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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff

v.

CHRISTOPHER PHILIP AHN,

Relator

CASE NO. 2:19-cv-5397 JFW (JPR)

**REDACTED**

**RELATOR'S OPPOSITION TO  
REQUEST FOR EXTRADITION  
FILED BY THE UNITED STATES**

[Filed Concurrently with Declaration of  
Christopher Ahn, Declaration of Naeun  
Rim and Declaration of Christopher J  
Lee]

Date: April 9, 2021  
Time: 10:00 a.m.  
Courtroom: 690

Assigned to Hon. Jean Rosenbluth, U.S.  
Magistrate Judge

**REDACTED**

## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES .....	4
I. INTRODUCTION .....	8
II. BACKGROUND .....	11
A. North Korea's Totalitarian State .....	11
B. Christopher Ahn's North Korean Human Rights Work .....	14
C. The Madrid Incident, According to Non-North Korean Evidence .....	16
D. Involuntary Testimony of North Korean Witnesses .....	20
III. PROCEDURAL BACKGROUND .....	22
IV. LEGAL STANDARD .....	23
V. SUMMARY OF EVIDENCE .....	24
VI. ARGUMENT .....	26
A. The Court Must Disregard the Testimony of the North Korean Officials As Inherently Unreliable.....	26
B. Mr. Ahn Should Not Be Extradited Because Spain Fails To Satisfy Dual Criminality. ....	29
1. The Dual Criminality Requirement Is Not Satisfied Because Mr. Ahn Believed His Actions Were Consensual.....	30
2. The Dual Criminality Requirement Is Also Not Satisfied Due to Mr. Ahn's Honest Belief that He Was Acting Under the Direction of the United States Government. ....	32
C. The Court Must Deny Extradition Because Spain Has Failed To Establish Probable Cause. ....	33
1. Spain Cannot Establish Probable Cause That Mr. Ahn Committed Any Charged Offense .....	33
a. Criminal Organization .....	34
b. Breaking and Entering.....	35
c. Threats .....	36
d. Causing Injuries.....	36
e. Illegal Restraint .....	37
f. Robbery .....	38

1 D. The Court Should Acknowledge A Humanitarian Exception To  
2 Extradition Given The Unprecedented Nature Of This Case. .... 38

3 VII. CONCLUSION ..... 41  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## TABLE OF AUTHORITIES

**Page(s)**

### **Federal Cases**

<i>Ahmad v. Wigen,</i> 726 F.Supp. 389 (E.D.N.Y. 1989).....	39, 41
<i>Arnbjornsdottir–Mendler v. U.S.,</i> 721 F.2d 679 (9th Cir. 1983) .....	39
<i>Ashcraft v. Tennessee,</i> 322 U.S. 143 (1944) .....	26
<i>Barapind v. Enomoto,</i> 400 F.3d 744 (9th Cir. 2005) .....	24, 33
<i>Barr v. U.S.,</i> 819 F.2d 25 (2nd Cir. 1987) .....	41
<i>Brinegar v. U.S.,</i> 338 U.S. 160 (1949) .....	33
<i>U.S. v. Burrows,</i> 36 F.3d 875 (9th Cir. 1994) .....	32
<i>U.S. v. Smyth,</i> 61 F.3d 711 (9th Cir.1995) .....	40
<i>Clarey v. Gregg,</i> 138 F.3d 764 (9th Cir. 1998) .....	30, 33
<i>Crowe v. County of San Diego,</i> 608 F.3d 406 (9th Cir. 2010) .....	27
<i>Emami v. U.S. Dist. Court. for Northern Dist. of California,</i> 834 F.2d 1444 (9th Cir. 1989) .....	39
<i>Matter of Extradition of Mainero,</i> 990 F.Supp. 1208 (1997) .....	24
<i>Matter of Extradition of Santos,</i> 228 F.Supp.3d 1034 (C.D. Cal. 2017).....	25, 29

1	<i>Franks v. Delaware,</i>	
2	438 U.S. 154 (1978) .....	24
3	<i>Gallina v. Fraser,</i>	
4	278 F.2d 77 (2nd Cir. 1960) .....	38, 39
5	<i>Giordenello v. U.S.,</i>	
6	357 U.S. 480 (1958) .....	24
7	<i>Glucksman v. Henkel,</i>	
8	221 U.S. 508 (1911) .....	39
9	<i>Han Kim v. D.P.R.K.,</i>	
10	774 F.3d 1044 (D.C. Cir. 2014).....	<i>passim</i>
11	<i>U.S. v. Juan,</i>	
12	776 F.2d 256 (11th Cir. 1985) .....	32
13	<i>Lopez-Smith v. Hood,</i>	
14	121 F.3d 1322 (9th Cir.1997).....	39
15	<i>U.S. v. Lui Kin-Hong,</i>	
16	110 F.3d 103 (1st Cir. 1997) .....	26
17	<i>Mainero v. Gregg,</i>	
18	164 F.3d 1199 (9th Cir. 1999).....	38, 39
19	<i>Man-Seok Choe v. Torres,</i>	
20	525 F.3d 733,738 (9th Cir. 2008).....	24
21	<i>Manta v. Chertoff,</i>	
22	518 F.3d 1134 (9th Cir. 2008) .....	10, 30
23	<i>U.S. v. Martinez-Hernandez,</i>	
24	932 F.3d 1198 (9th Cir. 2019) .....	31
25	<i>Massie v. D.P.R.K.,</i>	
26	592 F.Supp.2d 57 (D.D.C. 2008).....	13
27	<i>Neely v. Henkel,</i>	
28	180 U.S. 109 (1901) .....	39
	<i>Ocasio v. U.S. v. Wallace,</i>	
	136 S. Ct. 1423 (2016).....	31

1	<i>Ornelas v. U.S.</i> ,	
2	517 U.S. 690 (1996) .....	33
3	<i>Prasoprat v. Benov</i> ,	
4	421 F.3d 1009 (9th Cir. 2005) .....	38, 39
5	<i>Quinn v. Robinson</i> ,	
6	783 F.2d 776 (9th Cir. 1986) .....	23, 24
7	<i>Reis v. U.S. Marshal</i> ,	
8	192 F.Supp. 79 (E.D. Pa. 1961).....	33
9	<i>Sainez v. Venables</i> ,	
10	588 F.3d 713 (9th Cir. 2009) .....	24
11	<i>Santos v. Thomas</i> ,	
12	830 F.3d 987 (9th Cir. 2016) .....	10, 24, 25, 26
13	<i>U.S. v. Smith</i> ,	
14	831 F.3d 1207 (9th Cir. 2016) .....	32
15	<i>U.S. v. Soyland</i> ,	
16	3 F.3d 1312 (9th Cir.1993) .....	33, 36
17	<i>U.S. v. Taitz</i> ,	
18	130 F.R.D. 442 (S.D. Cal. 1999) .....	42
19	<i>Tang Yee-Chun v. Immundi</i> ,	
20	686 F.Supp. 1004 (S.D.N.Y. 1987) .....	30
21	<i>U.S. v. Tingle</i> ,	
22	658 F.2d 1332 (9th Cir. 1981) .....	27
23	<i>Warmbier, v. D.P.R.K.</i> ,	
24	356 F.Supp.3d 30 (D.D.C. 2018).....	13, 26
25	<i>Ybarra v. Illinois</i> ,	
26	444 U.S. 85 (1979) .....	33
27	<i>Zanazanian v. U.S.</i> ,	
28	729 F.2d 624 (9th Cir.1984) .....	23

1	<b>State Cases</b>	
2	<i>People v. Mayberry</i> ,	
3	15 Cal.3d 143 (Cal. 1975) .....	30
4	<i>People v. Rivera</i> ,	
5	157 Cal. App. 3d 736 (Cal. App. 1984) .....	31
6	<i>People v. Yoder</i> ,	
7	100 Cal. App. 3d 333 (Cal. App. 1979) .....	31
8	<b>Federal Statutes</b>	
9	18 U.S.C. § 112.....	31
10	18 U.S.C. § 113.....	31
11	18 U.S.C. § 956.....	31
12	18 U.S.C. § 960.....	31
13	18 U.S.C. § 970.....	31
14	18 U.S.C. § 1116.....	31
15	18 U.S.C. § 1201.....	31
16	18 U.S.C. § 2111.....	31
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

## 1 I. INTRODUCTION

2 Since the United States executed its first international extradition treaty, there  
 3 has never been an extradition case like this. The United States Government  
 4 (“Government”) is allowing North Korea—a country found by American courts to  
 5 have committed human rights atrocities against Americans, including kidnappings  
 6 and extrajudicial killings<sup>1</sup>—to use the Spanish government as a tool to extradite a  
 7 U.S. veteran based on the word of North Korean officials. The United States has  
 8 chosen this course even though it is undisputed that Christopher Ahn is in danger of  
 9 being killed by North Korea, and the danger to his life increases exponentially if he  
 10 leaves the United States. (Declaration of Naeun Rim (“Rim Decl.”) ¶ 3). While the  
 11 Government has tried to maintain the fiction that this case is about Spanish process,  
 12 Spanish evidence, and Spanish law, the extradition memorandum exposes this  
 13 fallacy—the brief is almost entirely based on the unreliable statements of the nine  
 14 North Korean witnesses, with the statements of any Spanish witnesses relegated to  
 15 mere footnotes.

16 While the request for extradition may be written in Spanish, it is the North  
 17 Korean government that is driving the prosecution of Mr. Ahn. At the direction of  
 18 their superiors, and out of fear for their own lives, North Korean diplomats from the  
 19 embassy have propagated a self-serving narrative that Mr. Ahn and members of Free  
 20 Joseon committed a violent raid with the aim of disrupting the Hanoi summit and  
 21 intimidating them into betraying their country. This narrative is as false as it is  
 22 incoherent. Free Joseon is a known human rights group that seeks to protect and  
 23 empower, not harm, North Korean refugees. The truth is that [REDACTED]  
 24 [REDACTED] had contacted Free Joseon and asked them to

25  
 26 <sup>1</sup> See, e.g., *Han Kim v. D.P.R.K.*, 774 F.3d 1044, 1045-46 (D.C. Cir. 2014)  
 27 (evidence satisfactory to show North Korea kidnapped a reverend, who was known  
 28 for providing humanitarian and religious services to defectors, while he was in  
 China and murdered him outside of the normal legal process).



1 [REDACTED] escape the embassy. [REDACTED]  
 2 [REDACTED] feared the retaliation that might befall  
 3 their relatives in North Korea once the North Korean government discovered their  
 4 betrayal. Accordingly, [REDACTED] *suggested and requested* that Free Joseon stage a  
 5 false kidnapping so that no retaliation would befall any defectors. The tragedy is that  
 6 the psychological hold of the North Korean dictatorship was too great—when a  
 7 woman in the embassy unexpectedly jumped out of the window and prompted the  
 8 Spanish police to surround the embassy in the middle of the defection attempt [REDACTED]  
 9 [REDACTED] was overcome with fear and changed [REDACTED] mind. [REDACTED]

10 [REDACTED]  
 11 [REDACTED] After receiving permission [REDACTED] Mr. Ahn  
 12 and the others left the embassy. Mr. Ahn committed no crimes recognizable under  
 13 United States law during these events.

14 Mr. Ahn returned swiftly to the United States, where he cooperated with Mr.  
 15 Hong's request that he speak to the FBI. It is undisputed that both Mr. Ahn and  
 16 Adrian Hong willingly spoke to the FBI following the Madrid incident, hardly the  
 17 actions of those with a guilty mind. As a U.S. Marine Corps veteran, Mr. Ahn  
 18 viewed himself and the human rights efforts of Free Joseon as staunchly aligned  
 19 with the United States Government and American principles of democracy. He  
 20 never dreamed that the Government would lend credence to the account of North  
 21 Korean officials, who clearly had every incentive to save themselves by vilifying  
 22 Free Joseon, over his. But in a stunning departure from America's steadfast refusal  
 23 to entertain bilateral relations with North Korea, in April of 2019, the Trump  
 24 Administration accepted a request from Spain to extradite Mr. Ahn, a United States  
 25 veteran with no criminal history, based at the time *entirely on the statements of*  
 26 *North Korean officials and their family members*. (Dkt. No. 1, 55-3). The  
 27 extradition proceedings began just a little over a month after the unprecedented  
 28 meeting between then-President Donald J. Trump and North Korean dictator Kim

1 Jong Un, which took place on February 27-28, 2019. The talks between the two  
2 countries were ultimately cut short, with no agreement reached.<sup>2</sup>

3 While the vagaries of international politics loom large on the periphery of  
4 these extradition proceedings, the Court can put a stop to this injustice based on  
5 purely legal grounds. The Court must decline to certify the extradition of Mr. Ahn  
6 for the following reasons:

7 First, the request for extradition is based almost entirely on inherently  
8 unreliable witness statements made by North Korean officials. These involuntary  
9 statements are not competent evidence, cannot form the basis for probable cause,  
10 and should not be considered by the Court. *See Santos v. Thomas*, 830 F.3d 987,  
11 1004 (9th Cir. 2016).

12 Second, the United States cannot satisfy the extradition treaty's requirement  
13 of dual criminality because it cannot establish that Mr. Ahn's had the requisite *mens*  
14 *rea* for his conduct. *See Manta v. Chertoff*, 518 F.3d 1134, 1142 (9th Cir. 2008). The  
15 explanatory evidence submitted by Mr. Ahn establishes, without contradicting any  
16 competent evidence submitted by Spain, that he lacked the criminal intent necessary  
17 to satisfy dual criminality because he believed his actions were consensual.

18 Third, the United States cannot present competent evidence sufficient to  
19 establish probable cause that Mr. Ahn, who arrived in Spain that morning and had a  
20 broken right hand, engaged in extraditable criminal conduct. No Spanish witness  
21 suggests Mr. Ahn restrained, physically harmed, or threatened anybody. At most,  
22 the evidence establishes that he was merely present as the alleged activity occurred.

23 Finally, due to the undisputed and credible threats by the North Korean  
24 regime against Mr. Ahn's life, this is the rare case where the Court can recognize a

25 \_\_\_\_\_  
26 <sup>2</sup> *See, e.g.*, "US-North Korea summit with President Donald Trump and Kim Jong  
27 Un cut short in Vietnam," *ABC News*, published February 28, 2019, *available at*  
28 <https://abcnews.go.com/Politics/trump-kim-meeting-2nd-summit-us-pushes-concrete/story?id=61368977>.

1 humanitarian exception to extradition without violating the rule of non-inquiry. The  
2 humanitarian concerns are directed at North Korea's long-documented penchant for  
3 carrying out extrajudicial kidnappings and murders on foreign soil. These concerns  
4 have nothing to do with the Spanish justice system. The Court therefore need not  
5 inquire into the fairness of *Spain's* legal process to conclude, as other courts have  
6 before, that North Korea is more than capable of "torturing and killing its political  
7 enemies" outside of the normal legal process. *See Han Kim*, 774 F.3d at 1046.

## 8 **II. BACKGROUND**

### 9 **A. North Korea's Totalitarian State**

10 A brief history of North Korea and its totalitarian regime is necessary to  
11 provide critical context for the evidentiary and legal arguments made throughout  
12 this brief.

13 The gross human rights abuses of the North Korean regime are *sui generis*  
14 within the international community. In particular, the regime's complete lack of  
15 respect for due process – evidenced by its willingness to engage in arbitrary  
16 detention, torture, hostage taking, and other coercive tactics to obtain desired  
17 outcomes – is beyond dispute. In 2014, the United Nations published a  
18 comprehensive report on human rights abuses in North Korea, concluding that North  
19 Korean government entities including the Ministry of State Security, the Office of  
20 the Public Prosecutor, and the judiciary – acting "under the effective control of the  
21 Korean Workers' Party ("KWP") and the Supreme Leader Kim Jong Un – engage in  
22 "systematic, widespread and gross human rights violations" including "crimes  
23 against humanity based on State policies." (Declaration of Christopher Jumin Lee,  
24 ("Lee Decl.") Exh. C ¶ 24).<sup>3</sup> North Korean authorities regularly commit "gross

25 \_\_\_\_\_  
26 <sup>3</sup> United Nations, General Assembly, *Report of the Commission of Inquiry on*  
27 *Human Rights in the Democratic People's Republic of Korea*, A/HRC/25/63  
28 ("UNHCR Report") available at  
<https://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/ReportoftheCommissi>

1 human rights violations in order to create a climate of fear that pre-empts any  
2 challenge to the current system of government[.]” including “detention, executions,  
3 and disappearances . . . characterized by a high degree of centralized coordination  
4 between different parts of the extensive security apparatus.” (*Id.* ¶ 57). Torture is an  
5 “established feature of the interrogation process[.]” (*Id.* ¶ 58), and the “vast majority  
6 of inmates are victims of arbitrary detention . . . imprisoned without trial or on the  
7 basis of a trial that fails to respect . . . due process and fair trial guarantees[.]” (*Id.* ¶  
8 62). Individuals so detained are routinely subject to “[t]orture, rape and other  
9 arbitrary cruelties” which are “widespread and committed with impunity.” (*Id.*)

10 While diplomats enjoy some level of privilege in North Korean society, that  
11 privilege comes at the cost of heightened surveillance and swift punishment for  
12 deviation. As set forth in more detail in the expert report of Robert Collins, loyalty  
13 is the singular quality demanded from all North Korean diplomats: they are hand-  
14 picked from the most loyal North Korean families, screened for loyalty before being  
15 selected for diplomatic service, and indoctrinated with loyalty as “*the* major  
16 component of training during their entire career.” (Lee Decl. Exh. A. at 4) (emphasis  
17 in original). When they are deployed overseas, with rare exceptions for very senior  
18 diplomats, their family members effectively become hostages. (*Id.* at 4). Should the  
19 diplomat offend the regime while serving abroad, their loved ones – including  
20 spouses, children, parents, and siblings – are considered “as guilty as the  
21 perpetrator” and subject to “imprisonment or worse.” (*Id.* at 4-5). Defection is the  
22 worst offense of all: family members of defectors are arrested and sentenced to life  
23 imprisonment in North Korea’s infamous gulags. (*Id.* at 9).

24 The regime imposes an additional layer of control to diplomats abroad  
25 through around-the-clock monitoring. Every North Korean embassy is also a cell of  
26 the KWP, with the ambassador as its chief. (Lee Decl. Exh. A. at 5). The

27 \_\_\_\_\_  
28 [onofInquiryDPRK.aspx](#).

1 ambassador monitors their subordinates and reports on their activities to the  
2 Ministry of Foreign Affairs (“MFA”) in Pyeongyang, which in turn reports to the  
3 KWP Organization and Guidance Department (“KWP OGD”), the internal security  
4 organ responsible for ensuring loyalty of every one of the 3.2 million party members  
5 nationwide. (*Id.*). Every embassy also has an entirely separate layer of monitoring  
6 through an embedded embassy security officer, who reports to the Ministry of State  
7 Security (“MSS”) – North Korea’s equivalent to the Nazi Gestapo. (*Id.* at 7). The  
8 ambassador and the MSS officer are expected to act as checks against each other to  
9 ensure that they both remain loyal to the regime. (*Id.*).

10 In addition to its oppression of diplomats, North Korea has a known track  
11 record for imprisoning, torturing, and even killing people without regard for due  
12 process. American courts have credited testimony from various North Korean  
13 experts to conclude that individuals taken into custody for political purposes –  
14 particularly those involved in assisting defectors – would be invariably singled out  
15 for “exceptionally painful, brutal, and outrageous treatment” potentially including  
16 “starvation, brutal beatings,” and various methods of torture including “kneeling  
17 motionless for hours on end, water torture, pidgeon torture with arms pinned behind  
18 the back and attached to cell bars in ways that made it impossible either to stand up  
19 or sit down[.]” *See Han Kim*, 774 F.3d at 1050 (internal quotations omitted); *see*  
20 *also Warmbier, v. Democratic People’s Republic of Korea*, 356 F.Supp.3d 30, 52  
21 (D.D.C. 2018) (finding satisfactory evidence to prove North Korean officials  
22 arbitrarily detained and tortured Otto Warmbier – an American college student – for  
23 seventeen months, causing severe brain damage and eventually resulting in his  
24 death). Courts have also confirmed that North Korea routinely uses hostage-taking  
25 as an instrument of policy. *Id.* at 50-51; *see also Massie v. D.P.R.K.*, 592 F.Supp.2d  
26 57, 75-78 (D.D.C. 2008) (finding that North Korea had kidnapped, detained, and  
27 tortured crew of U.S.S. Pueblo for eleven months in order to gain leverage against  
28 United States).

1 As the Court recognized in its Order conditionally granting bail, the United  
2 States has chosen not to maintain diplomatic relations with North Korea – including  
3 an extradition treaty – precisely because of the gross abuses that are routine within  
4 its justice system. (Dkt. No. 58 at 2 (“the United States does not have diplomatic  
5 relations [with North Korea] in part because its justice system, including specifically  
6 pretrial investigations, is not trustworthy and does not comply with due process.”))<sup>4</sup>  
7 Spain, on the other hand, has taken a different route, having established diplomatic  
8 relations with North Korea in 2001. The disparity has allowed North Korea, a  
9 terrorist state and a known enemy of the United States, to use Spain in these  
10 proceedings to effectively execute an “extradition by proxy”—to exploit the  
11 bilateral relations between Spain and the United States to gain access to an  
12 American citizen.

13 **B. Christopher Ahn’s North Korean Human Rights Work**

14 Christopher Ahn is an American-born citizen who was born and raised in  
15 Southern California. (Declaration of Christopher Ahn (“Ahn Decl.”) ¶ 2). As the son  
16 of a United States Air Force veteran, and the grandson of a woman who was rescued  
17 by American soldiers during the Korean War, Mr. Ahn has always been grateful for  
18 the opportunities that America had given his immigrant family. (*Id.*) He enlisted as a  
19 Marine and spent six years honorably serving his country, including a deployment in  
20 Iraq, where he primarily held a desk job working in intelligence. (*Id.* ¶¶ 2, 10.)

21 Mr. Ahn has no criminal history. Prior to his arrest, he was a full-time  
22

23 <sup>4</sup> As of the time of this filing, the State Department continues to maintain that “the  
24 United States does not maintain diplomatic or consular relations with North  
25 Korea[,]” while “strongly urg[ing] U.S. citizens not to go to [North Korea] due to  
26 the serious risk of arrest and long-term detention.” *Country Information: North*  
27 *Korea*, travel.state.gov, [https://travel.state.gov/content/travel/en/international-](https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/KoreaDemocraticPeoplesRepublicof.html)  
28 [travel/International-Travel-Country-Information-](https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/KoreaDemocraticPeoplesRepublicof.html)  
[Pages/KoreaDemocraticPeoplesRepublicof.html](https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/KoreaDemocraticPeoplesRepublicof.html) (last visited February 22, 2021).



1 entrepreneur who always made time to volunteer for charitable causes. Numerous  
2 letters attesting to Mr. Ahn's character are attached as Exhibit B.<sup>5</sup> David Bellavia, a  
3 recipient of the Medal of Honor in 2019 and a former roommate of Mr. Ahn, writes:

4 Chris always prided his service in the United States Marine Corps on  
5 saving lives. There was a difference and he always made a point of  
6 sharing that with his peers. Not all service at war was that of the trigger  
7 pulling class. Chris was an intellectual Marine. He solved problems with  
8 his mind. Ahn worked to help the people of Iraq and he took great pride  
9 in what he was able to accomplish. He is not and never has been a violent  
10 person. Christopher is and always will be a faithful and dutiful Marine.  
11 His life is predicated on honor and duty.

12 (Lee Decl. Exh B at 23). Will Prescott, a former army officer and business school  
13 classmate, describes Mr. Ahn as being "motivated by a strong desire to help others  
14 in need, which led him to join the U.S. Marines, volunteer for deployment in Iraq,  
15 and volunteer with numerous charitable organizations after returning to civilian  
16 life." (*Id.* at 33).

17 In 2009, Mr. Ahn met Adrian Hong ("Mr. Hong") through mutual friends in  
18 a social setting. (Ahn Decl. ¶¶ 3-4). At the time, Mr. Hong was already well-known  
19 as a North Korean human rights activist. He was a proponent of coordinating an  
20 organized effort to empower North Koreans to take control of their own society by  
21 finding ways to enable them to communicate with each other and with the outside  
22 world. At the time Mr. Ahn met him, Mr. Hong had just become a TED Fellow and  
23 was often featured in publications about human rights issues. (*Id.* ¶ 3)

24 Mr. Ahn stayed in contact with Mr. Hong based on their shared interest in  
25 North Korean human rights. (Ahn Decl. ¶ 4.) At some point, Mr. Hong started an  
26 organization called Cheollima Civil Defense, which later became Free Joseon. (*Id.*)  
27 On a few occasions, Mr. Hong called Mr. Ahn and ask him to help on specific tasks  
28 related to helping with North Korean defections. (*Id.*). Mr. Ahn's assigned tasks  
were usually limited to helping make travel arrangements for people and escorting

---

<sup>5</sup> These letters were previously submitted for Mr. Ahn's Application for bail.

1 them from one place to another. (*Id.* ¶ 5). Those periodic tasks were the extent of  
2 Mr. Ahn's involvement with the group. (*Id.* ¶ 4). Because of the safety issues  
3 surrounding North Korean defections, Mr. Ahn was never informed of the entire  
4 plan, and it was common for him to be coordinating with people he was meeting for  
5 the first time. (*Id.* ¶ 5).

6 Over time, Mr. Ahn came to believe that Mr. Hong was working in  
7 conjunction with the United States Government and other governments for these  
8 defection operations. (*Id.* ¶ 7). In 2011, Mr. Ahn attended a meeting with Mr. Hong  
9 and several U.S. government officials, during which Mr. Hong and the U.S. officials  
10 spoke collaboratively about ways to further empower North Koreans and improve  
11 defection efforts. (*Id.*). Mr. Ahn's belief was further reinforced in 2017, when two  
12 agents from the United States Central Intelligence Agency showed up in a different  
13 country to assist him in the process of helping several North Koreans proceed to  
14 their next destination during a highly sensitive defection. (*Id.*).

15 **C. The Madrid Incident, According to Non-North Korean Evidence**

16 On the morning of February 22, 2021, the day of the Madrid incident, Mr.  
17 Ahn traveled to Madrid to meet Mr. Hong. While others in the group had apparently  
18 been in Madrid for days or even weeks, passport control records indicate that Mr.  
19 Ahn arrived in Madrid at 8:10 a.m. that morning. (Dkt. 55-3 at 3). As was often the  
20 case when Mr. Hong asked Mr. Ahn to help with a North Korean defection, Mr.  
21 Ahn was not told what specific task he would be asked to do until he was on the  
22 ground. (Ahn Decl. ¶ 8.)

23 Once Mr. Ahn arrived in Madrid, Mr. Hong explained to Mr. Ahn as follows:

24 [REDACTED]  
25 [REDACTED], had asked Mr. Hong to help him defect [REDACTED]; [REDACTED]  
26 [REDACTED] wanted to defect, but [REDACTED]  
27 [REDACTED];  
28 and [REDACTED] had asked Mr. Hong to stage the defection as a kidnapping to protect



1 against any retaliation. (Ahn Decl. ¶ 8).

2 Mr. Ahn was aware that defectors, especially diplomats, are terrified that their  
3 actions will result in retaliation against their family in North Korea. (Ahn Decl. ¶ 9).  
4 As stated above, this fear is effectively used to hold them hostage while they are  
5 abroad. (Lee Decl. Exh. A at 4). The news had broken just two days prior to the  
6 Madrid incident that North Korea had abducted the daughter of Jo Song Gil, the  
7 former North Korean ambassador to Italy who defected in late 2018, from the streets  
8 of Rome and forced her to return to North Korea.<sup>6</sup> (Ahn Decl. ¶ 9). Within this  
9 context, Mr. Ahn believed it was credible that [REDACTED] would ask  
10 Mr. Hong to stage this mission as an involuntary kidnapping to protect themselves  
11 and their families. Based on prior experience, Mr. Ahn had no reason to believe Mr.  
12 Hong would try to force anyone to defect or physically harm anyone against their  
13 will. (*Id.*).

14 Knowing North Korea to be a surveillance state, the group had every  
15 expectation that the embassy would be covered with security cameras, and the North  
16 Korean government would be able to see everything that happened on embassy  
17 grounds. (Ahn Decl. ¶ 11). Mr. Ahn personally did not carry any weapons, but  
18 understood others in the group would have weapons, such as fake guns, and  
19 understood that the purpose of having these items was to make the “kidnapping”  
20 look real, not hurt anyone. (*Id.*) [REDACTED]  
21 [REDACTED] (*Id.*).

22 At around 4:40 p.m., Mr. Hong, Mr. Ahn, and others arrived at the North  
23 Korean embassy in various groups. (Dkt. 118-1 at 115-120). Mr. Hong was allowed  
24 inside the embassy by one of the North Korean officials, and the door was left  
25

26 <sup>6</sup> See, e.g., “North Korea accused of abducting its former ambassador’s daughter,”  
27 *The Guardian*, published February 20, 2019, available at  
28 <https://www.theguardian.com/world/2019/feb/20/north-korea-accused-of-abducting-its-former-ambassadors-daughter>.

1 slightly open. (Ahn Decl. ¶ 12). Mr. Ahn believed this had been done on purpose to  
2 allow the group to enter. (*Id.*). The group then entered the embassy, and once inside,  
3 several members of the group went through the motions of tying people up. (*Id.*).  
4 Mr. Ahn, whose right hand was fractured, did not participate in any restraining. He  
5 did not hit anyone or commit any violence. (*Id.*). Based on his observations, the  
6 others appeared to be taking great pains to make the restraining look real without  
7 actually hurting anyone. (*Id.*). He believed the entire process was consensual, and  
8 any resistance from the North Korean officials was being performed for the benefit  
9 of possible North Korean surveillance. (*Id.*).

10       The evidence from Spanish witnesses do not contradict the account of Mr.  
11 Ahn. They reported seeing events that would be consistent with what a staged  
12 kidnapping would look like to a third party observer. Lynn Gayero Dayao, a  
13 passerby standing outside the embassy, said she heard screaming from inside the  
14 embassy and peeked in through a hole in the wall. (Dkt. No. 118-1 at 80). Ms.  
15 Dayao says she saw a man being restrained by two or three people, one of whom  
16 had a ponytail and was carrying what she thought was a pistol. (*Id.* at 80-83).  
17 Another passerby, Teofila Villarroel Orozco, also says she saw a man being  
18 restrained. (*Id.* at 101-102). None of these witnesses identify Mr. Ahn as one of the  
19 people participating in the restraining.

20       Unbeknownst to Mr. Ahn or others inside the embassy, upon the group's  
21 arrival, one of the wives of the North Korean officials, Cho Sun Hi, jumped from  
22 her second floor window and fled the embassy grounds. Around 5:12 p.m., a man  
23 named Oscar Santiago Perales was driving past the embassy when he saw Ms. Cho  
24 step into the middle of the street in front of his car to stop him. (Dkt. No. 118-1 at  
25 65). Seeing that Ms. Cho was injured, Mr. Perales phoned emergency services and  
26 drove her to his workplace – a nearby gym – to offer first aid. (*Id.*) Eventually,  
27 paramedics and two police officers arrived at the gym. (*Id.* at 66). Ms. Cho  
28 communicated with the two officers through Google Translate, and claimed that

1 “some individuals had entered the Embassy and they were killing people, they were  
2 eating people and there were children there.” (Dkt. No. 118-1 at 19).

3 The officers passed on Ms. Cho’s claims to their superior, who directed them  
4 to establish a police perimeter around the embassy. (Dkt. No. 118-1 at 20). At  
5 around 5:50 p.m., three officers rang the doorbell at the embassy gates. (*Id.* at 152-  
6 53). Mr. Hong went to the door to speak to them. That was the first time those inside  
7 the embassy learned from the police that a woman had jumped out of the window  
8 and left the building. (Ahn Decl. ¶ 13). The police left shortly after speaking with  
9 Mr. Hong without incident. (*Id.*). After the police contact, the energy in the  
10 embassy changed, and the North Koreans grew increasingly distressed. (*Id.*).

11 Mr. Hong and a few others [REDACTED]. (*Id.* ¶ 14). Mr.  
12 Ahn did not go with them and did not hear what was discussed. (*Id.*). He waited for  
13 them for several hours and grew concerned. (*Id.*). The phone in the embassy kept  
14 ringing during this time. (*Id.*). The ringing of the phone seemed to terrify the North  
15 Koreans, who were viscerally upset and seemed to be convinced the phone ringing  
16 was proof that they were all being monitored. (*Id.*).

17 Eventually, Mr. Hong came out and told Mr. Ahn that [REDACTED] had changed his  
18 mind and did not want to go through with the defection. (*Id.* ¶ 15). The visit from  
19 the police and the phone ringing had alarmed him, and [REDACTED] now believed that  
20 North Korean state security knew what was going on. (*Id.*). [REDACTED]

21 [REDACTED]  
22 (*Id.*). [REDACTED]  
23 [REDACTED] so they could depart safely. (*Id.* ¶  
24 16).

25 Around 9:04 p.m., the group departed the compound in a mix of embassy cars  
26 and an Uber. (Dkt. No. 118-1 at 5, 24, 130-32). [REDACTED]

27 [REDACTED]  
28 [REDACTED] As they were leaving, someone from the group sent an email to the

1 Spanish government [REDACTED]  
2 [REDACTED]

3       Around 9:22 p.m., three North Korean individuals, who later claimed to be  
4 architecture students, arrived at the front of the embassy. (*Id.* at 25, 51, 133). One of  
5 them jumped the fence and went inside. (*Id.* at 25-26). At 9:25 p.m., several North  
6 Koreans emerged from the embassy compound. (Dkt. No. 118-1 at 133). Spanish  
7 officers on the scene report that some of them had their hands bound with cable ties  
8 or handcuffs. (*Id.* at 26, 52). Mr. So, who identified himself as “the person in  
9 charge,” spoke to the officers and told them that South Koreans had attacked the  
10 embassy. (*Id.* at 26-27). The police were not able to enter the embassy at that time,  
11 and did not conduct a search until “[m]uch, much later.” (*Id.* at 52). When they  
12 searched the premises, they recovered an eclectic collection of items, including  
13 cable ties, handcuffs, flashlights, gloves, a box of toys, a bag of gummy bears,  
14 balaclavas, pepper spray, duct tape, pliers, a bolt cutter, knives, scissors, and fake  
15 guns. (Dkt. No. 55-3 at 59-74).

16       **D.     Involuntary Testimony of North Korean Witnesses**

17       Starting with Mr. So’s contemporaneous statement to the police officers that  
18 the Madrid Incident was a South Korean attack, the North Korean diplomats  
19 involved began to construct a false narrative of the incident as a violent and  
20 unprovoked “raid.” A total of nine North Korean witnesses gave testimony to  
21 Spanish authorities. Six of these individuals were diplomats who were inside the  
22 embassy at the time of the Incident: Mr. So, Jang Ok Kyung (Mr. So’s wife), Jang  
23 Song Guk, Ju Hak Rim, Choe Song Jin, and Cho Sun Hi. The other three witnesses  
24 were the unidentified individuals who entered the embassy around 9:00 p.m, who  
25 claim to be students from nearby Nebrija University.

26       While speaking to Spanish authorities, each and every one of the North  
27 Korean witnesses was accompanied by Mr. So, the highest ranking official at the  
28 embassy, who purported to translate their testimony from Korean to Spanish. (Dkt.

1 No. 55-3 at 23, 26, 29, 33, 35, 38, 43, 45, 47). It does not appear that any Korean  
2 speaker unaffiliated with the North Korean government was present to verify the  
3 accuracy of Mr. So's translation. *Id.* Through their testimony – as delivered by Mr.  
4 So – the North Korean witnesses allege that:

- 5       ▪ Mr. Hong and others restrained and put bags over the heads of the North  
6       Korean witnesses against their will. (Dkt. No. 55-3 at 16, 24, 26, 35).
- 7       ▪ Mr. So was beaten by a group of four or five intruders, one of whom he  
8       identifies as Mr. Ahn. (Dkt. No. 55-3 at 21-22).
- 9       ▪ Mr. Hong and others detained Mr. So's wife and minor son throughout the  
10      incident. (Dkt. No. 55-3 at 29).
- 11      ▪ Ms. Cho jumped out of a window to escape the embassy because she was  
12      convinced that her colleagues had been murdered by the intruders. (Dkt.  
13      No. 55-3 at 39).
- 14      ▪ Mr. So was separately taken to a basement, where three or four intruders  
15      tried to force him to defect. (Dkt. No. 55-3 at 18). Mr. So claims that he  
16      refused "each and every one of the offers" and was also able to convince  
17      the intruders to leave voluntarily. (*Id.* at 18-19).
- 18      ▪ A North Korean official contacted the "students" from Nebrija University  
19      and directed them to check on the embassy's status. (Dkt. No. 55-3 at 43).

20       In addition to the aforementioned allegations regarding the intruders, the  
21 North Korean testimony is rife with what appears to be exaggerated professions of  
22 loyalty to the North Korean regime. For example, Mr. So insists that he was  
23 "insulted" by the offers to defect and considered it a "serious affront" when Free  
24 Joseon allegedly destroyed framed pictures of the Kim family – North Korea's  
25 dynastic rulers. (Dkt. No. 55-3 at 18-19). Likewise, Mr. So's wife Ms. Jang claims  
26 that she attempted to slit her wrists and kill herself to avoid being kidnapped –  
27 despite the fact that her death would have left her young son alone with the  
28 intruders. (*Id.* at 30-31). Another embassy official, Mr. Jang, recounts defiantly

1 shouting out to the intruders that “attacking [the Embassy] . . . was an act of war[.]”  
2 (*Id.* at 36).

### 3 **III. PROCEDURAL BACKGROUND**

4 On March 25, 2019, the Spanish National High Court (“Spanish Court”)  
5 issued an order commencing criminal proceedings in connection with the Madrid  
6 Incident. On or about April 12, 2019, the Spanish Court issued an international  
7 warrant for Mr. Ahn’s arrest. That same day, the Government filed the Complaint in  
8 the instant matter, seeking a provisional arrest pursuant to relevant extradition  
9 treaties between the United States and Spain. Spain later submitted its formal  
10 request for extradition on May 21, 2029.

11 Mr. Ahn was taken into custody on April 18, 2019, where he remained for  
12 three months until he was released on bail on July 9, 2019. (Dkt No. 73). In its order  
13 conditionally granting Bail, the Court held that a special circumstance arose in this  
14 case due to “the fact that much of the evidence supporting the . . . extradition comes  
15 from diplomatic officials of the North Korean government, a country with which the  
16 United States does not have diplomatic relations in part because its justice system,  
17 including specifically pretrial investigations, is not trustworthy and does not comply  
18 with due process.” (Dkt. No. 58 at 2). In particular, the Court expressed significant  
19 reservations regarding the competence of testimony provided by North Korean  
20 witnesses:

21 [T]he only witnesses to the Relator’s conduct inside the North Korean  
22 embassy in Spain on February 22, 2019, were North Korean officials or  
23 their family members and that each of them was interviewed by the  
Spanish police in the company of a high-ranking North Korean diplomat  
at the embassy, who was not only present but acted as the interpreter.

24 (Dkt. No. 58 at 2).

25 In the intervening fifteen months since his release on bail, Mr. Ahn has not  
26 attempted to flee and has remained in compliance with all of his conditions of  
27 release. On November 3, 2020, in recognition of Mr. Ahn’s continued compliance,  
28 the Court lifted his house arrest to allow him limited travel subject to a curfew. (Dkt.



1 No. 163).

## 2 **IV. LEGAL STANDARD**

3 “The right of a foreign sovereign to demand and obtain extradition of an  
4 accused criminal is created by treaty.” *Quinn v. Robinson*, 783 F.2d 776, 782 (9th  
5 Cir. 1986).<sup>7</sup> In determining whether to certify an extradition request pursuant to  
6 treaty, an extradition court must determine: (1) whether it has jurisdiction; (2)  
7 whether a valid treaty exists; (3) whether the provisions of the treaty, including dual  
8 criminality, have been satisfied; and (4) whether probable cause exists. *See*  
9 *Zanazanian v. U.S.*, 729 F.2d 624, 625–26 (9th Cir.1984). The doctrine of dual  
10 criminality provides that extradition is only available if the underlying offense is  
11 “considered criminal by the jurisprudence or under the laws of both the requesting  
12 and requested nations.” *Quinn*, 783 F.2d at 783; *see also* Extradition Treaty (Dkt.  
13 No. 55-1 Art. II.A) (extraditable offenses must be punishable by more than one year  
14 imprisonment under the laws of both the United States and Spain).

15 In an extradition proceeding, the Government bears the burden of providing  
16

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17 <sup>7</sup> A valid extradition treaty exists between the United States and Spain. The  
18 operative treaty encompasses the following documents, collectively referred to  
19 herein as the “Treaty”: Treaty on Extradition between the United States of America  
20 and Spain, U.S.-Spain, May 29, 1970, 22 U.S.T. 737; Supplementary Treaty in  
21 Extradition between the United States of America and Spain, signed January 25,  
22 1975; Second Supplementary Extradition Treaty between the United States of  
23 America and the Kingdom of Spain, U.S.-Spain, Feb. 9, 1998, S. Treaty Doc. No.  
24 102-24 (1992); Third Supplementary Treaty between the United States of America  
25 and the Kingdom of Spain, U.S.-Spain, Mar. 12, 1996, S. Treaty Doc. No. 105-15  
26 (1997); and the Instrument on Extradition between the United States of America and  
27 Spain, as contemplated by Article 3(2) of the Agreement on Extradition between the  
28 United States and the European Union signed 25 June 2003, as to the application of  
the Treaty on Extradition between the United States of America and Spain signed  
May 29, 1970, and the Supplementary Treaties on Extradition signed January 25,  
1975, February 9, 1988 and March 12, 1996, U.S.-Spain, Dec. 17, 2004 S. Treaty  
Doc. No. 109-14 (2006), with Annex. (The integrated text of the Treaty is available  
at Dkt. 55-1 at 1-10.)

1 sufficient evidence to establish probable cause. *See Quinn*, 783 F.2d at 783;  
2 *Barapind v. Enomoto*, 400 F.3d 744, 747 (9th Cir. 2005) (“Certification of  
3 extradition is lawful only when the requesting nation has demonstrated probable  
4 cause to believe the accused person is guilty of committing the charged crimes.”)  
5 Determining whether the burden has been met does not require the extradition court  
6 to rule on innocence or guilt. *Sainez v. Venables*, 588 F.3d 713, 717 (9th Cir. 2009).  
7 Rather, the court need only determine “whether there is *competent* evidence to  
8 support the belief that the accused has committed the charged offense.” *Quinn*, 783  
9 F.2d at 815 (emphasis added).

10 This limited scope does not render the judicial inquiry a mere rubber stamp:  
11 the extradition court has the authority to conduct an independent review of the  
12 evidence proffered, and not “accept without question the complainant’s mere  
13 conclusions that the person whose arrest is sought has committed a crime.”  
14 *Giordenello v. U.S.*, 357 U.S. 480, 486 (1958); *see also Man-Seok Choe v. Torres*,  
15 525 F.3d 733, 738 (9th Cir. 2008) (“Though the extradition papers accuse Choe of  
16 doing [illegal] things, accusations are not evidence.”); *Franks v. Delaware*, 438 U.S.  
17 154, 165 (1978) (“[I]t is the magistrate who must determine independently whether  
18 there is probable cause.”)

## 19 **V. SUMMARY OF EVIDENCE**

20 In making its probable cause determination, the Court has “wide latitude to  
21 admit evidence.” *Matter of Extradition of Mainero*, 990 F.Supp. 1208, 1219 (1997)  
22 (citing *Extradition of Kraiselburd*, 786 F.2d 1395, 1399 (9th Cir.1986)). In  
23 particular, the Court may consider “explanatory evidence” from the relator which  
24 “explains away or completely obliterates probable cause.” *Santos*, 830 F.3d at 1003  
25 (9th Cir. 2016); *see also Quinn*, 783 F.2d at 815 (“The credibility of witnesses and  
26 the weight to be accorded their testimony is solely within the province of the  
27 extradition magistrate”). The Relator is generally not permitted to introduce  
28 evidence that contradicts evidence presented by the Government. *Santos*, 830 F.3d



1 at 992. In practice, this means that the Relator cannot offer evidence regarding  
2 alibis, contradictory facts, or affirmative defenses. *Id.* at 993. On the other hand,  
3 evidence that is not inconsistent with the facts as put forth by the government’s  
4 evidence but instead puts them in a light that “explains away or completely  
5 obliterates probable cause” is freely admissible. *Id.* at 992. When it comes to the  
6 admissibility of a Relator’s evidence regarding the testimony of government  
7 witnesses, the Ninth Circuit has established a clear distinction: evidence that attacks  
8 the credibility of those witnesses is inadmissible contradictory evidence; evidence  
9 that attacks the **competence** of their testimony is admissible explanatory evidence.  
10 *Id.* at 1003. Further, when the competence of testimony is challenged, the burden of  
11 proof flips: the Government “must show by a preponderance of the evidence that the  
12 statements of [the witnesses] were not obtained by coercion.” *Matter of Extradition*  
13 *of Santos*, 228 F.Supp.3d 1034, 1037 (C.D. Cal. 2017).

14 Mr. Ahn seeks to admit the following as explanatory evidence in support of  
15 his opposition:

- 16 • Declaration of Christopher Ahn
- 17 • Expert Report of Robert Collins (Lee Decl. Exh. A)
- 18 • Character Letters for Mr. Ahn (Lee Decl. Exh. B)
- 19 • U.N. Report (Lee Decl. Exh. C)
- 20 • Medical Records of Mr. Ahn (previously filed under seal as Exhibit 1  
21 to Dkt. No. 33.)
- 22 • Declaration of Naeun Rim

23 The Collins Report<sup>8</sup> and U.N. Report go to the competency of the North

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24 <sup>8</sup> Mr. Collins is a scholar of North Korean politics who has authored several books  
25 on the country’s ruling elites, including diplomats. (Exh. B. at 1). He is a United  
26 States Army veteran who served over three decades in Korea, including as Chief of  
27 Strategy of the ROK-US Combined Forces Command – the military command  
28 tasked with countering North Korean aggression on the Peninsula. (*Id.* at 12). The  
Collins Report details the inhumane tactics the regime applies to its own diplomats

1 Korean witness statements. The Declaration of Mr. Ahn, the character letters, his  
2 medical records, and the Declaration of Naeun Rim are submitted as explanatory  
3 evidence that negates dual criminality, obliterates probable cause, or supports a  
4 finding of the humanitarian exception.

## 5 **VI. ARGUMENT**

### 6 **A. The Court Must Disregard the Testimony of the North Korean** 7 **Officials As Inherently Unreliable.**

8 As a threshold matter, the Court should not consider the testimony of the  
9 North Korean witnesses for the purpose of this extradition hearing. Involuntary  
10 confessions are incompetent and cannot be introduced under the due process clause  
11 of the Fifth Amendment. *Ashcraft v. Tennessee*, 322 U.S. 143, 155 (1944). Based on  
12 the same principle, the Ninth Circuit has held that “evidence that the government’s  
13 evidence was obtained by torture or coercion” is admissible in extradition  
14 proceedings, because coerced testimony is incompetent and therefore cannot support  
15 probable cause. *Santos*, 830 F.3d at 1004; *see also U.S. v. Lui Kin-Hong*, 110 F.3d  
16 103, 122 (1st Cir. 1997) (“confession obtained by duress is inherently unreliable and  
17 would be given little weight even if the confession were authenticated”).

18 While the *Santos* court was considering the admissibility of testimony  
19 obtained by torture, courts have identified other conditions in which testimony given  
20 under duress may be incompetent. *See, e.g., Crowe v. County of San Diego*, 608  
21 F.3d 406, 431 (9th Cir. 2010) (finding Fifth Amendment violation for evidentiary  
22 use of confession obtained by “psychologically brutal” interrogation of minor that –

23  
24 \_\_\_\_\_  
25 to ensure unquestioning loyalty, and how these methods would have likely played  
26 out in the aftermath of the Madrid Incident. Mr. Collins’s expert opinion has been  
27 previously been accepted by a federal court as evidence of North Korean practices.  
28 *See Warmbier*, 356 F.Supp.3d at 47 (accepting Mr. Collins’s conclusion that North  
Korea had likely tortured Otto Warmbier to obtain a false confession and dictated a  
statement to him that he was later forced to read on camera).

1 while absent of physical violence – involved isolation, threats, and pressure by  
2 police officers); *U.S. v. Tingle*, 658 F.2d 1332, 1334 (9th Cir. 1981) (reversing  
3 conviction on basis that Defendant’s confession was obtained by FBI agent who told  
4 her she would “not see her [two-year-old child] for a while” if she did not  
5 cooperate).

6 The testimony of the North Korean diplomats presents unique and  
7 unprecedented evidentiary challenges regarding reliability. As set forth in the  
8 Collins report, North Korean diplomats are in a constant state of duress and would  
9 never be able to admit that they were trying to defect without putting their lives and  
10 the lives of their families at risk. North Korean diplomats “face the distrust and  
11 security pressures that their North Korean counterparts face every hour of every  
12 day.” (Lee Decl. Exh. B. at 11). In the aftermath of the Madrid Incident, these  
13 pressures would have been at their Zenith. Mr. Collins assesses that the incident  
14 would have been reported to the regime through both MOFA and MSS channels.  
15 (*Id.* at 10). Once informed, KWP OGD would have immediately formulated a plan  
16 to arrest the family members and confiscate the assets of any diplomats at the  
17 embassy. (*Id.*). Mr. Collins also assesses that KWP OGD would have directed the  
18 diplomats regarding their testimony to Spanish authorities, with any deviation  
19 punishable by violence against their families. (*Id.*). With regards to Mr. So’s  
20 presence as a “translator” during each of the witness interviews, Mr. Collins  
21 concludes that this was likely intended to provide “assurance that the [interviewee]  
22 complies with KWP directives” and to allow Mr. So to compile a detailed report on  
23 the interview for KWP OGD. (*Id.*). Ultimately, Mr. Collins concludes based on his  
24 review of the witness statements that “the testimony of all North Korean witnesses  
25 who spoke to the Spanish authorities was likely involuntary.” (*Id.* at 11.)

26 Voluntary, competent testimony is simply not possible in these circumstances.  
27 See *Han Kim*, 774 F.3d at 1048 (acknowledging that North Korea “is known to  
28 intimidate defectors and potential witnesses[,]” and that North Korean witnesses

1 feared the regime to the extent that they would offer testimony to foreign authorities  
2 only “sparingly and anonymously,” if at all.) Each of the North Korean diplomats  
3 lived in a compound under constant observation by both their direct superior *and* an  
4 agent of a Gestapo-like secret police.<sup>9</sup> By the time they sat for interviews several  
5 months after the Madrid Incident, the regime would have been ready to round up  
6 their family members as hostages and seize their assets at a moment’s notice. Mr. So  
7 accompanied each of them, not only keeping a watchful eye on their testimony but  
8 also translating it from Korean to English – literally putting words in their mouth on  
9 behalf of the regime. The witnesses had no choice but to disclaim any coordination  
10 with Free Joseon—admitting as much would have effectively signed their death  
11 sentence.

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED] Defection is the worst possible  
17 form of disloyalty in the eyes of the regime, and their sensitivity has been  
18 heightened in recent years due to a string of high-profile diplomatic defections. (Lee  
19 Decl. Exh. A at 8-9). [REDACTED]

20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

26  
27 <sup>9</sup> Indeed, any of the North Koreans interviewed by the Spanish authorities may  
28 potentially have been an embedded MSS officer, including the three “students.”

1 In its briefing, the Government does not even attempt to address the  
2 competency issue, instead misrepresenting it as a determination of “credibility” that  
3 falls outside the scope of an extradition hearing. (Dkt. No. 113 at 25:1-22). The  
4 Government has offered no explanation for Mr. So’s presence at each of the witness  
5 interviews, nor any explanation for how any of these witnesses would be able to  
6 testify freely and truthfully that they had asked for Free Joseon’s help without  
7 risking being killed by the North Korean regime. The Government’s only support  
8 for the competence of the North Korean testimony is a conclusory statement by the  
9 presiding judge in Spain which asserts that the North Korean testimony was  
10 “objectively assessed” and found to be credible. (Dkt. No. 113 at 25:11-22). It is  
11 difficult to understand how Spain would be able to make any assessment at all about  
12 competence given that they have only the “translation” of a self-interested party who  
13 was acting as the agent of a coercive state security apparatus.

14 The Government has failed its burden to “show by a preponderance of the  
15 evidence that the statements of [the witnesses] were not obtained by coercion.”  
16 *Santos*, 228 F.Supp.3d at 1037. It is evident from the totality of the circumstances  
17 that the testimony of the North Korean witnesses could not have been voluntary.  
18 The testimony must be excluded from the Court’s consideration.

19 **B. Mr. Ahn Should Not Be Extradited Because Spain Fails To Satisfy**  
20 **Dual Criminality.**

21 Article II of the Treaty contains a requirement of dual criminality. (Dkt. 55-1  
22 at 10) (“an offense shall be an extraditable offense if it is punishable under the laws  
23 in both Contracting Parties by deprivation of liberty for a period of more than one  
24 year or by a more severe penalty.”) Dual criminality requirements in extradition  
25 treaties are satisfied “only if the alleged criminal conduct is considered criminal  
26 under the laws of both the surrendering and requesting nations.” *Clarey v. Gregg*,  
27 138 F.3d 764, 765 (9th Cir. 1998) (analyzing dual criminality provision in  
28 extradition treaty with Mexico). In practice, this requires two separate findings by

1 the extradition court: (1) that the alleged acts would be crimes under U.S. law; and  
2 (2) that those crimes are “substantially analogous” to the crimes listed by the  
3 requesting nation. *Tang Yee-Chun v. Immundi*, 686 F.Supp. 1004, 1010 (S.D.N.Y.  
4 1987); *see also Clarey*, 138 F.3d at 765 (“when the laws of both the requesting and  
5 the requested party appear to be directed at the same basic evil . . . the statutes are  
6 substantially analogous, and can form the basis of dual criminality.”)

7 When intent is an essential element of the applicable domestic crime, an  
8 extradition court must consider evidence regarding the relator’s intent as part of its  
9 dual criminality analysis. *Manta v. Chertoff*, 518 F.3d 1134, 1142 (9th Cir. 2008)  
10 (discussing domestic fraud statute’s requirement of “specific intent to defraud.”) If  
11 the evidence indicates that had the alleged conduct occurred, it would not be  
12 criminal under U.S. law due to lack of intent, the dual criminality requirement is not  
13 satisfied.

14 **1. The Dual Criminality Requirement Is Not Satisfied Because**  
15 **Mr. Ahn Believed His Actions Were Consensual**

16 As discussed *supra*, the Madrid Incident was not a violent raid, but a staged  
17 kidnapping that Mr. Ahn believed was being carried out at the request of those in the  
18 embassy. (Ahn Decl. ¶ 8-9). Mr. Ahn’s belief was consistent with the nature of his  
19 previous work assisting Mr. Hong with defections, all of which had involved  
20 voluntary participants who had asked for help. (*Id.* at 6). Given that the news had  
21 just confirmed North Korea’s brazen kidnapping of the former North Korean  
22 ambassador’s daughter *while she was in Italy*, it was not hard to imagine that North  
23 Korean officials in nearby Spain would want to go to great lengths to protect their  
24 families from similar retaliation.

25 Mr. Ahn’s honest belief that Mr. So and others had consented to the staged  
26 kidnapping negates the *mens rea* for the substantive U.S. crimes which would apply  
27 to the alleged conduct. *See, e.g., People v. Mayberry*, 15 Cal.3d 143, 156 (Cal.  
28 1975) (conviction for kidnapping unavailable if defendant “entertains a reasonable



1 and bona fide belief that [the victim] voluntarily consented to accompany him”);  
2 *U.S. v. Martinez-Hernandez*, 932 F.3d 1198, 1207 (9th Cir. 2019) (conviction for  
3 robbery requires “exercise of control over property *without consent* with the  
4 criminal intent to deprive the owner of the rights and benefits of ownership); *People*  
5 *v. Rivera*, 157 Cal. App. 3d 736, 742-43 (Cal. App. 1984) (reasonable belief that  
6 physical contact was consensual, even if mistake of fact, “negate[s] the element of  
7 intent” for assault); *People v. Yoder*, 100 Cal. App. 3d 333, 336 (Cal. App. 1979)  
8 (with regards to burglary, “in the absence of the required specific intent [to engage  
9 in illegal conduct] the crime is not committed”); *Ocasio v. U.S. v. Wallace*, 136 S.  
10 Ct. 1423, 1429 (2016) (formation of criminal conspiracy requires “specific intent  
11 that the underlying crime be committed by some member of the conspiracy”)  
12 (internal quotations omitted).<sup>10</sup> Without being able to establish the requisite criminal  
13 intent under U.S. law, the Government cannot satisfy dual criminality.  
14  
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18 <sup>10</sup> In Appendix B to their Extradition Memorandum, the Government lists various  
19 federal statutes that specifically pertain to offenses against foreign officials. (Dkt.  
20 No. 113-2 at 2-4). These statutes should play no part in the Court’s dual criminality  
21 analysis for two separate reasons: (1) Spain has not alleged any crimes that pertain  
22 exclusively to foreign officials; (2) North Korea has no diplomatic relations with the  
23 United States, and therefore their representatives – if located in the United States –  
24 would enjoy no official status. *See* 18 U.S.C. § 1116(b)(3)(B) (defining “foreign  
25 official” as “any person of a foreign nationality who is *duly notified to the United*  
26 *States* as an officer or employee of a foreign government . . . *who is in the United*  
27 *States on official business.*”) (emphasis added); *see also* 18 U.S.C. §§ 112(c),  
28 1201(a)(4), 970(c) (defining “foreign official” in accordance with 18 U.S.C. §  
1116(b)(3)). The other federal statutes listed are similarly inapplicable. *See* 18  
U.S.C. §§ 113, 956, 2111 (the North Korean embassy in Spain is not part of United  
States special maritime and territorial jurisdiction); 18 U.S.C. § 960 (North Korea is  
not a friendly nation.)

1                   **2. The Dual Criminality Requirement Is Also Not Satisfied Due**  
2                   **to Mr. Ahn’s Honest Belief that He Was Acting Under the**  
3                   **Direction of the United States Government.**

4           Courts have recognized that an individual’s honest belief that they are acting  
5 under the direction of a government authority may “[negate] the mens rea for the  
6 crime[.]” *U.S. v. Burrows*, 36 F.3d 875, 881 (9th Cir. 1994); *see also U.S. v. Smith*,  
7 831 F.3d 1207, 1220 (9th Cir. 2016) (acknowledging that a defendant lacks criminal  
8 intent when they act in reliance on “orders from superior officers whom they  
9 reasonably believed had authority to issue the orders.”); *U.S. v. Juan*, 776 F.2d 256,  
10 258 (11th Cir. 1985) (vacating conditional guilty plea on the basis that defendant  
11 had not been allowed to present evidence that “he had engaged in a relationship with  
12 government agencies the nature of which were such that his belief, [that he was  
13 cooperating with the U.S. Government] at the time of the charged crime, was  
14 reasonable and genuine.”)

15           Here, Mr. Ahn had reason to believe that the Madrid Incident was carried out  
16 with the authorization of [REDACTED]

17 [REDACTED] Moreover, Mr. Ahn also had reason to  
18 believe that the *United States* Government worked in coordination with Mr. Hong  
19 on major North Korean defection missions. This belief was based on Mr. Ahn’s  
20 previous interactions with Government officials while accompanying Mr. Hong, and  
21 the intervention of the CIA in a prior defection. (*Id.* at ¶ 7). Mr. Ahn is an ordinary  
22 American citizen who is not intimately familiar with the intricacies of international  
23 politics. Having seen government officials speaking to Mr. Hong with approval, and  
24 CIA agents suddenly appearing in a foreign country to assist with a sensitive  
25 defection, Mr. Ahn formed a genuine belief that Mr. Hong was acting with the  
26 authority of the Government, and that any work he did with Mr. Hong was therefore  
27 on behalf of the United States. For purposes of dual criminality, it is irrelevant  
28 whether the U.S. Government has the actual authority to ratify facially criminal



1 conduct in a foreign jurisdiction: for extradition, Mr. Ahn’s conduct must be  
2 criminal in *both jurisdictions*, *Clarey*, 138 F.3d at 765, and the Government would  
3 unquestionably have the authority to ratify identical conduct on American soil.

4 **C. The Court Must Deny Extradition Because Spain Has Failed To**  
5 **Establish Probable Cause.**

6 “Certification of extradition is lawful only when the requesting nation has  
7 demonstrated probable cause to believe the accused person is guilty of committing  
8 the charged crimes.” *Barapind*, 400 F.3d at 747. Under federal law, probable cause  
9 is a flexible standard:

10 Articulating precisely what “reasonable suspicion” and “probable  
11 cause” mean is not possible. They are commonsense, nontechnical  
12 conceptions that deal with the factual and practical considerations of  
13 everyday life on which reasonable and prudent men, not legal  
14 technicians, act. As such, the standards are not readily, or even  
15 usefully, reduced to a neat set of legal rules ... They are instead fluid  
16 concepts that take their substantive content from the particular contexts  
17 in which the standards are being assessed.

18 *Ornelas v. U.S.*, 517 U.S. 690, 695-96 (1996) (quotations and citations omitted). A  
19 determination of probable cause, therefore, requires a flexible, case-specific  
20 approach that is “accordingly correlative to what must be proved.” *Brinegar v. U.S.*,  
21 338 U.S. 160, 175 (1949).

22 **1. Spain Cannot Establish Probable Cause That Mr. Ahn**  
23 **Committed Any Charged Offense**

24 There is no competent evidence tying Mr. Ahn to any criminal act apart from  
25 his mere presence at the embassy that day. Mere presence in proximity to “others  
26 individually suspected of criminal activity does not, without more, give rise to  
27 probable cause.” *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979); *see also U.S. v. Soyland*,  
28 3 F.3d 1312, 1314 (9th Cir.1993) (mere presence in vehicle containing drugs does  
not support probable cause for drug possession); *Reis v. U.S. Marshal*, 192 F.Supp.  
79, 82 (E.D. Pa. 1961) (“Probable cause means more than the opportunity to commit  
crime or presence in a particular place. It must be more than surmise or suspicion”).

1 Mr. Ahn is photographed calmly entering the embassy with nothing but sunglasses  
2 in his hands. There is no Spanish witness or documentary evidence suggesting that  
3 Mr. Ahn restrained, harmed, or threatened anyone. There is no evidence of his  
4 extensive planning or organizing with others—in fact, just the opposite. The  
5 undisputed evidence shows that while *others* went to shop for weapons and *others*  
6 had been in Madrid for several days or weeks, Mr. Ahn flew in just that morning.

7 The only witness – North Korean or otherwise – who identifies Mr. Ahn as  
8 having engaged in any misconduct is Mr. So, who claims that Mr. Ahn, who had a  
9 broken hand, participated in hitting him. (Dkt. No. 55-3 at 20). As argued above,  
10 Mr. So’s testimony is not competent and must be disregarded.<sup>11</sup>

11 Spain attempts to overcome the lack of evidence connecting Mr. Ahn directly  
12 to any of the alleged crimes by suggesting he may still be liable under a vicarious  
13 liability theory. (Dkt No. 55-3 at 91). Under Spanish law, an individual can be held  
14 vicariously liable as a principal if he “directly induce[d] another or others to commit  
15 a crime” or “cooperate[d] in the commission thereof by an act without which a  
16 crime could not have been committed.” (*Id.*). But Spain offers no evidence  
17 whatsoever of inducement or “but-for” conduct by Mr. Ahn that would support  
18 probable cause. Nothing about the evidence suggests that Mr. Ahn contributed to  
19 alleged criminal activity in any way other than being physically present at the  
20 embassy.

21 **a. Criminal Organization**

22 In addition to the lack of direct evidence, an examination of the criminal  
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24 <sup>11</sup> Mr. Ahn’s medical records further demonstrate that Mr. So’s account is  
25 impossible, given that Mr. Ahn sought treatment for his fractured hand before and  
26 after he was in Madrid, and the X-rays showed continued *healing*. (Dkt. No. 33,  
27 Sealed Exhibit 1 at 7-8). Nonetheless, even if the Court were to take Mr. So’s  
28 testimony into account, the Court can still find, based on explanatory evidence, that  
Mr. Ahn lacked the requisite *mens rea* because he had a good faith belief that Mr.  
So had consented to such conduct.

1 statutes listed in the extradition requests reveals several other reasons why Spain  
2 fails to establish probable cause. Article 570 bis of the Spanish Penal Code states  
3 that an individual is guilty of criminal organization when they “promote, constitute,  
4 organise, coordinate or oversee a criminal organization.” (Dkt No. 55-3 at 90). The  
5 statute also defines a criminal organization as “a group formed of more than two  
6 people that is stable in nature and operates for an *indefinite period*, which, in an  
7 arranged and coordinated manner, assigns various tasks or functions with the *aim of*  
8 *committing crimes*.” (*Id.*) (emphasis added).

9       There is no evidence indicating that Free Joseon is a criminal organization,  
10 certainly not one created “with the aim of committing crimes” that “operates for an  
11 indefinite period.” Nor is there sufficient evidence that Mr. Ahn is a “member” of  
12 Free Joseon as defined in the statute. Mr. Ahn does not dispute that he has in the  
13 past taken on volunteer tasks on behalf of Mr. Hong in order to help North Korean  
14 defectors. It is Spain’s burden, however, to prove that his role rose to the level of  
15 “promoting, constituting, organizing, coordinating, or overseeing.” (Dkt No. 55-3 at  
16 90). If anything, the evidence indicates that Mr. Ahn’s role in the group was minor  
17 at best, given that he arrived on the morning of the incident and was not told details  
18 of the plan prior to his arrival. (Ahn Decl. ¶ 8).

19                   **b.     Breaking and Entering**

20       Article 202 of the Spanish Penal Code states that an individual is guilty of  
21 breaking and entering when they “enter into the dwelling of another or remain there  
22 against the will of the resident[.]” (Dkt. No. 55-3 at 89). [REDACTED]

23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]—or at the very least, Mr. Ahn  
26 believed that to be case. (Ahn Decl. at ¶ 8). Surveillance footage clearly shows Mr.  
27 Hong being invited into the embassy by a North Korean official. (Dkt. No. 118-1 at  
28 138). As Mr. So himself corroborates, Free Joseon departed the embassy voluntarily

1 when he made it clear that he no longer intended to defect and asked them to leave.  
2 (Ahn Decl. at ¶ 15-16; Dkt. No. 55-3 at 17-18). Based on the competent evidence  
3 available to the Court, there is no probable cause to believe that Mr. Ahn or anyone  
4 else had entered into or were remaining in the embassy against the will of [REDACTED]

5 [REDACTED]  
6 **c. Threats**

7 Article 169 of the Spanish Penal Code states that an individual is guilty of  
8 threats when he “threaten[s] others with causing them, their family, or other persons  
9 with whom they are intimately related detriment entailing homicide, injuries,  
10 abortion, offences against liberty, torture and offences against moral integrity,  
11 sexual freedom, privacy, honour, property, and the social-economic order[.]” (Dkt.  
12 No. 55-3 at 88). Spain’s evidence for threats is derived entirely from the testimony  
13 of North Korean witnesses. (Dkt No. 113 at 33:11-22). Without this testimony, all  
14 that remains is the photographs of fake guns left behind after Free Joseon and Mr.  
15 Ahn had departed the embassy. (Dkt No. 55-3 at 72, 74). Absent more, the mere  
16 existence of these objects is insufficient to support probable cause that Mr. Ahn – or  
17 anyone inside the embassy – made any kind of threat against the North Korean  
18 officials. *See Soyland*, 3 F.3d at 1314.

19 **d. Causing Injuries**

20 Article 147 of the Spanish Criminal Code states that an individual is guilty of  
21 causing injuries when he “by any means or procedure, cause[s] another individual  
22 an injury that impairs his or her bodily, physical or mental integrity[.]” (Dkt. No. 55-  
23 3 at 87). Causing injury is punishable by imprisonment of six months to three years  
24 only when “the injury, to objectively heal, in addition to first aid, requires medical  
25 treatment and/or surgery.” (*Id.*). “The simple vigilance or medical monitoring of the  
26 progress of the injury shall not be considered medical treatment.” (*Id.*). Causing an  
27 injury for which no “medical treatment” is required is a separate offense, punishable  
28 by one to three months imprisonment only. (*Id.*).

1 The record indicates that only two individuals suffered injuries that are  
2 corroborated by evidence other than the testimony of North Korean witnesses. The  
3 first is Ms. Choi, who jumped out of a second-floor window. Her resulting injuries  
4 are corroborated by medical records (Dkt. No. 118-1, Sealed Annex 1:1-13) and the  
5 testimony of several Spanish witnesses (*Id.* at 18-19, 48, 65). As an initial matter,  
6 there is no corresponding crime in the United States for indirectly “causing” injury  
7 as a standalone crime without some sort of criminal intent. Setting that aside, there  
8 is no indication that Mr. Ahn, who believed those in the embassy had asked the  
9 group to stage a kidnapping, could have reasonably foreseen that someone would  
10 jump out of a two-story window upon their arrival. Spain cannot establish probable  
11 cause that Ms. Choi’s injuries were caused by Mr. Ahn.

12 The second is Mr. So, who claims that he was physically assaulted by Free  
13 Joseon and Mr. Ahn. While Mr. So’s injury is corroborated by medical records,  
14 these records obliterate probable cause rather than bolster it. Mr. So’s hospital  
15 discharge report, written on February 25, 2019 (three days after the Madrid Incident)  
16 does not indicate that he received any treatment other than testing at the hospital,  
17 and does not recommend any further treatment other than prescription drugs and  
18 periodic follow-up by doctors. (Dkt. No. 118-1, Sealed Annex 2). A separate  
19 examination report compiled on March 15, 2019 states that Mr. So suffered only  
20 “basic injury” with “[n]o aesthetic damage” which would “heal and/or stabilise”  
21 within ten days. (*Id.*). These records are clear evidence that Mr. So suffered only  
22 minor injuries that did not require “medical treatment and/or surgery” as defined in  
23 Article 147 of the Spanish Criminal Code. Thus, even if probable cause exists for  
24 Mr. Ahn or anyone else causing injury to Mr. So, the applicable crime in Spain  
25 would carry a maximum sentence of three months; falling far short of the Treaty’s  
26 requirement that extraditable offenses be punishable “by deprivation of liberty for a  
27 period of more than one year.” (Dkt. 55-1 at 10).

28 **e. Illegal Restraint**

1 Article 163 of the Spanish Criminal Code states that an individual is guilty of  
2 illegal restraint when he “lock[s] up or detains others, depriving them of their  
3 freedom[.]” (Dkt. No. 55-3 at 88). There is no evidence that Mr. Ahn personally  
4 restrained anyone within the North Korean embassy against their will, or that he  
5 knowingly aided and abetted anyone else within the group that did. Moreover, to the  
6 extent that any of the North Korean witnesses were restrained, Mr. Ahn’s testimony  
7 is explanatory evidence that casts serious doubts on probable cause, (Ahn Decl. ¶  
8 12), because he had a genuine believe that those witnesses consented to be  
9 restrained as part of a staged kidnapping.

10 **f. Robbery**

11 Article 237 of the Spanish Criminal Code states that an individual is guilty of  
12 Robbery when he “seize[s] the moveable property of another person, using force in  
13 order to gain access or to leave the place where this is located, or violence or  
14 intimidation towards individuals[.]” (Dkt. No. 55-3 at 89). There is no evidence that  
15 Mr. Ahn took any property, and certainly no evidence that he did so using force,  
16 violence, or intimidation. This is not sufficient to support probable cause.

17 **D. The Court Should Acknowledge A Humanitarian Exception To**  
18 **Extradition Given The Unprecedented Nature Of This Case.**

19 Under the “rule of non-inquiry,” federal courts generally refrain from  
20 inquiring into the justice system of the requesting nations, reserving any  
21 humanitarian issues implicated by extradition for the Secretary of State. *Prasoprat*  
22 *v. Benov*, 421 F.3d 1009, 1016 (9th Cir. 2005) Courts have acknowledged, however,  
23 that an exception to the rule may exist when extradition would expose an individual  
24 to “procedures or punishment ... antipathetic to a federal court’s sense of  
25 decency[.]” *Gallina v. Fraser*, 278 F.2d 77, 79 (2nd Cir. 1960); *see also Mainero v.*  
26 *Gregg*, 164 F.3d 1199, 1210 (9th Cir. 1999) (assuming existence of humanitarian  
27 exception but declining invoke based on facts of case); *Lopez-Smith v. Hood*, 121  
28 F.3d 1322, 1326–27 (9th Cir.1997) (same); *Arnbjornsdottir–Mendler v. U.S.*, 721



1 F.2d 679, 683 (9th Cir. 1983) (same). In *Emami v. U.S. Dist. Court. for Northern*  
2 *Dist. of California*, 834 F.2d 1444, 1452 (9th Cir. 1989), the Ninth Circuit “[left]  
3 open the possibility that the considerations expressed in [*Gallina*] might someday  
4 cause us to develop a humanitarian exception in a case where the facts warranted it.”

5 The facts warrant it here, as this is a unique case where the Court may adopt a  
6 humanitarian exception without violating the rule of non-inquiry. Previously, where  
7 the Ninth Circuit has declined to adopt the exception, the relator’s argument was  
8 invariably centered on purported deficiencies the requesting nation’s justice system.  
9 *See, e.g., Prasoprat*, 421 F.3d at 1013 (existence of death penalty in Thailand);  
10 *Mainero*, 164 F.3d at 1210 (possibility of interrogation by torture in Mexico);  
11 *Arnbjornsdottir–Mendler*, 721 F.2d at 683 (possibility of solitary confinement in  
12 Iceland); *Emami*, 834 F.2d at 1453 (speculation that length of investigation in  
13 Germany may have adverse effect on relator’s health); *Lopez-Smith*, 121 F.3d at  
14 1327 (extortion by Mexican authorities).

15 Consideration of these issues are inherently inappropriate under the rule of  
16 non-inquiry. As demonstrated by the earliest Supreme Court cases articulating the  
17 rule, its roots lie on the assumption that the Executive would not have entered into –  
18 and Congress would not have ratified – an extradition treaty with any nation whose  
19 justice system was plainly inadequate. *Glucksman v. Henkel*, 221 U.S. 508, 512  
20 (1911) (“We are bound by the existence of an extradition treaty to assume the trial  
21 will be fair”); *Neely v. Henkel*, 180 U.S. 109, 123 (1901) (“in the judgment of  
22 Congress these provisions were deemed adequate to the ends of justice”); *see also*  
23 *Ahmad v. Wigen*, 726 F.Supp. 389, 411 (E.D.N.Y. 1989) (“Congress and the  
24 executive branch do not enter into extradition treaties with countries in whose  
25 criminal justice system they lack confidence.”), *aff’d*, 910 F.2d 1063 (2nd Cir.  
26 1990). Ignoring the rule of non-inquiry, therefore, would lead a Court to go against  
27 the clearly expressed will of both the Executive and Legislative branches and  
28 conduct an independent determination on the adequacy of the requesting nation’s

1 justice system. *C.f. U.S. v. Smyth*, 61 F.3d 711, 714 (9th Cir.1995) (“[C]ourts are ill-  
2 equipped as institutions and ill-advised as a matter of separation of powers and  
3 foreign relations policy to make inquiries into and pronouncements about the  
4 workings of foreign countries' justice systems.”)

5       These concerns are absent in this case because the humanitarian issues have  
6 nothing to do with Spain: rather, they pertain to the undisputed, credible threats  
7 against Mr. Ahn’s life by the North Korean regime. Regardless of how fair the  
8 Spanish justice system may be, North Korea has not hesitated to violate the laws of  
9 foreign nations to kidnap and murder their targets without due process. *See Han*  
10 *Kim*, 774 F.3d at 1051 (court has “no trouble concluding” North Korea had killed a  
11 reverend known to assist with defections “outside the formal legal process”). The  
12 danger against Mr. Ahn in particular is acute due to press reports of his participation  
13 in the rescue of Kim Han Sol, the nephew of North Korean dictator Kim Jong Un  
14 and considered the greatest living threat to Kim Jong Un’s legitimacy.<sup>12</sup> This  
15 association distinguishes Mr. Ahn from the average political dissident.

16       Here, extradition is not simply a matter of moving from one geographic  
17 location to another but of sending a known target for North Korea assassination to a  
18 country where North Korea has far greater access. The heightened danger to Mr.  
19 Ahn should he be sent to Spain is undisputed: [REDACTED]

20 [REDACTED]  
21 [REDACTED] There can be no question  
22 that North Korea, which is known to have ties to crime rings, will have no trouble  
23 finding a way to act upon their threats should Mr. Ahn be extradited to Europe—as  
24 was confirmed by the 2018 North Korean kidnapping of a defector’s daughter *in*

25  
26 \_\_\_\_\_  
27 <sup>12</sup> Kim Han-sol escaped with help of anti-North Korea group, *Korea Times*,  
28 published May 29, 2019, available at  
[www.koreatimes.co.kr/www/nation/2019/05/356\\_269710.html](http://www.koreatimes.co.kr/www/nation/2019/05/356_269710.html)



1 **Italy.** The risk to Mr. Ahn’s life from extradition is real—and it has nothing to do  
2 with the Spanish criminal justice system. As a result, the fact that the Executive has  
3 entered into – and Congress ratified – an extradition treaty with Spain is of no  
4 import here: applying the humanitarian exception merely acknowledges the unique  
5 threat to Mr. Ahn’s life posed by North Korea, and does not require the Court to  
6 disturb the determination of co-equal branches.

7 Free Joseon – and especially Mr. Ahn – have become enemies of the North  
8 Korean regime by offering hope and opportunity to those who dare speak out  
9 against this totalitarian dictatorship and its unparalleled repression. For a regime  
10 built almost entirely on fear, it is imperative that Mr. Ahn and others like him are  
11 hunted down, jailed, and – where possible – assassinated in order to suppress future  
12 defection and dissent. While the Court must normally exercise deference to other  
13 branches of government when application of a humanitarian exception would force  
14 them to pass judgment on a foreign justice system, that is not the case here.  
15 Therefore, the Court should invoke the humanitarian exception to extradition for  
16 Mr. Ahn, lest it “blind [itself] to the foreseeable and probable results of the exercise  
17 of [its] jurisdiction.” *Ahmad*, 726 F.Supp. at 410; *see also Barr v. U.S.*, 819 F.2d 25,  
18 28 n. 2 (2nd Cir. 1987) (“regardless of the degree of American government  
19 involvement in the conduct of a foreign sovereign, the federal courts will not allow  
20 themselves to be placed in the position of putting their imprimatur on  
21 unconscionable conduct.”).

## 22 **VII. CONCLUSION**

23 The law offers the Government a relatively streamlined procedure for  
24 extradition not because the Due Process rights of individuals in these cases are  
25 unimportant, but because they must be balanced against the possibility that failure to  
26 extradite pursuant to a valid treaty may damage the international standing of the  
27 United States. *See U.S. v. Taitz*, 130 F.R.D. 442, 444 (S.D. Cal. 1999) (“the resulting  
28 diplomatic embarrassment would have an effect on foreign relations and the ability

1 of the United States to obtain extradition of its fugitives.”) But that accommodation  
2 has its limits – limits which are far exceeded here. If this extradition is allowed to  
3 proceed, and the United States delivers one of its own citizens to the clutches of a  
4 totalitarian dictator on the basis of plain falsehoods, the damage to its international  
5 standing will dwarf the potential embarrassment of a failed extradition. Spain’s  
6 request to extradite Mr. Ahn on North Korea’s behalf should be denied.

7  
8 DATED: February 22, 2021

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