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11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13	IN THE MATTER OF THE)	CR. No. 11-mj-548
	EXTRADITION OF)	
14)	<u>UNITED STATES' OPPOSITION TO</u>
	OLIVER SCAPER,)	<u>FUGITIVE OLIVER SCHAPER'S</u>
15)	<u>REQUEST FOR BAIL</u>
	A fugitive from the)	
16	Government of Germany)	Court: Magistrate Judge
)	Stephen J. Hillman
17)	Hearing Date: June 6, 2011
)	Hearing Time: 2:00 p.m.
18)	
19)	

20 Complainant, United States of America, by and through its
 21 counsel of record, the United States Attorney, hereby submits

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1 its opposition to fugitive Oliver Schaper's request for bail
2 pending further extradition proceedings.

3 DATED: June 3, 2011

4 Respectfully submitted,

5 ANDRÉ BIROTTE JR.
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I

3 INTRODUCTION AND BACKGROUND

4 This is an extradition matter. Defendant, Oliver Schaper,
5 ("defendant") was arrested on April 28, 2011 on a provisional
6 arrest warrant based on an extradition request from the
7 government of Germany. According to materials provided by German
8 authorities to the United States Attorney's Office for this
9 district, defendant was duly and legally charged with and
10 convicted of having committed the crimes of fraud and breach of
11 trust in violation of Sections 263, 266 and 53 of the German
12 Criminal Code.

13 As set forth in further detail in the complaint filed on
14 March 14, 2011 in the above-captioned matter, on November 11,
15 2005, the Hanover Local Court imposed Judgment against defendant
16 in Hanover, Germany, sentencing defendant to two years
17 imprisonment, suspending the sentence and placing him on
18 probation. On August 23, 2006, the Hanover Local Court revoked
19 defendant's probation for his failure to comply with the
20 provisions of probation. The court then sentenced defendant to
21 two years confinement, a decision which became effective on
22 November 8, 2006. On November 15, 2006, the Court issued a
23 warrant for the enforcement of defendant's sentence. At some
24 point thereafter, defendant became a fugitive. On or about April
25 28, 2011, defendant was arrested in the Central District of
26 California, pursuant to a provisional arrest warrant requested by
27 the German government.

28 On April 29, 2011, the United States filed its Request for

1 Detention Pending Extradition Proceedings, which this Court
2 granted. (CR 7). On June 1, 2011, defendant filed a motion
3 asking for bail. Because defendant's motion fails to show that
4 there are special circumstances here sufficient to warrant bail,
5 his motion must be denied.

6 **II**

7 **ARGUMENT**

8 **A. Defendant fails to identify "special circumstances"
9 sufficient to justify his release on bail**

9 As defendant acknowledges in his brief, the federal statute
10 implementing the United States' extradition treaties with other
11 nations, 18 U.S.C. § 3184 et seq., does not provide for bail.
12 Because an international extradition is not a criminal case, the
13 Bail Reform Act, 18 U.S.C. § 3141 et seq., does not apply and the
14 criteria governing the allowance and the amount of bail in U.S.
15 criminal cases, 18 U.S.C. § 3142(g), are not applicable. Kamrin
16 v. United States, 725 F.2d 1225, 1227-28 (9th Cir.). In
17 addition, as defendant also acknowledges, there is a strong
18 presumption against bail in international extradition proceedings
19 such that bail should be granted only under "special
20 circumstances." United States v. Salerno, 878 F.2d 317, 317 (9th
21 Cir. 1989); Kamrin, 725 F.2d 1225, 1228 (9th Cir. 1984). See also
22 Government's Request for Detention at 4-7.

23 "Special circumstances" are limited to situations in which
24 the justification for release is pressing as well as plain.
25 United States v. Kin-Hong, 83 F.3d 523, 524 (1st Cir. 1996).
26 Examples of special circumstances include "the raising of
27 substantial claims upon which the appellant has a high
28 probability of success, a serious deterioration of health while

1 incarcerated, and unusual delay in the appeal process." Salerno,
2 878 F.2d at 317.

3 Defendant has failed to identify any such special
4 circumstances in this case. In fact, the only circumstance of
5 any kind defendant addresses in his brief is the prospect of a
6 lengthy appeals process for his asylum claim. But asylum and
7 extradition are unrelated proceedings and the timing of
8 defendant's asylum appeal has no bearing here. See Castaneda-
9 Castillo v. Holder, 638 F.3d 354, 360 (1st Cir. 2011) ("asylum and
10 extradition proceedings are 'separate and distinct,' in the sense
11 that 'the resolution of even a common issue in one proceeding is
12 not binding in the other'). Even if defendant is granted asylum,
13 he can still be extradited to Germany to face the consequences of
14 his fraud conviction, just as an American citizen can be
15 similarly extradited. Mironescu v. Costner, 345 F.Supp.2d 538,
16 546 (M.D.N.C. 2004) (noting that the immigration statute "says
17 nothing about extradition, which is based on criminal proceedings
18 and governed by an entirely different set of rules and
19 practice.... Individuals who have been granted an asylum are
20 still eligible for extradition for non-political crimes.").

21 Although there are situations in which bail might be
22 justified due to delays in the extradition itself, the timing of
23 unrelated litigation is not grounds for bail. See, e.g., Hababou
24 v. Albright, 82 F. Supp. 2d at 351-52 (delay in extradition of at
25 least a year while fugitive was awaiting trial on U.S. charges
26 does not constitute special circumstances). Moreover,
27 defendant's concerns about delay are speculative at best.
28 Setting aside the possibility that defendant himself might decide

1 against further appeals, defendant could, and most likely will,
2 be extradited long before any such lengthy appeals process
3 occurs. Defendant has already been fairly and justly convicted
4 by a German court, the Government of Germany has initiated the
5 extradition process, and Defendant does not even suggest that the
6 extradition process itself will be lengthy or complex. It is
7 both likely and probable that defendant will be extradited in a
8 timely manner.

9 Therefore, further delay in defendant's asylum claim has no
10 bearing on the suitability of bail in his extradition proceeding.

11 **B. Schaper presents a significant flight risk**

12 Not only does defendant fail to show that there are special
13 circumstances to justify bail, but he also fails to demonstrate
14 that he does not pose a significant flight risk. Defendant
15 argues that compliance with his immigration bond shows that he
16 will comply with a bond in this matter as well. But here too the
17 difference between asylum proceedings and extradition present an
18 insurmountable obstacle to defendant's claim.

19 As explained above, defendant is not being extradited to
20 face charges in Germany. Rather, he has already been justly
21 convicted and sentenced: the arrest warrant issued by the German
22 court seeks his return to Germany to serve a two year prison
23 sentence. This certainly creates a greater incentive for
24 defendant's non-appearance than proceedings in which he is trying
25 to persuade a court to allow him to remain in the United States.
26 Moreover, defendant does not offer even cursory information to
27 show that he is not a flight risk and poses no danger to the
28 community. Defendant has not identified any employment, family

1 or other ties to Southern California or the United States, nor
2 has he identified any bail resources.

3 Even if defendant could show community ties, lack of flight
4 risk is not reason enough, in itself, to justify bail in an
5 extradition proceeding. Salerno, 878 F.2d at 317-18; accord
6 Williams, 611 F.2d at 915; Hababou, 82 F. Supp. 2d at 352.

7 **D. Detaining Schaper pending extradition is not unjust**

8 Finally, defendant suggests that failing to release him at
9 this time would subject him to "an indefinite detention
10 situation." (Mot. at 4.) This is simply not the case. As
11 discussed above, Germany has initiated extradition proceedings
12 and, in all likelihood, defendant's detention will last no longer
13 than the time it takes for that process to complete itself.

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