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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

IN THE MATTER OF THE) Case No. CV 19-5397-FLA (JPR)
EXTRADITION OF)
CHRISTOPHER PHILIP AHN,) RELUCTANT CERTIFICATION OF
A Fugitive from the) EXTRADITABILITY
Government of the Kingdom)
of Spain.)

In April 2019, the U.S. Attorney's Office for the Central District of California, acting on behalf of the Kingdom of Spain, filed a Complaint requesting the extradition of Christopher Philip Ahn, a middle-aged U.S. citizen and Marine Corps veteran with no criminal record. Ahn is among a small group of men, all or some of them part of an organization called Free Joseon,¹

¹ According to Wikipedia, Joseon was "the last dynastic kingdom of Korea" and ended in October 1897, when it was replaced by the Korean Empire. Joseon, Wikipedia (last modified Apr. 27, 2022, 2:21 p.m.), <https://en.wikipedia.org/wiki/Joseon>. Free Joseon, "a covert anti-North Korean activist group," has declared itself to be the "true representative government of the people of

1 accused of a host of crimes arising from their entry into the
2 North Korean embassy in Madrid, Spain, on February 22, 2019. In
3 part because of his participation in the embassy incident, North
4 Korea wants to kill Ahn. I must decide whether to certify his
5 extradition to Spain, where North Korea can much more easily
6 murder him. Although I conclude that the law requires me to
7 certify, I do not think it's the right result, and I hope that a
8 higher court will either tell me I'm wrong or itself block the
9 extradition.

10 * * *

11 After Ahn was arrested, the United States filed a formal
12 request for extradition, supported by documentation from Spain,
13 and then a revised such request. In the three years since the
14 case was filed the parties have submitted various memoranda and
15 evidence relating to the extradition, which the Court has
16 carefully read, in most instances many times. On May 25, 2021,
17 the Court conducted an extradition hearing, at which Ahn appeared
18 with counsel. The Court heard sworn testimony from Tufts
19 Professor Sung-Yoon Lee and an unsworn statement from Cynthia
20 Warmbier² as well as argument from both parties.

21 _____
22 North Korea" and is "known to support North Korean defectors."
23 Free Joseon, Wikipedia (last modified Mar. 5, 2022, 9:30 a.m.),
https://en.wikipedia.org/wiki/Free_Joseon.

24 ² Warmbier is the mother of Otto Warmbier, a University of
25 Virginia college student who was tortured and murdered by the North
26 Korean regime in 2016 and 2017 for "allegedly taking down a poster
27 with a political slogan supporting North Korea's dictator, Kim
28 Jong-Il, from a hotel's staff-only area." Warmbier v. Democratic
People's Republic of Korea, 356 F. Supp. 3d 30, 38 (D.D.C. 2018).
The government did not object to her oral statement's admission.
(May 25, 2021 Hr'g Tr. at 154, ECF No. 231 (throughout, the Court

1 Ahn does not dispute that he and others, including Adrian
2 Hong Chang, a former TED fellow and longtime activist against
3 North Korea's ruling Kim family, entered the embassy that day in
4 February 2019. As discussed in greater depth below, Ahn claims
5 the group was asked by unidentified residents there to help them
6 defect; indeed, Hong and Ahn had previously been involved in
7 similar efforts. The United States seems to suggest that the
8 group might instead have intended to terrorize the embassy
9 residents and steal information; no one disputes that when the
10 group finally left, after about four and a half hours, they took
11 with them computer drives, a cell phone, and other electronic
12 information – which they promptly turned over to the FBI. Spain
13 has diplomatic relations with North Korea. The United States, on
14 the other hand, has declared North Korea a state sponsor of
15 terrorism, and with very few exceptions, bars North Koreans from
16 entering the country.

17 Ahn has raised several challenges to his extradition. He
18 argues that probable cause is lacking, in part because much of
19 the evidence the government relies on – namely, the statements of
20 the North Koreans who were inside the embassy that day – is not
21 “competent.”³ He also challenges the existence of “dual

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23 uses the pagination generated by its official Case
24 Management/Electronic Case Filing system).) It did, however,
25 object to a written statement from both of Warmbier's parents.
26 (See Ahn's Suppl. Ex. E, ECF No. 200-2; Resp. at 3, ECF No. 214.)
Because the Court has not relied on that statement, it need not
rule on the government's objection.

27 ³ The government, too, disputes some of the evidence, arguing
28 that the Court may not consider various declarations, reports, and
letters filed by Ahn. The Court gets to that below.

1 criminality," a requirement in extradition law that the
2 "essential character" "of the acts criminalized by the laws of
3 each country are the same and the laws are 'substantially
4 analogous.'" Manta v. Chertoff, 518 F.3d 1134, 1141 (9th Cir.
5 2008) (quoting Oen Yin-Choy v. Robinson, 858 F.2d 1400, 1404 (9th
6 Cir. 1988)). Finally, he argues that even if the Court finds
7 probable cause to extradite on all or some of the charges, it
8 should decline to do so under a "humanitarian exception" to
9 extradition.

10 Spain seeks Ahn's extradition on six counts: breaking and
11 entering, making threats, causing injury, illegal restraint,
12 criminal organization, and robbery with violence or intimidation.
13 At the hearing the Court denied the request for extradition on
14 robbery with violence or intimidation because the United States
15 had offered no definition or explanation for the requirement that
16 the robbery have been "for profit," nor any evidence that the
17 group took anything from the embassy for financial gain, the
18 commonsense understanding of the phrase.⁴ (May 25, 2021 Hr'g Tr.
19 at 97-99.)⁵ The Court also rejected Ahn's dual-criminality
20 argument because any required intent, which he argued the
21 government had no evidence of, may be inferred from action, see
22 Manta, 518 F.3d at 1142-43 (rejecting dual-criminality argument
23 for that reason), and the government's evidence – including, as

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25 ⁴ The North Korean witnesses consistently told the police that
26 they didn't think "the motive for the attack" was robbery.
(Revised Req., Ex. C at 19, 25, ECF No. 226-3.)

27 ⁵ All future citations to "Tr." at a particular page are to
28 the transcript of the extradition hearing, which was held on May
25, 2021, and is available on the docket at ECF number 231.

1 explained below, a civilian witness's testimony of one of the
2 embassy entrants wielding a gun over a man on the ground –
3 provided probable cause of any necessary specific intent. (Tr.
4 at 65.) And any affirmative defense based on lack of intent,
5 including that Ahn believed he was acting at the behest of or in
6 coordination with the U.S. government (see ECF No. 175 at 32-33),
7 may not be considered by the extradition court. See, e.g.,
8 Santos v. Thomas, 830 F.3d 987, 993 (9th Cir. 2016) (en banc); In
9 re Extradition of Fordham, 281 F. Supp. 3d 789, 799 (D. Alaska
10 2017) ("It is settled that the dual criminality requirement does
11 not encompass possible 'affirmative defenses[.]'"). So, what
12 remained to be decided after the hearing was whether probable
13 cause existed to extradite Ahn on the other five charges and, if
14 so, whether the Court should nonetheless refuse to certify
15 extradition on humanitarian grounds. The Court must also resolve
16 various evidentiary issues.

17 **EXTRADITION LAW**

18 The purpose of an extradition hearing is to determine
19 "whether there is 'evidence sufficient to sustain the charge
20 under the provisions of the proper treaty or convention,' or, in
21 other words, whether there is probable cause." Vo v. Benov, 447
22 F.3d 1235, 1237 (9th Cir. 2006) (as amended) (quoting 18 U.S.C.
23 § 1384). Probable cause, in turn, means "such information as
24 would justify the committal for trial of the person if the
25 offense had been committed in the requested State."⁶ (Revised
26

27 ⁶ Of course, in one sense the crimes with which Ahn is charged
28 could never have been committed in the United States because it has
no North Korean embassy nor any diplomatic relations at all with

1 Req., Ex. A, Annex to Extradition Treaty, art. X, § D, ECF No.
2 226-1); see Quinn v. Robinson, 783 F.2d 776, 782 (9th Cir. 1986).
3 Probable cause means a “fair probability” that the suspect has
4 committed the charged crime, Garcia v. Cnty. of Merced, 639 F.3d
5 1206, 1209 (9th Cir. 2011), and the burden of proving its
6 existence rests with the United States, see Barapind v. Enomoto,
7 400 F.3d 744, 747 (9th Cir. 2005) (en banc) (per curiam). The
8 probable-cause evidence should be “viewed through the lens of
9 common sense.” Florida v. Harris, 568 U.S. 237, 248 (2013). If
10 the magistrate judge finds probable cause, she “is required to
11 certify the individual as extraditable to the Secretary of
12 State.” Vo, 447 F.3d at 1237 (citation omitted); see also
13 Prasoprat v. Benov, 421 F.3d 1009, 1012, 1016-17 & n.5 (9th Cir.
14 2005) (noting that magistrate judge has “no discretionary
15 decision to make” and finding that humanitarian exception may not
16 be invoked by magistrate judge (citation omitted)).

17 The federal rules of evidence and procedure do not apply in
18 extradition proceedings, see Mainero v. Gregg, 164 F.3d 1199,
19 1206 (9th Cir. 1999), and therefore hearsay is permitted, Manta,
20 518 F.3d at 1147. The person whose extradition is sought may
21 present evidence that “explains” the government’s evidence but
22 not evidence that “merely ‘contradict[s] the testimony for the
23 prosecution.’” Santos, 830 F.3d at 992 (quoting Collins v.

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25 that country. This argument depends on the level of generality at
26 which “the offense” is defined. Because Ahn has not raised this
27 argument – and given that the specific charges in Spain’s request
28 for extradition are framed broadly, without tying the crimes to the
specific location where they allegedly took place – the Court
considers those charges capable of being committed here.

1 Loisel, 259 U.S. 309, 316-17 (1922)). Whether to admit evidence
2 offered by the fugitive is within the "sound discretion" of the
3 Court. Hooker v. Klein, 573 F.2d 1360, 1369 (9th Cir. 1978).

4 As many courts have observed, "[t]he difference between
5 'explanatory' and 'contradictory' is easier stated than applied."
6 Santos, 830 F.3d at 992; see also Gill v. Imundi, 747 F. Supp.
7 1028, 1040 (S.D.N.Y. 1990) (describing distinction between
8 "explanatory" and "contradictory" evidence as "somewhat murky").
9 In practice, the Ninth Circuit has found that explanatory
10 evidence "explains away or completely obliterates probable cause,
11 whereas contradictory evidence . . . merely controverts the
12 existence of probable cause, or raises a defense." Santos, 830
13 F.3d at 992 (cleaned up). Put another way, contradictory
14 evidence is that which would require the Court to make
15 credibility assessments. See id. at 993.

16 **EVIDENTIARY CHALLENGES**

17 1. Christopher Ahn's Declaration and Medical 18 Records

19 Before the hearing, Ahn sought to introduce his own
20 declaration explaining the events of February 22. (See ECF No.
21 178.) Although the declaration is under seal, published reports
22 cited by one or both parties have noted Ahn's claim that he
23 entered the embassy with the others because they had received
24 word that one or more of its residents wanted help defecting. In
25 open court, his counsel described the declaration as relaying
26 Ahn's "subjective understanding . . . that this was something
27 that had been requested by . . . people in the embassy, that they
28 had asked this group, Free Joseon, to stage a kidnapping so that

1 their family members would not face reprisal back in North Korea”
2 (Tr. at 67) based on their defection (id. at 68, 76). (See also
3 ECF No. 226-3 at 83 (Spanish prosecutorial report noting that
4 before February 22 “Hong Chang had made contact with an
5 unidentified individual at the Embassy who was open to
6 ‘defecting.’”).) Ahn argues that the evidence in his declaration
7 is “explanatory” because it “explain[s] ambiguities or doubtful
8 elements” in the government’s case and “obliterate[s] probable
9 cause,” relying on the Santos standard. According to him, “there
10 is no coherent explanation” for why the group entered the embassy
11 other than Ahn’s (Tr. at 75); “the narrative put forth by the
12 U.S. government makes no sense” (id. at 73). The government
13 objected to the declaration’s admission, arguing that it simply
14 contradicted the evidence showing probable cause.

15 In one sense, of course, the declaration does “explain” the
16 government’s evidence. In it, Ahn explains, yes, why he and the
17 others entered the embassy and offers context necessarily missing
18 from the government’s version of events given that he was inside
19 the embassy and none of the North Koreans who were there can
20 offer competent evidence, as explained below. But Ahn’s
21 statements “explain” the government’s evidence only to the extent
22 they are true. And assessing that would require a prohibited
23 credibility determination. See Santos, 830 F.3d at 993
24 (forbidding extradition challenges to “credibility of the
25 government’s offer of proof”); Barapind, 400 F.3d at 749-50
26 (noting that credibility of witness’s statement could not be
27 assessed without trial, which was beyond scope of extradition
28 proceeding); In re Extradition of Luna-Ruiz, No. CV 13-5059 VAP

1 (AJW)., 2014 WL 1089134, at *14 (C.D. Cal. Mar. 19, 2014)
2 (excluding relator's declarations because "[r]esolving the
3 conflict between the competing versions" of events "would entail
4 weighing conflicting evidence, assessing the relative credibility
5 of witnesses, and resolving factual disputes, functions that are
6 beyond the scope of an extradition proceeding"). But see Quinn,
7 783 F.2d at 815 (noting in context of evaluating government's
8 proof of identification that "credibility of witnesses and the
9 weight to be accorded their testimony is solely within the
10 province of the extradition magistrate"). Indeed, Ahn's account
11 is akin simply to a defense he would offer at any trial, after
12 the government had presented its evidence. He concedes that the
13 Spanish witnesses outside the embassy "reported seeing events
14 consistent with what a . . . kidnapping would look like to a
15 third party observer." (Opp'n at 18, ECF No. 175.) Whether that
16 kidnapping was "staged," as Ahn claims, would be for a trier of
17 fact to decide, based at least in part on the credibility of the
18 witnesses.⁷ Such evidence is contradictory. See Santos, 830
19 F.3d at 993. And contrary to Ahn's refrain that no competent
20 evidence contradicts his declaration, North Korean witness Cho
21 Sun Hi's admitted statement at least to some degree suggests that
22 the group's actions were real, not staged, as discussed further

23
24 ⁷ As discussed below, because the North Korean witnesses
25 likely wouldn't participate in any Spanish trial, there would
26 presumably be no one to contest Ahn's version of why the group
27 entered the embassy. But that fact more appropriately goes to why
28 a humanitarian exception should apply, not whether probable cause
exists based on the evidence now before the Court. See Quinn, 783
F.2d at 815 (noting that it is not extradition court's "role to
determine whether there is sufficient evidence to convict the
accused").

1 below.

2 Indeed, the government's version of events isn't entirely
3 implausible. After all, a group with the avowed purpose of
4 overthrowing the Kim regime might well want to steal records and
5 other information from it, or humiliate it by posting images
6 online of the group's members desecrating photographs of the Kim
7 family, as apparently happened during the embassy incident. (See
8 ECF No. 200-1 at 17; Ahn's Suppl. Ex. A at 8-9, ECF No. 197-1.)
9 And some things that transpired give credence to the government's
10 story line: embassy resident Cho⁸ would presumably not have
11 jumped off an elevated landing to escape, seriously injuring
12 herself, had she been expecting Ahn's group to help her defect or
13 if she had otherwise not believed a hostile invasion was taking
14 place. (See ECF No. 226-3 at 7-8.) And if at least some of the
15 embassy residents were in on the "kidnapping," why didn't one of
16 them come to the door when the police arrived and send them away
17 instead of Hong Chang having to impersonate an embassy staffer?
18 (See id. at 8.) The government's narrative is not so crazy or
19 unsupported as to be untenable. The Court therefore does not
20 consider Ahn's declaration in deciding this case because it
21 simply "contradicts" the government's evidence.

22 Similarly, Ahn sought to have admitted into evidence medical
23 records showing that one of his hands was healing from a recent
24 fracture at the time of the embassy incident. (Tr. at 125; Ahn's
25 Suppl. Ex. G, ECF No. 225.) He therefore could not have hit any

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27 ⁸ Although this witness is referred to by different names
28 throughout the record, Prof. Lee testified that she should be
referred to as "Ms. Cho" (Tr. at 44), so the Court uses that name.

1 of the embassy residents or taken other actions alleged by the
2 government, the argument goes. (See Tr. at 125-26.) The
3 government objected, arguing that the evidence was contradictory,
4 not explanatory. Regardless, it is of little weight because Ahn
5 could have acted with his other hand even had the fractured hand
6 been completely immobilized, which it was not. Moreover, the
7 evidence of Ahn hitting anyone was found not to be competent, as
8 explained below. The Court therefore does not consider the
9 medical records in making its probable-cause determination.

10 2. North Korean Witness Statements

11 Ahn argues that under Santos, the statements of the North
12 Korean witnesses on the events at the embassy are not "competent"
13 because they were procured by coercion and therefore may not be
14 considered in the probable-cause calculus. At the hearing the
15 Court agreed, with one limited exception. Here's why.

16 The function of an extradition magistrate judge "is to
17 determine whether there is competent evidence to justify holding
18 the accused to await trial." Collins, 259 U.S. at 316. "[A]
19 coerced statement is not competent evidence and cannot support
20 probable cause." Santos, 830 F.3d at 1001. "[T]he manner in
21 which evidence used to support probable cause was obtained" is
22 important in determining its competency. Id. at 1007. Evidence
23 concerning the competence of other evidence is explanatory, not
24 contradictory. See id. at 1008.

25 For this reason, and because Prof. Lee was present and
26 available to be cross-examined, the Court overruled the

1 government's objections⁹ and admitted his testimony on the
2 competence of the North Korean witnesses' statements; it also
3 admitted a letter he wrote that was filed on May 18, 2021.¹⁰
4 (See ECF No. 197-1.)

5 Prof. Lee is "deeply knowledgeable" on the subject of North
6 Korea. Warmbier v. Democratic People's Republic of Korea, 356 F.
7 Supp. 3d 30, 36 (D.D.C. 2018). He is a Professor of Korean
8 Studies at the Fletcher School of Law and Diplomacy at Tufts
9 University. (See ECF No. 197-1 at 2.) He has testified as an
10 expert on North Korea in congressional hearings and briefed then-

12 ⁹ One such objection was that unlike in Santos, the witnesses
13 here did not later recant their original statements. (See Gov't's
14 Reply Br. at 24, ECF No. 187.) But that fact works against the
15 government. As Santos recognized, when witnesses recant, the line
16 between explanatory and contradictory evidence becomes blurry. See
17 830 F.3d at 990 ("We hold that evidence of coercion is explanatory,
18 and may be considered by the extradition court, even if the
evidence includes a recantation." (emphasis added)). Because
there's little contradictory here about the evidence of coercion –
rather, it simply explains why the witnesses said what they did –
its admissibility is even more clear than in Santos.

19 The government also objected that it was improper for the
20 Court to consider evidence of coercion from an expert witness
21 because such testimony "cannot be used to establish facts." (ECF
22 No. 187 at 24.) But the cases it cites to support that principle
23 almost exclusively predate Santos, which expressly carved out an
24 exception for evidence demonstrating coercion or torture. (See id.
25 at 24-25 (citing pre-2016 cases and one from 2020 that did not
26 involve coercion or torture and is not even an extradition
matter).) Indeed, under Santos, the Court may consider any
"[r]eliable evidence that the government's evidence was obtained by
. . . coercion." 830 F.3d at 1003. And in any event, as the
government well knows, the rules of evidence and procedure do not
apply in extradition proceedings. See id. at 992.

27 ¹⁰ As will be discussed later in this decision, the Court also
28 admitted testimony from Prof. Lee concerning the humanitarian
exception.

1 President Barack Obama and Senator Bob Corker on the subject, the
2 latter when he was chair of the Senate Foreign Relations
3 Committee. (See id.; Tr. at 40.) The government did not
4 seriously question Prof. Lee's credentials but rather suggested
5 that he was biased because he had some earlier interactions with
6 Hong Chang, apparently the leader of Free Joseon and of the
7 Spanish embassy incident. (See ECF No. 226-3 at 3.) Prof. Lee
8 testified that he had invited Hong to speak at Tufts in 2013 and
9 after that had seen him on six additional occasions. (Tr. at 51,
10 55.) He acknowledged admiring Hong Chang. (Id. at 52.)

11 Prof. Lee testified about the reliability of statements made
12 by North Korean officials in general as well as those made after
13 the incident in this case. He did not offer any evidence on the
14 propriety of the embassy incident or any other topic directly
15 concerning Hong Chang. That he admires someone who has devoted
16 his adult life to fighting a totalitarian regime is hardly cause
17 for concern; it's to be expected. (See id. at 74.) Moreover, Ahn
18 offered evidence nearly identical to Prof. Lee's from Robert
19 Collins, a widely recognized expert on North Korea. See
20 Warmbier, 356 F. Supp. 3d at 48; (ECF No. 175-3 at 4-15).
21 Although the Court did not admit that evidence because Collins
22 was not available to be cross-examined, it mirrors Prof. Lee's
23 and serves to corroborate it. Accordingly, the Court, in its
24 "sound discretion," found Prof. Lee's testimony and letter
25 reliable and has considered them in deciding this case. (See Tr.
26 at 60-62.)

27 Prof. Lee testified that North Korean government witnesses'
28 statements are "inherently unreliable." (ECF 197-1 at 11.)

1 North Koreans abroad are "captives of the state whose loved ones
2 and associates back home are held hostage against their actions
3 abroad." (Id.) The witnesses here can be expected to have
4 "[c]onspire[d] together and tell the Spanish authorities
5 falsehoods and tales of exaggerated coercion and victimization
6 out of fear of retribution." (Id.) If they were thought to have
7 tried to defect, they would "face the certainty of banishment to
8 a gulag with their entire family and even execution." (Id.)
9 Further suggesting that the witnesses' statements were coerced
10 was the role of the North Korean Acting Ambassador, Yun Sok So,
11 who was present in the embassy the day of the incident, "as the
12 sole interpreter in the statements to the police on the embassy
13 incident made by all other North Korean nationals – each one of
14 them his subordinate." (Id. at 14.)

15 Prof. Lee testified that the situation for those North
16 Koreans who hold government posts, and particularly those in
17 foreign countries, is even more dire than for average citizens.
18 As an example, he noted that when a North Korean university
19 professor defected to South Korea in 1997, "5,000 of his friends,
20 relatives, distant relatives, [and] colleagues" were "all killed"
21 in North Korea. (Tr. at 58.) There is a "vast and extreme
22 punishment that befalls . . . any traitor in North Korea's eyes,
23 any defector." (Id.) As a result, the North Koreans at the
24 embassy would have had a "compelling need to keep their story
25 together" for fear that officials back home might think the
26 intruders were there to help one or more of them defect. (Id. at
27 53.) And anyone who attempts to defect from North Korea "must be
28 punished by death." (Id. at 43); see also 22 U.S.C. § 7801(5)

1 (finding that "North Korean Penal Code is [d]raconian,
2 stipulating capital punishment and confiscation of assets for a
3 wide variety of 'crimes against the revolution,' including
4 defection, attempted defection, [and] slander of the policies of
5 the Party or State" (first alteration in original)). With Acting
6 Ambassador So – the only North Korean present during the raid who
7 had diplomatic immunity and "who is superior to every single
8 North Korean involved" – acting as the translator for all the
9 witnesses' statements, the other North Koreans would be under
10 "enormous pressure . . . to keep to his version of the story."¹¹
11 (Tr. at 53-54.)

12 Prof. Lee's testimony is not the only evidence here of
13 coercion. Our own Congress has found that "the government of
14 North Korea attempts to control all information" and "strictly
15 curtails freedom of speech." § 7801; see also U.S. State Dep't
16 Bureau of Democracy, Human Rights, and Labor, 2020 Country
17 Reports on Human Rights Practices: Democratic People's Republic
18 of Korea, § 1.E (Mar. 30, 2021), [https://www.state.gov/reports/](https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/north-korea)
19 [2020-country-reports-on-human-rights-practices/north-korea](https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/north-korea)
20 (noting "reports of bribery and corruption" in North Korea's
21 "investigations or preliminary examination process"); U.N. Human
22 Rights Council, Rep. of the Comm'n of Inquiry on Human Rights in
23 the Democratic People's Republic of Korea, ¶ 26, U.N. Doc.
24 A/HRC/25/63 (Feb. 7, 2014) (Ex. C to ECF No. 175-3) (describing

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26 ¹¹ Not only did So act as the translator for all of the North
27 Koreans' official statements, he also was the one who primarily
28 spoke to the police when the residents first emerged from the
embassy, after Ahn and the rest had left. (See Gov't's Redacted
Ex. at 26, ECF No. 118-1 (Spanish police officer's statement).)

1 as one of North Korea's "most striking features" "its claim to an
2 absolute monopoly over information"). And the very lack of an
3 extradition treaty between the United States and North Korea
4 signals that we do not trust "evidence" from that country. See
5 Ahmad v. Wigen, 726 F. Supp. 389, 411 (E.D.N.Y. 1989) ("Congress
6 and the executive branch do not enter into extradition treaties
7 with countries in whose criminal justice system they lack
8 confidence."), aff'd, 910 F.2d 1063 (2d Cir. 1990); Han Kim v.
9 Democratic People's Republic of Korea, 774 F.3d 1044, 1048 (D.C.
10 Cir. 2014) (noting that North Korea is "known to intimidate
11 defectors and potential witnesses").

12 It can hardly be doubted, then, that the statements the
13 North Korean witnesses gave to the Spanish police and judiciary,
14 all translated by So, were coerced. The government's arguments
15 to the contrary are easily batted away. It objects that other
16 evidence corroborates some witnesses' statements. But the rule
17 of Santos is not aimed at "exclud[ing] presumptively false
18 evidence but . . . prevent[ing] fundamental unfairness in the use
19 of evidence whether true or false." 830 F.3d at 1003 (emphasis
20 in original). It contends that the Court is impermissibly making
21 a credibility call rather than a competence finding, and is
22 unlawfully doing so based on nationality. Nonsense. Again, the
23 Court has not considered at all whether the North Korean
24 witnesses' statements were true or false; it looked only at
25 whether they were forced to make them. Prof. Lee's testimony and
26 our own congressional and State Department findings show that
27 they were. And the Court has hardly written off all possible
28 statements coming from any North Korean. As an initial matter,

1 these are North Korean government officials far from home, sent
2 abroad with the knowledge that almost any false step might result
3 in harm, even death, to their family and friends. That's a far
4 cry from the average citizen on the street in North Korea.

5 Moreover, as the Court explained at the hearing, it found
6 one statement by a North Korean not coerced, although it was a
7 close call. Not enough evidence demonstrated that the initial
8 statements of witness Cho, who jumped from an elevated terrace at
9 the embassy and made what the Court found to be the equivalent of
10 excited utterances to the police – translated by Google Translate
11 and not Acting Ambassador So – were coerced.¹² (Tr. at 171.)
12 That finding shows that the Court did not simply write off all
13 North Koreans' statements wholesale because of where they were
14 born.

16 ¹² Some of Cho's initial statements were fantastical – South
17 Koreans had entered the embassy and were "killing people" and
18 "eating" them (ECF No. 118-1 at 19) – and Prof. Lee convincingly
19 testified that her "decades of inculcation and indoctrination would
20 have triggered her to say such things." (Tr. at 44.) Indeed,
21 "this is common North Korean verbiage that appears in North Korean
22 textbooks." (Id.); see also 2014 U.N. Rep. ¶ 27 ("The State
23 operates an all-encompassing indoctrination machine that takes root
24 from childhood[.]"). He also noted that her hesitance to give the
25 police certain identifying information was likely a "desperate
26 desire to try to limit what she tells authorities probably out of
27 concerns that what she says may be weighed against her back home
28 where I presume she has loved ones and associates who are held
hostage against every word, every action that North Koreans
stationed abroad take." (Id. at 56.) In light of her agitation
when she made the statements (see ECF No. 118-1 at 65 (Spanish
bystander who first helped her testifying that she was "in a high
state of anxiety and panic")) and given that neither So nor any
other North Koreans were present, the Court found that her
statements were not so coerced as to be inadmissible. (Tr. at
171.) Thus, it considers them for the limited evidentiary value
they have.

1 Finally, the government argues that there was nothing
2 unusual about Acting Ambassador So serving as a translator for
3 the other residents of the embassy, saying that it happens all
4 the time with other countries' diplomats. (See, e.g., ECF No.
5 187-1 at 4 (Spain explaining that So was used as translator for
6 "practical reasons").) But some examples the government gave of
7 such practices concerned "meetings" and other diplomatic
8 business, not criminal investigations and court proceedings.
9 (Tr. at 49-50.) In any event, even if having the highest-ranking
10 member of a diplomatic mission act as a translator in a criminal
11 proceeding were not unheard of, it would not excuse its happening
12 here because So was deeply self-interested. Even assuming he
13 didn't enlist Free Joseon's help to defect – which of course in
14 North Korea would be punishable by death – and accepting his
15 testimony about what happened, he was in charge when a group of
16 armed men took over the embassy, beat up the residents, and got
17 away with computers and other information-laden devices. Surely
18 he must have feared significant reprisal simply by virtue of his
19 having allowed the raid to happen on his watch. As Prof. Lee
20 testified, he would have made sure the other North Koreans'
21 statements matched his, whether by coercing them to say what he
22 wanted or simply translating them as he liked.

23 Because they were almost certainly coerced, the Court has
24 not considered the North Koreans' statements to the Spanish
25 police and judiciary (except for Cho's initial statement) because
26 that evidence is not competent.

27 3. Other Evidence

28 At the hearing the Court admitted Ahn's proffered evidence

1 of the 2014 U.N. Report of the Commission of Inquiry on Human
2 Rights in the Democratic People's Republic of Korea and his
3 attorney's declaration. (Tr. at 63.) Although it did not admit
4 for purposes of the probable-cause determination the letters of
5 support his friends and family members had submitted at the time
6 of his bail hearings (id. at 63-64), they are part of the record
7 and the Court has considered them in the section below on the
8 humanitarian exception.

9 **PROBABLE CAUSE**

10 So the question becomes whether the government's other
11 evidence amounts to probable cause supporting the remaining five
12 charges. Probable cause is "not a high bar." Kaley v. United
13 States, 571 U.S. 320, 338 (2014). It serves "only a gateway
14 function." Id. at 339. The Court must consider the probable-
15 cause evidence "through the lens of common sense." Harris, 568
16 U.S. at 248. As long as the government's competent evidence
17 supports a scenario in which Ahn committed the charged crimes,
18 probable cause exists. For four of the five remaining charges,
19 it does. Indeed, Ahn essentially admits as much. (See ECF No.
20 175 at 32-33 (acknowledging that group's actions constituted
21 "facially criminal conduct").)

22 Ahn contends that under Spanish law he is not responsible
23 for any misconduct committed by those who entered the embassy
24 with him. (See id. at 33-34.) But Spain says otherwise (see ECF
25 No. 187-1 at 4 (Spanish Magistrate Judge's statement of Spanish
26 law on criminal responsibility); ECF No. 187 at 47), and this
27 Court is not in a position to ignore that. See Grin v. Shine,
28 187 U.S. 181, 190 (1902) ("It can hardly be expected of us that

1 we should become conversant with the criminal laws of" requesting
2 countries). And Ahn's argument, which is not supported by any
3 reference to Spanish law, seems to be contradicted by Article 27
4 of the Spanish Penal Code, which provides that "[t]hose
5 criminally responsible for crimes . . . are the principals and
6 their accessories." (ECF No. 226-3 at 91.)

7 The competent evidence supporting extradition here is
8 enough:

9 Although Ahn did not arrive in Spain until the morning of
10 the embassy incident (see id. at 3), his compatriots prepared for
11 the operation by buying balaclavas, knives, imitation pistols,
12 handcuffs, flashlights, electrical tape, and a ladder the day
13 before, as shown by store receipts and video-camera surveillance
14 (see id. at 51-56). And Ahn does not contest that he went to and
15 entered the embassy with the others, as surveillance footage
16 seems to show.¹³

17

¹³ Ahn has never challenged the authenticity of the
18 surveillance footage from the embassy even though it was not handed
19 over to the Spanish police right away and could have been tampered
20 with for the same reasons the North Korean witnesses' statements
21 were coerced - to support the would-be defectors' cover story. As
22 Prof. Lee pointed out, about an hour and a half passed between when
23 the "so-called infiltrators" left the embassy and when Acting
24 Ambassador So allowed Spanish police to enter, "ample time to
25 coordinate and to lay out . . . damaging evidence." (Tr. at 54;
26 see also ECF No. 118-1 at 52 (Spanish police officer testifying
27 that they were not allowed into the embassy until "[m]uch, much
28 later," for a "short search"); ECF No. 197-1 at 11-14 (Prof. Lee
noting many contradictions in North Koreans' statements concerning
injuries and handcuffing).) Moreover, some of the footage,
particularly that taken after dark, is grainy and difficult to make
out. Even without the footage, though, probable cause exists that
Ahn committed the crimes with which he is charged (except robbery
with violence and intimidation and criminal organization, which the
Court has rejected for unrelated reasons). Accordingly, the Court

1 Two civilians who were waiting for a bus outside the embassy
2 when Ahn and the others entered heard "screams" from inside the
3 compound (ECF No. 118-1 at 77, 80-81, 101), and one of them
4 testified that when she peeked through a hole in the compound's
5 wall she saw someone on the ground with three people on top (id.
6 at 80-81), one of them holding a pistol (id. at 81).¹⁴ The other
7 witness saw people on top "grabbing the person who was on the
8 ground." (Id. at 102.)

9 Spanish police and a bystander testified that Cho, the woman
10 who jumped from the embassy's terrace to escape the intruders,
11 was very scared and appeared to be seriously injured. (See ECF
12 No. 226-3 at 7-8, 17, 39-41; ECF No. 118-1 at 9, 18-19, 48, 65-
13 66.) She told responding police, through Google Translate, that
14 "individuals had entered the Embassy and they were killing
15 people, were eating people and there were children there," and
16 she "continued insisting that we had to go in, that something
17 very serious was happening in the Embassy." (ECF No. 118-1 at
18 19-20; see also id. at 27, 48.) Spanish police also testified
19 that after they went to the embassy to investigate, Hong answered
20 the door and pretended to be North Korean, telling the officers
21 nothing was wrong and that if they had heard noises inside it was

22 _____
23 generally, although not entirely, avoids relying on the security
24 footage. See Cornejo-Barreto v. Siefert, 218 F.3d 1004, 1008 (9th
25 Cir. 2000) ("To isolate any possible taint . . . on the evidence
26 supporting the probable cause determination, the judge considered
27 the sufficiency of the evidence without the challenged
28 confessions."), labeled "advisory" by 379 F.3d 1075, 1086 (9th Cir.
2004).

¹⁴ A "student" who was with this witness apparently thought the people were just "practi[c]ing." (ECF No. 118-1 at 81.)

1 because "he couldn't open a door" and had had to "give it a kick"
2 (id. at 21; see also id. at 49) – suggesting, of course, that the
3 true North Koreans were either involuntarily incapacitated or
4 could not be trusted to say that they were fine because they in
5 fact were not in on the caper, and that when they heard the
6 police at the door they had made noise to try to attract
7 attention.

8 Officers stationed outside the embassy saw Ahn and his group
9 leave in embassy cars "quite fast" and "at great speed," one of
10 those cars with its lights off. (Id. at 50-51; see also id. at
11 24.) They took with them pen drives, computers, hard drives, and
12 a mobile telephone belonging to the North Koreans.¹⁵ (ECF No.
13 226-3 at 3, 9.)

14 After police were allowed to enter the compound, they found
15 scattered about various accoutrements of criminal activity,
16 including restraints, handcuffs, knives, and replica guns, items
17 consistent with those Ahn's cohorts had bought before the
18 incident. (See id. at 9.)

19 Finally, it is not lost on the Court that the embassy
20 incident took place mere days before President Trump was to meet
21 with Kim Jong-Un for a second summit. See, e.g., Ankit Panda,
22 Second Trump-Kim Summit to Take Place February 27-28 in Vietnam,
23 The Diplomat (Feb. 6, 2019), <https://thediplomat.com/2019/02/>

24
25 ¹⁵ Ahn argues that if all the group had wanted was to steal
26 information, they wouldn't have stayed "five hours." (Tr. at 83.)
27 (It was actually four and a half.) But remember: things did not go
28 as planned. Once the police showed up about an hour in, the "so-
called infiltrators," as Prof. Lee described them (id. at 54),
would have had to rethink their mission, their escape, and their
story.

1 second-trump-kim-summit-to-take-place-february-27-28-in-vietnam.
2 It's not a stretch to think that Free Joseon, a group intent on
3 undermining Kim's rule, might have wanted to create bad publicity
4 for North Korea before the summit by whatever means it could,
5 regardless of whether any embassy resident wanted to defect.

6 This evidence satisfies the government's burden of showing
7 probable cause to believe that the group who entered the embassy
8 that day committed crimes there. Except as to the criminal-
9 organization allegation, none of Ahn's arguments as to specific
10 charges undermine that evidence, as explained below.

11 1. Breaking and Entering

12 Relying on his own declaration, Ahn argues that no breaking
13 and entering occurred for reasons the Court does not explicitly
14 recount here because the declaration is under seal. But the
15 Court has ruled that declaration inadmissible "contradictory"
16 evidence. Moreover, although the remaining evidence is open to
17 interpretation, it amounts to probable cause of breaking and
18 entering. At least one of the government's photo stills might
19 depict one of the members of the group holding his foot in the
20 door to keep it open after Hong Chang, masquerading as someone
21 else, was allowed in. (See Gov't's Suppl. Ex. at 3, 5, ECF No.
22 202-1.) Just after the group's entry the two civilian witnesses
23 saw people being restrained on the ground, one of the intruders
24 displaying a gun. (ECF No. 118-1 at 81.) Finally, that Hong,
25 not one of the embassy's occupants, came to the door to talk to
26 the police while masquerading as a North Korean diplomat suggests
27 that the real North Koreans were restrained or unwilling to tell
28 the police that everything was okay because Ahn and the group had

1 in fact entered without permission or under false pretenses.

2 2. Illegal Restraint

3 Ahn's arguments concerning this charge again rest mostly on
4 his declaration, which the Court has declined to admit. Several
5 uncontested facts show probable cause to believe that the group
6 restrained the North Koreans: they (although not Ahn himself)
7 bought restraints the day before they entered the embassy; when
8 the police came to the door, Hong, posing as a North Korean,
9 answered, suggesting that the real North Koreans were all
10 restrained or unwilling to play along; and when the North Koreans
11 finally emerged from the building after the group had fled, some
12 were wearing restraints. It will be for the trier of fact to
13 decide whether to believe Ahn's explanation for how and why they
14 came to be restrained.

15 3. Causing Injuries

16 Ahn acknowledges that medical records show serious injuries
17 to Cho from when she jumped off the terrace to escape the
18 strangers in the embassy and some "basic injury" "with no
19 aesthetic damage" to Acting Ambassador So. (ECF No. 175 at 37.)
20 He argues that he could not have foreseen the former's injuries
21 and that the minimal harm caused to So means this charge would
22 carry a penalty of only up to three months, "falling far short of
23 the Treaty's requirement that extraditable offenses be punishable
24 'by deprivation of liberty for a period of more than a year.'" (Id.)

25
26 But the government has the better argument here. As it
27 points out (see ECF No. 187 at 40), under the treaty, extradition
28 is appropriate on any crime carrying a penalty of less than a

1 year as long as one of the other extraditable offenses is
2 punishable by more than a year (see ECF No. 226-1 at 10). The
3 other offenses on which the Court orders Ahn extradited all carry
4 a potential punishment of more than a year, and the minimum for
5 illegal restraint is four years. (See ECF No. 226-3 at 87-88.)
6 Thus, even were the Court to consider So's only marginal
7 "injuries," extradition would be appropriate on the causing-
8 injury charge. But the government wins on Cho's much more
9 serious injuries, too, as surely those who entered the embassy
10 could have expected that anyone present who was not "in" on any
11 staged kidnapping might have reacted as she did in an attempt to
12 escape. See United States v. Rodriguez, 766 F.3d 970, 983 (9th
13 Cir. 2014) ("In many situations giving rise to criminal
14 liability, the death or injury is not directly caused by the acts
15 of the defendant but rather intervening forces or events, such as
16 . . . escape attempts[.]" (citation omitted)); (see also ECF No.
17 226-3 at 87 (crime of causing injuries occurs when someone, "via
18 any means or procedure, cause[s] another individual an injury")).

19 4. Threats

20 Ahn claims that the evidence of threats "is derived entirely
21 from the testimony of North Korean witnesses." (ECF No. 175 at
22 36.) In fact, at least one civilian witness saw one of the
23 embassy entrants wielding a gun at the occupants, and another saw
24 a person being held down on the ground. This, along with the
25 receipts showing that Hong and the others purchased replica guns
26 and other tools of a forced break-in, is enough to show probable
27 cause that they "threaten[ed] others with causing them . . .
28 detriment entailing homicide, injuries, . . . offenses against

1 liberty, [or] torture.” (ECF No. 226-3 at 88); cf., e.g., United
2 States v. Grajeda, 581 F.3d 1186, 1191 (9th Cir. 2009) (noting
3 that using deadly weapon to “threaten” great bodily injury
4 constitutes crime of violence).

5 5. Criminal Organization

6 A “criminal organization” is “a group formed of more than
7 two people that is stable in nature and operates for an
8 indefinite period, which, in an arranged and coordinated manner,
9 assigns various tasks or functions with the aim of committing
10 crimes.” (ECF No. 226-3 at 90.)

11 Ahn contests that Spain has shown that Free Joseon has the
12 “aim of committing crimes,” has operated for an “indefinite
13 period,” or even that he is a member of it. (ECF No. 175 at 34-
14 35.) He points out that unlike the others involved in the
15 incident, he did not arrive in Spain until that morning and was
16 not part of the planning that took place beforehand, with the
17 purchase of various items that were apparently used at the
18 embassy. (See id.)

19 As for this last argument, all that is required for
20 liability is that someone “cooperate with” the organization “in
21 any . . . manner.” (ECF No. 226-3 at 90.) Even if Ahn was not a
22 member of Free Joseon or whatever other organization entered the
23 embassy that day, he “cooperated with” it.

24 Ahn’s other arguments fare better, however. Two possible
25 “organizations” were involved here: Free Joseon or the discrete
26 group of people who planned to and then entered the North Korean
27 embassy in Spain on February 22, 2019. If the Court takes Ahn at
28 his word and attributes the day’s events to Free Joseon (see Tr.

1 at 128; see also ECF No. 175 at 36), then the government has not
2 presented evidence that it is a "criminal" organization "with the
3 aim of committing crimes." It has not pointed to any other
4 crimes ever committed by Free Joseon or its predecessor
5 organizations. And its leader was a widely respected civil-
6 rights activist and former TED fellow (see Tr. at 51-52, 54-55),
7 hardly the profile of an inveterate criminal. The government
8 seems to think that the alleged commission of crimes on February
9 22, 2019, alone satisfies the criminal-organization requirements
10 (see ECF No. 187 at 42), but a plain reading of the statute's
11 language requires the group to have as an ongoing aim committing
12 crimes, which no evidence here shows. The government's reading
13 renders impermissibly superfluous the statute's language
14 mandating that the "criminal" organization be stable in nature
15 and of indefinite duration. See Conn. Nat'l Bank v. Germain, 503
16 U.S. 249, 253 (1992) (observing that "courts should disfavor
17 interpretations of statutes that render language superfluous");
18 cf. In re Comm'r's Subpoenas, 325 F.3d 1287, 1301 (11th Cir.
19 2003) (applying that rule of statutory construction to foreign-
20 treaty language), overruled on other grounds by Intel Corp. v.
21 Advanced Micro Devices, Inc., 542 U.S. 241 (2004).

22 On the other hand, if the "organization" at issue is simply
23 those who entered the embassy that day, then the government has
24 not shown that it is "stable in nature" and has "operated for an
25 indefinite period." Indeed, nothing demonstrates that that group
26 "operated" together before or beyond that finite period.

27 The government has not shown probable cause to believe that
28 Ahn committed the criminal-organization crime.

* * *

1
2 For all these reasons, probable cause exists to extradite
3 Ahn to Spain on the charges of breaking and entering, illegal
4 restraint, causing injuries, and threats but not on robbery with
5 violence or intimidation or criminal organization.

6 **HUMANITARIAN EXCEPTION**

7 Under the "rule of noninquiry," the Secretary of State, not
8 the courts, generally determines whether the United States should
9 refuse to extradite someone for humanitarian reasons. Prasoprat,
10 421 F.3d at 1016. The rule arises from the Secretary's need to
11 consider any foreign-policy implications of refusing extradition,
12 something the Secretary is generally in a better position to know
13 than a court.¹⁶ See id.

14 Still, the Ninth Circuit has alluded to the theoretical
15 existence of a "humanitarian exception" that would allow a court
16 to refuse to certify extradition when extraordinary circumstances
17 made extradition unjust. Id. (collecting cases). Although
18 neither party has cited any instance of a court finding such an
19 exception warranted, see also id., that may be at least in part
20 because if an extradition court invoked the exception and refused
21 to extradite, the government would have no mechanism to bring the
22 case further scrutiny in a court of appeals, see Hooker v. Klein,
23 573 F.2d 1360, 1364 (9th Cir. 1978) (noting that when magistrate
24 judge denies extradition request, government's only remedy is to

25
26 ¹⁶ Some contend that the rule has its origins in the ugly
27 history of judges refusing to inquire into how fugitive slaves
28 would be treated were they returned to their owners. See
Christopher H. Pyle, Extradition, Politics, and Human Rights 119
(2001).

1 start extradition process over again); United States v. Doherty,
2 786 F.2d 491, 501 (2d Cir. 1986) (holding that when extradition
3 court refuses to certify extradition, "sole recourse" for United
4 States is to file another extradition request because direct
5 appeal is not available), or because when courts have been
6 alarmed for humanitarian reasons about extraditing someone, they
7 have tended to find another reason to deny extradition rather
8 than relying on those humanitarian concerns, see John T. Parry,
9 Int'l Extradition, the Rule of Non-Inquiry, and the Problem of
10 Sovereignty, 90 B.U. L. Rev. 1973, 1990-91 (Oct. 2010).

11 But even if the exception exists, the Ninth Circuit has made
12 clear that a magistrate judge may not invoke it. See Prasoprat,
13 421 F.3d at 1016 ("[T]he magistrate judge does not have any
14 discretion to exercise."), 1017 ("[T]he magistrate judge did not
15 have the authority to refuse to issue a certificate of
16 extradition on humanitarian grounds."). "Once the magistrate
17 judge determines that the crime is extraditable and there is
18 probable cause to sustain the charge, 'it is the Secretary of
19 State, representing the executive branch, who determines whether
20 to surrender the fugitive.'" Id. (quoting Blaxland v.
21 Commonwealth Dir. of Pub. Prosecutions, 323 F.3d 1198, 1208 (9th
22 Cir. 2003)).

23 Because of this unequivocal language, the Court reluctantly
24 must reject Ahn's argument that it can apply the humanitarian
25 exception. He argues that none of the cases saying it can't
26 concerned "a non-treaty partner intend[ing] to commit an
27 extrajudicial assassination of the Relator and that the
28 opportunity to assassinate him exponentially increases if he

1 leaves the United States, independent of the procedures and
2 policies of the requesting nation.” (Reply to Gov’t’s Resp. to
3 Suppl. Exs. at 4-5, ECF No. 222 (emphasis in original).) That’s
4 all true, as is his focus on the rule of noninquiry generally
5 prohibiting an extradition court from “examining the penal
6 systems of requesting nations” and not some outside force. (Id.
7 at 5 (emphasis in original) (citing Lopez-Smith v. Hood, 121 F.3d
8 1322, 1327 (9th Cir. 1997).)

9 But courts have also applied the rule of noninquiry – and
10 refused to consider a humanitarian exception – when, as here, the
11 threat came from a source unrelated to the requesting country’s
12 government. See, e.g., United States v. Lui Kin-Hong, 110 F.3d
13 103, 111 (1st Cir. 1997) (rejecting relator’s argument that
14 extradition to Hong Kong was impermissible because city was to
15 revert to China by time of any trial and thus fairness of
16 judicial process there could not be guaranteed); Sindona v.
17 Grant, 619 F.2d 167, 174-75 (2d Cir. 1980) (applying rule even
18 though fugitive presented evidence of assassination threats in
19 requesting nation from “political enemies on the left”);
20 Venckiene v. United States, 929 F.3d 843, 864-65 (7th Cir. 2019)
21 (rejecting claim that fugitive would be “subject to physical harm
22 from sources outside the [requesting] government” as basis for
23 denying extradition because “these are humanitarian arguments
24 that are in the purview of the Secretary of State in extradition
25 proceedings”); Perloff v. Hylton, 542 F.2d 1247, 1249 (4th Cir.
26 1976) (rejecting claim that extradition should be denied because
27 of “potential assassins in Swedish prisons”); Koskotas v. Roche,
28 740 F. Supp. 904, 909, 917 (D. Mass. 1990) (applying rule to

1 assassination threats in requesting nation from terrorists).

2 Ahn argues that those cases are different because the threat
3 here is "institutional," from a "sovereign state that consciously
4 chooses to use assassination, kidnapping, and terrorism as an
5 instrument of policy." (Tr. at 142-43); see also 2014 U.N. Rep.
6 ¶ 24 (finding that North Korea "systematic[ally]" commits "crimes
7 against humanity based on State policies"). But why should the
8 source of the threat matter if the relator winds up dead just the
9 same? The truly significant difference here from those cases is
10 that the Court needn't make any messy inquiry into just how real
11 the threat is: the FBI has conceded that North Korea wants to
12 kill Ahn and that that threat is easier to carry out in Spain
13 than here in the United States. (See Rim Decl. ¶ 3, ECF Nos.
14 173-3 & 223 (unsealing Rim Decl.)) And our own State Department
15 (never mind Prof. Lee) has found that North Korea stops at no
16 border to avenge the Kim name. See U.S. State Dep't Bureau of
17 Democracy, Human Rights, and Labor, 2020 Country Reports on Human
18 Rights Practices: Democratic People's Republic of Korea, Exec.
19 Summary (Mar. 30, 2021), [https://www.state.gov/reports/](https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/north-korea)
20 [2020-country-reports-on-human-rights-practices/north-korea](https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/north-korea)
21 ("Significant human rights issues included . . . politically
22 motivated reprisals against individuals located outside the
23 country.").

24 Ahn does not really expand on his argument that the
25 "institutionality" of the threat somehow makes a difference. But
26 if what he means is that as a state sponsor of terrorism, North
27 Korea has the resources and the resolve to kill him no matter
28 what measures Spain might take, and that therefore any assurances

1 from it that the State Department might extract concerning his
2 safety aren't worth a roll of pennies, with that the Court
3 wholeheartedly agrees. As North Korea's assassinations and
4 kidnappings on European and other nations' (but not the United
5 States's) soil reveal (see ECF No. 175-3 at 77; Ahn's Suppl. Ex.
6 F at 49, ECF No. 203-1), it doesn't care about angering those
7 like Spain who partner with it in some way or another. Moreover,
8 for many reasons unrelated to North Korea, the U.N. Committee
9 Against Torture has questioned the effectiveness of our State
10 Department's reliance on diplomatic assurances from a requesting
11 nation to ensure an extraditee's safety. See U.N. Comm. Against
12 Torture, 36th Sess., Conclusions and Recommendations of the
13 Committee Against Torture, May 1-19, 2006, ¶ 21, U.N. Doc.
14 CAT/C/USA/CO/2 (May 18, 2006); see also Jane C. Kim, Note,
15 Nonrefoulement Under the Convention Against Torture: How U.S.
16 Allowances for Diplomatic Assurances Contravene Treaty
17 Obligations and Federal Law, 32 Brook. J. Int'l L. 1227, 1232
18 (2007) (arguing that "the use of non-reviewable and
19 insufficiently reliable diplomatic assurances, whether or not
20 given in good faith, effectively derogates" laws intended to
21 prevent human-rights abuses).

22 Some argue, with profound force, that courts have been
23 guilty of abdicating their responsibility to ensure the
24 fundamental fairness of extraditions, inappropriately ceding such
25 power almost entirely to the executive branch. See generally,
26 e.g., Parry, supra; Matthew Murchison, Note, Extradition's
27 Paradox: Duty, Discretion, and Rights in the World of Non-
28 Inquiry, 43 Stan. J. of Int'l L. 295, 296 (Summer 2007)

1 (describing rule of noninquiry as “glaring blind-spot for the
2 judiciary”).

3 The Court understands that in the usual case, “it is for the
4 political branches, not the judiciary, to assess practices in
5 foreign countries and to determine national policy in light of
6 those assessments.” Munaf v. Green, 553 U.S. 674, 700-01 (2008).

7 But “[t]he Supreme Court has never used the term ‘rule of non-
8 inquiry,’ let alone explicated its scope or proper application.”

9 Trinidad y Garcia v. Thomas, 683 F.3d 952, 992 (9th Cir. 2012)

10 (en banc) (Berzon, J., concurring & dissenting). And as many

11 have noted, the Secretary of State is not a neutral

12 decisionmaker. See, e.g., id. (Berzon, J., concurring &

13 dissenting); Murchison, supra, at 313 n.129 (collecting such

14 observations). Rather, according to these observers, “[t]he

15 State Department cannot be trusted to weigh the rights of

16 individuals against the government’s own international law

17 enforcement and foreign policy agenda.” Murchison, supra, at 313

18 n.129; see also Meredith Angelson, Note, Beyond the Myth of “Good

19 Faith”: Torture Evidence in International Extradition Hearings,

20 41 N.Y.U. J. Int’l L. & Pol. 603, 629 (Spring 2009) (“[T]he

21 interests of the relator may easily be lost in the [State

22 Department’s] calculation of whether or not to deny

23 extradition.”). Perhaps for this reason, “Munaf affirmatively

24 left open . . . the question of whether . . . in ‘a more extreme

25 case in which the Executive has determined that a detainee is

26 likely to be tortured but decides to transfer him anyway,’” a

27 court might have authority to intervene. Trinidad, 683 F.3d at

28 991 (Berzon, J., concurring & dissenting) (quoting Munaf, 553

1 U.S. at 702). Here, of course, "the Executive," in the form of
2 the FBI, admits that North Korea wants to kill Ahn and has
3 advised that the safest place for him is here, in the United
4 States.¹⁷ (See ECF No. 173-3 at 2.)

5 None of this changes the categorical language of the cases
6 the Court is bound to follow. The stakes here are high on both
7 sides, and given the Ninth Circuit's no-exceptions, couldn't-be-
8 clearer language barring a magistrate judge from invoking a
9 humanitarian exception and the government's inability to appeal
10 any refusal to extradite, my hands are tied.¹⁸

11 Based on what I know,¹⁹ I believe that extraditing Ahn to
12 _____

13 ¹⁷ The government has suggested in passing that the fact that
14 Ahn is still alive means that the threat to his life is not
15 substantial. But his continuing to breathe may be precisely
16 because he has remained in the United States, where North Koreans
17 generally cannot venture. Moreover, North Korea may be
18 incentivized not to harm Ahn for as long as Hong Chang, the
19 ringleader of the group and presumably the primary target of North
20 Korea's ire, remains at large, for surely the United States (or any
21 other country) would not extradite Hong if Ahn were killed by North
22 Korea before Hong was captured and extradited. Thus, as far as Ahn
23 is concerned, North Korea may simply be biding its time.

24 ¹⁸ Under the rule of noninquiry, "Courts faced with potentially
25 disturbing claims can compile reassuring string cites of cases in
26 which their predecessors refused . . . to inquire into possible
27 violations of human rights." Parry, supra, at 1995-96 (advocating
28 for "rule of limited inquiry" to replace rule of noninquiry).
Although that long list of cases - many of them trotted out in the
government's briefing - constrains me to certify extradition, I am
not reassured.

29 ¹⁹ I recognize that the government may have information
30 concerning Ahn that it doesn't wish to share with him or even the
31 Court. For instance, some of the newspaper accounts cited to the
32 Court quoted sources saying that he was or has been a CIA agent
33 (although the Court does not see how, if true, that would weigh in
34 favor of extraditing him). See, e.g., John Hudson, U.S.
35 Authorities Make First Arrest in Mysterious Raid of North

1 Spain would be "antipathetic" to our common "sense of decency,"
2 the standard first set out for a humanitarian exception to
3 extradition. See Gallina v. Fraser, 278 F.2d 77, 79 (2d Cir.
4 1960); see also 2014 U.N. Rep. ¶ 86 (concluding that North
5 Korea's "crimes" "shock the conscience of humanity"). I lay out
6 here the reasons why I wish I could invoke a humanitarian
7 exception to keep Ahn in the United States, and I humbly ask the
8 Ninth Circuit to clarify that it didn't mean to rule the
9 exception out categorically.²⁰ There would be no shame in that.
10 Certainly no one could have ever imagined a case like this one,
11 and the humanitarian exception deserves to be considered anew in
12 its context. See Emami v. U.S. Dist. Ct., 834 F.2d 1444, 1453
13 (9th Cir. 1987) (noting that Ninth Circuit has "left open the
14 possibility that . . . considerations . . . might someday cause
15 [it] to develop a humanitarian exception in a case where the

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17
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19 Korea's Embassy in Spain, Wash. Post (Apr. 19, 2019),
20 [https://www.washingtonpost.com/world/national-security/
21 us-authorities-make-first-arrest-in-mysterious-raid-of-north-
22 koreas-embassy-in-spain/2019/04/19/bfee15e2-d984-4600-9b63-
14270f9b0bb3_story.html](https://www.washingtonpost.com/world/national-security/us-authorities-make-first-arrest-in-mysterious-raid-of-north-koreas-embassy-in-spain/2019/04/19/bfee15e2-d984-4600-9b63-14270f9b0bb3_story.html). The Court can rule based only on what it
23 knows.

24 ²⁰ Of course, the district judge might grant any habeas
25 petition Ahn files, perhaps preventing the issue from reaching a
26 higher court. Indeed, although Ninth Circuit law seems clear that
27 a magistrate judge may not invoke the humanitarian exception, a
28 district judge may not be so constrained. See Trinidad, 683 F.3d
at 995 (Berzon, J., concurring and dissenting) (noting that
judicial habeas review of extradition orders prevents
"inappropriate concentration of power within a single branch,"
"ensuring that the executive's discretion to extradite is exercised
within the parameters of the law"); see also id. at 996.

1 facts warranted it").²¹

2 1. Ahn's Life Will Be in Danger in Spain

3 Early on in this case, the FBI confirmed that North Korea
4 has called for Ahn's execution. The government has never
5 disputed this. Indeed, given the expert testimony from Prof. Lee
6 and what we know of North Korea's past behavior, the existence of
7 a hit is hardly surprising. North Korea tortures and kills those
8 who cross it; it is a state sponsor of terrorism. Defection is
9 punishable by death, and apparently assisting it is too. See
10 § 7801(5); see also Han Kim, 774 F.3d at 1046 (describing
11 regime's abduction from China, torture, and murder of reverend
12 who helped North Korean defectors and refugees). And North
13 Korea's torture and killing of Otto Warmbier for taking a poster
14 of the supreme leader off the wall of his hotel certainly doesn't
15 bode well for Ahn and his cohorts, who reportedly filmed
16 themselves removing framed photos of the Kim family from the wall
17 of the embassy and smashing them to the ground, releasing that
18 footage on the internet for the world to see.²² (See ECF No.

19
20 ²¹ Some of the "facts" relied on in this section come from
21 media reports cited to the Court by Ahn and his counsel. The
22 government has never contested the accuracy of Petitioner's cited
23 reports, and because this entire section is dictum in any event, I
24 accept the contents of those reports and rely on a few outside
25 sources of my own.

26 ²² Except, of course, for those doomed to live in North Korea,
27 where access to the worldwide web is "notoriously restrict[ed],"
28 Saira Asher, What the North Korean Internet Really Looks Like,
BBC News (Sept. 21, 2016), <https://www.bbc.com/news/world-asia-37426725>, and not available to ordinary citizens, see
U.S. State Dep't, supra, § 2.A (reporting that internet access in
2020 was "limited to high-ranking officials and other designated
elites" and was "constantly monitored").

1 203-1 at 31 (still of photos being removed from wall); ECF No.
2 226-3 at 19-20 (statement of Acting Ambassador So); ECF No. 197-1
3 at 8-9 (Prof. Lee stating that smashing of photos at embassy
4 means North Korea "will go to the ends of the earth to take down
5 Mr. Ahn and the other alleged participants").)

6 Ahn faces retribution from North Korea not just for his
7 actions here but also because it has become known that he was
8 involved in helping Kim Han-Sol, Kim Jong-Un's nephew,
9 "disappear" after his father, whom many considered to be the
10 rightful heir to the North Korean throne, was assassinated by
11 North Korea and the nephew's life appeared also to be in danger.
12 (See ECF Nos. 197-1 at 10 & 175 at 40 (citing Lee Min-hyung, Kim
13 Han-Sol Escaped with Help of Anti-North Korea Group, The Korea
14 Times (last updated May 29, 2019), [https://www.koreatimes.co.kr/
15 www/nation/2019/05/356_269710.html](https://www.koreatimes.co.kr/www/nation/2019/05/356_269710.html)); Tr. at 145, 147-48.)

16 While the government does not contest that North Korea seeks
17 to assassinate Ahn – indeed, the FBI first brought the threat to
18 his attention – it downplays the risk, arguing that Spain should
19 be able to protect him. But even if Spain could somehow protect
20 Ahn if and while he was in custody there – unlikely, given North
21 Korea's ruthless resolve to kill its enemies and its ties to a
22 Spanish citizen apparently engaged in criminal activities on its
23 behalf (see ECF No. 197-1 at 6-7; see also id. at 6 (Prof. Lee
24 noting that North Korea "routinely conspire[s] with criminal
25 networks in Europe")) – he presented evidence that he would
26 likely be granted bail in that country while awaiting any trial.
27 (Tr. at 139; Ahn's Appl. Recons. at 20, ECF No. 33 at 20; ECF No.
28 33-1 at 97-113.) Stripped of any protection possible in jail –

1 solitary confinement or the like – Ahn would become even more
2 vulnerable. (Tr. at 141.) Uncontested evidence shows that North
3 Korea has abducted its enemies from numerous European countries,
4 including the Netherlands, Austria, and Italy, and it has killed
5 on foreign soil, including Kim Jung-Un’s half-brother, in a
6 Malaysian airport. (ECF No. 197-1 at 4-6.) In one instance of
7 apparent retribution shortly before the embassy incident here,
8 North Korea apparently kidnapped from Italy the 17-year-old
9 daughter of an official who defected from the embassy there,
10 repatriating her to North Korea, where she has not been heard
11 from since.²³ (ECF No. 175 at 17; ECF No. 222 at 3-4 (citing
12 newspaper accounts).)

13 And of course, because Spain has diplomatic relations with
14 North Korea and the United States does not, Ahn is much safer
15 here. With very few exceptions North Koreans are not allowed
16 into this country (see ECF No. 197-1 at 6 (noting that North
17 Koreans admitted into United States to participate in United
18 Nations must stay within 25 miles of diplomatic mission in
19

20 ²³ Perhaps Ahn assisted in this defection as well, another
21 reason for North Korea to go after him. (See ECF No. 226-3 at 83
22 (Spanish prosecutorial report noting that Ahn was in Italy in late
23 October 2018, along with Hong Chang and another participant in the
24 Spanish-embassy incident)); Choe Sang-Hun, North Korean Diplomat,
25 Missing Since 2018, Is in Seoul, Lawmaker Says, N.Y Times
26 (Nov. 27, 2020), [https://www.nytimes.com/2020/10/06/world/asia/
27 defector-north-korea.html](https://www.nytimes.com/2020/10/06/world/asia/defector-north-korea.html) (noting that Italian defection took place
28 in Nov. 2018); William Cole, Daughter of North Korea’s Ambassador
to Italy Has Been ‘Kidnapped by Kim Jong-Un’s Agents’ and Taken
Back to Pyongyang After Her Parents Disappeared in Alleged
Defection, DailyMail.com (Feb. 21, 2019),
[https://www.dailymail.co.uk/news/article-6728541/
North-Korean-ambassadors-daughter-kidnapped-Kim-Jong-Uns-agents-
parents-defect.html](https://www.dailymail.co.uk/news/article-6728541/North-Korean-ambassadors-daughter-kidnapped-Kim-Jong-Uns-agents-parents-defect.html) (same).

1 midtown Manhattan)), whereas Spain apparently allows entry to
2 "students" and others from that country, who have much greater
3 freedom of movement (id. at 6, 12-13; see also ECF No. 226-3 at
4 10). Ahn presented uncontested evidence that the FBI advised his
5 counsel that he "should not leave the United States as a matter
6 of safety." (ECF No. 173-3 at 2; see Tr. at 136.)

7 The government's assurances are even less convincing
8 considering the evidence presented at the hearing. Cindy
9 Warmbier explained how she and her husband were repeatedly told
10 by the State Department that their son would be "okay," only to
11 have him finally returned in a vegetative state, to die soon
12 after. (Tr. at 155-56.) Yes, this and the other examples of
13 North Korea's insatiable vengeance are anecdotal, but because of
14 our nonexistent relations with North Korea – again, a nation we
15 have declared a state sponsor of terrorism – the limited
16 anecdotal information available carries outsized weight. See Han
17 Kim, 774 F.3d at 1045 ("[T]hrough terror and intimidation [North
18 Korea] prevents any information about [its] crimes from escaping
19 to the outside world."). However sincere Spain's intentions and
20 secure its prisons, Ahn faces a serious risk of being
21 assassinated there. In Prof. Lee's words, "[T]here should be no
22 doubt that Christopher Ahn is at risk of being killed if he is
23 extradited outside the United States" because North Korea "is in
24 fact a model terrorist state whose murderous reach is global,
25 whose resources for carrying out acts of international terrorism
26 are vast, and whose will to assassinate high-value targets is
27 indefatigable." (ECF No. 197-1 at 3-4 (emphasis omitted).)

28 Ahn surely does not deserve to die for the offenses with

1 which he is charged. And there's no reason for him to. The
2 treaty between Spain and the United States can just as well be
3 honored here, for it explicitly provides that the State
4 Department can refuse to extradite a U.S. national and instead
5 try him here. (Revised Req., Ex. A, Annex to Extradition Treaty,
6 art. IV, ECF No. 226-1.)²⁴ Of course, as explained below, this
7 whole extradition is likely an exercise in futility and no trial
8 will take place anywhere, including in Spain, another reason why
9 the humanitarian exception should be available.

10 2. Spain Likely Can't Try Ahn

11 Spain certainly has an important interest in telegraphing to
12 its diplomatic partners that it will take whatever steps
13 necessary to ensure their safety and security when in the
14 country. See Finzer v. Berry, 798 F.2d 1450, 1455 (D.C. Cir.
15 1986) (noting that "host states have a special responsibility to
16 ensure that foreign embassies and the personnel inside them are
17 free from threats of violence and intimidation"). But at the
18 hearing, Prof. Lee testified that North Korea was extremely
19 unlikely to make its witnesses available to testify in any trial,

20
21 ²⁴ Indeed, if the Court believed it had any authority to apply
22 the humanitarian exception, it would not be inclined to impose it
23 outright but rather to order that if the United States did not
24 invoke article IV of the treaty within a certain number of days,
25 the Court would then refuse to extradite him on humanitarian
26 grounds. But even if a magistrate judge could apply the
27 humanitarian exception, it seems only the State Department, not a
28 judge, may attach conditions to an extradition order. See Emami,
834 F.2d at 1453. Unfortunately, "[v]esting the sole power to make
demands for assurances in the executive branch does not effectively
protect an individual's rights because the executive may be
preoccupied with political, military, or foreign policy concerns."
Andrew J. Parmenter, Comment, Death by Non-Inquiry, 45 Washburn
L.J. 657, 679-80 (Spring 2006).

1 much less allow them to be cross-examined. (Tr. at 59.) To his
2 knowledge, the statements the North Koreans gave to the Spanish
3 authorities marked the first time the country had ever
4 participated in any judicial proceeding in any other country.
5 (Id. at 58-59 (surmising that embassy officials did so because
6 they needed cover story to explain their actions)); see also
7 Warmbier, 356 F. Supp. 3d at 41 (noting that default was taken
8 against North Korea after it failed to appear); Han Kim, 774 F.3d
9 at 1045, 1048 (noting that North Korea "refused to appear in
10 court and subject itself to discovery" in civil suit filed by
11 family members of regime opponent who was abducted, tortured, and
12 killed by North Korea). All of the North Koreans but the Acting
13 Ambassador have apparently been called back to North Korea and
14 are not available to accept any kind of process. (Tr. at 59.)

15 Spain apparently requires in criminal trials that "the
16 evidence will be heard first-hand through the testimony of
17 witnesses, rather than through the reading of documents."
18 Stephan C. Thaman, Europe's New Jury Systems: The Case of Spain
19 and Russia, 62 Law & Contemp. Probs. 233, 241 n.43 (Spring 1999);
20 see also U.S. State Dep't Bureau of Democracy, Human Rights, and
21 Labor, 2020 Country Reports on Human Rights Practices: Spain,
22 § 1.E (noting that in Spain, defendants "may confront prosecution
23 . . . witnesses"); Spanish Const. Dec. 29, 1978, § 120
24 ("Proceedings shall be predominantly oral, especially in criminal
25 cases"). Pretrial statements are generally not admissible if the
26 witness was not subjected to adversarial cross-examination when
27 they were made. See Dennis P. Riordan, The Rights to a Fair
28 Trial and to Examine Witnesses Under the Spanish Constitution and

1 the European Convention on Human Rights, 26 Hastings Const. L.Q.
2 373, 391, 402-03 (Winter 1999).

3 Because the United States has signed an extradition treaty
4 with Spain, it's not the Court's role to inquire whether its
5 legal system is fair. See Glucksman v. Henkel, 221 U.S. 508, 512
6 (1911) ("We are bound by the existence of an extradition treaty
7 to assume that the trial will be fair."). But that's not what
8 it's doing. It's pointing out that Spain likely won't be able to
9 adhere to its own procedures for trying criminal defendants
10 because the North Koreans are virtually certain not to
11 participate in any trial. While the Court has found the
12 remaining evidence sufficient to support the very low probable-
13 cause standard, it's probably not enough to sustain an actual
14 criminal conviction in any country with which we have an
15 extradition treaty, particularly in light of Ahn's likely
16 uncontested explanation for the events of that day.

17 Because shipping Ahn off to Spain, where his life will be in
18 grave danger from a force our government recognizes as evil, to
19 await a trial that will likely never happen is inhumane and may
20 well violate due process, see Martin v. Warden, 993 F.2d 824, 829
21 (11th Cir. 1993) (recognizing that "constitutional rights of
22 individuals, including the right to due process, are superior to
23 the government's treaty obligations"), I – or some judge or
24 judges – should be able to stop it.

25 3. The State Department Has Already Rebuffed
26 Entreaties Not to Turn Ahn over to Spain

27 In the usual case, a court considers the probable-cause
28 question first, and then the State Department reviews the matter

1 to make certain extradition is appropriate. See, e.g., Meza v.
2 U.S. Att’y Gen., 693 F.3d 1350, 1357 (11th Cir. 2012) (“[T]he
3 Secretary decides, at least in the first instance, whether to
4 refuse extradition on humanitarian grounds after she receives the
5 certification of extradition from the magistrate judge.”); (see
6 also Tr. at 150). Thus, it might make sense in those instances
7 that an extradition court needn’t stumble over any humanitarian
8 concerns because they would be considered by the executive
9 branch. But here we already know that the State Department, for
10 whatever reason, is unlikely not to turn Ahn over to Spain.
11 Ahn’s counsel represented at the hearing that she had met
12 repeatedly with State Department officials to try to work out
13 some sort of deal to stop Ahn’s extradition, to no avail. (Tr.
14 at 150-51.) And under questioning from the Court at the hearing,
15 the government acknowledged that there would be “ramifications”
16 were certification denied. (Id. at 167; see also ECF No. 214 at
17 7 (government arguing that “[a]ny judgment that Spain is
18 incapable of protecting Ahn’s safety could have significant
19 diplomatic repercussions”).)

20 North Korea has made clear it’s watching what happens here:
21 it has asked that the “terrorists and their wire-pullers” be
22 brought to justice and is “wait[ing] for the result in patience.”
23 (ECF No. 197-1 at 10); Agence France Press, ‘Grave Terrorist
24 Attack’: North Korea Condemns Raid on Its Madrid Embassy, The
25 Guardian (Mar. 31, 2019), [https://www.theguardian.com/world/2019/
26 mar/31/grave-terrorist-attack-north-korea-condemns-raid-on-its-
27 madrid-embassy](https://www.theguardian.com/world/2019/mar/31/grave-terrorist-attack-north-korea-condemns-raid-on-its-madrid-embassy). The executive branch may have foreign-policy-
28 related incentives not to unnecessarily displease the regime.

1 See, e.g., Jon Herskovitz & Jeong-Ho Lee, Biden Nuclear Envoy
2 Ready for Talks 'Anytime' With North Korea, Bloomberg (June 20,
3 2021), [https://www.bloomberg.com/news/articles/2021-06-21/](https://www.bloomberg.com/news/articles/2021-06-21/biden-s-nuclear-envoy-seeks-help-on-north-korea-with-allies)
4 [biden-s-nuclear-envoy-seeks-help-on-north-korea-with-allies](https://www.bloomberg.com/news/articles/2021-06-21/biden-s-nuclear-envoy-seeks-help-on-north-korea-with-allies). But
5 if Ahn's extradition rests on a political agenda, isn't it
6 precisely the role of the courts to step in to prevent any human-
7 rights abuse? Indeed,

8 it is important to emphasize that a habeas court
9 reviewing [torture claims] would not be called upon to
10 consider whether extradition would further our foreign
11 policy interests or, if so, how much to weigh those
12 interests. Rather, it would be required to answer only
13 the straightforward question of whether a fugitive would
14 likely face torture in the requesting country.

15 Mironescu v. Costner, 480 F.3d 664, 672 (4th Cir. 2007)
16 (rejecting notion that rule of noninquiry is inviolate but
17 recognizing that Ninth Circuit is among circuits holding to the
18 contrary); see United States v. Fernandez-Morris, 99 F. Supp. 2d
19 1358, 1371-72 (S.D. Fla. 1999) (finding that "rule of non-inquiry
20 . . . is not inviolate" and describing Bolivian extradition
21 request as "shocking" but refusing to extradite on other
22 grounds). And as one commentator put it, "[t]he idea . . . that
23 the judiciary may lack the institutional competence to adjudicate
24 the prospective treatment of the relator upon transfer, defies
25 logic, as the same federal courts carry out this very inquiry on
26 a regular basis." M. Cherif Bassiouni, International Extradition
27 661 (6th ed. 2014) (citing Parry, supra, at 2004-06).

28 Bassiouni refers, of course, to immigration cases, in which

1 federal courts routinely delve into delicate issues concerning
2 "evidence of gross, flagrant or mass violations of human rights
3 within the country of removal" from "the government or forces
4 that the government is unwilling or unable to control." Ahmed v.
5 Keisler, 504 F.3d 1183, 1191 (9th Cir. 2007); 8 C.F.R.
6 § 208.16(c)(3)(iii) (standards for eligibility for withholding of
7 removal under Convention Against Torture). We don't cede all
8 authority to another branch of government in such circumstances,
9 and we shouldn't do so here. Cf. Boumediene v. Bush, 553 U.S.
10 723, 797 (2008) ("Within the Constitution's separation-of-powers
11 structure, few exercises of judicial power are as legitimate or
12 as necessary as the responsibility to hear challenges to the
13 authority of the Executive to imprison a person."); Valley Forge
14 Christian Coll. v. Ams. United for Separation of Church & State,
15 454 U.S. 464, 474 (1982) (noting that separation of powers does
16 not require that "Judicial Branch shrink from a confrontation
17 with the other two coequal branches of the Federal Government").
18 Indeed, in many extradition cases, unlike in immigration ones,
19 and as is true here, the life and liberty of a U.S. citizen are
20 at stake.

21 Even in the extradition context, a court can inquire into
22 whether a treaty partner used torture or other coercion to secure
23 confessions or other evidence supporting probable cause,
24 regardless of whether such findings might harm political
25 relations, see Santos, 830 F.3d at 1007 & n.9; similarly,
26 extradition courts routinely consider sensitive questions
27 concerning violent political uprisings in treaty partners in
28 determining whether to apply the political-offense exception to

1 extradition.²⁵ Why then can't judges assess evidence of human-
2 rights abuses bearing on the fundamental fairness of extradition
3 proceedings even if doing so might rankle our treaty partners or
4 foil a foreign-policy initiative? It happens all the time in
5 foreign courts, see, e.g., Parry, supra, at 2009 ("[S]everal
6 countries, including Canada, Germany, Ireland, the Netherlands,
7 and the United Kingdom, allow [judicial] inquiry in certain
8 circumstances, such as when the extraditee's human rights are at
9 risk."), and those countries have not become international
10 pariahs, see Caroline Stover, Note, Torture and Extradition:
11 Using Trinidad y Garcia to Develop a New Role for Courts, 45
12 Colum. Hum. Rts. L. Rev. 325, 351 (Fall 2013) ("[T]he argument
13 for diplomatic flexibility is significantly undermined by the
14 fact that other countries (with just as strong an interest in
15 diplomacy) place the Torture Determination with the courts.").

16 The government cites a Second Circuit case for the
17 proposition that "the Secretary never has directed extradition in
18 the face of proof that the extraditee would be subjected to
19 procedures or punishment antipathetic to a federal court's sense
20 of decency" and that "it is difficult to conceive" of it doing
21 so. (ECF No. 214 at 5 n.3 (citing Ahmad, 910 F.2d at 1067).)
22 Tell that to Kulver Singh Barapind. He argued that the court
23 should refuse to extradite him on humanitarian grounds because he
24 would be tortured on his return to India. See In re Extradition

25
26 ²⁵ A court may refuse to extradite under the political-offense
27 exception only when, among other things, there is self-directed
28 political unrest in the requesting nation, see Vo, 447 F.3d at
1241, a circumstance not present here.

1 of Singh, 170 F. Supp. 2d 982, 1038-39 (E.D. Cal. 2001). The
2 State Department nonetheless delivered him to that country, where
3 security forces apparently "applied electric shocks to his ears"
4 and "beat him," India: Punjab Case Shows Need for Anti-Torture
5 Law, Human Rights Watch (Sept. 27, 2012), [https://www.hrw.org/](https://www.hrw.org/news/2012/09/27/india-punjab-case-shows-need-anti-torture-law)
6 [news/2012/09/27/india-punjab-case-shows-need-anti-torture-law](https://www.hrw.org/news/2012/09/27/india-punjab-case-shows-need-anti-torture-law),
7 allegedly for five days, see Kenneth Ofgang, Court Says India
8 Immune From Torture Suit by Sikh, Metropolitan News-Enterprise
9 (Dec. 22, 2016), <http://www.metnews.com/articles/2016/>
10 [baral22216.htm](http://www.metnews.com/articles/2016/); see also Bassiouni, supra, at 943 (noting that
11 relator in Sindona, 619 F.2d at 174-75, was murdered in his cell
12 after State Department extradited him to Italy, just as he had
13 predicted would happen when he argued for humanitarian
14 exception).

15 As Ahn has repeatedly pointed out, this case is like no
16 other. It can't be right or fair that in the extraordinary
17 circumstances presented here, a judge has no discretion not to
18 send a U.S. citizen off to his likely assassination by a state
19 sponsor of terrorism. See Munaf, 553 U.S. at 702 (entertaining
20 possibility that in "extreme case" when Executive branch finds
21 that "detainee is likely to be tortured but decides to transfer
22 him anyway," court could intervene); Gallina, 278 F.2d at 79
23 (noting that humanitarian exception may exist when extradition
24 would be "antipathetic to a federal court's sense of decency");
25 Mainero v. Gregg, 164 F.3d 1199, 1210 (9th Cir. 1999) (citing
26 Gallina for same proposition).

27 4. Christopher Ahn Is by All Accounts a Good Person

28 I don't know Christopher Ahn. But those who do consider him

1 to be an exceptional person of virtuous character. (See ECF No.
2 33-1 at 10-50.) At the time of the embassy raid he was in his
3 late 30s and had no criminal record. (See ECF No. 33-1 at 18,
4 37.) He served his country honorably in the Marines for six
5 years. (See ECF No. 203-1 at 34.) A Medal of Honor winner who
6 knows him calls him a "faithful and dutiful Marine" whose "life
7 is predicated on honor and duty." (Id. at 35.) He has
8 volunteered for many charitable organizations. (See, e.g., ECF
9 No. 33-1 at 28, 33-36, 45, 50.) Even the crimes with which Spain
10 has charged him were almost certainly motivated by altruism – a
11 desire to help the oppressed, brutalized, starved people of North
12 Korea, who can't help themselves²⁶ – rather than greed or lust or
13 power or addiction, the typical motivators of the criminal mind.
14 (See ECF No. 203-1 at 36 (Marine Corps colonel stating that Ahn's
15 "consistent dedication to working against human suffering,
16 injustice, and oppression speaks volumes to the values he holds
17 in his heart").)

18 Ahn's strength of character is further shown by his conduct
19 while on release awaiting this decision. Despite the onerous
20 provisions this Court placed not only on him but on those it
21 appointed as third-party custodians (among the many more who
22 volunteered), he has not, to the Court's knowledge, violated even
23 the most insignificant condition of his release, not even once.
24 (Tr. at 177.) Of course, to some degree that's to be expected
25 from someone released on bond (although perhaps not always

26
27 ²⁶ See generally 2014 U.N. Rep. ¶¶ 46-55 (noting that North
28 Korea has "used food as a means of control over the population" and
that "hunger and malnutrition continue to be widespread").

1 anticipated, at least not in this Court's experience). But the
2 circumstances of how and why Ahn even came to be in custody speak
3 to his character. The other known participants in the embassy
4 breach apparently remain fugitives. But Ahn returned to his home
5 in Southern California, refusing to run from the authorities or
6 indeed from North Korea after the FBI informed him, before he had
7 been arrested on the Spanish charges, that North Korea had placed
8 a hit on him. (See generally ECF No. 33 at 21-23 & cited Exs.)
9 He would not leave the home where he helped care for his nearly
10 blind grandmother and ill mother. (See id.)

11 I'm not naive, and I know there may be more to Christopher
12 Ahn than meets the eye. But no one disputes that he has devoted
13 a good portion of his life to helping others, including in our
14 U.S. military. As noted, some have speculated that the CIA was
15 behind the embassy raid. One can imagine many reasons why, if
16 that were true, the United States would not admit it. But even
17 assuming Ahn was acting at the direction of his country and not
18 simply to help those trapped in an evil empire, that's only but
19 another reason why that same country shouldn't shove him into Kim
20 Jung-Un's grasping arms.

21 Yes, Ahn should have to face a court reckoning of some kind
22 for possibly violating at least the letter of the law. But he
23 should not be cast off to face an uncertain fate at the hands of
24 a despot, perhaps sacrificed to advance a foreign-policy agenda.
25 If I thought I could, I would require any trial of Ahn to be here
26 in the United States, and I hope that a judge or judges tasked
27 with fixing law instead of simply following it will do just that.

28

FINDINGS

1
2 1. The undersigned judicial officer is authorized under 18
3 U.S.C. § 3184 and General Order 05-07 to conduct an extradition
4 hearing.

5 2. The undersigned judicial officer and the U.S. District
6 Court for the Central District of California have personal
7 jurisdiction over Ahn and subject-matter jurisdiction over the
8 case, as Ahn was arrested in this district. See § 3184.

9 3. An extradition treaty between the United States and
10 the Kingdom of Spain is currently in force. (See ECF No. 226-1
11 at 2 (Heinemann Decl. ¶ 2 (recounting history of treaty)).)

12 4. Ahn is the subject of an April 12, 2019 arrest warrant
13 issued by the U.S. District Court for the Central District of
14 California at Spain's request based on its own arrest warrant.

15 5. The charges on which Ahn is wanted and as to which
16 extradition is sought constitute extraditable offenses under the
17 treaty.

18 6. Even without considering the evidence the Court has
19 found not to be competent, probable cause exists to believe that
20 Ahn committed the crimes of breaking and entering, illegal
21 restraint, causing injuries, and threats under Spanish law but
22 not robbery with violence or intimidation or criminal
23 organization. Based on the foregoing findings, the Court
24 concludes that Ahn is extraditable on those four charges only;
25 the Court hereby certifies this finding to the Secretary of State
26 as required under § 3184.

27 IT IS THEREFORE ORDERED that the Clerk of the Court deliver
28 to the Assistant U.S. Attorney a certified copy of this Reluctant

1 Certification of Extraditability and forward without delay
2 certified copies of the same to the Secretary of State (to the
3 attention of the Office of the Legal Adviser) and the Director,
4 Office of International Affairs, Criminal Division, U.S.
5 Department of Justice, in Washington, D.C., for appropriate
6 disposition.

7 IT IS FURTHER ORDERED that Ahn be committed to the custody
8 of the U.S. Marshal for the Central District of California
9 pending final disposition of this matter by the Secretary of
10 State and arrival of agents of the requesting state unless within
11 30 days of the date of this Order he files a Petition for Writ of
12 Habeas Corpus challenging the Court's certification of
13 extradition. If he does not do so, he must surrender to the U.S.
14 Marshal no later than noon on the 30th day after the date of this
15 Order. If he does file a habeas petition within the 30 days, he
16 will remain free on bond under the same terms and conditions as
17 previously imposed unless the Court orders otherwise. See
18 Salerno v. United States, 878 F.2d 317, 317 (9th Cir. 1989)
19 (applying special-circumstances bail test when fugitive appealed
20 denial of habeas petition certifying extradition).

21 Should this Order not be challenged through a habeas
22 petition or should the District Judge deny any such petition,
23 Ahn, together with any evidence seized incidental to his arrest,
24 must be transferred to the custody of agents of the requesting
25 state at such time and place as mutually agreed on by the U.S.
26 Marshal and the authorized representatives of the Kingdom of
27 Spain, to be transported to Spain, unless the Ninth Circuit
28 intervenes.

1 **CONCLUSION**

2 Because I believe that Prasoprat and the other law by which
3 I am bound does not foreclose a higher court, as opposed to a
4 magistrate judge, from applying the humanitarian exception, I
5 hold out some hope that this court will not become an
6 "accomplice" to Ahn's otherwise inevitable extradition. See From
7 Thomas Jefferson to Edmond Charles Genet, 12 September 1793,
8 Founders Online, Nat'l Archives, [https://founders.archives.gov/](https://founders.archives.gov/documents/Jefferson/01-27-02-0098)
9 documents/Jefferson/01-27-02-0098 (Jefferson observing that to
10 deliver fugitives to countries where they would be mistreated was
11 to become "accomplice" to that mistreatment). Cindy Warmbier
12 said that Ahn needed a "strong woman" to "stand up to North
13 Korea." (Tr. at 155.) I regret that I am too weak, in power if
14 not in will, to save him from the threat of torture and
15 assassination by that outcast nation.

16 IT IS SO FOUND AND ORDERED this 9th day of May, 2022.

17 
18 _____
19 JEAN P. ROSENBLUTH
20 U.S. Magistrate Judge