RECENT DEVELOPMENTS

Benitez v. Garcia: An Extradition Arrangement Lost in Translation

I.   OVERVIEW

Cristobal Rodriguez Benitez, a Mexican citizen, fled the United States after shooting and killing a man in San Diego, California.[1] Benitez was later discovered in Caracas, Venezuela; the U.S. government requested extradition of Benitez in 1997 to face the criminal charges pending in California.[2] Extradition was granted pursuant to a 1922 extradition treaty between the United States and Venezuela (U.S.-Venezuela extradition treaty).[3] This treaty provided that extradition would be granted only after satisfactory assurances were given that should the accused be convicted, the death penalty or life imprisonment would not be inflicted.[4] The Venezuelan grant of extradition was conditioned on the understanding that Benitez would not be sentenced to life in prison or incarceration exceeding thirty years.[5] Benitez was tried and convicted of murder and sentenced to fifteen years to life.[6]

Benitez sought habeas corpus relief, arguing that pursuant to the extradition decree from the Supreme Court of Venezuela and the Venezuelan Ministry of Foreign Affairs, his sentence could not exceed thirty years.[7] Benitez's state habeas corpus petitions were denied by the California state courts.[8] A federal magistrate judge determined that although his challenge had merit, it was not ripe because Benitez's

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1.   Benitez v. Garcia, 449 F.3d 971, 972 (9th Cir. 2006).
2.   *Id.*
3.   *Id.*
4.   *Id.* at 972-73.
5.   *Id.* at 973.
6.   *Id.* at 972.
7.   *Id.*
8.   *Id.*

indeterminate sentence might not cause him to serve more than thirty years in jail.[9] Then the district court found that the dispute was ripe, yet denied Benitez's petition on grounds that he failed to demonstrate that his sentence violated federal law.[10] On appeal, the United States Court of Appeals for the Ninth Circuit *held* that the decision of the district court should be reversed, deciding that clearly established federal law limited the term Benitez could serve to thirty years, giving deference to the surrendering country's expressed wishes. *Benitez v. Garcia*, 449 F.3d 971, 978 (9th Cir. 2006).

II.   BACKGROUND

    Immobilizing persons suspected of violating the law is the "ultimate objective of most criminal investigations, both domestic and international."[11] When a criminal flees to another country and refuses to return to the United States to face trial, law enforcement officials may request that the foreign government surrender the fugitive to U.S. officials pursuant to an extradition treaty.[12] Bilateral treaties are one of the preferred means of obtaining fugitives from abroad.[13] Treaties comport with principles of international comity because the governing laws of both parties are honored and there is judicial and executive oversight available to each.[14] Express treaty terms also help to resolve limitations between the U.S. common law tradition and the civil law systems of most foreign nations.[15]

    Tension is inherent not only between the contracting parties to an extradition treaty, but also within the branches of each contracting party's government.[16] In the United States, tension arises between the executive and judicial branches during the extradition process.[17] Executive officials must maintain cordial foreign relations with foreign powers, while the fugitive retains the right to assert his case before the judiciary once he is delivered into U.S. custody.[18] The court of law must ensure the fugitive's case is handled with deference given to the terms under which the

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    9.   *Id.* at 973.
    10.   *Id.* at 973-74.
    11.   Ethan A. Nadelmann, *The Evolution of United States Involvement in the International Rendition of Fugitive Criminals*, 25 N.Y.U. J. INT'L L. & POL. 813, 813 (1993).
    12.   *Id.*
    13.   *Id.* at 814-15.
    14.   *Id.* at 814.
    15.   *Id.* at 815-16.
    16.   *Id.*
    17.   *Id.*
    18.   *Id.*

fugitive was extradited.[19] Ambiguous language in the extradition treaty can lead to misinterpretation or willful disregard of the evident meaning.[20] Tension may also exist between the national and state government, although the Supremacy Clause of the United States Constitution is intended to avoid this strife.[21] The clause declares that all treaties entered into by the federal government will be the supreme law of the land.[22] State court judges are bound to honor treaties.[23] In the noted case, the issue centered on the conflict between state law sentencing guidelines and the interpretation of criminal sentencing allowed under the extradition treaty that brought the defendant to the state court.[24]

In the *Benitez* district court case, Benitez's petition for habeas corpus was reviewed under the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA).[25] Pursuant to AEDPA, Benitez was not entitled to relief unless he could demonstrate that the state court's decision was either:

(1) . . . contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.[26]

A state court's decision is contrary to clearly established federal law if it fails to apply the proper controlling authority or if it applies the correct authority but reaches a different conclusion.[27] Unreasonable applications of federal law occur when (1) a state court correctly identifies the governing legal rule yet applies it to a new set of facts in an objectively unreasonable way or (2) if the state court unreasonably extends or fails to extend a clearly established legal principle to a new situation.[28] In *Williams v. Taylor*, a confessed murderer was sentenced to death following a conviction for murder and robbery.[29] The trial court

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19.   *Id.*
20.   *Id.* at 816.
21.   U.S. CONST. art. VI, cl. 2.
22.   *Id.*
23.   *Id.*
24.   *See* Benitez v. Garcia, 449 F.3d 971, 976 (9th Cir. 2006).
25.   Benitez v. Garcia, 419 F. Supp. 2d 1234, 1240 (S.D. Cal. 2004).
26.   *Id.* (quoting 28 U.S.C. § 2254(d)(1)-(2) (2000)).
27.   Williams v. Taylor, 529 U.S. 362, 405 (2000).
28.   *Id.* at 407.
29.   *Id.* at 367-70.

determined that while the conviction was valid, the petitioner's right to effective counsel was violated because the defense counsel failed to discover and present mitigating evidence.[30] The state supreme court refused to set aside the death sentence; on appeal, the United States Supreme Court determined this was an unreasonable application of federal law.[31] Clearly established federal law consists of law determined by the Supreme Court at the time of the state court decision.[32] Federal circuit law is persuasive authority, but "*only* Supreme Court holdings are binding on the state courts and *only* those holdings need be reasonably applied."[33] The Supreme Court acknowledged that while an unreasonable application of federal law is difficult to define, it is different from an incorrect application of federal law.[34]

    In the *Benitez* district court case, the court agreed with the state appellate court's determination that the trial court did not err when it concluded that no violation of the U.S.-Venezuela extradition treaty occurred.[35] It further determined that the "state court did not act contrary to clearly established federal law" by denying Benitez relief on his habeas corpus petition.[36] The district court reasoned that while federal circuit law may be persuasive authority to determine if a decision is an unreasonable application of federal law, only Supreme Court holdings need to be reasonably applied.[37] Therefore, the district court reasoned that Benitez must show that the state court's refusal to give effect to the Venezuelan sentencing limitation was an unreasonable application of clearly established federal law, as determined by the Supreme Court.[38]

    The U.S.-Venezuela extradition treaty "forbids capital punishment and imprisonment for life."[39] The treaty includes a common compromise to quell concerns about extradition relations and the imposition of the death penalty.[40] Governments that have abolished the death penalty are generally unwilling to extradite individuals to nations that have retained capital punishments unless assurances are given that the death penalty

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30.   *Id.* at 371.
31.   *Id.* at 367.
32.   Benitez v. Garcia, 419 F. Supp. 2d 1234, 1241 (S.D. Cal. 2004).
33.   *Id.*
34.   *Williams*, 529 U.S. 362 at 410.
35.   *Benitez*, 419 F. Supp. 2d at 1244.
36.   *Id.*
37.   *Id.* at 1241.
38.   *Id.* at 1242.
39.   *Id.* at 1243.
40.   Treaty Between the United States and Venezuela for Extradition of Fugitives from Justice, art. IV, Jan. 19 and 21, 1922, 43 Stat. 1698 [hereinafter Extradition Treaty].

will not be imposed.[41] The U.S.-Venezuela extradition treaty includes a condition that "the Contracting Parties reserve the right to decline to grant extradition for crimes punishable by death and life imprisonment."[42] Executive authorities of each nation have the power to grant extradition for such crimes if satisfactory assurances are given that these sentences will not be inflicted.[43]

In the *Benitez* district court case, it was undisputed that the United States Embassy did not provide assurances that Benitez would not face a life sentence.[44] Instead, U.S. officials assured Venezuelan officials that Benitez would not receive the death penalty and disclosed that California sentencing guidelines provided a potential twenty-five years to life sentence for first degree murder.[45] Further assurances regarding the indeterminate sentencing arrangements were not requested by the Venezuelan government.[46] Benitez was extradited to the United States under an extradition decree stating that Benitez was not to receive punishment exceeding thirty years.[47] Ten months later, before the beginning of Benitez's trial, the Venezuelan Embassy voiced its unease that an indeterminate sentence of twenty-five years to life potentially violated the terms of the extradition treaty.[48] At the trial, the defense counsel moved for dismissal, claiming that the sentencing guidelines were not properly clarified to Venezuelan officials, and accordingly, the extradition was conducted under the mistaken belief that Benitez would not be subject to a sentence exceeding thirty years.[49] Dismissal was denied by the trial court and Benitez was convicted of second-degree murder following a jury trial.[50]

The day before his sentencing hearing, the California district attorney received a faxed letter from the United States Department of State (State Department) recommending that Benitez not receive a life sentence.[51] This letter, however, was not submitted into evidence at the hearing, and Benitez

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41.   Nadelmann, *supra* note 11, at 835-36.
42.   Extradition Treaty, *supra* note 40, art. IV.
43.   *Id.*
44.   *Benitez*, 419 F. Supp. 2d at 1244. Defense counsel argued that there was no "meeting of the minds" between U.S. and Venezuelan officials. *Id.* at 1239.
45.   *Id.* at 1244.
46.   *Id.* at 1238.
47.   *Id.* at 1244.
48.   *Id.* at 1238.
49.   *Id.* at 1239.
50.   *Id.* The trial court determined that extradition was proper because the United States did not commit fraud in its request and Venezuelan officials were aware of California's sentencing guidelines when they extradited Benitez. *Id.*
51.   *Id.*

was sentenced to fifteen years to life on the murder charge, plus an additional four years for the use of a handgun during the incident.[52]   The state appellate court upheld the conviction, concluding that Venezuelan officials were aware of California's sentencing guidelines, that the United States Embassy and the district attorney's office did not misrepresent California's sentencing guidelines, and that the Venezuelan government did not seek additional assurances to limit the potential sentencing.[53]   The district court further reasoned that the extradition decree by the Venezuelan Supreme Court was merely a pronouncement of a foreign court.[54]   The United States Supreme Court has never held that such a decree specifies enforceable conditions beyond the terms of the treaty itself.[55]   Extradition treaties, on the other hand, are deemed to be on par with other federal statutes as supreme laws of the land and therefore are binding upon state courts under the Supremacy Clause.[56]

      The district court differentiated its ruling from that of *United States v. Campbell*, where a Costa Rican criminal court decree conditioned extradition on a sentence not to exceed fifty years.[57]   Campbell was sentenced to a total of 155 years imprisonment on multiple counts of armed robbery of banks and post offices, illegally using a handgun during a crime, and conspiracy to commit those offenses.[58]   The *Campbell* court rejected the petitioner's contention that the Costa Rican government did not consent to his extradition under charges carrying cumulative penalties.[59]   However, the court agreed that when U.S. officials sought clarification as to whether a term could exceed fifty years, Costa Rican officials plainly responded that the sentence could not.[60]   In the *Benitez* district court case, the court distinguished *Campbell* on the grounds that assurances concerning a maximum term or life imprisonment were neither given nor requested.[61]   The assurances provided were those requested by the Venezuelan government regarding the death penalty.[62]   The district court further argued that, regardless,

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      52.   *Id.*
      53.   *Id.* at 1239-40. The Supreme Court has not clarified what constitutes "satisfactory assurances" nor addressed a situation where a foreign state raises concerns regarding such assurances months after extradition. *Id.* at 1244.
      54.   *Id.* at 1245.
      55.   *Id.*
      56.   *Id.* (citing U.S. CONST., art VI, cl. 2).
      57.   United States v. Campbell, 300 F.3d 202, 205-06 (2d Cir. 2002).
      58.   *Id.* at 204-05.
      59.   *Id.* at 211-12.
      60.   *Id.* at 211.
      61.   *Benitez*, 419 F. Supp. 2d at 1245.
      62.   *Id.*

Benitez would not be entitled to relief since the Supreme Court has yet to issue clearly established federal law on the amount of deference afforded to the conditions of an extradition decree.[63]

Clearly established federal law is present in the form of the doctrine of specialty.[64] This doctrine provides that a fugitive cannot be tried for any offense other than the one for which he was extradited.[65] This long-standing common law principle was first expressed in American courts in *United States v. Rauscher*. In *Rauscher*, an American seaman was extradited from Britain on charges of murdering a crew member.[66] The sailor was indicted and convicted on charges of cruel and unusual punishment.[67] The Supreme Court reversed this conviction, holding that Rauscher could only be tried on the offenses for which he was extradited.[68] The doctrine of specialty is based on notions of comity and trust between independent sovereigns and the prevention of prosecutorial abuse.[69] *Rauscher* only addressed the doctrine of specialty in terms of challenges a fugitive may raise for offenses under which he was extradited, but not for the punishment he received.[70] Therefore, in *Benitez*, the district court agreed with the state court that the specialty doctrine did not extend to Benitez's punishment.[71]

In contrast, *Restatement (Third) of Foreign Relations Law of the United States* section 477 expressly supports the extension of the specialty doctrine to punishment.[72] It provides that an extradited person will not be given a more severe punishment than was provided by the applicable law of the requesting state unless the state consented to this at the time of the extradition request.[73] The provision's intent is to prevent punishments in excess of what the requesting state reasonably contemplated.[74] The *Benitez* district court, however, declined to rule that the state court's failure to extend the specialty doctrine was unreasonable.[75] The district court, therefore, agreed with the state court

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63.   *Id.* at 1246.

64.   *Id.*

65.   Nadelmann, *supra* note 11, at 832.

66.   United States v. Rauscher, 119 U.S 407, 409 (1886).

67.   *Id.*

68.   *Id.* at 430; *see also* 18 U.S.C. § 3186 (2000); RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 477 cmt. b (1987).

69.   *Benitez*, 419 F. Supp. 2d at 1246.

70.   *Id.* at 1246-47.

71.   *Id.* at 1247-48.

72.   RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 477(1)(b) cmt. b.

73.   *Id.* § 477(1)(b).

74.   *Id.*

75.   *Benitez*, 419 F. Supp. 2d at 1248.

that Benitez's indeterminate sentence did not violate the terms of the U.S.-Venezuela extradition treaty and that the state court's decision was not contrary to clearly established federal law.[76] Benitez's petition for habeas corpus was denied.[77]

III. THE COURT'S DECISION

    In the noted case, the Ninth Circuit reversed the district court's denial of habeas relief and determined that clearly established federal law limited the punishment a defendant could receive if he was conditionally extradited pursuant to a treaty.[78] The court reviewed Benitez's case under the provisions of AEDPA.[79] Under this Act, a petition for habeas corpus could only be granted if the state court decision was "contrary to, or involved an unreasonable application of, clearly established Federal law as determined by the Supreme Court" or if the decision was a result of "an unreasonable determination of the facts in light of the evidence presented" to the state court.[80]

    The Ninth Circuit first addressed the issue of ripeness and noted that Benitez's extradition was conditioned, not only upon what sentence was entered against him, but also what he could actually serve.[81] This was consistent with the Venezuelan Supreme Court's extradition decree and the Venezuelan Ministry of Foreign Affairs' notice to the United States Embassy.[82] Therefore, the Ninth Circuit held that Benitez's case ripened at the time the state court declared its sentence.[83]

    With ripeness settled, the Ninth Circuit then evaluated the merits of Benitez's challenge to his sentence and declared that the state court's interpretation of the U.S.-Venezuela extradition treaty was an "unreasonable application of clearly established federal law."[84] Extradition treaties, once ratified, are federal law pursuant to the Supremacy Clause of the Constitution; however, the Ninth Circuit stated that whether the U.S.-Venezuela extradition treaty was *clearly established* federal law posed an issue that had not been addressed since the enactment of AEDPA.[85] *Rauscher* instructed lower courts to apply

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        76.   *Id.*
        77.   *Id.*
        78.   Benitez v. Garcia, 449 F.3d 971, 978 (9th Cir. 2006).
        79.   *Id.* at 974.
        80.   *Id.*
        81.   *Id.*
        82.   *Id.*
        83.   *Id.*
        84.   *Id.* at 974-75 (quoting Williams v. Taylor, 529 U.S. 362, 411 (2000)).
        85.   *Id.* at 975.

treaties, but did not detail what constituted clearly established federal law.[86] The Supreme Court had yet to address the U.S.-Venezuela extradition treaty in light of AEDPA, which instructs courts to apply federal law as determined by the Supreme Court.[87] The Ninth Circuit stated that the interaction between treaty rights and AEDPA presented a "difficult and heretofore unexamined issue."[88] The Ninth Circuit bypassed the issue and declared that both the unambiguous language of the treaty itself and the rights Benitez claimed under the treaty were already clearly established federal law.[89]

     The Ninth Circuit next examined the fundamental principles of extradition itself and agreed with the state court that under long-standing tenets derived from *Rauscher* and *Johnson v. Browne*, an extradited defendant could be tried only for the offenses for which he was extradited.[90] However, the doctrine of specialty did not apply to Benitez because the doctrine limited the crimes a defendant could be charged with, not the punishments a state could impose.[91] The Ninth Circuit declared that it could only enforce limitations on punishments if the contracting parties agreed to such limitations.[92] In order to determine whether a clear limitation was provided for in the treaty, the court looked to the circumstances surrounding the extradition and the agreement itself.[93]

     Looking first to what Venezuelan officials believed and expected Benitez would face upon extradition, the Ninth Circuit determined that significant rebuttal evidence existed to overturn the state court's finding that there was no agreement to limit the punishment Benitez could receive if extradited to the United States.[94] This entailed an analysis of the extradition decree, the process of how the extradition was carried into effect, and an assessment of the surrendering country's wishes.[95] The Ninth Circuit found that Venezuelan wishes were clearly articulated by correspondence acknowledging that Benitez would not face life incarceration.[96] The Ninth Circuit further noted that the extradition decree issued by the Venezuelan Supreme Court repeated this understanding by explicitly stating Benitez was not to receive

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     86.   *Id.*
     87.   *Id.*
     88.   *Id.*
     89.   *Id.*
     90.   *Id.* at 975-76.
     91.   *Id.* at 976.
     92.   *Id.*
     93.   *Id.*
     94.   *Id.*
     95.   *Id.* at 976-77.
     96.   *Id.* at 977.

"punishment depriving his freedom for more than thirty years" and that the extradition was subject to this fact.[97]   Additionally, correspondence from the Venezuelan Ministry of Foreign Affairs expressed that Benitez's extradition was conditioned on an understanding that he would not be sentenced to death or incarceration exceeding thirty years.[98]

    The Ninth Circuit's view of this "particularly probative" preextradition evidence of intent was strengthened by events following Benitez's extradition.[99]   The Venezuelan Embassy sent the State Department a diplomatic note prior to Benitez's trial indicating concern that life imprisonment may violate Venezuela's extradition conditions.[100] Reasonable views of the Executive Branch are generally respected concerning the interpretation of an international treaty, and the Ninth Circuit stated that evidence of these wishes was expressed in a note faxed by the State Department to the California district attorney.[101]   The note stated that it would be best for the extradition relationship of the two nations if Benitez did not serve a life sentence.[102]   In light of this note, the Ninth Circuit doubted whether there was an executive position favoring a life sentence.[103]

    The Ninth Circuit concluded its analysis by holding that clearly established federal law applied to limit the punishments that extradited defendants could receive when conditionally extradited.[104]   The court found that Venezuela consistently and clearly articulated that Benitez would not be deprived of his freedom for more than thirty years.[105] Therefore, deference should have been granted to the surrendering country's expressed wishes, and the court remanded the case to the district court to grant habeas relief to Benitez.[106]

IV.   ANALYSIS

    Historically, Americans have viewed their nation as a haven from the oppression of foreign governments and were therefore weary of entering into extradition treaties requiring reciprocal responsibilities.[107]

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    97.   *Id.*
    98.   *Id.*
    99.   *Id.*
    100. *Id.* at 978.
    101. *Id.* (citing El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng, 525 U.S. 155, 168 (1999)).
    102. *Id.*
    103. *Id.*
    104. *Id.*
    105. *Id.*
    106. *Id.*
    107. Nadelmann, *supra* note 11, at 820-21.

Bilateral treaties, negotiated directly with another country, afforded the opportunity to include provisions that were of specific advantage to the United States and reflected its national values.[108]   The drafters of the Constitution recognized the importance of treaties by declaring them the supreme law of the land, on equal footing with statutes enacted by Congress itself.[109]   International treaties, therefore, superseded state law and state judges were bound to enforce treaty terms.[110]   As a result, enforcement of treaties is a paramount issue for both international relations and protecting the rights of American citizens.

     Clarifying and eliminating ambiguities in the language of older treaties is a recent trend, the need of which is evidenced by the noted case. The Ninth Circuit and the district court differed on the importance of assessing the intent of the surrendering country's wishes during an extradition request.[111]   The district court looked to the expressed terms of the U.S.-Venezuela extradition treaty itself and determined that the treaty expressly forbids capital punishment and imprisonment for life.[112] Adequate assurances may be made, preventing such sentences from being imposed, but these assurances are not defined by the treaty.[113]   This failure to clarify was at the root of the discrepancy. The district court found that it was "undisputed" that the United States Embassy in Venezuela did not provide assurances to the Venezuelan government that a life sentence would not be imposed.[114]   The district court reasoned that disclosure of California's sentencing guidelines provided Venezuelan officials adequate information upon which to base their grant of extradition.[115]   However, these sentencing guidelines detailed a potential sentence of twenty-five years to life, an indeterminate term which may or may not have contravened Venezuela's expressed wishes for a term no longer than thirty years.   The district court did not give adequate consideration to the confusion that may result from the ambiguous guidelines.

     In contrast, the Ninth Circuit determined that Venezuelan wishes were always clearly articulated and Benitez's extradition was conditioned upon the expressed requirements that he would face neither the death penalty nor life imprisonment.[116]   The court determined that Venezuelan

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     108.   *Id.* at 827.
     109.   *See* U.S. CONST. art. VI, cl. 2.
     110.   *See id.*
     111.   *See Benitez*, 449 F.3d at 977.
     112.   Benitez v. Garcia, 419 F. Supp. 2d 1234, 1243 (S.D. Cal. 2004).
     113.   *Id.* at 1243-44.
     114.   *Id.* at 1244.
     115.   *Id.*
     116.   *Benitez*, 449 F.3d at 977.

officials' preextradition and postextradition behavior expressed concerns regarding limiting Benitez's sentence to less than life imprisonment.[117] The Venezuelan Ministry of Justice, prior to the extradition, even sought to clarify that the extradition was based upon the premise that Benitez would not face "life incarceration."[118] The extradition decree itself, issued by the Venezuelan Supreme Court, repeated this intention and directly stated that extradition was based on an understanding that Benitez would not receive punishment "depriving his freedom for more than thirty years."[119] This clearly expresses Venezuela's intentions that regardless of California's indeterminate sentencing guidelines, Benitez's term would not exceed thirty years. The court correctly determined that deference must be given to the surrendering country's wishes. Deference to expressed wishes maintains comity in international relations and is essential to reciprocal bilateral treaties.

    Additionally, the Ninth Circuit accurately reasoned that deference to Venezuelan wishes is due given the U.S. Executive Branch's reasonable views concerning the meaning of the U.S.-Venezuela extradition treaty.[120] It is the Executive Branch which has the power, with the advice and consent of the Senate, to make international treaties;[121] therefore, it is reasonable to give deference to the intent of the Executive Branch as well. Clearly, there was a miscommunication between state and executive officials regarding the extent of punishment Benitez could receive. This is evidenced by the State Department's letter faxed to the San Diego District Attorney's Office the day before the sentence was to be announced, recommending that a life sentence not be imposed.[122] However, the letter further added to confusion by stating that the district attorney was not required to make this recommendation, as the only assurances the United States gave were that the death penalty would not be sought.[123] Although the State Department's letter was vague regarding the exact position of the Executive Branch, the Ninth Circuit correctly

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    117.   *Id.*
    118.   *Id.*
    119.   *Id.*
    120.   *Id.* at 978; *see also* El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng, 525 U.S. 155, 168 (1999).
    121.   U.S. Const. art. II, § 2, cl. 2.
    122.   Benitez v. Garcia, 419 F. Supp. 2d 1234, 1239 (S.D. Cal. 2004). This letter was not submitted into evidence and the trial court declined defense counsel's request that the indeterminate sentence be capped at thirty years. *Id.*
    123.   *Id.* The letter stated, "We do not believe the Office of the District Attorney is required to make such a recommendation, as the United States was explicit regarding the assurances it provided the Government of Venezuela, which only encompassed the death penalty." *Id.*

determined that doubt was cast on a position favoring a life term.[124] The court noted that the letter contained the request that "it would be in the best interests of our extradition relationship for Mr. Rodriguez Benitez *not to serve* a life sentence."[125] Deference was therefore correctly given by the Ninth Circuit to both the surrendering country's wishes and those of the Executive Branch. The Ninth Circuit's holding recognized that the extradition decree, the Venezuelan Embassy, and State Department correspondence indicated a shared agreement that the state court was not permitted to sentence Benitez to a term exceeding thirty years.[126]

     The district court and the Ninth Circuit disagreed as to what constituted clearly established federal law. Both courts correctly determined that Benitez's claim was subject to AEDPA.[127] The federal magistrate's report stated that "the extradition decree should have been interpreted as part of the extradition treaty" and that the doctrine of specialty required the state court to give effect to the sentencing limitations as provided for in the decree.[128] The district court declared that the doctrine of specialty should not be extended to encompass the punishment an extradited defendant may receive.[129] However, the Ninth Circuit determined that this question did not need to be addressed because the U.S.-Venezuela extradition treaty itself sufficiently addressed the limitations on an extradited defendant's punishment.[130] The Ninth Circuit reasoned that unambiguous language in the extradition treaty and decree provided the clearly established federal law that Benitez needed to prove that sentencing limitations should be enforced per the treaty's conditions.[131]

     The district court, in contrast, did not believe that the extradition decree was on equal footing with the U.S.-Venezuela extradition treaty. Therefore, in the court's opinion, the decree was not clearly established federal law.[132] Additionally, the district court stated that the Supreme Court had yet to decide, post-AEDPA, whether the same degree of deference should be extended to an extradition decree as is extended to the treaty itself.[133] The district court subsequently denied relief, holding that a lack of clearly established federal law at the time of the state court's

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     124. *Benitez*, 449 F.3d at 978.
     125. *Id.*
     126. *Id.* at 978.
     127. *Benitez*, 419 F. Supp. 2d at 1240; *Benitez*, 449 F.3d at 974.
     128. *Benitez*, 419 F. Supp. 2d at 1242.
     129. *Id.* at 1247.
     130. *Benitez*, 449 F.3d at 976.
     131. *Id.* at 975.
     132. *Benitez*, 419 F. Supp. 2d at 1245.
     133. *Id.* at 1246.

ruling barred habeas corpus relief to the petitioner.[134] The state court's sentence of twenty-five years to life, therefore, did not contravene federal law or the U.S.-Venezuela extradition treaty.[135] The Ninth Circuit reversed this determination, ruling that clearly established federal law required that deference be given to the terms of both the U.S.-Venezuela extradition treaty and the extradition decree.[136] The Supreme Court has yet to clarify which court's interpretation is consistent with the high court's vision of extradition relations.

V.   CONCLUSION

       The Supreme Court can best resolve this interpretation dilemma by instructing courts as to whether extradition decrees and official correspondence should be granted the same deference as an extradition treaty itself. Extradition treaties are clearly established federal law, while the status of decrees and official correspondence is unknown. Foreign correspondence and decrees are not held to the same status of negotiated bilateral agreements, but to avoid misinterpretation, these documents should be given expressed deference. Additionally, the Supreme Court has neither clarified what constitutes "satisfactory assurances" nor addressed situations where concerns are raised about assurances after the extradition takes place.

       In order to maintain cordial foreign relations, it is best to give deference to the surrendering country's wishes and err on the side of caution when the interpretation of the language gives rise to confusion. Benitez's indeterminate sentence of twenty-five years to life was in direct conflict with the Venezuelan government's clearly voiced objections to a sentence of life imprisonment. The district court's insistence on declaring that an indeterminate sentence did not violate the U.S.-Venezuela extradition treaty's terms, even though it clearly created the possibility that Benitez would serve a life term, is contrary to clearly established federal law. The Ninth Circuit correctly declared that Benitez was entitled to habeas corpus relief and that his sentence should be amended to comply with the expressed extradition decree terms.

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Barbara Merry Boudreaux[*]

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       134.   *Id.*
       135.   *Id.*
       136.   *See Benitez*, 449 F.3d at 978.
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