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United States Court of Appeals for the Second Circuit No. 14-2378-cr - Urteil vom 30.6.2015 (U.S. v. Yesid Rios Suarez)

Beachtung des Spezialitätsgrundsatzes bei Auslieferung in die USA (Verhältnis Völkerrecht und Landesrecht; Klagebefugnis; Zusicherungen; völkerrechtlicher Protest).

Leitsätze der Bearbeiter

1. Die Zusicherung der Spezialität tangiert nur das Verhältnis des ersuchenden und des ersuchten Staates.

2. Verstöße gegen den Spezialitätsgrundsatz nach erfolgter Einlieferung in die USA kann der strafrechtlich Verfolgte in den USA deshalb nur dann geltend machen, wenn der ersuchte Staat zuvor völkerrechtlichen Protest gegenüber den USA eingelegt hat.

3. Dieser Protest ist erst während oder nach dem Strafverfahren gegen den Eingelieferten in den USA möglich.

Sachverhalt [Bearbeiter]

Der Berufungskläger und Beschuldigte Suarez erhebt Einspruch gegen ein Urteil des Distriktgerichts New York Süd wegen eines Delikts des Komplotts zur Herstellung und Einfuhr von mindestens 5 kg Kokain in die Vereinigten Staaten nach 21 U.S.C. Titel 21 § 963. Seit den frühen 1990er-Jahren hatte Suarez einen groß angelegten Drogenhandel aus Kolumbien und Venezuela betrieben. Im September 2010, während Suarez in Venezuela war, wurde er in Kolumbien in Abwesenheit wegen Herstellung von Drogen und wegen Drogenhandel verurteilt. Etwa ein Jahr später wurde Suarez von Venezuela an Kolumbien ausgeliefert. Im November 2011 richteten die Vereinigten Staaten ein förmliches Ersuchen auf Festnahme und Auslieferung von Suarez an Kolumbien, damit dieser wegen der Vorwürfe in diesem Falle vor Gericht gestellt werden könne. 1

Suarez ging in Kolumbien gerichtlich gegen die Auslieferung vor. Im Oktober 2012 hat das Justizministerium von Kolumbien entschieden, Suarez auszuliefern, wenn die Regierung der Vereinigten Staaten folgende Zusicherungen macht: 2

(1) Suarez wird nur für nach dem 17. Dezember 1997 begangene Taten belangt; 3

(2) Suarez wird verschiedene angemessenen Prozessschutzmaßnahmen erhalten; 4

(3) Suarez wird nicht „forced disappearance [gezwungenem Verschwinden] zum Opfer fallen, Folter oder Grausamkeiten, inhumaner oder entwürdigender Behandlung oder Bestrafung, Verbannung, lebenslänglicher Haftstrafe oder Beschlagnahme ausgesetzt sein“. 5

Im März 2013 gaben die Vereinigten Staaten in einer diplomatischen Note der Regierung von Kolumbien diese Zusicherungen. Insbesondere sagten die Vereinigten Staaten zu, dass, „obwohl für die Tat, deretwegen die Auslieferung beantragt wird, die Höchststrafe lebenslange Haftstrafe ist, sichert die Regierung der Vereinigten Staaten der Regierung von Kolumbien zu, dass eine lebenslange Haftstrafe weder beantragt noch verhängt werden wird…“. 6

Im Mai 2013 wurde Suarez an die Vereinigten Staaten ausgeliefert. Die Republik Kolumbien stellte dabei die Bedingung, „dass eine lebenslange Haftstrafe nicht beantragt oder verhängt wird“. Im Februar 2014 bekannte sich Suarez zum Anklagepunkt „Komplott“ schuldig. Im Juni 2014 wurde er zu 648 Monaten Haft und einer Geldstrafe von 1 Million US-$ verurteilt. Bei der Urteilsverkündung bestätigte das Distriktgericht, dass dieses „de facto eine lebenslange Haft ist“, erklärte aber, dass dieses nicht gegen die Bedingungen der Auslieferungsvereinbarung verstoße, weil das Urteil eine konkrete Anzahl von Jahren nennt, nicht aber eine lebenslange Haft darstelle. 7

Der 46jährige Suarez macht mit der Berufung geltend, dass die ihm auferlegte Strafe von 648 Monaten (oder 54 Jahren) dieser Bedingung widerspricht, weil sie de-facto eine lebenslange Haftstrafe darstellt. 8

Der Court oft Appeals hat die Berufung zurückgewiesen und das erste Urteil bestätigt. Der Richter Kearse hat ein dem Ergebnis zustimmendes, aber in der Begründung abweichendes Votum erstellt. 9

Standard of Review [Prüfungsmaßstab]

"A district court's interpretation of an extradition agreement involve[s] questions of law, and [is] therefore review[ed] . . . de novo." United States v. Baez, 349 F.3d 90, 92 (2d Cir. 2003).[1] 10

DISCUSSION

"Based on international comity, the principle of specialty generally requires a country seeking extradition to adhere to any limitations placed on prosecution by the surrendering country." Id. Although the rule of specialty is typically applied in cases where the defendant is tried for a crime not enumerated in the applicable extradition treaty or agreement, it also "has application in the sentencing context." United States v. Cuevas, 496 F.3d 256, 262 (2d Cir. 2007). Because "the cauldron of circumstances in which extradition agreements are born implicate the foreign relations of the United States. . . , a district court delicately must balance its discretionary sentencing decision with the principles of international comity in which the rule of specialty sounds." Baez, 349 F.3d at 93. 11

However, this Court has never "conclusively decided whether a defendant has standing to challenge his sentence on the ground that it violates the terms of the treaty or decree authorizing his extradition," or whether the right to object is held solely by the extraditing nation. Cuevas, 496 F.3d at 262. Rather, we have rejected those challenges on the merits without deciding the standing issue. See, e.g., United States v. Fusco, 560 Fed. App'x 43, 45 n.1 (2d Cir. 2014), cert denied. 135 S. Ct. 730 (2014) ("We need not resolve whether Fusco has prudential standing to challenge his prosecution and sentencing on the grounds that they violate the terms of the Extradition Treaty or the rule of specialty, because his argument plainly fails on the merits."); United States v. Frankel, 443 Fed. App'x. 603, 606 (2d Cir. 2011) ("We do not decide whether Frankel has standing to assert the rule of specialty as a basis to challenge his sentence because his argument fails on the merits."); United States v. Banks, 464 F.3d 184, 191 (2d Cir. 2006) (declining to "resolve" whether "the right to enforce [an extradition] agreement belongs to the Dominican Republic" and not to the defendant "because we find no error in the district court's findings or proceedings"). 12

"The doctrine of standing asks whether a litigant is entitled to have a federal court resolve his grievance. This inquiry involves 'both constitutional limitations on federal?court jurisdiction and prudential limits on its exercise.'" Kowalski v. Tesmer, 543 U.S. 125, 128 (2004) (quoting Warth v. Seldin, 422 U.S. 490, 498 (1975)). Unlike constitutional standing, which focuses on whether a litigant sustained a cognizable injury?in?fact, "[t]he 'prudential standing rule . bars litigants from asserting the rights or legal interests of others in order to obtain relief from injury to themselves.'" Rajamin v. Deutsche Bank Nat. Trust Co., 757 F.3d 79, 86 (2d Cir. 2014) (quoting Warth, 422 U.S. at 509). "When both limitations [potentially] present themselves, we may assume Article III standing and address 'the alternative threshold question' of whether a party has prudential standing." Hillside Metro Assoc., LLC v. JP Morgan Chase Bank, Nat. Ass'n, 747 F.3d 44, 48 (2d Cir. 2014) (quoting Kowalski, 543 U.S. at 129. "In other words, we may consider third?party prudential standing even before Article III standing." Id. (internal quotation marks omitted). 13

Because the prudential standing rule requires that an individual "'assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties,'" Rajamin, 757 F.3d at 86 (quoting Warth, 422 U.S. at 499), we must first determine who has legal rights or interests under the orders and Diplomatic Note that achieved Suarez's extradition. Although the United States and Colombia have had a formal extradition treaty since 1982, extradition is commonly negotiated on a case?by?case basis through diplomatic channels because of amendments to the constitution of Colombia that expressly prohibit the extradition of Colombian nationals except for a limited scope of offenses. See U.S. Department of State, Third Report on International Extradition Submitted to Congress Pursuant to Section 3203 of the Emergency Supplemental Act, 2000, as enacted in the Military Construction Appropriations Act, 2001, Public Law 106?246 Related to Plan Colombia, http://www.state.gov/s/l/16164.htm. For purposes of our analysis here, extradition documents such as Diplomatic Notes implicate the same international legal rights as treaties because "a violation of [an] extradition agreement may be an affront to the surrendering sovereign." Baez, 349 F.3d at 92; accord Fiocconi v. Attorney General of the United States, 462 F.2d 475, 479?80 (2d Cir. 1972) (holding that the rule of specialty is a general principle of international law that applies with equal force to extraditions accomplished by treaty and by comity). 14

Generally speaking, ?absent protest or objection by the offended sovereign, [a defendant] has no standing to raise the violation of international law as an issue." United States v. Reed, 639 F.2d 896, 902 (2d Cir. 1981). That is because international agreements, including treaties, "do not create privately enforceable rights in the absence of 15

express language to the contrary," Mora v. New York, 524 F.3d 183, 201 (2d Cir. 2008), or some other indication "that the intent of the treaty drafters was to confer rights that could be vindicated in the manner sought by the affected individuals," id. at 203.

"As a matter of international law, the principle of specialty has been viewed as a privilege of the asylum state, designed to protect its dignity and interests, rather than a right accruing to the accused." Shapiro v. Ferrandina, 478 F.2d 894, 906 (2d Cir. 1973). "[T]he object of the rule was to prevent the United States from violating international obligations." Fiocconi, 462 F.3d at 480. These concerns apply equally whether a criminal defendant objects based on the rule of specialty or based on the interpretation of an extradition treaty or Diplomatic Note. Because "[t]he provisions in question are designed to protect the sovereignty of states, . . . it is plainly the offended states which must in the first instance determine whether a violation of sovereignty occurred, or requires redress." United States ex rel. Lujan v. Gengler, 510 F.2d 62, 67 (2d Cir. 1975). 16

Any individual right that Suarez may have under the terms of his extradition is "only derivative through the state[]." Id. (internal quotation marks omitted). Thus, Suarez would only have prudential standing to raise the claim that his sentence violated the terms of his extradition if the Government of Colombia first makes an official protest. See, e.g., United States v. Alvarez?Machain, 504 U.S. 655, 659 (1992) ("[L]etters from the Mexican Government to the United States Government served as an official protest of the Treaty violation."); Gengler, 510 F.3d at 67 n. 8 ("[T]o support this claim[,] Toscanino would have to prove that the Uruguayan government registered an official protest with the United States Department of State."). It may be prudent, as a matter of general policy, for the United States Attorney's Office to ensure that the State Department is kept apprised when extradited defendants plead guilty, proceed to trial, or are sentenced. 17

CONCLUSION

For these reasons, and for the reasons explained in the simultaneously filed summary order, we AFFIRM the judgment of the district court. 18

KEARSE, Circuit Judge, concurring: 19

I concur in the judgment, on the ground that the diplomatic agreement that led to the extradition of defendant Yesid Rios Suarez to the United States from Colombia should be read in accordance with the language to which the United States and Colombia agreed. "Based on international comity, the principle of speciality [sic] generally requires a country seeking extradition to adhere to any limitations placed on prosecution by the surrendering country." United States v. Baez, 349 F.3d 90, 92 (2d Cir. 2003). In Baez, we considered a challenge to the sentence of life imprisonment imposed on a defendant who had been extradited to the United States from Colombia pursuant to an agreement recorded in a diplomatic note in which the United States agreed, inter alia, that it would not seek a sentence of life imprisonment and that if the United States court were "'nevertheless [to] impose a sentence of life imprisonment,'" the United States's "'executive authority will take appropriate action to formally request that the court commute such sentence to a term of years.'" Id. (quoting Diplomatic Note No. 1206 (emphasis mine)). Following the defendant's conviction, the district court imposed a sentence of life imprisonment. Thereafter, "[a]s contemplated by Diplomatic Note No. 1206, the United States, through the U.S. Attorney for the Southern District of New York, requested that the District Court sentence [the defendant] to a term of years." 349 F.3d at 92-93. We held that the government thereby "fulfilled the commitment it made in Diplomatic Note No. 1206." Id. at 93. Accord United States v. Riascos, 537 F. App'x 898, 900-01 (11th Cir. 2013); United States v. Corona-Verbera, 509 F.3d 1105, 1121 (9th Cir. 2007), cert. denied, 555 U.S. 865 (2008). 20

In United States v. Lopez-Imitalo, 305 F. App'x 818 (2d Cir. 2009), we considered a challenge to a 40-year prison term imposed on a 58-year-old defendant (see the defendant's brief on appeal, 2007 WL 6370252), who had been extradited to the United States from Colombia pursuant to an agreement in which, as in the agreement in Baez, the United States promised it would not seek a sentence of life imprisonment. We rejected the defendant's "argument that the Government breached the agreement by seeking a sentence of 60 years, which he assert[ed wa]s the functional equivalent of life imprisonment"; and we stated that there was no violation of the extradition agreement "[e]ven if the district court's sentence of 40 years were deemed to be a sentence of 'life imprisonment.'" 305 F. App'x at 819. We stated that "[o]ur decision in Baez compels the conclusion that the rule of specialty [sic] was not violated . . . ." Id. 21

Had the respective governments intended the Diplomatic Note to be an assurance that the U.S. government would not request a determinate sentence exceeding [the defendant's] expected lifespan, they could have drafted the note to say that.
Id. They did not do so, either in that case or here. 22

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[1] The Government's failure to raise the issue of prudential standing before the district court does not affect our duty to decide it. See Thompson v. Cnty. of Franklin, 15 F.3d 245, 248 (2d Cir. 1994)("The jurisdictional nature of the

standing inquiry, therefore, convinces us that we have an independent obligation to examine [plaintiff's] standing under arguments not raised below[.]").