

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 88-79-Cr-HOEVELER

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GENERAL MANUEL ANTONIO NORIEGA

Defendant.

**PETITION FOR WRITS OF HABEAS CORPUS,
MANDAMUS, AND PROHIBITION**

General Manuel Antonio Noriega, by and through his undersigned counsel, and pursuant to the authority granted this Court to issue writs of habeas corpus under 28 U.S.C. §2255 and to grant extraordinary writs under the All Writs Act, 28 U.S.C. §1651 petitions this Court to direct the United States to:

(i) Order the United States to immediately repatriate General Noriega to the Republic of Panama upon completion of his sentence on September 9, 2007 pursuant to the mandates of the Geneva Convention.

(ii) Order the United States to forthwith provide to General Noriega a plan for his repatriation to Panama pursuant to Article 118, para. 2.

(iii) Order Magistrate Judge William Turnoff to immediately cease and desist with any further litigation on the government of France's request for General Noriega's extradition (case no. 07-2183MC UNA) in violation of the Geneva Convention.

1. General Manuel Antonio Noriega has been in the penal custody of the United States since late December 1989. He has been in prison for over 17 years. He is scheduled to be released from the custody of the Federal Bureau of Prisons on September 9, 2007.

2. The defense has just been informed that the United States does not consider General Noriega to be a prisoner of war and has filed a Complaint seeking his extradition to France to face criminal charges there, in spite of the dictates of the Geneva Convention.

3. According to Article 5 of the Geneva Convention – “Beginning and End of Application:”

The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation.

Geneva Convention Relative to the Treatment of Prisoners of War (“Geneva III”), August 12, 1949, 6 U.S.T, 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135. In previous litigation before this Court, the government of the United States sought to house

General Noriega in conditions that would not comport with the minimum requirements of humane treatment guaranteed by the Geneva Convention. *United States v. Noriega*, 808 F.Supp. 791 (S.D. Fla. 1992). Rejecting that attempt, this Court held that, “a convicted POW is entitled to the basic protections of Geneva III for as long as he remains in the custody of the detaining power.” *Id.* at 802.

4. The fact that General Noriega has been in custody serving a sentence for a crime committed prior to his capture by the United States in no way deprives General Noriega of the full protections of the Convention. Pursuant to Article 85 of the Convention:

Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention.

5. Those benefits include the right to be repatriated to Panama after his release from BOP custody. Article 118. Indeed, this provision affirmatively requires that the United States prepare a plan for his repatriation to Panama and provide this plan to General Noriega. The government has failed to do so and in contravention of General Noriega’s rights, seeks to have him extradited to France.

6. In *United States v. Noriega*, *supra* this Court unequivocally held that General Noriega was a prisoner of war and was entitled to the protections of Geneva III. *Id.* at 796. This Court further held that prisoners of war could seek to

enforce their rights under the Geneva Convention in the domestic courts of the United States. *Id.* at 794. At the time that this Court made these rulings, no other court had ruled upon the rights of prisoners of war to seek redress before courts of law.

7. General Noriega is entitled to be repatriated to Panama. The Geneva Convention requires that he be informed how the United States will fulfill its obligations. The United States, having refused to do so, must be ordered to comply.

8. The French request for extradition, coming on the eve of General Noriega's release, is highly suspect. On three occasions in 1991, the Republic of Panama sought General Noriega's extradition to Panama. On January 23, 1991, the Republic of Panama requested that General Noriega be extradited to Panama to face charges for violation of the human rights of Mr. Osvaldo Boyd Chapman. (See Exh. A, attached). On January 30, 1991, the Republic of Panama requested that General Noriega be extradited to Panama to face charges for extortion of Mr. Constantino Batan Quintana. (Exh. B). On March 19, 1991, the Republic of Panama requested that General Noriega be extradited to Panama to face charges for the murder of Dr. Hugo Spadafora Franco. (Exh. C). As late as January 24, 2007, Iana Quadri De Ballard, General Director of Juridical and Treaty Affairs of Panama, wrote to Federico Humbert, Panama's Ambassador to the United States, to inquire as to the status of these extradition requests. (Exh. D).

9. It is abundantly clear that the United States has selectively decided to file France's extradition request while ignoring previous and more serious requests for extradition from Panama. The question arises, why would the United States ignore the provisions of the Geneva Convention in order to satisfy a request for extradition by the French? Could it be that there are elements in the Panamanian government that do not want General Noriega's repatriation? Statements by the French Ambassador to Panama, Pierre Henri Guignard, provide reason to believe that the French are seeking General Noriega's extradition as a quid pro quo for a \$300,000,000 contract to sell high speed trains to Panama.

MEMORANDUM OF LAW

It is the position of the United States that this Court never determined that General Noriega was a prisoner of war and that in the alternative this Court is not a competent tribunal to make that determination. The government is wrong on both counts.

As this Court will recall, following General Noriega's sentencing the defense learned that General Noriega was scheduled to be incarcerated in the maximum security prison at Marion, Illinois. Had he been sent to that institution, General Noriega would have been subject to conditions of confinement that would have violated express protections contained within the Geneva Convention.

Following briefing by both parties, this Court issued a recommendation to the Bureau of Prisons concerning the conditions of General Noriega's confinement. While recognizing that the Court did not have the power to direct where General Noriega would be housed, the Court did find that it had the authority to enforce protections of the Geneva Convention pertaining to General Noriega's treatment while in prison. In making that finding this Court explicitly held that General Noriega was a prisoner of war:

Passing for the moment the facts that an appeal has been taken and that to this point, at least, no violation of Geneva III is evident, the Court feels and so determines it has the authority to decide the status issue presented. This is not to say that the Executive branch cannot determine this issue under other circumstances. The Court does suggest that where the Court is properly presented with the problem it is, under the law, a "competent tribunal" which can decide the issue. With that in mind, **the Court finds that General Noriega is in fact a prisoner of war as defined by Geneva III**, and as such must be afforded the protections established by the treaty, regardless of the type of facility in which the Bureau of Prisons chooses to incarcerate him. (Emphasis supplied).

Id at. 796. The Court felt compelled to make this ruling at that time because the Court was concerned that sometime in the future the government would decide that it would no longer afford General Noriega the protections of the Geneva Convention:

The government's position provides no assurances that the government will not at some point in the future decide that Noriega is *not* a POW, and therefore not entitled to the protections of Geneva III. This would seem to be just the type of situation Geneva III was designed to protect against. Because of the issues presented in connection with the General's further confinement and treatment, it seems appropriate-even necessary-to address the issue of Defendant's status. Articles 2, 4, and 5 of Geneva III establish the standard for determining who is a POW. Must this determination await some kind of formal complaint by Defendant or a lawsuit presented on his behalf? In view of the issues presently raised by Defendant, the Court thinks not.

at 794. As recent events demonstrate, this Court's concern was prescient.

In previous litigation the government cited to a footnote in the decision of the Supreme Court in *Johnson v. Eisentrager*, 339 U.S. 763 (1950) to argue that General Noriega lacks standing to invoke the protections of the Geneva Convention. In *Hamdan v. Rumsfeld*, ___ U.S. ___, 126 S.Ct. 1749, 2793-96 (2006) the Supreme Court called this footnote "curious" and referenced authoritative commentary that casts serious doubt upon the soundness of the propositions articulated therein. 126 U.S. at 2794, fn. 57, 58. This Court rejected the government's reliance upon *Eisentrager* fourteen years ago. If anything, the Supreme Court's recent discussion of *Eisentrager* is further evidence of the correctness of this Court's original decision.

Finally, to the extent that the government now claims that this Court was without authority to determine its competence and General Noriega's status, that

argument is barred under principles of law of the case. *United States v. Amadeo*, 487 F.3d 823, 830 (11th Cir. 2007). At no time did the United States challenge the ruling of this Court. Having failed to do so the government is estopped from making these arguments at this time. As the Eleventh Circuit recently held:

“Under the law-of-the-case doctrine, an issue decided at one stage of a case is binding at later stages of the same case.” *United States v. Escobar-Urrego*, 110 F.3d 1556, 1560 (11th Cir.1997) (citation omitted). One aspect of this doctrine is that lower court rulings that have not been challenged on a first appeal will not be disturbed in a subsequent appeal. *See id.* (explaining that “a legal decision made at one stage of the litigation, unchallenged in a subsequent appeal when the opportunity existed, becomes the law of the case for future stages of the same litigation, and the parties are deemed to have waived the right to challenge that decision at a later time”) (citation omitted); *United States v. Fiallo-Jacome*, 874 F.2d 1479, 1481-83 (11th Cir.1989) (deciding that a defendant waives his right to raise in second appeal issues not raised in first appeal).

United States v. Garzan, 223 Fed. Appx 899 (11th Cir. 2007).

CONCLUSION

This Administration’s animus toward General Noriega has blinded itself to the danger facing our men and women around the world. When the government initially refused to recognize that General Noriega was a prisoner of war, we warned that the government was placing our own soldiers at risk. Since that time American service personnel have found themselves in harms way in at least four

conflicts: Iraq¹, Kosovo², Afghanistan, and Iraq again. Denying General Noriega the full protections of the Geneva Convention is simply not in our national interests. If our government does not recognize this, this Court must step in to enforce the Geneva Convention, which is the law of the land.

WHEREFORE, General Noriega respectfully requests that this Court:

(i) Order the United States to immediately repatriate General Noriega to the Republic of Panama upon completion of his sentence on September 9, 2007 pursuant to the mandates of the Geneva Convention.

(ii) Order the United States to forthwith provide to General Noriega a plan for his repatriation to Panama pursuant to Article 118, para. 2.

(iii) Order Magistrate Judge William Turnoff to immediately cease and desist with any further litigation on the government of France's request for General Noriega's extradition (case no. 07-2183MC UNA) in violation of the Geneva Convention.

¹ At the conclusion of Operation Desert Storm, twelve United States military personnel were repatriated.

² On March 31, 1999, Yugoslav forces captured three U.S. soldiers from 1st Infantry Division, which had been part of the United Nations Preventive Deployment Force (UNPREDEP) in Macedonia. The soldiers' release was ultimately secured as a result of the intervention of various religious leaders.

2601 S. Bayshore Drive

Suite 1400

Miami, FL 33133

By: /s/ Frank A. Rubino

FRANK A. RUBINO, ESQ.

Fla. Bar # 209171

110 SE 6th Street

Suite 1970

Fort Lauderdale, FL 33301

By: /s/ Jon May

JON MAY, ESQ.

Fla. Bar #276571

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice has been filed electronically with the Clerk using CM/ECF and furnished by electronic delivery this 23rd day of July, 2007 to: Michael P. Sullivan, Assistant U.S. Attorney, 99 NE 1st Street, Miami, FL and to all other counsel of record as listed by the clerk.

By: /s/ Jon May

JON MAY, ESQ.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

07-21830

CASE NO. _____

MAGISTRATE JUDGE
TURNOFF

MC UNA

IN THE MATTER OF THE EXTRADITION
OF
MANUEL ANTONIO NORIEGA

FILED by _____ D.C. DKTG
JUL 17 2007
CLARENCE MADDOX CLERK U.S. DIST. CT. S.D. OF FLA. - MIAMI

COMPLAINT

I, Michael P. Sullivan, being duly sworn, depose and state that I am an Assistant United States Attorney for the Southern District of Florida and act for and on behalf of the Government of France pursuant to the Extradition Treaty between the United States of America and France entered into force on February 1, 2002, (the Treaty) with respect to Manuel Antonio Noriega ("Noriega").

In accordance with Title 18, United States Code, Section 3184, I charge, on information and belief, as follows:

1. Noriega is duly and legally charged with having committed, in the jurisdiction of France, the crime of engaging in financial transactions with the proceeds of illegal drug trafficking, in violation of section 415 of the French Customs Code (Law 88-1149 of December 23, 1988, promulgated on December 28, 1988).

Article 2 of the Treaty provides that a charge for such offense shall serve as the basis for the extradition.

2. A warrant for Noriega's arrest was issued on July 1, 1999, by the High Court of Paris, France.

3. According to an investigation by French authorities, Noriega is wanted based on the following facts:

Noriega engaged in financial transactions in France with the proceeds of illegal drug trafficking activity. During the 1970s and 1980s, Noriega served as chief of Panama's military intelligence and later as commander of the Panamanian Defense Forces. He was arrested by U.S.

forces in Panama in January 1990. Noriega was convicted on April 9, 1992 in the Southern District of Florida of drug trafficking activities in connection the trafficking of drugs from Colombia to the United States.

Noriega's trial in the United States showed that in the 1980s, he came into contact with members of the Medellin, Colombia drug cartel, who were looking for ways to ship cocaine from Colombia through Panama into the United States and to launder the proceeds of drug sales. Noriega and the Medellin cartel reached a series of illicit agreements, whereby, with Noriega's assistance, the drug cartel transported significant quantities of cocaine through Panama to the United States from 1982 through 1985. They also used Noriega's protection to transport ether for cocaine processing and cash proceeds from their drug transactions to or through Panama. The Medellin cartel directed large cash payments to Noriega, which he deposited in banks in Panama and Europe.

The evidence against Noriega on which the French have relied is taken in part from the testimony at his U.S. trial and in part from investigation in France. Several witnesses at Noriega's trial in the United States testified about the payments that Noriega received from the Medellin cartel, which were the proceeds of drug trafficking. These witnesses include Steven Kalish, Ricardo Bilonick, Floyd Carlton and Carlos Lehder. Steven Kalish, a marijuana dealer, testified that with Noriega's assistance, he transported marijuana through Panama to the United States, and that he laundered millions of dollars in drug proceeds through Panamanian banks, including the Bank of Credit and Commerce International (BCCI) in Panama. In 1983 and 1984, Kalish paid Noriega \$2.5 million for his assistance in his illegal activities. Ricardo Bilonick also testified about the role that Noriega played in assuring the safe passage of numerous flights between Panama and Miami, in which the cargo was either cocaine destined for the United States or the cash proceeds of drug sales sent to Panama. In 19 such flights, some 20 tons of cocaine was transported, and Noriega received a fee of \$500,000 per flight. Up to \$60 million in cash proceeds of drug trafficking was deposited in three different Panamanian banks. Floyd Carlton, a pilot who worked for Noriega, and Carlos Lehder, a member of the Medellin cartel, both confirmed Noriega's involvement in drug trafficking

and the millions Noriega received in payment for his assistance.

The manager of the BCCI in Panama, Amjad Awan, who was convicted along with several other conspirators of money laundering in the Middle District of Florida (see United States v. Awan, 966 F.2d 1415 (11th Cir. 1992)), admitted that Noriega opened secret accounts at BCCI, ostensibly for funds of the Panamanian National Guard. In fact, however, the accounts were controlled by Noriega and for his benefit. He made large cash deposits on a regular basis. Starting in January 1982 and continuing into 1988, Noriega made deposits into his accounts at BCCI in Panama about every other month, in amounts ranging from \$100,000 to more than \$3 million. A financial analyst in the U.S. trial of Noriega concluded that Noriega's Panama-based accounts received total deposits of \$19 million.

Starting in 1983, money was transferred from Noriega's BCCI accounts in Panama to BCCI branches in London, where accounts were opened in the names of Noriega and various of his family members. Money was then transferred from London to BCCI branches or other banks in Luxembourg, Switzerland, France, Germany and Austria. At one point, several million dollars that had been transferred to BCCI in Luxembourg was sent to London to an account opened by Capcom Corporation. Capcom Corporation was run by a person named Akbar, who had agreed to receive funds owned by Noriega in order to keep their true owner secret. Numerous transfers of funds were made, often through the BCCI network of branches, so that it was difficult to trace the source of the funds.

Investigation in France has identified a number of transactions involving accounts in France attributable to Noriega. The transactions that form the basis of the French prosecution occurred between December 28, 1988 and December 22, 1989. These transactions involve a total of approximately 15 million French francs that were transferred from Panama via the United Kingdom, the United States, Germany, Switzerland, Austria, Luxembourg, and other countries to bank accounts in France. The bank accounts in France include accounts in Paris and Marseille at Credit Industriel & Commercial (CIC), Banque Nationale de Paris (BNP), Credit Lyonnais, Banco del Brazil, and

BCCI. They were opened in the names of Noriega, his family members and some Panamanian diplomats in France. [Unlawful transactions involving another \$20 million French francs in drug proceeds are attributable to Mrs. Felicidad Noriega, the wife of Manuel Noriega].

In addition, Noriega's funds emanating from illegal drug trafficking were used to purchase three apartments in Paris. In October 1982, an apartment at 228 rue de l'Universite was purchased for 1,810,000 francs by a Panamanian corporation, Gaswitt Investment, run by Gaspar Wittgreen. The payment was made with three checks drawn on the Banque Nationale de Paris (BNP) in Paris, checks that were sent by Wittgreen acting on behalf of Felicidad Noriega. In 1983, Felicidad Noriega purchased an apartment at 55/63 quai de Grenelle, Tour Totem, for 2.4 million French francs. In December 1984, an apartment at 91/93 quai d'Orsay was purchased by another Panama-based company, Capricorno International, represented by Wittgreen. The purchase was financed by a loan of \$400,000, which was personally guaranteed by Noriega. Three names were listed as occupants of the apartment: Capricorno S.A., Wittgreen, and Noriega.

Noriega was convicted in absentia in France on July 1, 1999 and sentenced to 10 years of imprisonment and a fine of 75 million French francs. The reason that the French prosecution and conviction are based on the financial transactions that took place from December 28, 1988 to December 22, 1989, is that the French law criminalizing this type of activity, section 415 of the Customs Code, took effect on December 28, 1988. The French extradition request includes an assurance that Noriega is entitled to a new trial once he is in France.

4. Noriega, who is within the jurisdiction of this Court, is currently incarcerated in a federal prison in Miami, Florida, serving a sentence imposed in 1992 for a drug-related conviction in the United States District Court for the Southern District of Florida.

5. Noriega is a citizen of Panama, male, born on February 11, 1938 in Darien, Panama.

6. In a request attached hereto, the government of France has formally requested the extradition of Noriega to France.

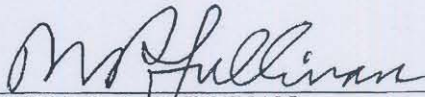
Whereupon, your complainant requests:

a. that a warrant be issued pursuant to Title 18, United States Code, Section 3184, for Noriega's arrest;

b. that Noriega be brought before this Court and the evidence of criminality be heard;

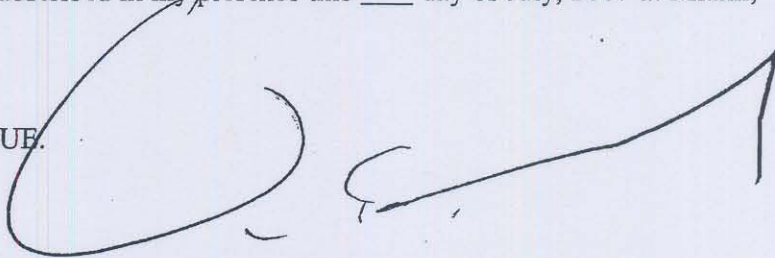
c. that if, on such hearing, the Court deems the evidence sufficient under the provisions of the Treaty to sustain the charges, the Court certify the same to the Secretary of State in order that a warrant may be issued for Noriega's surrender to the appropriate authorities of France according to the Treaty; and

d. that this Court take such other actions as may be required under the provisions of the Treaty and the laws of the United States to meet the obligations of the United States under the Treaty.


MICHAEL P. SULLIVAN
ASSISTANT UNITED STATES ATTORNEY

Sworn to before me and subscribed in my presence this 17 day of July, 2007 at Miami, Florida

AND A WARRANT SHALL ISSUE.


WILLIAM C. TURNOFF
UNITED STATES MAGISTRATE JUDGE

cc: Michael P. Sullivan, AUSA
U.S. Marshal Service

Certified to be a true and correct copy of the document on file	
Clarence Maddox, Clerk, U.S. District Court Southern District of Florida	
By <u>Steven C. Kalyanani</u>	Clerk
Date <u>JUL 17 2007</u>	