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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 No. MJ-20-08033-PHX-MTM

10 **ORDER CERTIFYING**
11 **EXTRADITION**

12 In the Matter of the Extradition of Ali
13 Yousif Ahmed Al-Nouri a/k/a Ali Youssef
14 Ahmed Al-Nouri, Ali Ahmed, Ali Yousif
15 Ahmed Al Noori, Ali Yousif Ahmed
Nouri, Ali Al-Daleme, Ali Yousif Ahmed,
Al-Mahmadi, Ali Yousif Ahmed, and Ali
Yousif Nouri.

16 In June 2006, Lieutenant Issam Hussein of the Fallujah police in Iraq was murdered
17 when a group of men emerged from their vehicles and fired pistols and automatic weapons
18 at him. Several months later in October 2006, Officer Khalid Mohammed was murdered in
19 similar fashion.

20 The government of Iraq asserts these murders were carried out by al-Qaeda of Iraq
21 (“AQI”), the transnational affiliate of al-Qaeda operating in Iraq. In particular, Iraq asserts
22 Relator Ali Yousif Ahmed Al-Nouri was a local AQI leader involved in planning and
23 executing Lieutenant Hussein’s and Officer Mohammed’s murders.

24 On behalf of the government of Iraq, the United States filed a Complaint seeking
25 Relator’s extradition pursuant to the Extradition Treaty between Iraq and the United States.
26 Doc. 3. After reviewing the evidence presented, the Court certifies Relator is extraditable
27 under 18 U.S.C. § 3184 for the offenses described in the Complaint.

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1 **I. EXTRADITION CERTIFICATION**

2 To certify extradition under 18 U.S.C. § 3184, the Court must find: (1) subject
3 matter jurisdiction; (2) personal jurisdiction over the relator; (3) an extradition treaty in
4 force and effect; (4) offenses covered by the treaty; and (5) competent evidence that the
5 relator committed those offenses. *Santos v. Thomas*, 830 F.3d 987, 991 (9th Cir. 2016) (en
6 banc).

7 **A. SUBJECT MATTER JURISDICTION AND PERSONAL JURISDICTION**

8 The parties acknowledge the Court has subject matter and personal jurisdiction in
9 this matter. Doc. 273 at 107. In the District of Arizona, the Local Rules of Criminal
10 Procedure delegate the responsibility of conducting extradition proceedings to United
11 States Magistrate Judges. *See* 18 U.S.C. § 3184 (permitting “any magistrate judge
12 authorized so to do by a court of the United States” to conduct extradition proceedings);
13 LRCrim 57.6(d)(15); *In re Extradition of Madrid*, No. MJ-09-01603, 2013 WL 265205 at
14 *1 (D. Ariz. Jan. 18, 2013). The Court has personal jurisdiction because Relator is present
15 in the District of Arizona. *In re Extradition of Mathison*, 974 F. Supp. 2d 1296, 1311 (D.
16 Or. 2013). Relator was arrested in Arizona and detained in Arizona. Docs. 11, 239.

17 **B. APPLICABLE EXTRADITION TREATY**

18 The Extradition Treaty (“Treaty”) between the United States and Iraq was ratified
19 in 1934. Doc. 3-3 at 7–14. Relator asserts the Treaty was annulled by hostilities between
20 the United States and Iraq in 1991 and 2003, and the United States and Iraq did not
21 negotiate a new treaty after those hostilities. Doc. 200 at 42–44 (citing *Karnuth v. United*
22 *States*, 279 U.S. 231, 239 (1929)).

23 This Court should not “easily disregard the determination of the Executive Branch”
24 that an extradition treaty remains in effect. *Then v. Melendez*, 92 F.3d 851, 854 (9th Cir.
25 1996). In *Then*, the Court concluded a 1932 extradition treaty between the United States
26 and the United Kingdom, which included the United Kingdom’s “dominions overseas,”
27 was a valid extradition treaty between the United States and Singapore—despite Singapore
28 becoming a separate state after its independence from the United Kingdom in 1965. *Id.* at

1 853. The *Then* Court advised “federal courts are not as well equipped as the Executive to
2 determine when the emergence of a new country brings changes that terminate old treaty
3 obligations.” *Id.* at 854. Other courts have observed “it is extremely doubtful that war ipso
4 facto abrogates a treaty of extradition” and concluded that “controlling importance” must
5 be given to how governments have acted in relation to a treaty. *Argento v. Horn*, 241 F.2d
6 258, 262 (6th Cir. 1957) (quoting *Terlinden v. Ames*, 184 U.S. 270, 285 (1902)).

7 The Court finds the governments of the United States and Iraq have maintained the
8 Treaty’s force and effect by their conduct. Declarations by the Office of the Legal Adviser
9 for the United States Department of State and the Iraqi Ministry of Foreign Affairs declare
10 the Treaty is in force. Doc. 3-3 at 2, 6. Further, the Department of State’s official Treaties
11 in Force publication lists the Treaty as in effect as of January 1, 2020, before Relator was
12 arrested. *See* U.S. Dep’t of State, *Treaties in Force: A List of Treaties and Other*
13 *International Agreements of the United States in Force on January 1, 2020*, at 215 (2020).
14 Accordingly, the Court concludes the Treaty between the United States and Iraq was in
15 force and effect at all relevant times.

16 C. OFFENSES COVERED BY TREATY

17 The Court must determine whether the offense: (1) is listed as an extraditable crime;
18 (2) whether the alleged conduct is criminalized in both countries; and (3) whether the
19 offenses in both countries are “substantially analogous.” *United States v. Knotek*, 925 F.3d
20 1118, 1128–29 (9th Cir. 2019).

21 1. Extraditable Crime

22 The “Arrest and Investigation Warrant” issued by the Magistrate Court of Al-Karkh
23 accuses Relator of committing two murders as defined by Article 406/1/A of the Iraqi Penal
24 Code. *See* doc. 3-3 at 49-51 (specifying “Type of Crime: Murder”). The parties agree the
25 Treaty is a “list treaty,” listing certain defined crimes as subject to extradition. Doc. 226 at
26 22–24; Doc. 273, Tr. 133:7–9. Article II of the Treaty lists, as an extraditable offense,
27 “[m]urder, including parricide, assassination,” and willful murder with premeditation.
28 Doc. 3-3 at 9. Accordingly, the Court finds that the offenses alleged are listed in the Treaty.

1 **2. Whether Criminalized in Both Countries**

2 The conduct alleged is criminalized in both the United States and Iraq. Article
3 406/1/A of the Iraqi Penal Code prohibits murder, including premeditated murder. In the
4 United States, 18 U.S.C. § 1111 prohibits murder, including willful and premeditated
5 killing.

6 **3. Whether the Offenses are Substantially Analogous**

7 In deciding whether the offenses are “substantially analogous,” the Court considers
8 whether “[t]he essential character of the transaction is the same, and made criminal by both
9 statutes.” *Knotek*, 925 F.3d 1131 (internal citations omitted). To be “substantially
10 analogous,” statutes need only be “directed to the same basic evil.” *Id.* (quoting *Clarey v.*
11 *Gregg*, 138 F.3d 764, 766 (9th Cir. 1998)). The criminal codes in the United States and
12 Iraq punish the deliberate killing of another by an individual without lawful authority to do
13 so. Accordingly, both statutes are “directed to the same basic evil” and are substantially
14 analogous. *Knotek*, 925 F.3d at 1132. The offenses for which Relator’s extradition is sought
15 are covered by the Treaty.

16 **D. COMPETENT EVIDENCE**

17 Certification of extradition requires a showing of probable cause that the relator
18 committed the offense for which extradition is sought. Probable cause for extradition is
19 assessed according to the standard for probable cause in American courts. *Santos v.*
20 *Thomas*, 830 F.3d 987 at 1006. “Simply because evidence has been authenticated does not
21 mean any evidence the government submits is sufficient to satisfy probable cause. Were
22 that the case, the judiciary’s role in the extradition process would be meaningless.” *Id.* This
23 Court must “determine whether there is competent evidence to justify holding the accused
24 to await trial, and not to determine whether evidence is sufficient to justify a conviction.”
25 *Barapind v. Enomoto*, 400 F.3d 744, 752 (9th Cir. 2005) (en banc) (internal quotation
26 marks omitted). The Court “does not weigh conflicting evidence and make factual
27 determinations but, rather, determines only whether there is competent evidence to support
28 the belief that the accused has committed the charged offense.” *Quinn v. Robinson*, 783

1 F.2d 776, 815 (9th Cir. 1986); *see also United States ex rel. Sakaguchi v. Kaulukulkui*, 520
2 F.2d 726, 730 (9th Cir. 1975) (“The magistrate’s function is to determine whether there is
3 ‘any’ evidence sufficient to establish reasonable or probable cause.”). The relator’s
4 evidence is “limited to that which explains the requesting country’s proof and excludes
5 contradictory or impeaching evidence.” *In re Extradition of Handanovic*, 826 F. Supp. 2d
6 1237, 1239 (D. Or. 2011).

7 Iraq alleges Relator was a leader in AQI in 2006 and, as part of AQI, planned and
8 carried out the murders of Iraqi police officers in Fallujah, Iraq. Doc. 3 at 2–5. Lieutenant
9 Hussein was murdered on or about June 1, 2006; Officer Mohammed was murdered on or
10 about October 3, 2006. Doc. 3 at 2–3.

11 A cooperator provided statements admitting that, while “working with an armed
12 militant group of al-Qaeda terrorist organization,” he, Relator, and others planned and
13 carried out the murders of Lieutenant Hussein and Officer Mohammed; the cooperator
14 named Relator as Emir of the al-Qaeda organization. Docs. 3-3 at 80; 3-4 at 7. A different
15 individual said Relator was present at the murder of Lieutenant Hussein and identified
16 Relator as Emir of a group of militants in the “Islamic State.” Doc. 3-4 at 5.

17 **1. Murder of Lieutenant Hussein**

18 On or about June 1, 2006, Lieutenant Hussein was killed in Fallujah, Iraq by persons
19 who emerged from two cars and fired automatic weapons and pistols at him. Doc. 3-3 at
20 86, 88.

21 **a. Evidence**

22 **i. Cooperator**

23 On June 6, 2010, the cooperator gave testimony to investigative courts and
24 statements to counterterrorism officers in Iraq.

25 *Testimony and Statements Before Investigative Courts*

26 In a document bearing the stamp “Karkh Investigative Court, terrorism matters,” the
27 cooperator testified he, Relator, and others met at Relator’s carpentry store on street 40 in
28 Fallujah, Iraq and agreed kill Lieutenant Hussein. Doc. 3-4 at 7. The cooperator stated:

1 I was with them and they wanted me to watch the road. Indeed they headed
2 towards street 40 where the victim was standing next to one of the stores and
3 the defendant Ali Yousif Ahmed stepped out of the car and fired shots at the
4 victim using his 9mm hand gun and killed him. Afterwards we fled the crime
5 scene.

5 *Id.*

6 In a document dated June 6, 2010, bearing the stamp “Al-Fallujah Investigative
7 Court,” the cooperator testified that he and Relator, also called Ali Yousif, and three other
8 individuals agreed to kill Lieutenant Hussein and “agreed on how to kill” him. Doc. 3-4 at
9 10. The cooperator testified that he did *not* participate in the killing but “the accused Ali
10 Yousif was the one who told me he executed the operation using a 9mm hand gun that he
11 was carrying.” Doc. 3-4 at 10. The cooperator signed this document by his thumb print.
12 Doc. 3-4 at 11.

13 A second statement made to the Al-Fallujah Investigative Court on June 6, 2010,
14 contains the cooperator’s statements during a court ordered walk-through of the location
15 of the murder:

16 In compliance to the decision of the Fallujah Investigative Judge dated
17 6/6/2010, which include a walk through by the accused who confessed....

18 [a]nd the accused [redacted] indicated that [redacted] was present when the
19 agreement took place to kill the victim, 1st Lieutenant Issam Hussein by the
20 defendant Ali Yousif, [redacted], and [redacted] while they were at the
21 defendant Ali Yousif’s shop, specialized in wood sales and located on Street
22 40 near the road leading to Al-Fallujah Police Directorate. [Redacted]
23 pointed with [redacted] hand to the location of the shop and indicated that he
24 had learned that Ali Yousif, [redacted], and [redacted] killed the victim 1st
25 Lieutenant Issam Hussein on Street 40 in Al-Fallujah and they used a white
Daewoo Prince belonging to the defendant Ali Yousif and they used
automatic weapons and pistols. The walk through coincided exactly to the
accused confession and therefore the hearing was closed...

26 Doc. 3-3 at 85–86. This document contains the cooperator’s signature by thumb print; it is
27 also signed by a judicial investigator and officers from the Counterterrorism Office. *Id.*

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1 *Statements to Office of Counter Terrorism*

2 In two statements dated June 6, 2010, both referenced as “Follow up” statements to
3 the “Office of Counter Terrorism,” the cooperator stated that he was present when the
4 agreement was made to kill Lieutenant Hussein; the cooperator asserted that he “did not
5 participate in this incident” and “did not go out with them.” Docs. 3-3 at 80; 3-4 at 9. Both
6 statements named Relator and two other individuals as having killed Lieutenant Hussein.

7 ii. Eyewitness

8 *Testimony to Investigative Court, Fallujah*

9 In a document dated November 1, 2009, bearing the stamp “Investigative Court,
10 Fallujah,” an eyewitness testified that he was sitting with Lieutenant Hussein¹ at a cigarette
11 store on Street 40, when “masked militants” emerged from two cars and surrounded the
12 eyewitness and Lieutenant Hussein. Doc. 3-4 at 6. The eyewitness recognized a gunman
13 (not Relator) who put a gun to his head and threatened to blow his head off. *Id.* The
14 eyewitness stated Relator was at the scene of the murder and stated that one gunman fired
15 his pistol at Lieutenant Hussein, but the pistol misfired, and Lieutenant Hussein was then
16 killed by shots from an AK47. *Id.*

17 *Statement to Office of Counter Terrorism*

18 In a statement also dated November 1, 2009, the eyewitness related to the Office of
19 Counterterrorism that he was sitting with Lieutenant Hussein when masked men put a gun
20 to his head and attempted to shoot Lieutenant Hussein with a handgun that misfired; then
21 “another armed person with an AK47 came” and “shots were fired from the AK47 where
22 it hit the victim’s body everywhere,” killing him. The eyewitness stated Relator was at the
23 scene of the murder. Doc. 3-4 at 5.

24 **b. *Probable Cause Analysis for Murder of Lieutenant Hussein***

25 For the murder of Lieutenant Hussein on June 1, 2006, both the cooperator and the
26 eyewitness place Relator at the scene while holding a handgun. The cooperator also asserts

27 _____
28 ¹ The eyewitness refers to Lieutenant Issam Hussein as “1st Lieutenant Issam Ahmed”;
Lieutenant Hussein’s full name is Issam Ahmed Hussein. Doc. 3 at 6; Doc. 3-4 at 2.

1 Relator admitted to him that Relator “executed the operation using” a handgun. Doc. 3-4
2 at 10. Further, according to the cooperator, the cooperator, Relator, and others had planned
3 the murder in advance while meeting at Relator’s shop in Fallujah.

4 The Court is mindful that the cooperator’s statements contain at least one significant
5 inconsistency—whether the cooperator was near the scene “to watch the road,” and able to
6 see Relator’s actions, and “fled the crime” with the other assailants (doc. 3-4 at 7), or
7 instead “did not go out with them” (doc. 3-4 at 9) or participate in the killing (doc. 3-3 at
8 80). Despite this inconsistency as to whether the cooperator personally witnessed the
9 killing or instead was told about it by Relator, the cooperator’s five statements are
10 consistent in many other significant details. The cooperator’s statements are consistent as
11 to who participated with the cooperator and Relator in planning the murder; as to where
12 the murder was planned, which the cooperator says was at Relator’s wood or carpentry
13 shop in Fallujah (doc. 3-4 at 7, 10); and as to the murder’s location, manner, and weapons
14 used, which the cooperator identifies as AK47s and pistols (docs. 3-4 at 7, 10; 3-3 at 85-
15 6). Accordingly, recognizing the cooperator would be subject to impeachment at a trial
16 regarding a significant inconsistency in the statements, the Court does not view the
17 cooperator’s statements, taken as a whole, to be so contradictory as to be unreliable to
18 support probable cause. *See, e.g., Zanzanian v. United States*, 729 F.2d 627, 628 (9th Cir.
19 1984) (rejecting relator’s argument in extradition case that accomplice’s statements were
20 “too unreliable to establish probable cause” because “[t]he fact that [the statements] were
21 given to the police and incriminated the speakers themselves sufficiently indicate[d] their
22 reliability”); *In re Extradition of Rodriguez Ortiz*, 444 F. Supp. 2d 876, 893 (N.D. Ill. 2006)
23 (“[P]roviding an air-tight narrative of the events surrounding a crime is not a precondition
24 for granting extradition.”). Further, the Ninth Circuit and other courts have concluded that
25 in an extradition proceeding, “the testimony of an accomplice is, next to the confession of
26 the defendant, the most satisfactory kind of evidence that can be produced as to the guilt
27 of the defendant.” *Currier v. Vice*, 77 F.2d 130, 132 (9th Cir. 1935); *see, e.g., Zanzanian*,
28 729 F.2d at 627; *Eain v. Wilkes*, 641 F.2d 504, 510 (7th Cir. 1981); *Matter of Extradition*

1 *of Tang Yee-Chun*, 674 F. Supp. 1058, 1062 (S.D.N.Y. 1987).

2 The Court also views as a significant corroborating detail that the eyewitness and
3 the cooperator, whose statements were given well after the 2006 murder, in 2009 and 2010
4 respectively, both identify the same individual² as involved with Relator in the murder.
5 The eyewitness names the individual who put a gun to his head as a person he knew by his
6 voice and appearance because the gunman was from the eyewitness's area (doc. 3-4 at 6);
7 the cooperator names the same individual in various statements as having planned and
8 participated in the murder with Relator (docs. 3-4 at 7, 9, 10; 3-3 at 80, 85–86). *See Eain*,
9 641 F.2d at 504 (“Where an accomplice’s testimony is corroborated by further facts there
10 is sufficient evidence to find probable cause.”).

11 The statements by the eyewitness are consistent in their core details—that the
12 eyewitness recognized Relator, who was armed with a gun and not masked, when Relator
13 entered the cigarette shop where the murder took place. Nevertheless, one statement by the
14 eyewitness may be read as cutting against probable cause. In his statement to the
15 Investigative Court, the eyewitness portrayed Relator as seemingly intervening in an effort
16 to *stop* the killing. In particular, the eyewitness stated that after a gunman had fired his
17 pistol at Lieutenant Hussein:

18 the gun would not fire twice and three times, then he started to cuss God
19 Almighty. At that time another person called Ali Yousif came our way, and
20 he was not masked and Ali pulled his gun [IL] and started shouting at them.
21 I remembered Ali’s words “leave him, this is 1st Lieutenant Issam and he
22 serves as a policeman” and another accused told Ali “Ali step back, it is not
23 your business” and afterwards one of the masked people who was carrying
an AK47 fired in the direction of 1st Lieutenant Issam and hit him with
multiple shots where he dropped to the ground and passed away.

24 Doc. 3-4 at 6. However, the eyewitness’s other statement, *given the same day*, provides a
25 contrary narrative that diminishes any inference that Relator tried to stop the killing. To
26 the Office of Counterterrorism, the eyewitness’s narrative is that Relator only spoke against

27 ² See sealed statements of the eyewitness, Doc. 3-1 at 106; the cooperator, Doc. 3-1 at 85-
28 6, 110 and investigative summary of the Fallujah Investigative Judge, Doc. 3-1 at 112, at
Doc. 3-1, Ex. A.

1 the killing *after Lieutenant Hussein had already been murdered:*

2 the gun did not fire on three attempts; then another armed person with an
3 AK47 came.....shots were fired from the AK47 where it hit the victim's body
4 everywhere. Immediately, the victim recited prayer before he passed away.
5 Then the so called Ali Yousif Nouri entered the store carrying a handgun in
6 his hand and spoke to the militants saying "leave Issam, he is an officer with
7 the Fallujah police" and they replied "step back and don't interfere with this
8 matter," knowing that at the time any person who raises a weapon in the face
of these militants that they claimed to be in the Islamic State would be killed,
and also knowing that the criminal [Ali] is a member of their group...and
that the criminal Ali Yousif is the Emir of their group.

9 Doc. 3-4 at 5. This statement casts Relator's armed presence at the scene, and his
10 intervention *after* Lieutenant Hussein had been killed, in a different light—it portrays
11 Relator as the leader of the group carrying out the killing, and as one who would have been
12 killed if not in accord with the killers. The Court is mindful it "does not weigh conflicting
13 evidence and make factual determinations but, rather, determines only whether there is
14 competent evidence to support the belief that the accused has committed the charged
15 offense." *Quinn*, 783 F.2d at 815. On the record before it, the Court does not make a factual
16 determination as to the correct inference to be drawn from the eyewitness's different
17 narratives as to when Relator appeared at the scene of Lieutenant Hussein's murder. *See*
18 *id.* ("[I]t is not our role to determine whether there is sufficient evidence to convict the
19 accused."). In this Court's limited role, the Court finds that the contrary inferences that
20 may be drawn from the eyewitness's statements—that Relator appeared just before or just
21 after the killing—do not destroy probable cause. *See In Re Extradition of Luna-Ruiz*, No.
22 CV 13-5059, 2014 WL 1089134, at *8 (C.D. Cal. Mar. 19, 2014) (inconsistencies within
23 statements of witnesses and between witnesses do not necessarily destroy or negate a
24 showing of probable cause).

25 As noted previously, Relator is accused of committing premeditated murder as
26 defined Article 406/1/A of the Iraqi Penal Code. Doc. 3-3 at 24, 49-51. Under the Iraqi
27 Code, a person may be guilty of a premeditated killing if they participate as a principal or
28 an accessory. An accessory includes any person "who conspires with others to commit an

1 offense and that offense is committed on the basis of such conspiracy;” an accessory is
2 considered to be a principal if they are “present during the commission of that offense or
3 any act contributing to that offense.” Doc. 3-3 at 26. Here, the Court finds Relator’s conduct
4 in meeting in advance with others to plan Lieutenant Hussein’s murder and his armed
5 presence at the scene of the murder constitutes competent evidence under a probable cause
6 standard of Relator’s guilt as an accessory or co-conspirator. *See Barapind*, 400 F.3d at
7 752 (fugitive’s presence at murder scene while accomplices killed victim was competent
8 evidence of probable cause as accomplice or co-conspirator in killing).

9 Under the totality of circumstances, including the testimony of the cooperator and
10 the eyewitness, the Court concludes there is competent evidence to find probable cause that
11 Relator committed or was an accessory or co-conspirator in the murder of Lieutenant
12 Hussein.

13 2. Murder of Officer Mohammed

14 On October 3, 2006, Police Officer Khalid Ibrahim Mohammad was killed by
15 gunfire in Fallujah by gunmen who emerged from two cars. Doc. 3-3 at 55. In support of
16 probable cause, Iraq provided statements and testimony from two eyewitnesses and the
17 same cooperator who provided information on the murder of Lieutenant Hussein.

18 a. Evidence

19 i. Eyewitness 3

20 In 2019, an eyewitness provided a sworn statement to a Judge in Iraq relating that
21 during Ramadan in 2006, while at the market on Street 40 in Fallujah, the eyewitness saw
22 Officer Mohammad with a group of people in front of a store. A “red Opel Omega car”
23 appeared with four people inside.” Doc. 3-3 at 76. Shots were fired from the red car and:

24 [t]hen the armed men exited the Opel car and one of them continued firing
25 on the victim (Khalid Ibrahim Mohammad) and they withdrew from the area.
26 Upon fleeing the area, I recognized the person who got out of the car and
27 fired on the victim. He was the fugitive (Ali Yousif Ahmed Nouri) since I
28 knew him from where he lived near our house and since he was well known
in the area for conducting assassination operations on most members of the
Police force.

1 Doc. 3-3 at 76. The statement also notes the eyewitness identified Relator from a group of
2 photos presented to the eyewitness by the Iraqi Judge, and that the eyewitness also knew
3 Relator from Relator’s work as a carpenter in Relator’s store on Street 40 in Fallujah. Doc.
4 3-3 at 76.

5 ii. Eyewitness 2

6 On February 2, 2019, an eyewitness provided a sworn statement to the Al-Karkh
7 Investigative Court stating that in 2006 the eyewitness was “standing near the location”
8 where Officer Mohammad was killed. The eyewitness stated that “[a]mong those who fired
9 shots and killed the plaintiff’s son a person that I recognized after his mask fell off his face
10 and he was Ali Yousif Ahmed Nouri, and this is my statement.” Doc. 3-3 at 75.

11 iii. Cooperator

12 *Statements in 2006*

13 On November 5, 2006, the cooperator provided statements to the Al-Fallujah Justice
14 Court and to the “Office of important crimes.” Doc. 3-3 at 81–82, 78. The cooperator told
15 the Al-Fallujah Investigative Court that he had joined a group, met Relator and others, and
16 agreed with them to kill “the policeman by the name of (Khalid Ibrahim Mohammad).”
17 Doc. 3-3 at 81. The cooperator stated that “in the month of Ramadan” Relator led a
18 surveillance team to locate Officer Mohammad:

19 [u]pon our arrival, the so called Ali Yousif told us that the above mentioned
20 policeman was near the stores on Street 40 and two people were sitting with
21 him. Ali Yousif was surveilling the area, then we departed where shots were
22 fired at him and he was killed with two other people because of the intensity
23 of the shots by [redacted] who was carrying a hand gun while the rest had
AK47s.

24 Doc. 3-3 at 81. The cooperator stated two cars were used in the attack; the cooperator drove
25 an Opel:

26 [in] the second car was Ali Yousif and [redacted] and [redacted] where we
27 headed towards the market. I was carrying a hand gun while the rest had
28 AK47s and they fired at the victim, so called Mohammad and they killed
him.

1 Doc. 3-3 at 82. To the “Office of important crimes,” the cooperator provided a similar
2 narrative, naming Relator as one of the leaders and that Relator “provided protection to the
3 car that we drove; which is the car that executed the job....” Doc. 3-3 at 78.

4 *Statements in 2010*

5 As noted previously in the discussion of Lieutenant Hussein’s murder, on June 6,
6 2010, the Al-Fallujah Investigative Court ordered a “walk-through” by the cooperator. As
7 to Officer Mohammad, the cooperator stated:

8 [w]hile the other accused Ali Yousif [and redacted names] were in an Opel
9 Vectra and they carried automatic weapons and a pistol carried by Ali Yousif
10 [IL], from the car and started to shoot in the direction of Khalid Ibrahim who
11 was standing near the mentioned shops. The incident took place quickly and
the victim was killed.

12 Doc. 3-3 at 85. The statement indicates “those who executed the killing fled in the Opel
13 Vectra.” *Id.* The cooperator signed this statement with a thumb print.

14 The cooperator made two other statements on June 6, 2010, to the Office of
15 Counterterrorism. The first statement said:

16 the first car, type Vectra which was used by the accused Ali Yousif and his
17 group, stopped suddenly next to the victim and Ali Yousif who was carrying
18 a 9mm pistol stepped out of it with [redacted] and [redacted] who were
19 carrying Ak47s. Then Ali Yousif fired towards the victim and with him
[redacted] and each using their gun they hit and killed the victim.

20 Doc. 3-4 at 8. The cooperator acknowledged that “civilians were shot as well.” Doc. 3-4 at
21 8. In the second statement, referenced as “follow up testimony,” the cooperator stated:

22 Ali Yousif told us that [IL] on a mission and when we arrived to Street 40
23 next to the water tank and near one of the stores, we saw the policeman
24 Khalid Ibrahim standing and with him two civilians; where Ali Yousif
25 ordered us to surround the area. Ali Yousif stepped out of the Vectra car and
26 with him was [redacted] and they proceeded to kill the policeman Khalid
Ibrahim, while we were surrounding the area. We carried Ak47s and Ali
Yousif had a 9mm pistol.

27 Doc. 3-4 at 9.

28 //

1 **b. *Probable Cause Analysis for Murder of Officer Mohammad***

2 Relator acknowledges that he was in Fallujah on October 4, 2006—the day after
3 Officer Mohammad’s murder. Doc. 273, Tr. 87–88. Two eyewitnesses, one of whom knew
4 Relator because Relator “lived near our house” (doc. 3-3 at 76), identify Relator as having
5 personally fired shots at Officer Mohammad. Eyewitness 3 and the cooperator are
6 consistent as to when—during Ramadan—and where the murder occurred—the market at
7 Street 40 in Fallujah. Doc. 3-3 at 76, 81.

8 The overall narrative from the eyewitnesses and cooperator is consistent: Relator
9 agreed with others to kill Officer Mohammad; the conspirators drove down Street 40 to
10 find him sitting outside a store, and Relator and others shot and killed Officer Mohammad.
11 This narrative did not meaningfully change over time—the cooperator gave two statements
12 in 2006 and three statements in 2010, while the two eyewitnesses provided statements in
13 2019. Nonetheless, there are some inconsistencies in the descriptions of the vehicles used
14 and whether Relator was armed with a pistol or an automatic weapon. *Compare* doc. 3-3
15 at 81–82, 78 (cooperator’s 2006 statements referencing Relator having an AK47, not a
16 pistol) *with* doc. 3-3 at 85 *and* doc. 3-4 at 8–9 (cooperator’s 2010 statements referencing
17 Relator having a pistol); *compare* doc. 3-3 at 76 (eyewitness saw a red Opel Omega car)
18 *with* doc. 3-3 at 78, 85 (cooperator describing “greyish” Opel Senator or Vectra).

19 At the extradition hearing, Relator asserted eyewitness 3’s statement (doc. 3-3 at
20 76) is not credible because in referring to Relator as a fugitive, a “term of art in extradition
21 cases,” the statement must have been “presented in anticipation of an extradition request.”
22 Doc. 273, Tr. 79:7–16. However, even assuming eyewitness 3 did not personally originate
23 every phrase in the statement—signed by a thumbprint—that does not by itself call into
24 question the statement’s credibility. By analogy, in legal proceedings in the United States,
25 counsel frequently draft affidavits for witnesses, who subsequently review and attest to the
26 affidavit’s veracity. *See, e.g., Ideal Elec. Co. v. Flowserve Corp.*, 230 F.R.D. 603, 605–06
27 (D. Nev. 2005).

28 As to eyewitness 2, Relator asserts the statement is less credible because it was made

1 in February 2019, approximately twelve years after murder. Doc. 273, Tr. 77–78. In the
2 absence of any other fact casting doubt on the veracity of the statement, this Court does not
3 find that the delay between the date of the murder and the date of the witness’s statement
4 undermines the statement’s credibility. *In re Extradition of Mazur*, which Relator cites
5 (doc. 273, Tr. 184:22–185:3), involved issues of credibility far more substantial than the
6 inconsistencies in the witness statements in this case. In *Mazur*, the primary witness in
7 support of extradition admitted *in the statements introduced at the extradition proceeding*
8 that he lied under oath, made up the connection between the relator and the victim of the
9 crime, and was providing information to the Polish government about the relator in
10 exchange for a lighter prison sentence. 2007 WL 2122401, at *22.

11 Considering the testimony of two eyewitnesses and the cooperator, all identifying
12 Relator as having fired shots at Officer Mohammad (docs. 3-4 at 8–9; 3-3 at 85, 82), the
13 Court finds that there is probable cause that Relator participated in the murder, and that the
14 inconsistencies among the statements are not of a sufficient magnitude to undermine
15 probable cause. *See Luna-Ruiz*, 2014 WL 1089134, at *8 (inconsistencies within
16 statements of witnesses and between witnesses do not necessarily destroy or negate a
17 showing of probable cause).

18 **II. ADDITIONAL CHALLENGES TO THE EXTRADITION PACKET**

19 **A. SUFFICIENCY OF THE ARREST WARRANT**

20 The Certificate of Authentication from the United States Department of State (doc.
21 3-3 at 15) and the arrest warrant issued by the Magistrate Court of Al-Karkh (doc. 3-3 at
22 49–51) state Relator is charged with murder, an offense covered by the Treaty. Relator
23 asserts that because the Iraqi arrest warrant was issued by an Iraqi “investigative court”
24 rather than a trial court, there has been no determination that a formal charge has been filed.
25 Doc. 200 at 27. Relator maintains that in Iraq his case was “subjected to a ‘series of
26 jurisdiction transfers’ from one investigative court to another that ‘constitue[d] a brazen
27 violation of Iraqi criminal process and the Iraqi Criminal Procedure Code.’” Doc. 200 at
28 32–33 (citing doc. 200-3, Ex. B at 21–22).

1 In *Grin v. Shine*, the Supreme Court declined to address whether, under Russian
2 law, Russian courts had properly issued an arrest warrant for a relator. 187 U.S. 181, 190
3 (1902). Following *Grin*, courts have not probed deeply into questions of foreign procedural
4 law. See *Emami v. U.S. Dist. Court for the N. Dist. of Cal.*, 834 F.2d 1444, 1449 (9th Cir.
5 1987) (“We refrain from interpreting the requirements of German criminal procedure both
6 out of respect for German sovereignty and because we recognize the chance of erroneous
7 interpretation is much greater when we try to construe the law of a country whose legal
8 system is not based on common law principles.”); see also *Skaftouros v. United States*, 667
9 F.3d 144, 159–60 (2d Cir. 2011) (“[T]he question of whether an arrest warrant is in
10 technical compliance with the law of the demanding country is not to be decided by U.S.
11 courts.”).

12 Relator cites *Sacirbey v. Guccione*, 589 F.3d 52 (2d Cir. 2009), in contending that
13 the Iraqi arrest warrant is invalid. See docs. 200 at 32–33; 226 at 31–33. *Sacirbey*, however,
14 is not persuasive because it must be read in light of *Skaftouros*, in which the Court stated
15 “*Sacirbey* stands for the unexceptional proposition that a foreign arrest warrant cannot
16 suffice to show that a fugitive is currently charged with an offense, as required by most
17 extradition treaties, where the court that issued the warrant no longer has the power to
18 enforce it.” 667 F.3d at 160. “To the extent . . . *Sacirbey* [had] engendered confusion” the
19 Court clarified a “‘valid arrest warrant’ is one that is ‘duly authenticated’ as required by
20 [18 U.S.C.] § 3190 and the applicable treaty, and sufficient to show that the fugitive is
21 *currently charged* with an offense recognized by the treaty.” *Id.* The arrest warrant must
22 merely “show that the fugitive is in fact ‘prosecutable’ upon extradition to the demanding
23 country.” *Id.* (alteration omitted).

24 As the Seventh Circuit recognized, the *Skaftouros* Court “emphasized that its
25 ‘analysis in *Sacirbey* was limited to determining whether the requirements of the
26 extradition were met; the majority opinion did not engage in questions of Bosnian law.’”
27 *Noeller v. Wojdylo*, 922 F.3d 797, 806 (7th Cir. 2019). In *Noeller*, an arrest warrant for the
28 relator had been issued by a Mexican court. *Id.* at 805. Prior to the extradition proceedings

1 in the United States, the relator initiated an *amparo* proceeding in Mexico, a proceeding
2 similar to a habeas corpus proceeding in the United States. *Id.* at 802. The relator in *Noeller*
3 asserted that the *amparo* proceeding resulted in the “suspension of his arrest warrant.” *Id.*
4 The *Noeller* court concluded that, even assuming the relator was correct, the warrant
5 presented by the Mexican government was sufficient documentary proof that the relator
6 was charged with a crime under the extradition treaty. *Id.* at 805. The *Noeller* Court noted
7 “[m]ore fundamentally, extradition proceedings are not vehicles for United States federal
8 courts to interpret and opine on foreign law.” *Id.* The *Noeller* Court also observed it “is
9 simply not our job” to “adjudicate the validity of the warrant,” which would require the
10 Court “to decide what legal conclusion a Mexican court reached based on its analysis of
11 Mexican law and criminal procedure.” *Id.* at 806. “If [the relator] thinks later developments
12 in the Mexican courts have rendered his arrest warrant invalid, that challenge belongs in a
13 Mexican court.” *Id.*

14 Here, in light of the documentary evidence Iraq submitted showing Relator is sought
15 for an extraditable crime, this Court will not decide whether the Iraqi arrest warrant is in
16 technical compliance with all aspects of Iraqi law. That issue is best decided by an Iraqi
17 court. *Emami*, 834 F.2d at 1449; *Skaftourous*, 667 F.3d at 159–60.

18 **B. NECESSITY OF CHARGING INSTRUMENT**

19 Relator asserts even if the arrest warrant is valid, it demonstrates Iraqi authorities
20 merely intend to continue investigating crimes, and that Relator has not yet been “charged”
21 with a crime. Doc. 200 at 23; doc. 273, Tr. 123:16–23. Relator relies on Exhibit 2,
22 paragraph 2 of Doc. 254-2, which is a translation of a statement by Judge Hussain of Iraq:

23 [Relator]’s testimony must to be [sic] heard, and his arguments and defenses
24 considered, and a trial in his presence be conducted. Therefore, after the
25 defendant has been extradited, he will be investigated according to due
26 process and he will be questioned regarding the charge that he is facing and
27 his statement recorded in this regards while documenting whatever evidence
he presents to deny it.

28 Doc. 254-2, Ex. 2 at 3.

1 Read in its totality, Exhibit 2 does not support a conclusion that Relator has not
2 been charged with a crime. Paragraph five of Exhibit 2 states that the Iraqi government
3 requested extradition “to bring [Relator] in front of the Iraqi courts *in order to prosecute*
4 *him in accordance with the law.*” Doc. 254-2, Ex. 2 at 5 (emphasis added). Further, the
5 Iraqi arrest warrant states that all law enforcement personnel in Iraq are “empowered and
6 tasked to arrest” Relator (doc. 3-3 at 49); and Judge Hussain attests to the existence of an
7 “arrest warrant” against Relator. Doc. 254-2, Ex. 2 at 5. Accordingly, Relator’s case is not
8 like *Sacirbey*, where the Bosnian authorities merely represented that “[t]here is an ongoing
9 criminal investigation against Sacirbey’ and that the Bosnian government sought
10 extradition to further that investigation.” 589 F.3d at 67. Here, the documentary evidence
11 is sufficient to conclude the Iraqi government seeks extradition so it may prosecute Relator
12 for crimes.

13 Article XI of the Treaty states “a duly authenticated copy of the warrant of arrest in
14 the country where the crime was committed, and copies of the depositions upon which such
15 warrant may have been issued, shall be produced with such other evidence or proof as may
16 be deemed competent in this case.” Doc. 3-3 at 12. Relator asserts that an arrest warrant is
17 insufficient; he contends the Iraqi government must present a formal charging instrument,
18 such as an indictment. Docs. 200 at 23–25; 226 at 30.

19 In *Matter of Assarsson*, the Seventh Circuit considered whether a formal indictment
20 was required under an extradition treaty between the United States and Sweden. 635 F.2d
21 1237 (7th Cir. 1980). That treaty required extradition of persons “who have been charged
22 with or convicted of any of the offenses” listed in that treaty’s Article II. *Id.* at 1242. Article
23 II of the Treaty in this case contains the same language. *Compare id.* at 1241–42 (“The
24 requested State shall, subject to the provisions of this Convention, extradite a person
25 *charged with or convicted of* any offense enumerated in Article II[.]” (emphasis added))
26 *with* doc. 3-3 at 9 (“Persons shall be delivered up according to the provisions of this Treaty,
27 who shall have been *charged with or convicted of* any of the following crimes if they are
28 punishable by the laws of both countries” (emphasis added)). The *Assarsson* Court

1 concluded “[t]he filing of formal charges is not stated anywhere as a prerequisite to
2 extradition;” the treaty only required production of a “duly certified or authenticated copy
3 of the warrant of arrest or other order of detention.” 635 F.2d at 1242–43.

4 In *Emami*, the Ninth Circuit adopted *Assarsson*’s reasoning in finding that the
5 extradition treaty between the United States and Germany did not require the filing of
6 formal charges. 834 F.2d at 1448 (“In *Assarsson* the Seventh Circuit held that the existence
7 of formal charges can be reviewable only if the treaty itself conditions extradition on the
8 existence of formal charges. The Seventh Circuit’s reasoning demonstrates that grafting
9 such a requirement as *Emami* proposes on to the treaty in the instant case is inadvisable.”).

10 Relator’s attempt to distinguish *Emami* is not persuasive. Relator states the treaty
11 in *Emami* was broader than the Treaty in this case, as the extradition treaty with Germany
12 merely required the requesting state to seek extradition “for prosecution” rather than for a
13 person “charged with or convicted of” an offense. Docs. 200 at 25; 226 at 27. However,
14 the *Emami* Court noted the extradition treaty with Germany “limits the application of the
15 [t]reaty to persons ‘who have been charged with an offense or are wanted by the other
16 Contracting Party for the enforcement of a judicially pronounced penalty or detention
17 order.” 834 F.2d at 1448. Moreover, in concluding that a formal charge was not necessary
18 for extradition, the *Emami* Court did not rely on the broader language of the treaty with
19 Germany. Rather, it adopted *Assarsson*’s reasoning, which interpreted a treaty that *did*
20 include the “charged with or convicted of” language present in the Treaty in this case. *Id.*
21 (“The [*Assarsson*] court reasoned that the word ‘charged,’ used as a verb in the generic
22 sense only to indicate ‘accused,’ could not be transmuted into a requirement that ‘charges,’
23 a noun, be filed.” (citation omitted)).

24 Following *Emami*, the Court concludes the language “charged with or convicted of”
25 in Article II of the Treaty does not require the filing of formal charges as a prerequisite to
26 extradition.

27 C. ENFORCEABILITY OF ARTICLE IV

28 Relator asserts interpreting Article II of the Treaty to not require a formal charge

1 prior to extradition would render Article IV effectively unenforceable because Article IV
2 requires the requesting state to try a relator only for a crime for which he was initially
3 extradited. Docs. 200 at 25–26; 226 at 23–24. Relator’s argument relies on the “Rule of
4 Specialty.” *See, e.g., In re Extradition of Handanovic*, 829 F. Supp. 2d, 979, 991 (D. Or.
5 2011).

6 “A person extradited may raise whatever objections the extraditing country would
7 have been entitled to raise.” *United States v. Cuevas*, 847 F.2d 1417, 1426 (9th Cir. 1988).
8 However, the treaty in *Cuevas* stated only that “[n]o person surrendered by either of the
9 Contracting States to the other shall be prosecuted or punished for any offense, committed
10 before the demand for extradition, other than that for which the extradition is granted.” *Id.*
11 In contrast, the Treaty in this case expressly reserves the right to object under the Rule of
12 Specialty to the “surrendering High Contracting Party.” Doc. 3-3 at 11.

13 Here, in asserting that a formal charge is a prerequisite to extradition, Relator
14 overstates the restrictiveness of Article IV of the Treaty. Article IV states that “[n]o person
15 surrendered shall be tried for any crime other than that for which he was surrendered
16 *without the consent of the surrendering High Contracting Party.*” Doc. 3-3 at 11 (emphasis
17 added). As applied here, the plain language of Article IV means that Iraq *can* try Relator
18 for crimes other than the crime for which Iraq initially sought extradition, so long as the
19 United States, as the surrendering country, consents. *See United States v. Georgiadis*, 819
20 F.3d 4, 9 (1st Cir. 2016) (“Because the doctrine of specialty is concerned with comity rather
21 than the rights of the defendant, it exists only to the extent that the surrendering country
22 wishes.” (alterations omitted) (quoting *United States v. Tse*, 135 F.3d 200, 204 (1st Cir.
23 1998))).

24 The Court concludes the materials submitted in the extradition packet establish
25 Relator has been “charged with” an extraditable crime under the Treaty. The Court also
26 concludes the arrest warrant submitted is sufficient to satisfy Article XI of the Treaty, and
27 that the lack of charging instrument does not render Article IV unenforceable.

28 //

1 III. DEFENSES TO EXTRADITION

2 Having concluded that there is probable cause that Relator committed the offenses
3 described in the extradition request, and that the Iraqi government has produced sufficient
4 documentation to comply with the terms of the Treaty, the Court considers various defenses
5 Relator raises.

6 A. IRAQI CRIMINAL JUSTICE SYSTEM

7 Relator argues the Court should decline certification because of the “abusive and
8 arbitrary procedures he would face in the Iraqi criminal justice system.” Doc. 200 at 33.
9 However, as the Court previously noted in its May 20, 2021 Order:

10 Under the rule of non-inquiry, an extradition court “does not inquire into the
11 penal system of a requesting nation, or try to determine whether an extraditee
12 is likely to be treated humanely if extradited, leaving such determinations to
13 the Secretary of State.” *Garcia v. Benov*, 715 F. Supp. 2d 974, 981-82 (C.D.
14 Cal. 2009), citing *Prasoprat v. Benov*, 421 F.3d 1009, 1016 (9th Cir. 2005).
15 The extraditing court “lacks discretion to inquire into the conditions that
might await a fugitive upon return to the requesting country.” *Prasoprat*, 421
F.3d at 1016.

16 Doc. 238 at 2–3. To the extent Relator raises concerns about the fairness and efficacy of
17 the Iraqi criminal justice system, those considerations are reserved for the Secretary of
18 State. *Garcia*, 715 F. Supp. 2d at 981-82.

19 Relator asserts, notwithstanding the rule of non-inquiry, an unspoken “humanitarian
20 exception” prohibits extradition. Doc. 226 at 33–34. However, the Ninth Circuit has
21 declined to establish a humanitarian exception to extradition. *See Prasoprat*, 421 F.3d at
22 1016–17; *Mainero v. Gregg*, 164 F.3d 1199, 1210 (9th Cir. 1999); *Emami*, 834 F.2d at
23 1452-53; *Arnbjornsdottir-Mendler v. United States*, 721 F.2d 679, 683 (9th Cir. 1983). *But*
24 *see Gallina v. Fraser*, 278 F.2d 77, 79 (2d Cir. 1960) (stating a humanitarian exception
25 may exist in “situations where the relator, upon extradition, would be subject to procedures
26 or punishment so antipathetic to a federal court’s sense of decency as to require
27 reexamination of [the general principle upholding extradition].”). This Court will not
28 deviate from the principle—which the Ninth Circuit has consistently re-affirmed—that

1 humanitarian justifications to refuse extradition are for the Secretary of State to decide, not
2 the courts. *Santos*, 830 F.3d at 1007 n.9; *Prasoprat*, 421 F.3d at 1016.

3 **B. APPLICATION OF THE DEATH PENALTY**

4 Relator asserts he cannot be extradited because “he is exempt from punishment for
5 the one treaty-enumerated crime mentioned in the complaint.” Doc. 200 at 30. Specifically,
6 Relator argues that death is the only punishment under Iraqi law for premeditated murder,
7 which in Relator’s view is the only conceivable charge the Iraqi government could
8 theoretically press against him. Doc. 200 at 31 (citing doc. 3-3, Ex. B at 22).

9 As the Court also explained in its May 20, 2021 Order:

10 The Ninth Circuit in *Prasoprat* held that it was not an abuse of discretion for
11 the extradition court to exclude expert witness testimony regarding use of the
12 death penalty in Thailand. *Prasoprat*, 421 F.3d at 1014-15. The Ninth Circuit
13 reasoned that “[t]he only purpose of the extradition hearing is for the
14 magistrate judge to determine whether the crime is extraditable and whether
15 there is probable cause to support the charge.” *Id.* at 1014. Therefore,
16 information as to how Thailand imposes the death penalty “would not be
relevant to the magistrate judge’s decision regarding whether to certify
Prasoprat as extraditable.” *Id.* at 1015.

17 Doc. 238 at 3. To the extent Relator’s argument concerns how Iraq imposes the death
18 penalty, that argument is foreclosed by the rule of non-inquiry. Further, as the United States
19 observes, Coalition Provisional Authority Order Number 7, Section 3(1) states that
20 “[c]apital punishment is suspended. In each case where the death penalty is the only
21 available penalty prescribed for an offense, the court may substitute the lesser penalty of
22 life imprisonment, or such other lesser penalty as provided for in the Penal Code.” Doc.
23 200-3, Ex. B-3 at 62. In the United States’s Supplemental Exhibits, Judge Hussain states
24 Order Number 7 applies to Relator under “Article 2 of the Amended Iraqi Penal Code, 111
25 for 1969.” Doc. 254-2, Ex. 2 at 4–5. According to Judge Hussain, because the crimes
26 occurred while the death penalty was suspended in Iraq, the death penalty would not be an
27 available punishment if Relator was convicted. Doc. 254-2, Ex. 2 at 4–5. Accordingly, the
28 Court is not persuaded that Relator is exempt from punishment under Iraqi law and not

1 extraditable on that basis.

2 **C. CONVENTION AGAINST TORTURE**

3 Relator asserts certifying extradition would violate the United Nations Convention
4 Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or
5 Punishment (CAT). Doc. 200 at 39. This Court is not the correct forum for that argument.
6 In *Trinidad y Garcia v. Thomas*, the Court noted that “the *Secretary of State* must make a
7 torture determination before surrendering an extraditee who makes a CAT claim.” *Id.* 683
8 F.3d 952, 957 (9th Cir. 2012) (emphasis added). Further, *Trinidad y Garcia* suggests the
9 Secretary of State’s determination may be issued after a magistrate judge has certified
10 extradition. *Id.* (“The Secretary must consider an extraditee’s torture claim and find it not
11 ‘more likely than not’ that the extraditee will face torture before extradition can occur.”
12 (citing 22 C.F.R. § 95.2)). Although the Ninth Circuit is clear that a CAT certification is
13 mandatory prior to *extradition*, the posture of *Trinidad y Garcia* strongly suggests CAT
14 certification is not required prior to *certification*.

15 **D. UNITED STATES CITIZEN**

16 Relator reads *Valentine v. United States ex rel. Neidecker*, as prohibiting his
17 extradition absent authorization in the Treaty because he is a United States citizen. 299
18 U.S. 5, 7–18 (1936). Relator argues the Treaty between the United States and Iraq does not
19 provide that authorization, as it does not compel the United States or Iraq to extradite its
20 own citizens. Doc. 200 at 45–46.

21 18 U.S.C. § 3196 provides:

22 If the applicable treaty or convention does not obligate the United States to
23 extradite its citizens to a foreign country, the Secretary of State may,
24 nevertheless, order the surrender to that country of a United States citizen
25 whose extradition has been requested by that country if the other
requirements of that treaty or convention are met.

26 The Treaty states “[u]nder the stipulations of this Treaty, neither of the High Contracting
27 Parties shall be bound to deliver up its own citizens.” Doc. 3-3 at 11. *Knotek* addressed
28 comparable language in an extradition treaty between the United States and the Czech

1 Republic and concluded Section 3196 “fill[ed] a void” between what the United States was
2 *permitted* to do versus what it was *prohibited* from doing under the terms of the extradition
3 treaty in that case. “In other words, the Treaty states that there is no obligation to extradite
4 a U.S. citizen, while section 3196 grants the U.S. government discretion to do so. “There
5 is a vast difference between not being bound to do an act and being forbidden to do it.”
6 *Knotek*, 925 F.3d at 1126–27 (alteration omitted) (quoting *Bašić v. Steck*, 819 F.3d 897,
7 900 (6th Cir. 2016)). Because Section 3196 similarly “fills a void” in the Treaty here, the
8 United States may extradite a United States citizen even if not obligated by the Treaty to
9 do so.

10 Relator asserts both Section 3196 and *Knotek* are inapplicable. First, Relator asserts
11 the government “has forfeited any ability to rely on Section 3196 by failing to include or
12 specifically reference it in its extradition complaint.” Doc. 200 at 47. Relator relies on
13 *Faretta v. California*, 422 U.S. 806, 818 (1975), which holds that criminal defendants in
14 the United States are entitled to “notice, confrontation, and compulsory process,” and cites
15 *Quinn*’s instruction that a magistrate judge should order discovery procedures “as law and
16 justice require.” *Quinn*, 783 F.3d at 817 n.41.

17 An extradition proceeding is not a criminal proceeding. *Matter of Extradition of*
18 *Mainero*, 990 F. Supp. 1208, 1218 (S.D. Cal. 1997). “The person whose return is sought is
19 not entitled to the rights available in a criminal trial at common law.” *Id.* (citing *Neely v.*
20 *Henkel*, 180 U.S. 109 (1901)). Moreover, Relator’s general argument regarding fair notice
21 is unfounded; Relator himself raised the Section 3196 issue in his initial extradition brief.
22 Doc. 200 at 47. An additional round of briefing followed (doc. 226) and the extradition
23 hearing was held several months later. Relator had ample notice that Section 3196 might
24 apply to him. Further, as the United States notes, the United States also did not mention
25 Section 3196 in the complaint in *Knotek*, in which the Ninth Circuit upheld the certification
26 of extradition. Doc. 228 at 36 n.16 (citing *United States v. Knotek*, No. 2:13-mj-02421,
27 Doc. 1 (C.D. Cal. Aug. 30, 2013)).

28 Relator also distinguishes *Knotek* by arguing the Treaty, unlike the treaty at issue in

1 *Knotek*, was ratified prior to Section 3196’s enactment and argues Section 3196 does not
2 apply retroactively. Doc. 200 at 49–50. However, the Sixth Circuit in *Bašić* applied Section
3 3196 to an extradition treaty ratified in 1902. 819 F.3d at 898–99. The Ninth Circuit
4 followed *Bašić* in *Knotek*. 925 F.3d at 1123 (“We agree with the Sixth Circuit and nearly
5 every district court that has considered the applicability of 18 U.S.C. § 3196 that, in the
6 absence of a treaty authorization or prohibition, the statute confers discretion on the U.S.
7 Department of State to seek extradition of U.S. citizens.”).

8 **E. POLITICAL OFFENSE EXCEPTION**

9 Relator asserts that even if probable cause exists, the offenses alleged were non-
10 extraditable political offenses.

11 For a court to apply the political offense exception, a relator must prove: “(1) the
12 occurrence of an uprising or other violent political disturbance at the time of the charged
13 offense, and (2) a charged offense that is ‘incidental to’ ‘in the course of,’ or ‘in furtherance
14 of’ the uprising.” *Quinn*, 783 F.2d at 797 (internal citations omitted). The test is
15 ideologically neutral: “[i]t is the fact that the insurgents are seeking to change their
16 governments that makes the political offense exception applicable, not their reasons for
17 wishing to do so or the nature of the acts by which they hope to accomplish that goal.” *Id.*
18 at 804–05.

19 **1. The United States’s Evidence Regarding AQI’s Role in Violence** 20 **in Iraq**

21 Professor Whiteside is a professor of national security affairs with the United States
22 Naval War College. In 2006 he served as a United States Army officer in Iraq conducting
23 counterinsurgency operations against insurgent groups, “including the group the United
24 States called ‘al-Qaeda in Iraq.’” Doc. 199-2, Ex. 2 at 1.

25 Whiteside’s Report described AQI’s origins: it began as “Tawhid wal-Jihad.” Upon
26 pledging its allegiance to Osama Bin Laden in 2004, the group’s leader, Abu Musab al-
27 Zarqawi, changed its name to “al-Qaeda’s Base of Jihad in the Land of Two Rivers,”
28 though the United States referred to the group as “al Qaeda in Iraq” or “AQI.” Doc. 199-2

1 at 4–5. Al-Zarqawi was Jordanian. Under his leadership:

2 [f]rom October 2004 to October 2006 the group would operate in the region
3 as an official al-Qaeda franchise dedicated to preparing the groundwork for
4 a caliphate that would allow implementation of Sharia in lands liberated from
both U.S. and allied forces and Iraq’s neighboring ‘apostate’ governments.

5 Doc. 199-2 at 5. According to Whiteside, AQI’s leadership was drawn heavily from non-
6 Iraqis, who maintained continuous ties with external terror groups such as the main al-
7 Qaeda group. The leader of AQI after Zarqawi’s death in June 2006 was Abu Hamza al-
8 Muhajir, an Egyptian. Doc. 199-2 at 7.

9 Whiteside notes that AQI’s regional commanders in Iraq were not Iraqi natives.
10 When Relator allegedly killed Lieutenant Hussein and Officer Mohammed—between June
11 to October 2006—AQI’s leader in Fallujah was Jarrah al-Shami, a native Syrian. Doc. 199-
12 2 at 8. Whiteside states AQI was not an “indigenous group” as it was “led by non-Iraqis
13 whose objectives were global” and “were responsive to higher-level leaders in Pakistan.”
14 Doc. 199-2 at 5.

15 Whiteside explains that AQI did not engage in violence on behalf of Iraqis to change
16 the government of Iraq. AQI’s goal was to establish a caliphate in the Levant region, a
17 region that would include part of Iraq, Kuwait, Syria, and Turkey. Doc. 199-2 at 9. AQI
18 was a “transnational terrorist group which operated and conducted terror attacks around
19 the region and beyond in the pursuit of its global jihadist agenda.” Doc. 199-2 at 6. AQI
20 “planned attacks and struck targets in Jordan, Israel, and Turkey.” Doc. 199-2 at 6. Rather
21 than committing violent acts in a domestic struggle to change the form of the Iraqi
22 government, AQI sought to replace international borders and establish a “pan-Islamic state
23 that transcended current borders and aligned with the borders of the Islamic Empire at its
24 greatest extent.” Doc. 199-2 at 9. Emphasizing AQI’s goal of destroying the Iraqi state to
25 subsume it within parts of Iraq, Kuwait, Syria, and Turkey, Whiteside notes that AQI’s
26 Arabic name for itself—“al-Qaeda’s Base of Jihad in the Land of Two Rivers”:

27 referr[ed] to the Euphrates and Tigris. None of the logos of the movement
28 that ultimately became the Islamic State—not Tawhid wal-Jihad (2003-
2004), AQI (2004-2006), Mujahidin Shura Council (2006), Islamic State of

1 Iraq (2006-2013) —have ever included an image of the borders of Iraq.
2 Doc. 199-2 at 9.

3 Whiteside states AQI conducted a “campaign to assassinate police officers for
4 allegedly publicly apostatizing and working for a democratic government.” Doc. 199-2 at
5 5. He notes that during his tour in Iraq as an officer in the United States Army, AQI in 2006
6 and 2007 claimed responsibility for a suicide attack on an Iraqi police station as well as the
7 capture and summary execution of an Iraqi police chief and his security detail. Doc. 199-2
8 at 12. As an example of AQI not being part of a domestic Sunni insurgency, Whiteside
9 notes AQI repeatedly targeted “Sunni Iraqis who joined or negotiated with the [Iraqi]
10 government” and “openly targeted civilians and Iraqis who joined police, military, or
11 government jobs.” Doc. 199-2 at 10. Whiteside notes that under Jarrah al-Shami, the Syrian
12 who led AQI in Fallujah in 2006, “[a]ll local AQI amirs in Fallujah” followed al-Shami’s
13 “instructions and guidance, especially directives to kill Iraqi policemen.” Doc. 199-2 at 8.

14 **2. Relator’s Expert**

15 Professor Hamoudi is a Professor of Law at the University of Pittsburgh School of
16 Law. In Hamoudi’s view, AQI was “part of the insurgency” in Iraq. Doc. 200-3 at 31, ¶
17 111. As to Zarqawi’s and AQI’s public pledge of allegiance to Osama Bin Laden, Hamoudi
18 states “while there was a formal affiliation between Zarqawi as nominal head of AQI and
19 Bin Laden and Al Qaeda, this affiliation was in name only.” Doc. 200-3 at 31, ¶ 113.
20 Hamoudi states the two groups “did not even share the same basic strategic or tactical
21 goals.” Doc. 200-3 at 31, ¶ 113.

22 As to attacks on police officers, Hamoudi states “there *was* international terrorism
23 in Iraq at the time of the insurgency, and Zarqawi *was* leading much of it.” Doc. 200-3 at
24 34, ¶ 127. But “neither Zarqawi nor international terrorists engaged in the meticulous
25 targeting of ranked police officers in the new Iraqi state,” because they lacked the skill,
26 experience, and operational capacity to do so. Doc. 200-3 at 34, ¶ 128. Instead, attacks on
27 police officers “were classic features of the Sunni insurgency.” Doc. 200-3 at 34, ¶ 129. In
28 disputing that AQI was capable of carrying out murders of police officers, Hamoudi writes

1 “[i]t is possible that the alleged killings, if they took place, were carried out by members
2 of the Army of Omar and were misattributed to AQI.” Doc. 200-3 at 34 ¶ 130. Hamoudi
3 asserts “[w]hat *is* important is to focus on the relevant act—the targeted assassination of
4 police officers—and not on who committed it.” Doc. 200-3 at 34 ¶ 130.

5 At the extradition hearing, Relator argued that even assuming AQI was “involved
6 in this and assuming Mr. Al-Nouri was involved with them in this is fully consistent with
7 the definition of a political offense because it was an attack that fit the profile of an act
8 under the indigenous conspiracy.” Doc. 273, Tr. 150:18–22. Relator asserted he was not
9 downplaying “the involvement of foreigners and foreign groups in this uprising” or asking
10 “the Court to ignore the involvement of foreigners in AQI” but “their presence and
11 involvement doesn’t change the degree to which this uprising fits within *Quinn*’s
12 definition.” Doc. 273, Tr. 147:8–13.

13 3. The Analysis Under *Quinn*

14 A relator does not need to “prove membership in the uprising group” to invoke the
15 political offense exception. *Quinn*, 783 F.2d at 811. In applying the test, the Court will
16 assume that the murders were committed by individuals acting on behalf of AQI, as no
17 competent evidence suggests that any group other than AQI committed the murders. In
18 particular, the Court finds no basis in the record to support Professor Hamoudi’s
19 speculation that the murders were misattributed to AQI.

20 Under *Quinn*, it matters *who the insurgents were* who carried out the murders of
21 Lieutenant Hussein and Officer Mohammad, as “not all politically motivated violence
22 undertaken by dispersed forces and directed at civilians is international terrorism.” *Id.* at
23 805. International terrorism is categorically excluded from the “protection afforded by the
24 exception.” *Id.* As the *Quinn* Court explained:

25 [t]he exception was designed, in part, to protect against foreign intervention
26 in internal struggles for self-determination. When we extradite an individual
27 accused of international terrorism, we are not interfering with any *internal*
28 struggle; rather it is the international terrorist who has interfered with the
rights of others to exist peacefully under their chosen form of government.

1 *Id.* at 806.

2 The Court in *Quinn* was clear that under the test for the political offense exception,
3 the Court does *not* analyze “the nature of the acts” by which insurgents seek to change
4 their government. 783 F.2d at 805. “[T]he tactics that are used in such internal political
5 struggles are simply irrelevant” to the analysis. *Id.* Accordingly, following *Quinn*, the
6 Court does not adopt Relator’s view that the identity of the murderers is irrelevant so long
7 as the murders “fit the profile of an act under the indigenous conspiracy.” Docs. 273, Tr.
8 150; doc. 200-3 at 34, ¶ 130. To the contrary, under *Quinn* the crucial question is not the
9 nature of the act but whether the act was incidental to or in furtherance of an *indigenous*
10 uprising.

11 The parties agree that there was a violent Sunni insurgency in Iraq in 2006; the Sunni
12 insurgency opposed the Iraqi government and the United States. *See* doc. 199-2, Ex. 2 at
13 10 (Report of Professor Whiteside for the United States); doc. 200-3, Ex. B at 30 ¶ 106
14 (Report of Professor Hamoudi for Relator); doc. 273, Tr. 142:20–23. Based on the
15 existence of a Sunni insurgency, Relator asserts he satisfies the first prong of the political
16 offense exception, even if the many groups involved in the violence had disparate
17 characteristics. Doc. 273, Tr. 142–44. According to Relator, even assuming he was
18 involved with AQI and following “orders to fire at policeman in Fallujah,” the murders are
19 protected under the political offense exception because “insurgencies have never been
20 hermetically sealed off from the rest of the world.” Doc. 200 at 21.

21 The Court credits the ample evidence in the Whiteside Report that AQI was an
22 international and transnational terrorist group committing violence in multiple nations
23 besides Iraq, and that AQI often stood in violent opposition to other Sunni insurgent groups
24 in Iraq. Indeed, the violent conflict towards the end of 2006 known as “the Awakening,”
25 during which the “local grassroots movement” groups violently opposed AQI’s attempt to
26 dominate the domestic insurgency and impose AQI’s goals, supports the conclusion that
27 AQI was in opposition to indigenous Sunni groups, and not part of a domestic insurgency.
28 *See* doc. 199-2 at 1, 4, 10.

1 In illustrating the differences between AQI and indigenous groups, Whiteside
2 identifies AQI’s targeting of Iraqi police forces—the subject of the Complaint seeking
3 Extradition—as one cause of the armed resistance Sunni militant groups conducted against
4 AQI. For some Sunni tribes, jobs in the Iraqi police force were an important source of
5 revenue and employment at a time of widespread unemployment. Doc. 199-2 at 11. AQI
6 favored attacks on police officers for its goals; *the indigenous Sunni insurgency did not*, as
7 “local Iraqi police had a negligible influence on insurgent activity and focused more on
8 their roles as community arbiters of citizen behavior.” Doc. 199-2 at 12.

9 In discussing the armed resistance to AQI in 2006 and 2007, Whiteside summarizes
10 how AQI differed from the domestic insurgency:

11 many felt that the group’s [AQI’s] killing of Iraqis that joined the
12 government as soldiers and police, largely to earn a living, was an affront to
13 the cultural, tribal, and societal norms of Anbar province and many other
14 Sunni dominated areas. In many cases, these rival resistance members and
15 tribal auxiliaries joined together to fight with the same U.S. and Iraqi
16 government forces they were recently fighting against. This massive shift
17 alone should speak to the bitter feelings that the extremists of AQI
18 engendered among the very people they were trying to govern, or more
accurately, coerce on their way to establishing a cross-boundary caliphate. It
is a categorical error to paint AQI as just another Iraqi resistance group
during this time period.

19 Doc. 199-2 at 13. This description—of rival resistance groups fighting *against* AQI, and
20 *with* “the same U.S. and Iraqi government forces”—supports the inapplicability of the
21 political offense exception to acts committed on behalf of AQI, an international and
22 transnational terrorist group.

23 This Court finds AQI in 2006 was not part of an internal “uprising or other violent
24 political disturbance” within the meaning of the first prong of the political offense
25 exception defined in *Quinn*. Here, the cooperator named Relator as Emir of the al-Qaeda
26 organization (doc. 3-4 at 7), and an eyewitness identified Relator as Emir of a group of
27 militants in the Islamic State (doc. 3-4 at 5). Relator acknowledges AQI was present in Iraq
28 and conducted acts of international terrorism in Iraq. Docs. 200-3 at 34, ¶ 127; 273, Tr.

1 147–48. On the evidence presented, the Court finds that the murders were acts of
2 international terrorism constituting “foreign intervention in internal struggles for self-
3 determination.” *Quinn*, 783 F.3d at 806. As the *Quinn* Court stated repeatedly, international
4 terrorism is not protected by the political offense exception. *Id.* at 805. “Acts of
5 international terrorism do not meet the incidence test and are thus not covered by the
6 political offense exception.” *Id.* at 817.

7 Additionally, in light of the evidence that, in contrast to AQI, indigenous insurgents
8 did not target police officers, the murders of Lieutenant Hussein and Officer Mohammed
9 were not in furtherance of, or incidental to, any domestic uprising. In *Barapind*, the Court
10 noted that the Relator “has the burden of showing a factual nexus between the crime and
11 the political goal.” 400 F.3d at 751. Here, in relying on the “nature of the act” of murdering
12 police officers, Relator has not met his burden of showing the acts were “causally or
13 ideologically related” to an indigenous political uprising. *Id.* at 752 (quoting *Quinn*, 783
14 F.2d at 809).

15 Relator argues against characterizing the acts as *international* terrorism, pointing
16 out that if he was involved in these acts at the behest of a foreign organization, he was still
17 a native of Iraq at the time of the two murders, and did not travel into Iraq from a foreign
18 country to commit any act. Doc. 273, Tr. 149–50. In Relator’s view, declining to apply the
19 political offense exception here would cause it to “cease to have any function, because the
20 reality of the world is foreigners do get involved; foreign entities and countries do get
21 involved.” Doc. 273, Tr. 148:14–20. To the contrary, in this Court’s view, *Quinn* supports
22 declining to apply the political offense exception under these circumstances in which an
23 international terrorist group, with its own foreign command structure in place in Iraq,
24 employed an Iraqi national to carry out its foreign intervention as it attempted to obliterate
25 the government of Iraq as a sovereign entity and subsume the Iraqi nation within a
26 caliphate. Exportation of violence is not protected by the political offense exception. *See*
27 *Quinn*, 783 at 813. Indeed, the Court in *Quinn* anticipated the scenario of violence exported
28 by foreign entities when it noted the political offense exception does not bar extradition of


1 an international terrorist who “has interfered with the rights of others to exist peacefully
2 under their chosen form of government.” *Quinn*, 783 F.2d at 806. Relator’s alleged acts of
3 murder, on behalf of AQI and in service of destroying the Iraqi government from without
4 as opposed to supporting a domestic political struggle from within, fit squarely within the
5 category of foreign intervention in internal struggles that *Quinn* excluded from the
6 protection of the political offense exception.

7 **IV. CERTIFICATION OF EXTRADITABILITY AND ORDER**

8 Under 18 U.S.C. § 3184, the Court finds and certifies to the Secretary of State that
9 Ali Yousif Ahmed Al-Nouri is extraditable for both offenses described in the Complaint
10 seeking extradition.

11 **IT IS ORDERED** the Clerk of the Court is directed to transmit this Order
12 Certifying Extradition to the Office of the Legal Advisor for the United States Department
13 of State.

14 Dated this 31st day of March, 2022.

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17 Honorable Michael T. Morrissey
18 United States Magistrate Judge
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