No. _____

IN THE SUPREME COURT OF THE UNITED STATES

EDWIN CORTORREAL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to The United States Court of Appeals For the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a criminal defendant has prudential standing to enforce an extradition decree that is issued for his own benefit where the government concedes that the decree codifies a promise made to the defendant by a judge in the surrendering nation. The Second Circuit held in this case that such a decree, and the promise it codifies, is not within the defendant's "own rights and interests" and that he therefore lacks prudential standing to enforce it.

2. Whether, under this Court's precedent in *United States v. Rauscher*, 119 U.S. 407 (1886), a criminal defendant has standing to assert violations of the rule of specialty without requiring the surrendering nation to intervene.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Edwin Cortorreal respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Second Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit is available at 2024 WL 4635230 and appears at Pet. App. 1a.

JURISDICTION

The judgment of the court of appeals was entered on October 31, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

INTRODUCTION

Petitioner Edwin Cortorreal consented to be extradited to the United States from the Dominican Republic only after a Dominican judge promised him that his sentence in the United States would not exceed thirty years. The United States concedes these facts, and also that it was apprised about this promise before it took Cortorreal into its custody; the promise was relayed by the Dominican Republic to lawyers both at Department of Justice and the Department of State; and the United States did not object. The promise was not enforced, however, because the Second Circuit – at odds with six other Courts of Appeals – holds that extraditees like Petitioner lack *prudential* standing to enforce the promises made directly to them unless the foreign nation itself intervenes. As a result, Petitioner is serving a sentence of life without parole. Simply put, the lower court held that a promise related to his sentence, communicated directly to him, is not within Petitioner's "own rights and interests" and he therefore lacks prudential standing to enforce it.

The Second Circuit's misguided prudential standing approach allows the government to avoid informing counsel and the district

courts about these extradition promises, reasoning that they are not sentencing *Brady* because they are not enforceable by the defendant, absent intervention of a foreign sovereign, even if the United States acknowledges that it agreed to abide by the promise to facilitate the extradition.

The Court should intervene to address a longstanding split in the Courts of Appeals on an issue that affects the life and liberty of all extraditees. The Second Circuit has strayed not only from that of the Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits, but also from its own historical jurisprudence, which would, in Judge Friendly's words, spare the United States from the "breach of faith" that occurred here. *Fiocconi v. Attorney Gen.*, 462 F.2d 475, 480 (2d Cir. 1972) (Friendly, J.)

STATEMENT OF THE CASE

Trial Court Proceedings

Petitioner Edwin Cortorreal was convicted following trial of three counts of racketeering and felony murder occurring while a marijuana robbery. That conviction is not in dispute.

Following Petitioner's arrest in the Dominican Republic, he consented to his extradition to the United States only after a Dominican judge promised him, at his extradition hearing, that he would not receive a sentence in the United States exceeding 30 years. This promise was codified in the Extradition *Decreto* (the Decree), which was provided to the United States before it took Petitioner into its custody. Despite this promise made to him and assented to by the United States, Petitioner was sentenced to life without the possibility of parole.

Prior to U.S. law enforcement taking Petitioner into custody, the Office of International Affairs (OIA) and others at Main Justice in Washington were apprised that his extradition was conditioned on this 30-year sentence cap. Additionally, the United States Department of State was made apprised of this condition through a diplomatic note. None of the U.S. government entities involved lodged an objection to Petitioner's 30-year sentence cap before taking him into custody and bringing him to the United States.

When Petitioner arrived in the United States, he clutched the Decree that codifies the 30-year-maxium sentence. He did so because this was the entire basis for his agreement to voluntary extradition. He

was then arraigned on a five-count indictment charging a racketeering conspiracy in violation of 18 U.S.C. § 1962(d); murder in violation of 18 U.S.C. §§ 924(j) and 1959(a); a separate firearms offense under 18 U.S.C. § 924(c); and a narcotics conspiracy in violation of 21 U.S.C. §§ 841(b)(1)(A), 846.

The government never produced the Decree in discovery, even though the U.S. Attorney's Office possessed it; apparently it did not believe it was discoverable under Rule 16 or as sentencing *Brady*. But Petitioner showed his counsel what he had brought with him from the Dominican Republic, and his counsel then sought to enforce the Decree. The district court held that Petitioner lacked *prudential* standing to enforce the 30-year-sencence cap that was contained in a promise made directly *to him*. Petitioner sought to obtain discovery as to what assurances United States officials made to their Dominican counterparts before the Dominican Republic agreed to surrender Petitioner. Because the district court found that because Petitioner lacked prudential standing to enforce the promises made to him in the Decree, he was not entitled to that discovery.

Petitioner was then convicted at trial and received the mandatory minimum sentence of life without parole. The United States did not dispute any of the above facts about Petitioner's extradition.

Appeal to the Second Circuit

In his brief to the Court of Appeals, Petitioner argued the district court erred when it held that he lacked prudential standing to enforce the 30-year sentence cap and that the government's nineteen months' delay in extraditing the petitioner violated his Sixth Amendment right to a speedy trial.

The Court of Appeals denied his appeal, citing its decision in *United States v. Suarez*, and stating that "absent protest or objection by the offended sovereign, [a defendant] has no standing to raise the violation of international law as an issue." *United States v. Cortorreal*, 2024 WL 4635230 (2d Cir. Oct. 31, 2024) (quoting *United States v. Suarez*, 791 F.3d 363, 366 (2d Cir. 2015).

REASONS FOR GRANTING CERTIORARI

I. Prudential Standing

The prudential standing test "is not meant to be especially demanding." *Clarke v. Sec. Indus. Ass'n*, 479 U.S. 388, 399 (1987); *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 225 (2012) (same). The prudential standing doctrine further requires that a litigant raise "their own rights and interests" rather than "generalized grievances" applicable to a broad population. *Warth v. Seldin*, 422 U.S. 490, 499, 500 (1975); *Am. Psychiatric Ass'n v. Anthem Health Plans, Inc.*, 821 F.3d 352, 358 (2d Cir. 2016). This prudential principle derives from the Court's "judicially self-imposed limits on the exercise of federal jurisdiction." *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11 (2004).

II. The Rule of Specialty

The doctrine of specialty was first recognized by the Supreme Court in *United States v. Rauscher*, 119 U.S. 407 (1886). The rule of specialty provides that an extradited defendant may be tried by the receiving nation only for those offenses charged in the extradition proceedings. In *Rauscher*, a crewmember on an American vessel was extradited from Great Britan on a charge of murder, but was tried and

convicted of a lesser included offense, not specified in the extradition proceedings or the treaty. *Id*. at 409-11. Despite no objection by Great Britian, the Court, implicitly recognizing that the defendant had standing to challenge a violation of this rule, held that "a person who has been brought within the jurisdiction of the court, by virtue of proceedings under an extradition treaty, can only be tried for one of the offenses described in that treaty, and for the offense with which he is charged in the proceedings for his extradition . . . ." *Id*. at 430. The Court explicitly recognized a defendant's individual right to assert a specialty violation. *Id*. ("[T]he operation of this principle of the recognition of the rights of prisoners under such circumstances by the courts before whom they are brought for trial."). The rule of specialty, as defined in *Rauscher*, creates a jurisdictional limitation to which offenses may be charged by the receiving nation. *See United States v. Levy*, 947 F.2d 1032, 1034 (2d Cir. 1991) ("[T]he doctrine of specialty does not guarantee a right not to be tried, but rather a right to be protected from a court's authority. The doctrine limits the personal jurisdiction of the domestic court.")

III. The Circuits are Split Over Whether Defendants Have Standing to Mount a Specialty Challenge

Nearly 140 years have passed since the Court decided *Rauscher*, and since then, courts of appeals have become deeply divided as to whether a extradited defendant can invoke a rule of specialty challenge, absent the protest of the surrendering country. Practically, this split means that a defendant's fate is left to chance, most tragically exemplified here. For example, had Petitioner been extradited to New Jersey, he would have been able to raise a specialty challenge to cap his sentence at thirty years' imprisonment. But for a few miles distance and bad luck, the petitioner will spend the rest of his life in prison. The absurdity of this result and its dire consequences demands this Court's intervention.

The Courts of Appeals are essentially divided into two camps. The first camp, and the majority (the Third, Sixth, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits)[1], holds that a defendant can independently

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[1] *United States v. Thomas*, 322 F. App'x 177, 180 & n. 4 (3d Cir. 2009) (embracing "majority" view that defendant has individual standing to invoke rule of specialty); *United States v. Fontana*, 869 F.3d 464, 468 (6th Cir. 2017) ("We believe that *Rauscher* demonstrates that even in the absence of a protest from the requested state, an individual extradited pursuant to a treaty has standing to challenge the court's personal jurisdiction under the rule of specialty");*United*

lodge any objection to a specialty violation that the surrendering country may have raised. The second camp (the Second, Fifth, and Seventh) holds that, absent protest by the surrendering country, the defendant does not have standing to assert this right.[2]

Not only does this divergence represent a circuit split ripe for review, as contemplated by Rule 10(c), but the Second Circuit's decision below is in direct conflict with this Court's holding in *Rauscher*, which hold that an extradition treaty embodies a "principle of the recognition of **the rights of prisoner**," not only between nations. *Rauscher*, 119 U.S. at 430 (emphasis added). *Rauscher* held that where a "court should fail to give due effect to the rights of the party under the treaty, a

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States v. Thirion, 813 F.2d 146, 151 & n. 5 (8th Cir. 1987) (rejecting claim that defendant "lacked standing" to assert violation in the treaty; extradited individual may lodge any objection rendering country might have raised (citing *Rauscher*)); *United States v. Andonian*, 29 F.3d 1432, 1435 (9th Cir. 1994) ("An extradited person may raise whatever objections the extraditing country is entitled to raise." (same, citing *Rauscher*)); *United States v. Levy*, 905 F.2d 326 (10th Cir. 1990) (same, citing *Rauscher*); *United States v. Puentes*, 50 F.3d 1567, 1572 (11th Cir. 1995) (same, citing *Rauscher*)); *United States v. Trabelsi*, 845 F.3d 1181 (D.C. Cir. 2017) (same, citing *Rauscher*).

[2] *United States v. Barinas*, 865 F.3d 99,105 (2d Cir. 2017) (defendants have "no standing to raise a Rule of Specialty violation); *United States v. Kaufman*, 874 F.2d 242, 243 (5th Cir. 1989) (only surrendering state can complain about a specialty violation); *United States v. Burke*, 425 F.3d 400 (7th Cir. 2005) (treaties do not create personal rights enforceable by defendants).

remedy is found in the judicial branch of the federal government" citing the "writ of habeas corpus" as a remedy. *Id*. In focusing on the individual rights of the prisoner or defendant and the individual standing required for a habeas corpus petition, *Rauscher* emphasized the rights of the aggrieved individual to have standing under the doctrine of specialty.

IV. The Second Circuit's Decisions Create a Prudential Standing Rule Contrary to this Court's Precedents and Traditional Standing Notions.

Certiorari is also warranted because the decision below does not align with this Court's precedent and because the Second Circuit misinterpreted the law as applied to this case. This case squarely falls within the "rights of the prisoner" that *Rauscher* guaranteed and the individual's "own legal rights and interests" that confer prudential standing under this Court's precedents. *Warth v. Seldin*, 422 U.S. 490, 499-500 (1975).

The Second Circuit's holdings in this domain contravene two important areas of law where they are split with the majority of the Courts of Appeals: (1) the doctrine of specialty and (2) prudential standing doctrine more broadly.

A. The Second Circuit Misapplies the Rule of Specialty

To hold that the petitioner does not have standing to bring a specialty challenge, the Second Circuit below relied on its decision in *United States v. Suarez*, which held that the surrendering government must first protest a specialty violation. 791 F.3d at 366. What makes this case unique is that Petitioner seeks to enforce a court judgment made *for him*, codifying a promise made by a judge directly *to him*; he does not seek to enforce rights derived from a treaty between nations. Promises made directly to an individual are at the core of traditional concepts of prudential standing rights – that is, their right to enforce their "own legal rights and interests." *Warth*, 422 U.S. at 499-500.

Thus, the Second Circuit's holding not only contravenes *Rauscher*; it is at odds with bedrock prudential standing principles. The Courts of Appeals that have properly allowed prudential standing to defendants to enforce extradition decrees and promises made during extradition

give effect to these traditional standing principles granting individuals the ability to enforce their own rights and interests. There is nothing closer to one's personal rights and interests than enforcing promises *made to them* about how long they will lose their liberty.

The Courts of Appeal that have correctly applied prudential standing doctrine in this area and permit defendants to enforce these rights trace that authority to directly *Rauscher*. *See supra* note 1. The Second Circuit, on the other hand, arrives to its conclusion by conflating the Supreme Court's decision in *Rauscher* with the decision in *Ker v. Illinois*, 119 U.S. 436 (1886), which was decided the same day. In *Ker*, the Court held that a defendant, who was brought into the United States by means other than an extradition treaty, or who challenges a non-specialty provision of a treaty, does not have standing to bring a specialty challenge. *Id*. That *Rauscher* and *Ker* were decided on the same day is instructive. The Court established two distinct lines of cases: *Rauscher*, applicable to a defendant who was brought to the United States through an extradition treaty process; and *Ker*, applicable to a defendant who arrived here by some other means. The latter operates as an exception to the former and this court's precedent

is clear that a defendant, like Petitioner, who was extradited pursuant to a treaty, has the right to bring a specialty challenge.

In this case and others, *see e.g. Barinas*, 865 F.3d at 104, the Second Circuit finds its reasoning from *Suarez*, which is in turn based on the *Ker* line of cases. In *Suarez*, the Second Circuit relied heavily on *United States v. Alvarez-Machain*, 504 U.S. 655 (1992), for the proposition that a defendant has no standing to bring a specialty challenge absent protest by the surrendering nation. 791 F.3d 363, 367.[3] Like in *Ker*, the *abducted* defendant in *Alvarez-Machain* was not brought to the United States through a treaty process. 504 U.S. 655 (1992). Despite *Suarez*'s reliance on *Alvarez-Machain*, there the defendant was brought here through a normal extradition process. That notwithstanding, the Second Circuit in *Suarez* does not once mention *Rauscher*, but rather bases its decision on *United States ex rel. Lujan v. Gengler*, 510 F.2d 62, 67 (2d Cir.1975) (finding no standing, applying *Ker,* where the defendant was abducted), and *Alvarez-Machain*, both of

[3] *See Fontana*, 869 F.3d at 464 (recognizing that *Alvarez-Machain* "seriously undermines any vitality" to the notion that the surrendering nation must first protest).

which concern abduction outside of the formal extradition treaty process.

Notwithstanding its brief acknowledgement that extradition treaties confer individual rights, the Second Circuit has never explained how or why it persistently applies the inapplicable *Ker* line of cases for when defendants are extradited pursuant to a treaty. The Second Circuit's conflation and misapplication of *Rausher* and *Ker* will continue to have dire consequences for defendants, as here, the difference between 30 years' and life imprisonment.

Notably, the five courts of appeals that correctly hold that a defendant has standing to bring specialty challenges all cite *Rauscher* in their precedential standing cases. *See, e.g.*, *United States v. Trabelsi*, 845 F.3d 1181 (D.C. Cir. 2017) (citing *Rauscher*, distinguishing *Ker*); *United States v. Puentes*, 50 F.3d 1567, 1572 (11th Cir. 1995) (citing *Rauscher*, distinguishing *Ker*). Interestingly, the Seventh Circuit, which has long held that a defendant does not have a personal right to assert a treaty violation, *see Matta–Ballesteros v. Henman*, 896 F.2d 255, 259 (7th Cir. 1990), has called in to doubt that holding in light of *Rauscher* and the split among the circuits. *United States v. Stokes*, 726 F.3d 880,

889 (7th Cir. 2013) ("Our decision in *Burke* is hard to square with *Rauscher*, which though old remains good law today. . . . Although we question whether Burke can be reconciled with *Rauscher*, *Jogi*, and the authority from other circuits, we do not need to resolve the matter here.").

In *Alvarez-Machain*, this Court emphasized that *Rauscher* was still good law and distinguished it from cases where the defendant was secured by means outside the treaty process. 504 U.S. 655 (1992). That case also noted that "no importance was attached to whether or not Great Britain had protested the prosecution of Rauscher." *Id*. at 667. To remedy *Rauscher*'s misapplication across the circuits, this Court should grant certiorari to make clear that a defendant can bring whatever objections the extraditing country would have been entitled to raise.

B. The Second Circuit's rule contravenes bedrock prudential standing principles.

The Second Circuit's decision – denying prudential standing to even seek to enforce a Decree issued solely for Petitioner's benefit – contravenes this Court's prudential standing jurisprudence by creating an exception to ordinary prudential standing doctrine that it applies solely in cases pertaining, even in an attenuated manner, to an

extradition treaty. The Second Circuit's rule upends and misapplies this Court's foundational prudential standing principles by holding that private persons lack prudential standing to enforce benefits granted to them. The parties agreed that the Decree, and the promises guaranteed to Petitioner within it, was explicitly for Petitioner's sole benefit. A defendant has standing to enforce agreements made outside of the Treaty, like the Decree here, as such documents are created for the defendant's sole benefit. *See Warth*, 791 F.3d at 499 (prudential standing requires that an individual "assert his own legal rights and interests).

The promise made directly to Petitioner cannot possibly be categorized as a right belonging to a foreign nation. The Decree in this case was issued for Petitioner alone, with his name at the top, and a promise explicitly conditioning his transfer to the United States on a thirty-year sentence cap. It was a guarantee from a judge in the Dominican Republic to Petitioner that, in the same sentence, guaranteed that he would not be sentenced to death and not receive more than 30 years' imprisonment:

> Said extradition turning over is ordered under the condition that Dominican citizen Edwin Cortorreal, aka Edwin Antonio Cortorreal Lora, aka Crazy Ed, will under no circumstance be tried for a violation other than the one that gives rise to his extradition, **nor will a penalty greater than the maximum penalty established in the Dominican Republic be applied, which is thirty (30) years**, nor will the death penalty be applied, in case his culpability is proven as regards the violations due to which his extradition is ordered and for which he will be tried.

See App. C, Decree, p. 19a-20a.

It was this promise that induced his consent to be extradited. In contrast to a treaty or diplomatic note where sovereigns are parties, Petitioner was the sole party in that proceeding.

In attempting to enforce the Decree before the court below, Petitioner seeks only to assert "his own legal rights and interests," *id.* at 367, as no rights are implicated other than these. *See United States v. Cuevas*, 496 F.3d 256, 262-63 (2d Cir. 2007) (assessing defendant's rights both under "[t]he 1909 extradition treaty between the United States and the Dominican Republic" and "the factual record" concerning "substantive assurances to the Dominican Republic" concerning a sentencing cap). Simply, it is a question of prudential standing and an

individual's right to enforce a promise made directly to him and for his benefit.

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be granted.

Dated: January 17, 2025

Respectfully submitted,

/s/ Benjamin Silverman

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23-7195
United States v. Cortorreal

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 31st day of October, two thousand twenty-four.

Present:

GERARD E. LYNCH,
MICHAEL H. PARK,
EUNICE C. LEE,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v. 23-7195

EDWIN CORTORREAL,

Defendant-Appellant[†]

FOR APPELLEE: COURTNEY HEAVEY, Ni Qian, Matthew Andrews, and Nathan Rehn, Assistant United States Attorneys, *for* Damian Williams, United States Attorney for the Southern District of New York, New York, NY.

[†] The Clerk of Court is respectfully directed to amend the caption accordingly.

FOR DEFENDANT-APPELLANT: BENJAMIN SILVERMAN, Law Office of Benjamin Silverman, New York, NY, and Jonathan Langer, Law Office of Jonathan Langer, New York, NY.

Appeal from a judgment of the United States District Court for the Southern District of New York (Caproni, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Defendant-Appellant Edwin Cortorreal challenges the district court's denial of his motions to dismiss the indictment and to cap his sentence at 30 years' imprisonment. On July 12, 2017, a grand jury returned a superseding indictment charging Cortorreal with five counts, including participating in a racketeering conspiracy, in violation of 18 U.S.C. § 1962(d); murder in aid of racketeering, in violation of 18 U.S.C. §§ 1959(a)(1) and (2); and the use of a firearm resulting in death in connection with racketeering conspiracy, murder, and narcotics conspiracy, in violation of 18 U.S.C. §§ 924(j)(1) and (2). At the time of the indictment, Cortorreal was residing in the Dominican Republic. He was extradited to the United States on January 31, 2020.

On May 28, 2021, Cortorreal moved to dismiss the indictment, arguing that the delay between his indictment and his extradition to the United States violated his Sixth Amendment right to a speedy trial. The district court denied the motion on March 7, 2023. In April 2023, Cortorreal was convicted by a jury after a one-week trial. Both before and after his conviction, Cortorreal moved to cap his sentence at 30 years' imprisonment based on an extradition decree signed by the President of the Dominican Republic. The district court denied the pretrial motion without prejudice. After Cortorreal renewed the motion post-trial, it denied the motion again.

The district court sentenced Cortorreal to a mandatory minimum term of life imprisonment. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

We review the district court's weighing of the factors relevant to a Sixth Amendment speedy trial objection for abuse of discretion. *United States v. Williams*, 372 F.3d 96, 112-13 (2d Cir. 2004). A district court abuses its discretion when it "(1) base[s] its ruling on an erroneous view of the law, (2) [makes] a clearly erroneous assessment of the evidence, or (3) render[s] a decision that cannot be located within the range of permissible decisions." *United States v. Keitt*, 21 F.4th 67, 71 (2d Cir. 2021).

"A district court's interpretation of an extradition agreement and application of the principle of speciality involve questions of law, and we therefore review them *de novo*." *United States v. Baez*, 349 F.3d 90, 92 (2d Cir. 2003).

I. Motion To Dismiss the Indictment

Criminal defendants "shall enjoy the right to a speedy . . . trial." U.S. Const. amend. VI. "The Supreme Court has identified four factors that must be balanced when considering whether the right has been violated: '[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.'" *United States v. Moreno*, 789 F.3d 72, 78 (2d Cir. 2015) (quoting *Barker v. Wingo*, 407 U.S. 514, 530 (1972)). "The first factor, the length of delay, also operates as a threshold inquiry." *Id.* A court "will only consider the other *Barker* factors when the defendant makes a showing . . . that the interval between accusation and trial has crossed the threshold dividing ordinary from presumptively prejudicial delay." *United States v. Ghailani*, 733 F.3d 29, 43 (2d Cir. 2013) (cleaned up). Once the full *Barker* analysis is triggered, "no one

factor is 'a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial,' and all 'must be considered together with such other circumstances as may be relevant.'" *Moreno*, 789 F.3d at 78 (quoting *Barker*, 407 U.S. at 533).

Here, the district court did not abuse its discretion in denying Cortorreal's motion to dismiss the indictment on speedy trial grounds. The government does not dispute that the length of time in this case between indictment and extradition is sufficient to trigger further inquiry under *Barker*. But a "delay, no matter how lengthy, 'cannot alone carry a Sixth Amendment claim without regard to the other *Barker* criteria.'" *United States v. Cabral*, 979 F.3d 150, 157 (2d Cir. 2020) (quoting *Doggett v. United States*, 505 U.S. 647, 656 (1992)).

The district court did not err in finding that the other *Barker* factors weighed against dismissal. *Barker*'s second factor, the reason for the delay, "is often critical." *Cabral*, 979 F.3d at 158 (internal quotation marks omitted) (citing *Moreno*, 789 F.3d at 79). The district court engaged in a detailed analysis of the reasons for the delay and properly found that the delay was justified**.** For example, the government was required by DOJ policy to consult with the Capital Case Section because Cortorreal and his co-defendants were charged with capital-eligible offenses. The decision whether to seek the death penalty is a "complex and appropriately deliberative process." *United States v. Aquart*, 92 F.4th 77, 97 (2d Cir. 2024) (internal quotation marks omitted). And Cortorreal's co-defendants specifically requested that the government not "fast-track" the decision to afford time for mitigation submissions. In addition, the extradition process requires "multiple levels of review and certification." A-239. "Where there is a reasonable explanation for a delay, its negative implications will be vitiated." *Garcia Montalvo v. United States*, 862 F.2d 425, 426 (2d Cir. 1988). Furthermore, it would have been futile to extradite

Cortorreal while the death penalty was still being considered, as "[i]t is DOJ practice not to seek extradition of any defendant from the Dominican Republic unless it can provide assurances to the Dominican Republic that it will not seek the death penalty." A-236; *see United States v. Diacolios*, 837 F.2d 79, 83 (2d Cir. 1988) ("Due diligence surely does not require the government to pursue that which is futile.").

The district court also properly found that even if some or all of the delay was not justified, there was no resulting prejudice to Cortorreal. He was not in custody, but at liberty in the Dominican Republic until September 2019. Cortorreal cites no concrete basis for finding that the delay prejudiced his defense, nor did COVID-19 restrictions substantially impair Cortorreal's trial preparations because he went to trial in 2023 after the restrictions were "lifted, or at the very least, significantly diminished." A-240. Finally, "overwhelming evidence" of Cortorreal's guilt was presented at trial, undermining his claim that witnesses might have had diminished memories. A-371; *see also United States v. Loud Hawk*, 474 U.S. 302, 315 (1986) (noting that a mere "possibility of prejudice [due to the absence or loss of memories of witnesses] is not sufficient to support respondents' position that their speedy trial rights were violated.").

II. Motion To Cap Sentence

"Based on international comity, the principle of speciality generally requires a country seeking extradition to adhere to any limitations placed on prosecution by the surrendering country." *Baez*, 349 F.3d at 92. "Although the rule of specialty is typically applied in cases where the defendant is tried for a crime not enumerated in the applicable extradition treaty or agreement, it also 'has application in the sentencing context.'" *United States v. Suarez*, 791 F.3d 363, 366 (2d Cir. 2015) (quoting *United States v. Cuevas*, 496 F.3d 256, 262 (2d Cir. 2007)).

Because extradition agreements "implicate the foreign relations of the United States," a district court in sentencing a defendant extradited to this country "delicately must balance its discretionary sentencing decision with the principles of international comity in which the rule of speciality sounds." *Baez*, 349 F.3d at 93.

The rule of speciality has been "viewed as a privilege of the asylum state, designed to protect its dignity and interests, rather than a right accruing to the accused." *Shapiro v. Ferrandina*, 478 F.2d 894, 906 (2d Cir. 1973). We have thus held that a defendant "would only have prudential standing to raise the claim that his sentence violated the terms of his extradition if the [surrendering government] first makes an official protest." *Suarez*, 791 F.3d at 367. It is "the offended state[] which must in the first instance determine whether a violation of sovereignty occurred, or requires redress." *Id.* (quoting *United States ex rel. Lujan v. Gengler*, 510 F.2d 62, 67 (2d Cir. 1975)).

The district court did not err in denying Cortorreal's motion to cap his sentence at 30 years' imprisonment because Cortorreal has no standing to enforce the terms of the extradition decree. "[A]bsent protest or objection by the offended sovereign, [a defendant] has no standing to raise the violation of international law as an issue." *Suarez*, 791 F.3d at 367 (quoting *United States v. Reed*, 639 F.2d 896, 902 (2d Cir. 1981)). Here, the Dominican Republic has not sought to enforce any sentencing cap.

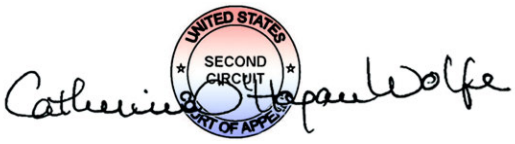
Cortorreal argues that the decree here confers standing on him because it was drafted for his benefit. But that argument "conflates two distinct concepts: treaty language directly benefiting private persons, which international agreements regularly feature; and treaty language indicating that the intent of the treaty drafters was that such benefits could be vindicated through

private enforcement, which is far less common." *United States v. Garavito-Garcia*, 827 F.3d 242, 247 (2d Cir. 2016) (cleaned up). The decree here contains no language granting Cortorreal any right of enforcement absent an objection from the Dominican Republic.

In any event, Cortorreal's argument would fail even if he had standing to raise it because the United States made no assurances to the Dominican Republic concerning the length of his sentence. A district court is under "no obligation" to limit a defendant's sentence when the "United States never made any substantive assurances to the Dominican Republic that if extradited and convicted, [the defendant] would not be sentenced to a term of more than 30 years' imprisonment." *Cuevas*, 496 F.3d at 263–64.

We have considered all of Cortorreal's remaining arguments and find them to be without merit. For the foregoing reasons, the judgment of the district court is **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
	:	
-against-	:	
	:	17-CR-438 (VEC)
EDWIN CORTORREAL,	:	
	:	OPINION & ORDER
Defendant.	:	

VALERIE CAPRONI, United States District Judge:

On April 26, 2023, following a jury trial, Edwin Cortorreal was convicted of (1) racketeering conspiracy, in violation of 18 U.S.C. § 1962(d); (2) murder in aid of racketeering, in violation of 18 U.S.C. §§ 1959(a)(1) and 2; and (3) the use of a firearm resulting in death in connection with a conspiracy to distribute marijuana. *See* Verdict Form, Dkt. 817. Sentencing is scheduled for September 20, 2023. *See* Order, Dkt. 816. Mr. Cortorreal has moved to limit his sentence to a maximum of 30 years based on an alleged agreement between the United States Government and the Government of the Dominican Republic to secure Mr. Cortorreal's extradition (the "Motion"). *See* Def. Mem. at 7–8, Dkt. 838.[1] The Government opposes the Motion. Gov. Opp., Dkt. 843. For the reasons discussed below, Defendant's motion is DENIED.

BACKGROUND

On July 12, 2017, the Grand Jury returned a five-count Superseding Indictment charging Mr. Cortorreal with racketeering conspiracy, in violation of 18 U.S.C. § 1962(d) (Count One); murder in aid of racketeering, in violation of 18 U.S.C. §§ 1959(a)(1) and 2 (Count Two); participating in a conspiracy to distribute more than a kilogram of heroin, more than five kilograms

[1] In connection with the Motion, Mr. Cortorreal requests a subpoena to obtain the names of individuals who communicated with Dominican authorities on behalf of the United States. *See* Def. Letter, Dkt. 839.

of cocaine, and more than 1,000 kilograms of marijuana, in violation of 21 U.S.C. §§ 841(b)(1)(A) and 846 (Count Three); the use of a firearm resulting in death in connection with the crimes charged in Counts One and Two, in violation of 18 U.S.C. §§ 924(j)(1) and 2 (Count Four); and the use of firearms in connection with the crimes charged in Counts One and Three, in violation of 18 U.S.C. §§ 924(c)(1)(A)(i), (ii) and 2 (Count Five). *See* Indictment, Dkt. 537.

Between April and December 2018, the U.S. Attorney's Office ("USAO") communicated with the Department of Justice's Office of International Affairs ("OIA") regarding a request to the Dominican Republic for Mr. Cortorreal's extradition. Gov. Opp. at 1. On March 14, 2019, the United States Embassy in the Dominican Republic presented the extradition request to the Dominican equivalent of the United States Department of State ("MIREX"); the extradition package included an express assurance that the United States would not seek the death penalty. *Id.* at 1–2; *see also* Ex. A, Warner Decl., ¶¶ 8, 21, Dkt. 843-1.

On September 30, 2019, Dominican authorities arrested Mr. Cortorreal pursuant to an arrest warrant issued by the Dominican Supreme Court. Gov. Opp. at 2. On November 22, 2019, the President of the Dominican Republic granted the U.S. Government's request to extradite Mr. Cortorreal and issued the "*Decreto*," an order that directed Dominican authorities to execute the extradition request.[2] *See id.*; *see also* Ex. B, Supp. Warner Decl., ¶ 4, Dkt. 838-2. On or around December 19, 2019, the U.S. Embassy in the Dominican Republic received the *Decreto* along with a diplomatic note in which the Dominican Government requested the United States to "indicate its acceptance" that, if convicted, Mr. Cortorreal's "penalty" would not exceed 30 years. Gov. Opp. at 2–3. Although the United States did not respond to that diplomatic note, the Dominican

[2] "A *Decreto* memorializes the decision of the President of the [Dominican Republic] to grant extradition." Ex. B, Supp. Warner Decl., ¶ 4, Dkt. 843-2.

authorities surrendered Mr. Cortorreal to United States law enforcement officers and, on January 31, 2020, Mr. Cortorreal was brought to the United States. *Id.* at 3; *see also* Def. Mem. at 7.

Mr. Cortorreal argues that the Court should "save the United States from a breach of faith" and enforce the Government's supposed agreement with the Dominican Republic not to impose a prison sentence of more than 30 years. *See* Def. Mem. at 6. According to Mr. Cortorreal, he agreed to waive extradition based on the assurances given by a Dominican judge when he was arrested that he would not face more than 30 years, a condition that the United States acquiesced to upon taking Mr. Cortorreal into custody from Dominican authorities. *See* Ex. G, Cortorreal Decl. ¶¶ 4–5, Dkt. 838-7; *see also* Ex. C, Cortorreal Waiver, Dkt. 838-3. The Government argues, however, that, even if the United States agreed to limit Mr. Cortorreal's maximum sentence, Mr. Cortorreal does not have standing to enforce that agreement. Gov. Opp. at 4–5. Further, even if Mr. Cortorreal had standing, the Government argues that it made no such agreement with the Dominican Republic. *See id.* at 10–11; Ex. C, Heinemann Decl. ¶¶ 6–7, Dkt. 843-3. Because the Court finds Mr. Cortorreal lacks standing, his Motion is denied.

DISCUSSION

An extradited defendant can only be tried for an offense "described in th[e] treaty [under which he is extradited], and for the offen[s]e with which he is charged in the proceedings for his extradition." *United States v. Barinas*, 865 F.3d 99, 104 (2d Cir. 2017) (quoting *United States v. Rauscher*, 119 U.S. 407, 430 (1886)). The rule of specialty "generally requires a country seeking extradition to adhere to any limitations placed on the prosecution by the surrendering country." *United States v. Suarez*, 791 F.3d 363, 366 (2d Cir. 2015) (quoting *United States v. Baez*, 349 F.3d

90, 92 (2d Cir. 2003)).[3] "A country that consents to extradite a person has the right to enforce such limitations." *Barinas*, 865 F.3d at 104 (citing *United States v. Garavito-Garcia*, 827 F.3d 242, 246–47 & n.33 (2d Cir. 2016)).

Because an international treaty is a compact between independent nations, it establishes the rights and obligations of the States involved; although an individual may benefit because of a treaty's existence, a treaty generally does not establish rights between states and individuals. *Mora v. New York*, 524 F.3d 183, 194–95201 (2d Cir. 2008) (citing *Head Money Cases*, 112 U.S. 580, 598 (1884) and *United States ex rel. Lujan v. Gengler,* 510 F.2d 62, 67 (2d Cir. 1975)); *see also Medellín v. Texas*, 552 U.S. 491, 506 n.3 (2008) ("Even when treaties are self-executing in the sense that they create federal law, the background presumption is that '[i]nternational agreements, even those directly benefiting private persons, generally do not create private rights or provide for a private cause of action in domestic courts.'"). Accordingly, the Second Circuit has held that a criminal defendant lacks standing to enforce an international agreement, regardless of whether he "objects based on the rule of specialty or based on the interpretation of an extradition treaty or Diplomatic Note," unless the surrendering state "first makes an official protest." *Suarez*, 791 F.3d at 367. Because "[t]he provisions in question are designed to protect the sovereignty of states, . . . it is plainly the offended states which must in the first instance determine whether a violation of sovereignty occurred[] or requires redress." *Gengler*, 510 F.2d at 67.

Mr. Cortorreal argues that, notwithstanding clear Second Circuit precedent, he has standing to enforce the terms of the *Decreto* because its sentencing-cap provision was "written specifically for him" and was "issued explicitly — and solely — for [Mr. Cortorreal's] benefit." Def. Mem. at

[3] "Although the rule of specialty is typically applied in cases where the defendant is tried for a crime not enumerated in the applicable extradition treaty or agreement, it also 'has application in the sentencing context.'" *Suarez*, 791 F.3d at 366 (quoting *United States v. Cuevas*, 496 F.3d 256, 262 (2d Cir. 2007)).

8. Because Mr. Cortorreal relied on that provision and "not on general language in a treaty between nations" when waiving extradition, Mr. Cortorreal argues that the *Decreto* is a different creature than the treaties or diplomatic notes that the Second Circuit has held criminal defendants lack standing to enforce. *See id.* The Court disagrees.

In connection with the defendant's extradition in *United States v. Suarez*, the United States, in a diplomatic note, "promised" the Government of Colombia that "a sentence of life imprisonment[would] not be sought or imposed." 791 F.3d at 365. At sentencing, the district court imposed a term of imprisonment of 648 months, the functional equivalent of a life sentence. *Id.* On appeal, Suarez sought to challenge his sentence based on the assurances provided by the United States in the diplomatic note; the Second Circuit found that Suarez lacked standing to enforce that commitment. *Id.* at 367. The Second Circuit's reasoning in *Suarez* applies with equal force here: the *Decreto* is just like any other "extradition document," and "[a]ny individual right" that Mr. Cortorreal may have under the sentencing-cap provision is "only derivative through the state." *Id.* (quoting *Gengler*, 510 F.2d at 67). Thus, even when the United States makes a commitment to a foreign state in a diplomatic note to abide by a limit on punishment, it is only the "country that consents to extradite a person [that] has the right to enforce such limitations." *Barinas*, 865 F.3d at 104; *see also Garavito-Garcia*, 827 F.3d at 246 ("[A]bsent protest or objection by the offended sovereign, a defendant has no standing to raise the violation of international law as an issue."). To state the obvious, if Suarez lacked standing when the United

States actually made promises to the extraditing country, then Cortorreal, as to whom the United States made no promises, certainly lacks standing.[4]

In short, this Court is bound by Second Circuit precedent: even if it is true that Mr. Cortorreal only waived extradition because he was assured that he would not face a term of imprisonment in excess of 30 years, and even if the conduct of the United States could be viewed as acquiescence to the sentencing-cap condition, Mr. Cortorreal lacks standing to enforce it absent protest or objection by the Dominican Republic.[5]

The Court further denies Mr. Cortorreal's request to issue a subpoena for the names of individuals who communicated with Dominican authorities in connection with Mr. Cortorreal's extradition. Although Mr. Cortorreal seeks to establish a record of the facts surrounding his extradition, Def. Letter at 1–2, there are no discoverable (or non-discoverable) communications between the United States and the Dominican Republic that will change the facts that (1) the Dominican Republic has not stepped forward to enforce the sentencing limitation contained in the *Decreto* and (2) Mr. Cortorreal individually lacks standing to enforce any such limitation on his sentence. Accordingly, Mr. Cortorreal's request for permission to issue subpoenas is denied.

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[4] Comparing the purported agreement vis-à-vis the maximum prison term with the agreement vis-à-vis the death penalty is revealing as to whether either country believed there was an actual agreement as to the former. When the United States intends to make a commitment to the extraditing country, it knows how to do it. By the same token, when the Dominican Republic wants to insist on a particular condition, it knows how to do that as well. Here, the Dominican Republic only conditioned extradition on the United States' agreement not to seek the death penalty; it did not condition release of its citizen on a commitment by the United States with regard to the maximum sentence, and the United States never made any commitment on that score.

[5] Mr. Cortorreal argues that by accepting his surrender from Dominican authorities, the United States acquiesced to the Dominican Republic's condition that Mr. Cortorreal's sentencing exposure be capped at 30 years, particularly because the sentencing condition was imposed *before* transferring Mr. Cortorreal to the custody of the United States. Def. Mem. at 6, 10 (citing *Cuevas*, 496 F.3d at 262–64). Because the Court finds that Mr. Cortorreal lacks standing to enforce the sentencing condition, regardless of the chronology of events, it does not reach the issue of whether the United States acquiesced to and is bound by the terms of the *Decreto*.

CONCLUSION

For the foregoing reasons, Mr. Cortorreal's motion is DENIED. The Clerk of Court is respectfully directed to terminate the open motions at docket entries 838 and 839.

The parties are reminded that sentencing will take place on **September 20, 2023, at 2:30 p.m.** in Courtroom 443 of the Thurgood Marshall Courthouse, 40 Foley Square, New York, New York, 10007.

SO ORDERED.

Date: July 31, 2023
New York, New York

VALERIE CAPRONI
United States District Judge

Danilo Medina
President of the Dominican Republic

Justice Department

[Coat of Arms]
Office of the Attorney General of the Republic
General Secretariat of the Justice Department
"Year of Innovation and Competitivity"

CERTIFICATION

The undersigned, **Ena Ortega, Esq.**, Secretary General of the Justice Department, CERTIFY AND ATTEST: That pursuant to Decree 423-19, dated November 22, 2019, the turning over for extradition of Dominican citizen **EDWIN CORTORREAL, aka EDWIN ANTONIO CORTORREAL LORA, aka CRAZY ED,** to the authorities of the United States of America, was ordered, to face the charges presented against him, who, according to information provided by the International Office of Legal Assistance and Extradition of this Office of the Attorney General of the Republic, was arrested on September 30, 2019, and has remained in provisional detention until he is definitively turned over to the authorities of the United States of America.

This certification is issued at the request of the interested party in the City of Santo Domingo de Guzman, National District, capital of the Dominican Republic, on the twenty sixth (26) day of the month of December of the year two thousand nineteen (2019).

[Signature]
By *Sara Cruz, Esq.* for
Ena Ortega L., Esq.
Secretary General of the Justice Department

[A seal has been stamped on the above signature; it reads:
Office of the Attorney General of the Republic
General Secretariat
Santo Domingo, Dominican Republic]

Danilo Medina
President of the Dominican Republic

Danilo Medina
President of the Dominican Republic

[Coat of Arms]
Danilo Medina

President of the Dominican Republic

NUMBER: 423-19

WHEREAS: The United States of America, by means of diplomatic note No. 255, of March 11, 2019, issued by its Embassy in the Dominican Republic, requested the Dominican Government to deliver in extradition Dominican citizen Edwin Cortorreal, aka Edwin Antonio Cortorreal Lora, aka Crazy Ed, pursuant to the charges presented against him in Indictment, case no. S1 17 Cr. 438, also known as S1 17 Cr. 438 (VEC) and 1:17-cr-00438-VEC, of July 12, 2017, filed at the United States District Court for the Southern District of New York, which are the following:

Count 1: Conspiracy to participate in a racketeering enterprise, or "racketeering conspiracy," in violation of Title 18, United States Code, Section 1962 (d).

Count 2: Murder in aid of racketeering, in violation of Title 18, United States Code, Sections 1959 (a) (1) and 2.

Count 3: Conspiracy to distribute and posses with the intent to distribute a controlled substance, to wit, (a) one kilogram and more of mixtures and substances which contained a detectable amount of heroin, (b) five kilograms and more of mixtures and substances which contained a detectable amount of cocaine and (c) 1000 kilograms and more of mixtures and substances which contained a detectable amount of marijuana, in violation of Title 21, United States Code, Sections 846, 841 (a) (1) and 841 (b) (1) (A).

Count 4: The use of firearms resulting in a death, in violation of Title 18, United States Code, Sections 924(j)(1) and 2 and 2 y.

Count 5: The use and carrying of firearms, in furtherance of a crime of violence and a drug trafficking crime, possession of firearms, and aiding and abetting the use, carrying and possession of firearms, in violation of Title 18, United States Code, Sections 924(c)(1)(A)(i), 924(c)(1)(A)(ii), and 2.

Danilo Medina
President of the Dominican Republic

Whereas: The Second Chamber of the Supreme Court of Justice was assigned the request for extradition of Dominican citizen Edwin Cortorreal, aka Edwin Antonio Cortorreal Lora, aka Crazy Ed, on March 18, 2019, by the Attorney General of the Republic.

Whereas: That, according to the court reporter's notes of the public hearing held on October 4, 2019, by the Second Chamber of the Supreme Court of Justice, the Dominican citizen Edwin Cortorreal, aka Edwin Antonio Cortorreal Lora, aka Crazy Ed, selected the simplified process of extradition when he voluntarily consented before the Judges of the Second Chamber, to be turned over to the authorities of the Government of the United States to be tried for the charges presented against him.

Whereas: That, pursuant to Article 1 of the Extradition Treaty subscribed to by the Government of the Dominican Republic and the Government of the United States of America, enacted in resolution No. 507-16, of June 10, 2016, The Parties committed to mutually turn over in extradition those persons who may be requested by the Requesting Party of the Requested Party to be tried, or for the imposition or fulfillment of a sentence of a term of imprisonment for one or for several of the crimes which give rise to the extradition.

Whereas: That, pursuant to Article 16 of the Extradition Treaty, the Requested Party may expedite the transfer of the requested person to the Requesting Party when this consists of the extradition or of a simplified extradition procedure, in which case the person may be turned over as expeditiously as possible.

Whereas: That the extradition procedure established in the Treaty also applies to requests for extradition for crimes committed before it went into effect, as long as on the date the crime was committed the facts that gave rise to the request for extradition had the character of a crime, pursuant to the laws of both parties.

Whereas: That the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, in Article 6, paragraphs 1 and 2, includes drug trafficking, defined in Article 3 of the Convention among the violations that give rise to extradition, making it be included in any extradition treaty in force between the Parties to the Convention.

Whereas: That international assistance for the extradition of Dominican citizen Edwin Cortorreal, aka Edwin Antonio Cortorreal Lora, aka Crazy Ed, was requested in compliance with the provisions of articles 160 and those following of law No. 76-02, of July 19, 2002, established by the Criminal Code of Procedure.

Considering: Resolution No. 507-16, of June 10, 2016, which approves the Extradition Treaty subscribed between the Government of the Dominican Republic and the Government of the United States of America.

Considering: Articles 160 and those that follow of Law No. 76-02, which establishes the Criminal Code of Procedure of July 19, 2002.

Danilo Medina
President of the Dominican Republic

Considering: Resolution No. 7-93, of May 30, 1993, which approves the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

In exercise of the powers conferred on me by Article 128 of the Constitution of the Republic, I decree the following:

DECREE:

Article 1. The extradition of Dominican citizen Edwin Cortorreal, aka Edwin Antonio Cortorreal Lora, aka Crazy Ed, to the United States of America is ordered, based on the accusations brought against him in the Indictment of Case No. S1 17 Cr. 438, also known as S1 17 Cr. 438 (VEC) and 1:17-cr-00438-VEC, of July 12, 2017, filed before the United States District Court for the Southern District of New York, which are the following:

Count 1: Conspiracy to participate in a racketeering enterprise, or "racketeering conspiracy," in violation of Title 18, United States Code, Section 1962 (d).

Count 2: Murder in aid of racketeering, in violation of Title 18, United States Code, Sections 1959 (a) (1) and 2.

Count 3: Conspiracy to distribute and posses with the intent to distribute a controlled substance, to wit, (a) one kilogram and more of mixtures and substances which contained a detectable amount of heroin, (b) five kilograms and more of mixtures and substances which contained a detectable amount of cocaine and (c) 1000 kilograms and more of mixtures and substances which contained a detectable amount of marijuana, in violation of Title 21, United States Code Sections 846, 841 (a) (1) and 841 (b) (1) (A).

Count 4: The use of firearms resulting in a death, in violation of Title 18, United States Code, Sections 924(j)(1) and 2 and [sic].

Count 5: The use and carrying of firearms, in furtherance of a crime of violence and a drug trafficking crime, possession of firearms, and aiding and abetting the use, carrying and possession of firearms, in violation of Title 18, United States Code, Sections 924(c)(1)(A)(i), 924(c)(1)(A)(ii), and 2.

Paragraph: Said extradition turning over is ordered under the condition that Dominican citizen Edwin Cortorreal, aka Edwin Antonio Cortorreal Lora, aka Crazy Ed, will under no circumstance

Danilo Medina
President of the Dominican Republic

be tried for a violation other than the one that gives rise to his extradition, nor will a penalty greater than the maximum penalty established in the Dominican Republic be applied, which is thirty (30) years, nor will the death penalty be applied, in case his culpability is proven as regards the violations due to which his extradition is ordered and for which he will be tried.

Article 2. Forward to the Ministry of Foreign Affairs, to the Office of the Attorney General of the Republic and to the Department of Migration, so that they be advised and for execution.

Issued in Santo Domingo de Guzman, National District, capital of the Dominican Republic, on the twenty second (22) of the month of November of the year two thousand nineteen (2019); year 176 of Independence and 157 of the Restoration.

[Signed]

Danilo Medina

MINISTERIO PÚBLICO

PROCURADURÍA GENERAL DE LA REPÚBLICA
SECRETARÍA GENERAL DEL MINISTERIO PÚBLICO
"Año de la Innovación y la Competitividad"

CERTIFICACIÓN

Quien suscribe, **Lcda. Ena Ortega L.,** Secretaria General del Ministerio Público, **CERTIFICO Y DOY FE**: Que en virtud del Decreto 423-19, de fecha 22 de noviembre de 2019, se dispuso la entrega en extradición a las autoridades de los Estados Unidos de América del nacional dominicano **EDWIN CORTORREAL alias EDWIN ANTONIO CORTORREAL LORA alias CRAZY ED**, para enfrentar los cargos que se le imputan, quien, según información suministrada por la Oficina de Asistencia Jurídica Internacional y Extradición de esta Procuraduría General de la República, fue arrestado el 30 de septiembre de 2019 y ha permanecido en prisión preventiva hasta su entrega definitiva a las autoridades de Estados Unidos de América.

La presente certificación se expide a solicitud de la parte interesada en la ciudad de Santo Domingo de Guzmán, Distrito Nacional, capital de la República Dominicana, a los veintiséis (26) días del mes de diciembre del año dos mil diecinueve (2019).

PROCURADURIA GENERAL DE LA REPÚBLICA
SECRETARIA GENERAL
Santo Domingo, R.D.

Lcda. Ena Ortega L.
Secretaria General del Ministerio Público

Danilo Medina
Presidente de la República Dominicana

NÚMERO: 423-19

CONSIDERANDO: Que los Estados Unidos de América, mediante la nota diplomática núm. 255, del 11 de marzo de 2019, de su embajada en la República Dominicana, solicitó al Gobierno dominicano la entrega en extradición del nacional dominicano Edwin Cortorreal, alias Edwin Antonio Cortorreal Lora, alias Crazy Ed, por motivo de los cargos que se le imputan en el acta de acusación del caso núm. S1 17 Cr. 438, también conocido como S1 17 Cr. 438 (VEC) y 1:17-cr-00438-VEC, del 12 de julio de 2017, interpuesta ante el Tribunal de Distrito de los Estados Unidos para el Distrito Sur de Nueva York, los cuales son los siguientes:

Cargo 1: Asociación delictuosa para participar en una empresa de delincuencia organizada, o bien "asociación delictuosa de delincuencia organizada", en violación al título 18 del Código de los Estados Unidos, sección 1962 (d).

Cargo 2: Homicidio en ayuda de la delincuencia organizada, en violación del Título 18 del Código de los Estados Unidos, Secciones 1959 (a) (1) y 2.

Cargo 3: Asociación delictuosa para distribuir y poseer, con la intención de distribuir una sustancia controlada, a saber: (a) un kilogramo y más de mezclas y sustancias que contenían una cantidad detectable de heroína, (b) cinco kilogramos y más de mezclas y sustancias que contenían una cantidad detectable de cocaína y (c) 1,000 kilogramos y más de mezclas y sustancias que contenían una cantidad detectable de marihuana, en violación al título 21 del Código de los Estados Unidos, secciones 846, 841(a)(1) y 841(b)(1)(A).

Cargo 4: Uso de armas de fuego que causaron una muerte, en violación al título 18 del Código de los Estados Unidos, secciones 924(j)(1) y 2 y.

Cargo 5: Uso y porte de armas de fuego para fomentar un delito de violación y un delito de narcotráfico, posesión de armas de fuego y ayuda e instigación del uso, porte y posesión de armas de fuego, en violación del título 18 del Código de los Estados Unidos, secciones 924(c)(1)(A)(i), 924(c)(1)(A)(ii), y 2.

CONSIDERANDO: Que la Segunda Sala de la Suprema Corte de Justicia fue apoderada de la solicitud de extradición del nacional dominicano Edwin Cortorreal, alias Edwin

Antonio Cortorreal Lora, alias Crazy Ed, el 18 de marzo de 2019, del procurador general de la República.

CONSIDERANDO: Que, de acuerdo a las notas estenográficas de la audiencia pública celebrada el 4 de octubre de 2019 por la Segunda Sala de la Suprema Corte de Justicia, el nacional dominicano Edwin Cortorreal, alias Edwin Antonio Cortorreal Lora, alias Crazy Ed, optó por el trámite simplificado de extradición al consentir voluntariamente ante los magistrados de la Segunda Sala, ser entregado a las autoridades del Gobierno de los Estados Unidos para que ser juzgado por los cargo que se le imputan.

CONSIDERANDO: Que, en virtud del artículo 1 del Tratado de Extradición suscrito entre el Gobierno de la República Dominicana y el Gobierno de los Estados Unidos de América, promulgado mediante la resolución núm. 507-16, del 10 de junio de 2016, las Partes se comprometieron a entregarse recíprocamente en extradición a las personas que sean requeridas por la Parte Requirente a la Parte Requerida para su enjuiciamiento o para la imposición o el cumplimiento de una sentencia condenatoria a pena privativa de libertad por uno o varios de los delitos que den lugar a la extradición.

CONSIDERANDO: Que, en virtud del artículo 16 del Tratado de Extradición, la Parte Requerida puede agilizar la transferencia de la persona reclamada a la Parte Requirente cuando esta consienta a la extradición o a un procedimiento de extradición simplificado, en cuyo caso puede ser entregada con la mayor celeridad posible.

CONSIDERANDO: Que el procedimiento de extradición previsto en el Tratado también aplica a solicitudes de extradición por delitos cometidos con anterioridad a su vigencia, siempre que en la fecha de su comisión los hechos que motivaron la solicitud de extradición tuvieran carácter de delito, conforme a la legislación de ambas Partes.

CONSIDERANDO: Que la Convención de las Naciones Unidas contra el Tráfico Ilícito de Estupefacientes y Sustancias Sicotrópicas, en su artículo 6, párrafos 1 y 2, incluye el narcotráfico, tipificado en el artículo 3 de la Convención entre las infracciones que dan lugar a extradición, haciéndolo incluir en cualquier tratado de extradición vigente entre las Partes de la Convención.

CONSIDERANDO: Que la asistencia internacional para la extradición del nacional dominicano Edwin Cortorreal, alias Edwin Antonio Cortorreal Lora, alias Crazy Ed, fue solicitada en cumplimiento de las disposiciones de los artículos 160 y siguientes de la ley núm. 76-02, del 19 de julio de 2002, que establece el Código Procesal Penal.

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VISTA: La resolución núm. 507-16, del 10 de junio de 2016, que aprueba el Tratado de Extradición suscrito entre el Gobierno de la República Dominicana y el Gobierno de los Estados Unidos de América.

VISTOS: Los artículos 160 y siguientes de la ley núm. 76-02, que establece el Código Procesal Penal, del 19 de julio de 2002.

VISTA: La Resolución núm. 7-93, del 30 de mayo de 1993, que aprueba la Convención de las Naciones Unidas contra el Tráfico Ilícito de Estupefacientes y Sustancias Sicotrópicas.

En ejercicio de las atribuciones que me confiere el artículo 128 de la Constitución de la República, dicto el siguiente

D E C R E T O:

Artículo 1. Se dispone la entrega en extradición a los Estados Unidos de América del ciudadano dominicano Edwin Cortorreal, alias Edwin Antonio Cortorreal Lora, alias Crazy Ed, por motivo de los cargos que se le imputan en el acta de acusación del caso núm. S1 17 Cr. 438, también conocido como S1 17 Cr. 438 (VEC) y 1:17-cr-00438-VEC, del 12 de julio de 2017, interpuesta ante el Tribunal de Distrito de los Estados Unidos para el Distrito Sur de Nueva York, los cuales son los siguientes:

Cargo 1: Asociación delictuosa para participar en una empresa de delincuencia organizada, o bien "asociación delictuosa de delincuencia organizada", en violación al título 18 del Código de los Estados Unidos, sección 1962 (d).

Cargo 2: Homicidio en ayuda de la delincuencia organizada, en violación del título 18 del Código de los Estados Unidos, secciones 1959 (a) (1) y 2.

Cargo 3: Asociación delictuosa para distribuir y poseer, con la intención de distribuir, una sustancia controlada, a saber: (a) un kilogramo y más de mezclas y sustancias que contenían una cantidad detectable de heroína, (b) cinco kilogramos y más de mezclas y sustancias que contenían una cantidad detectable de cocaína y (c) 1,000 kilogramos y más de mezclas y sustancias que contenían una cantidad detectable de marihuana, en

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violación al título 21 del Código de los Estados Unidos, secciones 846, 841(a)(1) y 841(b)(1)(A).

Cargo 4: Uso de armas de fuego que causaron una muerte, en violación al título 18 del Código de los Estados Unidos, secciones 924(j)(1) y 2 y.

Cargo 5: Uso y porte de armas de fuego para fomentar un delito de violación y un delito de narcotráfico, posesión de armas de fuego, y ayuda e instigación del uso, porte y posesión de armas de fuego, en violación del título 18 del Código de los Estados Unidos, secciones 924(c)(1)(A)(i), 924(c)(1)(A)(ii), y 2.

Párrafo: Dicha entrega en extradición se dispone bajo la condición de que al ciudadano dominicano Edwin Cortorreal, alias Edwin Antonio Cortorreal, Lora alias Crazy Ed, bajo ninguna circunstancia se le juzgará por una infracción diferente a la que motiva su extradición, ni se le aplicará una pena mayor a la máxima establecida en la República Dominicana, que es de treinta (30) años, ni la pena de muerte, en el caso de que se comprobare su culpabilidad respecto de las infracciones por las cuales se dispone su extradición y deberá ser juzgado.

Artículo 2. Envíese al Ministerio de Relaciones Exteriores, a la Procuraduría General de la República y a la Dirección General de Migración, para su conocimiento y ejecución.

DADO en Santo Domingo de Guzmán, Distrito Nacional, capital de la República Dominicana, a los veintidós (22) días del mes de noviembre del año dos mil diecinueve (2019); año 176 de la Independencia y 157 de la Restauración.

Danilo Medina