

Extradition of U.S. Citizens

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Introduction

The United States Court of Appeals for the Ninth Circuit (Ninth Circuit) recently [refused](#) to bar the extradition to the Czech Republic of a U.S. citizen, Ivo Knotek, who challenged his extradition on constitutional grounds. The federal international extradition process has several unusual aspects, but the Ninth Circuit case is somewhat unique even among extradition cases. In addition to other uncommon features, it explores the circumstances under which the United States will extradite one of its own citizens.

International extradition is essentially a diplomatic process in which the courts play a limited but often critical role. [CRS Rep.](#) Extradition of an individual found in this country is largely a matter of treaty. The Department of Justice [initiates](#) extradition hearings at the request of the Secretary of State and on behalf of the foreign government. The federal magistrate who conducts the extradition hearing certifies that an individual is extraditable [if](#) the magistrate determines that an applicable extradition treaty exists; that the individual is subject to extradition under the treaty; and that probable cause or its rough equivalent exists to believe the individual committed the offense or was sentenced as alleged.

Knotek was [born](#) in what was then Czechoslovakia. He entered the United States as a refugee from the Czechoslovakian Communist regime in 1977 and became a U.S. citizen in 1985. Sometime after the dissolution of Czechoslovakia into the Czech Republic and Slovakia, Knotek visited the Czech Republic where he was tried and convicted of attempted extortion. He returned to the United States, and eight years later in 2010 the Czech Republic sought his extradition to begin serving the sentence of imprisonment for attempted extortion.

The Treaty

The applicable extradition treaty dates from 1925 and thus predates the Czech Republic. The United States and the Czech Republic, however, ratified [amendments](#) to the [Czechoslovakian treaty](#) and those amendments became effective in 2010. Beginning in his extradition hearing, Knotek argued that he was not subject to extradition because he had not committed an extraditable offense under the amended treaty (the Treaty) and alternatively because his American citizenship precluded his extradition.

The Treaty [obligates](#) the parties to surrender an individual found in one country and sought for criminal trial or service of sentence in the other, if the crime at issue is extraditable under the Treaty. The Treaty, as amended, clears away many of the obstacles that might have defeated extradition under the original

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Czechoslovakian treaty. The original treaty [confined](#) extradition to a limited number of specifically identified crimes, and neither extortion nor Knotek's attempted extortion appear to have been among them. In contrast, the Treaty as amended [permits](#) extradition for any felony that satisfies its dual criminality requirement, that is, that constitutes misconduct punishable under the laws of each country. Even if Knotek's attempted extortion was not an extraditable offense under the original treaty, the Treaty as amended [applies](#) to crimes committed before the treaty amendments became effective. Thus, Knotek's attempted extortion, committed before the amendments became effective, is extraditable assuming it satisfied the Treaty's dual criminality and other requirements. Moreover, the Treaty makes clear that its dual criminality requirement exists [notwithstanding](#) the interstate commerce or other jurisdictional elements found only in federal crimes. In addition, although extradition is more commonly used to surrender a fugitive for trial, the Treaty [allows](#) surrender of a fugitive for service of sentence following conviction.

Ninth Circuit Proceedings

The magistrate certified Knotek as extraditable to the Secretary of State. The magistrate's decision is not subject to direct appeal but can be reviewed in narrow [habeas](#) corpus proceedings. Under Ninth Circuit [precedent](#), the district court's habeas review of an extradition order is limited to whether: "(1) the extradition magistrate [judge] had jurisdiction over the individual sought, (2) the treaty was in force and the accused's alleged offense fell within the treaty's terms, and (3) there is 'any competent evidence' supporting the probable cause determination." The district court denied Knotek's habeas petition. On appeal, Knotek argued that the crime for which his extradition was sought was not analogous to any offense under U.S. law and thus did not satisfy the Treaty's dual criminality requirement. The Justice Department argued on behalf of the Czech Republic that the same conduct would have violated the Hobbs Act. The [Hobbs](#) Act, among other things, outlaws attempts to commit extortion that has an impact on interstate commerce. The Ninth Circuit [rejected](#) Knotek's characterization of the facts underlying his Czech conviction and concluded that "attempted extortion in the United States and the Czech Republic are substantially analogous and there is dual criminality in Knotek's case."

At first glance, Knotek's citizenship argument might seem more compelling. The Treaty, as amended, carries forward the [article](#) from the original treaty that declared that neither country was obligated to extradite its own citizens. For over half a century following the Supreme Court's 1936 [decision](#) in *Valentine v. United States ex rel. Neidecker*, the existence of a similar treaty provision precluded the extradition of a U.S. citizen to any of more than thirty countries. The Court's decision began with the observation that as a matter of policy "the United States [had] favored the extradition of nationals of the asylum state." Nevertheless, the Court held, the executive branch has no authority to surrender a U.S. citizen to a foreign power in the absence of a treaty or statutory authorization. As for statutory authority, the Court observed that "[w]hatever may be the power of the Congress to provide for extradition independent of treaty, that power has not been exercised..." Because the treaty at issue in *Valentine* was not like treaties that absolved the parties of their obligation to surrender their nationals *but* also authorized them to do so at their discretion, the Court held that *Valentine* could not be extradited.

In 1990, however, Congress enacted a provision, [18 U.S.C. § 3196](#), which purports to provide such authorization. It states:

If the applicable treaty or convention does not obligate the United States to extradite its citizens to a foreign country, the Secretary of State may, nevertheless, order the surrender to that country of a United States citizen whose extradition has been requested by that country if the other requirements of that treaty or convention are met.

Knotek argued [on appeal](#) that the provision is unconstitutional because it amends the Treaty other than through the procedure the Constitution prescribes (the president "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur"). If the 1990 statute is constitutional, he contended, the later Czech Treaty amendments barred its

application when they left untouched, and thus implicitly revived, Article VIII of the original Czechoslovakian treaty with its absolution/but no authorization language.

The Ninth Circuit disagreed. [First](#), it pointed out that of the handful of cases to consider the issue only [one](#) has refused to permit extradition. [Second](#), it explained that the statute does not conflict with the Treaty, and therefore does not implicitly amend it, because the two are not mutually exclusive. “There is a vast difference between not being bound to do an act and being forbidden to do it. Knotek, like the petitioners in [Hilario](#) and [Bašić](#), makes the same fatal mistake in arguing that section 3196 overrides or amends the extradition treaty when in fact nothing in the language of the [Treaty] prohibits either sovereign from exercising discretion to extradite nationals consistent with its own domestic laws and policies.”

The Ninth Circuit found wanting Knotek’s statutory construction contention for the same reason. “Knotek’s argument, however, relies on the same flawed assumption – that section 3196 amends or conflicts with the Treaty as enforced in 2006, when in fact it does not.” the court [declared](#).

When, as here, a long delay occurs between sentencing and the extradition request, treaty statute-of-limitations and speedy-trial articles afford limited protection at best. Nevertheless, the Ninth Circuit [ends](#) with what some might consider a subtle criticism of the government’s policy choices to date:

In affirming Knotek’s extradition order, we do recognize the impact this decision has, uprooting a 62-year-old U.S. citizen to serve a four-and-a-half year sentence for an economic crime committed two decades ago. There is no explanation in the record as to why the extradition process has taken so long or why the U.S. government believes the national interest “dictates” exercise of discretion under section 3196 to extradite Knotek. As we have emphasized before, however, “[e]xtradition is a matter of foreign policy entirely within the discretion of the executive branch” and the “extradition court ... exercises very limited authority in the overall process of extradition.”

Congressional options

Congress is free to repeal to Section 3196. In doing so, it would revive the citizenship extradition bar, identified by the Supreme Court in [Valentine](#), which exists in the twenty to thirty U.S. extradition treaties that absolve the United States of its obligation to extradite, but do not authorize it to extradite U.S. citizens for foreign criminal prosecution or service of sentence. The choice is between sheltering U.S. citizens from the consequences of the crimes they commit abroad or surrendering U.S. citizens to foreign prosecution and punishment under circumstances that do not always comport with U.S. standards of fairness.

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