United States and the Government of the Republic of Lithuania (Treaty), Art. 2.

According to Lubet & Czackes' oft cited article, published in 1980, at least as of that time

> Neither Congress nor the Supreme Court has defined the term "political offense. … Consequently, the lower courts are left to decide the issue on a case by case basis. Although the courts have paid considerable attention to the substantive law, they have not developed a coherent procedural approach to the political offense exemption.

Lubet & Czackes, *The Role of the American Judiciary in the Extradition of Political Terrorists,* Journal of Criminal Law and Criminology (Vol. 71, Pg. 193), at 196. In a footnote the authors noted that In *Karadzole v. Artukovic*, 355 U.S. 393 (1958), *rev'g per curiam*, 247 F.2d 198 (9th Cir. 1957), which they described as "the most well known recent Supreme Court opinion on political extradition," the Court simply remanded the case to the district court without commenting on the definition of a political offense. Six years later, in *Quinn v. Robinson,* 783 F.2d 776 (9th Cir. 1986), the Ninth Circuit observed that this Court had discussed the political offense exception "only once, and then during the nineteenth century." *Id.* 783 F.2d at 781, *citing Ornelas v. Ruiz*, 161 U.S. 502, 40 L. Ed. 787, 16 S. Ct.

689 (1896). Since that article and that case, it does not appear this Court has weighed in on the "political offense" exception. A Lexis search of Supreme Court cases using the phrase "political offense" turns up a handful of cases, three of which simply quote the immigration statute where it excludes "a purely political offense" from the definition of a "crime of violence," *see Sessions v. Dimaya,* 138 S.Ct. 1204 (2018); *Nijhawan v. Holder,* 557 U.S. 29 (2009); and *Leocal v. Ashcroft,* 543 U.S. 1 (2004), and one the simply quotes the immigration statute where it excludes "a political offense" from the definition of a crime involving "moral turpitude." *See Vartelas v. Holder,* 566 U.S. 257 (2012).

As Lubet and Czackes observed, the lack of guidance from the Supreme Court has left it to the lower courts to define "a political offense" on a case by case basis. Lubet & Czackes, at 196. The commonly accepted view of political offenses has been to divide them into two categories, "pure" and "relative." Considered "pure" political offenses have been crimes like treason, sedition, and espionage, acts "directed against the state but which contain[] none of the elements of ordinary crime." *See, e.g., Ordinola v. Hackman,* 478 F.3d 588, 596 (4th Cir. 2007); *Quinn v. Robinson,* 783 F.2d at 794; *Eain v. Wilkes,* 641 F.2d 504, 512 (7th Cir. 1981). Considered "relative" political offenses have been otherwise common crimes committed in connection with a political act or common crimes committed for political motives or in a political context. *See, e.g., Ordinola,* 478 F.3d at 596; *Quinn,* 783 F.2d at 794. Put differently, courts have come to consider "relative" political offense as common crimes so connected with a political act that the entire offense is regarded as political. *See, e.g., Eain v. Wilkes,* 641 F.2d at 512.

The lower courts have also applied a further wrinkle when considering whether an offense is a "relative" political offense. It is called the "incidence test" and it requires first,

that there be a violent political disturbance or uprising occurring in the requesting country at the time of the alleged offense, and second, that the alleged offense be "incidental to," "in the course of," or "in furtherance of that uprising." *See, e.g., Ordinola,* 478 F.3d at 597; *Eain v. Wilkes,* 641 F.2d at 518.

The Seventh Circuit applied all these principles to decide the instant case. But these principles have never been adopted by this Court. Of particular concern to Petitioner is that the lower courts seem to limit "political offenses" to insurrections in the nature of war. Petitioner believes this interpretation comes from an overreading of the *Ornelas* decision decided one-hundred years ago. In *Ornelas* a band of over one-hundred armed men crossed the Texas border into Mexico and attacked forty Mexican soldiers. The men also attacked private citizens, stole their belongings, and took three of them prisoner, among other violent actions. The Court held the Mexican bandits were not extraditable because they were not engaging in a political revolt, an insurrection, or a civil war at the time they attacked the Mexican soldiers. Although the thrust of the opinion was that the men were not acting incidental to the revolt, insurrection or war that was, fortuitously, going on in Mexico, the circuit and district courts gleaned from there that absent something kindred to war there could be no political offense at all.

Thus, the common wisdom has been that the political offense exception applies only where there was some kind of "uprising or violent political disturbance" and 2) actions incidental to that disturbance, and that the violent disturbance must be akin to war. *Quinn v. Robinson,* 783 F.2d at 797. *See also, e.g., Koskotas v. Roche,* 931 F.2d 169, 171 (1st Cir. 1991) ("[T]o come within the "political offense" exception, Kostakos must meet the so-called 'incidence' test, by demonstrating that the alleged crimes were committed 'in the course of

and incident to a violent political disturbance such as war, revolution or rebellion.'"), *citing, e.g., Escobedo v. United States,* 623 F.2d 1098, 1104 (5th Cir.), *cert.* denied, 440 U.S. 1036 (1980); *Sidona v. Grant,* 619 F.2d 167, 173 (2d Cir. 1980); *In re Ezeta,* 62 F. 972, 977-1002 (N.D.Cal. 1894). The Seventh Circuit applied that standard in *Eain v. Wilkes,* 641 F.2d at 519, when it constricted the "uprising" component to equate to a violent political disturbance as "war, revolution or rebellion." The Seventh Circuit applied the same reasoning in the instant case.

Venckiene does not believe that it was ever this Court's intention to restrict the "violent political disturbance" requirement to cover only "war, revolution or rebellion." Yet when the Seventh Circuit decided the instant case, the only examples it provided were insurrections that fit within that mold. *See* App. 20-21, *citing, e.g., Ordinola,* (conflict over 50 percent of Peruvian Territory and affecting approximately 65 percent of country's population); *Barapind v. Enomoto,* 400 F.3d 744, 750 (9th Cir. 2005) (tens of thousands of deaths and casualties). The Seventh Circuit observed that Venckiene's case is distinguishable from those finding a political offense "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." App. 76.

Limiting "political offenses" to conflict similar to war makes mash out of the United States/Lithuanian Treaty. The treaty excludes extradition where the offense requested is a "political offense," and goes on to describe a number of offenses that "shall *not* be considered political offenses." Extradition Treaty, Art. IV, § 2 (emphasis added). The list

includes offenses such as "murder, manslaughter, malicious wounding, or inflicting grievous bodily harm," any kind of hostage taking, causing substantial property damage and other violent acts. *Id.* Putting aside the lower-court categorized "pure" political offenses, which by their nature can be non-violent, it is hard to imagine what kind of offenses *other* than the excluded ones that would satisfy the "relative" political offense description. In other words, criminal acts committed in the midst of a violent insurrection as defined by the Seventh Circuit may not have to be but are certainly likely to be those very violent acts. The Seventh Circuit's interpretation, an interpretation shared by almost all of the circuits, would nearly pinch the so-called "relative" political offense characterization out of existence, because almost any offense committed as part of a war would involve something akin to murder, manslaughter, and grievous bodily harm (and hence be excluded from the definition of a "political offense"), and any offense committed outside a war would be excluded because the uprising would be deemed not violent enough.

Accordingly, Neringa Venckiene believes that there is a reasonable probability that Venckiene would succeed on the merits, that this Court will grant certiorari and reverse the decision of the Seventh Circuit. Whether this Court ultimately adopts some or all of the lower court's construction of a "political offense" exception the construction of the phrase needs updating. The instant case provides the Court with an opportunity to provide guidance that is sorely needed.

B. The Other *Nken* Factors Support a Stay

The remaining *Nken* factors support a stay. Venckiene will be irreparably injured absent a stay; issuance of the stay will substantially injure the other parties who have an interest in the litigation; and a stay is where the public interest lies.

Quite simply, absent a stay the Seventh Circuit mandate will issue and this petition will become moot. Venckiene will be extradited to Lithuania where her safety is not guaranteed and where the political processed there are clearly determined to punish her. As noted above when the statute of limitations expired on one of the offenses a law was passed that extended the statute of limitations. When Venckiene could not be prosecuted because she enjoyed the protection of judicial immunity the authorities passed a law that removed her judicial immunity. When Venckiene could not be prosecuted because she enjoyed the protection of parliamentary immunity the authorities passed a law that removed her parliamentary immunity. It is not safe for her to return. There has been at least one attempt on her life and her brother was murdered. Courts have considered the possibility of irreparable injury a paramount concern in favor of granting a stay. *Nezirovic v. Holt,* 2014 U.S.Dist. LEXIS 91684 (W,D.Va.), at *4-*5, *citing Lindstrom v. Graber,* 203 F.3d 470 (7th Cir. 2000) (where petitioner was extradited pending his appeal, court found he had nothing to gain from further prosecution of the appeal); *Artukovic v. Rison,* 784 F.2d 1354 (9th Cir. 1986) (possibility of irreparable injury to defendant if stay is denied; appeal will become moot).

There does not appear to be any harm to Lithuania if there is this additional delay and the public interest would support a stay if the absence of a stay would moot an appeal. The motivation behind Lithuania's extradition is political, a factor separate from and additional to the offenses being political as well. Balanced against the certain harm – extradition – the Court should grant this emergency motion for a stay pending consideration of the petition for a writ of certiorari.

CONCLUSION

For the foregoing reasons, Petitioner Neringa Venckiene respectfully requests that the Court order that the Seventh Circuit stay issuance of its mandate until this Court rules on her petition for a writ of certiorari.

Respectfully submitted,
NERINGA VENCKIENE

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