

the United Kingdom's earlier extradition request for McMullen.<sup>156</sup> McMullen sought to have the new extradition request dismissed on the grounds that it was barred by the statute of limitations, but the U.S. District Court for the Southern District of New York denied his motion, and he was extradited to the United Kingdom.<sup>157</sup> As noted in Chapter III, the United Kingdom sought to extradite Doherty from the United States for his participation in a PIRA killing of a British Army captain. When a court barred Doherty's extradition on political offense exception grounds,<sup>158</sup> the INS deported him to the United Kingdom over his objection and his expressed designation of Ireland as the country to which he wished to be deported. These are good examples of the successful use of deportation as an alternative to extradition.

There are several examples of the United States working with foreign governments to gain the surrender of individuals to the United States through foreign immigration processes.<sup>159</sup> For example, in *United States v. Struckman*, Rian Struckman, a U.S. citizen, fled to Panama to avoid charges of tax evasion and conspiracy to defraud the United States.<sup>160</sup> United States and Panamanian authorities chose to remove Struckman from Panama through various visa revocations and denials rather than through the use of formal extradition procedures.<sup>161</sup> In other situations, the United States has filed an Interpol red notice and subsequently worked with the country where the alleged criminal was present to obtain that criminal's surrender via expulsion proceedings,<sup>162</sup> or obtained surrenders from other countries via their deportation procedures.<sup>163</sup>

156 *In re Extradition of McMullen*, No. 86 Cr. Misc. 1, at 47, 1988 U.S. Dist. LEXIS 7201, at \*1 (S.D.N.Y. June 24, 1988).

157 *See McMullen v. United States*, 989 F.2d 603 (2d Cir. 1993), *cert. denied*, 114 S. Ct. 301 (1993) (reversing the earlier holding that the subsequent extradition treaty is an unlawful bill of attainder as applied to McMullen); *reversing in part*, *McMullen v. United States*, 953 F.2d 761 (2d Cir. 1992) (affirming the district court's holding); *McMullen v. United States*, 769 F. Supp. 1278 (S.D.N.Y. 1991) (holding that the subsequent extradition treaty is an unlawful bill of attainder as applied to McMullen).

158 *In re Doherty*, 599 F. Supp. 270, 277 (S.D.N.Y. 1984).

159 The Council of Europe recently issued a document discussing this process of U.S. "disguised extradition." For the European perspective on this issue, see *Opinion of the European Committee on Crime Problems, Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters on "Disguised Extradition i.e. Surrender by Other Means, Some Ideas to Start a Discussion,"* PC-OC (2011) 09rev, May 16, 2011, available at [http://www.coe.int/t/dghl/standardsetting/pc-oc/PCOC\\_documents/PC-OC%20\\_2011\\_%2009%20rev%20E%20Mr%20Eugenio%20Selvaggi%20%20Disguised%20Extradition%20and%20Comments%20%20Cz%20Rep-Belgium.pdf](http://www.coe.int/t/dghl/standardsetting/pc-oc/PCOC_documents/PC-OC%20_2011_%2009%20rev%20E%20Mr%20Eugenio%20Selvaggi%20%20Disguised%20Extradition%20and%20Comments%20%20Cz%20Rep-Belgium.pdf) (last visited Sept. 28, 2012). *See also Mohamed & Another v. Pres. of the Rep. of South Africa* 2001 (17) CCT 01 (CC) (S. Afr.)

160 *United States v. Struckman*, 611 F.3d 560, 564 (9th Cir. 2010). *See also United States v. Liersch*, 2006 U.S. Dist. LEXIS 98439 (S.D. Cal. June 26, 2009) (involving an individual accused of money laundering and tax evasion removed from Guatemala without formal extradition proceedings. As extradition was not involved, the relator was not able to raise defenses under the United States–Guatemala extradition treaty).

161 *Id.* at 565–566 (the Ninth Circuit upheld the district court's ruling that Struckman was under its jurisdiction and discussed the Ker/Frisbie doctrine; *see* Chs. V and VI).

162 *See United States v. Gardiner*, 279 Fed. Appx. 848, 849–850 (11th Cir. 2008) (unpublished opinion) (upholding the expulsion and reasoning that "for extradition to be the sole method of transfer, the treaty must expressly prohibit any other method."); *Yousef v. United States*, 2011 U.S. Dist. LEXIS 79295 at \*2–3, \*21 (S.D.N.Y. 2011) (the Honduran Department of Immigration and Alien Affairs issued an order of deportation less than a month after the U.S. submitted an Interpol Red Notice application for the alleged criminal's arrest. The court reasoned, "A lawful arrest and expulsion, even if performed by armed, masked agents, is simply not a kidnapping."). The United States has also removed aliens to foreign states after the foreign state issued an international arrest warrant for the alien. *See Bruce Zagaris, U.S. Surrenders to Costa Rica a Former Police Officer Wanted for Murder*, 24 INT'L ENFORCEMENT L. REP. 134–135 (Apr. 2008).

163 *See Bruce Zagaris, Cuba Deports American Fugitive Wanted for Sexual Crimes against a Minor*, 24 INT'L ENFORCEMENT L. REP. 315–316 (Aug. 2008).