

# The Extradition Treaty Between Jamaica and the United States: Its History and the Saga of Christopher “Dudus” Coke

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## I. INTRODUCTION

Although the United States has been battling illicit drug trafficking for many years, during the last four decades, “international drug control bec[a]me a major priority in the formulation of

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United States foreign policy.”<sup>2</sup> To that end, the United States, among other things: (1) enacted laws that would enable it to meet its obligations under international treaties<sup>3</sup> and reduce domestic drug consumption; and (2) entered into new treaties that would facilitate the fight against multinational enterprises and conspirators involved in drug trafficking.<sup>45</sup> In June 1983, to broaden and further its drug policy agenda in the Caribbean, and to improve its “ability to combat international narcotics trafficking,”<sup>6</sup> the United States entered into its “first modern extradition treaty within the

2. Mark Andrew Sherman, *United States Drug Control Policy, Extradition, and the Rule of Law in Columbia*, 15 NOVA L. REV. 661, 662 (1991); Controlled Substances Act of 1970, 21 U.S.C. § 801 (2011); Uniform Controlled Substances Act (1994) § 201; *United Nations: Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, Dec. 20, 1988, U.N. Doc. E/CONF. 82/15, Corr. 1 and Corr. 2, reprinted in 28 I.L.M. 493 (1989); Controlled Substances Penalties Amendment Act of 1984, 21 U.S.C. § 841 (b) (2011); Chemical Diversion and Trafficking Act of 1988, 21 U.S.C. § 830 (2011).

3. Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. 91-1444 91st Cong., 2nd Sess. (1970).

4. Extradition Treaty with the Republic of Columbia, U.S-Colom., Sept. 14, 1979, S. Treaty Doc. No. 97-8 art. II¶ 4 (1979), including as extraditable offenses, attempts and conspiracies to engage in drug trafficking.

(4) Subject to the conditions set forth in paragraphs (1), (2) and (3) extradition shall also be granted:

(a) For attempting to commit an offense or participating in the association to commit offenses as provided by the laws of the United States.

(b) for any extraditable offense when, for the purpose of granting jurisdiction to either Contracting Party [sic], transportation of person or property, the use of the mails or other means of carrying out interstate or foreign commerce is also an elements of the specific offense. . .

#### APPENDIX

##### SCHEDULE OF OFFENSES

21. Offenses against the laws relating to the traffic in, possession, or production or manufacture of,[sic] narcotic drugs, cannabis, hallucinogenic drugs, cocaine and its derivatives, and other substances which produce physical or psychological dependence.

22. Offenses against public health, such as the illicit manufacture of or traffic in chemical products or substances injurious to health.

5. Extradition Treaty with the Republic of Bolivia, U.S.-Bol., Jun. 27, 1995, S. Treaty Doc. No. 104-22 art. III (1995) (making drug trafficking a mandatory extraditable offense) providing:

Neither Party [sic] shall be obligated to extradite its own nationals, except when the extradition request refers to. . . :

(b) murder; voluntary manslaughter; kidnapping; aggravated assault; rape; . . . **offenses related to the illicit traffic in controlled substances.** . . . (emphasis added).

6. Richard J. Barnett, *Extradition Treaty Improvements to Combat Drug Trafficking*, 15 GA. J. INT'L & COMP. L. 285 (1985).

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Caribbean region.”<sup>7</sup>

Pursuant to the Treaty, the United States has tried and imprisoned some of Jamaica’s most infamous crime figures; however, the Treaty, or more appropriately its enforcement, are not without criticism. In fact, some have questioned whether the Treaty is fair,<sup>8</sup> while others have asserted that in enforcing the Treaty, the United States simply ignores the constitutional rights of Jamaican citizens<sup>9</sup> and forces the Government of Jamaica to break its own laws.<sup>10</sup> Still yet, others argue that enforcement of the Treaty is really an exercise of the United States’ political and economic strength.<sup>11</sup> As a result, many Jamaicans argue that there is no need to extradite Jamaican citizens<sup>12</sup> to the United States, whose laws and legal traditions are significantly different from Jamaica’s, and whose citizens are the primary consumers and demanders of the illegal drugs exported from Jamaica, in addition to being the suppliers of illegal guns imported into Jamaica.<sup>13</sup> Many Jamaicans complain that the Treaty should not

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7. Extradition Treaty with Jamaica, U.S.-Jam, Jun. 14, 1983, S. Treaty Doc. No. 98–18 (1984) [hereinafter Treaty].

8. See Desmond “Milo” Bond, Letter to the Editor, *Is the Extradition Treaty Fair?*, JAMAICA OBSERVER, Apr. 18, 2010, available at <http://www.jamaicaobserver.com/letters/Authority>.

9. See Ken Chaplin, Op. Ed., *Justice Minister Correct in Coke’s Extradition Case*, JAMAICA OBSERVER (Apr. 6, 2010), [http://www.jamaicaobserver.com/columns/Ken-Chaplin-April-6—Minister-correct-in-extradition-matter\\_7521888](http://www.jamaicaobserver.com/columns/Ken-Chaplin-April-6—Minister-correct-in-extradition-matter_7521888); See also Daraine Luton, ‘*Dudus Defence*’, THE GLEANER, Mar. 3, 2010, available at <http://www.jamaica-gleaner.com/gleaner/20100303/lead/lead1.html> (quoting Prime Minister of Jamaica, Bruce Golding: “I am not defending the wrongdoing of any person but, if I have to pay a political price for it, I am going to uphold a position that constitutional rights do not begin at Liguanea.”) The American embassy in Jamaica is located in Liguanea, a subdivision of Kingston.

10. See Clayton Morgan, *The Extradition Treaty Between Jamaica and the USA*, RISINGSTARS.TV.NET BLOG (Nov. 25 2009, 12:30 PM), <http://www.risingstarstv.net/profiles/blogs/the-extradition-treaty-between> (discussing that “There is a view that the treaty has proved itself to be inimical to the interests of Jamaica. Space denies me the opportunity to submit a detailed exposition of the negative effects of the treaty on our sovereignty and the due process of law.”).

11. See Sherman, *supra* note 2, at 664, stating:

Thus, the United States drug control relationship with many third world nations is actually one of at least partial coercion. Naturally, such arm-twisting by any nation in pursuit of a foreign policy objective is bound to upset the government with which that country must work, but which may have differing perspectives on, and approaches to, the same objective.

12. See Morgan, *supra* note 10.

13. See Bond, *supra* note 8; see also Morgan, *supra* note 10; John G. Kester, *Some Myths of United States Extradition Law*, 76 Geo. L.J. 1441, 1442 (1988) (“Conversely, extradition from another country to the United States for trial here may impose

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be interpreted as a hammer used by the United States to secure the extradition of purported criminals.<sup>14</sup> Instead, it, like other treaties, should “be construed as to effect the apparent intention of the parties to secure equality and reciprocity between them.”<sup>15</sup>

To be sure, the Treaty is not enforced by purely formulaic and mechanical routines wherein Jamaica and the United States merely acquiesce to each other’s extradition requests. Instead, when a so-called Third World country is hesitant to comply with an extradition request from the United States, the United States uses its substantial bargaining power to coerce and ensure compliance.<sup>16</sup> That coercion, of course, may upset the government and the people of the nation being forced into submission.<sup>17</sup>

This article will analyze the history of the Treaty (i.e. the circumstances and context that gave rise to the drafting and execution of the Treaty), and some of the reasons that the Jamaican government and its citizens offered in initially refusing to comply with the Government of the United States’ Extradition Request for Christopher “Dudus” Coke. The article will examine whether the Treaty and/or the laws of Jamaica provided the government of that country with the unfettered discretion to refuse an extradition request from the United States, and it will further explore whether the international doctrine of specialty and its interpretation and application by American courts properly cautioned or informed the conduct of the Jamaican government in refusing to comply with the Extradition Request for Mr. Coke.

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insuperable defense costs on the accused, and often means separation from witnesses, evidence, and other support that would make conviction less likely.”)

14. *Warren v. Secretary of State for the Home Department* (2003) EWHC 1177 (stating: “it is in the interest of good international relations that a country honour [sic] its treaty obligations. This does not mean that a requesting state, which acts in breach of the spirit of the treaty, expects, as a matter of right, that the requested state is obligated to honour [sic] its request under the treaty.”).

15. *United States v. Lui Kin-Hong*, 110 F.3d 103, 110 (2d Cir. 1997) (stating that treaties are to be enforced in the interest of friendly international relationships.); see also *Warren*, *supra* note 14 (stating, “Such international cooperation is all the more important in modern times. . . . It is in the interest of good international relations that a country honor its treaty obligations. . .”).

16. *Sherman*, *supra* note 2, at 664; Gary Spaulding, *Dorothy’s Defence*, THE GLEANER, Mar. 4, 2011, available at <http://jamaica-gleaner.com/gleaner/20110304/lead/lead1.html> (quoting Senator Dorothy Lightbourne: “All I asked the US to do is to respect our laws. We are small and we are poor, but respect our laws.”).

17. *Id.*; *Dorothy Lightbourne Tried to Protect Dudus’ Rights*, THE GLEANER, Mar. 3, 2011, available at <http://jamaica-gleaner.com/latest/article.php?id=26927>.

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## II. THE HISTORY AND PURPOSE OF THE TREATY

During the 1970s, Jamaica became another pawn on the cold-war chess board. Michael Manley had been elected Prime Minister of Jamaica in 1976, and his domestic agenda was too left of center to make the United States comfortable. In fact, Prime Minister Manley's policies on education and minimum wage laws<sup>18</sup> were labeled as socialist.<sup>19</sup> His party's, the People's National Party, congenial relations with Cuba and the ambivalence or even support of some of its members for communism scared the United States Government and the Jamaican captains of industry:<sup>20</sup>

The local communist group, the tiny Workers' Party of Jamaica, made matters worse by pushing the line that socialism and communism were really the same thing, and, if not quite the same, that socialism was simply the first step on the road to communism.

In light of its cold war with Russia and its acrimonious relationship with communist Cuba, the United States could not and would not permit Jamaica, it believed, to saunter down the road to Marxism.<sup>21</sup> Consequently, the United States Government aligned itself with Michael Manley's opposition—The Jamaican Labor Party and its enigmatic leader, Edward Seaga.<sup>22</sup> Edward Seaga was also the Member of Parliament for West Kingston, which he had socially engineered into a power base for himself and the Jamaican Labor Party ("JLP").<sup>23</sup> West Kingston, and Tivoli Gar-

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18. PETER ABRAHAMS, *THE DREAMERS & THE ARMAGEDDON BOYS*, in *THE COYABA CHRONICLES: REFLECTIONS ON THE BLACK EXPERIENCE IN THE 20TH CENTURY* (2000). The National Minimum Wage compelled employers of domestic workers to observe set base rates and hours and conditions of work. Before that law, domestic helpers were at the mercy of employers. A good employer might pay her household help reasonably well and allow for an eight-hour day, with every other weekend off on full pay. A bad employer might pay very little and insist on a twelve- or fourteen- or even sixteen-hour day with no weekends off.

19. *Id.* His education program, in which the children of employers and their employees would go to the same schools, sit side-by-side in the same classes, unsettled many middle-class parents who had spent a life-time working to separate themselves from the lower classes and move up to the upper classes.

20. *Id.*

21. Casey Gane-McCalla, *How the CIA Created the Jamaican Shower Posse*, NEWSONE, (Jun. 3, 2010, 2:06 PM), <http://newsone.com/world/casey-gane-mccalla/how-the-cia-created-the-jamaican-shower-posse/>.

22. *Id.*

23. ABRAHAMS, *supra* note 18. Some of us in the media who had watched Seaga's rise, who had witnessed his handling of the JBC strike, were concerned about the man's attitude to the democratic process. The 1962 election campaign in West Kingston was a brutal and savage contest in which the bullet was used to influence the outcome of the ballot. When it was over and Dudley Thompson and his supporters

dens in particular, became Jamaica's first political garrison or garrison constituency.

"Neighborhoods such as Tivoli Gardens were originally created as bulwarks of political support for politicians who sustained the communities through cienteage [sic] in exchange for votes."<sup>24</sup> In the late 1970s, the CIA worked with Seaga and the JLP to destabilize Manley's government.<sup>25</sup> To strengthen the JLP, the CIA, it is alleged, provided weapons and economic aid to the JLP and its supporters. At that time, the United States entered into a marriage of convenience with the JLP and the gangs that operated in the JLP's garrison constituencies.

During the 1970 and 1980s, political gangs in Jamaica grew in stature.<sup>26</sup> The political gangs were inextricably intertwined with the political parties, whom they supported and for whom they secured and obtained votes.<sup>27</sup> The men (called dons), who controlled these garrisons for and sometimes at the behest of the politicians, were often regarded as "Robin Hood" type figures by residents of the garrisons.<sup>28</sup> Lester Lloyd Coke, also known as Jim Brown, was one of these figures. He and Vivian Blake, who would become the leaders of the Shower Posse, operated out of Tivoli Gardens.

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had been routed, the PNP, as a political party was completely wiped out in West Kingston. There was no room for it to regroup and rebuild. More than thirty years on, there is still no viable two-party system functioning in that constituency. The PNP — in or out of office — has fielded token candidates who have routinely been trounced by staggering majorities. The place had been turned into a closed, solid and permanent power base for one man.

24. Gary Brana-Shute, *Narco-Criminality in the Caribbean: Global Problems in Small Places*, [http://librarycontentdm.mona.uwi.edu/cdm4/item\\_viewer.php?CISO\\_ROOT=/Crime&CISOPTR=511&CISOBOX=1&REC=10](http://librarycontentdm.mona.uwi.edu/cdm4/item_viewer.php?CISO_ROOT=/Crime&CISOPTR=511&CISOBOX=1&REC=10) (last visited Nov. 3, 2013).

25. Gane-McCalla, *supra* note 21.

26. *Id.*

27. Brana-Shute, *supra* note 24, at 5 ("There is tendency for the gangs . . . led by th[eir] dons to realign with their former political patrons during election years when political parties need support, votes, and financial contributions, and the gunmen need political protection and insurance for the future.")

28. *Id.*; ABRAHAMS, *supra* note 18; SHERRIAN GRAY, TRENDS IN URBAN CRIME AND VIOLENCE IN KINGSTON, JAMAICA, 2007, available at <http://www.unhabitat.org/downloads/docs/grhs.2007.casestudy.crime.kingston.pdf> (last visited Nov. 3, 2013). Garrisons significantly contributed to increasing crime rates in Jamaica. For example, during the 1980 nine-month long election campaign, gangs from political garrisons waged a murderous war throughout the country. In that year, the police recorded 889 murders (there were only 351 in 1979) and 643 murders were caused by gun-related violence. In 2005, Jamaica had the highest murder rate in the world and the gangs involved in drug-trafficking were substantial contributors to that statistic. See also Mark P. Sullivan, CONG. RESEARCH SERV., RS22372, JAMAICA: POLITICAL AND ECONOMIC CONDITIONS AND U.S. RELATIONS 2 (1006).

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Robin Hoods, like Jim Brown and Blake, who were America's enforcers in the war against communism in Jamaica, needed capital<sup>29</sup> to initiate social welfare programs in their communities and to bolster their relationships with political figures and thus, it is alleged, they exponentially exported marijuana to the United States.<sup>30</sup> In 1981, marijuana exports from Jamaica to the United States rose from 900 to 1200 metric tons.<sup>31</sup> In 1984, it was estimated that exports of the same crop would have increased to between 1,627 to 2,977 metric tons.<sup>32</sup> The United States did not wish to pressure Seaga's government to eradicate marijuana fields and exportation, because Jamaica had become a close ally in the war against communism and, pressure, it was believed, would have forced Jamaica back into Manley's more leftist stance.<sup>33</sup> The United States government believed that a leftist Jamaican government was a bigger threat to America's national security than drug trafficking.<sup>34</sup>

That reasoning, however, was erroneous because the Shower Posse later recognized that crack cocaine and powder cocaine trades were more lucrative ventures<sup>35</sup> and formed relationships with Colombian and other South American cocaine producers.<sup>36</sup> Jamaica, as a consequence, became an exporter of cocaine to the United States, and the Shower Posse<sup>37</sup> made a violent<sup>38</sup> entry into

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29. In the early nineties, Jamaica supposedly earned more from marijuana exports than from other exports. See Barnett, *supra* note 6, at 297.

30. *Id.* at 295.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* at 297.

35. Brana-Shute, *supra* note 24, at 5 (discussing "Jamaican possess originally controlled the importation, distribution, and sale of marijuana at the retail level in the United States as early as the late 1970s. They have since enlarged their menu to include cocaine, crack, heroin, carachi, PCP, methamphetamine, and 'ice.'"). See also *The Shower Posse*, TRIVESTER NEWS, May 16, 2010, available at <http://www.trivester.com/world/americas/caribbean/jamaica/feature/jamaica-labour-party/shower-possee-gang/100516/>.

36. Jamaica is a main stopping-off point for the inter-American drug trade. See *Jamaica main transshipment port for Colombian Drugs - Narcotics Chief*, THE GLEANER, Jan. 31, 2002, available at <http://jamaica-gleaner.com/gleaner/20020131/news/news4.html>.

37. It is not certain whether the Shower Posse obtained its name because of its members' style of "showering" rivals with bullets or because its members were supporters and enforcers for the JLP, which promised during its 1980 campaign to bring showers of deliverance.

38. The Shower Posse allegedly committed more than one thousand murders throughout the United States. Ed Pilkington, *Christopher 'Dudus' Coke Handed 23-year US Jail Term for Drug Trafficking*, THE GUARDIAN, June 8, 2012, available at

crack cocaine distribution in major cities throughout the United States.

Throughout the early 1980s, as a result of the increased drug trafficking from, among others, Latin America and the Caribbean, crime grew throughout major American cities.<sup>39</sup> For example, in 1981, as a result of drug-related crimes, Miami, West Palm Beach and Fort Lauderdale were among the top ten crime-infested cities in the United States,<sup>40</sup> and, in 1982, twenty-five percent of all murders were related to illegal drug trafficking.<sup>41</sup> As a result of increased drug trafficking into its shores, the United States needed and sought the cooperation of the Jamaican government to thwart the efforts of narco-traffickers. Consequently, the Treaty was signed in 1983 and went into effect in 1991.<sup>42</sup> The Treaty supersedes the United States-United Kingdom Treaty on Extradition of 1931, which was made applicable to Jamaica, a former British colony, in 1935.<sup>43</sup>

### III. EXTRADITION SAGA OF CHRISTOPHER “DUDUS” COKE

In August 2009, pursuant to the Treaty, the Government of the United States of America sent an extradition request (the “Request”) to the Government of Jamaica<sup>44</sup> wherein the Government of the United States of America requested that the Govern-

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<http://www.guardian.co.uk/world/2012/jun/08/christopher-dudus-coke-jail-term>; J.P. Lane, *There’s an Element of Truth to Every Fictional Tale*, GOOD READS BLOG (May 26, 2012, 12:28), [http://www.goodreads.com/author\\_blog\\_posts/2504441-there-s-an-element-of-truth-to-every-fictional-tale](http://www.goodreads.com/author_blog_posts/2504441-there-s-an-element-of-truth-to-every-fictional-tale).

39. Molly McConville, *Note: A Global War On Drugs: Why The United States Should Support the Prosecution of Drug Traffickers in the International Criminal Court*, 37 AM. CRIM. L. REV. 75, 77 (2000).

The United States as the Largest importer and consumer of narcotic drugs and psychotropic substances in the world, increasingly feels the effects of international drug trafficking. Drug trafficking constitutes a unique and urgent threat to the security of the U.S. because it touches all ethnic and socioeconomic groups and infiltrates all communities, including cities, suburbs and rural areas. . . . [T]he work of international criminals and the drug use that results, wreak havoc within the borders of the United States and [is manifested] in the violence and ruined lives that plague so many of our communities.

40. Barnett, *supra* note 6, at 290.

41. *Id.*

42. The Extradition Act, (1991) (Jam.), available at [http://www.oas.org/juridico/mla/en/jam/en\\_jam-ext-law-ext1993.pdf](http://www.oas.org/juridico/mla/en/jam/en_jam-ext-law-ext1993.pdf) [hereinafter Jamaica Extradition Act].

43. Treaty, *supra* note 7, at Letter of Submittal, U.S.-Jam, Jun. 14, 1983.

44. K.C. SAMUELS, JAMAICA’S FIRST PRESIDENT—DUDUS-1992-2012 HIS RISE—HIS REIGN—HIS DEMISE 162-201 (2011); Maxine Williams, *Christopher ‘Dudus’ Coke Extradition Entangles Local and International Law*, THE GUARDIAN (UK), June 2,

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ment of Jamaica extradite Christopher “Dudus” Coke to the United States.<sup>45</sup> Ironically, Mr. Coke is the son of Lester Lloyd Coke, who formally was America’s partner in the war against communism, and who also was the subject of an extradition request from the United States government to Jamaica.<sup>46</sup> Mr. Coke (“Dudus”) had been indicted in the United States District Court for the Southern District of New York.<sup>47</sup> In the indictment, the Government of the United States of America alleged that Mr. Coke was a member of the Shower Posse and that he “and others known and unknown, unlawfully, intentionally, and knowingly combined, conspired and confederated, and agreed together and with each other to violate the narcotics laws of the United States.”<sup>48</sup> The indictment further alleged that Mr. Coke and others known and unknown, unlawfully, willfully, and knowingly, did combine and conspire” to traffic in firearms.<sup>49</sup>

Interestingly, many Jamaican citizens, though perhaps unfamiliar with the provisions of the Treaty, repeatedly asserted that the Treaty could not apply to a Jamaican citizen, who had not resided in the United States and that only a citizen of the United States should be extradited from Jamaica to face charges in that country. Members of the Jamaican public complained that the Treaty could not have applied to Mr. Coke, because he had not traveled to the United States in furtherance of the alleged crimes. The Government of Jamaica refused the extradition request, stating among other things, that: (1) the Treaty provided defenses to Mr. Coke’s extradition;<sup>50</sup> (2) it (the Government of Jamaica) needed additional evidence;<sup>51</sup> (3) the evidence submitted in support of the Request violated Jamaican law including the Jamaican Telecommunications Intercept Act;<sup>52</sup> and (4) the American courts’

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2010, available <http://www.guardian.co.uk/world/2010/jun/02/christopher-dudus-coke-extradition-law?INTCMP=SRCH>.

45. *Id.*

46. Brana-Shute, *supra* note 24, 5-6.

47. SAMUELS, *supra* note 44, at 162; Williams, *supra* note 44.

48. Sealed Indictment at 1, United States v. Coke, No. S15 07 Cr. 971 (RPP) (S.D.N.Y.) available at <http://amlawdaily.typepad.com/files/coke-christopher-michael-s15-indictment-1.pdf>.

49. *Id.*

50. See, e.g., Hugh Wilson, *Extradition and Ministerial Discretion*, THE GLEANER, Mar. 17, 2010, available at <http://jamaica-gleaner.com/gleaner/20100317/lead/lead7.html>.

51. *Id.*

52. *PM Defends His Handling of the ‘Dudus’ Extradition*, RJR NEWS, Sept. 12, 2010, available at <http://rjrnewsonline.com/news/local/pm-defends-his-handling-%E2%80%99dudus%E2%80%99-extradition/>; Wilson, *supra* note 50; Gary Spaulding,

interpretation of the Doctrine of Specialty cautioned and informed Jamaica's decision to extradite Mr. Coke.<sup>53</sup>

Of course, Jamaica's refusal to comply with the Request had far reaching economic,<sup>54</sup> political<sup>55</sup> and diplomatic consequences.<sup>56</sup> An international treaty is a unique creature, because even where the letter of the treaty may prescribe or permit specific interpretations or conduct, the spirit of the treaty or a government's past interpretation or enforcement may preclude the very conduct that the treaty facially permits.<sup>57</sup> Therefore, even if the Treaty, on its face allowed Jamaica to refuse the Request, some may argue that the spirit of the Treaty or Jamaica's past enforcement of the Treaty barred it from adopting that position.<sup>58</sup>

#### IV. THE JAMAICAN GOVERNMENT HAD LEGAL GROUNDS FOR REFUSING THE EXTRADITION REQUEST

##### A. *Mr. Coke was a Person Defined in the Treaty and Therefore Subject to Extradition, Though not a Citizen of the United States*

As stated herein above, the Treaty was signed in 1983 and

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*Lightbourne Biased In Handling 'Dudus' Extradition Case-KD*, THE GLEANER, Mar. 11, 2011, available at <http://jamaica-gleaner.com/gleaner/20110311/lead/lead4.html>.

53. Lloyd Williams, *Jamaica, US and Extradition*, JAMAICA GLEANER, Apr. 8, 2004, available at <http://jamaica-gleaner.com/gleaner/20040408/news/news1.html>; Gary Spaulding, *Jamaica's Diplomatic Rows With the U.S.*, BN VILLAGE, Apr. 13, 2010, available at <http://www.bnvillage.co.uk/f120/jamaicas-diplomatic-rows-u-s-104990.html>.

54. See *US Embassy Says Visa Cancellations Not Political*, JAMAICA OBSERVER, Apr. 15, 2010, available at <http://www.jamaicaobserver.com/news/embassy-cancels-visas-for-jamaicans>.

55. Jade Brown, *Counternarcotics, Terrorism & Intelligence after Action: The Rise And Fall Of Dudus Coke*, HSTODAY.US, Oct. 1, 2010, available at <http://www.hstoday.us/focused-topics/counternarcotics-terrorism-intelligence/single-article-page/after-action-the-rise-and-fall-of-dudus-coke/71b9c790a8949baecb9800e93bd730f9.html>.

56. See Desmond Allen, *New Twist in Dudus Affair: Canadian Newspaper Raps Golding on "Dudus" Affair*, JAMAICA OBSERVER, (April 15, 2010), [http://www.jamaicaobserver.com/news/US-Dudus-continues\\_7529858](http://www.jamaicaobserver.com/news/US-Dudus-continues_7529858); see also Luke Douglas, *More "Dudus" Fears: JMA, JEA, Mandeville Ministers Troubles about "Dudus" Impasse*, JAMAICA OBSERVER, (Mar. 22, 2010), <http://www.jamaicaobserver.com/More-Dudus-fears-3-22-2010>.

57. Wilson, *supra* note 50. "The foundation on which the extradition treaty is constructed is to fight transnational organi[z]ed crime and to ensure that those who allegedly commit criminal offences in a foreign state are not immune from prosecution."

58. Paul Henry, *Manatt was Working for Gov't on Dudus*, CARIBBEAN STAR, <http://www.caribbeanstar.tv/trending/16-in-the-music/131-manatt-was-working-for-govt-on-dudus-> (last visited Aug. 9, 2012).

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went into effect in 1991.<sup>59</sup> The Treaty supersedes the United States-United Kingdom Treaty on Extradition of 1931, which was made applicable to Jamaica, a former British colony, in 1935.<sup>60</sup> The United States wanted to ensure that the Treaty was broad enough to include Jamaican citizens charged (not merely convicted) with an extraditable offense,<sup>61</sup> and Jamaican citizens, who committed crimes outside the borders of Jamaica. That, of course, in the halls of the Government of the United States, is the spirit of the Treaty. The spirit of the Treaty, as declared by the parties thereto, also includes international cooperation to combat crime and bring narco-traffickers and drug runners to justice.<sup>62</sup>

To accomplish the spirit of the Treaty, Article I of the Treaty provides:

## ARTICLE I

## Obligation to Extradite

- (1) The Contracting Parties agree to extradite to each other, subject to the provisions of this Treaty:
  - (a) Persons whom the competent authorities in the Requesting State have charged with an extraditable offense [sic] committed within its territory; or
  - (b) Persons who have been convicted in the Requesting State of such an offence and are unlawfully at large.
- (2) With respect to an offence committed outside the territory of the Requesting State, the Requested State shall grant extradition, subject to the provisions of this Treaty, if there is jurisdiction under the laws of both States for the punishment of such an offense in corresponding circumstances.

Without more, the foregoing appears to have imposed upon

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59. Treaty, *supra* note 7; Henry, *supra* note 58.

60. Treaty, *supra* note 7.

61. *Id.*

62. That spirit of cooperation between states has grown and evolved. *See. e.g.,* SIBYLLE KAPFERER, U.N. HIGH COMM'R FOR REFUGEES, THE INTERFACE BETWEEN EXTRADITION AND ASYLUM, 2 PPLA/2003/05 (2003), *available at* <http://www.unhcr.org/3fe84fad4.pdf>.

[T]he international legal framework within which States [sic] determine whether or not to extradite has undergone fundamental changes. With respect to a number of particularly serious crimes, developments in international criminal law, humanitarian [law,] and human rights law since 1945 have provided States [sic] with a basis for extradition in the absence of pre-existing extradition agreements and in some cases established an obligation to Extradite. . .

Jamaica the legal obligation to comply with the Request. Indeed, the Government of the United States was fairly certain that, at the time it made the Request, Mr. Coke was a person whom it had charged with a crime committed within its territory. Indeed, it has been the long held position of the United States Supreme Court that where, without limitation, an extradition treaty refers to “person,” the word person shall encompass citizens of the United States and the other party to the Treaty.<sup>63</sup> In *Charlton v. Kelly*, the United States Supreme Court, interpreting the Extradition Treaty Between the United States and Italy, emphatically rejected the notion that “under principles of international law, citizens are [not] to be regarded as embraced within an extradition treaty unless expressly included.”<sup>64</sup> The word persons, the Court opined, etymologically includes citizens as well as those who are not.<sup>65</sup> Consequently, it has been the understanding in the United States for almost one hundred years that “persons” includes citizens.<sup>66</sup> Moreover, “in respect to the persons to be surrendered, the extradition treaties of the United States all employ the general term persons, or all persons. Hence, where no express exception is made, **the treaties warrant no distinction as to nationality.**”<sup>67</sup>

The foregoing conclusion is not merely based in American jurisprudence. Instead, it is soundly rooted in principles of international law.<sup>68</sup> The Jamaican government could not reasonably argue that the word “persons,” as used and described in the Treaty, does not include Jamaican citizens. Indeed, such an argument would be antithetical to the spirit of international cooperation in the fight against crime to which Jamaica is dedicated.<sup>69</sup> “Jamaica in fulfillment [sic] of its obligations under the 1988 United Nations Convention Against Illicit Traffic in Drugs and Psychotropic Substances (the Vienna Convention) has enacted the Mutual Assistance (Criminal Matters) Act, 1995 (**MACMA**).

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63. *Charlton v. Kelly*, 229 U.S. 447, 465 (1913).

64. *Id.*

65. *Id.*

66. *Id.* at 468 *citing* JOHN BASSETT MOORE, A TREATISE ON EXTRADITION AND INTERSTATE RENDITION, 170 (Vol. 1, General Books LLC 2009) (1891).

67. *Id.* (emphasis added).

68. *Id.* “The conclusion we reach is, that there is no principle of international law by which citizens are excepted out of an agreement to surrender persons, where no such exception is made in the Treaty itself.” (internal quotations omitted).

69. Mutual Assistance (Criminal Matters) Act, (1995) (Jam.) *available at* [http://moj.gov.jm/sites/default/files/laws/Mutual%20Assistant%20%28Criminal%20Matters%29%20Act\\_0.pdf](http://moj.gov.jm/sites/default/files/laws/Mutual%20Assistant%20%28Criminal%20Matters%29%20Act_0.pdf).

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“Th[at] is the primary domestic legislation that guides Jamaica’s mutual legal assistance to foreign countries.”<sup>70</sup> The MACMA gives the Jamaican government very broad latitude in assisting other nations in combatting international drug trafficking.

Moreover, the Vienna Convention on the Law of Treaties mandates that states should not “defeat the object and purpose of a treaty prior to its entry into force.”<sup>71</sup> Certainly then, Jamaica had a heightened obligation to effectuate the object and purpose of the Treaty which had been in force for more than a decade.<sup>72</sup> That conclusion, of course, is further supported by the Vienna Convention which provides that “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given the terms of the Treaty in their context and in the light of its object and purpose.”<sup>73</sup> Consequently, there should be no doubt as to ordinary meaning to be given to the term “persons,”<sup>74</sup> and any conclusion that Mr. Coke was not a “person” within the Treaty is merely one that seeks to avoid a good faith interpretation of the Treaty and patently ignore the Treaty’s object and purpose.

The claim that the word persons as used in the Treaty applies only to American citizens is also belied by the very Jamaican law which gives force to the application and enforcement of the Treaty in Jamaica—The Jamaican Extradition Act of 1991.<sup>75</sup> That act is conspicuously devoid of any language describing or defining “persons” as citizens of the United States.<sup>76</sup> In fact, during the last two decades, pursuant to the Jamaican Extradition Act, Jamaica extradited more than ten persons to the United States, including, but not limited to, the well-known cases of Leebert Ramsharam and Donovan Williams.<sup>77</sup> Consequently, at no time, heretofore, did the Jamaican government even remotely suggest that the

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70. *Id.*

71. Vienna Convention on the Law of Treaties, art. 18, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention].

72. See Jamaica Extradition Act, *supra* note 42, at art. III; see also Treaty, *supra* note 7.

73. Vienna Convention, *supra* note 71.

74. *Webster’s New World Dictionary* 191 (1977) (person, *n.* 1. human being. 2. the body or self)

75. The Jamaican Extradition Act, *supra* note 42.

76. *Id.*

77. *WikiLeaks: Extradition of Drug Kingpin Nembhard – Not as Easy as it Looked*, YAADINFO JAMAICA BLOG, (July 28, 2008, 19:41 UTC), <http://blogs.jamaicans.com/yaadinfo/2011/09/27/wikileaks-extradition-of-drug-kingpin-nembhard-not-as-easy-as-it-looked/>; Howard Campbell, *United States vs. its ‘Backyard’ – Washington Always Wins*, THE GLEANER, Mar. 14, 2010, available at <http://jamaica-gleaner.com/gleaner/20100314/lead/lead3.html>.

Treaty applied only to the extradition of American Citizens.<sup>78</sup>

The Jamaican Extradition Act repeatedly uses the word persons. For example, that act in pertinent part provides:

6. Subject to the provisions of this Act, a person found in Jamaica who is accused of an extradition offence in any approved State or who is alleged to be unlawfully at large after conviction of such an offence in any such State may be arrested and returned to that State as provided by this Act.

Of course, the Jamaican Parliament could have written the Act to state that anyone who is accused of an extradition offense and who when found in Jamaica is a citizen of the United States or other country may be returned to the United States or other country. The Jamaican Parliament did not.<sup>79</sup>

That Mr. Coke is indeed a person contemplated by and described in the Treaty is bolstered by the Jamaican Government's interpretation of the word persons in other treaties wherein the purpose and spirit is to also foster international cooperation against crime and drug trafficking. For example, in 1989, Jamaica and the United States entered into the Treaty Between the Government of the United States of America and The Government of Jamaica On Mutual Legal Assistance in Criminal Matters ("MLA").<sup>80</sup> In fact, much of the evidence that the Government of the United States obtained in its prosecution of the case against Mr. Coke was obtained via cooperation with Jamaican officials who responded to and complied with requests made pursuant to the MLA.<sup>81</sup> The MLA provides in pertinent parts as follows:

#### **ARTICLE 1**

1. The Contracting Parties undertake to assist each other, upon request and in accordance with the provisions of this Treaty, in investigations and proceedings for criminal law enforcement purposes.
2. Assistance pursuant to this Treaty shall include:
  - (a) locating persons; . . . .

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78. It should be noted that the Government of Italy asserted that persons as described in its treaty with the United States did not include Italian citizens.

79. The Jamaican Extradition Act, *supra* note 42 at § 6.

80. See Treaty with Jamaica on Mutual Legal Assistance in Criminal Matters, U.S.-Jam., Jul. 7, 1989, S. Treaty Doc. 102-16 (1991).

81. *Jamaicans Want Dudas Charged*, NATION NEWS, Sept. 6, 2011, available at <http://www.nationnews.com/articles/view/jamaicans-want-dudas-charged/>; Livern Barrett, *Probe Dudas Here – PNP Pushes Case but Cop Ponders Whether Coke can be Charged Locally*, Sept. 7 2011, available at <http://jamaica-gleaner.com/gleaner/20110907/lead/lead1.html>.

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**ARTICLE 4**

1. Requests for assistance shall normally be in writing and if made otherwise shall be communicated in written form within a period of time to be agreed upon by the Central Authorities. . . .
3. To the extent necessary and possible, a request shall include:
  - (a) Available information on the identity and whereabouts of a person to be located;
  - (b) the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;
  - (c) the identity and location of a person from whom evidence is sought . . . .

The MLA, like the Jamaican Extradition Act, is conspicuously devoid of any provision defining the word person as a citizen of the United States. As a result, the argument offered by Jamaicans that the Treaty does not apply to Mr. Coke is in no way supported by law. That argument, is instead, summarily dismissed as an impassioned cry from those, who for economic and/or political reasons, wished to have Mr. Coke remain in Jamaica.

*B. The Treaty and the Act Provided the Jamaican Government with Defenses to the Extradition of Mr. Coke*

The inquiry into whether the Jamaican government was obligated to extradite Mr. Coke does not and should not end at a determination that he was a person under the Treaty. In fact, the Jamaican government argued that pursuant to the Treaty, it could deny the Extradition Request. Of course, unless a country has obligated itself, pursuant to a treaty to perform some act or allow some action, it, as a sovereign state, is free to make decisions that it deems in the best interest of the state<sup>82</sup> and its citizens although those decisions may disappoint or sometimes anger other sovereigns that would have preferred a different result.<sup>83</sup>

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82. *Executive Discretion in Extradition*, 62 COLUM. L. REV. 1313, 1313 (1962). "[T]he Secretary . . . [b]y virtue of his position . . . must consider not only the equities of the particular case but also the consequences of his decision upon our foreign relations."

83. *See id.* ("Absent a treaty obligation, international law imposes no duty upon a country to deliver up a person who has sought asylum within its boundaries."); *see also* *United States v. Rauscher*, 119 U.S. 407, 412-15 (1886); and *Valentine v. United*

Hence, the question that must logically follow is whether the Government of Jamaica, in the Treaty, unconditionally obligated itself to extradite every individual for whom the United States Government seeks extradition. In short, the answer to that question is no. Article VII of the Treaty emphasizes that each state has tremendous latitude in deciding whether to deliver its own nationals to the Requesting State.

Article VII of the Treaty provides:

- (1) **Neither Contracting Party shall be bound to deliver up its own nationals** but the executive authority of the Requested State shall, if not prevented by the laws of that State, have the power to deliver them up if, **in its discretion, it be deemed proper** to do so.
- (2) Extradition shall not be refused on the ground that the fugitive is a national of the Requested State if the fugitive is also a national of the Requesting State.
- (3) If Extradition is not granted for an offence pursuant to paragraph (1), the Requested State shall, if it has jurisdiction over the offence, submit the case to its highest competent authorities for decision as to prosecution, in according with the law of that State.

(Emphasis added)

“Treaties, like statutes, must be construed by giving their terms their ordinary meaning. . . .”<sup>84</sup> Paragraph (1) unambiguously states that neither the United States nor Jamaica is unconditionally obligated to comply with extradition requests from

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States ex rel Neidecker, 299 U.S. 5, 8 (1936); and *Hilario v. United States*, 854, F. Supp. 165, 173 (E.D.N.Y. 1994) (“The reason that the United States grants foreign extradition requests only pursuant to treaty is that Congress so provided by statute.”); U.N. GAOR, 59th Sess., Int. Law Comm., *The Obligation to Extradite or Prosecute* at 1, U.N. Doc. A/CN.4/579/Add.2 (June 5, 2007) (“The United States of America believes that its practice, and that of other countries, reinforces the view that there is not a sufficient basis in customary international law or State practice to formulate draft articles that would extend an obligation binding legal instruments that contain such obligations.”); *The Interface Between Extradition and Asylum*, *supra* note 62 (“International law does not establish a general duty to extradite. A legal obligation for one State [sic] (the Requested State) to surrender a person wanted by another State [sic] (the Requesting State) exists only on the basis of bilateral and multilateral extradition agreements . . .”). It should be noted that some countries’ laws provide for extradition absent an extradition agreement, but very often that willingness to extradite is specifically predicated on reciprocity. See, e.g., Austria S. 3 of the Law of Extradition and Mutual Legal Assistance of 1979; See also Germany s. 5 of the Law on International Mutual Assistance in Criminal Matters of (December 23, 1982).

84. See *Hilario* 854 F.Supp. 165; Vienna Convention, *supra* note 71, art. 32.

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either party. In fact, American jurisprudence has consistently recognized that where a treaty has employed the language in Article VII, Paragraph (1) of the Treaty, the United States has the discretion to refuse the requesting state's extradition request, and the United States "has both granted and denied the surrender of American nationals under a treaty of [that] type."<sup>85</sup>

Interestingly, the Jamaican Extradition Act, which also governs extradition proceedings in Jamaica, also provides great latitude for Jamaica to refuse extradition of one of its citizens.<sup>86</sup> Section 7(5) of the Act states that the "Minister may, in his discretion, refuse to extradite a fugitive on the grounds that the fugitive is a citizen of Jamaica."<sup>87</sup> Likewise, Section 12(1) of the Act states:

Where a person is committed to await his extradition and is not discharged by order of the Supreme Court, **the minister may**, by warrant, order him to be extradited to the approved state by which the request for the extradition was made unless the extradition of that person is prohibited, or prohibited for the time being, by Section 7 or by this section, or the minister decides under this section to make no such order in his case.

As a result, the question for discussion may properly have been whether Jamaica should have complied with the request—not whether it was obligated to do so.<sup>88</sup> Moreover, that Sections 7(5) and 12(1) of the Act state that the Minister may use discretion in extraditing Jamaican citizens to the United States negates the claims that Prime Minister Golding usurped the powers of the Jamaican courts.<sup>89</sup> Undeniably, it was Dorothy Lightbourne, Jamaica's Minister of Justice at the time, who, believing that Mr. Coke's constitutional rights were breached, refused to sign the

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85. *Id.*; see also *Valentine* 299 U.S. 5; Charlton, *supra* note 63; *Executive Discretion in Extradition*, *supra* note 85 at 1322 n.68. "In 1947 and 1949, the State Department refused to surrender a total of four United States citizens to Mexico. In notes to the Mexican Ambassador, the Department invited the attention of the Mexican government to persistent refusal of Mexico to surrender its nationals."

86. The Jamaican Extradition Act, *supra* note 42.

87. *Id.* at sec. 12(1).

88. Wilson, *supra* note 50:

It is prima facie a breach of the citizen's constitutional right . . . to be forcibly removed from his country where he has committed no infringement of its law to a foreign state on the basis of allegations. BUT THIS IS NOT AN ABSOLUTE RIGHT AND IS SUBJECT TO PUBLIC INTEREST CONSIDERATION IN FIGHTING TRANSNATIONAL CRIME AND BRINGING FUGITIVES TO JUSTICE." (emphasis added).

89. Jamaica Extradition Act, *supra* note 42.

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Request for Mr. Coke.<sup>90</sup> “Parliament chose to give discretionary authority to the minister of justice. It is the minister who must consider the good faith and honor of [her] country in its relation with other states. It is the minister who has the expert knowledge of the political ramifications of an extradition request.”<sup>91</sup> It may be argued then that in pressuring Prime Minister Golding to sign the Request, the United States government was, in fact, asking the Prime Minister to usurp the laws of Jamaica, ignore the delegation of powers within his cabinet and invade the province of the minister of justice.

But even if one argues that Prime Minister Golding, not Minister Lightbourne, was the ultimate executive, and that he could have executed the Request, that argument does not escape the plain meaning of the Treaty which affords each country unfettered discretion in refusing to comply with extradition requests. The United States, where necessary, has never ignored that it has such broad discretion. In fact, “[t]oday, [in the United States], the ability of the executive branch to reject the results of the extradition hearing is taken for granted.”<sup>92</sup> Consequently, although the United States Supreme Court once held that

where extradition is sought pursuant to a valid treaty, a petitioner cannot prevent extradition simply by alleging that . . . the processes . . . of the foreign country fail[] to accord with constitutional guarantees, . . . [t]he Department of State has the discretion to deny extradition on humanitarian grounds, if it should appear that it would be unsafe to surrender a person to foreign authorities.<sup>93</sup>

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90. Gary Spaulding, *Lightbourne Biased in handling ‘Dudus’ Extradition Case-KD*, THE GLEANER, Mar. 11, 2011, available at <http://jamaica-gleaner.com/gleaner/20110311/lead/lead4.html>; Paul Henry, *Lightbourne Blames US for ‘Dudus’ Impasse*, JAMAICA OBSERVER, Mar. 8, 2011, available at [http://www.jamaicaobserver.com/news/Lightbourne-blames-US-hard-line-approach-for-Coke-impasse\\_8487963](http://www.jamaicaobserver.com/news/Lightbourne-blames-US-hard-line-approach-for-Coke-impasse_8487963); Dorothy Lightbourne *Tried to Protect Dudus’ Rights*, GO-JAMAICA, Mar. 3, 2011, available at [http://go-jamaica.com/news/read\\_article.php?id=26927](http://go-jamaica.com/news/read_article.php?id=26927).

91. *Idziak v. Canada*, 3 S.C.R. 631, 659 (1992). See also *Heath v. United States, Privy Council Appeal No. 6 of 2001*, (E. Carib. Ct. App. June 19, 2002) (finding that where Governor General of St. Kitts delegated matters of foreign affairs to the minister of foreign affairs, requisitions for extradition issued from the minister to the magistrate were proper).

92. John T. Parry, *The Lost History of International Extradition Litigation*, 43 VA. J. INT’L L. 93, 150 (1993); *United States v. Howard*, 996 F.2d 1320, 1325 (1st Cir. 1993).

93. Compare *United States v. Fernandez-Morris*, 99 F. Supp. 2d 1358, 1370 (S.D. Fla. 1999), with *Heath v. United States, Privy Council Appeal No. 58 of 2004*, (E. Carib. Ct. App. Nov. 28, 2005) (citing *Nankissoon Boodram v. Attorney General* (1996) 47 WIR 459, 495) (“The proper forum for a complaint about publicity is the trial

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C. *The Jamaican Government Rationally Relied on the Doctrine of Specialty in Refusing to Sign the Request*

1. Jamaican Government Raises Specialty as a Possible Reason for Not Extraditing Mr. Coke to the United States.

In October 2009, the Government of Jamaica stated that it would not hastily comply with United States Government's request to extradite Mr. Coke to New York.<sup>94</sup> Minister Lightbourne, the Jamaican Attorney General and Minister of Justice stated that caution and deliberation were required because, "as a result of the hasty and precipitous action of the former minister of justice, a Jamaican national was improperly and illegally extradited to the US in 1992."<sup>95</sup> The Jamaican national to whom she referred was Richard "Storyteller" Morrison. The Jamaican Government further explained that "[d]espite considerable efforts, [it] was not able to secure the return of [Mr. Morrison] to enable the breach to be remedied, [and] the error was compounded when [Mr. Morrison] was tried in the US in a manner which further breached the provisions of the Treaty."<sup>96</sup>

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court. . ."), and *Heath v. United States, Privy Council Appeal No. 58 of 2004*, (E. Carib. Ct. App. Nov. 28, 2005) (citing *Republic of Argentina v. Mellino*) (1987) 1 SCR 536, 558 (stating "Our courts must assume that the defendant will be given a fair trial in the foreign country. Matters of due process generally are to be left for the courts to determine at trial there as they would be if he were to be tried here. Attempts to preempt decisions on such matter . . . would directly conflict with principles of comity on which extradition is based."). See also Hague Conference on Private International Law, *Hague Convention on the Civil Aspects of International Child Abduction* 25 Oct. 1980, Hague XXVIII, available at: <http://www.unhcr.org/refworld/docid/3ae6b3951c.htm> ["Hague Treaty"]; Moreover, in a practical sense, the Elian Gonzales saga demonstrated that the executive branch of the United States, notwithstanding contrary ideas or desires of some, if not most of its citizens, will enforce the letter of international treaties. In that case, Janet Reno, then the Attorney General and executive authority of the United States concluded that The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction must be followed and that Elian Gonzales should be returned to his father and allowed to return to Cuba. See also Marlene Moses & Jessica Uitto, *The Hague Convention of Oct. 25, 1980, The Civil Aspects of International Child Abduction*, 46 Tenn. Bar. J. 28, 33 (2011).

94. *No 'Dudus' Mistake - Lightbourne Fires Back at Critics, Declares Previous Gov't's Extradition Breaches will not be Repeated*, THE GLEANER, Oct. 30, 2009, available at <http://jamaica-gleaner.com/gleaner/20091030/lead/lead1.html>.

95. *Id.*

96. *Id.* [T]he current Opposition should be advised to take careful note of an undertaking given by its then Minister of National Security and Justice, [Mr.] K.D. Knight, in an address to Parliament on June 6, 1995, "I wish to give the assurance

## 2. Specialty And The Case of Richard “Story Teller” Morrison

In 1991, Richard “Storyteller” Morrison, like Jim Brown, was in custody in a penitentiary in Kingston, Jamaica, where he awaited, pursuant to Jamaican law, an appeal of an order of extradition to South Florida.<sup>97</sup> As a result of an administrative error, the documents which evidenced Mr. Morrison’s intent to appeal had been misplaced, and Mr. Morrison was prematurely surrendered to the agents of the United States, who took him to the United States.<sup>98</sup> At that time, Mr. Morrison, pursuant to Jamaican law, intended to appeal his extradition order to the Judicial Committee of the Privy Council of the United Kingdom.<sup>99</sup>

The Jamaican government, through multiple diplomatic efforts, sought Mr. Morrison’s return to Jamaica, arguing, among other things, that Mr. Morrison was not legally extradited, and the United States’ refusal to return him to Jamaica comprised a breach of the Treaty.<sup>100</sup> Interestingly, the Jamaican government’s strident demand for Mr. Morrison’s return to Jamaica did not raise the ire or eye of most Jamaicans, because the Jamaican government, at that time, was led by Prime Minister Percival Patterson, whose political party, the PNP, was not aligned to Tivoli Gardens, the garrison from which Mr. Morrison and his colleagues operated.

The Government of Jamaica and Mr. Morrison sought assistance from the American courts, but their challenges to the United States’ refusal to return Mr. Morrison were unsuccessful. For example, in *Government of Jamaica v. United States of America*,<sup>101</sup> the Government of Jamaica filed an Emergency Petition for Writ

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that my ministry will do everything in its power to ensure that the extradition process in Jamaica is carried out in a manner which is faithful not only to our inter-national obligations but also to the fundamental concepts of justice and fairness as enshrined in the [Jamaican] Constitution.” See also Gary Spaulding, *Jamaica’s diplomatic rows with the U.S.*, BN VILLAGE, Apr. 13, 2010, available at <http://www.bnvillage.co.uk/f120/jamaicas-diplomatic-rows-u-s-104990.html> (quoting Senator Dorothy Lightbourne: “It is to be recalled that as a result of the hasty and precipitous action of a former minister of justice, a Jamaican national was improperly and illegally extradited to the US in 1992.”).

97. *Dudus’ Nightmare*, STARBROEK NEWS, Sept. 9, 2009, available at, <http://www.stabroeknews.com/2009/news/regional/09/09/%E2%80%98dudus%E2%80%99-nightmare/>; Williams, *supra* note 53.

98. Williams, *supra* note 53.

99. *Id.*

100. *Id.*

101. *Gov’t of Jamaica v. United States*, 770 F. Supp. 627 (M.D. Fla. 1991).

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of Habeas Corpus and Request for Injunctive and Declaratory Relief, which was individually adopted by Mr. Morrison.<sup>102</sup> The United States District Court for the Middle District of Florida conducted an evidentiary hearing on the Emergency Petition.<sup>103</sup> “At the hearing, the Government of Jamaica presented evidence on the question of whether the extradition of Richard Morrison from Jamaica was in violation of Jamaican law.”<sup>104</sup> In that case, “[o]n or about October 31, 1989, pursuant the Extradition Treaty between the United States and the United Kingdom (which remained in force and applied to Jamaica, a former British territory), the United States presented an extradition request for [Mr.] Morrison to the Jamaican Foreign Ministry.”<sup>105</sup>

On February 19, 1991, a Jamaican magistrate concluded that it would be lawful to extradite Mr. Morrison, and, as a result, Mr. Morrison was detained in prison.<sup>106</sup> Subsequently, Morrison filed in the Supreme Court of Jamaica a notice of his intent to apply to Her Majesty in Council (hereinafter the “Privy Council”) for leave to appeal the Full Court’s decision; however, the notice of intent to appeal was inadvertently included in another person’s file.<sup>107</sup>

Consequently, on or about June 13, 1991, the Jamaican Ministry of Foreign Affairs, via diplomatic note, advised the United States Embassy in Kingston, Jamaica that Morrison had been surrendered prematurely and that the Government of Jamaica requested his immediate return.<sup>108</sup> In that case, the Government of Jamaica, argued that “because Morrison was mistakenly extradited before his appeal to the Privy Council was complete, the extradition was not in accordance with Jamaican law, and was therefore not in accordance with the Extradition Treaty in effect between the United States and the sovereign nation of Jamaica.”<sup>109</sup> There, the Middle District of Florida concluded that Morrison should not be returned to Jamaica because the court was uncertain that any Jamaica law had been broken and to the extent that any Jamaican law had been broken, the Government of the United States was not the cause of the violation.<sup>110</sup> The

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102. *Id.* at 628.

103. *Id.*

104. *Id.*

105. *Id.*

106. *Gov’t of Jamaica v. United States*, 770 F.Supp. 627 (M.D. Fla. 1991).

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

court further concluded that the weight and deference should properly be given to the opinion of the executive branch.<sup>111</sup> The executive branch refused to return Mr. Morrison to Jamaica.

In *Morrison v. Lappin*,<sup>112</sup> Richard Morrison argued that because the indictment upon which extradition was based had been filed in the Southern District of Florida, his subsequent indictment, trial and sentencing in the Middle District of Florida violated the Principle of Specialty. The Eleventh Circuit Court of Appeals, to which Morrison previously appealed the decision of the Middle District of Florida, concluded that although the Middle District of Florida enhanced his sentence, the doctrine of specialty had not been violated.<sup>113</sup> Notwithstanding the fact that Morrison argued on appeal that he was not permitted to raise the defense of specialty until after the Government of Jamaica raised it and that the United States Government suppressed evidence that the Government of Jamaica asserted the doctrine of specialty as the basis for his return to Jamaica, the Eleventh Circuit Court of Appeal determined that he lacked standing to challenge personal jurisdiction in the Middle District because he did not raise the defense of specialty during trial.<sup>114</sup>

### 3. Explaining the Doctrine of Specialty

“Specialty requires that an extradited defendant be tried for the crimes on which Extradition [sic] was granted, and none other.”<sup>115</sup> That notion is soundly rested on principles of international comity.<sup>116</sup> Consequently, specialty is a manifestation that the states have agreed that the defendant should not be subject to arbitrary prosecution by the state to which the defendant is surrendered.<sup>117</sup> In some federal circuits, “specialty is prima facie self-executing and may be raised by a defendant as an affirmative defense to prosecution.”<sup>118</sup> Nonetheless, the surrendering govern-

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111. *Gov't of Jamaica v. United States*, 770 F.Supp. 627 (M.D. Fla 1991) (stating, “In the final analysis, this Court remains of the opinion that this is precisely the sort of instance in which deference should be afforded to the Executive Branch. . . . These are all considerations of political import which are singularly within the province of the Executive Branch.”).

112. *Morrison v. Lappin*, No. 4:06CV2087 (D. Ohio Dec. 8, 2006).

113. *Id.*

114. *Id.*

115. *United States v. Medina*, 985 F. Supp. 397, 400 (S.D.N.Y. 1997).

116. *Id.*

117. *Id.*

118. Jacques Semmelman, *The Doctrine of Specialty in the Federal Courts: Making Sense of United States v. Rauscher*, 34 Va. J. Int'l L. 71, 74 (1993).

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ment may waive the application of the doctrine of specialty and preclude the defendant's right to escape prosecution.<sup>119</sup> In other circuits, the converse is true and thus, the defendant is not permitted to raise specialty as an affirmative defense "unless the surrendering government has objected to the prosecution."<sup>120</sup> Other courts have held that the doctrine of specialty is a defense that merely limits the jurisdiction of the court, and, as a result, the defendant is precluded from raising it at trial for the first time.<sup>121</sup>

#### 4. The Jamaican Government's Concern Regarding the Application of the Doctrine of Specialty as a Defense in American Courts

At the outset, one must note that the Government of Jamaica did not raise the doctrine of specialty as a defense to Mr. Coke's extradition, it merely stated that it believed that the doctrine had been violated in the case of Richard Morrison and that it wanted, in light of American law, to ensure that the doctrine would not be violated in Mr. Coke's case. The Government of Jamaica's concern was exacerbated by two things. First, notwithstanding the fact that Eleventh Circuit Court of Appeal seemed to recognize that a defendant may raise the defense of specialty where the sending state has raised or has standing to raise it,<sup>122</sup> that court ruled that Mr. Morrison could not raise the defense as a challenge to the trial court's jurisdiction.<sup>123</sup> Second, the United States District Court for the Southern District of New York (the court in which Mr. Coke was indicted) has apparently adopted the Eleventh Circuit Court of Appeals' position that the doctrine of specialty is not violated where the sentence of the extradited person is enhanced or a grand jury returns a superseding indictment that enlarges the charge for which the extradited person was extradited to the United States.<sup>124</sup>

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119. *Id.*; *Medina*, 985 F.Supp. at 400 n. 5 (stating "Because specialty is based upon concerns of international comity, the surrendering country may waive its applicability.").

120. Semmelman, *supra* note 118 at 74.

121. *United States v. Yousef*, 377 F.3d 56, 71 (2d. Cir. 2003).

122. *United States v. Puentes*, 50 F.3d 1567, 1572 (11th Cir. 1994) ("An extradited person may raise whatever objections the extraditing country is entitled to raise."); *See also* Robert Iraola, *The Doctrine of Specialty and Federal Criminal Prosecutions*, 43 VAL. U. L. REV. 89 (Fall 2008).

123. *Morrison v. Lappin*, No. 4:06CV2087 (D. Ohio Dec. 8, 2006).

124. *Id.*; *Puentes*, 50 F.3d, at 127; Iraola, *supra* note 122, at 95 (stating, "*United States v. Puentes* illustrates the principle that courts not interpret specialty in a manner that restricts the government's proof at trial with respect to the charged

For example, in *Antwi v. United States*, the Government of the United States charged Joseph Antwi, a Ghanaian citizen, with, among other things, “conspiracy to distribute or possess with the intent to distribute one kilogram or more of heroin and more than five kilograms of cocaine.”<sup>125</sup> The Government of the United States submitted an affidavit in support of the extradition request that it tendered to the Ghanaian government.<sup>126</sup> In the affidavit, the Government of the United States explained that conspiracy is separate from the substantive charges and that a defendant may be convicted of conspiracy although not convicted of the substantive crimes.<sup>127</sup>

Antwi was extradited to the United States, and on June 20, 2002, a jury convicted him of conspiracy to distribute or to possess with the intent to distribute one kilogram or more of heroin.<sup>128</sup> In a subsequent habeas petition filed on July 19, 2004, Antwi challenged his conviction arguing among other things that his “presence in the United States was secured by the Government in violation of the bilateral extradition treaty governing relations between the United States and Ghana, and its associated law principles of specialty and dual criminality.”<sup>129</sup>

In its threshold determination of whether Antwi had standing to raise the doctrine of specialty, the district court noted that although the circuit courts that have addressed the question are split, and “[t]he more persuasive analysis . . . finds that extradited parties do have standing to raise that defense,<sup>130</sup> and that since Ghana did not waive the doctrine of specialty in the case, Antwi’s standing to raise the defense was abrogated.<sup>131</sup> In that case, like the Extradition Treaty between the Government of the United States and the Government of Jamaica, the applicable extradition treaty between the United States and Ghana incorporated the principle of specialty. Consequently, that treaty in pertinent part stated:

A person surrendered can in no case be kept in custody or be brought to trial in the territories of the High Contracting

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conspiracy offense for which the extradition was granted when the scope of the evidence exceeds that which was presented to the requested state.”)

125. *Antwi v. United States*, 349 F. Supp. 2d 663, 666 (S.D. N.Y. 2004).

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Antwi*, 349 F. Supp. 2d at 669-71.

131. *Id.* at 672-73.

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Party to whom the surrender has been made for any other crime or offence, or on account of any other matters, than those for which the extradition shall have taken place, until he has been re-stored, or had an opportunity of returning, to the territories of the High Contracting Party by whom he has been surrendered.<sup>132</sup>

In light of the foregoing provision of the Treaty, Answi argued that because the affidavit of extradition stated that he earned up to \$100,000 from heroin sales, any conviction for more than what the affidavit stated constituted a violation of the extradition treaty because his conviction was “not within the scope of the same charges for which extradition was granted.”<sup>133</sup> Answi also argued that the doctrine of specialty was violated because, as a result of a finding that he committed perjury during the trial, the court enhanced his sentence for obstruction of justice.<sup>134</sup> The district court rejected Answi’s arguments and concluded that he was prosecuted for the “same crimes that formed the basis of the extradition request.”<sup>135</sup> The court also concluded that Answi was not charged with a separate crime of obstruction of justice; instead, “the sentence for the crime for which he was committed was merely enhanced,” and that the [doctrine] of specialty does not prevent the [United States] from bringing a charge based on conduct that occurs after extradition.”<sup>136</sup>

To be sure, the Extradition Treaty recognizes and incorporates the doctrine of specialty. Specifically, Article XIV of the treaty provides:<sup>137</sup>

#### Article XIV

##### Rule of Specialty

- (1) A person extradited under this Treaty may only be detained, tried or punished in the Requesting State for the offence [sic] for which extradition is granted, or –
  - (a) For a lesser offence [sic] proved by the facts before the court of committal, or in the case of extradition pursuant to Article XV, any lesser offence [sic] disclosed by the facts upon which the request is based; or
  - (b) For an offence [sic] committed after the extradition; or
  - (c) An offence [sic] in respect to which the executive

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132. *Id.* at 673.

133. *Id.* at 673.

134. *Id.*

135. *Antwi v. United States*, 349 F. Supp. 2d 663, 673 (S.D. N.Y. 2004).

136. *Id.* at 673–74.

137. Treaty, *supra* note 7.

authority of the Requested State, in accordance with its law, consents to the person's detention, trial or punishment; and for the purposes of this sub-paragraph the Requested State may require the submission of the documents mentioned in Article VIII or the written views of the extradited person with respect to the offence [sic] committed, or both, [ . . . ]

- (2) A person extradited under this Treaty may not be extradited to a third State unless—
  - (a) The Requested State consents; or
  - (b) The circumstances are such that he could have been dealt with in the Requesting State pursuant to sub-paragraph (d) of paragraph (1)

Likewise, The Jamaican Extradition Act, contemplates and incorporates the doctrine of specialty.<sup>138</sup> Specifically, the Act states in pertinent part as follows:

(3) A person shall not be extradited to an approved State or be committed to or kept in custody for the purposes of such extradition, unless provision is made by the law of that State, or by an arrangement made with that State, for securing that he will not-

(a) be tried or detained with a view to trial for or in respect of any offence committed before his extradition under this Act other than-

(i) the offence in respect of which his extradition is requested; [ . . . ]

(5) The Minister may, in his discretion, refuse to extradite a fugitive on the ground that the fugitive is a citizen of Jamaica, [ . . . ]

The Treaty and the Act unequivocally precludes any person from being tried for a greater offense than that or those for which he was extradited.<sup>139</sup> Moreover, the Treaty and the Act give the Government of Jamaica the discretion to refuse extradition of one of its citizens.<sup>140</sup> Certainly, the Government of Jamaica, which felt embarrassed and affronted by the Government of the United States' refusal to return Mr. Morrison had the legal right to refuse extradition of Mr. Coke until it determined how and for what he would be tried in the United States.<sup>141</sup> Certainly, the Government

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138. Jamaica Extradition Act, *supra* note 42.

139. *Id.*; Treaty, *supra* note 7.

140. *Id.*

141. See *e.g.*, Jamaica Extradition Act, *supra* note 42:  
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of Jamaica, which had the discretion to refuse extradition of one of its citizens, could ask for more evidence to determine whether the Government of the United States would enlarge or enhance the scope of the charges which formed the basis of the extradition request.

## V. CONCLUSION

To instill confidence in the public, auditors are required to be independent in appearance and independent in fact. Prime Minister Golding may have truly been independent in fact, and his administration may have desired to ensure that letter of the Treaty was enforced; however, he and his administration were not independent in appearance. Prime Minister Golding's administration, it would seem, spent thousands of dollars and used great resources to fight or delay compliance with the Request for Mr. Coke in a manner inconsistent with its handling of other extradition requests for Jamaican citizens indicted for the crimes listed in Mr. Coke's indictment.<sup>142</sup> To further complicate matters, Prime Minister Golding seemed to have blurred the lines between his role as chief executive of Jamaica and chief executive of the Jamaica Labor Party.<sup>143</sup> Prime Minister Golding may have forgotten that although the letter of the Treaty permitted his position, the spirit of the Treaty **may** have required a different approach. In fact, he and his administration were required to juxtapose the interests of Mr. Coke with the country's interest in fighting transnational crime and corruption. Indeed, that is a complex task that requires a multifaceted approach, because the constitutional rights of citizens is no less important than a country's obligation to international treaties and global cooperation.

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8. (1) Subject to the provisions of this Act relating to provisional warrants, a person shall not be dealt with under this Act except in pursuance of an order of the Minister (in this Act referred to as "authority to proceed") issued in pursuance of a request made to the Minister by or on behalf of any Approved State—  
[ . . ]

(3) On receipt of such a request the Minister may issue an authority to proceed, unless it appears to him that an order for the extradition of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Act.

142. *PNP Hammers the Government Over Manatt Phelps and Phillips Saga*, RJR NEWS, available at <http://rjrnews.com/local/pnp-hammers-the-government-over-manatt-phelps-and-phillips-saga> (last visited Aug. 13, 2012).

143. *Id.*; *JLP on Manatt-Dudus Report*, THE GLEANER, June 14, 2011 <http://jamaica-gleaner.com/latest/article.php?id=29382>.

Nonetheless, it is certainly unfair to conclude that the administration of former Prime Minister Bruce Golding refused to comply with the Extradition Request for Christopher “Dudus” Coke solely because Mr. Coke and or his father had been leaders of the Tivoli Gardens community and allegedly the leaders of the Shower Posse that operated from that community. As described above, the Treaty and the Jamaican Extradition Act provide(d) the Government of Jamaica with unfettered discretion to refuse extradition of one of its citizens.<sup>144</sup> Furthermore, as a sovereign state, which must protect the constitutional rights of its citizens, Jamaica, via Prime Minister Golding, could and should ensure that the information supplied in the Request was sufficient to fulfill the requirements of the Treaty.<sup>145</sup> Moreover, because a previous Jamaican administration was severely criticized when it blundered in the handling of the extradition request for Richard Morrison, who was later deprived full due process under Jamaican law, Prime Minister Golding’s administration may have simply wanted to ensure that it did not repeat the same errors.<sup>146</sup>

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144. Treaty, *supra* note 7, at art. VII.

145. *Id.* at art. IX–X:

- (1) If the executive authority of the Requested State considers that the information furnished in support of the request for extradition is not sufficient to fulfill the requirements of this Treaty, it shall notify the Requesting State in order to enable that State to furnish additional information. . . .

146. “Norris Barnes was kidnapped and the United States had never acknowledged that it did wrong . . . . We are going to insist that the extradition issues be done in compliance with the laws of Jamaica.” Gary Spaulding, *United States Refusing to Amend Extradition Treaty, Says Golding*, THE GLEANER, Mar. 24, 2011, available at <http://jamaica-gleaner.com/gleaner/20110324/lead/lead3.html>.