

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

FILED JAN 22 1985
United States Court of Appeals
For the District of Columbia Circuit

MR. CHRISTIAN DAVID,
Petitioner/Appellant,
v.
U.S. DEPARTMENT OF STATE,
Respondent/Appellee

Case No. 85-5118

EMERGENCY MOTION FOR STAY OF EXTRADITION

COMES NOW the Petitioner/Appellant pursuant to Rule 8(a) of the Federal Rules of Appellate Procedure for the United States Courts of Appeals and pursuant to Rule 6(j) of the General Rules of the United States Court of Appeals for the District of Columbia and presents this his emergency motion for stay of extradition and transfer of custody as follows:

1. Petitioner filed a Consolidated Petition for Habeas Corpus relief with the United States District Court for the District of Columbia on January 9, 1985. At the time he was incarcerated at the United States prison in Fort Leavenworth, Kansas, and was scheduled to be extradited to France upon his release from prison on January 18, 1985. On the morning of January 18, 1985 Judge Jackson entered an order to show cause why the writ of habeas corpus should not be granted and temporarily enjoined extradition of Petitioner pending a hearing on the order to show cause which he set for the morning of January 22, 1985.

2. At the hearing on January 22, 1985 Judge Jackson dis-

missed the Consolidated Petition for Habeas Corpus after reviewing the submissions of counsel both in writing and orally. Petitioner immediately filed his notice of appeal of this decision with the Clerk of the District Court and made a motion to Judge Jackson to order federal authorities to refrain from transferring custody of the Petitioner to any other person pursuant to Rule 23(a) of the Rules of Appellate Procedure of United States Courts of Appeal pending the outcome of his appeal. Judge Jackson denied this motion without hearing on January 22, 1985. (See attached documents).

3. Counsel for the government has not informed the Petitioner if the Petitioner will be held in his present status in the custody of United States Marshalls as required by Rule 23(a) even though they have been served with a filed copy of the notice of appeal and the motion to determine custody filed with Judge Jackson. Counsel for the government have indicated that they do not yet have a position on the matter. Petitioner believes that he will be extradited to France by U. S. Marshalls on the evening of January 22, 1985 in violation of Rule 23(a).

4. This Court must issue a stay of extradition on January 22, 1985 to ensure that Rule 23(a) is given proper effect. Petitioner is entitled to an appeal of Judge Jackson's order denying habeas corpus relief pursuant to the right of appeal contained in 28 U.S.C. §2253, and he is entitled to remain in the custody of U. S. Marshalls pending appeal pursuant to Rule 23(a). Therefore the Petitioner will prevail on the merits of this motion, entitling him to emergency relief. Petitioner will suffer irreparable harm

if relief is denied because his extradition before the appeal is heard will tend to moot his petition for habeas corpus relief because no court of this country could grant him such relief if he is turned over to the French. The United States government will not be harmed if the stay is entered because they will remain in a status quo situation pending outcome of the appeal.

5. The public interest will be served by the granting of this stay and this issue is properly before this court on this motion by reason of Rule 6(j)4 of this Court which requires this to be considered. Petitioner has offered to provide certain information of an intelligence and national security nature to U. S. government authorities upon certain conditions. The specifics of this offer are contained in a letter from Counsel to Judge Jackson dated January 18, 1985 which is under seal in the record of this case. A stay of deportation would permit appropriate executive and legislative agencies of the U. S. government to interview the Petitioner and determine the value of his information. The Court is urged to review the letter to Judge Jackson in deciding the issue of the public interest involved in this motion.

6. This Motion could not be filed seven days in advance of the date for action required by reason of the timing of the decision of Judge Jackson which he rendered this morning. Counsel for Petitioner will make every effort to notify Mr. John Martin of the U. S. Attorney's office of the filing of this motion.

7. The Petitioner is likely to prevail upon the merits of his appeal because of the status of the record submitted for the review of this Court.

WHEREFORE in view of the extreme prejudice which the Petitioner would suffer as a result of a premature extradition from this country before receiving an adjudication of his rights as provided by law, the Petitioner moves this Court to stay the carrying out of his extradition to France pending the further decision of this Court.

CHRISTIAN DAVID
By: Counsel

B. Fensterwald

Bernard Fensterwald, III
Counsel for Christian David
Fensterwald, Alcorn & Bowman, P.C.
1000 Wilson Boulevard, Suite 900
Arlington, VA 22209
(703) 276-9297

CERTIFICATE OF SERVICE

The foregoing Emergency Motion for Stay of Extradition together with attached exhibits was served by delivery to John Martin, Assistant U.S. Attorney at his office at Room 6400 United States Courthouse, Washington, D.C. this January 22, 1985.

B. Fensterwald

Bernard Fensterwald, III