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No. 96 Original

IN THE
Supreme Court of the United States

OCTOBER TERM, 1983

COMMONWEALTH OF PUERTO RICO,

v.
STATE OF IOWA,

Plaintiff,

Defendant.

**MOTION FOR LEAVE TO FILE AND
COMPLAINT**

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Comes now the Plaintiff, the Commonwealth of Puerto Rico, and by its Secretary of Justice, Carmen Rita Velez Borrás, and Special Counsel respectfully requests leave of the Court to file the Bill of Complaint which is submitted herewith.

CARMEN RITA VELEZ BORRAS

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COMMONWEALTH OF PUERTO RICO,

Plaintiff,

v.

STATE OF IOWA,

Defendant.

COMPLAINT

The Commonwealth of Puerto Rico by its Secretary of Justice and Special Counsel, brings this suit against the defendant, the State of Iowa, and for its cause of action states:

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2 of the Constitution of the United States.

II

The plaintiff, the Commonwealth of Puerto Rico, has sought to extradite a fugitive, one Ronald Calder, from Iowa where he has resided since "jumping bail" in Aguadilla, Puerto Rico in mid-April, 1981.

III

The defendant, the State of Iowa, has denied and continues to deny the request for the return of Ronald Calder.

IV

On or about January 25, 1981, in Aguadilla, Puerto Rico, Army Villalba, who was then eight months pregnant, was run over by a car driven by Ronald Calder. Both Mrs. Villalba and the baby died on January 25, 1981. According to several eye-witnesses, including the victim's husband, Antonio DeJesus Gonzalez, Calder purposefully attempted to run down the couple after an argument between Calder and Gonzalez.

V

Some hours after the incident Ronald Calder was brought before Municipal Judge Jose Moreno and charged with homicide. Bail was set at \$5,000.00.

VI

On or about February 4, 1981, after a thorough investigation and in accordance with Puerto Rican Law, the case was submitted by the District Attorney to Judge Benito Diaz-Laureano. After examining the witnesses brought before him, the Court found probable cause to charge Calder with attack to commit murder (Criminal Case G81-90) and first degree murder (Criminal Case G81-91). Bail was set at \$10,000.00 and \$5,000.00 respectively. Upon deposit of \$5,000 cash Mr. Calder was released. On that same day Calder was summoned for a preliminary hearing but failed to appear. Pursuant to Puerto Rican Law, the Court ruled that by his absence Calder had waived his right to a preliminary hearing.

VII

After setting the arraignment for two occasions on which Calder did not appear and upon the request of the district attorney, Calder's bail was increased to \$55,000.

VIII

On or about April 13, 1981, Judge Jose Capella Capella declared Calder a fugitive from justice after a search for the suspect proved unsuccessful.

IX

On or about mid-April 1981, Calder returned to his native state of Iowa. On April 16, 1981, the Puerto Rico police notified the Polk County, Iowa Sheriff's Office by cable that Calder was a fugitive and that extradition papers would follow.

X

On or about April 24, 1981, Calder was arrested by the Des Moines Police Department. He posted the \$20,000 bond set by the magistrate.

XI

On or about May 18, 1981, Carlos Romero Barcelo, Governor of Puerto Rico, made a formal demand on then-Governor Ray of Iowa to deliver Calder to the Puerto Rican authorities. The demand complied in all respects with the requirements of 18 U.S.C. § 3182. Governor Romero Barcelo's warrant and extradition papers contained: 1) a copy of the arrest warrant dated March 4, 1981; 2) fugitive resolution of the Court, dated April 13, 1981; 3) information by the district attorney dated February 27, 1981; 4) two sworn affidavits establishing probable cause; 5) sworn identification of Calder's photograph;

6) verification by Governor Romero Barcelo: that all papers were duly authenticated, that Calder was charged with murder and attempted murder, that a court of Puerto Rico had found probable cause upon a preliminary hearing, and that Calder was then a fugitive from justice.

XII

On or about June 17, 1981, at the request of the fugitive, an extradition hearing was held by Governor Ray's office. The scope of an extradition hearing is limited by statute to whether the extradition request is in the proper form; whether the accused is the person named in the requisition papers; and whether the accused meets the requirements of a fugitive from justice. Neither the form of the papers nor the identity and fugitive states of the accused were disputed by Iowa. Calder himself admitted to being the person sought and to having fled Puerto Rico before arraignment.

XIII

At the June 17 hearing, four witnesses testified on behalf of Calder as follows:

1. William Kutmus, counsel for Calder, admitted that his client was a fugitive and was the man sought by Puerto Rico.
2. Mark Pennington, counsel for Calder, testified concerning his impressions in regard to the state of Puerto Rican justice based on two trips to Puerto Rico in March 1981. Although Mr. Pennington speaks no Spanish, he testified that based on his conversations with the residents of the island, and the media coverage of the event, Calder could not receive a fair trial in Puerto Rico because of anti-American sentiments and because of the judicial system itself.

3. Gene Miller was Calder's companion on the day of the alleged murder. Miller testified to threats of violence to himself and Calder following the incident. He also gave his perceptions about the criminal justice process in Puerto Rico.

4. Ronald Calder testified that he fled Puerto Rico because he feared that he would not receive a fair trial.

Eduardo DeJesus Garcia, special prosecutor for the Puerto Rico Department of Justice, objected at the end of each witnesses' testimony and at the close of Calder's evidence to the form and content of all the evidence presented, as beyond the scope of extradition hearings as provided by the Uniform Criminal Extradition Act, Section 4 (codified at Iowa Code § 820.20 (1978)) and 18 U.S.C. § 3182.

XIV

On or about August 10, 1981, Governors Ray and Romero Barcelo met in Atlantic City, New Jersey, to attempt to resolve the matter. Negotiations continued through the fall of 1981.

XV

On or about December 28, 1981, Governor Ray denied the request for extradition of Ronald Calder expressing his concern that the charge was too severe. This despite Governor Romero Barcelo's assurances that plea bargaining would be undertaken as soon as Calder was in Puerto Rican custody and that the charges could be reduced during or after the trial if in fact the evidence failed to substantiate the allegations.

XVI

A renewed request for extradition made to newly-elected Governor Branstad immediately after his inauguration was also denied.

FIRST CAUSE OF ACTION

XVII

The plaintiff realleges, as though set forth in full, the allegations contained in Paragraphs I through XVI.

XVIII

The failure of the Governor of Iowa to extradite Ronald Calder, upon the proper request of the Governor of Puerto Rico, constitutes a breach of a ministerial duty mandated by Article IV, Section 2 of the United States Constitution and 18 U.S.C. § 3182.

SECOND CAUSE OF ACTION

XIX

The plaintiff realleges, as though set forth in full, the allegations contained in Paragraphs I through XVI.

XX

The Governor of Iowa improperly considered extra-Constitutional and extra-statutory matters in denying the request to extradite Ronald Calder, in violation of the Constitutional and statutory rights of Puerto Rico. The scope of an extradition hearing and the bases upon which extradition must be granted are circumscribed by the Constitution and 18 U.S.C. § 3182. Denial of Puerto Rico's demand, premised as it was on the evidence received at the extradition hearing, violated Puerto Rico's rights under Article VI, Section 2 and 18 U.S.C. § 3182.

WHEREFORE, the Plaintiff respectfully prays that this Court:

(a) Issue a writ of mandamus directing the Governor to grant the extradition demand made by Puerto Rico and to deliver up to Puerto Rican authorities, Ronald Calder.

(b) Declare and adjudge, pursuant to 18 U.S.C. § 3182, that insofar as an extradition hearing may inquire only as to the identity of the fugitive, his fugitive status, and the formal requirements of the extradition papers, that the ultimate denial of the extradition request based on the June 17 hearing violates the Article IV, Section 2 and 18 U.S.C. § 3182.

(c) Grant the plaintiff such other further relief as the Court may deem just and proper.

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No. ____ Original

COMMONWEALTH OF PUERTO RICO, *Plaintiff,*

v.

STATE OF IOWA *Defendant.*

**BRIEF IN SUPPORT OF MOTION FOR
LEAVE TO FILE**

Puerto Rico has brought this action to effect the extradition of Ronald Calder from the State of Iowa. The original jurisdiction of this Court is invoked pursuant to Article III, Section 2 of the United States Constitution and 28 U.S.C. § 1251(a)(1).

STATEMENT OF THE CASE

On January 25, 1981, in Aguadilla, Puerto Rico, Army Villalba, then eight months pregnant, was killed by a car driven by Ronald Calder. The child she was carrying also died from the impact of Calder's vehicle.

According to the sworn statements of eye witnesses including the victim's husband, Antonio DeJesus Gonzalez, Calder caused these deaths in a deliberate attempt to run down the couple following an altercation with DeJesus Gonzalez. Witnesses' testimony demonstrated that Mr. Calder ran his car over the victim more than one time.

Both Ronald Calder and his companion at the time of the incident, Gene Miller, alleged in their testimony given in a hearing at the office of the Governor of Iowa, that Mrs. Villalba was killed accidentally as the Defendant attempted to flee from the scene of the incident.

Some hours after these occurrences Ronald Calder was brought before Municipal Judge Jose Moreno and accused of homicide. Bail was set at \$5,000.00.

On February 4, 1981, after a thorough investigation in accordance with the Criminal Law of the Commonwealth of Puerto Rico, the case was brought before District Court Judge Benito Diaz Laureano by the Commonwealth. Two lawyers appeared in Calder's defense. After examining the sworn witnesses before him, the Judge found probable cause to accuse Calder with attack to commit murder and first degree murder with bail set at \$10,000.00 and \$5,000.00 respectively. Upon deposit of \$5,000.00 cash Calder was released.

On that same day, after having signed a copy of the notice, Calder was summoned for preliminary hearing under Criminal Rule 23. He did not appear in court on the date of this hearing. In accordance with Puerto Rico Criminal Law, the court held that he had waived his right to a preliminary hearing due to his absence.

After Ronald Calder failed to appear on two separate arraignment dates provided by the court, the district attorney requested an increase in the defendant's bail. In response, the Court, on March 4, 1981, increased Calder's bail to \$55,000.00. On April 13, 1981, Superior Court Judge Jose A. Capella Capella, after an unsuccessful search for Mr. Calder in various locations including his established domicile, declared the defendant a fugitive from justice and set his bail at \$300,000.00.

A formal request for extradition was submitted on May 15, 1981 to then incumbent Governor of Iowa, Hon. Robert D. Ray. Included in the request were the following documents: an arrest warrant; a fugitive resolution; an accusation for first degree murder; an accusation for attempt to commit murder; and three sworn statements of witnesses. Among the affidavits of Ms. Rosa I. Marrero and Mr. Antonio de Jesus Gonzalez, two stated probable cause and one identified a photograph of Mr. Calder to be that of the defendant. In addition, the Puerto Rican Governor's official requisition stated that probable cause to prosecute Ronald Calder had been established by a duly constituted court of justice of the Commonwealth and that Calder was thus a fugitive from justice.

Calder was arrested by the Des Moines, Iowa Police Department on April 24, 1981. He posted the \$200,000.00 bond set by an Iowa Magistrate after his arrest for extradition.

Upon defendant counsel's request, Governor Robert D. Ray ordered that an extradition hearing be held on June 17, 1981. Written Memoranda were filed by the defense attorneys prior to the hearing, establishing the grounds upon which the defense based its claim for executive clemency. The hearing was conducted by the Legal Counsel to Governor Ray.

The dispute herein lies essentially in the Iowan Governor's consideration of testimony presented at this extradition hearing. At the hearing it was firmly established that Calder unquestionably met the statutory requirements of extradition. The request for extradition was in proper form and Calder admitted that he was the fugitive sought by Puerto Rican authorities. Nevertheless, testimony was admitted on Calder's behalf as to why he should not be returned to Puerto Rico for trial. The

Puerto Rican Special Prosecutor and District Attorney, both present, objected to this evidence as contrary to section 424-4.4 of the Iowa Administrative Code. This section establishes the scope of the Extradition Hearing. In addition, objections were made to the speculative nature of the testimony.

In response, the defendant offered two contentions. First, the defense argued that Calder's life would be in danger if he were forced to return to Puerto Rico. Second, it was alleged that Calder could not receive a fair trial in the Commonwealth. With respect to the first allegation, Calder and Miller both asserted that their lives and those of their families had been threatened by persons seeking revenge for Mrs. Villalba's death. Hearsay testimony was presented in support of the second contention alleging that it was a common practice in Puerto Rico to bribe witnesses and that such unlawful activity had already occurred in the instant case. It was also alleged that Aguadilla was a known stronghold of anti-American groups favoring the independence of Puerto Rico.

At the conclusion of the hearing, instructions were issued to both parties regarding the filing of legal briefs. Defense counsel was ordered to submit legal reasons within seven (7) days as to why Governor Ray should consider the testimony presented at the hearing. Puerto Rican officials were in turn granted seven (7) days from the date of receipt of the defendant's brief to reply. Two days later the instructions were modified to require the parties to file briefs simultaneously within 15 days. The brief of defense counsel did not focus on the issue of admissability of the testimony as requested by the Governor's Legal Counsel.

On March 18, 1983, in response to the Puerto Rican Attorney General's Office request for a duplicate of the

extradition hearing tapes, the Iowan Governor's Legal Counsel in charge of the Calder hearing informed the plaintiff that the second tape, which contained most of the legal arguments and objections relating to the admission of the testimony given by Ronald Calder and Gene Miller, had been destroyed in the duplicating process. The first tape was sent to Puerto Rico.

Over the next several months, Governor Ray, both in person in Atlantic City, New Jersey, and by correspondence, attempted to arrange a plea bargain for Calder through Puerto Rican Governor Romero Barcelo. After Governor Ray found that such an arrangement was not possible under the Criminal Law of Puerto Rico, unless and until Mr. Calder was returned to the Commonwealth, he officially denied the extradition request on December 28, 1981.

I. Bases Of Jurisdiction

- A. The term "state" as included in Article III, Section 2 and 28 U.S.C. § 1251(a) applies to the Commonwealth of Puerto Rico in a juridical controversy between Iowa and the Commonwealth.**

The second clause of Article III, Section 2, which divides the federal judicial power between the original and appellate jurisdictions of the Supreme Court, clearly provides for original jurisdiction in disputes between states. Moreover, 28 U.S.C. § 1251(a) specifies that the Court's original jurisdiction over such suit shall also be exclusive. Puerto Rico, although actually a territorial commonwealth under the federal constitution and not admitted to the Union, has the status of a state for purposes of this jurisdictional language.

The original jurisdiction of the Supreme Court was intended to provide states with an impartial forum in

which to sue another state or citizens of another state and thereby protect the plaintiff state from forced submission to the local courts of its adversaries. 17 Wright and Miller § 4053 at 185. Consistent with this purpose then, Article III, Section 2 accommodates a suit by Puerto Rico against Iowa insofar as the sovereignty of Puerto Rico, a commonwealth fully subject to the federal Constitution, deserves the same protection as any one of the several states.

Further support for exclusive original jurisdiction over the pending controversy can be gleaned from analogous cases. In *Comacho v. Public Service Commission*, 450 F.Supp. 231, 232 (D.P.R. 1978), the court held that Puerto Rico enjoys the sovereign immunity accorded to States of the Union. See also *Ursulich v. Puerto Rico National Guard*, 384 F. Supp. 736, 739 (D.P.R. 1974) ("Puerto Rico has full power of local determination and possesses many of the attributes of sovereignty possessed by states including immunity of suit."); and *In re Northern Transatlantic Carriers Corp.*, 300 F.Supp. 866 (D.P.R. 1969). In *Calero-Toledo v. Pearson Yacht Leasing Co.*, this Court quoted with approval an earlier First Circuit decision: "Puerto Rico has not become a State in the Federal Union like the 48 states, but it would seem to have become a State within the common and accepted meaning of the word." 416 U.S. 663, 672 (1974), quoting, *Mora v. Mejias*, 206 F.2d 377 (1st Cir. 1953).

Last term, this Court had occasion to consider the status of Puerto Rico in another context. *Alfred L. Snapp & Son v. Puerto Rico*, ____ U.S. ____, 102 S.Ct. 3260 (1982), raised the issue of whether Puerto Rico had standing to maintain a *parens patriae* action despite the fact that only a small number of Puerto Ricans were directly affected by the contested conduct. The Court held that in

order to maintain a *parens patriae* action, a State must express a "quasi-sovereign" interest. No discussion of Puerto Rico's status ensued. Any doubt regarding Puerto Rico's equal footing as a state was dismissed with a footnote. The Court wrote: "Although we have spoken throughout of a state's standing as *parens patriae*, we agreed with the lower courts and the parties that the Commonwealth of Puerto Rico is similarly situated to a state in this respect: It has a claim to represent its quasi-sovereign interests in federal court at least as strong as that of any state." 102 S.Ct. at 3269 n.15.

The foregoing decisions imply that insofar as Puerto Rico enjoys the sovereignty and quasi-sovereignty of the 50 states, it likewise shares the jurisdictional status of a state as a sovereign under Article III, Section 2 of the Constitution.

In *Kentucky v. Dennison*, 66 U.S. (24 How.) 65 (1861), the Court specifically held that a dispute between states arising under the Extradition Clause was a proper case for disposition within the Court's original jurisdiction. The Supreme Court has established that Puerto Rico enjoys the same extradition rights as the states, *Kopel v. Bingham*, 211 U.S. 463 (1909). Therefore, in disputes arising from the infringement of those rights, the Commonwealth of Puerto Rico should have the status of a state for jurisdictional purposes.

Several other analogies can be drawn to support extending Section 1251(a) jurisdiction to a suit between Puerto Rico and a state. Puerto Rico is considered a "state" for purposes of federal diversity jurisdiction in the district courts. 28 U.S.C. § 1332. Similarly, statutes of Puerto Rico were held to qualify as state statutes for purposes of the now abrogated three-judge court provision which applied to suits enjoining the enforcement of

state statutes. *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974). Furthermore, it is expressly provided in 28 U.S.C. § 1258 that “[f]inal judgment or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by this Court by appeal, or by writ of *certiorari* in situations where that route is available for review of the judgments of the highest courts of states.” See *Fornaris v. Ridge Tool Co.*, 400 U.S. 41, 42 n.1 (1968).

In *Cordova and Simonpietri Insurance Agency, Inc. v. Chase Manhattan Bank, N.A.*, 649 F.2d 36 (1st Cir. 1981), the court decided that once Puerto Rico’s status was changed from a territory to a Commonwealth by the Puerto Rican Federal Relations Act, Puerto Rico was to be treated as a state and not a territory under the Sherman Antitrust Act, 15 U.S.C. § 1-3 (1976). The United States Court of Appeals for the First Circuit stated:

As the Supreme Court has written, “the purpose of Congress in the 1950 and 1952 legislation was to accord to Puerto Rico the degree of autonomy and independence normally associated with a state of the Union. . . .”

649 F.2d at 41 quoting *Examining Board of Engineers, Architects and Surveyors v. Flores de Otero*, 426 U.S. 572, 594 (1976). Thus the pertinent cases dealing with the jurisdictional status of Puerto Rico dictate a reading of Section 1251(a) to include a suit by Puerto Rico against a state to enforce its constitutional right to extradition.

B. Concurrent original jurisdiction lies in this Court based on the existence of a federal question and the presence of the State of Iowa as a party.

Should the Court determine that Puerto Rico is not considered a state for purposes of exclusive original jurisdiction over a dispute between two or more states,

original jurisdiction is invoked, alternatively, based on the presence of the State of Iowa as a party. Article III, Section 2, Clause 2 provides that the Court shall have original jurisdiction “[i]n all cases . . . in which a state shall be a party.” This Court has original concurrent jurisdiction of all cases otherwise within the federal judicial power which are brought by or against a state. *United States v. Texas*, 143 U.S. 621 (1892). Thus, jurisdiction in this instance properly rests on the existence of a federal question, *i.e.*, the scope and enforceability of a demanding state’s rights under 18 U.S.C. § 3182 and Article IV Section 2, in addition to the presence of the State of Iowa as a defendant.

This Court has ruled, however, that it may decline to entertain a suit which properly falls within its original concurrent jurisdiction. In *Illinois v. City of Milwaukee*, 406 U.S. 91 (1972), the Court acknowledged an obligation to honor its original jurisdiction “only in appropriate cases.” 406 U.S. at 93. The Court explained that the question of what is appropriate concerns “the seriousness and dignity of the claim” as well as “the availability of another forum where there is jurisdiction over the named parties, where the issue tendered may be litigated and where appropriate relief may be had.” 406 U.S. at 93.

The seriousness and dignity of the claim cannot be overstated in the present case. The issues involve the right of a sovereign under the federal Constitution to enforce its criminal laws and to bring alleged offenders to trial. The gravity of this particular matter was sufficient in the minds of the Framers to make provision in the Constitution itself for mandatory interstate extradition.

The lack of any other suitable forum should also urge this Court to exercise its jurisdiction. Concurrent jurisdiction of state and federal district courts

notwithstanding, the matters at issue could not be fairly litigated in any alternative forum. The entire purpose of Article III, Section 2 would be thwarted if Puerto Rico were forced to litigate extradition matters in the courts of the adversary state.

II. Insofar As The Duties Of The Asylum State Executive Are Mandatory And Ministerial, Mandamus Lies To Compel Him To Extradite The Fugitive, Where The Demand For Extratition Complies With The Statutory Requirements.

The writ of mandamus may properly issue to compel an executive officer to perform plainly imperative duties of a ministerial character. *Pattillo v. Schlesinger*, 625 F.2d 262 (9th Cir. 1980). This Court has consistently held that the duty of the governor of the asylum state to extradite upon a proper demand is purely ministerial. *Kentucky v. Dennison*, 65 U.S. (24 How.) 66 (1861). *Michigan v. Doran*, 439 U.S. 282 (1978).

Both the language of the Constitution and of section 3182 specifically impose the duty to respond to an extradition demand on the governor of the asylum state. The statute provides that the governor of a state having jurisdiction over the crime has a right to demand rendition from the governor of the state to which the fugitive has fled. Along with his demand he must produce "a copy of an indictment found or an affidavit made before a magistrate . . . charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor . . . of the State or Territory from whence the person so charged has fled." Whenever these prerequisites are fulfilled, the governor of the asylum state "*shall* cause him [the fugitive] to be arrested and secured . . . and *shall* cause the fugitive to be delivered" to an agent of the demanding jurisdiction. 18 U.S.C. § 3182 (1978) (emphasis added).

The ministerial nature of the extraditing governor's task has been repeatedly stated. His duty is merely to review the extradition request to determine whether the person demanded has been substantially charged with a crime and whether he is a fugitive from justice. *Munsey v. Clough*, 196 U.S. 364 (1905). If indeed, the extradition papers conform to the statutory standard, the governor of the asylum state has a mandatory obligation to grant the request and deliver up the fugitive.

In the present case, the Governor of Iowa found that the extradition papers were in order, that Ronald Calder had been substantially charged with a felony, and that he was a fugitive from justice. Under these circumstances, the Governor of Iowa had no choice but to extradite Calder immediately. In *Kentucky v. Dennison* the Court wrote that the asylum state executive officer "has no right to look beyond [the extradition papers] or to question them, or to look into the character of the crime specified in this judicial proceeding. The duty which he is to perform is, as we have already said, merely ministerial." 65 U.S. at 106. More recently a lower federal court explained: "Upon receiving a properly documented request for extradition from a sister state, and determining only that the accused is a fugitive from justice, officials in the asylum state are *required* to extradite . . . In short, they have no duty to exercise independent judgment in assessing the substantive offense with which a defendant is charged." *Halloway v. Carey*, 482 F.Supp. 551, 554 (S.D.N.Y. 1979). (emphasis added). In *New Jersey v. Sincore*, 376 A.2d 580 (N.J. Super. 1977), a state court commented that "it is precisely because no discretion is permitted that the accused is entitled to challenge the validity of the [extradition] actions by means of the writ of *habeas corpus*." 376 A.2d at 584.

Despite the uncontradicted case law that a Governor's duty to extradite is purely ministerial, courts have declined to mandamus a governor to grant an extradition demand. This Court set the initial precedent in the case of *Kentucky v. Dennison*, *supra*. Justice Taney, writing for the Court, reasoned that while the duty was ministerial and the constitutional language mandatory, the obligation on the asylum governor was a "moral" one which could not be enforced by the judicial process. This conclusion rests on facts which were idiosyncratic to the *Dennison* case and on historical circumstances which do not exist today.

In *Dennison*, the fugitive sought by the State of Kentucky had been indicted for assisting a slave in making an escape. The governor of Ohio refused to extradite on the grounds that the offense charged was not a crime in Ohio. While Justice Taney acknowledged that the offense charged need not constitute crime in the asylum state, the disinclination of the Court to become embroiled in the dispute between Northern and Southern states surrounding the fugitive slave laws likely influenced the refusal to issue the writ. In addition, the *Dennison* Court emphasized the independence of the states from one another and from the federal government: "[T]he states of this Union, although united as one nation for certain specified purposes, are yet, so far as concerns their internal government, separate sovereignties, independent of one another." 65 U.S. at 98. The Court also stressed the relative impotence of the federal government. "It is true that Congress may authorize a particular state officer to perform a particular duty; but if he declines to do so, it does not follow that he may be coerced or punished for his refusal." 65 U.S. at 108.

The rigid federalism espoused and protected by the *Dennison* Court is far removed from the present reality. Federal authority to compel constitutional compliance or punish non-compliance by state officials is illustrated in its pristine form by 42 U.S.C. § 1983 (1976). Moreover, federal courts have not hesitated to compel state officials to perform constitutional duties by means of desegregation and busing orders. See e.g., *Brown v. Board of Education*, 349 U.S. 294 (1955); *Green v. County School Board*, 391 U.S. 430 (1968).

No reason remains for continued allegiance to the *Dennison* rationale. The Constitution establishes a mandatory obligation on the part of the executive of the asylum state. If this obligation is only a "moral" obligation and hence unenforceable by judicial process, then it is not mandatory. Preclusion of judicial enforcement renders the mandatory language of the Constitution superfluous.

The Court, therefore, should overturn this aspect of *Kentucky v. Dennison* and issue a writ of mandamus directing the Governor of Iowa to secure and deliver up to the Puerto Rican authorities, Ronald Calder.

III. Insofar As Iowa Has Denied An Extradition Request On Nonconstitutional Grounds, A Judgment Should Issue Declaring That Iowa Has Acted In Derogation Of Article IV, Section 2, 18 U.S.C. § 3182, And The Rights Of Puerto Rico Secured Thereby.

Interstate extradition of criminals is essentially a matter of federal law. *Michigan v. Doran*, 439 U.S. 282, 289 (1978); *DeGenna v. Grasso*, 413 F.Supp. 427 (D. Conn.) *aff'd sub nom. Carino v. Grasso*, 426 U.S. 913 (1976). Article IV, Section 2 confers on the federal government the authority to regulate interstate extradition. Pursuant to this authority Congress enacted 18 U.S.C. § 3182 prescribing the standards and requisites for extradition

to be observed by the demanding and the asylum states. These federal provisions are dominant and controlling. They do not purport to occupy the entire field, however, and state enactments such as the Uniform Criminal Extradition Act are valid as long as they operate within the confines of the federal standards. (*See e.g.*, Iowa Admin. Code Ann. § 820 et seq. (1979)).

In its seminal pronouncement on the subject of extradition the Supreme Court made clear that the regulations necessary to carry the extradition clause into execution were to be enacted by Congress in order to ensure fair and uniform application of the provision to all the states. *Kentucky v. Dennison*, 65 U.S. at 104. The *Dennison* Court noted that "if it was left to the States, each State might require different proof to authenticate the judicial proceeding upon which the demand was founded." 65 U.S. at 104. Thus, the standards announced in section 3182 are uniformly binding on all the states and it becomes the duty of the asylum state to deliver a fugitive when the statutory requirements are met. *Grano v. Delaware*, 257 A.2d 768 (Del. Super. 1969).

Section 3182 requires that the governor of the demanding state produce specific documentation and authentication of the indictment or affidavit supporting the charge. Once the demanding state submits these specified papers, the asylum state executive is limited to consideration of two issues: 1) whether the person demanded has been substantially charged with a crime against the laws of the demanding state; and 2) whether he is a fugitive from justice. *Munsey v. Clough*, 196 U.S. 364, 372 (1905).

The imperative duty of the asylum state to deliver a fugitive when the statutory requirements have been met is not a matter of mere comity, but an absolute right of the demanding state under the federal Constitution. *In re*

Russell, 524 P.2d 1295 (Cal. 1974). An asylum state cannot, in derogation of the rights of the demanding state, impose more stringent requirements than the federal statutory standards or refuse extradition on grounds not articulated in section 3182. *DeGenna v. Grasso*, 413 F.Supp. 427 (D. Conn.), *aff'd, sub nom., Carino v. Grasso*, 426 U.S. 913 (1976); *Walden v. Mosley*, 312 F.Supp. 855 (S.D. Miss. 1970).

In *Michigan v. Doran*, 439 U.S. 282 (1978), for example, this Court reversed a decision of the Michigan Supreme Court which held that an asylum state must conduct a probable cause inquiry before extraditing an apprehended fugitive. The *Doran* Court rejected this extra-statutory burden on the rights of the demanding state. "To allow plenary review in the asylum state of issues that can be fully litigated in the charging state would defeat the plain purpose of the summary and mandatory procedures authorized by Article IV, Section 2." 439 U.S. at 290. Thus the judiciary has a duty to see that the purpose of Article IV, Section 2 is not frustrated by the asylum state's requiring more of a demanding state for rendition of a fugitive than is required by section 3182. *Grano v. Anderson*, 318 F.Supp. 263 (D. Del. 1970), *aff'd*, 446 F.2d 272 (3rd Cir. 1971).

In the present case, Iowa officials denied the request to extradite Calder on grounds beyond the scope of section 3182. Governor Ray denied the demand because of his concerns that the charge of first-degree murder was too severe and that Calder would not receive a fair trial in Puerto Rico. These are not proper matters to be considered in an extradition proceeding, nor are they valid statutory grounds for denial of a rendition demand. This Court has explicitly stated that "the proceedings of the demanding state are clothed with the traditional

presumption of regularity." *Michigan v. Doran*, 439 U.S. at 290. In *Garrison v. Smith*, the district court held that it is not for the asylum state to inquire into the constitutionality of a sister state's criminal justice system. The constitutional rights of the accused are safeguarded by the courts of the demanding jurisdiction. 413 F.Supp. 747 (N.D. Miss. 1976).

Similarly in *Johnson v. Matthews*, 182 F.2d 677 (D.C. Cir. 1950) the court considered whether a court in the asylum state, on application for writ of *habeas corpus*, could determine the constitutional validity of the penal process by the demanding state in regard to the fugitive. The fugitive himself offered evidence that the Georgia penal system would afford him neither humane treatment nor a fair trial. The Court of Appeals wrote:

[A]ppellant has a right to test in a federal court the constitutional validity of his treatment by the Georgia authorities. But that test cannot come as part of the constitutional process of returning a fugitive to the state where he is charged. If the fugitive's constitutional rights are being violated in Georgia, he can and should protect them in Georgia. 182 F.2d at 680.

The rights of the accused are properly guarded, not by the Governor of the asylum state, but by writ of *habeas corpus*. If the Governor issues a warrant erroneously, without a basis for finding that the person demanded is a fugitive from justice, *habeas corpus* is the proper remedy. *DeGenna v. Grasso*, 413 F.Supp. 427 (D. Conn.), *aff'd. sub nom.*, *Carino v. Grasso*, 426 U.S. 913 (1976). Matters such as the constitutionality of the demanding state's procedure or the regularity of the process against the fugitive can be raised only after extradition by application for *habeas corpus*. See *Marbles v. Creecy*, 215 U.S. 63 (1909).

The State of Iowa was required to make a determination regarding extradition of Calder within the confines of the Extradition Clause and its statutory implementation. Thus, if the Court declines to mandamus Governor Branstad to grant Puerto Rico's demand for Ronald Calder, a declaratory judgment should issue that Iowa must abide by the mandate of the Constitution and statute. *Powell v. McCormack*, 395 U.S. 486 (1969), raised the sensitive issue whether the House of Representatives had exceeded its power to judge the qualifications of its members when it refused to seat, on grounds not specified in the Constitution, Congressman-elect Adam Clayton Powell. It was argued that the case was non-justiciable because it was impossible for the Court to give effective relief, insofar as courts cannot issue mandamus or injunctions compelling the Speaker of the House or the Sergeant-at-Arms to perform official acts. The Supreme Court held that declaratory relief could be given independently of whether other forms of relief were appropriate.

The Court reasoned that the House, although the sole judge of its respective members' qualifications, was confined in making its judgments to the qualifications established in express terms by the Constitution. Ultimately, the Court entered a declaratory judgment that the House was without power to exclude a Congressman-elect on non-constitutional grounds.

The present controversy is likewise susceptible to declaratory adjudication. It is the duty of the states to administer extradition requests in accord with the construction placed on the controlling federal constitutional and statutory provisions by the Supreme Court. The State of Iowa has denied a valid extradition demand based on grounds not countenanced by Article IV, Sec-

tion 2 and section 3182. Thus, a declaratory judgment should issue finding that Iowa lacked authority to refuse extradition on non-constitutional grounds and in so doing violated the rights of Puerto Rico guaranteed by Article IV, Section 2.

CONCLUSION

For the reasons stated herein the Commonwealth of Puerto Rico respectfully requests the Court to grant it leave to file the attached Bill of Complaint.

Respectfully submitted,

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