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Jacob A. Manheimer

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INTERSTATE RENDITION VIOLATIONS AND SECTION 1983: LOCATING THE FEDERAL RIGHTS OF FUGITIVES

INTRODUCTION

The transfer of fugitives between states is governed by procedures prescribed by the extradition clause of the Constitution, the federal extradition statute and applicable state law. In recent years, an increasing number of plaintiffs have sought damages for transfers effected in violation of these interstate rendition provisions. Violations occur after police detain a suspect whose arrest is sought in another state: In contravention of interstate rendition laws, and before a probable cause determination is made, the police either

1. U.S. Const. art. IV, § 2, cl. 2.
4. The technically correct term to describe the transfer of fugitives between states is “interstate rendition,” not “extradition,” which describes the transfer of fugitives between nations. 2 J. Moore, A Treatise on Extradition and Interstate Rendition § 516, at 819 (1891); Note, Extradition: Computer Technology and the Need to Provide Fugitives with Fourth Amendment Protection in Section 1983 Actions, 65 Minn. L. Rev. 891, 891 n.3 (1981) [hereinafter cited as Computer Technology]; Note, Interstate Rendition and the Fourth Amendment, 24 Rutgers L. Rev. 551, 551 n.1 (1970) [hereinafter cited as Interstate Rendition]. This note, however, will follow the common practice of using the terms interchangeably.
transport the fugitive directly to the state in which he is wanted,\(^7\) or contact the police in that state, who retrieve him.\(^8\)

Because federal courts are perceived to be more receptive to suits against police officers than state courts,\(^9\) fugitives extradited in violation of constitutional or statutory provisions have brought their actions under section 1983 of the Ku Klux Klan Act.\(^{10}\)

\(^7\) E.g., Crumley v. Snead, 620 F.2d 481, 482 (5th Cir. 1980); Brown v. Nutsch, 619 F.2d 758, 761 (8th Cir. 1980).


provides a damage remedy for infringement of federal rights by persons acting under color of state law.\(^\text{11}\) Federal courts are divided, however, as to whether extradition violations give rise to actions under section 1983. While the Sixth Circuit and several district courts have rejected the section 1983 action,\(^\text{12}\) the current trend is towards recognizing the action.\(^\text{13}\) Some courts recognizing the action have found federal rights in the extradition clause of the Constitution and the federal extradition statute.\(^\text{14}\) Other courts have found federal rights to be implicated by the violation of state law.\(^\text{15}\) One court has based relief on the fugitive's right to challenge extradition by writ of habeas corpus.\(^\text{16}\) Despite this lack of consensus as to the source of the right, commentators have viewed the trend as providing a necessary measure of protection for fugitives' rights.\(^\text{17}\)

This Note first examines the federal and state extradition provisions and the requirements for maintaining a section 1983 action. It contends that violations of federal and state extradition provisions do not support section 1983 actions because the provisions create no federal rights. It is argued instead that fugitives can be adequately protected by the right to challenge extradition in a habeas corpus hearing at which probable cause must be established, and that section 1983 is available to redress infringement of this right.


\(^{13}\) The five circuit courts that have addressed the issue in the last eight years have all recognized the action. Crumley v. Snead, 620 F.2d 481 (5th Cir. 1980); Brown v. Nutsch, 619 F.2d 758 (8th Cir. 1980); McBride v. Soos, 594 F.2d 610 (7th Cir. 1979); Wirth v. Surles, 562 F.2d 319 (4th Cir. 1977), cert. denied, 435 U.S. 933 (1978); Sanders v. Conine, 506 F.2d 530 (10th Cir. 1974).


\(^{15}\) McBride v. Soos, 594 F.2d 610, 612-13 (7th Cir. 1979); Wirth v. Surles, 562 F.2d 319, 322 (4th Cir. 1977), cert. denied, 435 U.S. 933 (1978); Sanders v. Conine, 506 F.2d 530, 532 (10th Cir. 1974).

\(^{16}\) Crumley v. Snead, 620 F.2d 481, 484 (5th Cir. 1980).

\(^{17}\) See J. Murphy, Arrest by Police Computer 31-32 (1975); Computer Technology, supra note 4, at 907-08.
I. EXTRADITION PROVISIONS

The extradition clause of the United States Constitution was intended to continue the summary extradition procedures practiced by the colonies. The clause provides:

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

Because the clause does not specify a procedure for the interstate rendition of fugitives, Congress, in 1793, enacted the federal extradition statute, which requires that (1) the governor of the demanding state present to the governor of the asylum state an indictment or affidavit charging the fugitive with a crime; (2) the governor of the asylum state have the fugitive arrested, and then notify the demanding governor of the arrest; and (3) agents from the demanding state retrieve the fugitive.

Although the federal extradition statute provides more detailed extradition procedures than the extradition clause of the Constitution, it fails to address the propriety of making arrests before requisition by the governor of the demanding state, the availability of bail


19. U.S. Const. art. IV, § 2, cl. 2.

20. 2 J. Moore, supra note 4, § 531, at 840; see R. Hurd, supra note 18, at 593-94. United States Attorney General Edmund Randolph, in a report to President Washington, dated July 20, 1791, proposed supplementing the clause with specific procedures. 2 J. Moore, supra note 4, § 532, at 842. A fugitive is a person charged by a state with having committed a crime, but who is absent from that state. The person's motive for leaving the state is irrelevant. Appleyard v. Massachusetts, 203 U.S. 222, 227 (1906); Roberts v. Reilly, 116 U.S. 80, 97 (1885); see 2 J. Moore, supra note 4, § 565, at 894-95; Computer Technology, supra note 4, at 891 n.3.

21. Act of Feb. 12, 1793, ch. 7, 1 Stat. 302 (current version at 18 U.S.C. § 3182 (1976)). The current statute is substantially similar to the original, which has been modified to: (1) eliminate any reference to slaves; (2) extend coverage to any state or territory of the United States; and (3) reduce the time period in which an agent from the demanding state must appear from six months to 30 days. Compare Act of Feb. 12, 1793, ch. 7, 1 Stat. 302, with 18 U.S.C. § 3182 (1976).

22. The state requesting extradition is the demanding state. The state in which the fugitive is found is the asylum state. Interstate Rendition, supra note 4, at 551 n.3.


and the sufficiency of the criminal charge.\textsuperscript{25} To remedy these deficiencies, the National Conference of Commissioners on Uniform State Laws, in 1926, approved a draft of the Uniform Criminal Extradition Act (UCEA).\textsuperscript{26} Revised in 1936,\textsuperscript{27} the UCEA\textsuperscript{28} has been adopted by forty-eight states.\textsuperscript{29} Among its thirty-one sections, the UCEA outlines the situations in which arrest is proper\textsuperscript{30} and provides more specific requirements for requisition.\textsuperscript{31} It also requires that the arrested party (1) be taken before a judge to be informed of the demand for his surrender and the charges against him; (2) be informed of his right to counsel; and (3) be informed of his right to challenge the extradition process by writ of habeas corpus.\textsuperscript{32}

\textsuperscript{25} Id. at 590; Uniform Criminal Extradition Act, commissioners’ prefatory note, 11 U.L.A. 52-53 (1974); see Council of State Governments, Handbook of Interstate Crime Control 128-29 (1966).


\textsuperscript{27} Section 6 of the 1926 act provided for extradition of a criminal from the state in which he acted to the state in which his acts resulted in a crime. U.C.E.A. § 6 (Tent. Draft), Nat’l Conf. of Comm’rs on Unif. State Laws and Proceedings, Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings 593-94 (1926). It was amended to permit “extradition of that person not only from the state in which he acted, but from any state into which he thereafter moves.” U.C.E.A., commissioners’ prefatory note, 11 U.L.A. 54 (1974). Section 5 was amended to authorize extradition of those persons who under certain state laws were not held to be fugitives, and those persons who were wanted for trial in one state, but were already serving a prison sentence in another state. Id.; id. § 5, 11 U.L.A. 159 (1974).

\textsuperscript{28} 11 U.L.A. 59 (1974).

\textsuperscript{29} Id. at 51.

\textsuperscript{30} The UCEA provides for the issuance of an arrest warrant by the governor of the asylum state when he decides that an extradition request should be honored, U.C.E.A. § 7, 11 U.L.A. 180 (1974), or by a judge or magistrate if a “credible” person swears that another person has committed a crime or has escaped from detention in another state, and has fled from that state. Id. § 13, 11 U.L.A. 249-50 (1974). Additionally, if a police officer or private person has reasonable grounds to believe that a person is charged with a crime punishable by death or imprisonment for more than one year, he may arrest that person without a warrant, but the arrestee must be taken before a judge or magistrate “with all practicable speed.” Id. § 14, 11 U.L.A. 252 (1974).

\textsuperscript{31} The governor of the demanding state must allege in writing “that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state.” Id. § 3, 11 U.L.A. 92 (1974). The UCEA also requires that the request be “accompanied by a copy of an indictment found or by information supported by affidavit . . . made before a magistrate there, together with a copy of any warrant which was issued thereupon. . . . The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the Executive Authority making the demand.” Id.

\textsuperscript{32} Id. § 10, 11 U.L.A. 209 (1974).
Habeas corpus is the process by which a prisoner may challenge the legality of his detention. In 1885, the Supreme Court, in *Roberts v. Reilly*, recognized the right to challenge extradition by writ of habeas corpus, stating that "whenever the executive of the State . . . causes the arrest for delivery of a person charged as a fugitive from the justice of another State, the prisoner . . . is entitled to invoke the judgment of the judicial tribunals . . . by the writ of habeas corpus, upon the lawfulness of his arrest and imprisonment." Although the Court did not identify the exact source of this right, it is to be found in the Constitution. The framers of the Constitution recognized the importance of the "Great Writ" and provided that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended." Denial of the right to a habeas corpus hearing and violations of the various extradition provisions have all been held to be valid bases for section 1983 actions.

II. Requirements for a Section 1983 Action

The Supreme Court has identified two elements necessary for recovery under section 1983. The plaintiff must prove: (1) that the defendant deprived him of a right secured by the "Constitution and laws"; and (2) that the deprivation was accomplished under color of state law. Because the acts of police officers have been consistently
treated as carried out under color of state law, the latter requirement has never been an issue in extradition-abuse litigation. In contrast, courts have struggled with, and commentators have recognized the difficulty in, determining when a defendant has been deprived of constitutional or statutory rights. In a prophetic statement in 1884, the Supreme Court noted that "[i]t might be difficult to enumerate the several descriptions of rights secured to individuals by the Constitution, the deprivation of which, by any person, would subject the latter to an action for redress under [section 1983]; and, fortunately, it is not necessary to do so in this case." In later cases, however, courts have been forced to struggle with the identification of federal rights.

A. Rights Secured by the Constitution

The fundamental rights guaranteed by the Bill of Rights and protected by the fourteenth amendment against infringement by the states have been consistently treated as within the scope of section 1983. Actions have been held to lie for violation of the rights of free

41. Conduct by police officers under the pretext of lawfulness or made possible only because the wrongdoer is clothed with state authority has been held to be under color of state law, regardless of the illegality of the act. E.g., Scheuer v. Rhodes, 416 U.S. 232, 243 (1974); Monroe v. Pape, 365 U.S. 167, 184-87 (1961), overruled in part on other grounds, Monell v. Department of Social Servs., 436 U.S. 658 (1978); Screws v. United States, 325 U.S. 91, 111 (1945); United States v. Classic, 313 U.S. 299, 326 (1941). An early Supreme Court decision had suggested that an illegal or unauthorized act of a state officer was not one committed under color of state law. Barney v. City of New York, 193 U.S. 430, 441 (1904). This suggestion was subsequently questioned, Home Tel. & Tel. Co. v. City of Los Angeles, 227 U.S. 278, 294 (1913), and ultimately repudiated. United States v. Raines, 362 U.S. 17, 25-26 (1960); Iowa-Des Moines Nat'l Bank v. Bennett, 284 U.S. 239, 246-47 (1931).

42. See, e.g., Brown v. Nutsch, 619 F.2d 758, 761 (8th Cir. 1980) ("It is uncontested that both the police officers acted under color of state law."); McBride v. Soos, 594 F.2d 610, 611-12 (7th Cir. 1979) ("There is no question that [the police officers] were acting under color of state law."); Wirth v. Surles, 562 F.2d 319, 321 (4th Cir. 1977) ("[W]hen a highway patrolman crosses a state line to obtain custody of a suspect ... he is acting under color of law."); cert. denied, 435 U.S. 933 (1978).


speech,\textsuperscript{46} assembly,\textsuperscript{47} free press,\textsuperscript{48} freedom from cruel and unusual punishment,\textsuperscript{49} and freedom of religion.\textsuperscript{50} Section 1983 has been held to be available to redress fourth amendment violations including unlawful search and seizure,\textsuperscript{51} use of excessive force,\textsuperscript{52} and beating prisoners into incriminating themselves.\textsuperscript{53}

Not every constitutional provision, however, has been held to create a right. In \textit{Carter v. Greenhow},\textsuperscript{54} the dismissal of a complaint based on the contract clause\textsuperscript{55} was affirmed.\textsuperscript{56} The Supreme Court reasoned that the clause secures no substantive individual rights,\textsuperscript{57} but merely "forbids any State to pass laws impairing the obligations of contracts."\textsuperscript{58} The only "right" created was to have "a judicial determination, declaring the nullity of the attempt to impair its obligation."\textsuperscript{59}

\section*{B. Rights Secured by Laws}

Prior to 1980, it had been argued that section 1983 only provides a remedy for violations of civil rights and equal protection laws.\textsuperscript{60} In that year, however, the Supreme Court expressly held in \textit{Maine v.}

\begin{itemize}
\item \textsuperscript{46} Hudson v. Harris, 478 F.2d 244, 245 (10th Cir. 1973); International Soc'y for Krishna Consciousness, Inc. v. Wolke, 453 F. Supp. 869, 871 (E.D. Wis. 1978); Ammond v. McGahn, 390 F. Supp. 655, 658 (D.N.J. 1975), rev'd on other grounds, 532 F.2d 325 (3d Cir. 1976).
\item \textsuperscript{47} Slate v. McFetridge, 484 F.2d 1169, 1170 (7th Cir. 1973); Ames v. Vavreck, 356 F. Supp. 931, 935 (D. Minn. 1973).
\item \textsuperscript{48} Lewis v. Baxley, 368 F. Supp. 768, 772, 780 (M.D. Ala. 1973).
\item \textsuperscript{50} Cruz v. Beto, 405 U.S. 319, 321-22 (1972) (per curiam); Shabazz v. Barnauskas, 598 F.2d 345, 346, 348 (5th Cir. 1979); Oney v. Oklahoma City, 120 F.2d 861, 862, 866 (10th Cir. 1941).
\item \textsuperscript{52} Morgan v. Labiak, 368 F.2d 338, 340 (10th Cir. 1966); Bargainer v. Michal, 233 F. Supp. 270, 271 (N.D. Ohio 1964).
\item \textsuperscript{53} Hardwick v. Hurley, 289 F.2d 529, 530-31 (7th Cir. 1961); Wakat v. Harlib, 253 F.2d 59, 65 (7th Cir. 1958).
\item \textsuperscript{54} 114 U.S. 317 (1884).
\item \textsuperscript{55} U.S. Const. art. I, § 10, cl. 1.
\item \textsuperscript{56} 114 U.S. at 323.
\item \textsuperscript{57} \textit{Id.} at 321-22.
\item \textsuperscript{58} \textit{Id.} at 322.
\item \textsuperscript{59} \textit{Id.}
\end{itemize}
that section 1983 encompasses claims based on all federal statutory violations. Finding the legislative history of section 1983 to be unclear, the Court relied on the section's plain meaning and noted that it provides a remedy for "deprivation of any rights, privileges, or immunities secured by the Constitution and laws." This holding was subsequently qualified in Middlesex County Sewerage Authority v. National Sea Clammers Association and Pennhurst State School & Hospital v. Halderman. The Middlesex Court interpreted Pennhurst as standing for the proposition that a section 1983

61. 448 U.S. 1 (1980).
62. Id. at 4.
64. 448 U.S. at 4 (emphasis added by Court) (quoting 42 U.S.C. § 1983 (Supp. III 1979)). As originally enacted, § 1 of the Ku Klux Klan Act of 1871 authorized actions to redress the "deprivation of any rights, privileges, or immunities secured by the Constitution," and vested jurisdiction over those actions in the federal courts. Ku Klux Klan Act, ch. 22, § 1, 17 Stat. 13 (1871). Unlike § 1983, the Act did not provide a cause of action for deprivation of rights secured by federal law. Compare Ku Klux Klan Act, ch. 22, § 1, 17 Stat. 13 (1871), with 42 U.S.C. § 1983 (Supp. III 1979). The words "and laws" were added in 1874 when Congress enacted the Revised Statutes of the United States. U.S. Rev. Stat. tit. 24, § 1979, [18 pt. 1] Stat. 347 (2d ed. 1878). Congress also separated the provision authorizing the action from the provision providing federal jurisdiction. District courts were given jurisdiction over actions to redress deprivations of rights secured by the Constitution or "by any law of the United States." Id. tit. 13, ch. 3, § 563(12), [18 pt. 1] Stat. 96 (2d ed. 1878). Circuit courts were given jurisdiction over actions for deprivation of rights secured by the Constitution or "by any law providing for equal rights." Id. ch. 7, § 629(16), [18 pt. 1] Stat. 112 (2d ed. 1878). In 1911, the old circuit courts were abolished and their authority was transferred to the district courts. The Judiciary Act of Mar. 3, 1911, ch. 13, §§ 289-291, 36 Stat. 1167. District court jurisdiction was restricted, however, to actions to redress deprivations of rights secured by the Constitution, "or of any right secured by any law of the United States providing for equal rights." Id. ch. 2, § 24(14), 36 Stat. 1092. The provision authorizing the action has been carried forward as 42 U.S.C. § 1983 (Supp. III 1979). The current provision providing for federal jurisdiction is 28 U.S.C. § 1343(3) (1976). For an exhaustive discussion of the ambiguous legislative history behind the language changes, see Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 608-12 (1979). The Chapman Court held that the language of the jurisdictional limitation was controlling and that district courts could not hear actions based on Social Security Act violations because the Act did not provide for equal rights. Id. at 620, 622-23. In Thiboutot, it was argued that the jurisdictional limitation to actions for the deprivation of equal rights laws should apply to § 1983 as well; that § 1343(3) and § 1983 have a common origin and should therefore have a common scope. Maine v. Thiboutot, 448 U.S. 1, 6-7 (1980). The Court rejected the argument, stating that there was no evidence that the plain language of § 1983 was not intended and recognized that a § 1983 action could lie for Social Security Act violations. Id. at 8-9. The Court resolved the apparent inconsistency of Chapman and Thiboutot by noting that jurisdiction could be asserted by means other than § 1343. Id. at 8 n.6; see S. Nahmod, supra note 44, § 2.10 (Supp. 1980).
action would not lie if "Congress had foreclosed private enforcement of [the] statute in the enactment itself, [or if] the statute at issue . . . was [not] the kind that created enforceable 'rights' under § 1983."67

Whether an act creates substantive rights in favor of a particular individual or class depends on whether Congress intended the act to create enforceable rights.68 In Middlesex, the Court stated: "We look first, of course, to the statutory language . . . . Then we review the legislative history and other traditional aids of statutory interpretation to determine congressional intent."69

In attempting to discern congressional intent, some federal courts addressing section 1983 actions for purely statutory violations have properly conducted detailed analyses of the language and legislative history of the statutes at issue.70 In so doing, these courts have often distinguished between statutes that confer individual rights and statutes that assist the states.71 For example, the Wagner-Peyser National Employment System Act72 has been interpreted as conferring rights upon migrant farm workers.73 In contrast, the Urban Mass Transit


69. 101 S. Ct. at 2623.


72. Ch. 49, 48 Stat. 113 (1933) (current version at 29 U.S.C. §§ 49, 557 (1976)).

Act\textsuperscript{74} and the Federal-Aid Highway Act\textsuperscript{75} were intended to assist and encourage states to develop mass transportation programs, not to create substantive rights.\textsuperscript{76} The trend of recent decisions is to require clear indications of intent to confer substantive rights, and absent such indications, section 1983 has been held not to lie.\textsuperscript{77} Applying an even stricter standard, the Fourth Circuit has suggested that plaintiffs must point to "substantive provisions of the . . . acts which give them a tangible right, privilege, or immunity."\textsuperscript{78} 

In \textit{Pennhurst State School \& Hospital v. Halderman},\textsuperscript{79} the Supreme Court held that the Developmentally Disabled Assistance and Bill of Rights Act\textsuperscript{80} does not create any substantive rights, despite the presence of the words "Bill of Rights" in the Act's title and the inclusion of section 6010, which defines and lists these rights.\textsuperscript{81} The Court found that section 6010 merely expresses a preference for certain kinds of treatment for those covered by the Act.\textsuperscript{82} The Court's disposition of the \textit{Pennhurst} case may be arguable,\textsuperscript{83} but the import of the decision is clear: For a section 1983 action to lie, Congress must "unambiguously" intend to create substantive rights enforceable in a private action.\textsuperscript{84} Whether a statute unambiguously confers rights enforceable under section 1983 is rarely clear.\textsuperscript{85} The extradition provisions are no exception, and consequently, whether

\begin{itemize}
\item 75. 23 U.S.C. §§ 101-156 (1976).
\item 78. Perry v. Housing Auth., 664 F.2d 1210, 1217 (4th Cir. 1981).
\item 79. 451 U.S. 1 (1981).
\item 81. 451 U.S. at 18-20.
\item 82. \textit{Id.} at 17-18. The Court noted that the Act, in making federal funds available to the states, places no condition on the receipt of those funds. This, the Court reasoned, indicates that Congress intended not to create substantive rights. \textit{Id.} The legislative history of the Act "buttressed" the Court's conclusion: The House report referred to the Act's purpose as "simply to continue an existing federal grant program, designed to promote 'effective planning by the states of their programs, initiation of new, needed programs, and filling of gaps among existing efforts.' " \textit{Id.} at 20 (quoting H.R. Rep. No. 58, 94th Cong., 1st Sess. 6, \textit{reprinted in} 1975 U.S. Code Cong. & Ad. News 919, 924).
\item 85. \textit{Cf.} Pennhurst State School & Hosp. v. Halderman, 451 U.S. 1, 18 (1981) (although statute refers to "rights," congressional intent, not particular words, deter-
section 1983 is available to remedy extradition violations has divided the courts.  

III. Section 1983 Actions for Extradition Violations

A. Judicial Treatment

The few courts that have rejected the section 1983 action for extradition procedure violations have advanced two distinct rationales for their position: (1) The extradition clause of the Constitution and the federal extradition statute protect no personal rights—their primary purpose is to benefit the states by providing a smooth extradition procedure; or (2) no federal right is implicated because the specific extradition provisions violated in these cases are matters of state law only. One argument focuses on the nature of the right infringed, the other on the particular statute violated.

Courts that recognize the section 1983 action reject the argument that the federal extradition provisions merely provide for state comity and protect no individual rights. The Tenth Circuit stated that such a suggestion was "not worthy of serious notice." These courts reason that violations of the federal statute are actionable because fugitives have a right to the statute's procedural protections. The language of two circuit decisions suggests that even violations of state extradition procedures are actionable; because the state extradition statutes are

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86. See supra notes 12-16 and accompanying text.
90. Sanders v. Conine, 506 F.2d 530, 532 (10th Cir. 1974).
92. McBride v. Soos, 594 F.2d 610, 613 (7th Cir. 1979); Sanders v. Conine, 506 F.2d 530, 532 (10th Cir. 1974).
"derived from federal law," any failure to adhere to the provisions of the state laws is actionable under section 1983.\textsuperscript{3}

The disparate results reached by the courts may be explained by their failure to conduct the kind of detailed analysis of the language and legislative history of the extradition provisions that the Supreme Court has indicated is necessary to determine whether statutes create rights.\textsuperscript{4}

**B. Federal Extradition Provisions**

Statutory construction should begin with an analysis of the language of the enactment at issue.\textsuperscript{5} Neither the extradition clause of the Constitution\textsuperscript{6} nor the federal extradition statute\textsuperscript{7} refer to the rights of fugitives. On the contrary, they confer rights and duties on the executive authorities of the states.\textsuperscript{8} Furthermore, the legislative history of the provisions indicates that the constitutional clause was intended to formalize the summary extradition procedures practiced by the colonies\textsuperscript{9} and that the statute was intended to provide the machinery for doing so.\textsuperscript{10} John Bassett Moore, in his seminal work on

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\textsuperscript{3} McBride v. Soos, 594 F.2d 610, 613 (7th Cir. 1979); accord Sanders v. Conine, 506 F.2d 530, 532 (10th Cir. 1974) (states' power to extradite "arises under" federal law).

\textsuperscript{4} See supra notes 68-69, 84 and accompanying text.


\textsuperscript{6} U.S. Const. art. IV, § 2, cl. 2. The Extradition Clause gives governors the right to demand the delivery of fugitives. It imposes the duty of delivery on the asylum state. \textit{Id}. The Supreme Court has held that the duty of delivery is merely a "moral" duty and does not obligate the governor to deliver the fugitive. Kentucky v. Dennison, 65 U.S. (24 How.) 1, 6 (1860).

\textsuperscript{7} 18 U.S.C. § 3182 (1976). The statute requires that authorities in the demanding state produce an indictment or affidavit made before a magistrate. It also provides that the prisoner must be released if no agent from the demanding state appears within thirty days. \textit{Id}. Consequently, it has been argued that the Act creates rights. Brown v. Nutsch, 619 F.2d 758, 764 (8th Cir. 1980); Sanders v. Conine, 506 F.2d 530, 532 (10th Cir. 1974); \textit{Computer Technology}, supra note 4, at 895 n.21. There is, however, no express grant of rights to the fugitive. He may be considered an indirect beneficiary of procedures that the state authorities are required to follow. Cf. Perry v. Housing Auth., 664 F.2d 1210, 1213 (4th Cir. 1981) (low-income tenants are indirect beneficiaries of Housing Act).

\textsuperscript{8} Innes v. Tobin, 240 U.S. 127, 130-31 (1916); Appleyard v. Massachusetts, 203 U.S. 222, 227 (1906); Roberts v. Reilly, 116 U.S. 80, 95 (1885); Kentucky v. Dennison, 65 U.S. (24 How.) 66, 103 (1860); Commissioners' Report, supra note 24, at 590.

\textsuperscript{9} See supra note 18 and accompanying text.

\textsuperscript{10} Lascelles v. Georgia, 148 U.S. 537, 540-41 (1893); Kentucky v. Dennison, 65 U.S. (24 How.) 66, 104-05 (1860); 2 J. Moore, supra note 4, §§ 531-534, at 840-48;
extradition.\textsuperscript{101} traced the debates leading to the inclusion of the extradition clause. He noted that the framers of the Constitution made no mention of the need to protect the rights of fugitives, but frequently referred to the importance of state comity.\textsuperscript{102}

The federal extradition statute was proposed in the wake of a disagreement between the governors of Pennsylvania and Virginia over the correct rendition procedure.\textsuperscript{103} President Washington suggested that a statute be enacted by Congress to clarify the procedures and requirements to be met prior to rendition.\textsuperscript{104} As with the debates over the constitutional clause, the debates over the federal extradition statute reveal no concern for the need to protect fugitive rights.\textsuperscript{105} Rather, the Act was intended to smooth the extradition process.\textsuperscript{106}

Courts that have recognized the section 1983 action have failed to examine the legislative history of the federal extradition provisions. Instead, they reason that the procedures prescribed by the federal provisions benefit fugitives, and therefore, that violation of the procedures is actionable under section 1983.\textsuperscript{107} That a statute benefits an individual, however, does not necessarily mean that Congress intended the statute to confer rights upon that individual.\textsuperscript{108} In holding that Congress did not intend to create a private right of action under section 10 of the Rivers and Harbors Appropriation Act,\textsuperscript{109} the Supreme Court recently stated that "[t]he question is not simply who see Appleyard v. Massachusetts, 203 U.S. 222, 228-29 (1906); R. Hurd, supra note 4, at 593-94.

\textsuperscript{101} 2 J. Moore, \textit{supra} note 4.


\textsuperscript{103} R. Hurd, \textit{supra} note 18, at 593-94; 2 J. Moore, \textit{supra} note 4, §§ 531-532, at 840-45.

\textsuperscript{104} R. Hurd, \textit{supra} note 18, at 593-94; 2 J. Moore, \textit{supra} note 4, §§ 531-533, at 840-45; J. Scott, Interstate Rendition 5-7 (1917).

\textsuperscript{105} R. Hurd, \textit{supra} note 18, at 593-94; 2 J. Moore, \textit{supra} note 4, §§ 531-532, at 840-45; J. Scott, \textit{supra} note 104, at 5-7.

\textsuperscript{106} R. Hurd, \textit{supra} note 18, at 593-94; 2 J. Moore, \textit{supra} note 4, §§ 531-532, at 840-45; J. Scott, \textit{supra} note 104, at 5-7.


would benefit from the Act, but whether Congress intended to confer federal rights upon those beneficiaries."110 Mere benefit cannot be the test for determining intent to create rights; if it were, every statute would support a section 1983 action because every statute benefits at least some individuals.

Two of the circuit courts that recognize the section 1983 action111 have relied on United States ex rel. McClene v. Meyering,112 in which the Seventh Circuit stated that a "fugitive has a right not to be imprisoned or dealt with by the states in disregard of those safeguards provided by the Constitution and statutes of the United States."113 To support this statement, the Meyering court cited114 only the Supreme Court decision in Compton v. Alabama.115 The Compton Court, however, stated only that "the right to arrest the alleged fugitive" is dependent upon compliance with the federal provisions; no mention was made of fugitive rights.116 The Supreme Court has, in fact, consistently treated the extradition clause and statute as providing for comity, not for fugitive rights.117 For example, in Lascelles v. Georgia,118 the Court stated that "[t]he sole object of the provision of the Constitution and the act of Congress to carry it into effect is to secure the surrender of persons accused of crime."119

In sum, nothing in the language, legislative history or historical treatment of the federal extradition provisions satisfies the Court's requirement that a provision clearly confer substantive rights to support a section 1983 action. At best, the evidence is ambiguous and, as illustrated by Pennhurst, ambiguity is not a sufficient basis for the action.120

C. State Extradition Provisions

One court denied relief under section 1983 on the ground that no federal rights were infringed because the statutory procedures violated were solely matters of state law.121 The court held that because the

112. 75 F.2d 716 (7th Cir. 1934).
113. Id. at 717.
114. Id. at 717-18.
116. Id. at 6 (emphasis added).
118. 148 U.S. 537 (1893).
119. Id. at 542.
120. See supra notes 81-82, 84 and accompanying text.
UCEA is a statute adopted by states, its violation does not give rise to a federal cause of action.122 The courts in Sanders v. Conine123 and McBride v. Soos124 suggested, however, that section 1983 is available to redress violations of the UCEA. The McBride court maintained that a cause of action can arise from "violation of rights protected by state law derived from federal law."125 The Sanders court argued that because the state's "power to extradite arises under the federal Constitution and statutes," violation of Wyoming's version of the UCEA is actionable under section 1983.126

Whether there is any support for the suggestion in McBride and Sanders that the violation of a state statute may support a section 1983 action is questionable. These courts did not explain why violation of state statutes "derived" from federal law or providing for the exercise of powers "arising" under federal law are actionable under section 1983. If all such state statutes were actionable, section 1983 actions would lie for state statutory violations in any area covered by federal legislation. Most courts recognize, however, that there is a distinction between rights conferred by state law and those conferred by federal law; only the latter are enforceable under section 1983.127 For example, the Supreme Court, in Paul v. Davis.128 dismissed a section 1983 action stating that "violation of local law does not necessarily mean that federal rights have been invaded."129 That a wrong has been

122. Id. This rationale has been criticized for ignoring the federal extradition statute. It is suggested that "[t]aken to an absurd extreme, this view would imply that the states can ignore any act of Congress if they decide to act in the same area . . . . The UCEA did not supersede the federal extradition provisions, but rather supplemented them. A violation of a UCEA rule may also be a violation of the federal statute, and thus support a section 1983 action for a violation of a federal right." Computer Technology, supra note 4, at 906 (footnotes omitted). This criticism hinges upon the assumption that the federal extradition statute creates rights. As noted, this assumption is erroneous, and the criticism is therefore unfounded. See supra pt. III (B).
123. 506 F.2d 530 (10th Cir. 1974).
124. 594 F.2d 610 (7th Cir. 1979).
125. Id. at 613. Upon remand, the district court quoted the circuit court's language and recognized the availability of § 1983 for violation of the UCEA, but denied relief because the defendants had acted in good faith. McBride v. Soos, 512 F. Supp. 1207, 1209-10, 1216 (N.D. Ind. 1981).
126. 506 F.2d at 532.
129. Id. at 700 (quoting Screws v. United States, 325 U.S. 91, 108 (1945)). Justice Douglas, writing for a plurality in Screws, observed: "The fact that a prisoner is
committed by a state official does not necessarily mean a section 1983 action will lie. 130

The recent Supreme Court decision in Cuyler v. Adams 131 may supply the rationale for remedying UCEA rights violations in section 1983 actions. In Cuyler, the Court held that violation of rights conferred by the Agreement on Detainers (AOD), a state statute providing for the interstate rendition of convicts held in state penitentiaries, 132 is actionable under section 1983. 133 If the AOD is treated only as a state statute, violation of its provisions should not give rise to an action under section 1983 because no federal statute is violated. 134 The Court reasoned, however, that the AOD "is an interstate compact approved by Congress and is thus a federal law." 135 To so hold, the Cuyler Court determined that the compact clause of the Constitution 136 applies to the AOD and transforms it into federal law: Congress authorized the states to enter a cooperative agreement of this kind, and the subject matter of the legislation was an appropriate subject for congressional legislation. 137

assaulted, injured, or even murdered by state officials does not necessarily mean that he is deprived of any right protected or secured by the Constitution or laws of the United States." 325 U.S. at 108-09. Screws was not a § 1983 action, but was brought under that section's criminal counterpart, 18 U.S.C. § 242 (1976). Id. at 93. In Paul v. Davis, however, the Court applied the reasoning of Screws to a § 1983 action. 424 U.S. at 699-700. The plaintiff had been defamed in a "flyer" circulated by Louisville, Kentucky police officers, identifying him as a shoplifter. Id. at 694-96. The Court held that no constitutional right had been implicated and, therefore, the § 1983 action would not lie. Id. at 713-14. Instead, the plaintiff had "state[d] a classical claim for defamation actionable in the courts of virtually every State." Id. at 697.

130. 424 U.S. at 699-701.
132. Agreement on Detainers, Council of State Governments, Handbook on Interstate Crime Control 91-98 (1966). The AOD establishes a procedure for the transfer of convicted prisoners in one jurisdiction to the temporary custody of another jurisdiction to stand trial. Id.
133. 449 U.S. at 449-50.
134. See cases cited supra note 127.
135. 449 U.S. at 438.
136. U.S. Const. art. I, § 10, cl. 3. The compact clause provides in part: "No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State." Id. During the colonial era, the colonies resolved boundary disputes among themselves and applied to the British Crown for approval. The compact clause, which requires congressional approval of interstate agreements, may be viewed as the "republican transformation of the needed approval by the Crown." Frankfurter & Landis, The Compact Clause of the Constitution—A Study in Interstate Adjustments, 34 Yale L.J. 685, 694 (1925). The clause gave Congress the power to "exercise national supervision through its power to grant or withhold consent, or to grant it under appropriate conditions." Id. at 695; accord Cuyler v. Adams, 449 U.S. 433, 439-40 (1981).
137. 449 U.S. at 440.
The congressional authorization to which the court referred is the 1934 Crime Control Consent Act,\textsuperscript{138} which provides: "The consent of Congress is hereby given to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies."\textsuperscript{139} The AOD was drafted twenty-five years after enactment of the Crime Control Consent Act, but the intervening years did not prevent the congressional consent from applying to the AOD.\textsuperscript{140} The drafters of the AOD had expressly noted that the Agreement was authorized by the Crime Control Consent Act,\textsuperscript{141} and Congress, in enacting the District of Columbia version of the AOD,\textsuperscript{142} had recognized that it was so authorized as well.\textsuperscript{143} The Cuyler Court stated that the extradition clause, commerce clause and the federal extradition statute demonstrate that interstate rendition of convicts is an "appropriate subject for congressional legislation."\textsuperscript{144}

It may be argued that the Cuyler rationale is applicable to UCEA violations as well. The Court has recognized that extradition is an appropriate subject for congressional legislation.\textsuperscript{145} The legislative history of the Crime Control Consent Act indicates that the UCEA is precisely the kind of legislation Congress believed to be the proper subject for state cooperation. The House report accompanying the Crime Control Consent Act recognized the ease with which criminals

\textsuperscript{139} Id. The statute was enacted for the express purpose of ensuring compliance with the compact clause requirement that Congress consent to interstate agreements. Cuyler v. Adams, 449 U.S. 433, 441 n.9 (1981). The House Report accompanying the bill noted that "[l]egislation is necessary to accomplish the purpose sought by the bill because of the language in that part of article I, section 10, of the Constitution . . . . This bill seeks to remove the obstruction imposed by the Federal Constitution and allow the States cooperatively and by mutual agreement to work out their problems of law enforcement." H.R. Rep. No. 1137, 73d Cong., 2d Sess. 1-2 (1934). The entire House Report was reprinted in the Senate report. S. Rep. No. 1007, 73d Cong., 2d Sess. 1 (1934).
\textsuperscript{140} See 449 U.S. at 441 & n.9; id. at 450 (Rehnquist, J., dissenting).
\textsuperscript{145} See supra note 144 and accompanying text.
cross state lines and the necessity of cooperative agreements to solve the problem. It stated:

The rapidity with which persons may move from one State to another, [including] those charged with crime . . . , and the fact that there are no barriers between the States obstructing this movement, makes it necessary that . . . the States by mutual agreement shall aid each other in the detection and punishment of offenders against their respective criminal laws.\(^1\)

The *Cuyler* Court specifically declined to decide whether acts of reciprocal legislation other than the AOD had received congressional approval, or whether their subject matter was appropriate for congressional legislation.\(^2\) The Court’s reasons for finding that Congress had approved the AOD and that the AOD’s subject matter was appropriate for congressional legislation, however, apply with equal force to the UCEA. The UCEA furthers the purpose of the Crime Control Consent Act and addresses extradition, a subject clearly appropriate for congressional legislation.\(^3\) If the UCEA is treated as having been passed pursuant to the Crime Control Consent Act, *Cuyler* suggests that violations of the UCEA may be redressed under section 1983.

The *Cuyler* rationale may be criticized, however, as an unwarranted expansion of compact clause law. Traditionally, interstate agreements have been treated as federal law only if they have received congressional consent and are within the scope of the compact clause.\(^4\) The Supreme Court has stated that agreements are within the scope of the compact clause only if they are “directed to the formation of any combination tending to the increase of political power in the States, which [might] encroach upon or interfere with the just supremacy of the United States.”\(^5\) The AOD and the UCEA

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147. 449 U.S. at 442 n.10.
148. See *supra* note 144 and accompanying text.
149. This “law of the Union” doctrine was formulated in Pennsylvania v. Wheeling & Belmont Bridge Co., 54 U.S. (13 How.) 518 (1851), in which the Court stated: “This compact, by the sanction of Congress, has become a law of the Union.” *Id.* at 565; accord *Pett v. Tennessee-Missouri Bridge Comm’n*, 359 U.S. 275, 278 (1959); *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 27-28 (1951); *Delaware River Joint Toll Bridge Comm’n v. Colburn*, 310 U.S. 419, 427-28 (1940).
150. *Virginia v. Tennessee*, 148 U.S. 503, 519 (1893), *quoted in* United States Steel Corp. v. Multistate Tax Comm’n, 434 U.S. 452, 468 (1978); *New Hampshire v. Maine*, 426 U.S. 363, 369-70 (1976). One commentator has noted the paradox created by the rule: An agreement between the states “encroaching upon the free exercise of federal authority,” requires Congressional consent to be valid; yet an agreement with such political effects is a treaty, which is absolutely forbidden. Engdahl, *Characterization of Interstate Arrangements: When is a Compact not a Compact?*, 64 Mich. L. Rev. 63, 67 (1965). Two other commentators have asserted that “[i]n actuality, there have been no compacts adopted or proposed in our history
may have received implicit congressional consent, but it is hardly arguable that they are within the scope of the compact clause: Neither the AOD nor the UCEA encroach upon federal supremacy.\textsuperscript{151}

The \textit{Cuyler} Court quoted the traditional rule with approval,\textsuperscript{152} but never analyzed the rule's application to the AOD. Instead, the Court reasoned that the AOD was within the scope of the compact clause merely because the subject matter was appropriate for congressional legislation.\textsuperscript{153} This is quite different and significantly more expansive than the traditional test. While the AOD and the UCEA may be exactly the kind of legislation envisioned by Congress in enacting the Crime Control Consent Act, congressional consent alone is insufficient to transform a state law into federal law. The Court has noted that the contrary argument "confuses Congress' power to legislate with its power to consent to state legislation."\textsuperscript{154} If \textit{Cuyler} is restricted to conform to compact clause precedents, section 1983 will not lie for violations of the UCEA.

IV. \textbf{SECTION 1983 ACTIONS FOR DENIAL OF THE RIGHT TO PETITION FOR A WRIT OF HABEAS CORPUS}

That section 1983 is unavailable to enforce the federal extradition provisions, and may well be unavailable to remedy violations of the UCEA, does not necessarily leave the fugitive without relief. The constitutional right to challenge extradition in the asylum state by writ of habeas corpus has been recognized by nearly every court that
has addressed extradition abuse. Surprisingly, however, only the Fifth Circuit, in *Crumley v. Snead*, based section 1983 recovery on denial of the right to a habeas corpus hearing. The *Crumley* court asserted that "the right to the hearing is one secured by the Constitution and laws of the United States. Any denial of this right gives rise to a cause of action under 42 U.S.C. § 1983."

Traditionally, habeas corpus proceedings in the extradition context have been limited to determining whether there has been compliance with the federal extradition statute. In *Michigan v. Doran*, the Supreme Court stated that considerations are limited to: "(a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive." The *Doran* Court specifically declined to decide whether extradition must be preceded by a neutral judicial determination of probable cause. Although the question was not presented, Justice Blackmun, in his concurrence, chastised the Court for avoiding the issue. He noted that circuit and state courts were divided on the question and

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156. 620 F.2d 481 (5th Cir. 1980).

157. *Id.* at 483.


160. *Id.* at 289.

161. *Id.* at 285 n.3. Because the requisition documents clearly indicated that a probable cause determination had been made in the demanding state, the question was not presented. *Id.*

162. *Id.* at 290-91 (Blackmun, J., concurring in the result).

argued that, under \textit{Gerstein v. Pugh}, the fourth amendment requires a probable cause determination.\textsuperscript{165}

In \textit{Gerstein}, the Supreme Court addressed the fourth amendment requirements for pre-trial arrest and detention, balancing "the individual's right to liberty and the State's duty to control crime."\textsuperscript{166} The Court noted that the individual's liberty interest could be afforded maximum protection by requiring a judicial probable cause determination prior to every arrest, but that this "would constitute an intolerable handicap for legitimate law enforcement."\textsuperscript{168} The Court recognized, however, that once in custody, the prisoner's liberty interest outweighs the state's interest in crime prevention.\textsuperscript{169} Any extended detention by police, therefore, must be predicated on a judicial determination of probable cause.\textsuperscript{170}

In deciding whether a probable cause determination is required prior to rendition, a similar balancing must be undertaken with respect to the fugitive's liberty interest and the states' interests in extradition.\textsuperscript{171} The state interests served by extradition are: prompt return of criminal offenders, protection of state comity\textsuperscript{172} and prevention of states from becoming safe asylums for fugitives.\textsuperscript{173} With reference to an individual's liberty interest, the \textit{Gerstein} Court observed that extended pre-trial confinement "may imperil the suspect's job, interrupt his source of income, and impair his family relationships. . . . When

\textsuperscript{164} 420 U.S. 103 (1975).
\textsuperscript{166} 420 U.S. at 112.
\textsuperscript{167} \textit{Id.} at 113.
\textsuperscript{168} \textit{Id.}
\textsuperscript{169} \textit{Id.} at 114.
\textsuperscript{170} \textit{Id.}
the stakes are this high, the detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty.”174 In Doran, Justice Blackmun noted that the stakes are higher in the extradition setting: The prisoner is confined in the asylum state, forcibly transported across state lines and confined in the demanding state.175

An increasing number of courts view the fugitive’s liberty interests as outweighing the states’ interests in extradition.176 A probable cause determination in the demanding state prior to extradition proceedings in the asylum state would adequately protect the prisoner’s liberty interest without overburdening the extradition process.177 No more would be required of police officers and courts in extradition situations than is presently necessary in intrastate arrest cases,178 and the

174. 420 U.S. at 114 (citations omitted).
175. 439 U.S. at 296 (Blackmun, J., concurring in the result); accord Ierardi v. Gunter, 528 F.2d 929, 930 (1st Cir. 1976).
177. See, e.g., Zambito v. Blair, 610 F.2d 1192, 1195-96 (4th Cir. 1979), cert. denied, 445 U.S. 928 (1980); Ierardi v. Gunter, 528 F.2d 929, 930-31 (1st Cir. 1976); Kirkland v. Preston, 385 F.2d 670, 676-77 (D.C. Cir. 1967). The courts that require a probable cause determination prior to extradition have disagreed as to (1) whether the demanding state or the asylum state must make the determination, compare Zambito v. Blair, 610 F.2d 1192, 1196 (4th Cir. 1979) (demanding state), cert. denied, 445 U.S. 928 (1980), with Ierardi v. Gunter, 528 F.2d 929, 930-31 (1st Cir. 1976) (either state), and Clement v. Cox, 118 N.H. 246, 247-48, 385 A.2d 841, 843 (1978) (same); and (2) whether the extradition request must be accompanied by an affidavit stating facts that support a probable cause determination, or stating that a determination has been made. Compare Kirkland v. Preston, 385 F.2d 670, 675-76 (D.C. Cir. 1967) (must state facts), and Wellington v. South Dakota, 413 F. Supp. 151, 154 (D.S.D. 1976) (same), with Pippin v. Leach, 188 Colo. 385, 389-90, 534 P.2d 1193, 1195-96 (1975) (en banc) (must state facts or state that determination has been made), with Zambito v. Blair, 610 F.2d 1192, 1196 (4th Cir. 1979) (need not state facts or state that determination has been made), cert. denied, 445 U.S. 928 (1980). Justice Blackmun suggested that the competing fugitive and state interests may best be accommodated by requiring the demanding state to make the probable cause determination and state in the extradition request that such a determination has been made. Michigan v. Doran, 439 U.S. 282, 296 (1978) (Blackmun, J., concurring in the result). Extradition procedures would be kept summary, the asylum state would not delve into the underpinnings of the demanding state’s judicial determination and the prisoner’s liberty interest would be protected. Id. at 296-97.
178. Under Gerstein, a probable cause determination must be made prior to any “significant restraint of [the] liberty” of an arrestee. 420 U.S. at 114.
prisoner would be assured of constitutional protection prior to extradition.179 Recognizing the probable cause requirement would eliminate the apparent harshness of refusing to recognize section 1983 actions for statutory extradition violations. The prisoner's rights would be fully protected by a habeas corpus hearing at which an affidavit must be presented showing that the demanding state has made a probable cause determination. The section 1983 damage action should be available to remedy a denial of the right to such a hearing.

Conclusion

Most courts that recognize the section 1983 action for interstate rendition violations have incorrectly identified the federal and state extradition provisions as the source of fugitive rights. In contrast, the courts that refuse to recognize the action, though correctly perceiving that the provisions create no federal rights, fail to recognize that a federal right does exist. The habeas corpus provision of the Constitution clearly protects the right to challenge confinement, and this right has been repeatedly recognized in the extradition context. Only the Fifth Circuit, however, has based section 1983 relief on denial of the right to challenge extradition in a habeas corpus hearing. In so doing, this court was able to provide fugitives with adequate protection without straining to find federal rights in the extradition clause, the federal extradition statute or the UCEA. Because habeas corpus is only available while the fugitive is still confined in the asylum state, section 1983 is the only means by which a wrongfully extradited fugitive may enforce his rights. Courts should, therefore, follow the Fifth Circuit's lead and permit section 1983 actions for violation of the fugitive's constitutional right to challenge extradition by writ of habeas corpus.

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179. See supra notes 166-70 and accompanying text. The fourth amendment does not distinguish between detention for extradition and detention for other purposes. Michigan v. Doran, 439 U.S. 282, 295 (1978) (Blackmun, J., concurring in the result); Kirkland v. Preston, 385 F.2d 670, 676 (D.C. Cir. 1967); Computer Technology, supra note 4, at 914; see U.S. Const. amend. IV. There is no reason why the constitutional protections afforded by the fourth amendment should not extend to the fugitive. Michigan v. Doran, 439 U.S. 282, 294-96 (1978) (Blackmun, J., concurring in the result); Kirkland v. Preston, 385 F.2d 670, 676 (D.C. Cir. 1967); Computer Technology, supra note 4, at 914.