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February 10, 1998

Cathy A. Catterson
Clerk, Court of Appeals
for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: In the Matter of the Extradition of Chee Fan Chen;
Chee Fan Chen v. United States Marshal
No. 97-15609; D.C. No. MC-95-00140-LKK

Dear Ms. Catterson:

Pursuant to the Court's request at oral argument and in the order filed December 12, 1997, respondent-appellee United States submits this letter brief.

The Court asked the undersigned to respond to several questions, which are paraphrased as follows. Has the Secretary of State ever imposed conditions on an extradition? If so, has the Secretary ever sent a monitor to the requesting country to ensure that the conditions were complied with? Would the Secretary send a monitor if she were to impose conditions on an extradition? Does the Secretary follow some statute, regulation, guideline, or other policy or procedure in determining whether to extradite or to condition an extradition -- especially in the face of allegations the requested person may be subjected to inhumane treatment by the requesting state? What criteria does she consider? The Court asked Chen's counsel to address what significance, if any, must or should the Court attach to the Secretary's Country Report.

The undersigned has consulted with the Department of State and submits the following response to the Court's questions.

There is no statute or published regulation applicable to the Secretary's decision-making process in determining whether to sign an extradition warrant or whether to impose conditions on an extradition. Article 3 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("Torture Convention"), prohibits, among other things, the extradition of a person to a country where "there are substantial grounds for believing that he would be in danger of being subjected to torture." Understandings included in the United States instrument of ratification of the treaty establish that the United States

interprets this phrase to mean "if it is more likely than not that he would be tortured." The obligation imposed by the Convention with regard to extradition is vested with the Secretary of State as the United States official with ultimate responsibility for determining whether a fugitive will be extradited. Decisions on extradition are presented to the Secretary¹ only after a fugitive has been found extraditable by a United States judicial officer and given an opportunity to challenge the finding by seeking a writ of habeas corpus.

The Secretary of State has taken steps to ensure United States Government compliance with our obligation under the Torture Convention. All bureaus in the Department and all posts abroad have been advised that, in order to implement this obligation, the Secretary will consider in all extradition cases whether a person facing extradition "is more likely than not" to be tortured in the country requesting extradition. All Department bureaus and posts abroad have been requested to provide any information relevant to the issue of torture in a particular extradition case to the Office of the Legal Adviser and the Bureau of Democracy, Human Rights and Labor.

In each case where allegations relating to torture are made or the issue is otherwise brought to the Department's attention, appropriate policy and legal offices review and analyze all available information relevant to the case in preparing a recommendation to the Secretary. If the person wanted for extradition has attempted to raise this issue during judicial proceedings, any relevant information provided to the court is reviewed. The fugitive, on his own or through counsel, and other interested parties may also submit additional written documentation to the Department of State for consideration in reaching the decision on extradition. The review also considers other information available to the Department concerning judicial and penal conditions and practices of the requesting country, including the information contained in the State Department's annual Human Rights Reports, and the possible relevance of that information to the individual whose surrender is at issue. The Human Rights Reports are the official State Department reports to Congress on human rights conditions in individual countries for a given year as

¹ Within the Department of State, the statutory authority to make decisions on signing of extradition warrants has been delegated only to the Deputy Secretary. Thus, all requests for surrender are submitted to the Secretary personally or to the Deputy Secretary. For ease of reference here, the term "Secretary" should be read to include the Deputy Secretary.

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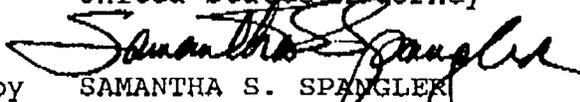
mandated by law (sections 116(d) and 502(b) of the Foreign Assistance Act of 1961, as amended, and section 505(c) of the Trade Act of 1974, as amended).² The Bureau of Democracy, Human Rights and Labor, which drafts the Human Rights Reports and provides advisory opinions on asylum requests in deportation proceedings under section 207 of the Immigration and Nationality Act, is a key participant in this process.

Based on the resulting analysis of all relevant information, 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 conditions or after receiving assurances she deems appropriate. The Secretary has indeed reached a decision to sign a warrant in several cases only after receiving adequate assurances of humane treatment from the requesting state. Such assurances are sought and received where necessary regardless of whether the requesting state is a party to the Torture Convention. In situations where follow-up monitoring by the United States Government has been deemed necessary, that responsibility is generally carried out by the relevant United States embassy or consulate in the country to which the person is extradited. With rare exception, the Department has not found it necessary to send anyone from Washington for this purpose.

Because the Secretary follows a principled decision-making process with appropriate concern for the treatment a requested person will receive if returned to a requesting country, this Court should not hesitate to rule that there is no "humanitarian exception" to the rule of non-inquiry.

Respectfully submitted,

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United States Attorney


by SAMANTHA S. SPANGLER
Assistant U.S. Attorney

cc: Suzanne Luban, Counsel for Appellant Chen

² The government contends this Court should consider the Human Rights Report in the same manner it should consider all other material presented regarding Chen's claim that his extradition should be denied based on humanitarian reasons: the Court should defer that inquiry to the Secretary of State under the well-settled rule of non-inquiry and should refuse to recognize the existence of a "humanitarian exception" to that rule.