Meza v. U.S. Attorney General: Motivation Is Fickle in the Application of the Political Offense Exception to Extradition

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I. OVERVIEW

Carlos Alberto Yacaman Meza, a Honduran national, sought to appeal an order of extradition from the United States for the murder of Luis Rolando Valenzuela Ulloa, also a Honduran national.[1] The murder took place approximately five years after the start of the political events at issue, namely, the campaign of former Honduran President José Manuel Zelaya and Valenzuela's involvement in campaign soliciting donations for Zelaya in exchange for political positions in the new administration.[2] When Zelaya won, Valenzuela was appointed as a member of Zelaya's cabinet, where he remained until June 28, 2009, when the Honduran military instigated a coup d'état.[3] The uprising created a violent and unstable environment throughout Honduras, which began to die down only when a new president took over from the interim president in November of 2009.[4] On June 15, 2010, both Yacaman and Valenzuela were dining at a restaurant in Honduras when Yacaman approached Valenzuela and engaged him in an aggressive discussion

1. Meza v. U.S. Att'y Gen., 693 F.3d 1350, 1353 (11th Cir. 2012).
2. *Id.*
3. *Id.* This was in response to Zelaya's attempt to amend the Constitution to allow him remain in office for an extra term. *Id.*
4. *Id.* at 1353-54. The subsequent political environment, from November of 2009 until June 2010, is at issue in this case; although the violence had subsided, there was still considerable public denunciation of the new regime, and in the month the murder was committed, "[a]t least a dozen journalists were assassinated." *Id.* at 1354.

about Valenzuela's alleged failure to deliver on a bribe for government contracts, repeatedly accusing Valenzuela of theft.[5] Yacaman later shot Valenzuela in the neck as he attempted to leave the restaurant.[6] Yacaman then fled to the United States and was found and detained by the United States Immigration and Customs Enforcement in Miami, Florida, about three months after the murder took place.[7] Yacaman was then brought before a magistrate judge at the request of the United States in response to Honduras's request for extradition to prosecute him for Valenzuela's murder.[8] The magistrate judge issued a certification of extraditability, prompting Yacaman to file a petition for a writ of habeas corpus to block extradition.[9]

The district court denied his petition, and on appeal, Yacaman sought to evade extradition by making three claims: (1) that the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT) barred his extradition because he would face such treatment in a Honduran prison, (2) that the current state of the Honduran government rendered the extradition treaty between the United States and Honduras invalid, and (3) that the murder of Valenzuela should qualify him for the political offense exception to extradition.[10] After reviewing the circumstances of the murder, the court evaluated each claim separately, deferring to the appropriate branch of government for the CAT and extradition claims.[11] The United States Court of Appeals for the Eleventh Circuit *held* (1) that Yacaman's claim under the CAT was not ripe, (2) that there was a valid extradition treaty between the United States and Honduras, and (3) that the murder of Valenzuela was not sufficiently tied to a political uprising or disturbance so as to fall under the political offense exception to extradition. *Meza v. U.S. Attorney General*, 693 F.3d 1350, 1356-60 (11th Cir. 2012).

II. BACKGROUND

When immigrants arrive at Liberty Island, they are greeted with a poem, from which the following quote has become immortalized as the ultimate expression of the morals upon which the United States was founded:

5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.* at 1354-55.
9. *Id.* at 1355.
10. *Id.*
11. *Id.* at 1356.

> Give me your tired, your poor,
> Your huddled masses yearning to breathe free,
> The wretched refuse of your teeming shore.
> Send these, the homeless, tempest-tost to me,
> I lift my lamp beside the golden door![12]

Of course, as the United States sought to create mutually beneficial relationships with foreign nations, the ideal of America as a land of refuge and freedom adapted to develop qualifications to encourage international cooperation in ensuring that justice was served.[13]

Extradition treaties between the United States and foreign nations enabled the United States to facilitate justice against criminals who seek to evade punishment for their crimes.[14] However, the terms of the CAT are sometimes able to temper the strictures of extradition treaties, thereby upholding the human rights ideals embodied in the engraved quote on the Statue of Liberty.[15] Because separation of powers prevents the courts from interpreting international treaties, they are left to seek judicial remedies to resolve claims contesting extradition.[16]

Extradition proceedings are governed by 18 U.S.C. § 3184, which grants judges and federal magistrates the authority to make the determination whether the requested individual should be extradited under the applicable treaty.[17] After this decision is made, it is still within the purview of the Secretary of State to authorize or deny the final removal of the requested individual; this authority is governed by the same title, under § 3186.[18]

Perhaps the most notable remedy for those seeking to fight extradition from the United States is the political offense exception, and its treatment within U.S. courts can act as a reflection of traditionally American values.[19] The manner in which various courts have interpreted this controversial facet of the law provides both an educational and

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12. These lines were taken from a sonnet by Emma Lazarus, written in 1883, for an auction to raise funds for the Statue of Liberty. It was later inscribed on the statue in 1903.

13. *See* David M. Lieberman, Note, *Sorting the Revolutionary from the Terrorist: The Delicate Application of the "Political Offense" Exception in U.S. Extradition Cases*, 59 STAN. L. REV. 181, 183 (2006).

14. *See* 18 U.S.C. § 3184 (2006).

15. *See* Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT].

16. Quinn v. Robinson, 783 F.2d 776, 787 (9th Cir. 1986).

17. 18 U.S.C. § 3184.

18. *Id.* § 3186; *see also* Barapind v. Reno, 225 F.3d 1100, 1105 (9th Cir. 2000) ("Once the magistrate has certified to the Secretary of State that the individual is extraditable . . . , the Secretary in her discretion may determine whether the alien should be surrendered to the custody of the requesting state based on humanitarian or other concerns." (citations omitted)).

19. *See infra* Part IV.

enlightening look into the possibilities for improvement.[20] Moreover, after a brief discussion of the CAT and the validity of an extradition treaty, this Note will focus largely on the political offense exception and its purpose, development, and interpretation in U.S. courts as a precursor to the Eleventh Circuit's decision in *Meza*, as well as its possible implications on extradition law.[21]

A. Function of the CAT and the Validity of an Extradition Treaty

The CAT was created in order to combat "cruel, inhuman or degrading treatment or punishment."[22] This multilateral treaty, signed by the United States in 1988 and entered into force in 1994, prohibits extradition of a person "where there are substantial grounds for believing that he would be in danger of being subjected to torture."[23] After an extradition order is made by a judge or federal magistrate, it is ultimately the role of the Secretary of State to determine whether that individual will face such inhumane conditions upon his or her return to the requesting country.[24] Specifically, the Code of Federal Regulations requires that the Secretary of State make the determination of whether the individual "'is more likely than not' to be tortured" if the government acts pursuant to an order of extradition.[25] Other courts that have handled claims of protection under the CAT have reiterated the process by which an individual is finally surrendered to the requesting country, and have pointed out that unless the United States Department of State determines that the person will be subjected to torture, the protections under the CAT cannot apply.[26] The judicial rule of noninquiry, which is also applicable here, prevents courts from making determinations based on foreign judiciary procedures.[27]

The Executive Branch also has the power to determine whether an extradition treaty is valid.[28] In certain, unusual circumstances, two nations may not be held to a previous treaty under the successor-state rule; however, the strictness of this standard renders it difficult to

20. *See infra* Part IV.
21. *See infra* Part II.B-C.
22. CAT, *supra* note 15, pmbl.
23. *Id.* art. 3.
24. 18 U.S.C. § 3186 (2006).
25. 22 C.F.R. § 95.2(b) (2012).
26. *See* Cornejo-Barreto v. Seifert, 218 F.3d 1004, 1009 (9th Cir. 2000), *overruled on other grounds by* Trinidad y Garcia v. Thomas, 683 F.3d 952, 957 (9th Cir. 2012).
27. *See* Mainero v. Gregg, 164 F.3d 1199, 1210 (9th Cir. 1999).
28. *See* Terlinden v. Ames, 184 U.S. 270, 288 (1902).

successfully claim, as illustrated by *Kastnerova v. United States*.[29] In this case, the Czech Republic was found to be bound by an extradition treaty between the former Czechoslovakia and the United States due to the existence of diplomatic letters and statements between the Czech Republic and the President of the United States, which were taken as an expression of intent for the Czech Republic to be bound by the old treaty.[30]

B. Identifying the Political Offense Exception and Potential Problems of Interpretation

In comparison to the long history of extradition agreements, the political offense exception is a relatively recent addition to extradition law.[31] In contrast to matters concerning the CAT and the validity of a treaty, the political offense provision has been designated as a role of the courts.[32] Where courts have struggled in responding to this question is in the determination of what, exactly, qualifies as sufficiently "political" to satisfy the exception.[33] One way in which the exception has been narrowed is through the distinction between *pure* and *relative* political offenses.[34] Pure political offenses are referred to as "objectively" political in nature and include only "acts directed against the state," not those which could be classified as "ordinary crime."[35] Some examples of pure political offenses are treason, sedition, and espionage.[36] Courts generally do not employ the incidence test to these types of crimes because their political nature is self-evident.[37] Offenses that do contain elements of ordinary crime, however, can still be protected as relative political offenses if they are "so connected with a political act that the entire offense is regarded as political."[38] The offense exception itself, as posited by the United States Court of Appeals for the Ninth Circuit in *Quinn v. Robinson*, developed an answer to three overarching concerns: (1) the underlying value that individuals place on their right to rebel

29. 365 F.3d 980 (11th Cir. 2004).
30. *Id.* at 986.
31. Quinn v. Robinson, 783 F.2d 776, 792 (9th Cir. 1986) (relating the history of the exception as a development of the early-nineteenth-century shift towards viewing political offenses as protected under the law).
32. *See* Eain v. Wilkes, 641 F.2d 504, 513 (7th Cir. 1981).
33. Lieberman, *supra* note 13, at 182.
34. Manuel R. García-Mora, *The Nature of Political Offenses: A Knotty Problem of Extradition Law*, 48 VA. L. REV. 1226, 1230 (1962).
35. *Id.*
36. Ordinola v. Hackman, 478 F.3d 588, 596 (4th Cir. 2007).
37. Vo v. Benov, 447 F.3d 1235, 1240-41 (9th Cir. 2006).
38. García-Mora, *supra* note 34, at 1230-31.

against government and to encourage political activism, (2) the fear that those convicted of political crimes would face unjust punishment in their country of origin due to their expressed beliefs, and (3) the notion that governments should remain uninvolved in the governmental struggles of other countries.[39]

These concerns manifested in the many variations of the political offense exception; although some extradition treaties historically only applied the political offense exception to pure political offenses, courts began to seek a more narrowly tailored test for when to apply the exception.[40] The Anglo-American political incidence test indicates a move toward a broader application of the exception.[41] One major theme throughout the development of the political offense exception is the need to balance between two competing concerns: on the one hand is the concern that an overly broad application of the exception will prevent those who have committed abhorrent crimes from facing justice, and on the other is the fear of punishing those who act bravely in defense of productive political change, thus negating the very purpose of the exception to protect those acting in furtherance of productive revolution.[42]

The Anglo-American political incidence test was first introduced in *In re Castioni*, a case involving a request to England from the Swiss government for the extradition of Angelo Castioni, who was charged with the crime of murdering a government official in the process of an attack on the palace.[43] Although Castioni did not have any prior connection to the victim, the court considered that he "was acting as one of a number of persons engaged in acts of violence of a political character with a political object, and as part of the political movement."[44] In denying extradition, the Divisional Court gave credence to the fact that Castioni's actions were "incidental to and formed a part of political disturbances."[45] Moreover, even though the murder contained the elements of a common crime, the court held that because the murder was committed "in the course of" and "in furtherance of" a political uprising, Castioni did qualify for the political offense exception to extradition.[46]

39. 783 F.2d 776, 793 (9th Cir. 1986).
40. *Id.*
41. *Id.* at 794, 797.
42. *See* Lieberman, *supra* note 13, at 182.
43. (1890) 1 Q.B.D. 149 at 149-50 (Eng.).
44. *Id.* at 159.
45. *Id.* at 166.
46. *Id.* at 156.

C. Development of the Political Incidence Test in the United States

One of the first cases in the United States to consider the ruling in *In re Castioni* took place four years later and concerned an extradition request from the Republic of El Salvador for a group of Salvadoran nationals.[47] The case concerned a litany of crimes relating to the group's alleged defense of the current governmental regime during a violent political uprising that began in April of 1894 and was still in full force at the commission of the crimes.[48] The United States District Court for the Northern District of California gave great weight to the nature of the crimes and the political atmosphere in which they were committed, ruling that none of the crimes, including murder and bank robbery, were extraditable.[49] However, the court was not indiscriminate in granting the exception and held that one of the acts, reportedly committed some four months before the start of armed violence in El Salvador, did not qualify the accused for relief under the political offense exception.[50] The court reasoned that the crime was not closely tied to the violent uprising that instigated the other crimes.[51] Aware of the possible impact a decision clarifying the nature of a political offense in this context could have, the court looked to political philosophers such as Sir James Stephens[52] and John Stuart Mill, as well as *In re Castioni* and a draft of a treaty on International Penal Law from 1888.[53] The ultimate effect of the decision in *In re Ezeta* was to give courts the standard that foreign nationals could be exempted from extradition if their crimes were "committed during the progress of actual hostilities" between contending forces and if the crimes were sufficiently tied to an ongoing violent political uprising.[54] Whether the foreign nationals involved were seeking to further or to prevent that uprising was immaterial to the party's ability to claim the defense.[55]

Ornelas v. Ruiz is the only relevant United States Supreme Court case to address this topic.[56] In that case, the extradition treaty at issue was between the United States and Mexico and provided that extradition

47. *In re* Ezeta, 62 F. 972, 976 (N.D. Cal. 1894).
48. *Id.* at 976-78.
49. *Id.* at 976.
50. *Id.* at 986.
51. *Id.*
52. *Id.* at 997 (stating that a political offense should include crimes that are "incidental to and form[] a part of political disturbances" (internal quotation marks omitted)).
53. *Id.* at 997-99.
54. *Id.* at 995.
55. *Id.*
56. 161 U.S. 502 (1896).

should not be carried out for any criminal whose extradition is requested for pure political offenses.[57] Although the district court held the relevant acts to be protected, nonextraditable political acts, the Supreme Court upheld the commissioner's reversal of that decision in a subsequent habeas action.[58] However, the Court did make reference to four relevant factors: "the character of the foray, the mode of attack, the persons killed or captured, and the kind of property taken or destroyed."[59] Although the Court held that the discretion of the commissioner was not to be questioned, the Court did introduce the idea that "the political intentions of those who commit[the act]" could be a part of the test to determine whether an act is political.[60]

What must be highlighted in the Court's opinion in *Ornelas* is the direct reference to motivation: a theme that arises in the case law pertaining to the incidence test and political offense interpretation in general, with little consistency among the circuits.[61] After these seminal cases of the late twentieth century, courts largely adhered to the fairly broad application of the exception introduced in *In re Castioni* and furthered in *In re Ezeta* until the mid-1980s.[62] These cases were regarded as establishing a two-part incidence test, requiring "(1) . . . an uprising or other violent political disturbance at the time of the charged offense and (2) a charged offense that is 'incidental to[,] in the course of,' or 'in furtherance of' the uprising."[63] *Quinn* marks a departure from the focus on individual objectives of the accused and focuses instead on the larger political atmosphere precipitating and influencing the crime.[64] In reevaluating the political incidence test and its application in recent decisions, the *Quinn* court reiterated the need for a proper application and refused to incorporate into the test an element regarding "certain types of conduct engaged in by some contemporary insurgent groups, conduct that we in our society find unacceptable."[65] The "incidental to"

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57. *Id.* at 510-12.
58. *Id.*
59. *Id.* at 511.
60. *See id.* at 511-12.
61. *See, e.g.*, Garcia-Guillern v. United States, 450 F.2d 1189, 1192 (5th Cir. 1971) (defining a political offense based on the circumstances at the time of the crime and its commission, not on the motives of the actors committing those crimes); Eain v. Wilkes, 641 F.2d 504, 520 (7th Cir. 1981) ("[F]or purposes of extradition, motivation is not itself determinative of the political character of any given act." (citation omitted)).
62. Lieberman, *supra* note 13, at 191.
63. Quinn v. Robinson, 783 F.2d 776, 797 (9th Cir. 1986) (footnote omitted) (citations omitted).
64. Lieberman, *supra* note 13, at 192.
65. *Quinn*, 783 F.2d at 801.

prong of the incidence test was also given nuance in *Quinn* by the application of a geographical boundary—the crime at stake must not only be committed at the same time as the violent uprising, but also must be within the same geographical area.[66]

The *Quinn* court also applied what it referred to as a "liberal" standard of the political incidence test, which requires "neither proof of the potential or actual effectiveness of the actions in achieving the group's political ends . . . nor proof of the motive of the accused."[67] This distinction is justified by the goal of an unbiased, objective determination of the nature of the crime, which is intended to bring about a more uniform application of the political incidence test.[68] Therefore, the incidence test set forth in *Quinn* establishes a somewhat more streamlined set of acts that can be protected under the political offense exception, and in the process also reminds future courts that the exception was designed to protect acts *incidental to* an effort to facilitate positive governmental change.[69]

Two cases from the United States Court of Appeals for the Fifth Circuit, *Garcia-Guillern v. United States* and *Escobedo v. United States*, are instructive in their interpretation of what constitutes a political offense.[70] In the first case, which dealt with the U.S.-Peru extradition treaty, the court refused to apply the political offense exception when a public officer was charged with embezzlement because the crime was not incidental to an uprising.[71] Nine years later, the court reiterated the definition of political offense in *Escobedo*, a case in which Mexican nationals sought to fight their extradition for the kidnapping and murder of the Cuban Consul.[72] In finding the offenses inapplicable under the prior court's decision in *Garcia-Guillern*, the *Escobedo* court urged, "An offense is not of a political character simply because it was politically motivated."[73] The court thus adhered literally to *Quinn* in refusing to consider that the petitioners kidnapped the Consul in order to compel the Cuban government to release political prisoners.[74]

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66. *Id.* at 809.
67. *Id.* (citations omitted).
68. *Id.* at 810.
69. *See id.* at 798.
70. Garcia-Guillern v. United States, 450 F.2d 1189, 1192 (5th Cir. 1971); Escobedo v. United States, 623 F.2d 1098, 1104 (5th Cir. 1980).
71. *Garcia-Guillern*, 450 F.2d at 1190-93.
72. *Escobedo*, 623 F.2d at 1101.
73. *Id.* at 1104.
74. *See id.*

One case in which the political offense exception did apply involved the requested extradition of a member of the Provisional Irish Republican Army to Great Britain for a murder committed during an attack on British soldiers.[75] In finding the offense to fall cleanly within the requirements of the exception, the court discussed that the attack was solely political in part because it lacked any violence targeted toward civilians.[76] The court was also careful not to extend the exception to "every fanatic group or individual with loosely defined political objectives" and urged future courts to consider factors including "the nature of an organization, its structure, and its mode of internal discipline," in order to determine whether a crime warrants protection under the political offense exception.[77] In dictum, the court posited that a crime otherwise political in character could fall outside the exception if it were evident that personal reasons were the principal justification for the offense.[78]

In *Koskotas v. Roche*, the United States Court of Appeals for the First Circuit cited *Quinn* when applying the political incidence test.[79] The court made the important distinction between an ordinary crime related to politics and a political offense for purposes of the exception to extradition.[80] As in so many of the prior cases from other circuits, the First Circuit refused to apply the exception to the petitioner's financial crimes because the crimes did not fall under the distinction in the U.S.-Greece extradition treaty of "any crime or offense of a political character, [and any] acts connected with such crimes or offense."[81] In denying relief, the court pointed to the lack of violence related to the crime itself or its motivation, stating that "Koskotas allege[d] neither an intention to promote violent political change nor an intention to repress violent political opposition."[82] In this way, the court seems to twist slightly the words of *Quinn* by interpreting the violent objective requirement to encompass the subjective intent of the accused.[83]

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75. *In re* Doherty, 599 F. Supp. 270, 272 (S.D.N.Y. 1984).
76. *Id.* at 275.
77. *Id.* at 276.
78. *Id.* at 277.
79. 931 F.2d 169, 171-72 (1st Cir. 1991).
80. *Id.*
81. *Id.* at 171 & n.2.
82. *Id.* at 172.
83. *See id.*

III. THE COURT'S DECISION

In the noted case, the Eleventh Circuit carefully analyzed the facts surrounding Yacaman's murder of Valenzuela and the political atmosphere in Honduras at the time and evaluated Yacaman's arguments based on existing case law in a concise, straightforward opinion.[84] The court divided the discussion into three sections to evaluate each of Yacaman's claims separately.[85] As to his argument that the CAT should preclude him from extradition, the court dismissed it on the grounds that the claim was not ripe, because it is not within the role of the judiciary to determine whether there is a sufficient likelihood that an individual will be tortured upon his arrival in the requesting country.[86] The court then dismissed Yacaman's second claim that the extradition treaty between the United States and Honduras was not valid at the time of the murder, determining that the claim lacked merit.[87] Finally, the court rejected Yacaman's claim that the political offense exception to extradition should apply by reviewing decisions of other circuits and thereby carefully avoiding an extension of the interpretation of what constitutes a political offense.[88]

First, the court discussed whether the extradition of Yacaman would violate his rights under the CAT and found that the claim was not justiciable under the ripeness doctrine.[89] Because the CAT protects individuals from inhumane treatment abroad, Yacaman attempted to argue that if extradited, he would undoubtedly face torture in a Honduran prison once he returned to his home country.[90] However, under the rule of noninquiry, which prevents courts from engaging in precisely these types of considerations when determining whether to extradite an individual, it is not the role of the courts to determine how a foreign judicial system will treat its defendants.[91] Thus, the court refused to make a decision on this matter.[92] The court acknowledged that it is solely the role of the Secretary of State to make the determination whether an individual will face such treatment protected by the CAT upon his extradition, and this determination is to be made *after* the extradition

84. Meza v. U.S. Att'y Gen., 693 F.3d 1350, 1356-60 (11th Cir. 2012).
85. *Id.* at 1356.
86. *Id.* at 1357.
87. *Id.* at 1358.
88. *Id.* at 1358-59.
89. *Id.* at 1356-57.
90. *Id.* at 1356.
91. *Id.*
92. *Id.*

order, as the last step in the extradition process.[93] Accordingly, the court pointed out that the Secretary of State had not yet made such a decision and therefore the claim was not ripe.[94] The discussion of this claim is very short and straightforward: after laying out the constitutional requirement that an appeal present a case or controversy and that federal courts may not prematurely decide cases, the court directly applied the words of a prior Supreme Court case to reach the conclusion that Yacaman's claim was not ripe.[95] Finally, the court cited *Cornejo-Barreto v. Siefert*, a Ninth Circuit case that contained a nearly identical CAT claim that was also dismissed for lack of ripeness.[96]

Second, the court dismissed Yacaman's claim that there was no valid extradition treaty between the United States and Honduras at the time the offense was committed.[97] The basis of Yacaman's claim was that at the time of the coup d'état, the government that had been in power was not legitimate, and thus the new government elected in early 2010 should not be considered a party to the treaty under a successor-state analysis.[98] The court gave no credence to this claim, because it failed for two reasons: first, it is not the role of the judiciary to determine whether a treaty is in force between two nations, and second, the successor-state argument is not applicable in cases where there has simply been a shift in the governmental regime.[99] As to the former, the court first stated that it is within the power of the Executive Branch to decide whether a treaty should be carried out and pointed to the decisions of other circuits to demonstrate that each court has come to the same conclusion in this area of law.[100] Although the court's opinion provides no external citation, the court related that a member of the Executive Branch attested that the treaty was in force, and thus the court could not find it to be invalid.[101] Because the country of Honduras remained one country before and after the insurgency, the court found the political situation in Honduras at the time of the murder to be wholly inapplicable to the successor-state analysis.[102]

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93. *Id.* at 1357.
94. *Id.* at 1356-57.
95. *Id.* at 1357.
96. *Id.* (citing Cornejo-Barreto v. Siefert, 218 F.3d 1004 (9th Cir. 2000)).
97. *Id.* at 1358.
98. *Id.*
99. *Id.*
100. *Id.*
101. *Id.*
102. *Id.*

Finally, the court turned to the political offense claim.[103] Yacaman's defense rested on the contention that the violent uprising leading up to and following the coup d'état was in full force at the time he murdered Valenzuela and that he and other political figures viewed the murder as being politically motivated.[104] In order to come to the conclusion that the action did not fall under the political offense exception, the court reviewed the distinction between pure and relative political offenses and cited recent case law to demonstrate how a crime could qualify as a relative political offense.[105] The court relied on the standard set forth in *Quinn*, which interpreted a relative political offense to qualify for the exception when the crime is "causally or ideologically related to [a violent political] uprising."[106] Most relevant to the court's conclusion was the discrepancy in time: although there was a violent political uprising in Honduras prior to the murder, because the murder of Valenzuela occurred one full year after the coup d'état, the court found the nexus between the crime and the uprising too attenuated to warrant the exception.[107] The court then proceeded to explain why the murder was not political in nature, concluding that Yacaman's motive was fueled by his own hatred of Valenzuela and not any kind of desire to promote political change.[108]

Additionally, in its comparison to *Koskotas*, the court emphasized the nature of the crime in *Koskotas* as a crime related to politics, rather than a political offense, because it ultimately resulted in the defendant's obtaining political favors for his crimes.[109] The overall analysis of the political offense claim is marked by a heavy reliance on the First Circuit ruling in *Koskotas*, including a reference to the distinction between a political conflict "tainted by allegations of political corruption"[110] and the lack of a clear intention to promote or repress violent opposition.[111] Because the offense was not sufficiently tied to the earlier uprising, and the court found his motivations to be unrelated to that uprising, the murder of Valenzuela did not satisfy the requirements of the political offense exception.[112]

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103. *Id.*
104. *Id.*
105. *Id.* at 1358-59.
106. *Id.* at 1359 (citations omitted) (internal quotation marks omitted).
107. *Id.*
108. *Id.*
109. *Id.* at 1359-60.
110. *Id.* at 1359 (quoting Koskotas v. Roche, 931 F.3d 169, 172 (1st Cir. 1991) (internal quotation marks omitted)).
111. *Id.*
112. *Id.* at 1359-60.

IV. ANALYSIS

The court's discussion and analysis of Carlos Alberto Yacaman Meza's murder of Luis Rolando Valenzuela is brief, yet to the point. By first dismissing two meritless claims—that the CAT should prevent extradition and that there was no valid extradition treaty in force—the court wasted little time giving reasoning and moved quickly on to the discussion of the political offense exception, which it declared inapplicable in six short paragraphs.[113] The brevity of the discussion of the political offense exception makes clear what the court considered to be the pertinent facts of the claim: the timeline of the political insurgency in Honduras, when the crime was committed in light of that timeline, and the motivating factor behind the murder.[114]

Although the decision followed a rational approach, there seems to be a growing trend of courts not applying the political offense exception to relative political offenses, ranging from extortion of a political figure[115] to financial crimes including embezzlement by a public officer[116] to murder and conspiracy.[117] The existence of such a trend in itself, however, does not necessarily convey a judicial conformity in applying the exception. To the contrary, instead of acting as a manifestation of the more streamlined application of the political incidence test that *Quinn* sought to set forth with its holding that courts should not consider the subjective motivations of actors, the noted case demonstrates the apparent ability of courts to consider whatever elements they desire in determining whether an act is sufficiently political to justify the application of the exception to relative political offenses.[118] One possible explanation for this more widespread refusal to apply the exception is a desire to encourage more amicable relations with foreign nations, in order to encourage reciprocity in matters when the tables are turned and it is the United States requesting an extradition.[119]

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113. *Id.* at 1356-60.
114. *Id.* at 1359-60.
115. Escobedo v. United States, 623 F.2d 1098, 1104 (5th Cir. 1980).
116. Garcia-Guillern v. United States, 450 F.2d 1189, 1191 (5th Cir. 1971); *see also* Koskotas v. Roche, 931 F.2d 169, 171 (1st Cir. 1991).
117. *See* Quinn v. Robinson, 783 F.2d 776, 818 (9th Cir. 1986).
118. *See, e.g.*, *Koskotas*, 931 F.2d at 172 (finding the exception inapplicable when the accused "ascribes no political motive for the criminal conduct with which he is charged" (citation omitted)); Eain v. Wilkes, 641 F.2d 504, 520 (7th Cir. 1981) (pointing out that the motivation behind a crime is not relevant to the determination whether that crime is incidental to a violent uprising).
119. Lieberman, *supra* note 13, at 183.

In the area of extradition treaties, implications of reciprocity run deeper than meets the eye; at a time when the field of international law is still in its earliest stages, enforcement of such treaties by nature requires good faith on the part of each country because the mechanisms employed in order to enforce these treaties operate within national law, not international law. Therefore, although the United States requires enforcement of extradition under federal criminal procedure,[120] one cannot guarantee the existence or enforcement of such statutes in foreign countries. The fear, then, is that when other countries enter treaties embodying such classically American values as the advancement of international relations and development, those countries will fully intend to refuse extradition if it even slightly behooves their own interests, without thought to international obligations. If the overarching goal of the United States in the field of international extradition law is to engage other countries in legal practices similar to its own in order to ensure compliance with treaties, there must be a uniform application of the treaties throughout the circuit courts and certainly within the Supreme Court. The state of the political incidence test indicates a movement away from uniformity within our own courts. Therefore, a liberal interpretation of a test to determine whether to apply an exception to an international treaty would work *against* the United States' desire to encourage cooperation and reciprocity because one might imagine other countries becoming dissatisfied with their lessening ability to predict whether a fugitive will return home for prosecution.

As it stands, the incidence test seems to place judges in the unfortunate position of having to choose between strict neutrality, which carries the risk of protecting truly abhorrent crimes, and pure subjectivity, which enables them to twist the current two-pronged test in order to suit their opinions.[121] In that sense, the "liberal" interpretation of the test advocated by *Quinn* can be considered as an effective narrowing of the pool of protected individuals because if courts adhere to the standard, it prevents criminals such as Yacaman from escaping extradition based on their subjective states of mind.[122] However, the court did weigh the subjective intent of Yacaman in order to find him extraditable, citing as evidence that Yacaman was motivated by his personal anger toward Valenzuela and that his motivations were not of a political nature.[123] Then again, the court proceeded to relate that even if

120. *See* 18 U.S.C. § 3184 (2006).
121. Lieberman, *supra* note 13, at 200.
122. *Quinn*, 783 F.2d at 809.
123. Meza v. U.S. Att'y Gen., 693 F.3d 1350, 1359 (11th Cir. 2012).

Yacaman *did* have political motivations, that would not be enough to characterize the crime as political in nature.[124]

Because the requirement that judges not consider the motives of the accused appears only to be applied when it is convenient to do so, even setting aside international law, the situation of application is clearly undesirable in a judicial system that holds adherence to law and precedent in such a high regard. The style of the court's evaluation in the noted case belies an unacknowledged distaste for the current test in its unarticulated desire to incorporate motive into the incidence test, if not to directly suggest a modification to the test as it stands, because in such a concise discussion, it would be illogical to spend nearly an entire paragraph arguing a point that is effectively and admittedly moot.

One possible flaw in the court's reasoning is its reliance on one case from the First Circuit, *Koskotas*.[125] A streamlined analogy can be appropriate when the case at hand is so substantially similar to an earlier case that the court need not compare the facts of the case in order to come to an educated decision. However, in the noted case, the crime at stake was murder, and Yacaman argued both that the murder was committed at a time when the acknowledged violent political uprising was still in force and that the murder was related to the political promises he had received from the man he murdered.[126] *Koskotas*, on the other hand, concerns the crime of embezzling money to government officials in exchange for favors; there was no apparent violent uprising at the time, and the lack of any violence was integral to the court's decision.[127] What is interesting here is the court's implication that the commonality of motives—the desire to obtain political favors in exchange for money—was enough to guide its own ruling. This serves as a further indication of the court's possible desire to see a change in the interpretation of the incidence test.

In an age where international travel is becoming rapidly more accessible to individuals worldwide, the sudden prevalence of extradition cases calls for a reevaluation of the application of extradition treaties and their intricacies, especially when the rule at stake is one that establishes when an individual will evade extradition, and therefore prosecution in his homeland. This need for development in the area of international law is one not ignored by the United States Department of Justice in its

124. *Id.*
125. *See id.*
126. *Id.* at 1355.
127. Koskotas v. Roche, 931 F.2d 169, 171-72 (1st Cir. 1991).

dealing with foreign nations, and the decision in this case only serves to underline that concern.

V. Conclusion

The court's decision in *Meza* appears on its face to be a clear indication of the general pattern of case law pertaining to the political offense exception to extradition. A closer examination of the dicta, however, particularly in light of recent trends in the application of the incidence test, reveals a possible desire to move away from the ruling in *Quinn* toward a more inclusive test that factors in the motive behind the crime in question. Because judges in extradition cases must consider not only the implication of the case at hand, but also the potential impact on international relations, rules and tests in this area of the law must be narrowly tailored and unambiguous. As it stands, the political incidence test may seem clear, but precedent, particularly in the past three decades, indicates an unpredictable application of the requirement that decisions set aside determinations of motive and state of mind.

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