Vanderbilt Journal of Transnational Law

Volume 35
Issue 3 *May 2002*

Article 8

2002

International Bounty Hunter Ride-Along

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Ryan M. Porcello, International Bounty Hunter Ride-Along, 35 *Vanderbilt Law Review* 953 (2021)
Available at: https://scholarship.law.vanderbilt.edu/vjtl/vol35/iss3/8

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International Bounty Hunter Ride-Along: Should U.K. Thrill Seekers Be Permitted to Pay to Experience a Week in the Life of a U.S. Bounty Hunter?

ABSTRACT

This Note explores the international implications of a plan proposed by two bounty hunters in the Tacoma, Washington area to charge U.K. thrill seekers to accompany them on manhunts in the United States. Part II explains the differences in Colonial American society that resulted in the early development of a commercial bail bond system to replace the English personal surety system. Part III examines the contractual relationship between a bail bondsman and a defendant, as well as the agency relationship between a bail bondsman and a bounty hunter, to show why bounty hunters have such unbridled power to arrest fugitives. This section also explains why bounty hunters are not regarded as state actors subject to constitutional restraints and describes the modern commercial bail bond industry in the United States. Part IV discusses the limitations on the ability of U.S. bounty hunters to exercise their arrest powers outside of the United States. Part V details the plan of two bounty hunters in the Tacoma, Washington area—one of whom was a U.K. citizen—to charge U.K. tourists to accompany them on bounty hunting missions. Finally, Part VI addresses whether U.S. citizenship ought to be a prerequisite to being a U.S. bounty hunter.

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I. INTRODUCTION

The United States is the only country that uses private bounty hunters to track down defendants who skip bail.[1] In 1998, two bounty hunters in Washington state concocted a plan to capitalize on this unique feature of the U.S. criminal justice system by charging U.K. tourists to experience firsthand a week in the life of a U.S. bounty hunter.[2] Because of bad publicity, the bounty hunters did not carry through with this plan,[3] but the possibility remains open that other enterprising bounty hunters will institute such a ride-along scheme for foreign tourists who are fascinated by the Wild West image of the U.S. bounty hunter.

Bounty hunters in the United States are virtually unregulated.[4] They have police-like powers, but are not subject to mandatory training or licensing requirements.[5] More importantly, the law does not consider them to be state actors, so they are not subject to constitutional restrictions.[6] This Note considers the ability of non-U.S. citizens to participate in a scheme similar to the one proposed by the Washington state bounty hunters and concludes that lack of regulation would permit citizens of other countries to act as bounty hunters in such a scheme.

Part II examines the factors that influenced the development of the commercial bail bond system in the United States. The commercial bail bond system developed in Colonial America as an adaptation of the English personal surety system for release pending trial.[7] Such an adaptation was necessary because Colonial American society was far more mobile than English society.[8]

Part III analyzes the scope of a bounty hunter's power to arrest fugitives. *Taylor v. Taintor*, a nineteenth century U.S. Supreme Court decision, gave bounty hunters the power to use any reasonable means necessary to recapture defendants who skip bail, including

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1. Sasha Abramsky, *A Deadly Game of Cat and Mouse*, INDEP. (London), Mar. 1, 1998, at 10 (referring to bounty hunting as "a uniquely American form of employment" and noting that in other countries that grant bail to defendants "it is the role of the police to haul in skippers").

2. Neil Modie, *All Bets Are Off in Manhunts-for-Tourists Scheme*, SEATTLE POST-INTELLIGENCER, Apr. 25, 1998, at B1 [hereinafter Modie, *All Bets Are Off*].

3. *Id.*

4. Jonathan Drimmer, *When Man Hunts Man: The Rights and Duties of Bounty Hunters in the American Criminal Justice System*, 33 HOUS. L. REV. 731, 773-75 (1996).

5. *See* discussion *infra* Part III.B.

6. *See* discussion *infra* Part III.C.

7. *See* discussion *infra* Part II.B.

8. *See id.*

breaking and entering into the home of the defendant.[9] Part III also explains the modern commercial bail bond industry and why courts have declined to treat bounty hunters as state actors subject to constitutional restraints.

Part IV discusses the limitations on the ability of U.S. bounty hunters to exercise their arrest powers outside of the United States. *Reese v. United States* prohibits bail bondsmen and their bounty hunters from arresting defendants who flee to another country.[10] *Reese*, however, is substantially undercut by the *Ker-Frisbie* doctrine, which permits courts to exercise jurisdiction over defendants who are abducted in violation of *Reese*.[11] Part IV also addresses the issue of U.S. treaties that may nullify or reduce the impact of the *Ker-Frisbie* doctrine.

Part V introduces the reader to two bounty hunters in Washington and outlines their plan to charge U.K. tourists to accompany them on bounty hunting missions. The bounty hunters abandoned their ride-along vacation plan because of bad publicity—some of which resulted from the discovery that one of the pair had served two years in prison in the United Kingdom.[12] If the concept can withstand legal scrutiny, however, other bounty hunters may decide to supplement their income by charging international tourists to tag along with them on manhunts. Part VI concludes that the principles of *Taylor v. Taintor* are broad enough to allow citizens of other countries to legally act as bounty hunters in the United States, but suggests that this scenario would create additional regulatory obstacles that are not at issue when states regulate bounty hunters who are U.S. citizens.

II. THE DEVELOPMENT OF A COMMERCIAL BAIL SYSTEM

U.K. commentators are fascinated by the unique U.S. tradition of using private bounty hunters to track down bail jumpers.[13] Many suggest that U.S. citizens are still caught up in the Wild West mentality of yesteryear and depict bounty hunters as gunslingers tracking down criminals from "Wanted: Dead or Alive" posters.[14] These commentators fail to recognize that the modern U.S. bail system has its roots in the English common law. The development of

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9. Taylor v. Taintor, 83 U.S. 366, 371 (1872).
10. Reese v. United States, 76 U.S. 13, 21-22 (1869).
11. *See* discussion *infra* Part IV.B.
12. Modie, *All Bets Are Off*, *supra* note 2.
13. *See, e.g.*, *MPs Condemn "Wyatt Earp" Tours Hunting Fugitives from U.S. Justice*, BIRMINGHAM POST, Feb. 3, 1998, at 8 [hereinafter *MPs Condemn*].
14. *Id.* (quoting a U.K. MP who referred to bounty hunters as "latter-day Wyatt Earps and Bat Mastersons").

a commercial bail bond system and the use of private bounty hunters resulted from the necessary adaptations of the English personal surety system to an increasingly mobile society that inhabited a vast, undeveloped country with no apparent boundaries.[15] The commercial bail bond system that replaced the English personal surety system required bondsmen to employ bounty hunters to recapture bail skippers.

A. *Pretrial Release in Medieval England*

The exact origins of the modern practice of release on bail pending trial are not certain, but the practice clearly predates the Norman invasion of England.[16] Some scholars have speculated that the origins of the modern bail system can be traced back to the ancient English practice of hostageship.[17] Hostageship was a war tactic developed by Germanic Angles and Saxons in England in which a hostage was held until the fulfillment of a promise or the occurrence of a desired consequence.[18] Under this system, a person, called a hostage-surety, was chosen to assume personal responsibility for the hostage. This person "placed his body in a state of metaphorical hostageship."[19] Some historical evidence suggests that the hostage-surety would actually be required to suffer the punishment intended for the prisoner if the prisoner escaped.[20] It is more likely, however, that the hostage-surety protected the debtor from punishment by assuming his debt, and the debtor then became indebted to the surety.[21]

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15. *See* Drimmer, *supra* note 4, at 748-49; John A. Chamberlin, Note, *Bounty Hunters: Can the Criminal Justice System Live Without Them?*, 1998 U. ILL. L. REV 1175, 1180-81.

16. Chamberlin, *supra* note 15, at 1178 (explaining that the uncertainty exists because "the notion of bail predates written English law"); RONALD GOLDFARB, RANSOM: A CRITIQUE OF THE AMERICAN BAIL SYSTEM 21 (1965) (noting that another reason for the uncertainty is "historical inattention"); *see also* Drimmer, *supra* note 4, at 744.

17. GOLDFARB, *supra* note 16, at 21-22.

18. *Id.* at 22.

19. *Id.*

20. *Id.*

21. *Id.* Goldfarb explains the similarities between hostageship and the modern bail system as follows:

> Both the old hostage and the modern surety assume responsibility for another, one by pledging his body, the other by pledging his material wealth. The classic condition of suretyship existed in the hostage relationship; that is, if the debtor failed to reimburse the creditor, the surety became responsible to the creditor. . . . Today's surety is responsible only for property liability and not bodily seizure. Money has replaced men. Liability for the responsibility of another is the common characteristic of both relationships.

Id. at 22-23.

Another theory traces the origins of the modern bail system to the early English concept of *wergeld*.[22] Under the ancient system of *wergeld*, someone who allegedly committed a wrong against another person was required "to guarantee a payment to reimburse that wrong, should he later be found at fault."[23] The person who allegedly committed the wrong could find a surety, who would assure the victim that the accused would pay his *wergeld* if fault were found.[24] If, upon an adverse judgment, the accused failed to pay his *wergeld*, the surety would be obligated to pay the *wergeld* in his stead.[25] The victim was guaranteed compensation for his injuries if the accused was found to be at fault, thus discouraging victims from seeking private vengeance.[26]

By the thirteenth century, England had developed a personal surety system for pretrial release that would be the model for the modern U.S. system of bail.[27] Because magistrates did not sit in a particular place, but instead traveled from county to county conducting trials, it was common for many months, or even years, to pass between arrest and trial.[28] To prevent prolonged detention of suspects pending trial, local sheriffs would often release suspects into the custody of a trustworthy member of the community, referred to as the defendant's surety.[29] At first, the surety was required to be a blood relative of the accused, but eventually sureties were permitted to be friends or acquaintances of the accused.[30]

In the early days of pretrial release, the surety was "literally bound body for body."[31] In other words, if the defendant failed to appear for trial, the surety was obligated to endure the punishment that the defendant was intended to suffer.[32] This practice eventually evolved into one in which, instead of agreeing to suffer the defendant's punishment, the surety agreed to pay a certain sum if the accused did not appear, usually by forfeiture of land.[33]

Under English common law, the state's custody of an accused did not end when he was delivered to the surety.[34] Instead, the surety acted as proxy for the state until the defendant's trial began.[35]

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22. *Id.* at 23.
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. Drimmer, *supra* note 4, at 744-45.
28. *Id; see also* Chamberlin, *supra* note 15, at 1179.
29. Drimmer, *supra* note 4, at 745; Chamberlin, *supra* note 15, at 1179.
30. Chamberlin, *supra* note 15, at 1179.
31. Drimmer, *supra* note 4, at 744.
32. *Id.*
33. *Id.* at 745.
34. *Id.*
35. *Id.* "Bail, as a form of continued detention, was commonly referred to as 'the Duke's living prison.'" *Id.* at 745-46.

Because custody was treated as a single, continuous event, the surety had authority to imprison the accused at any time, even if he had not yet failed to appear for trial.[36] Also, the surety had the same legal duty as the sheriff to recapture the accused if he fled.[37] It was rare for the accused to flee, however, because the penalty for flight included banishment and confiscation of any land that he owned.[38] The risk of flight was further reduced because most town sheriffs personally knew the defendants they released and were in a good position to accurately judge trustworthiness and risk of flight.[39]

B. *Adapting the English Personal Surety System to Colonial America*

Exact duplication of the English model of pretrial release was not possible in Colonial America.[40] There were many differences between eighteenth century England and Colonial America that resulted in the development of the U.S. commercial bail bond system to replace the system that worked so well in England.[41] "Eighteenth century England . . . was a homogenous, property-oriented nation with limited mobility."[42] For the most part, people lived in small towns and knew each other well.[43] This familiarity created incentives for pretrial release that were not duplicated in Colonial America.[44] Local English sheriffs usually had the advantage of knowing both the defendant and the potential surety,[45] and were therefore willing to release defendants into the custody of sureties.[46] Sureties were willing to risk forfeiture of property because they were acquainted with the defendants released into their custody and could accurately evaluate the potential risk of flight.[47]

Also important was the fact that English citizens tended to stay in one place for most of their lives.[48] English citizens were deeply rooted in their communities and rarely traveled.[49] England's size and

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36. *See id.* at 746.
37. *Id.*
38. Chamberlin, *supra* note 15, at 1180. Confiscation of land was a significant deterrent to flight because "[p]roperty ownership in England during Medieval times included not only ownership rights, but also rights and privileges in society generally. Those who were not fortunate enough to own property were considered the lowest class of society." *Id.*
39. *Id.*
40. *See id.* at 1180-81; Drimmer, *supra* note 4, at 748-49.
41. Drimmer, *supra* note 4, at 748-49; Chamberlin, *supra* note 15, at 1180-81.
42. Drimmer, *supra* note 4, at 748.
43. *Id.*
44. *See id.*
45. *Id.*
46. *Id.*
47. Chamberlin, *supra* note 15, at 1181.
48. Drimmer, *supra* note 4, at 748.
49. *See id.* at 748-49.

property-oriented social structure made it unlikely that defendants would flee before trial.[50] Because England was a well-developed island, defendants had few places to which they could escape.[51] They were also tied to their land as the source and symbol of their social position.[52]

The characteristics of English society that made the surety system possible did not carry over to Colonial America. Unlike England, Colonial America was a continent, with an "unexplored and seemingly endless frontier."[53] Although the first settlers established small towns and used a personal surety system similar to the one used in England, wanderlust eventually took hold and a personal surety system became unworkable.[54] As the nation expanded and people from towns ventured into the unexplored frontier, "the populace increasingly came to lack longstanding roots or deep community relationships."[55] Land was not a scarce status resource as it was in England;[56] instead, people were wanderers who were not tied to any one place for long.[57]

Mobility led to the disappearance of the familiarity that had existed in English towns.[58] This environment made it difficult for defendants to find sureties the courts knew and considered trustworthy.[59] Also, because defendants did not have family and friends in the community, it was difficult for them to find people willing to act as sureties for them.[60]

Even if defendants did have people in the community with whom they were well acquainted, those people were often unwilling to act as sureties because the risk of flight was too great.[61] Defendants were not rooted in the community, and there was a vast frontier into which they could escape.[62] People were unwilling to risk forfeiture of land when the vast frontier that made it likely that defendants would flee also made it extremely unlikely they could be tracked down.[63] For

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50. *See* Chamberlin, *supra* note 15, at 1180-81.
51. *Id.*
52. *See id.*
53. *Id.* at 1181.
54. Drimmer, *supra* note 4, at 748-49.
55. *Id.* at 749.
56. Chamberlin, *supra* note 15, at 1180-81.
57. *See* Drimmer, *supra* note 4, at 749.
58. *See id; see also* Chamberlin, *supra* note 15, at 1181 (explaining that "[b]ecause the United States was a new nation, citizens often did not know each other").
59. Drimmer, *supra* note 4, at 749.
60. Chamberlin, *supra* note 15, at 1181.
61. *Id.*
62. *Id.* Also, "[C]olonial punishments for conviction were often harsh, so that flight to another part of the country was an inviting alternative." *Id.*
63. *Id.*

pretrial release to be effective in Colonial America, a new system had to be invented.

The new system that emerged was a commercial bond system.[64] Despite the difficulty in finding acceptable sureties, pretrial release was still necessary to avoid excessive pretrial detention and prison overcrowding.[65] To solve these problems, U.S. courts developed a system that allowed defendants to pay for their pretrial release.[66] If the defendant failed to appear for trial, he would forfeit the sum he paid.[67]

The development of a system of release on bail presented a lucrative opportunity for entrepreneurs willing to take a risk.[68] These entrepreneurs came to be known as commercial bail bondsmen. Many defendants could not afford to pay the full bail amount required for their pretrial release, but they could afford to pay a fee to a bail bondsman, who then agreed to pay the full amount to the court.[69] Bail was regarded as a continuation of the defendant's incarceration.[70] Like the personal surety, the bail bondsman acted as a proxy for the state to guarantee the defendant's appearance at trial.[71] The bail bondsman had the authority to recapture the defendant at any time.[72] If the defendant did not appear at trial, the money that the bail bondsman paid for the defendant's pretrial release would not be returned to him.[73]

As mentioned earlier, there was little incentive for defendants to remain in the community and the nation's rapid expansion made it increasingly easy for defendants to flee before trial.[74] To combat these changes, bondsmen began to rely on the assistance of bounty hunters to track down defendants who skipped bail.[75] Bounty hunters were regarded as agents of the bondsman and therefore had the same legal authority to recapture the defendant as the bondsman.[76]

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64. *Id.; see also* Drimmer, *supra* note 4, at 749.
65. *See* Chamberlin, *supra* note 15, at 1181.
66. *See id.*
67. *Id.*
68. *Id.*
69. *Id.*
70. Drimmer, *supra* note 4, at 749.
71. *Id.*
72. *Id.* at 750.
73. Chamberlin, *supra* note 15, at 1181.
74. *Id.* at 1180-81.
75. Drimmer, *supra* note 4, at 750.
76. *Id.*

III. THE SCOPE OF THE BOUNTY HUNTER'S POWER

Bounty hunters are authorized to use all reasonable force—including deadly force—to recapture bail jumpers.[77] Bounty hunters act as agents for bail bondsmen who delegate their contractual power to re-arrest fugitives to the bounty hunters.[78] Because bounty hunters are enforcing the contract between the fugitive and the bondsman, they are not regarded as state actors subject to constitutional restrictions.[79]

A. *Early Cases Authorizing the Use of Bounty Hunters*

Two early cases—*Nicolls v. Ingersoll* and *Taylor v. Taintor*—set the parameters for bounty hunter action.[80] These cases authorized bounty hunters to use all reasonable force necessary to recapture bail jumpers.[81] They also allowed bounty hunters to cross state lines to pursue fleeing fugitives and even to break down doors.[82]

1. *Nicolls v. Ingersoll*

One of the most influential cases authorizing the use of bounty hunters and defining the scope of their powers was *Nicolls v. Ingersoll*, decided by the New York Supreme Court of Judicature in 1810.[83] The case involved a civil suit against two bounty hunters for trespass, assault and battery, and false imprisonment.[84] After being arrested in New Haven, Connecticut and released on bail, which was paid by a commercial bondsman named Edwards, Nicolls returned to his home in New York.[85] To protect his security, Edwards hired two bounty hunters, Ingersoll and Morgan, to arrest Nicolls and bring him back to New Haven before he was scheduled to appear in court.[86] The bounty hunters went to Nicolls' home around midnight and demanded entry.[87] After they were refused, the bounty hunters broke into Nicolls' residence and seized him "with great roughness."[88]

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77. *See* Taylor v. Taintor, 83 U.S. 366 (1872).
78. *Id.* at 371.
79. *Id.*
80. *See id.*; Nicolls v. Ingersoll, 7 Johns. 145 (N.Y. Sup. Ct. 1810).
81. *Id.*
82. *Id.* at 154, 156.
83. *Id.* at 145.
84. *Id.*
85. *Id.*
86. *Id.*
87. *Id.*
88. *Id.*

Nicolls filed a civil suit against the bounty hunters for trespass, assault and battery, and false imprisonment.[89] The jury found in favor of the bounty hunters on the issues presented, finding that the bounty hunters had made a demand to be admitted before breaking the door and that no "undue and unnecessary force had been made use of in attempting to make the surrender."[90] On appeal, Nicolls argued that bondsmen could not legally delegate their recapture powers to bounty hunters, that the recapture powers could not be exercised in another state, and that the bounty hunters used excessive force by breaking into his house.[91]

The court first addressed the issue of whether a bondsman could delegate his authority to recapture a defendant to bounty hunters.[92] Because "the law recognizes the act of an authorized agent as equal to that of the principal," the court held that a bondsman may delegate his contractual recapture powers over a defendant to bounty hunters.[93] The court then held that a bondsman and his agents have the authority to recapture a defendant in another state and to return him to the state where he was arrested.[94] The bail bondsman may recapture the defendant at any time and in any place because the law considers the defendant to be a prisoner of the bondsman.[95] The defendant has his liberty only because the bondsman allows it.[96] If the bondsman chooses to re-arrest, he can do so at any time and in any place—just as a sheriff can enter another state to pursue an escaped prisoner, so can the bondsman or his agents.[97]

Finally, the court addressed the issue of the appropriate amount of force that could be used to recapture a defendant.[98] The court explained "that the law considers the [bailee] as a prisoner, whose jail liberties are enlarged or circumscribed, at the will of [the bondsman]."[99] The court held that bondsmen and their agents could recapture a defendant at any time, "even on a Sunday."[100] Bondsmen and their bounty hunter agents even have the authority to break down the door of the defendant's home to recapture him because their "power is analogous to that of the sheriff, who may break open an outer door to take a prisoner, who has escaped from arrest."[101]

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89. *Id.*
90. *Id.*
91. *Id.*
92. *See id.* at 153.
93. *Id.* at 154.
94. *Id.*
95. *Id.* at 155-56.
96. *Id.*
97. *Id.*
98. *See id.* at 155.
99. *Id.* at 155-56.
100. *Id.* at 155.
101. *Id.* at 156.

2. *Taylor v. Taintor*

The U.S. Supreme Court expanded on the New York Supreme Court of Judicature's analysis in *Nicolls v. Ingersoll* more than sixty years later in the landmark case of *Taylor v. Taintor*.[102] *Taylor v. Taintor* is credited with giving bondsmen and bounty hunters the extensive powers that they currently possess.[103] It has been criticized often, but never overruled.[104]

In *Taylor v. Taintor*, the Supreme Court confronted the issue of whether a bail bondsman should be required to forfeit the bail he paid for a defendant's release if the defendant was unable to appear for trial because a second state delivered him into the custody of a third state.[105] McGuire was arrested in Connecticut for grand larceny.[106] He was released on $8,000 bail paid by Taylor and Allen.[107] Following his release, McGuire went home to New York.[108] While McGuire was in New York, the governor of Maine asked the governor of New York to arrest McGuire and to deliver him to Maine to be tried for a burglary that he had allegedly committed in that state.[109] The governor of New York was unaware that McGuire had been released on bail pending trial in Connecticut, so he complied with Maine's request.[110] McGuire was unable to attend his scheduled court appearance in Connecticut because he was incarcerated in Maine.[111] Taylor and Allen forfeited their bail payment because McGuire did not appear before the Connecticut court at the appropriate time.[112] They sued to recover this money because the arrest and transfer of McGuire from New York to Maine, ordered by the governor of New York, was beyond their control.[113]

In reaching its decision, it was necessary for the Court to summarize and approve the common law rules regarding bail bondsmen and bounty hunters:

> When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original

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102. *See* Taylor v. Taintor, 83 U.S. 366, 371-72 (1872).

103. *See generally* Maj. Christopher M. Supernor, *International Bounty Hunters for War Criminals: Privatizing the Enforcement of Justice*, 50 A.F. L. REV. 215, 232 (2001).

104. *See, e.g.*, State v. Fry, 910 P.2d 164 (Idaho Ct. App. 1994); Grun v. State, 829 S.W.2d 222 (Tex. Crim. App. 1992); Johnson v. County of Kittitas, 11 P.3d 862 (Wash. App. Div. 2000).

105. *Taylor*, 83 U.S. at 368.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.* at 368-69.

112. *Id.* at 369.

113. *Id.*

> imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge; and if that cannot be done at once, they may imprison him at once. They may exercise their rights in person *or by agent. They may pursue him into another State*; may arrest him on the Sabbath; and, if necessary, *may break and enter his house* for that purpose. The seizure is not made by virtue of new process. None is needed. *It is likened to the rearrest by the sheriff of an escaping prisoner. . . .* They may doubtless permit him to go beyond the limits of the State within which he is to answer, but it is unwise and imprudent to do so; and if any evil ensue, they must bear the burden of the consequences, and cannot cast them upon the obligee.[114]

Taylor and Allen could not recover their bail payment because "bail will [only] be exonerated where the performance of the condition is rendered impossible by the act of God, the act of the obligee, or the act of the law."[115] This case did not fall within the act of the law exception because McGuire's act of committing a crime in Maine, not the act of the New York governor, caused his appearance in Connecticut to be impossible.[116]

Under the common law, Taylor and Allen could have prevented McGuire from leaving Connecticut.[117] When McGuire went to New York, he was still considered to be in the custody of the state of Connecticut through his bail bondsmen.[118] As sureties, Taylor and Allen had the authority to enter New York to seize McGuire at any time prior to his trial in Connecticut or to send bounty hunters to do the same.[119] They could also have notified the governor of New York that McGuire was released on bail pending trial in Connecticut.[120] If Taylor and Allen had done so, the governor of New York may have recognized the conflict and delivered McGuire into their custody instead of Maine's.[121]

B. *The Modern Bail Industry in the United States*

Today, bail bonding is a big business in the United States. The bail industry generates more than $4 billion in revenue each year, netting more than $400 million in profit.[122] Bail bonding is also a risky business. Approximately fourteen percent of defendants who are released into the custody of bail bondsmen fail to appear for trial.[123]

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114. *Id.* at 371-72 (emphasis added).
115. *Id.* at 369.
116. *Id.* at 373-74.
117. *Id.* at 373.
118. *Id.*
119. *Id.* at 371-73.
120. *See id.* at 373.
121. *See id.*
122. Chamberlin, *supra* note 15, at 1188.
123. *Id.* at 1189.

Bail is generally available to all defendants, unless they are charged with a capital crime.[124] The Eighth Amendment guarantees that bail shall not be excessive.[125] Magistrates generally determine the amount of bail based on the defendant's risk of flight.[126] Defendants who cannot afford to pay for their own release can hire a bail bondsman to post a bail bond for them—assuming they can afford to pay the bondsman's fee, which is usually ten percent of the full bail amount.[127] Bail bondsmen have complete discretion in determining for which defendants they are willing to act as sureties,[128] but the industry is extremely competitive and profit margins are slim, so bondsmen sometimes post bonds for defendants who pose a serious risk of flight.[129] When the defendant is released pending trial, the bondsman pays a percentage of the bail amount, usually ten percent, to the court.[130] This money will be returned to him if the defendant appears for trial.[131]

If the defendant does not appear for trial, the bondsman becomes liable for the full amount.[132] Typically, bail bondsmen have agreements with insurance companies that pay the full bail amount if the defendant fails to appear for trial and cannot be tracked down.[133] Despite insurance, bondsmen still have incentive to track down defendants who flee because insurance companies will no longer underwrite their bonds if they consistently fail to secure the appearance of more than two percent of their clients.[134]

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124. Drimmer, *supra* note 4, at 761.

125. U.S. CONST. amend. VIII (stating that "[e]xcessive bail shall not be required . . . ").

126. NEIL P. COHEN & DONALD J. HALL, CRIMINAL PROCEDURE: THE POST-INVESTIGATIVE PROCESS, CASES AND MATERIALS 91 (2d ed. 2000).

127. Holly J. Joiner, Note, *Private Police: Defending the Power of Professional Bail Bondsmen*, 32 IND. L. REV. 1413, 1417 (1999) (noting that "this fee is nonrefundable so it cannot provide a financial incentive [for the defendant] to return").

128. *Id.* The absolute discretion of bondsmen has been criticized by Judge J. Skelly Wright:

> [T]he professional bondsmen hold the keys to the jail in their pockets. They determine for whom they will act as surety—who in their judgment is a good risk. The bad risks, in the bondsman's judgment, and the ones who are unable to pay the bondsmen's fee, remain in jail. The court . . . [is] relegated to the relatively unimportant chore of fixing the amount of bail.

Pannell v. United States, 320 F.2d 698, 699 (D.C. Cir. 1963) (Wright, J., concurring).

129. Chamberlin, *supra* note 15, at 1189.

130. Andrew D. Patrick, Note, *Running from the Law: Should Bounty Hunters Be Considered State Actors and Thus Subject to Constitutional Restraints?*, 52 VAND. L. REV. 171, 175 (1999).

131. *Id.*

132. *Id.* Failing to appear for trial is known as "skipping" or "jumping" bail, and a defendant who does so is known as a bail "jumper" or a bail "skipper." *Id.*

133. Chamberlin, *supra* note 15, at 1188.

134. *Id.* at 1189.

When a defendant fails to appear, the court will issue a bench warrant for the return of the accused.[135] The bondsman cannot rely on the successful return of the defendant by the government, however, because the volume of outstanding bench warrants far exceeds the government's resources.[136] If the defendant is not found within a certain number of days, the bondsman becomes liable for the full bail amount.[137] The bondsman cannot leave his business to track down each defendant on his own, so employing bounty hunters to track down missing defendants makes good business sense.[138] Bail bondsmen usually pay bounty hunters a fee equal to ten percent of the bond amount if a fugitive is recovered successfully.[139]

Due to the increasing costs of the criminal justice system, the recent trend is for the state and federal governments to rely on the private sector to carry out many public sector functions.[140] This trend is evident in the bail bond industry. Increased costs of maintaining detention facilities and overcrowding have led to a greater preference for release on bail.[141] In an effort to reduce prison overcrowding and to cut the costs of pretrial detention, the government has, in effect, delegated the public function of jailing defendants whose trials are pending to bail bondsmen and bounty hunters.[142]

In terms of efficiency, the reliance on bail bondsmen and bounty hunters is sound policy. Most defendants released on bail will not flee the jurisdiction. For those who do, the estimated 99.2% successful recapture rate for bounty hunters is significantly higher than the recapture rate for police.[143]

The problem with the trend toward privatization in pretrial detention is that bounty hunters are generally unregulated. One reason bounty hunters are more successful than police at recapturing defendants is that they are not subject to the same constitutional restrictions.[144] Bounty hunters are allowed to use any force reasonably necessary, including deadly force, to apprehend their targets, thus creating the potential for infliction of serious physical harm on defendants.[145] Even bounty hunters who use more force than is reasonably necessary are unlikely to be prosecuted.[146] Civil

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135. *Id.*
136. *Id.*
137. *Id.* at 1189-90.
138. *Id.*
139. Patrick, *supra* note 130, at 175.
140. Drimmer, *supra* note 4, at 759-60.
141. *Id.* at 760.
142. *Id.*
143. *Id.* at 762.
144. *See* discussion *infra* Part III.C.
145. Chamberlin, *supra* note 15, at 1192.
146. *Id.* at 1193.

suits are not an attractive option because bounty hunters typically do not have enough assets to make these suits worthwhile.[147]

The potential for abuse is augmented by the fact that most states do not have any licensing or training requirements for bounty hunters.[148] For the most part, anyone who can find a bail bondsman willing to pay them can become a bounty hunter.[149] With few exceptions, any screening of bounty hunters falls to the bondsman.[150] This creates "an ominous problem" because the bondsman's interests may conflict with the interests of society.[151] In selecting bounty hunters, the bondsman is motivated exclusively by financial concerns.[152] If a bounty hunter has an exceptional success rate for recapturing defendants, the bondsman will earn significant profits and may overlook a bounty hunter's abusive practices.[153] In most states, the total lack of regulation means that even a criminal record will not prevent an individual from becoming a bounty hunter.[154]

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147. *Id.*

148. *Id.* at 1190. "In most states, the job requires no qualifications, no training, and no license of any sort. It seems that the only requirement to enter the profession is self-proclamation." Bondsmen, on the other hand, are subject to licensing requirements in most states. Drimmer, *supra* note 4, at 771; *see also* Neil Modie, *Bounty Hunters Have Carte Blanche in Pursuits; False Arrest Among Consequences*, TIMES-PICAYUNE, Apr. 19, 1998, at A17 (noting that "[b]ail agents in Washington must be trained, bonded and licensed and have no criminal records"). A number of states have decided to institute stricter regulations on bounty hunters. *See, e.g.*, Dermot Purgavie, *He Came in Search of Bounty (But He Ended Up Behind Bars)*, GUARDIAN (London), Sept. 28, 1997, at 5 (explaining that to get a license to be a bounty hunter in Nevada, one "must be at least 21, with no felonies or drug offenses on their record, must be screened for drugs, prove their mental fitness and take a minimum of 80 hours of training in courses ranging from constitutional law to arrest procedures"); *see also* Dan Synge, *Connected: DIY Hunting with Mice; The Wild West Image of the Bounty Hunter Has Given Way to that of a 4x4 Driver with a Website, But the Perils Are the Same*, DAILY TELEGRAPH (London), Nov. 13, 1998, at 6 (noting that Illinois, Kentucky, and Oregon have made bounty hunting illegal).

149. Chamberlin, *supra* note 15, at 1193-94. For novice bounty hunters, finding a bondsman to work for may prove to be a difficult task because most bondsman "will deal only with reputable bounty hunters." Synge, *supra* note 148. But novice bounty hunters may get their start by latching onto or tagging along with a successful, reputable bounty hunter. *See* discussion *infra* Part V (pointing out that Washington bounty hunter Ted Oliver allowed curious friends to tag along with him when he chased fugitives and that Oliver got his start by doing the same thing).

150. Chamberlin, *supra* note 15, at 1193-94.

151. *Id.* at 1194.

152. *Id.*

153. *Id.* The problem may not be as "ominous" as it seems, however, because many bondsmen, who recognize that the abusive reputation of the bounty hunting profession is bad for business, actually support the movement to regulate bounty hunters. *Id.* at 1188.

154. According to Arizona prosecutor Richard Romley, "[Bounty hunters] are America's dirty little secret. . . . We have no regulations at all. Any ex-con who is out of prison for murder can become a bounty hunter." Purgavie, *supra* note 148; *see also* Drimmer, *supra* note 4, at 772 (speculating that many bounty hunters are indeed ex-

C. *The Contractual Relationship: Why Bounty Hunters Are Not State Actors*

Even though courts have justified giving bounty hunters police-like arrest powers by analogizing them to a police officer in pursuit of a fleeing suspect, this same analogy has not carried over to impose equal restrictions.[155] Instead, most courts have held that the Constitution's restrictions on police conduct do not apply to bounty hunters because they are not state actors.[156] Their authority to arrest a defendant is based on the contract between the defendant and the bondsman rather than on a court order.[157] By assenting to the bail contract, the defendant agrees to be subject to seizure by the bail bondsman or his agents at any time.[158]

Because the bondsman's authority to arrest the defendant is based on the bail contract rather than on court order, the Fourth Amendment does not protect the defendant from unreasonable searches and seizures by the bounty hunter.[159] While police must have a warrant to enter a defendant's home without consent, the bail contract gives the bounty hunter the authority to break into a defendant's home to seize the defendant without a warrant or

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convicts); discussion *infra* Part V (explaining that Washington-based bounty hunter Ted Oliver served time in a U.K. prison for stabbing his wife).

155. Drimmer, *supra* note 4, at 753-54; *see also* Andrew Berenson, *An Examination of the Rights of American Bounty Hunters to Engage in Extraterritorial Abductions in Mexico*, 30 U. MIAMI INTER-AM. L. REV. 461, 469 (1999).

156. *See, e.g.*, United States v. Rose, 731 F.2d 1337, 1345 (8th Cir. 1984) (holding that bounty hunters are not state actors). *But see* Jackson v. Pantazes, 810 F.2d 426 (4th Cir. 1987) (holding that bounty hunters acting in conjunction with police are state actors). For arguments for and against application of state action theory to bounty hunters, compare Patrick, *supra* note 130 (arguing that bounty hunters are not state actors under three tests for state action: privately-initiated stated-aided activity, state-regulated private action, and symbiotic relationship) with Drimmer, *supra* note 4, at 784-88 (arguing that bounty hunters should be considered state actors because they satisfy the symbiosis test for state action).

157. *See, e.g.*, *In re* Von Der Ahe, 85 F. 959, 960 (W.D. Penn. 1898) (recognizing that the bounty hunter's arrest "is not made by virtue of the process of a court, but is the exercise of a right arising from the relation between the parties" and that "there is a fundamental difference between the right of arrest by bail and arrest under warrant").

158. Drimmer, *supra* note 4, at 754.

159. *Id.* at 770. The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

consent.[160] Incriminating evidence discovered during the course of such an arrest may be seized by the bounty hunter and used against the defendant at trial.[161]

The restrictions of the Fifth and Sixth Amendments also do not apply to bounty hunters.[162] Bounty hunters are not required to inform defendants of their *Miranda* rights to silence and counsel before questioning.[163] Any incriminating statements that a defendant makes to a bounty hunter can then be used against him at trial.[164]

IV. RESTRICTIONS ON THE ABILITY OF U.S. BOUNTY HUNTERS TO ACT INTERNATIONALLY

A bounty hunter's authority to re-arrest a fleeing suspect ends at the U.S. borders.[165] *Reese v. United States* prohibits bounty hunters from recapturing defendants who have fled to other nations.[166] If a bounty hunter violates this prohibition, however, the *Ker-Frisbie* doctrine allows U.S. courts to exercise jurisdiction over defendants who have been brought before them by unlawful means.[167] The *Ker-Frisbie* doctrine is unlikely to apply in cases of government sponsored transborder abductions.[168] Several treaties appear to limit the impact of the *Ker-Frisbie* doctrine, but for reasons that will be explored, they are unlikely to apply to abductions by bounty hunters.[169]

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160. Drimmer, *supra* note 4, at 770. "In fact, all persons interfering with such searches can be criminally liable, and bounty hunters can even break into the home of a third party to arrest a suspect who is inside." *Id. See also* Taylor v. Taintor, 83 U.S. 366, 371-72 (1872) (describing the bondsman's and his agent's authority to break into the home of the defendant to make an arrest).

161. Drimmer, *supra* note 4, at 770-71.

162. *Id.* at 769-71. The Fifth Amendment provides, in relevant part, that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. V. In addition, the Sixth Amendment requires that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." U.S. CONST. amend. VI.

163. *See, e.g.*, United States v. Rose, 731 F.2d 1337, 1345 (8th Cir. 1984) (reasoning that bounty hunters are not required to give *Miranda* warnings to defendants because they are private actors). Patrick, *supra* note 130, at 177 (noting that bounty hunters "need not advise fugitives of their *Miranda* rights").

164. *Rose*, 731 F.2d at 1345; *see also* Drimmer, *supra* note 4, at 771 (summarizing bounty hunters' broad powers "to break into defendants' homes and take them into custody, and [to] seize or elicit incriminating evidence and statements that, whether voluntary or coerced, will be admissible against the defendant in court").

165. *See generally* Reese v. United States, 76 U.S. 13 (1869).

166. *Id.* at 21.

167. *See* Ker v. Illinois, 119 U.S. 436 (1886); Frisbie v. Collins, 342 U.S. 519 (1952).

168. *See* United States v. Alvarez-Machain, 504 U.S. 655 (1992).

169. *See infra* Part IV.B.4.

A. Reese v. United States

In *Reese v. United States*, the U.S. Supreme Court made it clear that a bondsman's or bounty hunter's "power of arrest can only be exercised within the territory of the United States."[170] In December 1856, Limantour was indicted in California for falsifying land grants from the Mexican government.[171] Reese and Castro became Limantour's sureties.[172] The conditions of the bail agreement required Limantour to appear at the next regular term of the Circuit Court in San Francisco and at any necessary subsequent term.[173] Limantour appeared at the next term of the Circuit Court, then entered into a stipulation with the district attorney that postponed criminal proceedings until two land cases were decided by the District Court.[174] The stipulation allowed Limantour to return to Mexico until decisions were reached in the two cases.[175] Reese and Castro were not parties to this stipulation, nor were they aware of its terms.[176] Limantour went back to Mexico and never returned to California.[177]

Reese and Castro sued to recover the bail amount that was forfeited when Limantour failed to appear for trial.[178] The Supreme Court ruled in favor of Reese and Castro because the government changed the nature of their obligation without their assent by agreeing to the stipulation.[179] Furthermore, the government made it impossible for Reese and Castro to exercise their power to arrest Limantour because the stipulation allowed him to return to Mexico and their power to arrest did not extend beyond the territory of the United States.[180]

B. *The* Ker-Frisbie *Doctrine*

Even though the Supreme Court's decision in *Reese v. United States* prohibits bounty hunters from exercising their arrest powers in other countries, the *Ker-Frisbie* doctrine allows U.S. courts to exercise personal jurisdiction over defendants who are arrested in

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170. *Reese*, 76 U.S. at 21.
171. *Id.* at 14.
172. *Id.*
173. *Id.* at 18.
174. *Id.* at 19.
175. *Id.* at 22.
176. *Id.* at 21.
177. *Id.* at 22.
178. *Id.* at 17-18.
179. *Id.* at 21.
180. *Id.* at 22.

violation of *Reese*.[181] The *Ker-Frisbie* doctrine is based on the cases of *Ker v. Illinois*[182] and *Frisbie v. Collins*.[183]

1. Articulation of the Doctrine: *Ker v. Illinois* and *Frisbie v. Collins*

In *Ker v. Illinois*, Ker was indicted in Illinois on charges of larceny and embezzlement.[184] At the time of his indictment, Ker was known to be in Lima, Peru.[185] Julian was sent to Peru as an agent of the U.S. government with papers from the U.S. State Department requesting that the Peruvian government extradite Ker in accordance with the extradition treaty between the two nations.[186] Instead of delivering these papers, Julian forcibly kidnapped Ker and brought him to the United States to face trial.[187] The Criminal Court of Cook County exercised personal jurisdiction over Ker and convicted him, notwithstanding that he appeared before the court as a result of an illegal abduction.[188]

Ker challenged his conviction under the due process clause of the Fourteenth Amendment.[189] The Supreme Court held that the Illinois court did not violate due process by exercising personal jurisdiction over Ker.[190] The Illinois court complied with the due process guarantee, even though Ker was present only because of illegal abduction, because the court used the proper procedures to indict, try, and convict him:

> The "due process of law" here guaranteed is complied with when the party is regularly indicted by the proper grand jury in the State court, has a trial according to the forms and modes prescribed for such trials, and when, in that trial and proceedings, he is deprived of no rights to which he is lawfully entitled. We do not intend to say that there may not be proceedings previous to the trial, in regard to which the prisoner could invoke in some manner the provision of this clause of the Constitution, but, *for mere irregularities in the manner in which he may be brought into custody of the law, we do not think he is entitled to say*

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181. "The *Ker-Frisbie* rule permits courts to exercise personal jurisdiction over a defendant regardless of the illegal manner in which the defendant was brought before the court. The *Ker-Frisbie* rule is a modern formulation of the Roman maxim *mala captus bene detentus*—an improper capture results in a lawful detention." Timothy D. Rudy, *Did We Treaty Away Ker-Frisbie?*, 26 ST. MARY'S L.J. 791, 802 (1995).

182. *Ker*, 119 U.S. at 436.

183. *Frisbie*, 342 U.S. at 519.

184. *Ker*, 119 U.S. at 437.

185. *Id.* at 438.

186. *Id.*

187. *Id.*

188. *Id.* at 439.

189. *Id.* at 439-40. The due process clause guarantees that "No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . ." U.S. CONST. amend. XIV, § 1.

190. *Ker*, 119 U.S. at 440.

> *that he should not be tried at all for the crime for which he is charged in a regular indictment.*[191]

Ker also argued that his abduction violated the extradition treaty between the United States and Peru, but the Court held that the abduction did not violate this treaty because Julian was not acting under the authority of the United States when he abducted Ker.[192] The Court noted that, under the treaty, Peru could properly request the United States to extradite Julian for violating Peru's kidnapping laws.[193] The Court also recognized that Ker had a potential remedy with respect to Julian because he could sue Julian for trespass and false imprisonment.[194]

In *Frisbie v. Collins*, the Court had occasion to reaffirm the principle of *Ker v. Illinois*.[195] Collins argued that his murder conviction should be overturned because he was tried in violation of due process and the Federal Kidnapping Act.[196] Collins alleged that he was kidnapped and beaten by Michigan police, who brought him from Chicago to Michigan to be tried for murder.[197] The Court rejected Collins' argument that his trial and conviction violated due process and the Federal Kidnapping Act because, under the rule established in *Ker v. Illinois*, "the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction.'"[198] If Collins' story were true, his abductors could have been convicted of kidnapping under the Federal Kidnapping Act.[199] The Court did not believe, however, that it was reasonable to construe the Federal Kidnapping Act to prohibit a court from exercising jurisdiction over an illegally abducted defendant.[200] The Court found that the severe criminal sanctions available under the Act were sufficient to deter this type of abduction without implying additional sanctions.[201]

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191. *Id.* (emphasis added).
192. *Id.* at 442-43.
193. *Id.* at 444.
194. *Id.*
195. *Frisbie*, 342 U.S. at 519.
196. *Id.* at 520. The Federal Kidnapping Act is codified at 18 U.S.C. § 1201 (1994).
197. *See id.*
198. *Id.* at 522.
199. *Id.*
200. *Id.* at 522-23. "We think the Act cannot fairly be construed so as to add to the list of sanctions detailed a sanction barring a state from prosecuting persons wrongfully brought to it by its officers." *Id.* at 523.
201. *Id.* at 522-23. Sanctions for violating the Federal Kidnapping Act include imprisonment for a term of years, life imprisonment, or the death penalty if the kidnapping results in someone's death. 18 U.S.C. § 1201(a) (1994).

2. Application of *Ker-Frisbie* to Bounty Hunters: *Jaffe v. Smith* and *Kear v. Hamilton*

The cases of *Jaffe v. Smith*[202] and *Kear v. Hilton*[203] are illustrative of the application of the *Ker-Frisbie* doctrine to circumstances in which a bounty hunter abducts a defendant in violation of *Reese v. United States*.[204] In August 1980, Jaffe was arrested in Florida and charged with twenty-eight counts of unlawful land sale practices.[205] A professional bonding company, Accredited Surety & Casualty Company, paid Jaffe's bail, which was set at $137,000.[206] After arranging for release on bail, Jaffe left Florida and returned to his home in Toronto, Canada.[207] Accredited hired a bounty hunter named Kear to apprehend Jaffe and return him to Florida for trial.[208] Kear crossed the border into Canada, seized Jaffe in Toronto, and transported him back to the United States for trial in Florida.[209]

After being tried and convicted on all counts, Jaffe made an argument before the Eleventh Circuit Court of Appeals that was similar to Ker's argument in *Ker v. Illinois*.[210] Jaffe argued that the Florida court did not have authority to try him because his presence before the court resulted from his illegal abduction from Canada, which violated the extradition treaty between the United States and Canada.[211] The Eleventh Circuit did not agree that Jaffe's abduction violated the extradition treaty because Jaffe failed to establish governmental action in violation of the treaty.[212] Kear acted in an individual capacity.[213] The Eleventh Circuit upheld Jaffe's

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202. Jaffe v. Smith, 825 F.2d 304 (11th Cir. 1987).
203. Kear v. Hilton, 699 F.2d 181 (4th Cir. 1983).
204. *Reese*, 76 U.S. at 13.
205. *Jaffe*, 825 F.2d at 305.
206. *Id.*
207. *Id.*
208. *Jaffe*, 825 F.2d at 305; *Kear*, 699 F.2d at 181.
209. *See supra* note 208 and accompanying text.
210. *Jaffe*, 825 F.2d at 306; *see also Ker*, 119 U.S. at 436.
211. *Jaffe*, 825 F.2d at 306.
212. *Id.* at 307.
213. The present appeal presents a clear case of individual citizens acting outside the parameters of a treaty. . . . The bondsmen did not purport to act pursuant to the treaty when they apprehended Jaffe, they carried no papers pertaining to his extradition nor did they approach any Canadian official concerning his extradition.

Id. The Eleventh Circuit also noted that two applications for Jaffe's extradition had been made, but they were both rejected by the Attorney General of Florida because of errors in form. *Id.* No further attempts to extradite Jaffe pursuant to the treaty were made. *Id.*

conviction, following *Ker v. Illinois*.[214]

> Unless a defendant can prove that he or she was removed from the asylum state by governmental action, and therefore establish a treaty violation, she or he may not object to trial in the United States. *In essence the law is not concerned with the manner in which a defendant finds his or her way into the court.*[215]

Because Jaffe failed to establish state action that violated the treaty, his abduction from Canada did not invalidate the trial court's jurisdiction over him and his conviction was consistent with due process.[216]

The ramifications of Jaffe's abduction were not limited to his conviction in Florida. *Kear v. Hilton* dealt with Canada's request to have Kear extradited for violation of Canadian kidnapping laws.[217] The Court had recognized in *Ker v. Illinois* that one possible remedy for Julian's abduction of Ker was extradition to Peru to be tried for violating that country's kidnapping laws.[218] In *Kear v. Hilton*, the Canadian government successfully employed this remedy.[219]

In his appeal before the Fourth Circuit Court of Appeals, Kear argued that he should not be extradited because doing so would violate the mutuality requirement of the extradition treaty between the United States and Canada.[220] The mutuality requirement means that extradition is only available for crimes that are punishable by the laws of both countries.[221] Kear argued there was no mutuality because it would not violate the Federal Kidnapping Act if a Canadian bounty hunter entered the United States, seized a bail jumper, and returned him to Canada.[222] The Fourth Circuit disagreed:

> The rationale advanced, however, depends solely on cases relating to seizures within the United States for return to appear before a federal or state court. Those cases are simply inapposite to a situation such as the one which confronts us, where considerations of sovereignty and the crossing of an international boundary intervene and there is neither a superimposed structure like the federal government in its relationship with the several states nor any full faith and credit clause (Article I,

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214. *Id.*
215. *Id.* (emphasis added).
216. *Id.* at 307-08.
217. *See Kear*, 699 F.2d at 181.
218. *See Ker*, 119 U.S. at 444.
219. *Kear*, 699 F.2d at 183.
220. *Id.*
221. *Id.*
222. *Id.* The court noted that this scenario was unlikely to occur because Canadian law does not permit "the practice of bonding for compensation." *Id.* at 184. Canada still relies on a personal surety system for release pending trial. *See id.* ("those who go security for someone being admitted to bail are relatives, friends or acquaintances acting for non-monetary reasons"). For a discussion of personal sureties, see *supra* Part II.A.

Section 1 of the United States Constitution) and its requirement of aid and assistance in enforcement of the laws of sister states.

Consequently, we do not accept the contention that [the Federal Kidnapping Act] would, in contradiction of its plain terms, be held not to reach bounty-hunting abductions across international boundaries, absent a rule making such abductions legal.[223]

The Fourth Circuit rejected Keär's mutuality defense because a Canadian bounty hunter who entered the United States, seized a bail jumper, and brought him back to Canada would be guilty of kidnapping under the Federal Kidnapping Act.[224] Kear was extradited to Canada where he was subsequently convicted of kidnapping.[225]

3. Application of the *Ker-Frisbie* Doctrine to State-Sponsored Kidnapping: *United States v. Alvarez-Machain*

In *United States v. Alvarez-Machain*, the U.S. Supreme Court was presented with the issue of whether a state-sponsored abduction in a country with which the United States had an extradition treaty divests the trial court of jurisdiction over the defendant.[226] The Court held that the *Ker-Frisbie* rule applied and the trial court could exercise jurisdiction over the defendant under these circumstances, unless the extradition treaty explicitly prohibited such abductions.[227]

Alvarez was indicted for his alleged involvement in the kidnapping and murder of Drug Enforcement Administration Special Agent Camarena-Salazar.[228] Alvarez was in Mexico at the time of his indictment.[229] To secure Alvarez's presence for trial, agents of the Drug Enforcement Administration paid Mexican contacts $50,000 to kidnap Alvarez and bring him to the United States.[230] Alvarez argued that the trial court could not exercise jurisdiction over him because he had been abducted in violation of the extradition treaty between the United States and Mexico.[231] The Court rejected Alvarez's argument because the extradition treaty did not explicitly

223. *Id.* at 183.
224. *Id.* at 183-84.
225. R. v. Kear, 1989 W.C.B.J. LEXIS 6091 (dismissing Kear's appeal from conviction for kidnapping).
226. United States v. Alvarez-Machain, 504 U.S. 655, 657 (1992).
227. *Id.* at 662.
228. *Id.* at 657. According to the DEA, "[Alvarez], a medical doctor, participated in the murder by prolonging Agent Camarena's life so that others could further torture and interrogate him." *Id.*
229. *Id.*
230. *Id.*; United States v. Caro-Quintero, 745 F. Supp. 599, 603 (C.D. Cal. 1990).
231. *Alvarez-Machain*, 504 U.S. at 658.

prohibit transborder abductions.[232] Because the abduction did not violate the extradition treaty, the *Ker-Frisbie* doctrine was applicable and the trial court could exercise jurisdiction over Alvarez without inquiring into how his presence before the court was obtained.[233]

4. Treaties That May Limit the *Ker-Frisbie* Doctrine

Some scholars have argued that the United States has entered into international treaties that will limit the impact of the *Ker-Frisbie* doctrine in the future.[234] These treaties are not applicable to international abductions by bounty hunters for two reasons: first, the treaties are not self-executing and second, bounty hunters are not state actors.[235]

a. Transborder Abduction Treaty

In the aftermath of the *Alvarez-Machain* decision, the extradition treaty between the United States and Mexico was amended to prohibit transborder abductions.[236] Given this amendment, the U.S. Supreme Court would likely hold that a state-sponsored transborder abduction in Mexico does divest a U.S. court of jurisdiction over a defendant.[237] The Transborder Abduction Treaty does not apply to abductions by bounty hunters, however, because the treaty defines transborder abductions in terms of state agents.[238] A transborder abduction only occurs under the treaty when an individual is abducted from one of the nations and transported to the other "by federal, state or local government officials of the Party to whose territory the person is taken, or by private individuals acting under the direction of such individuals."[239] Therefore, the

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232. The Court refused to imply a term in the treaty that would prohibit transborder abductions. *Id.* at 668-69.

233. *See id.* at 669-70.

234. *See, e.g.*, Rudy, *supra* note 181.

235. *See* Berenson, *supra* note 155, at 483-84, 487; *see also supra* Part III.C.

236. *See* Treaty Between the Government of the United Mexican States and the Government of the United States of America to Prohibit Transborder Abductions, Nov. 23, 1994, U.S.-Mex., *reprinted in* 5 MICHAEL ABELL & BRUNO A. RISTAU, INTERNATIONAL JUDICIAL ASSISTANCE: CRIMINAL EXTRADITION (1995) [hereinafter Transborder Abduction Treaty]. It should be noted that the Transborder Abduction Treaty is unlikely to affect the applicability of the *Ker-Frisbie* doctrine to abductions in Mexico because it has not been submitted to the U.S. Senate for advice and consent. *See id.*

237. *See* discussion of *United States v. Alvarez-Machain*, *supra* Part IV.B.3.

238. *See* Transborder Abduction Treaty, *supra* note 236, art. 3, § 1(b).

239. *Id*; *see also* Berenson, *supra* note 155, at 486-87 (recognizing that the treaty would not apply to abductions by bounty hunters because bounty hunters are not considered state agents, but arguing that bounty hunters should be considered state agents and thus subject to the treaty).

Transborder Abduction Treaty would divest a court of jurisdiction in cases like *Alvarez-Machain* where the government participated in the abduction, but not in cases like *Kear* where a bounty hunter carried out the abduction without government aid or authorization.[240]

b. The United Nations Charter and the Organization of American States Charter

The United Nations Charter declares "all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State."[241] Government-sponsored abductions would probably be considered violations of a nation's territorial integrity and political independence; again, however, it is unlikely that abductions by bounty hunters would violate the UN Charter because bounty hunters are not state actors.[242] Article 17 of the Organization of American States Charter has a similar provision, which would likely be violated by government-sponsored abductions, but not by bounty hunter abductions.[243] Furthermore, federal courts have repeatedly held that the UN and OAS Charters are not self-executing, which means that courts cannot apply the treaties until Congress passes implementing legislation.[244]

c. Civil and Political Covenant

The United States is also a party to the Civil and Political Covenant, which could nullify the *Ker-Frisbie* doctrine.[245] Article 9(1) of the Covenant provides that "No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law."[246] Also, Article 9(4) declares that "anyone who is

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240. *See* discussion of *Kear v. Hilton, supra* Part IV.B.2 and *United States v. Alvarez-Machain, supra* Part IV.B.3.

241. U.N. CHARTER art. 2, para. 4.

242. *See* discussion *supra* Part III.C; *see also* Berenson, *supra* note 155, at 481, 483 (stating that "it is reasonable to regard American bounty hunters entering Mexico's territory and abducting Mexican nationals as a force that threatens and violates the territorial integrity of Mexico," but acknowledging that the prohibition does not apply to bounty hunters because they are not state actors).

243. *See* Berenson, *supra* note 155, at 481-83.

244. *Id.* at 483.

245. *See* Rudy, *supra* note 181, at 797. "If the United States does not forego use of the *Ker-Frisbie* doctrine, or provide an effective remedy for those kidnapped abroad, then the country will violate its international obligations arising from a major human rights treaty." *Id.* at 798.

246. International Covenant on Civil and Political Rights, art. 9(1), G.A. Res. 2200A (XXI), 21 U.N. GAOR, Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171.

deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if his detention is not lawful."[247]

The Covenant is unlikely to nullify the *Ker-Frisbie* doctrine because Congress has specifically declared that Articles 1 through 27 are not self-executing.[248] It therefore cannot be enforced until Congress chooses to pass implementing legislation. Even if it were self-executing, the Covenant would not apply to abductions by bounty hunters because bounty hunters are not state actors.[249]

V. "INTERNATIONAL BOUNTY HUNTER RIDE-ALONG"

In 1998, newspapers on both sides of the Atlantic became enthralled with U.K.-born bounty hunter Ted Oliver.[250] Oliver and his partner, Ron Mahalko, developed a plan that would capitalize on the U.K. fascination with the lifestyle of U.S. bounty hunters.[251] Their plan was to charge U.K. thrill seekers to accompany them while they tracked down bail skippers in the Tacoma, Washington area.[252] Although Mahalko and Oliver abandoned their plan because of bad publicity—most of it arising from the discovery that Oliver was a convicted felon—Mahalko left open the possibility that he might carry through with the plan on his own at a later time.[253] Even if he does not, other enterprising bounty hunters may develop similar schemes for cashing in on the fascination that bounty hunters command.

A. *Background Information on the Bounty Hunters*

Mahalko and Oliver were partners in a company called National Fugitive Recovery Bureau until Mahalko learned about Oliver's prior conviction in the United Kingdom.[254] Oliver is an interesting character, an excellent "poster child" for those who criticize the reliance on private bounty hunters in the United States. He grew up in the United Kingdom where bounty hunting is illegal, but in 1989 he found his calling in the United States.[255] At the time he conceived

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247. *Id.* art. 9(4).
248. *See* Berenson, *supra* note 155, at 483-84.
249. *Id.*
250. *See, e.g.*, Modie, *All Bets Are Off*, *supra* note 2.
251. *See id.*
252. *See id.*
253. *Id.*
254. *Id.*
255. In a U.K. television program called Cutting Edge, Oliver said, "I had this dream of going to America to be a bounty hunter. . . . I didn't know whether it still existed, but I wanted to be somebody who tracked armed people." Thomas Sutcliffe,

of the ride-along program, Oliver was the only Briton to work as a bounty hunter in the United States.[256] He spent part of each year in the United Kingdom and claimed dual U.S. and U.K. citizenship.[257] He considered himself to be a modern day Wild West gunslinger,[258] practicing the art of bounty hunting with a "commando-uniformed, assault-weapon-wielding style."[259] When he tracked down bail jumpers, Oliver carried an arsenal of weapons, including his nine-millimeter semiautomatic pistol, snub-nose revolver, shotgun, 150,000-volt stun gun, and pepper spray.[260] Oliver killed one fugitive and wounded seven others prior to the ride-along fiasco.[261]

Oliver is also a good example of just how easy it is to become a bounty hunter. He got his first job with a bonding company after helping a friend track down a fugitive.[262] He became a successful bounty hunter in the United States in 1989, even though he was not a U.S. citizen at the time.[263] He continued to be a successful bounty hunter after serving two years in a U.K. prison for stabbing his estranged wife thirteen times with a hunting knife in her home in Luton, England in 1994.[264] Both federal and Washington state laws prohibit convicted felons from carrying a firearm, yet Oliver possessed a state-issued concealed weapons permit and an alien firearms license despite his overseas conviction.[265]

Mahalko was not motivated by the same Wild West philosophy of bounty hunting as Oliver; instead, he was a bounty hunter because of

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Television Review, INDEP. (London), Feb. 11, 1997, at 24. Oliver described the profession as being too exciting to give up: "Once you've done that sort of work, and you hunt people down with guns, you just can't find a job like it." William Leith, *Television: Monday 10 February*, OBSERVER, Feb. 9, 1997, at 83. Apparently, Ernest Hemingway shared Oliver's sentiments regarding the practice of hunting men: "There is no hunting like the hunting of a man, and those who have hunted armed men long enough and liked it never cared for anything else." Drimmer, *supra* note 4, at 770 n.1 (attributing this quote to Hemingway).

256. *See* David Jack, *The Lone Stranger!; It's U.S. Bounty Hunter Ted . . . All the Way from Luton; Briton Works as Top U.S. Bounty Hunter*, PEOPLE (London), Feb. 2, 1997, at 11 (referring to Oliver as "the only Briton to work in this lethal occupation"). According to Oliver, his English accent saved his life one time when he told a gang that kidnapped him that he was just a harmless tourist. *Id.*

257. *See* Modie, *All Bets Are Off*, *supra* note 2.

258. *See id.*

259. Neil Modie, *Bounty Hunters Live by Own Code; Longview Man Dealt Skip Tracers' Frontier Brand of Justice*, SEATTLE POST-INTELLIGENCER, Apr. 16, 1998, at A1 [hereinafter Modie, *Own Code*].

260. Jack, *supra* note 256, at 11.

261. *Id.*

262. *Id.*

263. *See id.*

264. *See* Modie, *All Bets Are Off*, *supra* note 2. Oliver explained that he "lost control" when he stabbed his wife, but thankfully he said he never lost control when he was on the job. Tony Purnell, *Ted's a Real Son of a Gun; Last Night's View*, MIRROR (London), Feb. 11, 1997, at 5.

265. *Id.*

a sense of social purpose.[266] He criticized other bounty hunters for breaking down doors before knocking.[267] Although he had no formal law enforcement training, he was a police intern in high school.[268] Like Oliver, Mahalko knew what it was like to kill a bail jumper in self-defense.[269] When he shot a bail jumper behind the wheel of a car that would have otherwise run him over, police ruled it justifiable homicide.[270] Mahalko did not approve of ex-convicts being bounty hunters, so he terminated his partnership with Oliver upon learning of Oliver's conviction in the United Kingdom.[271] He suggested publicly that he might carry through with the international ride-along plan on his own after the bad publicity surrounding his ex-convict ex-partner's involvement died down.[272]

B. *Details of the Plan to Bring Paying U.K. Tourists on Manhunts*

If the bounty hunters had carried through with their plan, the U.K. tourists would not have been the first non-bounty hunters to tag along on bounty hunting expeditions.[273] Oliver was actually inspired with the idea to bring tourists on manhunts while bounty hunting with some friends who were curious about his occupation.[274] In 1998, he and Mahalko decided to make the idea a reality by advertising the "International Bounty Hunter Ride-Along" in gun magazines.[275] The goal of the program was to expose people from the United Kingdom to the U.S. practice of using private bounty hunters to track down fugitives.[276] Mahalko and Oliver planned to charge U.K. thrill

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266. "Why I do it is an issue of the heart. I do it because I care about people." Sutcliffe, *supra* note 255, at 11.

267. "There are guys out there who will kick in a door every time. I'll wait several minutes before I'll kick in a door." Neil Modie, *Tacoma Crime Safari; Bounty Hunters Set Sights on Tourists for a Ride-Along*, SEATTLE POST-INTELLIGENCER, Mar. 23, 1998, at A1 [hereinafter Modie, *Tacoma Crime Safari*].

268. Neil Modie, *Bounty Hunters Offer British an Action Holiday, Plan to Train Tourists, Take Them Along on Jobs Draws Skepticism and Outrage*, DALLAS MORNING NEWS, Mar. 29, 1998, at 1A [hereinafter Modie, *Action Holiday*].

269. *See* Purnell, *supra* note 264.

270. *Id.*

271. *See* Modie, *All Bets Are Off*, *supra* note 2.

272. *See id.*

273. Oliver admitted that their company had already taken curious U.S. citizens with them to experience a typical day in the life of a bounty hunter. Stephen Farrell, *Holiday with a Bounty Hunter*, TIMES (London), Feb. 3, 1998.

274. He explained, "They said how exciting it was so I just decided to put something together." *See MPs Condemn*, *supra* note 13.

275. *See* Michael Thompson-Noel, *Have Weapon, Will Travel*, FIN. TIMES (London), Feb. 28, 1998, at 24.

276. According to Oliver, his goal was "to let people be more aware of what we do as bounty hunters because most people over here in Britain think this went out with the Wild West. . . . Most don't believe it still goes on." Modie, *Action Holiday*, *supra* note 268. Mahalko agreed that the program could "improve relations internationally

seekers between $600 and $1800 per person for the privilege of accompanying them on manhunts.[277] They planned to take no more than two guests on each outing.[278] The program was designed to target customers in the United Kingdom, but the two bounty hunters were willing to accept participants from other countries so long as they spoke English.[279]

Participants in the "International Bounty Hunter Ride-Along" program would be provided with bulletproof vests, handcuffs, pepper spray, stun guns, and, where possible, semi-automatic pistols.[280] In order to use a gun, each tourist would have to secure an alien firearms license, which would not be a problem in the state of Washington so long as they entered the country legally and had no criminal record.[281] Mahalko and Oliver planned to provide the tourists with training on how to use the weapons, as well as training in martial arts and breaking down doors.[282] Oliver emphasized that the tourists had to be prepared to face dangerous criminals who might shoot them to avoid being taken to prison.[283]

The bounty hunters did not plan to share any rewards they received from bail bondsmen for successfully recapturing fugitives.[284] Mahalko and Oliver were well aware of the potential liability they could face if tourists were injured.[285] To avoid liability, the bounty hunters would have required the tourists to sign waivers to absolve

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and give foreign tourists an opportunity to participate in something they've never done before." *Id.*

277. *Id.*

278. *Id.*

279. Although targeted at the United Kingdom, the ride-along program also sparked interest from people in Germany, Australia, Turkey, and Ireland. The English requirement was for safety; Oliver and Mahalko only spoke English and needed the tourists to understand commands in the field. *See id.*

280. *Id.* In an interview, Oliver said, "We really need them to carry a gun for their own safety. When you kick the door in, you never know what is going to happen." *Id.* Mahalko was not as enthusiastic about letting the tourists carry guns because of liability concerns. *Id.*

281. *Id.* Ironically, Oliver might have been unable to participate in his own ride-along program because it was not open to anyone with a felony or misdemeanor conviction. *See* Modie, *All Bets Are Off*, *supra* note 2.

282. *See id.*

283. "You are in danger. A lot of people are on the run for a reason. They are guilty and don't want to be caught. Many will put up a battle and some will be armed. . . . [The tourists] have got to be prepared, prepared to retaliate with guns." *MPs Condemn*, *supra* note 13.

284. Oliver said, however, that "if participants do something really good then maybe they will get a reward." *Id.*

285. *See Vacations: Let's Go Manhunting*, N.Y. TIMES, Mar. 15, 1998, § 6 (Magazine), at 21.

them from all liability for injuries that might occur during their fugitive recovery efforts.[286]

C. *Criticism of the "International Bounty Hunter Ride-Along" Proposal*

Mahalko and Oliver's idea to bring international tourists with them on bounty hunting missions was widely criticized, but surprisingly almost none of the criticism focused on whether or not the planned venture was legal. Curt Benson, a spokesman for the Pierce County Sheriff's Department, was surprised that foreign tourists were willing to pay large sums of money and risk their lives to ride along with bounty hunters when they could ride along with police for free.[287] Benson was not aware of any laws that would prevent the bounty hunters from carrying through with their plans.[288] He did express concern, however, that the presence of foreign tourists acting as bounty hunters would be problematic for police officers arriving at a crime scene.[289] Benson speculated that if the bounty hunters carried through with their plans, it would lead to legislation restricting the powers of bounty hunters.[290]

Criticism of the program was also harsh in the United Kingdom, especially in Parliament.[291] Mr. Bruce George, Labour MP for Walsall South, was critical of the bounty hunters' appeal to the U.K. fascination with the American West: "I am appalled that British people are being encouraged to participate in private law enforcement

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286. When asked whether clients would be required to sign waivers, the bounty hunters' U.K. agent, Clive Corner, said with a laugh, "Good heavens, yes. . . . This is entirely at their own risk." *Id.*

287. "I can't imagine that people would want to expose themselves to danger when there are many police departments that allow citizens to go on ride-alongs, and it doesn't cost them anything. . . . But we don't give them a gun." Modie, *Tacoma Crime Safari*, *supra* note 267.

288. *See* Modie, *Action Holiday*, *supra* note 268.

289. Benson said,

> "If we get called to a crime scene at . . . night, it's one thing to have a bounty hunter there who may have worked with officers in the past and have some idea about proper protocol. It's another thing when you're responding and you've got people on vacation with guns who it may or may not be difficult to have control over. . . . The tourists may or may not understand the law and the language and the procedures that law enforcement here has."

Id.

290. "I can see something like this causing legislation to occur—quickly, and probably not necessarily to the bounty hunters' benefit." *Id.* In 1998, bills to regulate bounty hunters failed in the Washington state legislature. *See* Neil Modie, *Bounty Hunters Have Carte Blanche in Pursuits; False Arrest Among Consequences*, TIMES-PICAYUNE, Apr. 19, 1998, at A1.

291. *MPs Condemn*, *supra* note 13.

in the United States and that they will be encouraged, as well, to become latter-day Wyatt Earps and Bat Mastersons."[292]

Mr. Gerry Birmingham, Labour MP for St. Helens South, had similar concerns: "This is bizarre. I hope British people will have more sense than to participate."[293] Despite the criticism of the ride-along plan, a spokesman for the Association of British Travel Agents admitted that he was unaware of any "regulations governing holidays" that would prohibit the two bounty hunters from selling bounty hunter ride-along vacation packages to U.K. tourists.[294]

Even if the plan to bring U.K. tourists with them on manhunts was completely legal, Mahalko and Oliver needed cooperation from the bail bondsmen that employed them in order for the plan to work. Ron Moores, the Tacoma bail bondsman from whom Mahalko and Oliver got most of their assignments, did not object to U.K. tourists accompanying the bounty hunters on manhunts: "I'm sure they may have checked out the legal ramifications. They have their own business. I can't tell them how to run their business."[295]

The reaction from other bail bondsmen was not so favorable. Holly Bishop, a bail bondsman and president of the Washington State Bail Agents Association, was strongly opposed to the idea: "That's a stupid idea. . . . They're bringing tourists over here to have a safari-in-Africa type of thing? Who's going to be responsible?"[296] Stephen Kreimer, executive director of the Professional Bail Agents of the United States, agreed with Bishop: "Are you kidding me? That's a frightening prospect. . . . I would hope someone would put a stop to that."[297] R.T. Burton, a bounty hunter who runs a training school for bounty hunters in Arizona, wrote in a newsletter, "Our industry does not need this sort of Rambonian-idiot running around with British tourists effecting bail bond arrests."[298]

The critics of "International Bounty Hunter Ride-Along" got their wish. The bounty hunters were forced to abandon their plan in the wake of bad publicity.[299] Mahalko terminated his partnership with Oliver after the news broke that Oliver had spent two years in jail in

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292. *Id.* George admitted to being "an avid student of the American West, but [he did not] want British people to become second-class sheriffs and marshalls, and become involved in an incredibly sensitive issue." *Id.* He went on to say, "I hope people are not going to be tempted to America to arrest other people, or even shoot them, to recover debts. This is horrendous." *Id.*

293. *Id.*

294. Thompson-Noel, *supra* note 275.

295. Modie, *Action Holiday*, *supra* note 268. Moores apparently did not think the tourists would interfere with Mahalko's estimated ninety-eight percent success rate for capturing fugitives. *See id.*

296. *Bounty Hunters Should Be Corralled*, SEATTLE POST-INTELLIGENCER, Mar. 24, 1998, at A10.

297. Modie, *Action Holiday*, *supra* note 268.

298. Modie, *Own Code*, *supra* note 259.

299. Modie, *All Bets Are Off*, *supra* note 2.

the United Kingdom.[300] The bounty hunters' plan sparked a lot of controversy and in the end they never took a single tourist along with them on a bounty-hunting excursion. But the idea is plausible, and the possibility remains open that Mahalko or another bounty hunter will try to turn it into a reality. Also, there is a possibility that Oliver's success will inspire other U.K. citizens to cross the Atlantic to become bounty hunters for longer than one or two weeks. It is not clear how—or even if—the scarce laws governing bounty hunters will prevent these possibilities from occurring.

VI. CONCLUSION: CITIZENSHIP AS A PREREQUISITE FOR BOUNTY HUNTING

Surprisingly, in the midst of all the criticism resulting from the ride-along proposal, the question of legality was barely addressed. The public policy concerns are in many ways the same regardless of whether bounty hunters bring U.S. or foreign citizens on bounty hunter vacations. The question of the legality of bounty hunter vacations in general is therefore most likely to be answered at the state level because the states are responsible for regulating bounty hunters. Most states would likely agree that it contravenes public policy to allow bounty hunters to bring paying tourists—U.S. or otherwise—along with them on manhunts.

The ride-along proposal, however, highlights another, more transnational question: whether U.S. law requires bounty hunters acting in the United States to be U.S. citizens. The fact that Oliver, a U.K. citizen, has been employed as a bounty hunter in the United States for several years could indicate that the laws governing bounty hunters do not prohibit foreign citizens from becoming bounty hunters in the United States. Alternatively, it could indicate that the system is not capable of preventing citizens of other countries from becoming bounty hunters.

A. *Given the Absence of Regulations Governing Bounty Hunters, Non-U.S. Citizens Could Most Likely Become Bounty Hunters*

The bounty hunter's authority to re-arrest a fleeing suspect is based on the contract between the bondsman and the suspect. The relationship between the bail bondsman and the bounty hunter is an agency relationship in which the bondsman delegates to the bounty hunter his contractual right to re-arrest the suspect. This relationship is governed by the Supreme Court's decision in *Taylor v.*

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300. *See id.*

Taintor.[301] *Taylor* does not place limits on who the bondsman can delegate his contractual re-arrest power to, nor does it require that agents be U.S. citizens. There is nothing in the reasoning of *Taylor* that would prevent a bail bondsman from delegating his re-arrest power to agents who are citizens of other countries, so long as the agents exercise the arrest power in accordance with the broad guidelines set by *Taylor*.[302]

Although the case law does not explicitly prohibit non-U.S. citizens from becoming U.S. bounty hunters, allowing this to happen may not be a desirable result. The U.S. Supreme Court has long held that bounty hunters are not state actors, but bounty hunters do serve an important U.S. criminal justice function. Bounty hunters track down bail jumpers who would otherwise escape from justice because police do not have adequate resources or manpower to pursue and recapture them. For this reason, bounty hunters and the commercial bail bond industry in general are arguably necessary evils. These functions should not be performed, however, by curious vacationers from other countries. Oliver's case gives a clear example of the difficulties inherent in monitoring the few requirements of a bounty hunter.[303] Officials in Washington were unaware of Oliver's conviction in England.[304] He was issued a firearms permit despite his felony convictions.[305] Record keeping—or sharing—between countries is clearly not equal to the task.

B. *Even if it Were Illegal for Non-U.S. Citizens to Act as Bounty Hunters, the System is Ill-Equipped to Stop Them*

Most states leave the responsibility for screening bounty hunters to the bondsmen who employ them.[306] In most states, self-proclamation and the ability to find a bondsman to hire them are the only requirements.[307] Other U.K. citizens interested in becoming bounty hunters can self proclaim just as Oliver did. If the law allows them to obtain alien firearm permits, it is unlikely to prevent them from using those permits to pursue a job as a bounty hunter.

Oliver's success as a bounty hunter demonstrates how unchecked bounty hunters truly are. Bounty hunters operate mostly in secrecy. Bail bondsmen, whose profits are based on bounty hunter success rates, are primarily responsible for regulation. There is no formal training requirement for bounty hunters; they learn their trade by

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301. *See Taylor*, 83 U.S. at 366.
302. *See id.*
303. *See, e.g.*, Modie, *All Bets Are Off*, *supra* note 2.
304. *Id.*
305. *Id.*
306. Chamberlin, *supra* note 15, at 1193-94.
307. *Id.* at 1190.

accompanying other bounty hunters just as Oliver did. The bondsman who ultimately became Oliver's first source for bounty hunting assignments did not object to Oliver tagging along with one of the bounty hunters the bondsman employed, even though Oliver was a Briton and not trained as a bounty hunter. As long as bounty hunters return a high percentage of defendants, bail bondsmen responsible for monitoring their activity are unlikely to care what nationality they are.

Furthermore, foreign citizens acting as bounty hunters would be unlikely to be prosecuted based on the complaint of a defendant they returned to justice. Defendants abducted by them would be able to sue for trespass and false imprisonment, but it is doubtful that these suits would be worthwhile because criminal defendants who have admittedly skipped town to avoid trial lack financial resources.

As this Note has emphasized, bounty hunters are difficult to regulate. They operate in secrecy on the edge of the law and are responsible only to the bondsmen who pay them. If bondsmen are allowed to delegate their power to re-arrest fugitives to non-U.S. citizens, the difficulties of regulating bounty hunter behavior become even more complex. Foreign bounty hunters inspired by Oliver's Wild West depiction might choose to visit the United States for some manhunting adventures whenever they need an adrenaline fix and then return to their home countries. If these bounty hunters violate the reasonable force guidelines of *Taylor v. Taintor* or state laws regulating bounty hunting, prosecutors will be faced with the difficult task of identifying, locating, and extraditing the bounty hunters to bring them to justice. For these reasons, curious vacationers should not be allowed to perform these necessary criminal justice functions.

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