

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

P920040-2049

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In the Matter of the Petition of :

RANJIT SINGH GILL and :
SUKHMINDER SINGH SANDHU, :

Petitioners, :

-against - :

ROMOLO J. IMUNDI, United States :
Marshal for the Southern District :
of New York, :

Respondent. :

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DECLARATION
88 Civ. 1530 (RWS)

DECLARATION OF ANDRE M. SURENA

I, Andre M. Surena, pursuant to 28 U.S.C. Section 1746, hereby declare and say as follows:

1. I am the Assistant Legal Adviser for Law Enforcement and Intelligence ("L/LEI") in the Office of the Legal Adviser of the Department of State ("Department"), Washington, D.C. L/LEI, which I supervise, is responsible for legal advice on all law enforcement matters of significance to the Department, including management of the Department's responsibilities in cases of international extradition. I have supervised the management of the Department's extradition responsibilities for five years. I make the following statements based upon my personal knowledge and upon information made available to me in the performance of my official duties.

2. The process of extraditing a fugitive to a foreign country begins when a formal extradition request is presented to the Department by a diplomatic note from the requesting State's Embassy in Washington. Upon receiving the request with supporting documents properly certified by the U.S. Embassy in the requesting State, my office conducts a preliminary review of the materials to determine: (a) whether an extradition treaty is in effect between the requesting State and the United States, (b) whether the request appears to come within the scope of the applicable extradition treaty, and (c) whether, on the face of the supporting documents, there is no clearly-evident defense to extradition (for example, that the offense is manifestly a political offense or that the request is manifestly politically motivated). If the answers to these questions are yes, we transmit the request and documents to the Department of Justice for further review and, if appropriate, the commencement of judicial extradition proceedings.

3. The Department of Justice review, conducted by the Office of International Affairs, is primarily intended to determine whether the supporting documents contain sufficient evidence to meet U.S. evidentiary requirements. If the Department of Justice considers that the documents are in order and the extradition request is well founded, it has the request and documents filed (generally, by a United States Attorney's Office) in the appropriate federal district court along with a

complaint seeking a warrant for the fugitive's arrest. Upon issuance of the arrest warrant, the U.S. Marshals Service apprehends the person sought, if he can be found, and he is held pending the extradition hearing.

4. A hearing on the merits of the extradition request is then held before a United States magistrate or a United States district judge sitting as an extradition magistrate. The Department of Justice, through the Office of the U.S. Attorney, will represent the legal interests of the requesting State at the hearing when it is obliged to do so by treaty or when the requesting State agrees to provide reciprocal representation for U.S. requests presented before its courts. If the extradition judge or magistrate confirms the identity of the fugitive and finds that probable cause exists to believe that he committed the offense charged (or that he has been convicted in the requesting State of the offense) and that no defense to extradition under the applicable treaty has been made, he will issue a certificate of extraditability and order that the fugitive be held in custody pending a final determination on his extradition by the Secretary of State. The judicial record in the case is then certified to the Secretary, pursuant to 18 U.S.C. Section 3184, for a decision by the Secretary on whether to authorize the surrender of the fugitive to the agents of the requesting State. See 18 U.S.C. Section 3186. This authority has been delegated to the Deputy Secretary of State; consequently, either the Secretary or the Deputy Secretary may exercise this authority.

5. The fugitive may seek judicial review of the extradition magistrate's finding by petitioning for a writ of habeas corpus, generally in the district court in which the extradition hearing was held. The district court's decision on the petition for a writ of habeas corpus is appealable to the United States Court of Appeals. Either party may seek review of a Court of Appeals decision by petitioning the Supreme Court for a writ of certiorari. The Secretary will not make a final determination on whether to extradite the fugitive until the completion of the judicial proceedings.

6. Although the Department of Justice generally represents the interests of the requesting State during judicial extradition proceedings, this representation does not in any way constitute a decision by the United States, acting through the Secretary of State, to extradite the individual. The Secretary's decision on whether to extradite is made after final judicial action. However, if the court declines to issue a certificate of extraditability on grounds of lack of probable cause or a treaty-based defense, there will be no occasion for the Secretary to act.

7. Upon the issuance of a certificate of extraditability and completion of judicial proceedings, the Secretary may consider de novo all issues properly raised before the court, and any new arguments either in favor of or against surrender

that are presented to him by any interested party or which have otherwise come to the Department's attention. He may also consider any arguments which, although not new, are relevant and could not have been considered by the court, e.g., whether the extradition request was politically motivated, or whether the fugitive is likely to be denied a fair trial or otherwise persecuted upon his return.

8. The manner in which the Secretary may consider these issues will vary from case to case. Invariably, the Department of State will rely upon its knowledge and expertise of the judicial and penal conditions and practices of the requesting country. It may in some cases make specific inquiries relating to the individual fugitive or it may frame its judgment on the basis of its analysis of more general information.

9. Based on an analysis of such information by all relevant offices within the Department, the Secretary may decide to surrender the fugitive to the requesting State, to deny surrender of the fugitive, or to surrender the fugitive subject to any conditions he deems reasonable or otherwise appropriate.

10. The allegations raised by petitioners during the course of these judicial proceedings relating to their inability to receive a fair trial and claims of persecution upon extradition have not yet been presented to the Secretary for consideration. The Department is aware of the seriousness of the allegations and will consider them prior to the

Secretary's final determination on extradition. In fact, my office has already sought to obtain relevant information from the Department's Country Office for India and from its Bureau of Human Rights and Humanitarian Affairs. Either petitioner is also free to submit to the Secretary in writing any material that he believes is relevant generally to the question of his extradition. If, upon completion of judicial proceedings, the courts have sustained the finding of extraditability, the Department would present all relevant issues to the Secretary for his consideration and decision.

11. The foregoing demonstrates that petitioners' unsupported claims that the Secretary of State cannot and will not consider their allegations of persecution are unfounded.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on 10 December 1989.

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Andre M. Surena