**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| NERINGA VENCKIENE, | ) | |
| | ) | |
| Petitioner, | ) | |
| | ) | |
| -v- | ) | No. |
| | ) | |
| UNITED STATES OF AMERICA | ) | |
| | ) | |
| and | ) | |
| | ) | |
| C.R. Nicklin, in his Official Capacity as Warden of the Metropolitan Correctional Center, Chicago, Illinois, | ) | |
| | ) | |
| Respondents. | ) | |

**PETITION FOR A WRIT OF HABEAS CORPUS**

NOW COMES the Petitioner, NERINGA VENCKIENE, by and through her attorneys, MONICO & SPEVACK, pursuant to 28 U.S.C. § 2241, and respectfully petitions the Court for a Writ of Habeas Corpus to prevent her extradition to Lithuania. On February 21, 2018, the Honorable Daniel Martin certified an extradition order, *see In the Matter of the Extradition of Neringa Venckiene,* 18 CR 56-1 (N.D.Il.) (Ex. A), and on April 23, 2018, the United States Department of State without explanation authorized Ms. Venckiene's surrender pursuant to the Extradition Treaty between the United States and Lithuania. (Ex. B). In the meantime Petitioner has pending an Asylum Request that is not scheduled for a hearing until July 2019.

Ms. Venckiene has a reasonable fear for her physical safety and life if the order of the Secretary of State is carried out. In that regard this petition also raises an issue with

respect to Petitioner's possible treatment by authorities in Lithuania should she be sent there. Accordingly, this Petition for Habeas Corpus asks the Court to stay her extradition until this Petition for Habeas Corpus can be decided and until the Asylum Request can be heard (if necessary). In addition, Petitioner asks the Court to vacate the certification order entered by Magistrate Judge Martin and affirmed by the Department of State. The bases for these requests are as follows.

## INTRODUCTION

1. On February 21, 2018, the Honorable Daniel Martin, Magistrate Judge, held a hearing in the matter of the extradition of petitioner, Neringa Venckiene ("Venckiene"). On February 23, 2018, Magistrate Judge Martin found he had jurisdiction over the matter and certified the extradition of Ms. Venckiene to the Secretary of State. Magistrate Judge Martin ruled that Ms. Venckiene had been charged with a crime for which a treaty existed between the United States and Lithuania and that Lithuania's warrants and documents seeking Ms. Venckiene's surrender were properly and legally authenticated. The Court also found probable cause as to two of the four alleged offenses charged by Lithuania, *to wit*: "hindering the activities of a judge, prosecutor, pre-trial investigation officer, lawyer or bailiff," and "resistance against a civil servant or a person performing the functions of public administration for which extradition is sought." (Ex. A). The Court found probable cause did not exist with respect to two additional offenses, respectively "complicity in the commission of a criminal act" and "unlawful collection of information about a person's private life." (Ex. A).

3. Magistrate Judge Martin certified his Order and sent all the documents he had reviewed to the Secretary of State. Ms. Venckiene provided documents on her own behalf and asked the Secretary to decline extradition based on the blatantly political nature of the request and that Ms. Venckiene's life would be in danger were she returned. On April 23, 2018, the United States Department of State without explanation authorized Ms. Venckiene's surrender. (Ex. B).

**JURISDICTION**

4. This Court has jurisdiction pursuant to 28 U.S.C. § 2241. *See also Prasoptat v. Benov*, 421 F.3d 1009, 1013 (9th Cir. 2015) (challenge to Magistrate Judge's extradition order may only be made through a petition for habeas corpus). *See also Caplan v. Vokes*, 649 F.3d 1336, 1340 (9th Cir. 1981). Although Petitioner could have challenged Magistrate Judge Martin's certification ruling through a petition for a writ of habeas corpus immediately, a writ may be sought at any point in the process because the order is not considered "final" until the Secretary has rendered its decision. Only then has there been an actual final ruling. *See, e.g., De La Rosa v. Daniels,* 2015 U.S. Dist. LEXIS 175982 (E.D.Tx.) (entertaining challenge to Magistrate Judge's certification order after Secretary ordered petitioner's extradition); *Prasoprat v. Benov,* 622 F.Supp.2d 980, 983 (C.D.Cal. 2009) (refiled habeas petitioner considered by court after Secretary of State certified extradition). *Cf. Hoxha v. Levi,* 465 F.3d 554, 560 (9th Cir. 2006) (challenge to extradition under Foreign Affairs Reform and Restructuring Act (FARR) not ripe until Secretary has ruled). *See also Prasoprat v. Benov,* 622 F.Supp.2d at 985, *quoting Braxland v.*

*Comm. of Pub. Prosecutions,* 323 F.3d 1198, 2018 (9th Cir. 2003) ("[P]otential abuses in the requesting country rising to the level of torture are reviewable by American courts[.]").

**STATEMENT OF FACTS**

5. Ms. Venckiene, a Lithuanian national, received her law degree from Vilnius University in 1995. From 1999 to 2012 she worked as a Judge, first on the Kaunas District Court and then on the Kaunas Regional Court. Judge Venckiene eventually served as a Representative of the "Way of Courage" political party in the Lithuanian Parliament (Seimas).

6. Judge Venckiene's brother, Drasius Kedys ("Kedys"), had a child out of wedlock with Laimute Stankunaite ("Stankunaite"). A custody agreement dated March 19, 2008, gave Kedys full custody but granted Stankunaite visitation rights on weekends.

7. In November 2008, the then-four-year-old child reported that during visitations at Stankunaite's home she had been sexually molested by Andrius Usas ("Usas"), an Assistant to the Speaker of the Seimas. She later added Jonas Furmanavicius ("Furnmanavicius"), a Kaunas Regional Court Judge, Vaidas Milinis ("Milinis"), President of the Kaunas Regional Court, and a fourth individual identified only as Aidas (last name unknown). A court psychiatrist who examined the child determined her allegations of abuse were genuine.

8. Judge Venckiene and Kedys thereupon began filing complaints with the Prosecutor General's Office, which were largely ignored. Judge Venckiene and Kedys accused the Lithuanian law enforcement system of investigatory negligence and

corruption. Stankunaite was never indicted despite a ruling on October 6, 2009 by the Vilnius District Court concluding sufficient evidence existed to do so. Given the ranking of the individuals accused, the matter drew national interest throughout Lithuania.

9. On October 5, 2009, Furmanavicius and Stankunaite's sister, Violeta Naurseviciene, were shot and killed. On the same day Judge Venckiene's brother Kedys disappeared. On October 8, 2009, a court awarded Judge Venckiene full guardianship of her niece. On April 17, 2010, Kedys' dead body was discovered on the bank of a lagoon. A government investigation declared his death to have been accidental (alcohol induced asphyxiation caused by his own vomit) but an independent criminologist concluded the death was not accidental and there was no alcohol found in his system. His funeral drew thousands of Lithuanian citizens.

10. The highly publicized pedophilia case and Kedys' death ignited a grassroots political movement, which blossomed into an anti-graft political party they called the "Way of Courage." Its members created Way of Courage to oppose political corruption and it sought justice for Kedys and the child. Judge Venckiene became the party's voice and Kedys its martyr. As part of their activities the group allegedly conducted surveillance of the suspected pedophiles in order to gather information against them.

11. On June 13, 2010, Usas was also found dead. On November 17, 2010, the Panevesyz District Court discontinued investigating the pedophilia allegations and steps were taken to repair Usas' reputation. An infuriated Judge Venckiene publicly

denounced the Lithuanian government's handling of the investigation and pledged to journalists that this would not be the end of the matter, that she would not be silenced, and vowed that everything will be exposed eventually. Newspapers published her most incendiary excerpts leading the government to initiate a pre-trial investigation against her for "humiliating" the court.

12. On January 12, 2011, having found no evidence to suggest Judge Venckiene had violated any laws, the authorities terminated the investigation. The statute of limitations on any possible charges expired. On February 24, 2011, however, the head of the Judicial Council petitioned to extend the already expired limitations period. The petition was granted.

13. Nonetheless, proceedings against Judge Venckiene laid dormant for over a year. During that time Judge Venckiene remained her niece's legal guardian. Then, on December 16, 2011, the Kedainai District Court ordered the child returned to the home of her mother (Stankunaite), the person upon whose watch the alleged molestation had been allowed to occur. The child did not want to live with her mother due to fears of further sexual molestation. Judge Venckiene made several efforts to orchestrate a transfer but these attempts failed because the child simply refused to go. Public outcry and protests ensued.

14. On March 22, 2012, the Kedainiai District Court ruled that the authorities could use force to effectuate the transfer, but not against the person of the child and only to remove any obstacles in the way of enforcement of the court order. On March 23, 2012, law enforcement arrived where the child was staying at a time Judge

Venckiene was not present. During an attempted transfer, officers physically assaulted Judge Venckiene's mother-in-law and aunt and physically harmed the child. The transfer failed. The Lithuanian Chief Justice publicly branded Judge Venckiene an "abscess in the legal system and an abscess in the political system" and "the trouble of the whole state."

15. On May 17, 2012, over 200 police officers descended on the home to enforce the December 16, 2011 order. As many as 100 protesters gathered outside, many of whom ended up being detained. Officers disabled cameras that had been installed inside the home to record the transfer. Clinging to Judge Venckiene's neck the child refused to let go and officers had to forcibly disengage her, injuring Judge Venckiene's right shoulder and petrifying the child in the process. The Lithuanian government alleged that Judge Venckiene kicked Stankunaite and punched an officer.

16. The May 17, 2012, incident had been videotaped in part and became a national obsession, precipitating even greater public outrage. Judge Venckiene continued to be outspoken. She published *Way of Courage*, a book criticizing the judicial system and its negligent investigation of Kedys' case and the molestation allegations.

17. On May 23, 2012, citing Judge Venckiene's supposed incendiary remarks of November 17, 2010 and her alleged "interference" with the transfer on May 17, 2012, the Prosecutor General asked parliament to revoke Judge Venkiene's judicial immunity, which Parliament did on June 26, 2012. Ms. Venckiene resigned her judgeship the next day, citing among other things frustration she had experienced inside the courts and the negligent handling of her niece's pedophilia case. A Public Commission comprising of

law professors and drafters of the Lithuanian Constitution issued a report that concluded, among other things, that the police unlawfully violated Ms. Venckiene's judicial immunity when they forcibly removed her niece and that any criminal prosecution of Ms. Venckiene was baseless.

18. Having resigned her judgeship, Ms. Venckiene did not abandon her political activities. In fact, they increased. Under the Way of Courage political banner she ran in the October 2012 parliamentary election. Way of Courage won seven (7) seats and elected Ms. Venckiene to act as the Party Chair.

19. On December 28, 2012, the Prosecutor General petitioned to remove Ms. Venckiene's parliamentary immunity so she could be arrested on the charges relating to the transfer of her niece and for "humiliating" the court. The charges were almost identical to the charges brought on May 23, 2012: humiliating the court on November 17, 2010; failing to comply with a court order to transfer her niece to her niece's mother; violating her duty as her niece's guardian by causing the child psychological stress; and on May 17, 2012 refusing to allow police into the home and physically assaulting an officer. The Prosecutor General added a fresh charge of assaulting Laimute Stankunaite. On April 9, 2013, Judge Venckiene's parliamentary immunity was removed. Fearing for her personal safety in Lithuania, shortly thereafter Ms. Venckiene came to the United States.

20. All this happened over five (5) years ago. Since then Ms. Venckiene purchased a home in Crystal Lake where she has lived openly and without incident with her now 18-year-old son owning and operating a neighborhood store. Numerous

citizens and observers have come forward to confirm that Ms. Venckiene's life will be at risk if she is returned to Lithuania, which is the subject of an asylum petition that has been pending for five years and is set for hearing before the immigration court (EOIR) on July 22, 2019.

**EXTRADITION PROCEEDINGS**

21. On January 26, 2018, the United States Government filed a complaint for extradition. The request for extradition listed the following Lithuanian offenses:

(a) complicity in the commission of a criminal act[1];

(b) unlawful collection of information about a person's private life[2];

(c) hindering the activities of a judge, prosecutor, pre-trial investigation officer, lawyer, or bailiff[3]; and

(d) resistance against a civil servant or a person performing the functions of public administration.[4]

22. On February 21, 2018, Magistrate Judge Daniel Martin held a hearing on the Government's extradition request. At the conclusion of the hearing Magistrate Judge Martin made the following findings:

(a) As to the offense of "complicity in the commission of a criminal act," a finding of no probable cause;

[1] In violation of Lithuania Criminal Code Article 25.
[2] In violation of Lithuania Criminal Code Article 167.
[3] In violation of Lithuania Criminal Code Article 231.
[4] In violation of Lithuania Criminal Code Article 286.

(b) As to the offense of "unlawful collection of information about a person' a finding of no probable cause;

(c) As to the offense of "hindering the activities of a judge, prosecutor, pre-trial investigation officer, lawyer, or bailiff," a finding of probable cause;

(d) As to the offense of "resistance against a civil servant or a person performing the functions of public administration for which extradition is sought," a finding of probable cause.

23. Magistrate Judge Martin certified his order and forwarded it along with the pleadings to the Secretary of State on February 23, 2018. On March 5, 2018, Petitioner began submitting documents to the Secretary of State asking the Office to exercise its discretion not to extradite her. Petitioner argued principally that the extradition request was politically motivated and thus fell under the "political offense" exception to the Lithuanian/United States treaty. (Ex. C). Ms. Venckiene argued Lithuania wanted her returned so it could punish her for participating in a political uprising and speaking out against high ranking officials accused of pedophilia and against a judicial system and government that countenanced the behavior. As they said, Ms. Venckiene had made herself into an abscess in the legal system and an abscess in the political system and the trouble of the whole state.

24. Despite Ms. Venckiene's fears that signing her over to Lithuania was the same as signing a death warrant, on April 23, 2018, the Secretary of State rejected her plea and authorized her surrender pursuant to the Lithuania/United States treaty. (Ex. B). The Department provided no explanation.

**PETITION FOR HABEAS CORPUS**

25. The process of extradition is governed by the federal extradition statute, 18 U.S.C. § 3181, *et seq.*, and the Extradition Treaty between the United States of America and the Republic of Lithuania. Habeas review of the Magistrate Judge's order is limited to determining 1) whether the extradition court had jurisdiction to conduct the proceedings and jurisdiction over the individual sought; 2) whether the extradition treaty was in force and the crime fell within the treaty's terms; 3) whether there was probable cause that the individual committed the crime; and 4) whether the crime fell within the political offense exception. *Prasoprat v. Benov,* 421 F.3d at 1013. The question of whether the offense comes within the treaty is a question of law reviewed *de novo*. *Quinn v. Robinson,* 783 F.2d 776, 791 (9th Cir. 1986). Petitioner did not contest the first two questions before the Magistrate Judge.

26. Petitioner asks the Court to prevent her extradition to Lithuania on the last two grounds. First, she submits that Lithuania is seeking to extradite her for purely political purposes. Second, she submits the Magistrate Judge's decision was in error because there was less than probable cause that she committed offenses that would fall under the treaty. Finally, she submits that the decision of the Secretary of State denied her any process at all because it was based on unknown, rudderless principles, as is made clear by the fact that the Secretary provided absolutely no explanation as to how the Office reached the conclusion it did.

**A. The Political Offense Exception Applies in the Instant Matter to Deny Extradition, Such That Her Return to Lithuania Places Her In Reasonable Fear for Her Physical Safety**

27. The Extradition Treaty between the United States and Lithuania provides that "Extradition shall not be granted if the offense for which extradition is requested is a political offense." *See* Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Lithuania, Art. 2, ¶ 1. The political offense exception forbids countries from extraditing people accused of offenses that are political in nature. It applies when the requisition for surrender has been made with a view to try and punish someone for an offense of a political character. *See Neziroviv v. Holt,* 990 F.Supp. 606, 619 (W.D.Va. 2014). The Treaty itself does not define what constitutes a political offense.

28. In *Ordinola v. Hackman,* 478 F.3d 588 (4th Cir. 2007), the Fourth Circuit explored the political offense exception and concluded that two categories existed: "pure" and "relative" political offenses. "Pure" political offenses include offenses such as treason, sedition and espionage. "Relative" political offenses are common crimes "so intertwined with a political act that the offense itself becomes a political one." *Id.* at 596.

29. While "pure" political offenses are easy to identify, determining whether a common offense is "relatively" political requires close attention to the facts at issue. For "relative" political offenses the question to be answered is whether there was some sort of political disturbance in the requesting country at the time of the alleged offense and whether the alleged offense was incidental to or in furtherance of the disturbance. *Ordinola v. Hackman,* 478 F.3d at 596-97, *and also citing Vo v. Benov,* 447 F.3d 1235, 1241

(9th Cir. 2006). Thus, the court must apply two general prerequisites: 1) an uprising or some other violent political disturbance; and 2) an act committed incidental to the occurrence. *Pajkanovic v. United States,* 353 Fed. Appx. 183, 185 (11th Cir. 2009), *citing Escobedo v. United States,* 623 F.2d 1098, 1104 (5th Cir. 1980).

30. The "uprising" component applies when a certain level of violence exists and when those engaged in that violence are seeking to accomplish a particular objective. *Singh,* 170 F.Supp.2d at 982, *citing Quinn v. Robinson*, 783 F.2d 776, 807 (9th Cir. 1986). The "incidental" component applies to "common crimes committed in connection of a political act or common crimes committed for political motives or in a political context." *In re Extradition of Singh,* 170 F.Supp.2d 982, 996 (E.D.Cal. 2001). *See also id., quoting Ornelas v. Ruiz,* 161 U.S. 502, 510 (1896) (the political offense exception exists when "the nexus between the crime and the political act is sufficiently close.").

31. In the instant matter there existed in Lithuania a political uprising and disturbance, an organized protest against the Lithuanian authorities that overflowed into violence. Two people – Jonas Furmanavicius and Stankunaite's sister, Violeta Naurseviciene – were murdered in the street. Two people – Drasius Kedys and Andrius Usas – were found dead under suspicious circumstances. There have been allegations of additional deaths related to the matter as well. Ms. Venckiene was herself injured when police invaded the home in the midst of a politically inspired demonstration where officers violently yanked her niece out of Ms. Venckiene's arms. Others, including the child's mother and a police officer, also have claimed to have been injured. As many as 40 people were arrested.

32. As to whether the offenses were "incidental" to the uprising and disturbance, they clearly were. There is a subjective and objective component to the incidental analysis. The subjective prong looks at the motivation of the actor: it is necessary but not sufficient that the offense was politically motivated. The objective prong requires the actor to show the offense was objectively political because political motivation alone does not turn every alleged action into a political offense. *Nezirovic v. Holt,* 990 F.Supp.2d at 620. *Accord, Ordinola v. Hackman*, 478 F.3d at 600.

33. Ms. Venckiene did not commit the charged offenses to benefit herself. Her actions were in protest against what she and other Lithuanian protestors perceived as government corruption. Her motives were subjectively political. To the extent the allegations of batteries have credibility they would have been committed in the midst of a purely political incident and uprising.

34. Moreover, the offenses were objectively political as well. The offenses for which Lithuania seeks extradition were not directed against innocent civilians but against the Lithuanian government. *See Ordinola v. Hackman,* 478 F.3d at 603. The charges arose in the midst of a violent public demonstration the whole purpose of which was to prevent the Lithuanian government from enforcing what was perceived as an illegal order against the child and removing her from the safety of Venckiene and delivering her into the arms of the person responsible for the abuse. The request to extradite for what amounts to a minor crime committed in the midst of a gale is too far out of proportion to common sense to be anything *other* than an extradition for political purposes. It has all the earmarks of a subterfuge and Ms. Venckiene's treatment should

she be sent back to Lithuania to answer for five and six year old alleged criminal offenses is in and of itself alarming.

35. The prosecuting authorities revoked Ms. Venckiene's judicial immunity, effectively forcing her off the bench. This and related events led to the creation of a new political party that placed delegates in the Lithuanian parliament. When Ms. Venckiene responded by getting herself elected to the parliament her parliamentary immunity was removed. When the statute of limitations had run on the alleged offenses the statute was extended. She has been vilified for exercising her right of free speech. These are not ordinary circumstances. These are political offenses being prosecuted for purely political reasons.

36. Meanwhile, Ms. Venckiene's brother was murdered (authorities claimed it was "suicide" and "accidental drowning," but an expert rebutted those findings). The fact that the extradition papers seek extradition for offenses that barely qualify as misdemeanors in the United States is itself indicative that political issues drive the request. Because of the political nature of the extradition, the court should grant Ms. Venckiene's petition for habeas corpus.

**B. There Is Less than Probable Cause**
**That Petitioner Committed an Extraditable Offense**

37. In order to obtain extradition, the Government must establish probable cause that the petitioner committed the offense being charged in the requesting country. *Quinn v. Robinson,* 783 F.2d at 783. The Government must support the request with sufficient evidence to show the crimes charged are among those listed as extraditable

offenses in the treaty and sufficient justification for the individual's arrest would have existed had he or she committed the crime in the United States. *In the Matter of the Extradition of Sarunas Paberalius*, 2011 U.S.Dist. LEXIS 57907, at *3, (N.D.Ill. May 31, 2011), *citing Eain v. Wilkes*, 641 F.2d 504, 508 (7th Cir. 1931); *In re Extradition of Mazur*, 2007 U.S. Dist. LEXIS 52551, at *1 (N.D. Ill. July 20, 2007). This "dual criminality" is established if the conduct involved in the foreign offense would be criminal under United States federal law, the law of the state in which the hearing is held, or the law of a preponderance of the states. *Paberalius*, 2011 U.S.Dist. LEXIS at *24.

39. To effectuate extradition, "dual criminality" must exist, meaning that the offenses charged in Lithuania must have a comparable equivalent in the United States. Those comparable equivalents must also constitute offenses that American law considers felonies. *See* Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Lithuania, Art. 2, ¶ 1. ("An offense shall be an extraditable offense if it is punishable under the laws of the United States by deprivation of liberty for a period of more than one year of a more severe penalty." In addition, the requesting country must satisfy what American law identifies as "probable cause" to believe the offense described has been committed.

**1. Hindering the Activities of Officers**

40. The first offense for which Magistrate Judge Martin found probable cause was that she hindered the activities of a judge, prosecutor, pre-trial investigation officer, lawyer, or bailiff in violation of Lithuanian Criminal Code, Art. 231, which states in pertinent part:

> 1. A person who, in any manner, hinders a judge, prosecutor, pre-trial investigation officer, lawyer or an officer of the International Criminal Court or of another international judicial institution in performing the duties relating to investigation or hearing of a criminal, civil, administrative case or a case of the international judicial institution or hinders a bailiff in executing a court judgment shall be punished by community service or by a fine, or by restriction of liberty, or by imprisonment for a term of up to two years.
>
> 2. A person commits the act indicated in paragraph 1 of this Article by using violence or another coercion shall be punished by a fine or by arrest or by imprisonment for a term of up to four years.

41. With respect to paragraph 1, the closest analogue in United States law would appear to be 720 ILCS 5/31-3 (Obstructing Service of Process), which is a Class B misdemeanor and therefore not an extraditable offense.[5]

42. Besides lacking in dual criminality, the evidence fails the test of probable cause. The Lithuanian government charged Ms. Venckiene with hindering the activities of a bailiff because there was a court order requiring Ms. Venckiene to turn over her niece, of whom Ms. Venckiene had been granted guardianship, to the child's mother. The child did not want to leave, having been sexually molested by her mother's friends while under her mother's care. The Lithuanian government's request supports this claim where it states that "several attempts have been made to give the daughter over to her, but the guardian N. Venckiene kept deferring the transfer of the child by saying that the child does not want to go to the mother." In other words, the

[5] The Illinois obstruction statute provides:

> Whoever knowingly resists or obstructs the authorized service or execution of any civil or criminal process or order of any court commits a Class B misdemeanor.

Government admits Ms. Venckiene attempted to turn her niece over to her mother, but the girl refused.

43. There were two instances where the Lithuanian government attempted to enforce the court order through the use of force. The first attempt occurred on March 23, 2012. Police officers arrived at the house where the child was staying at that time. The transfer failed when the members of the Kedys family showed resistance. Ms. Venckiene was not present at the time of the attempted transfer. Thus, the evidence with respect to the original failed transfers attempt does not support an allegation that Venckiene hindered the activities of the bailiff.

44. The second, and ultimately successful transfer occurred on May 17, 2012, when 240 police officers arrived at Ms. Venckiene's house. In addition to law enforcement, hundreds of protesters were present, many of whom police forcefully arrested. Law enforcement officials opened the doors to the house with the help of special equipment. During these events the child sat braced on Ms. Venckiene's lap clinging to her neck. Officials wrestled the child away. There was no obstruction on Ms. Venckiene's part.

**2. The Government Did Not Establish Probable Cause for Resistance Against a Civil Servant or a Person Performing the Functions of Public Administration**

31. Magistrate Judge Martin also found probable cause that Ms. Venckiene committed the offense of Resistance against a Civil Servant or a Person Performing the Functions of Public Administration, a violation of Lithuanian Criminal Code, Art. 286.

For the same reasons probable cause did not exist as to "hindering," probable cause did not exist as to resistance.

32. Specifically, Article 286 provides:

> A person who, through the use of physical violence or threatening the immediate use thereof, resists a civil servant or another person performing the functions of public administration shall be punished by community service or by a fine, or by imprisonment for a term of up to three years.

33. Again, from all the evidence presented Ms. Venckiene did not use or threaten physical violence to resist a civil servant or another person performing a function of public administration. The evidence presented Ms. Venckiene as passive. Authorities used force on their own terms – force that the violated the order *not* to use force on the child. Ms. Venckiene was passive. She was the only person actually injured during the transfer. *If* someone was struck by Ms. Venckiene it would have been reflexive and in defense and protection of the child, and not part of an effort to resist the transfer.

34. Thus, even if the political offense exception does not apply, the lack of duality and the failure of probable cause supports granting this petition for habeas corpus and preventing the extradition of Ms. Venckiene.

**C. The Extradition Scheme Violates Due Process**
**To the Extent Review of the Secretary of State is Precluded**

35. While the ultimate decision to extradite rests within the Secretary of State's discretion, a matter such as the instant one exposes the serious due process flaw in the scheme when the Secretary can make that decision without providing any basis for his ruling. In the instant case the Secretary merely absorbed the information

provided and without analysis ruled that extradition was appropriate. There is no indication whether the Secretary agreed or disagreed, no indication as to the standards he applied – assuming he applied any standards at all – to reach his conclusion on such matters as the political offense exception. For these reasons as well this petition should be granted.

## CONCLUSION

For the foregoing reason, Petitioner respectfully requests that her Petition for Habeas Corpus be granted, or in the alternative that the Court stay the extradition proceedings and set this matter down for a hearing on the merits, or grant such other relief the Court deems just.

Respectfully submitted,
NERINGA VENCKIENE

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