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An ICE official wanted in Minnesota walked free. Is extradition now voluntary?

Seth J. Chandler; The Dallas Morning News

Sep. 1—Last week, Christian Castro walked out of the Cameron County Jail in Brownsville a free man. Castro, an Immigration and Customs Enforcement agent, is charged in Minnesota with four felony counts of assault for shooting a man through the front door of a Minneapolis home. He was not released because anyone found the charges wanting. He was released because Texas law caps detention on another state's warrant at 90 days, and Gov. Greg Abbott spent those 90 days declining to decide whether to honor Minnesota's extradition demand — and a federal court ruled, the day before the clock ran out, that his refusal to decide is something no court can review.

Set aside what you think of Castro, of ICE, or of Minnesota's charges. The question the ruling answers is not whether Castro should be extradited. It is whether any state can be made to answer another state's demand at all. The practical answer, for now, is no.

Here is the logic. The Constitution says a person charged with a crime who is found in another state "shall on demand" be "delivered up." No statute, the court observed, sets a deadline for the asylum state's governor to act. Because there is no deadline, delay is not refusal. Because delay is not refusal, there is nothing to review. A governor who never speaks can never be brought to court.

Standing alone, that reasoning is merely troubling. Combined with the 90-day detention limit, it is a conduit for extinguishing extradition. The state holds the accused for 90 days; the governor outwaits that limit while he investigates; the accused goes free; the demanding state is told its case still isn't ready for court.

The court that announced this ruling never asked the obvious next question: How, exactly, is Minnesota supposed to get Castro back? He is under no travel restriction Minnesota can enforce. If he crosses into Mexico — and Minnesota told the court it fears exactly that — its prosecution is essentially over. And even if he wanders further about Texas or other sanctuary states for people accused of felonies, how does Minnesota get him back? A state's right that expires while it ripens is not a right.

And what, precisely, is Texas investigating? The governor says he needs time to determine whether Castro is truly a "fugitive," because Castro may not have left Minnesota voluntarily — his federal employer ordered him back to Texas. But the trial judge's own opinion, in a footnote, expressed doubt that the distinction matters. The Supreme Court said in 1885 that a fugitive is simply someone who committed acts charged as a crime in one state and is found in another. Courts have applied that rule to

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people removed from a state in custody, against their will. Whether Castro left on orders or on his own initiative, the case law points the same direction: He answers the charges in Minnesota. Texas is taking unlimited time to investigate a simple question whose answer almost certainly does not matter.

The deeper problem is that Texas's position contradicts itself. For 90 days, Texas imprisoned Castro on one legal basis: that he stands accused as a fugitive from Minnesota justice. That is the only authority Texas law gives a sheriff to hold a man on another state's charge. If Abbott genuinely harbored serious doubts that Castro is a fugitive, the honest course was to say so and release him — in June. A state cannot jail a man for three months on a premise its governor simultaneously tells a federal court he doubts. Texas claimed the benefit of the fugitive label for detention and disclaimed it for delivery.

We have seen unenforceable extradition before. In 1861, the Supreme Court held that Ohio's governor was obligated to surrender a free Black man indicted in Kentucky for helping an enslaved woman escape — but that no court could compel him. That rule stood until 1987, when a unanimous Supreme Court discarded it as "the product of another time." Last week's ruling in Brownsville does not question the 1987 decision. It doesn't need to. If courts must wait for a refusal, and refusal is optional, the precedent survives, in practice, as a right no state can ever invoke.

Texans should not cheer even if they believe Castro is the victim of an unjust prosecution motivated by anti-ICE hostility. Texas asks other states for fugitives constantly, and gets them, promptly, because the Constitution commands it. If adopted more broadly, the stall-and-release tactic approved by the court this week will belong to every governor who would rather not return someone to a disliked state — and such governors will not be hard to find. The federal court ruling this week weakens the glue that holds America together by returning us to the pre-Civil War environment in which governors had no enforceable obligation to return those subject to extradition.

Seth J. Chandler is a professor of law at the University of Houston Law Center where he teaches constitutional law. Opinions expressed here are his own and not those of the University of Houston.

---- Index References ----

News Subject: (Assault & Battery (1AS33); Crime (1CR87); Criminal Law (1CR79); Judicial Cases & Rulings (1JU36); Legal (1LE33); Prisons (1PR87); Sexual Misconduct & Crimes (1SE01); Social Issues (1SO05); Violent Crime (1VI27))

Region: (Americas (1AM92); Minnesota (1MI53); North America (1NO39); Texas (1TE14); U.S. Midwest Region (1MI19); U.S. Southwest Region (1SO89); USA (1US73))

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