

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

CHRISTIAN DAVID,
Petitioner,
v.
U.S. DEPARTMENT OF STATE,
Respondent

RECEIVED & INDEXED
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
DATE 01-23-85 TIME 2:58
NAME J. Roberts #033
Case No.

To the Honorable Warren E. Burger, Chief Justice of the Supreme Court of the United States and Circuit Justice for the District of Columbia Circuit: Pursuant to Rules 41 and 44 of the Rules of this Court, petitioner applies for an emergency stay of the transfer of custody of the petitioner pending the filing of a writ of certiorari, as follows:

1. Petitioner filed a petition for habeas corpus in the U.S. District Court for the District of Columbia on January 9, 1985 raising new objections to the plans of the Department of State to extradite him to France. District Judge Jackson enjoined extradition on January 18, 1985, and issued an Order to Show Cause why the writ of habeas corpus should not be granted. A hearing was held on January 22, 1985, at which time Judge Jackson denied the petition for a writ of habeas corpus. Petitioner took an immediate appeal of that decision to the U.S. Court of Appeals for the District of Columbia the same day and moved Judge Jackson to stay transfer of custody pursuant to Rule 23(a) of the Federal Rules of Appellate Procedure, which requires that no prisoner be transferred to the custody of another person pending appellate review of a petition for habeas corpus absent order of the court. Judge Jackson denied this motion without hearing on January 22, 1985.

2. Subsequently, on January 22, 1985, petitioner made an emergency motion to the U.S. Court of Appeals for the District of

Columbia for an order staying extradition to give effect to Rule 23(a) cited above. The Court of Appeals on January 22, 1985, denied that motion, and on January 23, 1985, at approximately 4:00 p.m., petitioner's counsel was notified that the Court of Appeals had summarily denied petitioner's appeal on an emergency motion by the government for summary affirmance without holding a hearing or receiving briefs.

3. Petitioner has been informed that the Department of Justice has made arrangements to place him forcibly on an airplane in New York City on the evening of January 23, 1985 and return him to France.

4. Petitioner seeks review of the action of the District Court and the Court of Appeals by this court; however if the government is allowed to forcibly remove him from the United States, petitioner will be denied the opportunity to present his appeal to this Court.

5. Rule 41 of the Rules of this Court prohibit in direct language the transfer of custody of a prisoner to another person pending review in this Court of a decision in a habeas corpus proceeding commenced before a court, without an order of this Court. Petitioner believes that this Rule by its own operation and effect prohibits transfer of the prisoner by its terms, however the Department of Justice has stated to counsel its intention to transfer the prisoner. Therefore, petitioner seeks this Court to enforce its Rule by way of a stay of the transfer pending further proceedings herein.

6. Petitioner will suffer irreparable harm should he be transferred without having received his full legal rights of appeal guaranteed to him by the laws of the United States. The United States Government will not be harmed if the status quo is maintained pending appellate review. The Government of France has

stated its position that it feels free to try the petitioner whenever he might be turned over to them and therefore that government will not be harmed by a stay.

7. The public interest would be served by the granting of a stay. Petitioner has stated to the District Court in a sealed letter presented in that proceeding that he is in possession of intelligence information relating to the national security of the United States, and that on conditions contained therein he is willing to discuss this information with U.S. authorities. Petitioner's background as has already been noted publicly--and is set forth at some length at pages 5-12 of the Consolidated Petition for Habeas Corpus Relief--is of a nature to give credence to this claim. A copy of the sealed letter is attached to this petition for the review of this court, and petitioner prays this Court to carefully examine this letter but to preserve it under seal. (The letter is addressed to Judge Thomas Penfield Jackson and is dated January 18, 1985.)

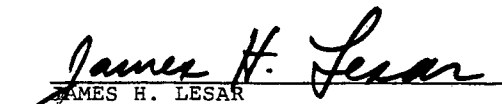
8. Petitioner attaches the orders and decisions of the lower courts to this motion, and also attaches and incorporates herein his consolidated petition for habeas corpus relief and his response to the Government's opposition thereto, together with Appellant's Emergency Motion to the Court of Appeals previously mentioned.

9. Petitioner is likely to prevail on the merits of his appeal because the U.S. District Court clearly violated Rule 44.1 of the Federal Rules of Civil Procedure by refusing to consider petitioner's evidence on French law (see attached Reply to Respondent's Answer and Answer to Order to Show Cause at 5-7), and finding instead that a statement from the French Embassy was binding. Rule 44.1 states that the court may consider "any relevant material or source."

10. Furthermore, petitioner is likely to prevail because he has argued new grounds for relief in his consolidated petition for habeas corpus relief, specifically, that the French statute of limitations on his offense has in fact run in spite of claims made by the French government; that his kidnapping from Brazil in irons in 1972 was "constructive extradition" which, under the terms of the United States-Brazil Treaty, entitles him to release after serving his U.S. prison term; new evidence of ineffective assistance of counsel in the original extradition hearing in 1975; new evidence that France seeks his extradition with a view to punish him for an offense of a political character; and such other matters as have been raised in petitioner's pleadings filed in the District Court, copies of which are attached hereto.

WHEREFORE petitioner, being in fear of his life should he be extradited to France, and seeking the opportunity to have the merits of his habeas corpus petition properly adjudicated, moves this Court for a stay of transfer of his custody and extradition to France.

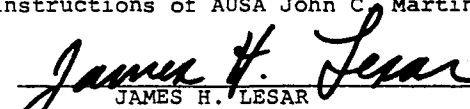
Respectfully submitted,


JAMES H. LESAR
Fensterwald, Alcorn & Bowman
1000 Wilson Blvd., Suite 900
Arlington, Va. 22209
Phone: (703) 276-9297

Counsel for Christian David

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Emergency Motion for Stay of Transfer of Custody was hand-delivered to the Office of the Solicitor General of the United States, Department of Justice Building, Room 5141, Washington, D.C. 20001, this 23rd day of January, 1985, pursuant to the instructions of AUSA John C. Martin.


JAMES H. LESAR