No. 06-715

In the Supreme Court of the United States

MAN-SEOK CHOE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the requirement that petitioner demonstrate "special circumstances" to obtain bail while awaiting an extradition determination, *Wright* v. *Henkel*, 190 U.S. 40 (1903), violated the Due Process Clause.

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OPINIONS BELOW

The orders of the court of appeals denying petitioner's motion for bail pending extradition proceedings (Pet. App. 44a) and denying reconsideration (Pet. App. 45a) are unreported. The magistrate judge's order denying petitioner's request for bail (Pet. App. 38a-42a) and the district court's denial of review and reconsideration of that order (Pet. App. 42a) are also unreported.

JURISDICTION

The court of appeals' order denying petitioner's motion for bail pending extradition proceedings was entered on June 13, 2006, and its order denying petitioner's motion for reconsideration or rehearing was entered on August 7, 2006. On November 3, 2006, Justice Kennedy extended the time within which to file a

petition for a writ of certiorari to and including November 20, 2006, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner was arrested based on an extradition arrest warrant issued by a magistrate judge sitting in the Central District of California, pursuant to 18 U.S.C. 3184, which stated that he was the subject of an extradition request made by the Republic of South Korea. Pet. App. 38a. The magistrate judge ordered petitioner detained without bond and denied his motion for review and reconsideration of that detention order. *Id.* at 38a-39a. The district court denied review of the magistrate judge's detention order. *Id.* at 43a. The court of appeals denied his emergency motion for bail, as well as his motion for reconsideration. *Id.* at 44a-45a.

1. Petitioner is a citizen of South Korea with lawful permanent resident status in the United States. In September 2005, the Republic of South Korea submitted a formal request to the United States Secretary of State for the extradition of petitioner. The South Korean government accused petitioner of illegal influence through bribery, bribing investigating officials, and unlawful flight from the Republic. Formal Extradition Papers and Request for Extradition 75-79 (FEP).

According to the South Korean extradition request, in 1993, petitioner and a co-conspirator bribed at least one prominent figure of the Korean government to have the Korea High Speed Rail Authority select Alsthom Company of France to supply high-speed trains for a rapid transit railway. FEP 75-76. As a result of petitioner's efforts, Alsthom was awarded the contract.

Alsthom subsequently transferred $11,292,803 to petitioner. *Id.* at 76-77. Petitioner, in turn, transferred some of those funds to his co-conspirator, as well as the family members of the government official that petitioner had bribed. *Ibid.*

After the Foreign Affairs Department of the Korean Police launched an investigation into petitioner's receipt of more than $11 million, petitioner and his co-conspirator bribed a police official who, after minimal investigation, closed the case. FEP 77-78. The Central Investigation Department at the Supreme Prosecutor's Office of the Republic of Korea then launched an investigation and obtained a departure prohibition on petitioner. As a result, petitioner was stopped at the airport while attempting to flee overseas. *Id.* at 71, 78-79. Although his Korean passport was confiscated, petitioner smuggled himself out of the Republic of Korea in 1999 without any valid travel documents. *Id.* at 79.

2. In January 2006, the government initiated extradition proceedings against petitioner, pursuant to 18 U.S.C. 3184, at the request of the Republic of South Korea. Pet. App. 38a. On February 15, 2006, petitioner was arrested, and the magistrate judge ordered petitioner detained without bond. *Id.* at 38a-42a. The magistrate judge explained that "[i]t is well settled that in extradition proceedings, there is a presumption against bail and that bail will be granted only upon a showing of 'special circumstances.'" *Id.* at 39a (quoting *Wright* v. *Henkel*, 190 U.S. 40, 63 (1903)). Such a presumption is warranted, the magistrate judge reasoned, because of "[t]he national interest in complying with treaties." *Id.* at 39a n.2. While the magistrate judge agreed with petitioner that he "poses no real danger to the community," *id.* at 40a, and that "the risk of flight could be amelio-

rated by * * * the imposition of * * * conditions of bond," *id.* at 41a, the magistrate judge held that petitioner had not demonstrated any special circumstances warranting bail. In particular, petitioner had failed to demonstrate a "high probability that he would prevail on the merits," or that he had any health condition that warranted release. *Ibid.* Finally, the magistrate judge rejected petitioner's due process challenge as "unsupported by either statute or case law." Pet. App. 39a n.2.

Petitioner filed an application for review of the magistrate judge's detention order and a petition for a writ of habeas corpus. The district court denied relief in a summary order. Pet. App. 43a. Invoking 28 U.S.C. 1291 and 2253(a), petitioner filed an emergency motion in the Ninth Circuit for bail pending appeal. The court of appeals denied the motion "without prejudice to renewal should [petitioner] experience a serious deterioration of health and if the district court denies [petitioner's] renewed motion for bail." Pet. App. 44a.

ARGUMENT

Petitioner seeks (Pet. 8-18) this Court's review of the requirement that he demonstrate "special circumstances" to obtain bail pending his extradition proceedings. That claim does not merit further review.

1. The procedural posture of this case has materially changed in a way that moots the question decided below. The bail decision for which petitioner seeks this Court's review was made before he had been found to be extraditable. Pet. App. 39a. On October 10, 2006—almost four months after the court of appeals' order denying bail, *id.* at 44a—the magistrate judge ruled that petitioner was extraditable as charged, certified its findings to the Secretary of State, and issued a new custody rul-

ing directing that petitioner "remain in such custody until he is surrendered to the Republic of Korea, or until further order of the Secretary of State." App., *infra*, 27a.[1]

The decision finding petitioner to be extraditable moots the only question decided below, which was whether petitioner should have been released on bail pending the extradition decision. Furthermore, issuance of that decision alters the legal analysis. The plain language of 18 U.S.C. 3184 mandates that, once a fugitive has been found to be extraditable, the magistrate judge "shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made." See *Lopez-Smith* v. *Hood*, 121 F.3d 1322, 1326 (9th Cir. 1997) (noting that, after finding of extraditability, the magistrate judge has no discretion not to commit the charged individual). Accordingly, any decision concerning bail at this juncture and any review of petitioner's constitutional argument would have to factor in (i) the statutory command of detention, (ii) the heightened international relations implications of release after a finding of extraditability has been made and the case transferred to the Secretary of State, and (iii) the increased risk of flight after the individual's challenges to extradition have been rejected. No decision below considered those questions. They addressed only the now-moot question of whether release prior to a finding of extraditability would be appropriate.

2. Even setting aside the substantially altered character of the case in light of intervening developments,

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[1] A copy of the decision granting the request for extradition is attached to this brief. App., *infra*, 1a-27a.

the question presented does not warrant this Court's review. The requirement that a fugitive demonstrate special circumstances to obtain bail is consistent with and, indeed, directed by this Court's precedent. More than a century ago, this Court established a presumption against bail in extradition cases. *Wright*, 190 U.S. at 63. The Court noted that the extradition statute itself did not authorize bail, and that the unique character of extradition proceedings for international fugitives required a presumption against such release:

> The demanding government, when it has done all that the treaty and the law require it to do, is entitled to the delivery of the accused on the issue of the proper warrant, and the other government is under obligation to make the surrender; an obligation which it might be impossible to fulfil if release on bail were permitted.

Id. at 62. Furthermore, the effort to regain custody of a fugitive who had been sought by a foreign government through the proper treaty channels "would be surrounded with serious embarrassment" in the Nation's foreign relations. *Ibid.* The Court accordingly stated that "bail should not ordinarily be granted in cases of foreign extradition," but it declined to rule out the possibility of bail upon a showing of "special circumstances." *Id.* at 63. The Court reached that conclusion despite Wright's argument "[t]hat the denial of the right to give bail * * * constitutes a deprivation of liberty without due process of law." *Id.* at 43.

The court of appeals' decision to deny petitioner bail adheres to that precedent. Petitioner argues (Pet. 9) that *Wright*'s requirement of "special circumstances" entails nothing more than consideration of "the particu-

lar circumstances or totality of the circumstances present in any given extradition case." But that argument ignores this Court's direction that "bail should not ordinarily be granted in cases of foreign extradition," *Wright*, 190 U.S. at 63, and thus that an exceptional showing is needed to obtain bail. Petitioner made no such showing here.

Indeed, petitioner's "particular circumstances" (Pet. 9) are arguably less compelling than those advanced by Wright, which this Court held did not warrant bail in an extradition case. Wright, unlike petitioner, was a citizen of the United States. *Wright*, 190 U.S. at 40. Wright's health was suffering as a result of the detention, *id.* at 43, while petitioner's claim of a "back problem" was found to be insubstantial, Pet. App. 41a. Nothing in this Court's opinion in *Wright*, moreover, suggested that Wright was any greater flight risk than petitioner or that the government had to prove a risk of flight to justify the detention. See 190 U.S. at 62-63. Despite that record, this Court held that "no error was committed in refusing to admit [Wright] to bail." *Id.* at 63.[2]

3. As petitioner notes, there is no conflict in the circuits on the question presented. To the contrary, the courts of appeals have "uniformly" (Pet. 8) held for decades that extradition defendants must demonstrate special circumstances to obtain bail. See, *e.g.*, *In re Ex-*

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[2] Petitioner's argument (Pet. 10) that this Court was "silen[t]" concerning the need for "special circumstances" is thus incorrect. The Court's holding that Wright's circumstances were insufficient, *Wright*, 190 U.S. at 63, sets at least a threshold that, if not surpassed, cannot constitute "special circumstances." Petitioner, whose circumstances are no more compelling from Wright's (and may be less so), therefore fails to merit bail under *Wright*.

tradition of Kirby, 106 F.3d 855, 858 (9th Cir. 1996) ("[T]he Supreme Court recognized that there is a presumption against bail in an extradition case and only 'special circumstances' will justify bail."); *United States* v. *Kin-Hong*, 83 F.3d 523, 524 (1st Cir. 1996); *Martin* v. *Warden*, 993 F.2d 824, 827 n.4 (11th Cir. 1993) ("[W]e are aware of no decision in which a federal court has departed from the legal requirement that a defendant prove "special circumstances."); *Salerno* v. *United States*, 878 F.2d 317 (9th Cir. 1989) (no bail unless extradition defendant can show special circumstances, even when he poses only a minimal risk of flight); *In re Extradition of Russell*, 805 F.2d 1215, 1216 (5th Cir. 1986) (no bail in extradition proceedings absent special circumstances because, "[u]nlike the situation for domestic crimes, there is no presumption favoring bail. The reverse is rather the case.") (quoting *Beaulieu* v. *Hartigan*, 554 F.2d 1, 2 (1st Cir. 1977) (per curiam)); *United States* v. *Leitner*, 784 F.2d 159, 160-161 (2d Cir. 1986); *In re Extradition of Ghandtchi*, 697 F.2d 1037, 1038 (11th Cir. 1983); *Hu Yau-Leung* v. *Soscia*, 649 F.2d 914, 920 (2d Cir.), cert. denied, 454 U.S. 971 (1981); *United States* v. *Williams*, 611 F.2d 914 (1st Cir. 1979) (per curiam); *Beaulieu*, 554 F.2d at 1-2; *In re Klein*, 46 F.2d 85 (S.D.N.Y. 1930); see also *In re Mitchell*, 171 F. 289, 289 (S.D.N.Y. 1909) (Learned Hand, J.) (in extradition cases, bail should be granted "only in the most pressing circumstances, and when the requirements of justice are absolutely peremptory").

4. Finally, petitioner's argument (Pet. 12-18) that his detention violates due process is without merit. This Court's requirement of "special circumstances" and the uniformity of circuit law applying that standard reflect not only the unique foreign relations and international

law-enforcement imperatives identified by this Court in *Wright*, 190 U.S. at 62, but also the reality that almost every extradition defendant (including petitioner) is, by definition, a fugitive from justice and thus a flight risk. Beyond that inherent risk, the threat of extradition creates unique incentives for flight, due to the fear of criminal prosecution in a foreign justice system that may lack many of the protections for criminal defendants guaranteed by the United States Constitution. In addition, improvident release would entail enormous costs for the United States' own extradition requests and its international relations generally. For those reasons, the Due Process Clause's balance of interests permits the temporary detention of an individual pending extradition proceedings unless special circumstances warrant release. See *United States* v. *Salerno*, 481 U.S. 739, 750-751 (1987) (holding that an individual's "strong interest in liberty" may nevertheless "in circumstances where the government's interest is sufficiently weighty, be subordinated to the greater needs of society").[3]

A magistrate judge's prediction in an individual case that release conditions could "ameliorate[]" the risk of flight (Pet. App. 41a) does not change the constitutional balance. "[T]he risk of the applicant using release on bail as the occasion to escape does not * * * exhaust the

[3] Because the extradition decision made by a magistrate judge is not appealable, see 18 U.S.C. 3184, extradition proceedings themselves generally do not lead to long detentions. Section 3188 of Title 18, moreover, imposes a presumptive two-month time limit on the detention of a person who has been committed for rendition. Because the extradition process is often stayed (by court order or as a matter of Executive Branch discretion) pending the resolution of habeas corpus proceedings initiated by the individual, the habeas process can lengthen the detention. But the decision to prolong proceedings in that manner is the choice of the extradition defendant.

conditions that may warrant denial of bail." *Carbo* v. *United States*, 82 S. Ct. 662, 666 (1962) (Douglas, J., in chambers). Some risk of the individual absconding always remains and the costs of such flight in extradition matters are substantial and irreparable. Flight not only renders the government unable to comply with its treaty obligation in the case at issue, but also could undermine the United States' ability to assure compliance by foreign governments with their reciprocal extradition obligations and to convince other foreign governments to enter into mutual extradition treaties.[4] Indeed, concern about the damage that release could inflict on the national interest is what informed this Court's denial of bail in *Wright*, 109 U.S. at 62, notwithstanding Wright's assertion (echoed by petitioner here) that his detention violated due process, *id.* at 43. This Court repeatedly has upheld against substantive due process challenges detentions that similarly further important governmental purposes. See, *e.g.*, *Salerno*, 481 U.S. at 746-751 (pretrial detention on basis of danger to community under Bail Reform Act of 1984 serves valid regulatory purpose).[5]

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[4] See *Jiminez* v. *Aristiguieta*, 314 F.2d 649, 653 (5th Cir.) ("No amount of money could answer the damage that would be sustained by the United States were the appellant to be released on bond, flee the jurisdiction, and be unavailable for surrender, if so determined."), cert. denied, 373 U.S. 914 (1963); *Klein*, 46 F.2d at 85 (noting the "grave risk of frustrating the efforts of the executive branch of the government to fulfill treaty obligations"); *United States ex rel. McNamara* v. *Henkel*, 46 F.2d 84, 85 (S.D.N.Y. 1912) (presentation of forfeited bail to a foreign nation "is ridiculous, if not insulting").

[5] See also *Kansas* v. *Hendricks*, 521 U.S. 346, 361 (1997) (civil detention of sex offenders who pose a serious threat of recidivism); *Reno* v. *Flores*, 507 U.S. 292, 301-306 (1993) (immigration regulation authorizing release of detained juvenile aliens only to parents, close relatives,

In short, the court of appeals' denial of bail accorded with this Court's decision in *Wright*, the uniform decisions of other courts of appeals, and this Court's due process precedent. Thus, no further review would be warranted, even if the ruling below had not become moot.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 2007

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or legal guardians, absent unusual and compelling circumstances, does not result in detention violating substantive due process); *Schall* v. *Martin*, 467 U.S. 253, 263-274 (1984) (post-arrest detention of juveniles on basis of danger to community serves valid regulatory purpose); *Jones* v. *United States*, 463 U.S. 354, 386-370 (1983) (indefinite detention of insanity acquitees serves valid regulatory purpose of treatment and protection of society from potential danger); *Carlson* v. *Landon*, 342 U.S. 524, 537-542 (1952) (no due process barrier to detention of potentially dangerous resident aliens pending deportation proceedings).

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Case No. CV 06-01544-RGK (MLG)

IN THE MATTER OF THE
EXTRADITION OF MAN SEOK CHOE, A FUGITIVE FROM
THE REPUBLIC OF KOREA

[Filed: Oct. 10, 2006]

MEMORANDUM AND ORDER GRANTING REQUEST FOR EXTRADITION AND COMMITTING FUGITIVE TO CUSTODY

I. Background

Before the Court is a request for extradition brought by the Republic of Korea ("Korea"), the requesting state, against Man Seok Choe ("Choe"). Pursuant to an extradition treaty between the United States and Korea, the United States acts on behalf of Korea in this matter. *See* Extradition Treaty Between The Government of the United States of America and the Government of the Republic of Korea, Dec. 10, 1999, art. 18, 18 U.S.C. § 3181 ("Extradition Treaty" or "Treaty").

On January 3, 2006, a warrant was issued pursuant to 18 U.S.C. § 3184, for the arrest of Man Seok Choe based on a complaint filed by the United States, alleging that Choe was the subject of an extradition request

made by Korea. Case No. 06-M-0001. Pursuant to the warrant, on February 15, 2006, United States Marshals arrested Choe in this judicial district. Choe, a Korean citizen and U.S. resident alien since 1970, is accused by Korea of having committed the following crimes in Korea: (1) Acceptance of a Bribe Through Good Office, in violation of article 3 of the Act on Aggravated Punishment, etc of Specific Crimes; (2) Offering a Bribe to a Public Official, in violation of paragraph I, article 133 of the criminal code; and (3) Stowing Away, in violation of paragraph I, article 3. No formal charges have been filed by Korea.[1]

On February 16, 2006, Choe was brought before United States Magistrate Judge Oswald Parada for an initial appearance. Choe was ordered detained without bond. On March 13, 2006, Korea's formal extradition request for Choe's surrender was filed by the United States and assigned to Untied States District Judge R. Gary Klausner and this United States Magistrate Judge. On April 3, 2006, a supplement warrant of arrest was submitted by Korea and filed by the United States, extending the validity of the previous warrant to February 20, 2007.

On April 4, 2006, Choe filed a motion for review of the order detaining him without bail entered by Judge

[1] In Korea's formal extradition papers, Kwang Soo Oh, Prosecutor of the Central Investigation Department, explains that "it is [the] normal practice of investigation and prosecution in Korea for Prosecutors not to indict a suspect who is on the run," and that an indictment will follow completion of the extradition process. (Formal Extradition Papers at 71).

The Treaty between the US and Korea allows requests for extradition to be supported by either a copy of the warrant or order of arrest, or a copy of the charging document. Treaty, art. 8(3).

Parada. This Court denied that motion on April 10, 2006, and ordered Choe detained pending further proceedings. Choe filed an application for review and reconsideration of the this Court's order by Judge Klausner, and on May 17, 2006, Judge Klausner ordered Choe detained without bail. Choe appealed the detention order to the United States Court of Appeals for the Ninth Circuit, which affirmed the District Court's order on June 16, 2006. Case No. 06-55738.

Choe filed an Opposition ("Opposition") to the request for extradition and the United States filed a Reply ("Govt.'s Reply"). An extradition hearing was held before this Court on August 3, 2006. Assistant United States Attorney Daniel O'Brien appeared on Korea's behalf, and William J. Genego appeared on behalf of Choe. After considering the parties respective papers, evidence, and oral arguments, the matter was taken under submission. For the reasons discussed below, the Court issues this Memorandum and Order granting Korea's request for Choe's extradition.

II. Crimes Alleged[2]

A. Acceptance of a Bribe Through Good Office, in Violation Of Article 3 of the Act on Aggravated Punishment, etc of Specific Crimes

On May 8, 1989, the Korean government announced plans to construct a national rapid transit railway system. (Formal Extradition Papers "FEP" at 71). The Korean government solicited bids for the supply of high-

[2] The facts are taken from the allegations made by Kwang Soo Oh, Prosecutor of the Central Investigation Department at the Supreme Prosecutor's Office in Korea, in support of Korea's formal request for the extradition of Choe.

speed trains, and three companies were in fierce competition for the contract. (Id.). One of those companies was Alsthom Co. of France (Alsthom"). (Id.).

In December 1992, Alsthom CEO Jean Cariou asked Ki Choon Ho (who was then an acquaintance of, but who would later marry Cariou) to assist them in locating someone who could lobby the Korean government on their behalf, and thereby help to ensure that Alsthom would be awarded the rail car contract. (FEP at 75). In February 1993, a fortuneteller with whom Ho had been acquainted introduced her to Choe, who was widely known among political and administrative officials. (Id.).

In early April of 1993, Ho and Choe met with the Chairman of Alsthom at the business room of the Westin Chosun Hotel in Seoul. The Chairman of Alsthom asked Ho and Choe if they would lobby government officials to select Alsthom for the high-speed rail contract. (FEP at 76). Alsthom promised to pay Ho and Choe 1 percent of the total contract price if Alsthom was awarded the contract. (Id.). Choe and Ho accepted Alsthom's offer, and agreed to divide the payment 65 percent / 35 percent, respectively. Later that same month, Choe approached Myung Soo Hwang, Secretary General of the ruling party in Korea and a member of the National Assembly, and asked him to exert his influence on behalf of Alsthom. (FEP at 76). Choe allegedly promised Hwang significant compensation if Alsthom was successful in its bid. (Id.).

According to the prosecutor, as a result of Choe's lobbying Alsthom was selected as supplier for Korea's high-speed rail cars on June 14, 1994. (FEP at 76). Pur-

suant to their agreement, on November 28, 1994 and May 16, 1995, Alsthom transferred approximately $11,292,803 to an account belonging to Choe in Hong Kong. (Id.). On December 10, 1994 and May 19, 1995, Choe remitted a total of $3,952.200 to Ho. (Id.). The prosecutor further alleges that Choe paid Hwang 400 million won in exchange for Hwang exerting his political influence on behalf of Alsthom. (FEP at 73, 95-96).

Under Korean law, Choe's act of accepting a monetary benefit from Alsthom in exchange for lobbying government officials on their behalf, constitutes the crime of acceptance of a bribe through good offices in violation of Article 3. (FEP at 77, 86).

B. Offering a Bribe to a Public Official, in Violation of Paragraph I, Article 133 of the Criminal Code

On June 8, 1995, Hong Kong police became suspicious after discovering the large amount of money deposited into Choe's Hong Kong account by Alsthom. (FEP at 72, 77). Suspecting that the money might be connected with drug trafficking, they alerted Korean officials to Choe's account activity. (Id.). By November 1995, the Korean police has launched an investigation into the transfer of funds. (FEP at 77). Shortly thereafter, Ho was questioned by the police. (FEP at 78).

It is alleged that Ho and Choe conspired to bribe Yoon Ki Jeon, Chief of the Kimpo Airport Police Station, to close the investigation. (FEP at 78). According to the prosecutor, Ho and Choe further agreed that Ho would provide the money for the bribe up front, and Choe would bear half of the expense later. (FEP at 78).

In early December 1995, Sang In Kim introduced Ho to Officer Jeon at his office. (FEP at 78). At that meet-

ing, Ho asked Officer Jeon to exert his influence to close the case without further inquiry. (Id.). Over the next three months, Ho paid Jeon approximately $80,000. (Id.). On March 19, 1996, the investigation was closed without further investigation. (FEP at 84).

Korea claims that Choe's alleged act of conspiring with Ho to bribe a police officer to close the investigation launched against them violates paragraph I, article 133 of the criminal code, which prohibits offering a bribe to a public officer in connection with his official duties. (FEP at 78, 87).

C. Violation of the Stowaway Control Act, Paragraph I, Article 3.

In April 1998, the prosecutor for the Central Investigation Department at the Supreme Prosecutor's Office reopened the investigation of the 1994-95 transfers of funds from Alsthom to Choe, and the transfer of funds from Choe to Ho. (FEP at 72).

On September 28, 1999, a departure prohibition, preventing Choe from leaving Korea, was issued against Choe at the request of the investigating prosecutor. (FEP at 78). On October 2, 1999, Choe, who was unaware of the departure prohibition, was stopped by officials while trying to fly from Korea to Los Angeles, California. (FEP at 79, 85). As a result, Choe's passport was confiscated. (Id.).

Sometime in October 1999, both Choe and Ho were interrogated by an investigating prosecutor. (FEP at 74). On October 29, 1999, Choe appeared at the Central Investigation Department in order to make a statement. (FEP at 79). The departure prohibition had expired, but Choe's passport was never returned. However, some-

time in December 1999, Choe left Korea. (Id.). He eventually made his way back to the United States.

Under Korean law, Choe's act of leaving Korea, when his passport had been confiscated and without undergoing the proper departure procedures, violates paragraph 1, article 3, of the Stowaway Control Act.

III. Discussion

A. Legal Standard

Extradition from the United States is governed by 18 U.S.C. § 3184, which confers jurisdiction on "any justice or judge of the United States" or any authorized magistrate judge to conduct an extradition hearing under the relevant extradition treaty between the United States and the requesting nation.[3] The purpose of the extradi-

[3] 18 U.S.C. § 3184 provides that:

> Whenever there is a treaty or convention for extradition between the United States and any foreign government, or in cases arising under section 3181(b) , any justice or judge of the United States, or any magistrate judge authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any state, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, or provided for under section 3181(b), issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or magistrate judge, to the end that the evidence of criminality may be heard and considered. Such complaint may be filed before and such a warrant may be issued by a judge or magistrate judge of the United States District Court for the District of Columbia if the whereabouts within the United States of the person charged are not known or, if there is reason to believe the person will shortly enter the United States. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions

tion hearing is to determine whether a person arrested pursuant to a complaint in the United States on behalf of a foreign government is subject to surrender to the requesting country under the terms of the pertinent treaty and relevant law. *See* 18 U.S.C. § 3184. In order to surrender the person to the requesting country, the Court must determine that each of the following requirements have been met: (1) the extradition magistrate has jurisdiction to conduct the extradition proceedings; (2) the extradition magistrate has jurisdiction over the fugitive; (3) an extradition treaty is in full force and effect; (4) the crime is extraditable (the dual criminality requirement); (5) there is probable cause to believe that the individual appearing before the magistrate judge has committed the crimes alleged by the requesting nation (the probable cause requirement); and (6) there are no applicable treaty provisions which bar the extradition for any of the charged offenses. *See Barapind v. Reno*, 225 F.3d 1100, 1105 (9th Cir. 2000); *Cornejo-Barreto v. Seifert*, 218 F.3d 1004, 1009-10 (9th Cir. 2000); *Quinn v. Robinson*, 783 F.2d 776, 783, 790 (9th Cir. 1986); *Zanazanian v. U.S.* 729 F.2d 624, 626 (9th Cir. 1984).

If these requirements are met, the extradition magistrate must certify the individual as extraditable to the Secretary of State and issue a warrant to commitment. *Blaxland v. Commonwealth Dir. Of Pub. Prosecutions*,

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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, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

323 F.3d 1198, 1208 (9th Cir. 2003). Once such a certification has been made, "it is the Secretary of State, representing the executive branch, who determines whether to surrender the fugitive." *Blaxland*, 323 F.3d at 1208; 18 U.S.C. § 3184. Extradition is a matter of foreign policy entirely within the discretion of the executive branch, and "the executive branch's ultimate decision on extradition may be based on a variety of grounds, ranging from individual circumstances, to foreign policy concerns, to political exigencies." *Blaxland*, 323 F.3d at 1208. Thus, the authority of the extradition magistrate is limited to the judicial determination required by section 3184.

United States citizenship does not bar extradition by the United States. *See* Treaty, art. 3(1) ("Neither [c]ontracting [s]tate shall be bound to extradite its own nationals, but the [r]equested [s]tate shall have the power to extradite such person if, in its discretion, it be deemed proper to do so"); *Charlton v. Kelly*, 229 U.S. 447, 467-8 (1913); *Quinn*, 783 F.2d at 782.

B. The Judicial Officer is Authorized to Conduct the Extradition Proceedings

Pursuant to section 3184 and General Order No. 01-13,[4] this Court has jurisdiction to preside over the extradition of Choe. This issue was not challenged by Choe.

C. The Court Has Jurisdiction Over the Fugitive

Pursuant to section 3184, this court has jurisdiction over Choe, who is "found within [this] judicial district,"

[4] United States District Court for the Central District of California General Order No. 01-13 authorizes this Court's magistrate judges to preside over "[e]xtradition proceedings pursuant to 18 U.S.C. 3181 *et seq*."

because he was arrested, and is presently detained, in the Central District of California. This issue was not challenged by Choe.

D. There is an Applicable Treaty in Full Force and Effect

The parties do not dispute, and this Court expressly finds, an extradition treaty between the United States and Korea is in full force and effect. *See* 18 U.S.C. § 3181 (Historical and Statutory Notes). The Treaty applies to offenses committed before and after the date it entered into force. Treaty, art. 20.

E. Extraditable Offense—The Dual Criminality Requirement

"[U]nder the doctrine of 'dual criminality,' an accused person can be extradited only if the conduct complained of is considered criminal by the jurisprudence or under the laws of both the requesting and requested nations." *Quinn*, 783 F.2d at 786-87. The dual criminality principle is explicitly incorporated into Article 2 of the Extradition Treaty, which provides that: "[a]n offense shall be an extraditable offense if, at the time of the request, it is punishable under the laws in both the Contracting States by deprivation of liberty for a period of more than one year, or by a more severe penalty." Treaty, art. 2(1).

The principle of dual criminality does not require that the name by which the crimes are described in the requesting and the requested states be the same, nor does it require that the scope of criminal liability be coextensive. *Collins v. Loisel*, 259 U.S. 309, 312 (1922). "It is enough if the particular act charged is criminal in both jurisdictions." *Id*. at 312. In determining whether

the act charged is criminal in both jurisdictions, the "totality of the conduct alleged" must be taken into account. Treaty, art. 2 (3). Moreover, an offense is extraditable whether or not the laws in the contracting states "place the offense within the same category of offense or describe the offense by the same terminology," and whether or not the constituent elements differ under the laws of the contracting states, provided "that the offenses under the laws of both states are substantially analogous." Treaty, art. 2(3)(b)(c); *see also U.S. v. Khan*, 993 F.2d 1368, 1372 (9th Cir. 1993) ("Many cases have held that dual criminality is satisfied even though the names of the crimes and the required elements were different in the two countries"); *Emami v. U.S. D.*, 834 F.2d 1444, 1450 (9th Cir. 1987) (required elements may be different in the requesting and requested nations as long as "substantive conduct each statute punishes is functionally identical"); *Cucuzzella v. Keliikoa*, 638 F.2d 105, 108 (9th Cir. 1981) ("The crimes need not be identical").

1. <u>Acceptance of Bribe Through Good Offices</u>

Choe contends that the act constituting the first offense for which extradition is requested does not satisfy the dual criminality requirement. (Opposition at 16). Specifically, Choe asserts that he cannot be extradited for the first alleged crime because his receipt of money from Alsthom is not criminal under U.S. law, and because there is no offense under U.S. law which is substantially analogous to acceptance of bribe through good offices.

The Korean law provides as follows: "Any person who receives, demands or promises any money or interest in connection with a mediation of matters belonging

to the duties of the public official, shall be punished by imprisonment for not more than five years or a fine not exceeding ten million won." (FEP at 86). In its formal papers, Korea explains that the crime is constituted when a civilian performs "good offices" with respect to affairs within the scope of a public officer's duty, and receives money or benefits in return for that act. (Id.). Good offices means "mediating or supporting a specific matter at a negotiation in such a way to offer convenience to a bribe-giver or to a third party." (Id.).

Choe is accused of performing "good offices", or, being the "mediator' in the selection of Alsthom as the train supplier. The selection of Alsthom was a "specific matter" or duty belonging to a public official, namely, the Minister of Construction and Transportation, whose duty it was to oversee Korea's high speed rail project. (See FEP at 86; Govt.'s Reply at 9-10). Choe allegedly performed "good offices" when he devised the scheme with Ho to bribe Hwang, a government official, to exert his influence on behalf of Alsthom, in order to "offer convenience" to Alsthom, the "bribe-giver." Thus, when Choe received money from Alsthom as reward for securing the high speed rail contract, he committed the crime of acceptance of bribe through good offices.

Choe argues, however, that the dual criminality element is not satisfied because it is not illegal in the United States to accept payment for lobbying government officials on behalf of private companies. (Opposition at 17). Choe is correct that it is the specific act of accepting money from Alsthom which forms the basis of this offense. Nevertheless, the United States contends, and this Court agrees, that this same conduct, had it occurred here, would constitute wire fraud involving the

deprivation of honest services (18 U.S.C. §§ 1343, 1346).[5] (Govt.'s Reply at 10). Sections 1343 and 1346 [6] prohibit fraudulent schemes, furthered by the transmission of funds by wire, to deprive the public of "the intangible right of honest services". 18 U.S.C. §§ 1343, 1346.

After Choe agreed to lobby on behalf of Alsthom, Choe allegedly approached Hwang, a high-ranking government official, and asked him to exert his influence on behalf of Alsthom. (FEP at 76). Korea asserts that Choe promised Hwang significant compensation in exchange for Hwang's political influence. (Id.). Choe's role as a middleman in a bribery scheme to improperly give Alsthom the advantage in winning a government contract is a scheme to "deprive another of the intangible right of honest services." Choe "cause[d] to be transmitted by means of wire" the money he accepted from Alsthom, by willingly participating in the fraudulent scheme. Thus, the allegations made by Korea establish that Choe's conduct is considered criminal in both contracting states.

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[5] The United States also asserts that Choe's conduct violates 18 U.S.C. § 202 (Bribery); 18 U.S.C. § 666 (Bribery Concerning Programs Receiving Federal Funds); and 18 U.S.C. § 1951 (Hobbs Act).

[6] 18 U.S.C. § 1343 provides, in relevant part, that: "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means, of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate commerce, any writings, signs, signals, pictures or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both."

18 U.S.C. § 1346 states that the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

Similarly, Choe's argument that the United States and Korean statutes are not "substantially analogous" also fails. *See* Treaty, art. 2(3)(b)(c); *see also Kahn*, 993 F.2d at 1372 (Pakistani law of conspiracy not sufficiently analogous to United States' separate crime of using a telephone to facilitate a drug offense). The focus of the dual criminality requirement is on the conduct charged. The statutory elements of the two crimes need not be identical. In *Theron v. U.S. Marshal*, 832 F.2d 492 (9th Cir. 1987), the court held that a South African statute, which criminalized the failure of an adjudicated insolvent to disclose his insolvency when obtaining credit, was substantially analogous to 18 U.S.C. § 1014, which criminalizes knowingly making false statements to a bank. The court explained that, while "South Africa's law is broader than section 1014 . . . both laws can be used to punish the failure to disclose a loan applicant's liabilities to a bank while obtaining credit." *Id. See also Clealry v. Gregg*, 138 F.3d 764 (9th Cir. 1998) (upholding extradition even though requesting nation's murder statute was broader than felony murder because facts alleged murder took place during robbery); *In re Russell*, 789 F.2d 801, 803 (9th Cir. 1986) (upholding extradition for conspiracy even though overt act was not required in requesting nation because request alleged several overt acts). Here too, violation of acceptance of bribe through good offices criminalizes a broader range of conduct than that which constitutes an offense under 18 U.S.C. §§ 1343, 1346. However, the two laws are sufficiently analogous because they both punish acts of the same general character—accepting money in furtherance of a scheme to improperly influence government officials engaged in fraudulent behavior with respect to the duties of their office. It is immaterial that the scope

of criminal liability is not coextensive. *See Collins*, 259 U.S. at 312. Accordingly, this Court finds that Korea has satisfied the dual criminality requirement with respect to the first alleged offense.

2. Offering a Bribe to a Public Official

This Court finds, and Choe does not contest, that Korea's allegations of Choe's conduct as to the second offense satisfy the dual criminality requirement.

3. The Stowaway Control Act

Choe also contends that criminality does not exist with respect to his illegal departure from Korea because there is no substantially analogous law in the United States which seeks to criminalize the same conduct. (Opposition at 30-33).

The Stowaway Control Act prohibits crossing of the territorial border, on a deserted ship or airplane, without valid documents or government permission. (FEP at 87). According to Korea's formal papers, the purpose of the law is "to prevent a Korean national from entering a territory outside the Republic of Korea without undergoing proper procedures." (FEP at 88). The United States argues that dual criminality is satisfied because Choe's conduct, had it occurred here, would have violated 18 U.S.C. § 1073, which prohibits unlawful flight to avoid prosecution. (Govt.'s Reply at 17).

The United States is correct that Choe fleeing Korea in order to dodge a criminal investigation pending against him would constitute unlawful flight under 18 U.S.C. § 1073. Nevertheless, this Court is not aware of any substantially analogous United States statute which has been enacted to punish conduct of the same general character as the Stowaway Control Act—simply pre-

venting U.S. nationals from crossing the border without proper documentation. Thus, this Court is not entirely convinced that the "substantive conduct each statute punishes is functionally identical" and consequently, that the dual criminality requirement is met with this offense. *See Cucuzzella*, 638 F.2d at 108. However, since this Court finds that Choe may be extradited on the first two offenses alleged, this Court need not decide whether Choe's violation of the Stowaway Act is an extraditable offense.

F. Probable Cause

The government requesting extradition has the burden of producing "such information as would provide reasonable grounds to believe that the person sought has committed the offense for which extradition is requested." Treaty, art. 8(3) (c); *see also Barapind*, 360 F.3d at 1068-70 (the probable cause element requires the extradition magistrate to find reasonable ground to believe the accused is guilty of the crimes charged). The burden is met if there is any evidence warranting the extradition court to make such a finding. *See Barapind*, 360 F.3d at 1068; *Quinn*, 783 F.2d at 790 (citing *Fernandez v. Phillips*, 268 U.S. 311, 312 (1925)). Further, the requesting nation is not required to present all of its evidence at an extradition hearing. *Quinn*, 783 F.2d at 815. An extradition magistrate "does not weigh conflicting evidence and make factual determinations." *Id.* The ultimate question of guilt or innocence is left to the country requesting extradition. *See e.g.*, *Collins,* 259 U.S. at 316; *Quinn*, 783 F.2d at 815. Moreover, it is well-settled that the rules of evidence, other than with respect to privileges, do not apply in extradition proceedings. Fed. R. Evid. 110(d) (3); *See e.g.*, *Collins*, 259

U.S. at 317 (unsworn statements of absent witnesses may be acted upon by extradition magistrate although they could not have been received by him under the law of the state on a preliminary examination); *Mainero v. Gregg*, 164 F.3d 1199, 1206 (9th Cir. 1999) (evidence in an extradition proceeding is not incompetent simply because it is hearsay); *Emami*, 834 F.2d at 1451 ("In the Ninth Circuit it has been repeatedly held that hearsay evidence that would be inadmissable for other purposes is admissible in extradition proceedings").

1. Acceptance of Bribe Through Good Offices

Choe argues that because dual criminality is premised on an alleged bribe to a government official, there must be evidence presented that would justify holding Choe for trial in the United States for bribing Hwang. (Opposition at 20). Choe misstates the law.

Contrary to Choe's assertion, the Treaty only requires that a request for extradition be supported by such information as would provide probable cause to believe that the person sought "has committed the offense for which extradition is requested." Treaty, art. 8(3)(c) (emphasis added). Courts interpreting the probable cause requirement have likewise explained that the evidence must simply demonstrate that there is reasonable grounds to believe "the accused has committed the crime charged." *Quinn*, 783 F.2d at 783 (citing *Glucksman v. Henkel*, 221 U.S. 508, 512 (1911)); *Sakaguchi v. Kaululukui*, 502 F.2d 726, 729-31 (9th Cir. 1975).

There is ample information provided by Korea to support a reasonable belief that Choe accepted money from Alsthom in violation of Korean law. Ho testified that she and Choe met with Alsthom where they were

promised money in exchange for lobbying government officials for the rail contract. (FEP at 80). Ho further testified that she and Choe approached Hwang about exerting his influence on behalf of Alsthom. (Id.). A few months after Alsthom was awarded the contract, Alsthom transferred approximately $11,000,000 into Choe's account. (Id.). Alsthom CEO Ambroise Jean Cariou confirmed that Alsthom paid Choe in exchange for his lobbying efforts. (Id.). In addition, Korea has provided copies of the bank records which show Alsthom's transfer of money to Choe's Hong Kong account, and Choe's subsequent transfer of money to Ho's Hong Kong account. (FEP at 55-64, 80). Thus, this Court finds that probable cause exists to believe that Choe is guilty of the first offense charged.

2. Offering a Bribe to a Public Official

The only evidence of Choe's bribery of a police officer proffered by Korea are excerpts of incriminating statements, recounted by the prosecutor, made by alleged co-conspirators Ki Choon Ho and Sang In Kim, and Hee Bong Park. (FEP at 82-84). No original statements or trial transcripts were submitted. Choe contends that the evidence submitted with respect to the second offense is neither sufficiently competent nor sufficiently reliable to establish probable cause. (Opposition at 26).

In relevant part, Korea's formal papers set forth the following facts in support of its request for Choe's extradition for the bribery of a police officer.

Ho's statement recounts how she and Choe agreed in November 1995 to a pay [*sic*] police to stop the investigation of money transferred by Alsthom. (FEP at 82). Ho admits that, after consulting with Choe, Sang In Kim

introduced her to Officer Jeon, who agreed to use his influence to close the case in exchange for 80 million won (approximately $80,000), paid in installments. (Id.). Ho further stated that Choe remitted his one-half share of the bribe money to Ho on March, 27 1996. (Id.). The Prosecutor explained that the aforementioned facts were testified to by Ho at her trial, held June 16, 2000. Ho was convicted of violation of acceptance of bribe through good offices and bribe-offering to a public official. (FEP at 74). Ho was reportedly sentenced to 18 months imprisonment with suspension of its execution for two years. (Id.). Korea also submitted a copy of Ho's March 1996 bank statement showing a transfer of $45,000 to Ho by Choe. (FEP at 64).

Kim's statement, also recounted by the prosecutor in Korea's formal papers, explains how Kim was asked by Ho to introduce her to a high-ranking police officer working in the foreign affairs department. (FEP at 83). Kim admits that he introduced Officer Jeon to Ho, where he witnessed Ho ask Officer Jeon to stop the investigation into the money wired by Alsthom without any further investigation. He states that he saw Ho pay Officer Jeon 30 million won at that meeting. (Id.). Kim further states that he personally made a second payment of 30 million won to Officer Jeon, on behalf of Ho, in February 1996. (Id.). These facts are reportedly taken from Kim's testimony at Ho and Officer Jeon's bribery trials, held July 14, 2000.

A final excerpted statement by Hee Bong Park, a police officer in charge of the investigation of money wired to Choe and Ho's Hong Kong accounts, was submitted by Korea. (FEP at 83-84). In this statement, Officer Park states that during the investigation of Choe

and Ho, he and Officer Jon Tae Kim were asked by Officer Jeon to only make "light" inquiries into the matter so that Ho could not be charged. (Id.). According to the prosecutor, Officer Kim corroborated Officer Jeon's statements. (Id.).

a. Competency of the Evidence

Contrary to Choe's assertion, the fact that Korea has only submitted testimony as recited by the prosecutor does not render that testimony incompetent or otherwise inadmissible in this proceeding. An extradition request may be based entirely on an investigator's affidavit summarizing other witness' statements and information, as long as such evidence is properly authenticated. *Emami*, 834 F.2d at 1451 (foreign prosecutor's affidavit with summaries of statements admissible); *Zanazanian v. U.S.*, 739 F.2d 624, 627 (9th Cir. 1984) (police reports containing multiple hearsay considered sufficiently reliable to be competent). Evidence presented in Korea's formal extradition papers are facially authenticated under 18 U.S.C. § 3190, which provides, in relevant part, that:

> "The certificate of the principal diplomatic or consular officer of the United States who is resident in the demanding country constitutes proof that the documents offered are properly authenticated. Under this statute, a consular certificate is conclusive proof that the documents have been properly authenticated as admissible in a criminal proceeding in the demanding country, and the accused is not allowed to present testimony that the documents would not be admissible under the law of the foreign country."

Article 9(a) (b) of the Treaty incorporates the same principles of authentication by requiring that the documents accompanying the extradition request be admitted into evidence in an extradition proceeding when "they are certified by the principal diplomatic or consular officer of the Requested State resident in the Requesting State; or [when] they are certified or authenticated in any other manner accepted by the law of the Requested State."

The documents submitted by Korea in support of its extradition request were certified on September 15, 2005, by the Consular General in Seoul, who at the time of certification, was the principal consular officer of the United States in Korea. (FEP at 29). Thus, any attack by Choe on the competency of the evidence as such must fail.

b. Reliability of the Evidence

Choe further argues that, even if the prosecutor's recitation of witness statements is deemed competent evidence, those statements, and Ho's in particular, are not sufficiently reliable to establish probable cause. (Opposition at 26).

Specifically, Choe contends that it is impossible for this Court to make a fair assessment of the reliability of Ho's statement without examining the complete transcript of her testimony. (Opposition at 26). It is well-settled, however, that self-incriminating statements made by accomplices are sufficient to establish probable cause at an extradition hearing. In *Zanazanian*, the Ninth Circuit held that unsworn, unsigned police reports containing recitations of partial confessions of the fugitive's alleged accomplices were not too unreliable to es-

tablish probable cause. *Id.* Indeed, the court found that "the fact that they were given to police and incriminated the speakers themselves sufficiently indicates their reliability." *Id.* Similarly, in *Emami*, the Ninth Circuit, relying on *Zanazanin*, held that hearsay statements summarized in a German prosecutor's affidavit provided reliable evidence to support a finding of extraditability. *Emami*, 834 F.2d at 1450-52. Nothing in this case militates a different result.

Finally, Choe argues that the reliability of the statements submitted is further undermined by the apparent contradictions in the witness's testimony. (Opposition at 27-8). Although the fugitive in an extradition proceeding may offer explanatory evidence that would completely negate probable cause, evidence which merely contradicts the government's evidence, or otherwise establishes an affirmative defense to the charges, is inadmissible. *See Barapind v. Enomoto*, 400 F.3d 744, 749 (9th Cir. 2005) (en banc); *Hooker v. Klein*, 573 F.2d 1360, 1368 (9th Cir. 1978); *Mainero*, 164 F.3d at 1207 n.7. Thus, impeachment of the credibility of the requesting country's witnesses is not permitted. See *Collins*, 259 U.S. at 316.

Choe is correct that Ho's uncorroborated testimony is the sole evidence implicating Choe in the scheme to bribe Officer Jeon. Also, Ho's testimony may conflict with Kim's testimony. As Choe points out, Ho testified that she paid Officer Jeon in installments, and that she personally delivered the money on December 14 and 30, 1995. (FEP at 82). However, Kim testified that he personally made a payment to Officer Jeon in February 1996. (FEP at 83).

Here, Choe's challenges to the sufficiency of evidence based on the apparent contradictions in testimony and uncorroborated accounts of his involvement does not explain away Korea's evidence. Indeed, Choe does not even refute the evidence presented by Korea. Instead, Choe simply attacks the credibility of witnesses and, somewhat persuasively, exploits the apparent weaknesses in the government's case against him. As a result, Choe's probable cause arguments may be effective in impeaching Ho and others at trial, and they may raise disputed issues of fact helpful to his defense. However, such arguments do not help him in this proceeding, where the Court must not "weigh conflicting evidence and make factual determinations" that will be made at trial in the requesting state. *Quinn*, 783 F.2d at 815.

Thus, this Court finds that Korea has met its burden in producing competent and reliable evidence showing that there is reasonable ground to believe Choe is guilty of bribing a police officer in violation of Korean and U.S. law.

G. Statute of Limitations

Finally, Choe asserts that article 6 of the Treaty bars his extradition as to all three offenses. (Opposition at 2, 10-12). Article 6 provides, that:

> Extradition may be denied under this Treaty when the prosecution or the execution of punishment of the offense for which extradition is requested would have been barred because of the statute of limitations of the Requested State had the same offense been committed in the Requested State. The period during which a person for whom extradition is sought fled from justice does not count towards the

> running of the statute of limitations. Acts or circumstances which would suspend the expiration of the statute of limitations of either State shall be given effect in the Requested State, and in this regard the Requesting State shall provide a written statement of the relevant provisions of its statute of limitations, which shall be conclusive.

(FEP at 20).

It is uncontested that the statute of limitations for Choe's alleged crimes, had they been committed here, is five years. 18 U.S.C. § 3282. Korean law provides for a five year statute of limitations for the first two offenses, acceptance of a bribe and offering a bribe to a public official, and a three year statute of limitations for the third offense, violation of the stowaway act. (FEP at 88-89). The limitations period begins to run after the criminal act is completed, and in this case, commenced on May 16, 1995, December 30, 1995, and December 1999, respectively. (FEP at 89). Without interruption, under both Korean and U.S. law, the limitations period would have expired for the first two offenses on May 15, 2000 and December 29, 2000. (See FEP at 90). With respect to the third offense, under U.S. law the limitations period would have expired on December 30, 2004, and under Korean law, December 30, 2002. (Id.). In its formal papers, however, Korea explains that because Choe fled the country in December 1999 to avoid prosecution for the first two bribery offenses, the limitations period was tolled at the time of flight. (Id.). United States law would similarly stop the clock for any person found "fleeing from justice." § 18 U.S.C. 3290. In order to toll the limitations period for this reason, the government must prove that Choe fled Korea with the intent to avoid

prosecution by a preponderance of the evidence. *See Quinn*, 783 F.2d at 817.

Choe claims that the government lacks the proof necessary to establish that the limitations period was tolled when he illegally left Korea in December 1999. (Opposition at 11). A person must know that he is wanted by the authorities in order to be deemed a fugitive. *Quinn*, 783 F.2d at 816, n.38 *(*citing *U.S.* v. *Gonsalves*, 675 F.2d 1050, 1053 (9th Cir. 1982)). Choe accurately points out that, at the time he left Korea, there were no charges pending against him, the departure prohibition had expired, and there had not been any arrests in connection with the offenses for which he is now wanted. (Opposition at 12). Moreover, Choe asserts that, contrary to Korea's claim, there is no proof that he disobeyed a summons to appear at the prosecutor's office, issued after his last interrogation in October 1999. Indeed, no such summons has been provided in Korea's formal papers. Thus, Choe argues that he never received notice that he was wanted by the Korean authorities until his arrest on February 16, 2006. (Id.).

Choe does ignore, however, that while no formal charges had been initiated against him, he had been aware, since at least October 1999, that the authorities had re-opened the investigation against him of the 1995 transfer of money from Alsthom. (See FEP at 73). In addition, shortly before he left Korea, both he and Ho had been interrogated by prosecutors with respect to both bribery charges. (FEP at 74). While Choe is correct that it does appear as if the departure prohibition had expired when he left Korea, his surreptitious departure, without the return of his confiscated passport, or any legal documents permitting his leave, in conjunction

with all other facts, lends compelling support to the inference that he fled the country with the intention of avoiding detection by the authorities. Moreover, this Court has already found that reasonable grounds exist to believe that Choe bribed a police official to close the initial 1995 investigation. While the Court agrees that there is no evidence to support the prosecutors assertion that Choe ignored a summons to appear, such a finding does not change this Court's conclusion that the government has met its burden of showing that Choe, more likely than not, left Korea in order to avoid prosecution. Thus, this Court concludes the there [*sic*] are no applicable statutes of limitation which bar Choe's extradition.

III. Findings, Conclusions And Certification

For the reasons discussed above, the Court grant's Korea's request for Choe's extradition and makes the following findings and conclusions in support of this Memorandum and Order:

1. This Court has jurisdiction over the proceedings;

2. This Court has jurisdiction over Man Seok Choe;

3. There is a valid extradition treaty between the United States and the Republic of Korea in full force and effect;

4. The Korean offense of Accepting a Bribe Through Good Office and Offering a Bribe to a Public Official are extraditable offenses consisting of conduct considered to be criminal in both the United States and the Republic of Korea, and which are punishable by deprivation of liberty for a period of more than one year;

5. There is probable cause to believe that Choe committed the crimes of Accepting a Bribe Through Good Office and Offering a Bribe to a Public Official;

6. There are no applicable treaty provisions which bar extradition; and

7. The Republic of Korea's formal papers and documents in support of its request for Choe's extradition are and have been presented in accordance with the law of the United States of America and the Treaty, and have been translated and authenticated in the manner required by the Treaty.

The Court hereby certifies the above findings and conclusions, and the transcripts of the extradition hearing held in this case, to the Secretary of State, pursuant to 18 U.S.C. § 3184.

IV. Warrant of Commitment

The Court further orders that Choe shall be committed to custody, as required under 18 U.S.C. § 3184, and that he remain in such custody until he is surrendered to the Republic of Korea, or until further order of the Secretary of State.

DATED: October 6, 2006

/*s*/ MARC L. GOLDMAN
MARC L. GOLDMAN
United States Magistrate
Judge