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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE MATTER OF THE REQUESTED
EXTRADITION OF KEVIN JOHN
BARRY ARTT

Case No. 92-xr-00151-CAL (JD)

ORDER RE UNSEALING

In 1992, the United States, at the request of the United Kingdom, initiated extradition proceedings in this District against Kevin John Barry Artt and other individuals who had escaped from a prison in Northern Ireland after convictions for acts of violence. The United Kingdom eventually dropped the extradition request, and Artt appears to have remained in the United States. The extradition case was presided over by District Judge Charles Legge, who retired from the bench in 2001.

Dan Lawton was an attorney who represented Artt in immigration matters in the 1990s. In February 2024, Lawton filed a request to unseal and obtain documents submitted by the United States in 1995 for *in camera* review by Judge Legge in connection with a discovery dispute in the extradition case. *See* Dkt. Nos. 517 (motion) and 523 (amended motion). The documents concerned an investigation by the Royal Ulster Constabulary (RUC) into the shooting of Peter Heathwood in Belfast, Northern Ireland, in 1979. Based on personal research, Lawton believes that Heathwood was shot by “mistaken identity” when “Loyalist paramilitaries” broke into his house to “assassinate” Artt, who rented a room there. Dkt. No. 523 at 8. Lawton wants access to the RUC investigation documents because he thinks they will evidence a Loyalist plot against Artt and “regards Mr. Heathwood as a friend who deserves to know why what happened to him,

1 happened to him.” *Id.* at 13. Lawton says that he “withdrew completely” from representation of
2 Artt in 2000, *id.* at 8, and that he does not represent Heathwood, *id.* at 13.

3 The United States opposed Lawton’s request. *See* Dkt. No. 527. The United States
4 represents that the government of Northern Ireland also opposes the request. Dkt. No. 527-1 at
5 ¶ 11.¹ The United States represents that Artt does not object to allowing access to the
6 investigation documents, but asks that other materials about “stops, encounters, and sightings” of
7 Artt by United Kingdom law enforcement personnel not be disclosed. *Id.* ¶ 10.

8 Lawton’s request reaches back in time to the Troubles in Northern Ireland. In 1983, Artt
9 and several other individuals escaped from a prison in Belfast and made their way to San
10 Francisco. Artt was a Catholic Republican and opposed extradition under Article 3(a) of the
11 Supplementary Treaty of extradition between the United Kingdom and the United States, which
12 stated that “extradition shall not occur” if it would result in punishment “by reason of [the
13 respondent’s] race, religion, nationality or political opinions....” *See Matter of Artt*, 972 F. Supp.
14 1253, 1256 (N.D. Cal. 1997), *rev’d sub nom. Matter of Requested Extradition of Artt*, 158 F.3d
15 462 (9th Cir. 1998), *reh’g granted, opinion withdrawn sub nom. In re Requested Extradition of*
16 *Artt*, 183 F.3d 944 (9th Cir. 1999). Judge Legge ultimately declined to apply Article 3(a) and
17 certified Artt for extradition. *Matter of Artt*, 972 F. Supp. at 1257. While this decision was on
18 appeal, the United Kingdom withdrew the extradition request.

19 A number of discovery disputes arose during the extradition proceedings. One of the
20 disputes involved Artt’s request for the RUC investigation documents, which was argued to Judge
21 Legge at a hearing on December 18, 1995. *See* Dkt. No. 123 (Hr. Tr.). Artt wanted the RUC
22 documents as possible evidence that he had been targeted by government-related forces for being
23 Catholic, which Artt believed would support an Article 3(a) defense to extradition on grounds of
24 punishment for his religious and political beliefs. *Id.* at 99:20-100:8. The United States said that
25 nothing in the RUC documents indicated that Artt was a target, and so the documents were

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28 ¹ Lawton objects to this representation on hearsay grounds. Dkt. No. 528-4 at 2-3. The objection
is overruled. The Federal Rules of Evidence do not apply in extradition proceedings, which is the
context of Lawton’s request. Fed. R. Evid. 1101(d)(3).

1 irrelevant to the extradition case, among other objections to producing them. The United States
2 proposed that Judge Legge review them *in camera*, *id.* at 112:3-21, and filed the RUC documents
3 under seal. Dkt. No. 128.

4 After that, the whole thing appears to have faded away. The docket does not show that
5 Judge Legge did anything with the documents after they were presented for his review. The
6 docket also does not indicate that Judge Legge relied on the contents of the RUC documents in
7 any way for an order, decision, or judgment in the case. The case moved on without any further
8 attention to the RUC documents.

9 Lawton's request is denied for several straightforward reasons. To start, the procedural
10 posture of the request is doubtful. Lawton cites to District Civil Local Rule 79-5 and Criminal
11 Local Rule 56-1 as the grounds of the request. Dkt. No. 523 at 2. The rules state the general
12 principle of public access to court records and, in the case of Civil Local Rule 79-5(g)(3),
13 acknowledge the possibility of a non-party like Lawton filing a request to unseal a document.
14 Even so, the applicability of the rules here is subject to serious question. This case was an
15 extradition action under an international treaty, and "the rules of ... civil procedure that govern
16 federal court proceedings heard under the authority of Article III of the United States Constitution
17 do not apply in extradition hearings that are conducted under the authority of a treaty enacted
18 pursuant to Article II." *Requested Extradition of Smyth*, 61 F.3d 711, 720-21 (9th Cir. 1995).

19 Although it is certainly true that the public's right to court filings is a bedrock principle in
20 our federal judicial system, *see In re Google Play Store Antitrust Litig.*, 556 F. Supp. 3d 1106,
21 1107 (N.D. Cal. 2021), access to documents submitted for *in camera* review for a discovery
22 dispute are a different matter. Judge Legge had the RUC documents in chambers to review for
23 discovery purposes. They were not used in a dispositive order, and never came up again in the
24 case. In these circumstances, access is not warranted. *See, e.g., Phillips ex rel. Ests. of Byrd v.*
25 *Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002) (no right of access to discovery attached
26 to non-dispositive motion); *Times Mirror Co. v. United States*, 873 F.2d 1210, 1214 (9th Cir.
27 1989) (no right of access to *ex parte* warrant application before indictment); *States v. Wolfson*, 55
28 F.3d 58, 60 (2d Cir. 1995) (no right of access to "documents that were submitted to a court *in*

United States District Court
Northern District of California

1 camera as part of a discovery dispute and were held not discoverable,” 27 years later); *United*
2 *States v. Rodriguez*, 390 Fed. App’x 652, 653-54 (9th Cir. 2010) (unpublished) (district court did
3 not err by declining to unseal documents that the court reviewed for “materiality”).


4 There is also the fact that extradition “is a diplomatic process that is initiated by a request
5 from the nation seeking extradition directly to the Department of State.” *Prasoprat v. Benov*, 421
6 F.3d 1009, 1012 (9th Cir. 2005). If the State Department determines the request is within the
7 scope of an extradition treaty, the U.S. Attorney will file a complaint in the relevant judicial
8 district for an arrest warrant of the individual to be extradited. *Id.* (citation omitted). The resulting
9 case does not determine the guilt or innocence of an alleged fugitive such as Artt, but rather only:
10 (1) “whether the crime of which the person is accused . . . falls within the terms of the extradition
11 treaty”; and (2) “whether there is probable cause to believe the person committed the crime
12 charged.” *Santos v. Thomas*, 830 F.3d 987, 991 (9th Cir. 2016).

13 The RUC documents were provided by Northern Ireland to Judge Legge in this context,
14 and the Court is advised that Northern Ireland objects to providing them to Lawton. Principles of
15 international comity weigh against access. It may be that Heathwood cannot obtain the RUC
16 documents in the United Kingdom, as Lawton suggests, Dkt. No. 524 ¶ 6, but a United States
17 court is not a forum for an end run around another nation’s laws.

18 As a closing observation, the Court independently reviewed the RUC documents in
19 connection with Lawton’s request. Nothing in the documents indicates that Artt was the intended
20 target of the shooting in Heathwood’s home in 1979.

21 **IT IS SO ORDERED.**

22 Dated: July 17, 2024

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25 JAMES DONATO
26 United States District Judge
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