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JUTHAMAS SIRIWAN and JITTISOPA SIRIWAN

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUTHAMAS SIRIWAN

and

JITTISOPA SIRIWAN,

Defendants

CR Nos. 09-00081-1; 09-00081-2

The Honorable George H. Wu, Crtrm. 10

DEFENDANTS' REPLY TO THE GOVERNMENT'S THIRD SUPPLEMENTAL BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Date: February 21, 2013
Time: 8:30 a.m.
Crtrm.: 10

Date of Filing: February 1, 2013

TO THE COURT, THE PARTIES AND THEIR COUNSEL:

Defendants Juthamas Siriwan ("Governor Siriwan") and Jittisopa Siriwan ("Ms. Siriwan") (collectively, "the Siriwans"), through undersigned counsel and pursuant to this Court's Order of December 10, 2012 (DE 100), will and hereby do file their Reply to the Government's Third Supplement Brief (DE 105 (Jan. 11, 2013)). Defendants' Reply Brief is based upon the attached memorandum of points and authorities, the files and records in this matter, as well as any evidence or argument presented at any hearing on this matter.

DATED: February 1, 2013

Respectfully submitted,
KELLEY DRYE & WARREN LLP
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Pursuant to this Court's Order of December 10, 2012 (DE 100), Defendants, Governor Siriwan and Ms. Siriwan, respectfully submit this Brief in Reply to the Government's Third Supplemental Brief in Opposition ("Gov't Third Supp. Br."). (DE 105 (Jan. 11, 2013)).

INTRODUCTION

In response to this Court's Order of December 10, 2012, the Government provides an in-depth exegesis on constitutional speedy trial requirements, the foreign relations power of the executive, and the law of extradition. The Siriwans Motion to Dismiss is not, however, based on any of these considerations. The matter before this Court is simply the Indictment's sufficiency, which the Siriwans have shown to be irretrievably defective.

As the Government raises no new issue warranting a finding in its favor, the Siriwans respectfully request this Court dismiss the Indictment.

ARGUMENT

A. The Government's Speedy Trial Arguments Are Irrelevant

In the opening section of its January 11, 2013, brief, the Government establishes the proposition that an indictment may remain on a docket, even over a very long time, without running afoul of the Sixth Amendment's guarantee of a speedy trial. (Gov't Third Supp. Br. at 2-7.) The proposition is unexceptional, but also irrelevant. The Siriwans never claimed the Court "cannot" keep the Indictment on its docket for a period of years, such as when the delay is due to the defendant's own actions.[1] Rather, the Siriwans' argument is the Court "should not" keep the Indictment on its docket because it is irretrievably flawed for all the reasons that have been expressed in the Siriwans' briefs to date.

As such, the Government's excruciatingly detailed speedy trial-based arguments shed no light on any issue of importance in this case, and, indeed, tend to

[1] (*See, e.g., id.* at 4 (citing *United States v. Blake*, 817 F. Supp. 2d 1082, 1088 (N.D. Ind. 2011)).)

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obfuscate the real matter.[2] The Siriwans have not invoked speedy trial considerations and, in fact, actually waived them during the argument relating to their motion for a special appearance.

B. The Court Has Authority to Decide This Case

In the second part of its brief, the Government objects to the Siriwans' interpretation of the Thai government's recent communications and again raises arguments about extradition and, particularly, courts' authority in such situations.[3] (Gov't Third Supp. Br. at 7-12.) The Siriwans do not ask this Court to interject itself into the decisions either the United States or Thailand will make with respect to extradition. Rather, the argument presented is that the Kingdom of Thailand quite evidently has decided to pursue official corruption charges against Governor Siriwan, and, most likely, Ms. Siriwan, before the Kingdom proceeds to address the United States' extradition request.[4] It is hard to understand how Thailand's decision cannot represent an "'expression of sovereign interest.'" (Gov't Third Supp. Br. at 7 (quoting Def. Nov. S.R. at 5).)

Moreover, the Thai Attorney General and Ministry of Foreign Affairs correspondence both cite authorities on which the Kingdom may ultimately refuse the United States' extradition request. (*See, e.g.*, Def. Nov. S.R. at 4 (citing Thai

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[2] So, too, do the caselaw and intimations relating to defendants actively "resisting" U.S. efforts to bring them to trial. (*See id.* at 5-6 (citing *United States v. Reumayr*, 530 F. Supp. 2d 1200 (D.N.M 2007) and *United States v. Manning*, 56 F.3d 1188 (9th Cir. 1995)).) As this Court is well aware, the Siriwans moved to appear specially, and have been permitted to do so.

[3] And it does so in the context of the law governing extradition courts' authority send people *from* the United States abroad at another nation's request. The significance of this discussion is difficult to discern.

[4] These matters are addressed in the Thai Attorney General letter of November 9, 2012 (DE 96-1), as well as the December 14, 2012 Diplomatic Note (DE 105-1). The Siriwans discussed the implications of these letters in their November 15, 2012 Status Report (at 3-6 (DE 97)) and January 11, 2012 Supplemental Brief (3-4 (DE 106)).

Attorney General Letter).) These include their invocation of Article 5(2) of the extradition treaty between the United States and the Kingdom of Thailand[5] and Section 14(4) of the Thai Extradition Act, B.E. 2551 (2008),[6] which indicates that Thailand believes the extradition – and, by extension, this prosecution – "may affect the international relation." (*See* Def. Nov. S.R. at 3-5.) Obviously, Thailand has not yet reached that conclusion, but the Siriwans have identified the Thai and international law bases on which such an assertion could rest.

The Constitution does not, moreover, preclude the Court from reading and assessing information from Thailand the Government has provided.[7] Nor does it prevent this Court from ruling on the Siriwans' Motion to Dismiss, any more than the district court and Fifth Circuit were precluded from deciding *United States v. Castle*, 925 F.2d 831 (5th Cir. 1991) (*per curiam*). The only potential distinction between *Castle* and the case at bar, was that the Government's efforts to use the money laundering statute as an end-run around the Foreign Corrupt Practices Act's jurisdictional limitations is somewhat more sophisticated that the failed effort in *Castle* to charge the FCPA violation via a conspiracy charge.

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[5] Which provides, "Extradition may be denied when the person sought is being or has been proceeded against in the Requested State for the offense for which extradition is requested." Treaty Between the Government of the Kingdom of Thailand and the Government of the United States of America Relating to Extradition, Art. 5(2), December 14, 1983, 98.16 U.S.T. I, Hein's KAV 1940 (entered into force May 17, 1991).

[6] Which provides, "If the Central Authority considers that the request may affect the international relation, or there is a reason not to proceed with the request, or the request is not subject to the provisions of this Act, the Central Authority shall notify the Requesting State or Ministry of Foreign Affairs, as the case may be, for further proceedings." *Id.*

[7] *See, e.g.*, Fed. R. Crim. P. 26.1 ("Issues of foreign law are questions of law, but in deciding such issues a court may consider any relevant material or source—including testimony—without regard to the Federal Rules of Evidence."); *see also US v. Fowlie*, 24 F.3d 1059, 1064-65 (9th Cir. 1994) (extradition case citing Rule 26.1 and interpreting Mexican law as part of jurisdictional inquiry).

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Nor, moreover, is *Vo v. Benov*, 447 F.3d 1235 (9th Cir. 2006), at all relevant. This Court is ruling on a motion to dismiss, not a sitting as an extradition court.[8] Extradition should ultimately not proceed because the Indictment is infirm, not because the Siriwans have asserted a "judicially cognizable right not to be extradited on a basis that falls with a discretionary exception to an extradition treaty." (Gov't Third Supp. Br. at 10). If the point has not been made sufficiently by now, this case is not about the grant or denial of extradition, but an inquiry into the sufficiency on the Indictment. That is the whole point of the Court's permitting the Siriwans to appear specially[9]—an outcome to which the Government consented.

Furthermore, the Siriwans have not asked this Court to enforce any Thai governmental determination.[10] Rather, under accepted U.S. jurisprudence going back to the earliest days of the Republic, (*cf. Murray v. The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804)), the Siriwans have asked the Court to apply international law considerations in deciding whether it should exercise jurisdiction in this instance. (*See, e.g,*, Def. Jan 11 Supp. Br. at Part B and authorities cited therein.) Consideration of Thai law, and the Kingdom's interests in this matter, are fully appropriate to the Court's inquiry.[11]

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[8] Where, as the government has shown, its scope of review and judicial discretion is much more circumscribed. (Gov't Third Supp. Br. at 9-11); *See also Vo*, 447 F.3d at 1237 ("An extradition court … exercises very limited authority in the overall process of extradition."). This Court retains its full Article III powers.

[9] *See In re Hijazi*, 589 F.3d 401, 407 (7th Cir. 2009) (describing the reasons for deciding a motion to dismiss of foreign defendants appearing specially).

[10] (*See id.* at 11 ("[E]ven if Thailand eventually decides not to extradite the defendants on the basis of Article 5(2) of the Treaty, the defendants have no right to raise that issue with this Court and this Court has no role in 'enforcing' any Thai determination.") (citing *Terlinden v. Ames*, 184 US 270, 286 (1902)).)

[11] *See supra* n.4; *see also In re Grand Jury Proceedings*, 40 F.3d 959, 964-96 (9th Cir. 1994) (considering and interpreting Austrian law, balancing U.S. and Austrian interests in contempt proceeding).

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The Court is thus free to consider and rely on, in its judgment, the legal and factual relevance of the Thai diplomatic dispatches in the context of the Siriwans' extensively-briefed domestic and international law arguments. For instance, the Court may conclude that the Letter and Note offer, when considered in connection with the learned authorities, statutory provisions, and legislative history Defendants have provided, further support for the expression of organic jurisdiction in Thai law. This Court may also find that the application of the Money Laundering Control Act against these Defendants and under these facts to be "unreasonable" and contrary to international law under the rubric outlined in *United States v. Vasquez-Velasco*, 15 F.3d 833 (9th Cir. 1994). This is not "standing in the Secretary of State's shoes" or the exercise of an Executive Department function. (Gov't Third Supp. Br. at 10 n.31.) This inquiry is purely judicial.

Finally, the Government purports to have had the Executive's prerogatives infringed when the Court asked if it made sense for the United States to maintain this case on the docket. (Gov't Third Supp. Br. at 12-14.) Clearly, the court cannot "make" the Government voluntarily dismiss its Indictment; however, the Court does have the authority to rule on the Siriwans' Motion to Dismiss.

CONCLUSION

The case is fully briefed, and the issues presented are mature. Therefore, the Court should proceed to decide—and grant—the Siriwans' Motion to Dismiss.

DATED: February 1, 2013

Respectfully submitted,
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