

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 17-22197-MC-UNA

IN THE MATTER OF THE  
EXTRADITION OF RICARDO  
ALBERTO MARTINELLI BERROCAL

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**EMERGENCY MOTION TO DISMISS COMPLAINT AND FOR DISCHARGE FROM  
CUSTODY DUE TO LACK OF JURISDICTION AND FOR EMERGENCY HEARING**

Pursuant to Local Rule 7.1(d) and the Treaty Between the United States of America and the Republic of Panama Providing for the Extradition of Criminals, U.S.-Pan., May 25, 1904, 34 Stat. 2851 (the “Treaty”),<sup>1</sup> President Ricardo Martinelli moves, on an emergency basis, to dismiss the extradition complaint and to be discharged from custody immediately because the Government has failed to produce an arrest warrant from Panama for an extraditable offense, a fundamental prerequisite to extradition under the Treaty. In support, President Martinelli states:

The Complaint seeking President Martinelli’s extradition [DE1] alleges that Panama has charged him with four offenses relating to alleged improper interception/surveillance and embezzlement under Panamanian law. *Id.* at \*1-2. Under the Treaty, if a defendant is “merely charged with a crime,” Panama must produce “a duly authenticated copy of the warrant of arrest in the country where the crime has been committed[.]” Treaty, art. III. This arrest warrant must be for an extraditable crime. *See Sacirbey v. Guccione*, 589 F.3d 52 (2d Cir. 2009) (holding extradition precluded where Bosnia failed to produce a valid arrest warrant). Under the Treaty, extradition is permitted only for certain enumerated offenses. Treaty, art. II.

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<sup>1</sup> The Treaty is attached to this motion as Attachment A.

Here, the Panamanian arrest warrant is *not* for an extraditable offense under the Treaty and is not based on the alleged acts of improper interception/surveillance and embezzlement. During the afternoon of June 14, 2017, the Government for the first time provided to President Martinelli's counsel copies of the sole, voluminous "exhibit" offered in support of the extradition complaint. The exhibit contains a single detention order, which purports to serve as the required warrant of arrest under the Treaty. *See* Warrant of Arrest.<sup>2</sup> This warrant is *not* based on the allegedly extraditable offenses set forth in the Complaint, contrary to the Complaint's representation in paragraph 6 that the warrant "was issued on the basis of the following facts." [DE1:2 ¶6]. It is for a separate act described in the Panamanian detention order as "contempt" ("rebeldia") and apparently based on President Martinelli's alleged failure to appear in Panama:

TO ORDER the provisional detention of Mr. RICARDO MARTINELLI BERROCAL, Panamanian, bearer of personal identity card No.8-160-293, Deputy of the Central American Parliament, on the grounds of the declaration of contempt, final and non-appealable, issued by the Justice Judge of Guarantees on December 11, 2015.

Attachment B-2.

Contempt or failure to appear is *not* an extraditable offense under the Treaty. Treaty art. II (listing thirteen enumerated offenses, none of which include contempt). In other words, Panama has not issued an arrest warrant because it believes it has probable cause to arrest President Martinelli for the alleged offenses; it has merely ordered his detention on procedural grounds for "contempt" based on failure to appear, something that is not even an offense under the Criminal Code of Panama.<sup>3</sup> Consequently, the Court must dismiss the Complaint and order President

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<sup>2</sup>The warrant of arrest, along with the English translation provided by Panama, are attached to this motion as Attachment B-1 and B-2.

<sup>3</sup> This is apparent from the face of the detention order. Attachment B-2. The detention order for contempt purports to be based on Articles 158 and 237 of the Criminal Procedural Code. *Id.* There is no reference whatsoever to the four articles of the Criminal Code of Panama proscribing the four allegedly extraditable offenses.

Martinelli's immediate release because there is no Panamanian warrant for his arrest based on the allegedly extraditable offenses.<sup>4</sup>

President Martinelli respectfully requests that the Court order an emergency hearing to address this motion, given that President Martinelli was arrested on a defective and improper extradition complaint and has had his liberty deprived since Monday evening, June 12, 2017.

WHEREFORE, President Martinelli's confinement is unconstitutional, and the Complaint must be dismissed.

Dated: June 16, 2017

Respectfully submitted,

s/ Marcos Daniel Jiménez

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<sup>4</sup> Extradition and President Martinelli's detention are improper for additional reasons. Before a judge in Panama can properly charge the alleged offenses or issue a valid arrest warrant for "rebeldia," the Panamanian criminal procedure code requires an investigative phase that includes a proceeding known as "imputation," which never happened. Although he submits that this motion is dispositive, President Martinelli reserves all rights and will detail these additional reasons if and when necessary.

**CERTIFICATE OF SERVICE**

This motion was filed electronically on June 15, 2017 through CM/ECF and served on Adam Fels, counsel for Panama, through that system.

*s/ Marcos D. Jimenez*  
Marcos D. Jimenez