No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOSE TRINIDAD MARTINEZ SANTOYO,
Petitioner,
v.

LASHA BOYDEN, U.S. Marshal for the Eastern District of CA; MINDY MCQUIVEY, Chief, U.S. Probation Office for the Eastern District of CA; MERRICK B. GARLAND, Attorney General; ANTONY J. BLINKEN,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

Appendix A

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE TRINIDAD MARTINEZ SANTOYO,

Petitioner - Appellant,

v.

LASHA BOYDEN, U.S. Marshal for the Eastern District of CA; et al.,

Respondents - Appellees.

No. 24-1967

D.C. No.
2:23-cv-00447-DJC-JDP
Eastern District of California,
Sacramento

ORDER

Before: OWENS, VANDYKE, and JOHNSTONE, Circuit Judges.

The panel has voted to deny Appellant's petition for panel rehearing and petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it. Fed. R. App. P. 40.

Appellant's petition for panel rehearing and petition for rehearing en banc are therefore DENIED.

Appendix B

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOSE TRINIDAD MARTINEZ SANTOYO, *Petitioner - Appellant*, v. LASHA BOYDEN, U.S. Marshal for the Eastern District of CA; MINDY MCQUIVEY, Chief, U.S. Probation Office for the Eastern District of CA; MERRICK B. GARLAND, Attorney General; ANTONY J. BLINKEN, *Respondents - Appellees*.	No. 24-1967 D.C. No. 2:23-cv-00447-DJC-JDP OPINION

Appeal from the United States District Court
for the Eastern District of California
Daniel J. Calabretta, District Court, Presiding

Argued and Submitted February 10, 2025
San Francisco, California

Filed March 11, 2025

Before: John B. Owens, Lawrence VanDyke, and Anthony D. Johnstone, Circuit Judges.

Opinion by Judge Owens

SUMMARY*

Extradition

Affirming the district court's denial of a habeas corpus petition challenging an order certifying the petitioner's extradition to face charges in Mexico, the panel held that the "lapse of time" language in the extradition treaty between the United States and Mexico does not incorporate the Sixth Amendment Speedy Trial Clause.

The panel addressed other arguments in a concurrently filed memorandum disposition.

COUNSEL

Carolyn M. Wiggin (argued) and Rachelle Barbour, Assistant Federal Public Defenders; Heather E. Williams, Federal Public Defender; Federal Public Defender's Office, Sacramento, California; for Petitioner-Appellant.

Elliot C. Wong (argued) and Alstyn Bennett, Assistant United States Attorneys; Nirav K. Desai, Assistant United States Attorney, Appellate Chief; Phillip A. Talbert, United States Attorney; Office of the United States Attorney, Sacramento, California; for Respondents-Appellees.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

OPINION

OWENS, Circuit Judge:

Jose Trinidad Martinez Santoyo appeals from the denial of his petition for a writ of habeas corpus, which challenged an order certifying his extradition to face charges in Mexico. He argues that the district court erred in holding that the extradition treaty between the United States and Mexico, Extradition Treaty, U.S.-Mex., May 4, 1978, 31 U.S.T. 5059, did not incorporate the U.S. Constitution's Sixth Amendment Speedy Trial Clause.[1] We have jurisdiction under 28 U.S.C. § 1291 and § 2253, and we affirm.

I. BACKGROUND

In January 2014, a judge in Mexico issued an arrest warrant for intentional aggravated homicide alleging that one month earlier, Santoyo shot a man twice in the head after a heated argument. In November 2018, Mexico requested that the United States provisionally arrest Santoyo. In accordance with the governing extradition treaty, the United States filed a complaint in the Eastern District of California in August 2021, seeking a provisional arrest of Santoyo with a view towards extradition. Santoyo was arrested on May 12, 2022, and he remained in custody until November 4, 2022, when he was released on bail pending resolution of his extradition proceedings.

[1] Santoyo also argues that the district court erred in upholding the extradition court's finding of probable cause, excluding a forensic report, and denying his motion to compel certain discovery. We address these arguments in a concurrently filed memorandum disposition, in which we affirm.

In July 2022, Mexico formally requested Santoyo's extradition for aggravated intentional homicide. Accompanying this request were the 2014 arrest warrant, eyewitness statements, a police investigative report, and an autopsy report. After extensive litigation, a magistrate judge certified the extradition on February 24, 2023.

Santoyo then challenged that certification via a petition for writ of habeas corpus. Relevant to this opinion, he argued that the Sixth Amendment's speedy trial right applied to the extradition proceedings, as the treaty prohibited extradition when the prosecution "for which extradition has been sought has become barred by lapse of time according to the laws of the requesting or requested Party." Extradition Treaty art. 7. Santoyo contended that the "lapse in time" language necessarily incorporated a speedy trial right, and the delay between the issuance of Mexico's arrest warrant in January 2014 and the July 2022 formal extradition request mandated his release.

A different magistrate judge recommended rejecting that argument, and the district court agreed. Citing case law from several circuits (including ours), the district court held that the "lapse in time" language only referred to a statute of limitations, and not to the Sixth Amendment's speedy trial protections. And because there was no alleged statute of limitations problem, the extradition could proceed. Santoyo timely appealed from the denial of his habeas petition.

II. DISCUSSION

A. Standard of Review

"We review de novo the district court's denial of a habeas petition in extradition proceedings." *Rana v. Jenkins*, 113 F.4th 1058, 1063 (9th Cir. 2024) (citation omitted). Our

review is "severely limited." *Id.* (citation omitted). "We can review only 'whether: (1) the extradition magistrate judge had jurisdiction over the individual sought, (2) the treaty was in force and the accused's alleged offense fell within the treaty's terms, and (3) there is any competent evidence supporting the probable cause determination of the magistrate judge.'" *Id.* (citation omitted).

B. Extraditions and the U.S.-Mexico Treaty

"Extradition is a matter of foreign policy entirely within the discretion of the executive branch, except to the extent that the [extradition] statute interposes a judicial function." *Vo v. Benov*, 447 F.3d 1235, 1237 (9th Cir. 2006) (citation and alteration omitted); *see also* 18 U.S.C. § 3184 (federal extradition statute). Because extradition is a diplomatic process, the judiciary's role in extradition proceedings is very narrow. *See United States v. Knotek*, 925 F.3d 1118, 1132 (9th Cir. 2019).

Extradition proceedings begin when the country seeking extradition files a request with the State Department. *Patterson v. Wagner*, 785 F.3d 1277, 1279 (9th Cir. 2015). If the United States initiates judicial proceedings to extradite an accused in accordance with its treaty obligations, the extradition court must then hold an extradition hearing to determine whether to certify the accused for extradition. *Id.* As part of its review, it must determine whether there is probable cause to sustain the charge. *Id.* at 1279–80. If there is probable cause, the extradition court *must* certify the extradition to the Secretary of State, who ultimately determines whether to extradite the accused to the requesting state. *Id.*

We have emphasized that extradition hearings are not trials, *Prasoprat v. Benov*, 421 F.3d 1009, 1014 (9th Cir.

2005), mini trials, *see Santos v. Thomas*, 830 F.3d 987, 992, 1007 (9th Cir. 2016) (en banc), nor "dress rehearsal[s] for trial," *Oen Yin-Choy v. Robinson*, 858 F.2d 1400, 1407 (9th Cir. 1988) (citation omitted). Rather, they are "designed only to trigger the start of criminal proceedings against an accused; guilt remains to be determined in the courts of the demanding country." *Sainez v. Venables*, 588 F.3d 713, 717 (9th Cir. 2009) (citation omitted).

Here, the United States and Mexico have agreed to extradite those who have been charged with murder. Extradition Treaty, art. 1, 2(a). The treaty includes a "Lapse of Time" section, which provides: "Extradition shall not be granted when the prosecution or the enforcement of the penalty for the offense for which extradition has been sought has become barred by lapse of time according to the laws of the requesting or requested Party." Extradition Treaty, art. 7.

C. The Treaty Does Not Encompass a Sixth Amendment Speedy Trial Right

For more than forty years, the law on delay in extradition hearings has been clear: While a "delay in seeking extradition may be relevant to the Secretary of State's final determination as to whether extradition may go forward . . . [t]he delay may not, however, serve as a defense to judicial extradition proceedings." *Kamrin v. United States*, 725 F.2d 1225, 1227 (9th Cir. 1984); *cf. Munaf v. Geren*, 553 U.S. 674, 698–99 (2008) (principles of comity and respect for foreign sovereigns may preclude courts from scrutinizing their actions). The language in question—"lapse of time"—does not alter this long-standing presumption.

As a preliminary matter, the Sixth Amendment's text does not support its application to extradition proceedings.

It provides, "[i]n all *criminal prosecutions*, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI (emphasis added). An extradition proceeding is not a criminal prosecution. *See Martinez v. United States*, 828 F.3d 451, 457 (6th Cir. 2016) (en banc) (noting extradition proceedings "are not 'criminal prosecutions'"); *Sabatier v. Dabrowski*, 586 F.2d 866, 869 (1st Cir. 1978) ("[C]haracterizing [extradition] proceedings as 'criminal prosecutions' within the meaning of the sixth amendment . . . goes against the weight of authority and ignores the modest function of an extradition hearing."); *see also Santos*, 830 F.3d at 992 (noting extradition proceedings are not criminal trials "intended to ascertain guilt," and "neither the Federal Rules of Evidence nor the Federal Rules of Criminal Procedure apply" (citation omitted)). Rather, extradition is a diplomatic process by which the United States adheres to its treaty obligations by sending an individual sought by the requesting state to be prosecuted in that state. *See Patterson*, 785 F.3d at 1279 ("[E]xtradition is a diplomatic process carried out through the powers of the executive, not the judicial, branch." (citation omitted)).

Even if an extradition treaty could provide for American constitutional protections, the plain text of this treaty does not incorporate the Sixth Amendment. "The interpretation of a treaty, like the interpretation of a statute, begins with its text." *Medellín v. Texas*, 552 U.S. 491, 506 (2008). As Santoyo argues, the treaty includes a "lapse of time" provision, which implicates some sort of time bar. However, lapse of time alone does not establish a Sixth Amendment violation. This is because the speedy trial right does not prescribe a specific length of time and is context dependent. *See Barker v. Wingo*, 407 U.S. 514, 521 (1972) ("[T]he right to speedy trial is a more vague concept than other procedural

rights. It is, for example, impossible to determine with precision when the right has been denied.").

Therefore, to determine whether there has been a deprivation of the Sixth Amendment speedy trial right, courts must balance the length of the delay with other factors including "the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Id.* at 530. These factors are not exclusive, and none, including the length of delay, is "either necessary or sufficient, individually, to support a finding that a defendant's speed[y] trial right has been violated." *United States v. Mendoza*, 530 F.3d 758, 762 (9th Cir. 2008).

Because the Sixth Amendment right to a speedy trial does not bar prosecution or the enforcement of a penalty solely on the basis of a "lapse of time," the plain text of the treaty does not incorporate the Sixth Amendment or the balancing test required by the Supreme Court. *See Martinez*, 828 F.3d at 457–58 ("Because the Sixth Amendment does not establish a time limit, fixed or otherwise, before a trial must start, it does not create a rule that 'bar[s]' criminal prosecutions due to 'lapse of time.'"). As the Sixth Circuit noted en banc when considering the same argument under the same treaty provision, Santoyo's arguments "require us to add something to the Sixth Amendment that does not exist (a time bar)" and "to subtract requirements of the Sixth Amendment that do exist," such as the reason for the delay. *Id.* at 458.

In addition, an extradition court cannot consider the *Barker* and other relevant factors without exceeding its limited scope of review. The weighing of these factors would inevitably result in the very mini trials that we have cautioned against as "[t]he resolution of a speedy trial claim

necessitates a careful assessment of the particular facts of the case." *United States v. MacDonald*, 435 U.S. 850, 858 (1978) (noting "most speedy trial claims . . . are best considered only after the relevant facts have been developed at trial"); *see also Santos*, 830 F.3d at 991 ("It is fundamental that the person whose extradition is sought is not entitled to a full trial at the magistrate's probable cause hearing." (citation omitted)).

Crucially, the court would need to consider the reason for the delay, and consequently, compel a foreign sovereign to justify its actions and otherwise explain why the balance of factors weighs against a finding of a speedy trial violation. *See Yapp v. Reno*, 26 F.3d 1562, 1568 (11th Cir. 1994) ("A speedy trial inquiry would require [the extradition court], generally unfamiliar with foreign judicial systems and the problems and circumstances facing them, to assess the reasonableness of a foreign government's actions in an informational vacuum."); *cf. McNeely v. Blanas*, 336 F.3d 822, 827 (9th Cir. 2003) ("[T]he prosecution bears the burden of explaining pretrial delays."). However, "[f]oreign states requesting extradition are not required to litigate their criminal cases in American courts." *Santos*, 830 F.3d at 991. As such, the accused "does not have the right to introduce evidence in defense because that would require the government seeking his extradition 'to go into a full trial on the merits in a foreign country.'" *Id.* at 992 (citation omitted). Similarly, incorporating the Sixth Amendment would require the requesting state to litigate the merits of the speedy trial claim in the United States, which runs counter to the "principle[s] of comity" and "[r]espect for the sovereignty of other countries" which underpin the objectives of international extradition treaties. *Martinez*, 828 F.3d at 464 (citation omitted).

As the Sixth Circuit recognized, there is also the "question of fault." *Id.* In its speedy trial inquiry, the extradition court may need to consider whether an accused waived his Sixth Amendment right by evading the requesting state. *United States v. Myers*, 930 F.3d 1113, 1119 (9th Cir. 2019) ("When a defendant causes a post-indictment delay, the defendant is deemed to have waived the right to a speedy trial."); *see also Martinez*, 828 F.3d at 464 ("Whether the State or a defendant is more to blame for untoward delays is '[t]he flag all litigants seek to capture' in a speedy-trial case." (citation omitted)).

The parties to the treaty, a Senate Committee report, courts, and the Restatement (Third) of Foreign Relations Law also have consistently read the "lapse of time" language as a statutes of limitations bar. "Because a treaty ratified by the United States is 'an agreement among sovereign powers,' we [may] consider[] as 'aids to its interpretation' the negotiation and drafting history of the treaty as well as 'the postratification understanding' of signatory nations." *Medellín*, 552 U.S. at 507 (citation omitted). In addition, "[a] construction of a treaty by the political department of the government, while not conclusive upon courts called upon to construe it, is nevertheless of weight." *United States v. Lombera-Camorlinga*, 206 F.3d 882, 887 (9th Cir. 2000) (en banc) (citation omitted).

Here, the United States has interpreted the "Lapse of Time" article as encompassing only statutes of limitations and has construed its obligations as requiring extradition when "the applicable statutes of limitations [are] complied with." Similarly, while Mexico includes the relevant statutes of limitations and its compliance thereof in its formal extradition request, it does not mention any purported speedy trial requirement.

The Senate Committee on Foreign Relations' report on the extradition treaties with various countries, including Mexico, also reads the "lapse of time" provision as a statute of limitations provision. *See* S. Exec. Rep. No. 105-23 (1998). The report includes a section titled "*Lapse of Time*," which provides that "[s]ome of the treaties include rules that preclude extradition of offenses barred by an applicable statute of limitations." *Id.* at 6. The report does not include any discussion of the Sixth Amendment or speedy trial rights. *See generally id.*; *see also Yapp*, 26 F.3d at 1567 (noting the Senate Executive Report on the extradition treaty between the United States and the Bahamas provided that the "lapse in time" provision "requires that the requested state deny extradition if the requesting State's statute of limitation bars the prosecution of the offense in question" (citation omitted)).

Courts have likewise read the "lapse of time" language in extradition treaties as statutes of limitations bars. *See Martinez*, 828 F.3d at 462 (noting "[e]very case on the books has concluded that [the 'lapse of time'] phrase encompasses only statutes of limitations") (collecting cases). Though we have not explicitly addressed the precise issue in this appeal before, we have, at least in passing, read "lapse of time" provisions as statute of limitations provisions. *See, e.g.*, *Caplan v. Vokes*, 649 F.2d 1336, 1340–42 (9th Cir. 1981) (reading the "lapse of time" provision as a statute of limitations provision); *Theron v. U.S. Marshal*, 832 F.2d 492, 499 (9th Cir. 1987) (interpreting the "lapse of time" section as "establish[ing] the federal statute of limitations as the appropriate statute of limitations"), *abrogated on other grounds by United States v. Wells*, 519 U.S. 482 (1997).

Furthermore, "it has long been settled that United States due process rights cannot be extended extraterritorially."

Kamrin, 725 F.2d at 1228. In accordance with this principle, we have rejected other attempts to incorporate the Speedy Trial Clause into extradition treaties. For example, we rejected the argument that a broad treaty provision "granting fugitives 'the right to use such remedies and recourses as are provided by the law of the requested Party,' . . . in effect impose[d] upon [the requesting state] the duty to comply with the speedy trial and due process clauses of the United States Constitution." *Matter of Extradition of Kraiselburd*, 786 F.2d 1395, 1398 (9th Cir. 1986). We explained that, "despite the 'remedies and recourses' provision in the treaty, [the requesting state's] only obligation was to comply with the applicable statute of limitations." *Id.* (citation omitted). Our holding today is consistent with this precedent.

The Restatement (Third) of Foreign Relations Law also lends support. It includes a section about "*Extradition and periods of limitation*," and notes that "[n]early all extradition treaties provide for the effect of the passage of time." Restatement (Third) of Foreign Relations Law § 476(e) (1987). It explains that "under some treaties extradition is precluded if either state's statute of limitations has run," though "[i]f the treaty contains no reference to the effect of a lapse of time, neither state's statute of limitations will be applied." *Id.*; *see also Yapp*, 26 F.3d at 1567 (citing the Restatement (Third) of Foreign Relations Law to note "the fact that for over a century, the term 'lapse of time' has been commonly associated with a statute of limitations violation"); *Martinez*, 828 F.3d at 463 (also citing the Restatement (Third) of Foreign Relations Law in support).

In sum, we join the Sixth and Eleventh Circuits in *Martinez* and *Yapp* and hold that the extradition treaty's "lapse of time" language does not incorporate the Sixth Amendment Speedy Trial Clause. "To the extent there was

a delay, this is a matter left for the Secretary of State's consideration." *Man-Seok Choe v. Torres*, 525 F.3d 733, 741–42 (9th Cir. 2008).

AFFIRMED.

Appendix C

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE TRINIDAD MARTINEZ SANTOYO, Petitioner, v. LASHA BOYDEN, et al., Respondents.	No. 2:23-cv-00447 DJC JDP ORDER

Petitioner is represented by counsel and has filed this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 9, 2023, the Magistrate Judge issued Findings and Recommendations herein which were served on both parties and which contained notice that any objections to the Findings and Recommendations were to be filed within fourteen days. (ECF No. 16.) Petitioner has filed objections to the Findings and Recommendations (ECF No. 17) and Respondents have filed a response (ECF No. 18).

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this Court has conducted a *de novo* review. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis.

BACKGROUND

A complaint for Petitioner's arrest and extradition to Mexico was originally filed on August 1, 2021. (Compl. (*United States v. Martinez Santoyo,* 2:22-cr-00141-TLN-KJN, ECF No. 1); *see In re Extradition of Jose Trinidad Martinez Santoyo*, 2:21-mj-00125-KJN, ECF No. 1.) The complaint sought Petitioner's arrest pending possible extradition based on a warrant for Petitioner's arrest issued in Colotlan, Jalisco, Mexico for a charge of "Aggravated Intention Homicide with Advantage". (*Id.* at 2.) Mexican officials allege that Petitioner shot and killed the Decedent, Vela Miranda, on December 20, 2013, "outside of a pool hall called 'Billar Tenzompa,' located in the community of Tenzompa, Huejuquilla el Alto, Jalisco, Mexico." (*Id.*)

Following Petitioner's arrest, Petitioner was ordered detained pending trial by Magistrate Judge Kendall J. Newman but was subsequently ordered released on bail by District Judge Troy L. Nunley pending extradition proceedings. (Order Granting Mot. for Bail (*United States v. Martinez Santoyo,* 2:22-cr-00141-TLN-KJN, ECF No. 37).) During extradition proceedings, Petitioner sought to compel production of evidence related to the Decedent. (Mot. to Compel (*In re Extradition of Jose Trinidad Martinez Santoyo*, 2:21-mj-00125-KJN, ECF No. 37).) Judge Newman, as the extradition court, granted that request for evidence "regarding whether the witness statements were obtained by coercion, duress, or torture" but denied the motion as it related to evidence of the Decedent's alleged ties to drug trafficking and the Los Zetas cartel. (Order Granting in Part Mot. to Compel (*In re Extradition of Jose Trinidad Martinez Santoyo*, 2:21-mj-00125-KJN, ECF No. 49).)

On February 22, 2023, Judge Newman held an extradition hearing. (Minutes of 2/22/23 Hr'g (*In re Extradition of Jose Trinidad Martinez Santoyo*, 2:21-mj-00125-KJN, ECF No. 54).) At that hearing, Judge Newman found the Government had met its burden of proof and subsequently issued an order certifying the extradition of Petitioner. (*Id.*; Order Granting Mot. for Certification of Extradition (*In re Extradition of Jose Trinidad Martinez Santoyo*, 2:21-mj-00125-KJN, ECF No. 54).) Judge Newman

also denied the Government's request for Petitioner to be remanded into custody. (Minutes of 2/22/23 Hr'g; *see* Order Denying Mot. for Recons. of Pre-Extradition Release (*In re Extradition of Jose Trinidad Martinez Santoyo*, 2:21-mj-00125-KJN, ECF No. 58).)

Petitioner brought the present Petition for Writ of Habeas Corpus to challenge Magistrate Judge Newman's February 24, 2023 Order finding that Petitioner could be extradited to Mexico to be prosecuted for aggravated homicide as well as Judge Newman's partial denial of Petitioner's Motion to Compel. (ECF No. 1.) Petitioner subsequently filed a First Amended Petition that challenges these orders on five grounds: (1) the extradition court erred by denying Petitioner's motion to compel; (2) there is insufficient and competent reliable evidence to support probable cause; (3) there is insufficient evidence supporting probably cause for the element of "undue advantage"; (4) the extradition court erred in excluding Petitioner's explanatory evidence; and (5) Petitioner's extradition was time-barred under the relevant treaty. (First Amended Petition (ECF No. 11).) On September 28, 2023, Magistrate Judge Jeremy D. Peterson, as the referral judge in the present habeas action, issued Findings and Recommendations recommending that the habeas petition be denied. (Findings and Recommendations ("F. & R.") (ECF No. 16).) Petitioner has objected to portions of those Findings and Recommendations. (Pet'r's Obj. (ECF No. 17).)

PETITIONER'S OBJECTIONS

Petitioner objects to the Findings and Recommendation on five bases: (1) the Magistrate Judge erred in finding that the United States does not hold exculpatory evidence arising from its own investigation of the decedent; (2) the Magistrate Judge erred in holding that it was Petitioner's burden to enforce the extradition court's clear order; (3) exclusion of the gunshot residue report from Mexican authorities denied due process; (4) the Magistrate Judge erred in finding that the decedent was not armed; and (5) the Magistrate Judge erred in holding that the Sixth Amendment

speedy trial right does not apply in this case.[1] (*See* Pet'r's Obj.)

The Court reviews *de novo* "those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). On a habeas petition from extradition proceedings, habeas review is limited to whether "(1) the extradition magistrate had jurisdiction over the individual sought, (2) the treaty was in force and the accused's alleged offense fell within the treaty's terms, and (3) there is 'any competent evidence' supporting the probable cause determination of the magistrate." *Vo v. Benov*, 447 F.3d 1235, 1240 (9th Cir. 2006).

I. Exculpatory Evidence Regarding the Decedent

The Magistrate Judge in the habeas action, Judge Peterson, correctly found that the Magistrate Judge in the extradition action, Judge Newman, did not abuse his discretion in ruling that evidence regarding the decedent's alleged connections to drug dealing and the Los Zetas cartel was not explanatory for purposes of probable cause.

The decision of an extradition court to deny discovery can be reviewed by a habeas court. *See Quinn v. Robinson*, 783 F.2d 776, 817 n.41 (9th Cir. 1986). However, such a review only examines whether "the magistrate's decision to deny discovery constituted an abuse of discretion that deprived the accused of due process." *Id.*

During extradition proceedings "neither the Federal Rules of Evidence nor the Federal Rules of Criminal Procedure apply" and the accused may only admit evidence that "explain[s] matters referred to by the witnesses for the government[.]" *Santos v.*

[1] The phrasing of Petitioner's objections can lead to confusion as they often do not specify whether the Magistrate Judge being referenced is Judge Peterson, the Magistrate Judge to whom the present Habeas Petition was referred, or Judge Newman, the Magistrate Judge who presided over the extradition proceedings. Where possible, the Court will specify the court or judge in question to avoid this issue. The Court also notes that the titles of Petitioner's objections do not always accurately reflect the actual order of the extradition court. For example, one of Petitioner's objections is that "the Magistrate Judge erred in holding that it was Petitioner's burden to enforce the extradition court's clear order" despite the Findings and Recommendations making no such holding. (*See* F. & R. at 3 n.1.) This order addresses the actual substance of Petitioner's objection.

Thomas, 830 F.3d 987, 992 (9th Cir. 2016). Such "explanatory" evidence, evidence that "'might [explain] ambiguities or doubtful elements' in the government's case[,]" differs from "contradictory" evidence, which is evidence that simply contradicts the evidence of probable cause presented by the government. *Id.* at 993 (citing *Collins v. Loisel*, 259 U.S. 309, 315–16 (1922) and *Carlton v. Kelly*, 229 U.S. 447, 461 (1913)).

Here, the extradition court ruled that while evidence related to the use of torture, duress, or coercion in collecting witness statements needed to be disclosed as it could potentially be explanatory, evidence related to the decedent's alleged involvement in drug trafficking and the Los Zetas drug cartel was, at best, contradictory and thus not admissible. (Order Granting in Part Mot. to Compel at 7–8.) Judge Newman reasoned that involvement with the cartel could not negate probable cause for the incident in question as, unlike the usage of torture or coercion in obtaining witness statements, the decedent's involvement in the drug trade did not have any bearing on "the manner of collection of the witness statements." (*Id.*) Further, Judge Newman found that any argument by Petitioner that the evidence must be disclosed as it could indicate the corruption of Mexican officials would violate "the diplomatic principle of non-inquiry . . . ." (*Id.* at 8.)

Judge Newman did not abuse his discretion in reaching this conclusion and thus Judge Peterson's finding to that effect was correct. Unlike concerns about the manner and method of statement collection, information about a decedent's cartel ties cannot properly be considered explanatory as it does not seek to resolve ambiguities or doubtful elements of the government's case establishing probable cause. As suggested by the extradition court, it is not even clear that such evidence could even be considered contradictory evidence absent some indication of the relevance of the decedent's alleged cartel ties.

In Petitioner's original motion to compel as well as in subsequent motions, he does not provide a clear statement of how such evidence will be relevant, instead asserting that *Brady* is applicable in extradition actions and arguing the evidence may

be relevant by broadly suggesting the evidence could go to the general credibility of witnesses and the possibility for corruption of Mexican officials. (Motion to Compel at 9–12.) For purposes of extradition proceedings, Petitioner was not permitted to "impeach government witnesses or produce witnesses whose testimony contradicts evidence already offered by the government." *Santos*, 830 F.3d at 993. As such, Judge Newman made an appropriate determination that this evidence was not relevant as even if it went to credibility, it would not be explanatory. The possibility that the evidence might provide some indication of corruption is also similarly not relevant or explanatory as they have no direct bearing on the existence of probable cause. *See Prasoprat v. Benov*, 421 F.3d 1009, 1015–16 (9th Cir. 2005).

Judge Newman also correctly found (and Judge Peterson correctly confirmed) that Petitioner was incorrect in contending that the requested evidence must be provided as *Brady* material. The Ninth Circuit has previously expressly stated that due process does not require that principles set forth in *Brady* apply to the determination of probable cause during extradition proceedings. *Merino v. United States Marshal*, 326 F.2d 5, 13 (9th Cir. 1963). Though Petitioner indicates there is a Sixth Circuit case, *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993), which suggests *Brady* applies in situations where the government has conducted its own investigation, the Ninth Circuit's decision in *Merino* is binding on this Court where the Sixth Circuit's in *Demjanjuk* is not.

Accordingly, on *de novo* review, the reasoning in the Findings and Recommendations on this point is correct and the Court will adopt them over Petitioner's objections.

II. Exculpatory Evidence in the Possession of Other Agencies

The Magistrate Judge correctly decided that the Petitioner had not provided any legal basis for the argument that the extradition court's order compelling discovery should apply to the entire United States Government. Just as in the First Amended Petition, Petitioner's objections fail to cite any authority for this position.

In the extradition proceedings, Judge Newman originally ordered the production of evidence in the position of "the U.S." (Order Granting in Part Mot. to Compel at 8.) In a later filing confirming that the "United States" was "not in possession of any evidence regarding whether the witness statements were obtained by coercion, duress, or torture, and is mindful of its continuing duty to report", the United States Attorney's Office ("USAO") included the following footnote:

> Like the definition of the term "government" used in the United States' Opposition to the Motion to Compel (ECF 46 at n. 1) and at oral argument on the Motion to Compel, this memo uses "United States" to refer to the United States Attorney's Office for the Eastern District of California ("USAO E.D. Cal.") and the Department of Justice's Office of International Affairs ("OIA"). The United States understands that this too is the definition of "U.S." as used in the Court's Order (ECF 49, at 8), and that the Court's Order is limited to documents and materials in the possession of the USAO E.D. Cal. and OIA, with no obligation to request information from Mexico or seek out new material not within the USAO E.D. Cal.'s or OIA's possession from other U.S. agencies or offices. *See, e.g.*, Order at 7 ("As a reminder, the U.S. is under no obligation to request evidence from Mexico or seek out new material not within its possession.") (citation omitted).

(Suppl. Mem. Regarding Evid. of Coercion, Duress, or Torture (*In re Extradition of Jose Trinidad Martinez Santoyo*, 2:21-mj-00125-KJN, ECF No. 50) at 1–2 & n.1.)

The choice to define the "U.S." to mean only the USAO for the Eastern District of California and the Department of Justice's Office of Internal Affairs was seemingly a unilateral decision of the USAO as to the proper interpretation of the extradition

court's order. Given that the Motion to Compel specifically discussed material related to a proceeding in the District Court for the Western District of Pennsylvania, Magistrate Judge Newman's order granting that motion in part would seem unlikely to have been limited to information in possession and control of the United States Attorney's Office for the Eastern District of California and the Department of Justice's Office of International Affairs. The USAO elected not to file a motion for clarification or otherwise seek approval to limit the scope of the court's order and instead made this decision without the court's input. In apparent recognition by the USAO that this was not an action approved by the extradition court, the USAO included the above disclosure as a footnote in a supplemental memorandum. (*Id.*)

While the USAO's actions appear to be improper, this issue is ultimately outside of the bounds of what Magistrate Judge Peterson or this Court can consider on extradition habeas review. As noted above, the habeas court for extradition proceedings is limited to reviewing "(1) the extradition magistrate had jurisdiction over the individual sought, (2) the treaty was in force and the accused's alleged offense fell within the treaty's terms, and (3) there is 'any competent evidence' supporting the probable cause determination of the magistrate." *Vo*, 447 F.3d at 1240. Though the habeas court can review the decision of an extradition court to deny discovery, *see Quinn*, 783 F.2d at 817 n.41, here, the extradition court made no such decision. Despite Petitioner being aware that the USAO had limited the scope of the discovery provided (*see* Opp'n to Gov't Req. for Extradition (*In re Extradition of Jose Trinidad Martinez Santoyo*, 2:21-mj-00125-KJN, ECF No. 51) at 4 (acknowledging the USAO's interpretation of the Court's order)), Petitioner did not raise an objection or make a motion to the court. As a result, the extradition was never presented to the extradition court and no decision on this discovery issue was rendered. Thus, it is outside the scope of extradition habeas review as the extradition court did not "deny discovery". *See Quinn*, 783 F.2d at 817 n.41.

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Given the above, a *de novo* review shows the reasoning in Judge Peterson's Findings and Recommendations is well founded on this point and shall be adopted.

III. Exclusion of Gunshot Residue

Judge Peterson was correct in finding that the extradition court did not abuse its discretion in excluding evidence related to the possible presence of gunshot residue on the decedent's hand. Petitioner argues that excluding this evidence was improper as it was explanatory. The extradition court found that the only apparent reason for including this evidence would be to establish that the decedent was also armed but that this could only go to the "unfair advantage" (also referred to as "undue advantage") element of the aggravated homicide charge and was not relevant for any other purpose. (Order Granting U.S.'s Mot. for Certification of Extradition (*In re Extradition of Jose Trinidad Martinez Santoyo*, 2:21-mj-00125-KJN, ECF No. 55) at 12–13.) The court excluded this evidence as not relevant to the existence of probable cause and ruled that whether there was ultimately undue advantage is an issue for a jury to decide. (*Id.*)

The magistrate judge in extradition proceedings is granted substantial deference in the determination of the admissibility of evidence. *Collins v. Loisel*, 259 U.S. 309, 317 (1922) ("Whether evidence offered on an issue before the committing magistrate is relevant is a matter which the law leaves to his determination, unless his action is so clearly unjustified as to amount to a denial of the hearing prescribed by law."). While an accused party may present explanatory evidence related to probable cause at extradition proceedings, evidence not related to probable cause is not admissible. *Id.* at 315–16.

Judge Newman's decision to not admit evidence related to the gunshot residue as it only went to the unfair advantage element was not an abuse of discretion. Judge Newman reasoned that the gunshot residue evidence could serve as the basis from which a jury could find that the decedent was armed and that the unfair advantage element was thus unsatisfied, but that "[a] jury could just as easily believe [the

Decedent] had residue on his hand because he reached for [Petitioner]'s gun just before Petitioner pulled the trigger." (Order Granting U.S.'s Mot. for Certification of Extradition at 12–13.) Given this, Judge Newman found that this evidence was not admissible as it did not go to probable cause. (*Id.*) This is a reasonable and justified determination of the relevance of the gunshot residue evidence and not an abuse of discretion. *See Collins*, 259 U.S. at 317.

As such, Judge Peterson's finding in the Findings and Recommendations that Judge Newman did not abuse his discretion is correct and the Court will adopt the Findings and Recommendations on this point.

IV. Unfair Advantage

Judge Peterson also accurately determined that the extradition court had properly found that there was evidence of undue advantage sufficient to support probable cause.

During extradition proceedings, the magistrate judge's limited purpose is "to determine whether there is any evidence sufficient to establish reasonable or probable cause." *United States ex rel. Sakaguchi v. Kaulukukui*, 520 F.2d 726, 730–31 (9th Cir. 1975) (citation omitted). On habeas review, a probable cause determination "must be upheld if there is any competent evidence in the record to support it." *Sainez v. Venables*, 588 F.3d 713, 717 (9th Cir. 2009) (quoting *Quinn v. Robinson*, 783 F.2d 776, 791 (9th Cir. 1986)).

Here, the extradition court based its determination of unfair advantage on the eyewitness statements from Baudelio Oronia Conchas, Pedro Oronia Conchas, and Manuel Miranda Miranda, all of whom stated that Petitioner was armed and none of whom stated that the Decedent was armed. (*See* Order Granting U.S.'s Motion for Certification of Extradition at 6–8.) While Judge Newman recognized that there were theoretically "multiple ways to treat the witnesses' statements" and that other contrary evidence might exist (such as the possible gunshot residue evidence addressed above), he found that these issues went to the credibility of the eyewitness's

statements and thus was suited for presentation to a jury, not the extradition court, who has no role in determining guilt or innocence and only determines whether probable cause exists. (*Id.* at 12–13.)

The statements of the three eyewitnesses are sufficient competent evidence to support Judge Newman's finding of probable cause. While it is possible that Petitioner will successfully argue at trial that the undue advantage element was not satisfied (whether based on the credibility of witnesses, the presence of contradictory evidence such as the gunshot residue discussed previously, or some other argument), the Magistrate Judge's determination of probable cause related to the undue advantage element shall be upheld as there is competent evidence that supports a reasonable inference that Petitioner had undue advantage when he allegedly shot the decedent. *See Sainez*, 588 F.3d at 717.

Accordingly, Judge Peterson's Findings and Recommendations are correctly reasoned and shall be adopted despite Petitioner's objections.

V. Speedy Trial Rights

Finally, the Findings and Recommendations are correct in finding that Petitioner was not entitled to speedy trial rights during the extradition proceedings. Petitioner argues that he was entitled to speedy trial rights under the relevant treaty and that those rights were violated as Mexico did not request Petitioner's extradition until 2022 despite the Mexican warrant for Petitioner's arrest being issued in 2014. Magistrate Judge Peterson found that speedy trial rights do not apply to extradition proceedings. (F. & R. at 6–7.) In doing so, Judge Peterson cited cases from the First, Second, Fifth, and Eleventh Circuit that explicitly found that the speedy trial right guarantees of the Sixth Amendment did not apply to extradition proceedings. (*Id.*) He also noted that the Ninth Circuit has previously stated that "[w]hen the United States is the requested country, delay in seeking extradition may be relevant to the Secretary of State's final determination as to whether extradition may go forward. . . .

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The delay may not, however, serve as a defense to judicial extradition proceedings." (*Id.* at 6 n.2 (citing *Kamrin v. United States*, 725 F.2d 1225, 1227 (9th Cir. 1984)).)

In his objection to the Findings and Recommendations, Petitioner argues that even if the Sixth Amendment speedy trial rights do not generally apply to extradition proceedings, the treaty between Mexico and the United States effectively re-applies speedy trial rights by stating that "[e]xtradition shall not be granted when the prosecution or the enforcement of the penalty for the offense for which extradition has been sought has become barred by lapse of time according to the laws of the requesting or requested Party." (Pet'r's Obj. at 4–5.) Petitioner argues that the "lapse of time" language must include speedy trial rights. (*Id.* (citing Extradition Treaty art. 7, U.S.-Mex., May 4, 1978, 31 U.S.T. 5059).)

This same argument has been expressly rejected by numerous other courts, including other courts in this district and the Sixth and Eleventh Circuit Courts of Appeals. *See Martinez v. United States*, 828 F.3d 451, 457–58 (6th Cir. 2016) (finding that the "lapse of time" language in the US-Mexico treaty did not apply to Sixth Amendment speedy trial rights as those rights do not create a fixed time bar); *Yapp v. Reno*, 26 F.3d 1562, 1567 (11th Cir. 1994) (finding similar "lapse of time" language in a treaty with the Bahamas was a reference to the statute of limitation, not to speedy trial rights); *see also Gonzalez v. O'Keefe*, No. 12-cv-2681-LHK, 2014 WL 6065880, at *4 (N.D. Cal. Nov. 20, 2014) (finding a "lapse of time" provision refers to statutes of limitations and did not include speedy trial rights); *Cerda v. Jenkins*, 2023 WL 8845145 (C.D. Cal. Dec. 20, 2023) (same). Moreover, the Ninth Circuit has previously interpreted this "lapse" language as an incorporation of the applicable statute of limitations. *Causbie Gullers v. Bejarano*, 293 Fed. Appx. 488, 489 (9th Cir. 2008). It has also rejected an argument that a treaty containing a provision providing for "the right to use such remedies and recourses as are provided by the law of the requested Party," entitled the accused to speedy trial rights the treaty. *In re Extradition of Kraiselburd*, 786 F.2d 1395, 1398 (9th Cir. 1986). That treaty, which also included a

"lapse of time" provision similar to the one at issue here, only required that the country requesting extradition "comply with the applicable statute of limitations" and the accused was not entitled to "constitutional protections that the United States Constitution affords defendants in American criminal prosecutions." *Id.*

In support of his position, Petitioner only cites a single case from the District Court for the Northern District of Alabama where that court found that speedy trial rights should apply based on the "lapse of time" language. (Pet'r's Obj. at 4 (citing *In re Mylonas*, 187 F. Supp. 716, 721 (N.D. Ala. 1960)).) However, as the Sixth Circuit noted while addressing that same district court case in deciding *Martinez,* that case "was hardly a landmark extradition decision" and contains no actual analysis of the issue. *Martinez*, 828 F.3d at 465. Further, the Eleventh Circuit has since expressly adopted a different position on this same issue and, in doing so, noted that it had "expressly disapproved of *Mylonas*."[2] *Yapp*, 26 F.3d at 1566–67.

Petitioner's main argument appears to be that the "lapse of time" language, as it is contained in a treaty, should be considered under a plain language analysis and that under such analysis, speedy trial rights should have been extended to Petitioner's extradition proceedings. (Pet'r's Obj. at 3–4.) Even applying such an analysis, Petitioner's argument is unpersuasive. Petitioner is correct that "[t]he interpretation of a treaty, like the interpretation of a statute, begins with its text." *Medellín v. Texas*, 552 U.S. 491, 506–07 (2008) (citing *Air France v. Saks*, 470 U.S. 392, 396–397 (1985)). However, interpretation of the plain text of Article 7 from the treaty does not support Petitioner's position. The treaty bars extradition where "prosecution or the enforcement of the penalty" for the charged offense "become barred by a lapse of

[2] In his objections, Petitioner says that the Eleventh Circuit disapproved of *Mylonas* on the basis that the Sixth Amendment generally does not apply to extradition proceedings and "said nothing about the *Mylonas* court's holding that the 'lapse of time' language in the United States-Greece treaty includes the Sixth Amendment Speedy Trial Clause." (Pet'r's Obj. at 5 n.1.) To the contrary, the Eleventh Circuit's discussion of *Mylonas* in *Yapp* appears to expressly recognize this distinction and reject *both* the general Sixth Amendment and the treaty-based arguments. Yapp, 26 F.3d at 1566–67 ("Whether the holding in *Mylonas* is construed as interpretation of the Constitution or interpretation of a treaty, we do not find it persuasive.")

time according to the laws of the requesting or requested Party." Extradition Treaty art. 7, U.S.-Mex., May 4, 1978, 31 U.S.T. 5059. The plain text of this treaty, with its references to "prosecution or . . . enforcement" as well as to "bars" that result from a lapse of time seems to only incorporate statutes of limitations. *Id.* Petitioner seeks to look outside the text of the treaty himself, arguing that at the time the treaty was ratified "a federal court had interpreted the 'lapse of time' phrase in a different treaty to include the Sixth Amendment speedy trial rights[]" and that the treaty's drafters would be aware of that fact. (Pet'r's Obj. at 5.) Such evidence is far outside the scope of the text of the treaty and Petitioner does not provide citations to any "aids" for interpretation that might support such a reading, such as "the negotiation and drafting history of the treaty as well as 'the postratification understanding' of signatory nations." *Medellín*, 552 U.S. at 506–07.

Given the above, the Findings and Recommendations issued by Judge Peterson are well reasoned and will be adopted by this Court.

CONCLUSION

In accordance with the above, IT IS HEREBY ORDERED that:

1. The Findings and Recommendations signed September 28, 2023 (ECF No. 16) are ADOPTED IN FULL;
2. The First Amended Petition (ECF No. 11) is DENIED;
3. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: **March 27, 2024**

Daniel J. Calabretta

Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE

DJC1 – MartinezSantoyo23cv00447.JO

Appendix D

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

IN THE MATTER OF THE EXTRADITION OF JOSE TRINIDAD MARTINEZ SANTOYO TO THE REPUBLIC OF MEXICO.	No. 2:21-mj-125-KJN ORDER (ECF Nos. 6, 45.)

The United States Government filed a complaint in this matter regarding the extradition of Jose Trinidad Martinez Santoyo ("Martinez") at the request of and pursuant to a treaty with Mexico. The U.S. contends the undersigned is authorized to conduct the extradition proceeding, the court has jurisdiction over Martinez, the treaty is in full force and effect, the charged crime (Intentional Aggravated Homicide, unfair advantage) is covered by that treaty, and sufficient evidence exists to support a finding of probable cause on the charge.[1] (ECF Nos. 1, 6, 45.)

Martinez opposes extradition, contending probable cause is lacking because the evidence tying him to the killing: (I) is mostly based on testimony from three purported eyewitnesses whose statements contain inconsistencies; and (II) fails to show the killing was by "undue advantage." (ECF No. 51.) The U.S. contends ample evidence exists for the court to find probable cause that Martinez shot and killed the victim with "unfair advantage." (ECF No. 53.)

For all of the reasons set forth herein, the court finds that Martinez is certified for

[1] This matter proceeds before the undersigned pursuant to Local Rule 302(b)(8).

extradition to Mexico.

Allegations in the Extradition Packet; Procedural Posture

In the early morning hours of December 21, 2013, Jose Luis Vela Miranda ("Vela Miranda") was shot and killed outside of a pool hall in Tenzompa, state of Jalisco, Mexico. Officials from the police and prosecutor's office investigated the shooting, which included collecting eyewitness statements from Baudelio Oronia Conchas, Pedro Oronia Conchas, and Manuel Miranda Miranda.[2]

These three stated that late in the evening on December 20th, they were drinking outside the pool hall along with Martinez, Vela Miranda, and one other person. Each of the three witnesses stated that between 3:00 and 3:30 a.m., Martinez and Vela Miranda began to argue, Martinez became aggressive, and the two moved about 10 meters away from the group and toward Vela Miranda's truck. Manuel and Pedro heard Martinez challenge Vela Miranda to a fight, saying he was "not a man." Pedro heard Vela Miranda reply that he was a man "since he was born" and that a fight was unnecessary. They then indicated Martinez pointed a pistol at Vela Miranda's head and fired two shots at close range; Manuel said he saw a flash and heard shots; Pedro said he heard the shots. The three witnesses saw Vela Miranda fall to the ground and saw Martinez walk away. They fled, reportedly in fear of Martinez. At a later date, Baudelio, Pedro, and Manuel identified Martinez from a photo array. (See ECF No. 45-1 at 20-32.)

On January 31, 2014, an arrest warrant for Martinez was issued by a court in Jalisco on the charge of Aggravated Intentional Homicide with Advantage. (See id. at 25-26; 90-126.) Sometime in late 2020 or early 2021, Mexico submitted a provisional request to the U.S. seeking the arrest and extradition of Martinez; the U.S. filed a complaint on August 9, 2021. (ECF No. 1.) Martinez was arrested and the U.S. requested extradition in May of 2022. (ECF Nos. 5, 6.) The U.S. formally moved to extradite Martinez on November 9, 2022. (ECF No. 45.) Martinez opposed, and the U.S. filed a reply brief. (ECF Nos. 51, 53.) The court held a hearing on the matter on February 22, 2023. (ECF No. 54.)

[2] Given the familial relations, the court refers to these individuals by their first names. No disrespect is intended.

Legal Standards for Extradition Proceedings

"Extradition from the United States is a diplomatic process [] initiated by a request from the nation seeking extradition directly to the Department of State." Prasoprat v. Benov, 421 F.3d 1009, 1012 (9th Cir. 2005); see Factor v. Laubenheimer, 290 U.S. 276, 287 (1933) ("[T]he principles of international law recognize no right to extradition apart from treaty."); see also Quinn v. Robinson, 783 F.2d 776, 782 (9th Cir. 1986) ("The right of a foreign sovereign to demand and obtain extradition of an accused criminal is created by treaty."). If the State Department determines the extradition request falls within the treaty, a United States Attorney files a complaint in the district court seeking arrest and extradition of the accused. Id.; Santos v. Thomas, 830 F.3d 987, 991 (9th Cir. 2016).

After arrest, a magistrate judge is permitted "to conduct an extradition hearing under the relevant extradition treaty between the United States and the requesting nation, and to issue a certification of extraditability to the Secretary of State." In re Extradition of Santos, 795 F. Supp. 2d 966, 969 (C.D. Cal. 2011); see also 18 U.S.C. § 3184; Local Rule 302(b)(8) (referring all extradition proceedings to magistrate judges). The court has limited authority in the overall process of extradition, as "[e]xtradition is a matter of foreign policy entirely within the discretion of the executive branch, except to the extent that the statute interposes a judicial function." Vo v. Benov, 447 F.3d 1235, 1237 (9th Cir. 2006); see also Wright v. Henkel, 190 U.S. 40, 57 (1903) ("Treaties must receive a fair interpretation, according to the intention of the contracting parties, and so as to carry out their manifest purpose."); Santos, 795 F. Supp. 2d at 970 ("Extradition treaties are to be liberally construed so as to effect their purpose, that is, to surrender fugitives for trial for their alleged offenses.") (quoting Valentine v. U.S. ex rel. Neidecker, 299 U.S. 5 (1936)).

In an extradition hearing, there are no discretionary decisions for the court to make. Prasoprat, 421 F.3d at 1012. The court cannot consider whether the accused is guilty; it is instead to determine whether competent legal evidence justifies extradition. Collins v. Loisel, 259 U.S. 309, 315-16 (1922). If the court "deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention . . ., [it] shall certify the same, together with a copy of all the testimony taken . . . ." 18 U.S.C. § 3184; see Santos, 830 F.3d at 992 ("So long as the

judicial officer determines that there is probable cause, [that officer] is required to certify the individual as extraditable to the Secretary of State."). The Secretary of State retains the discretion to actually surrender the accused. Prasoprat, 421 F.3d at 1012.

In deciding whether to grant a request for a certificate of extradition, courts consider whether: (1) the extradition judge has jurisdiction to conduct the proceedings; (2) the extradition court has jurisdiction over the accused; (3) the extradition treaty was in full force and effect; (4) the crime fell within the terms of the treaty; and (5) there was competent legal evidence to support an extradition finding. Zanazanian v. U.S., 729 F.2d 624, 626 (9th Cir. 1984).

Regarding "competent legal evidence," it is axiomatic that "[f]oreign states requesting extradition are not required to litigate their criminal cases in American courts." Santos, 830 F.3d at 991. In making a finding on competent legal evidence, the court is to "determine whether there is any evidence sufficient to establish reasonable or probable cause." U.S. ex rel Sakaguchi v. Kaulukukui, 520 F.2d 726, 730-31 (9th Cir. 1975). The probable cause inquiry asks whether there is "a reasonable ground to believe the accused guilty." Mirchandani v. United States, 836 F.2d 1223, 1226 (9th Cir. 1988) (citations omitted); see also Garcia v. Cty. of Merced, 639 F.3d 1206, 1209 (9th Cir. 2011) (noting probable cause equates to a "fair probability" that the suspect has committed the charged crime). Evidence in support of an extradition request need not be admissible at a later trial. See Then v. Melendez, 92 F.3d 851, 855 (9th Cir. 1996) (noting that rules of evidence do not apply in extradition context); see also Fernandez v. Phillips, 268 U.S. 311, 312 (1925) ("Competent evidence to establish probable cause is not necessarily evidence competent to convict."). To this end, courts have held that a certificate of extradition can be supported by hearsay, id., self-incriminating statements of accomplices, Zanazanian, 729 F.2d at 627, or summaries of witness statements composed by police officers or prosecutors, id. at 628; Emami v. U.S. Dist. Ct. for N. Dist. of California, 834 F.2d 1444, 1451 (9th Cir. 1987).

The burden of demonstrating probable cause rests with the extraditing country, via the U.S.'s submissions. Then, 92 F.3d at 855. The court may consider the credibility of the proffered evidence and weight to give it. See Quinn, 783 F.2d at 815. Further, an extradition court may only consider evidence brought by the accused that is "explanatory" and not "contradictory." See

Santos, 830 F.3d at 1007 (indicating the accused may offer evidence "which might have explained ambiguities or doubtful elements" of the U.S.'s case, such that the evidence "explains away or completely obliterates probable cause") (citing Collins, 259 U.S. at 316; Hooker v. Klein, 573 F.2d 1360, 1369 (9th Cir. 1978)).

Analysis

Martinez does not challenge the authenticity of any of the evidence in the extradition packet at ECF No. 45-1. The court finds the evidence submitted to be properly authenticated and admissible pursuant to 18 U.S.C. § 3190. Further, Martinez does not contest the first four considerations outlined in Zanazanian. (See ECF No. 51.) The court finds: (1) the undersigned has jurisdiction to conduct the proceedings (18 U.S.C. § 3184; Local Rule 302(b)(8)); (2) the court has jurisdiction over Martinez because he was arrested within the court's boundaries (see, e.g., In re Extradition of Camelo-Grillo, 2017 WL 2945715, at *5 (C.D. Cal. July 10, 2017)); (3) the extradition treaty between the U.S. and Mexico is in effect (see ECF No. 45-1 at 2 ¶ 2 (decl. Heinemann, State Dept. legal adviser); id. at 33-52 (the Treaty provisions)); and (4) the charged crime falls within the scope of this treaty (see id. at 2 ¶ 5; 36-37).

Finally, Martinez does not contest the fact that Vela Miranda was shot and killed in December of 2013 in Jalisco, Mexico. (See ECF No. 51.) The extradition request contains the following evidence regarding these facts: the prosecutor's summation of the case, the prosecutor's summary of the exhibits, and the exhibits themselves: the Arrest Warrant [Ex. A], the statements of the three eyewitnesses [Exs. D-F], the December 21, 2013 report after the crime-scene inspection [Ex. G-H], and the autopsy report [Ex. I]. (ECF No. 45-1 at 21-24; 25-30, 89-126; 136-37; 141-42; 147-48; 153-55; 157-59; 161-68.) The court finds competent legal evidence exists in the extradition packet to support a finding that Vela Miranda was shot and killed on December 21, 2013, outside of the pool hall in Tenzompa, Jalisco, Mexico. Then, 92 F.3d at 855 (hearsay statements accepted in extradition proceedings); Zanazanian, 729 F.2d at 628 (summaries of witness statements composed by police officers or prosecutors accepted in extradition proceedings).

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Martinez primarily argues the evidence does not support a finding of probable cause that: (I) Martinez was the shooter, given the only evidence tying him to the shooting are the three eyewitness statements which contain inconsistencies; and (II) the homicide was carried out with "undue advantage," given that (a) the judge who issued the warrant only cited the definition of "advantage" and did not discuss the "undue" portion, (b) the extradition packet arguably contains no evidence to meet any of the definitions of "unfair advantage stated in Article 219(I) in the Homicide chapter of the Criminal Code of Jalisco, and (c) a forensic report indicates Vela Miranda had gunshot residue on his hands, implying Martinez did not have an advantage because Vela Miranda was also armed. (ECF No. 51.)

The U.S. contends: (I) the Mexican prosecutor's summary and the three eyewitness statements provide a basis for a court to find probable cause that Martinez was the shooter; and (II) Martinez's arguments regarding the "undue advantage" portion of the charge are impermissible attempts to contradict the evidence in the record. (ECF No. 53.)

I. Probable Cause Regarding Martinez as the Shooter

Given how central the three witnesses' statements are to Mexico's case in identifying Martinez as the shooter, the undersigned reproduces the relevant portions, each made on December 22, 2013:

- Statement of Baudelio Oronia Conchas (ECF No. 45-1 at 136-37):

> [O]n December 20[,] 2013, [] around 23:00 hours I was drinking some beers with [Pedro, Manuel, Vela Miranda, Martinez, and Rodrigo] outside the pool hall that is located in front of the main plaza of Tenzompa, Huejuquilla el Alto, Jalisco.
> ***
> [W]e went on drinking outside the pool hall, on Calle Abasolo, on the sidewalk, until about 3:00 hours in the early morning of Saturday, December 21 . . ., when [] Martinez and [] Vela Miranda started to argue, and they moved about 10 meters far from the place [where] we were towards the place where [Vela Miranda's] truck [] was parked [] on the street in front of the municipal plaza and in front of a grocery store, therefore I could not listen to what they were arguing because they were a bit far. I could only see that [] Martinez was very aggressively arguing with [] Vela Miranda, since they were about 1 meter far from each other, and suddenly I saw that [] Martinez aimed with a gun at [] Vela Miranda to the head. I did not see where he took it from because everything happened so fast, with the moonlight I could just see that he was holding it with his right hand and it was a square type short gun, whose caliber I

> could not see, since in that moment I saw that [] Martinez shot at [] Vela Miranda, who only leaned on his truck, so in that moment [Martinez] took the gun with both hands and shot [] Vela Miranda again, also aiming at the head[.] [Vela Miranda] fainted slowly until he fell on the ground, and [Martinez] left walking very calmly towards the back of the truck and . . . to the east[.] [Pedro, Manuel, Rodrigo] and I ran to the other side, towards the west of the street[;] from there everybody went home[.] I do mention that when we witnessed the crime we ran because we were afraid that as we all had witnessed everything, [Martinez] had wanted to kill us too, because I know that [Martinez] is a very aggressive person and that he is regularly armed[.]

- Statement of witness Manuel Miranda Miranda (ECF No. 45-1 at 141-42):

> [O]n Friday, December 20[,] 2013, in or around nine at night (21:00) I arrived in the pool hall . . . on Calle Abasolo No. 11 . . . . I arrived, had a few beers and started playing pool because there was many people. At eleven at night (23:00), the hall was closed because it is the time it regularly closes and I together with [Pedro, Baudelio, Rodrigo, and Martinez] remained outside the hall. Thereat, also arrived [] Vela Miranda, and he also had beer with us. Then, it started to rain hard, so we entered into a little room which is aside the pool hall . . . where we kept drinking while it was raining; when it stopped raining, we went back out and kept drinking on the sidewalk[.]
>
> ***
>
> [A]round 03:00 at dawn of Saturday, December 21[,] Martinez and [Vela Miranda] started having a quarrel, but I do not know what it was about; I only remember that [Martinez] was telling [Vela Miranda] he was not a man and they moved about 10 meters from where [Vela Miranda's] truck . . . was parked.
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> ***
>
> After they left I did not manage to hear what was the quarrel about, because they were away and talked slowly [sic]. I noted they were very aggressive to each other and I was only able to hear that [Vela Miranda] was telling [Martinez] they should have a fight and [Martinez] said [Vela Miranda] was not manly enough and they should fire, but I never thought this was going to happen and it was a simple quarrel. I never imagined [Martinez] was holding a firearm, both looked equally drunk and they were 1 meter away from each other. I suddenly noted that [] Martinez shot at [] Vela Miranda, but I did not see the firearm well. I only saw light and knew that it was a shot because a very loud shot was heard; once again I saw that [Martinez] fired back at [Vela Miranda] by his head, so, in that moment, [Vela Miranda] was fainting by his truck and reached the ground; it was then that [Martinez] left walking, in a very slow way along Calle Abasolo towards his house; thereafter, [Baudelio, Pedro, Rodrigo] and myself ran toward Calle Hidalgo and therefrom each one left [for] home; we ran because we were much afraid that [Martinez] would kill us to eliminate witnesses[.]

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- Statement of witness Pedro Oronia Conchas (ECF No. 45-1 at 147-48):

> [O]n December 20 of this year, 2013, in or around eleven at night (23:00), I closed the pool hall which I own and is named "Billar Tenzompa [] in Calle Abasolo No. 11. I regularly close at that time. When all the people inside left the hall, I remained outside along with my brother Baudelio, [Manuel, Martinez and Rodrigo]. [] Vela Miranda also joined us and he had some beer with us. Then, it began to rain, so I opened the door to a room that is aside the hall . . . . We stayed there for as long as it was raining; when it stopped raining, we went back out and we kept drinking on the sidewalk until around 03:00[.]
> ***
> It was already Saturday, December 21[.] [Martinez and Vela Miranda] started a quarrel, but I did not hear what they were quarreling about. I can only remember that [Martinez] was telling [Vela Miranda] he was not a man and [Vela Miranda] would reply that he was a man ever since he was born and they moved about 10 meters from the place [toward Vela Miranda's] truck
> ***
> [T]hereafter, I was not able to hear what they were quarreling about because they were away and spoke slowly [sic] and I was only able to see that [] Martinez was arguing in a very aggressive manner with [] Vela Miranda because they were around 1 meter away between both of them. Suddenly, I saw that [] Martinez aimed at [] Vela Miranda by his head with a gun which I did not see where he took it from, because everything happened really quickly and I did not see the type of gun it was; then I saw that [] Martinez fired at [] Vela Miranda who remained standing and leaned on his truck; then [] Martinez again fired at [] Vela Martinez [sic] on his head; then [Vela Miranda] slid over his truck and then he fell on the ground; it was then that [Martinez] walked away really slowly by the back of the truck and kept walking along . . . Calle Abasolo, towards the east; then [Baudelio, Manuel, Rodrigo] and myself ran to the opposite side; this is, towards the west of the street and left for Calle Hidalgo and therefrom, each left home. I should mention that when we witnessed this, we all ran because we were afraid that, since we witnessed this, [Martinez] might have wanted to kill us as well; I know that [Martinez] is a very aggressive person.

Each witness provided additional details not reproduced here, including a description of Vela Miranda's truck, details about the location, and statements that none of the three had seen Martinez since the event but that the passport photo each was shown was in fact Martinez. (See, generally, ECF No. 45-1 at 136-48.) Further, in July of 2015, Manuel, Baudelio, and Pedro each identified Martinez from a photo lineup. (See id. at 170-73, 175-78, 180-83.)

Also in support of its extradition request, Mexico submitted the numerous pieces of evidence proffered from Mexican authorities. This includes a statement of the case of the Mexican prosecutor (ECF No. 45-1 at 73-83), a description of the exhibit list (id. at 85-88), the

arrest warrant (id. at 90-123), statements from the officers who investigated the crime scene (id. at 153-55 and 57-59), the autopsy report (id. at 161-68), and Martinez's birth certificate and photo (id. at 185, 189). Relevant to the identity of the shooter, the Mexican prosecutor noted the consistency of the witnesses' statements that they, Vela Miranda, and Martinez were drinking outside the pool hall in Tenzompa from 11:00 p.m. on December 20, 2013, through 3:00 a.m. on the 21st, and that Martinez and Vela Miranda began to argue aggressively and move toward Vela Miranda's truck. (ECF No. 45-1 at 78-79.) The prosecutor noted the multiple statements that Martinez challenged Vela Miranda's manhood, that the witnesses heard gunshots, and that Martinez left the scene immediately afterward. (Id. at 79.)

Martinez argues this evidence is insufficient for a finding of probable cause. Martinez notes there is no physical evidence in the record tying him to the shooting, including a lack of any showing Martinez owned or possessed the gun, the absence of a gun in evidence, the failure of authorities to search the house where Martinez was staying (despite having spoken to Martinez's wife on December 21st), and the fact that the authorities did not test the two recovered shell casings for DNA or fingerprints. Martinez also notes that the statements from Baudelio, Manuel, and Pedro were taken together, unsworn, and that their stories had changed slightly about what they witnessed. For example, on December 21st, Pedro and Baudelio told the investigators they did not see the first shot but saw the second, but the following day they told the prosecutor they had seen the shooting, and in July of 2015 Baudelio said he only heard two shots. (Cf. ECF No. 45-1 at 158; With id. at 136-148 and 176.) Martinez also argues the photo array the witnesses were shown in 2013 was suggestive because the photo has Martinez's information on it, and notes that the reproductions in the extradition packet are dark and illegible.

Martinez's arguments here are unpersuasive for the simple fact that probable cause is based on the totality of the circumstances. Illinois v. Gates, 462 U.S. 213, 238 (1983). True, Mexican authorities may not have Martinez's DNA or fingerprints from the shell casings, or any other physical evidence tying Martinez to the shooting. Also true, the Mexican prosecutors appear to lack a single witness who can testify to all of Martinez's alleged words and actions on the night Vela Miranda was killed. But on the totality, the three witnesses' statements and

prosecutor's summary raise a "fair probability" Martinez was the shooter. Garcia, 639 F. 3d at 1209. They indicate the three had been drinking beer with Martinez at the pool hall from the evening of December 20th through around 3:00 a.m. on the 21st; indicate Martinez and Vela Miranda argued and walked away from the group; give some indication as to the tenor of the argument and some of the words Martinez and Vela Miranda exchanged; and indicate that shortly after moving away from the group Vela Miranda was shot and killed—Martinez being the only other individual in close proximity. According to at least one witness, Martinez was the one who shot Vela Miranda; and all three witnesses stated that after the shooting, Martinez walked away from the scene and towards the house where he was staying. The evidence also gives a fair probability that the Martinez in these proceedings is the same person who was staying in the town, given the witnesses' statements and the authorities interactions with Martinez's wife the following day. Each of these facts is a piece of the puzzle that leaves the undersigned with "a reasonable ground to believe" Martinez is the person who shot Vela Miranda on the night in question. Mirchandani, 836 F.2d at 1226; see also Quinn, 783 F.2d at 815 (noting the differing standards between a probable cause finding and the evidence required for conviction) (citing Escobedo v. United States, 623 F.2d 1098, 1102 & n.10 (5th Cir.) (single photograph identified by witness sufficient to support probable cause finding)).

Further, while some irregularity might be present with the Mexican authorities' procedures in collecting the witness's statements, including the use of Martinez's passport as a means for the witnesses to identify him and the fact that the statements were not given under oath, these do not render the evidence submitted to be tainted in the same way as in those cases cited by Martinez in his brief. In In re Extradition of Chavez, the court noted the primary source tying Mr. Chavez to the crime were two statements given 7 years after the shooting by two illiterate farmers who had not witnessed the crime but only knew a similarly named person killed their relative. 408 F. Supp. 2d 908, 913-914 (N.D. Cal. 2005). In In re Extradition of Gonzalez, the court determined the accused should be released on bail pending an extradition hearing because the evidence showed that, on the date of the bank robbery, the accused was hundreds of miles away from the scene, and the eyewitness statements were not given until six months after the robbery

and after U.S. authorities sent Mexican authorities pictures of Gonzalez. 52 F. Supp. 2d 725, 733 (W.D. La. 1999). Here, the three witnesses gave their statement the day after the shooting. Additionally, they stated they had been with Martinez drinking beer since earlier in the evening and up through the shooting, and so would have known Martinez prior to being shown the passport photo containing Martinez's name. Manta v. Chertoff, 518 F.3d 1134, 1145 (9th Cir. 2008) (finding no error where the magistrate judge in an extradition proceeding credited the witness's identification of the accused, even though the witness was shown the accused's passport containing personal information, where the witness had prior interactions with the accused). Further, the Ninth Circuit has recognized that "unsworn hearsay statements contained in properly authenticated documents can constitute competent evidence to support a certificate of extradition." Artukovic v. Rison, 784 F.2d 1354, 1356 (9th Cir. 1986).

Thus, the undersigned rejects Martinez's argument that the evidence is insufficient to tie him to the shooting in December of 2013.

II. Evidence Concerning a Homicide with Unfair Advantage

Martinez has been charged with "Intentional Aggravated Homicide." (ECF No. 45-1 at 90.) Article 219(I) defines "aggravated" as a homicide committed with "premeditation, unfair advantage, lying in wait, or treachery." (Id. at 131.) The Article further states that "unfair advantage" exists when:

> (a) the perpetrator is significantly stronger than the victim or the victim is unarmed; (b) the perpetrator is stronger due to the weapons they use, due to greater skill with those weapons or due to the number of persons accompanying them; or (c) the perpetrator's life is not endangered by the victim as perpetrating the crime.

Martinez contends the evidence presented is insufficient to establish the murder was carried out with "undue advantage." He first argues the Mexican judge who issued the warrant failed to cite Article 219(I), instead relying on a dictionary definition of "advantage" without addressing the "undue"/"unfair" portion. Additionally, Martinez argues there is a lack of evidence to show: (a) Martinez was stronger or Vela Miranda was unarmed; (b) Martinez was stronger due to his use of or skill with a gun or support from others, or due to Vela Miranda's inferior weapon; or (c) Martinez's life was not endangered by Vela Miranda. He contends these

potential situations are undermined by the fact that Vela Miranda apparently started the argument that led to his death, the witnesses did not all state they saw the shooting, and Vela Miranda's right hand showed traces of gunshot residue. (See ECF No. 52-1.) Given these facts, Martinez argues he cannot be extradited on the specific charge of Intentional Aggravated Homicide.

Martinez's arguments are unpersuasive for the mere fact that there are multiple ways to treat the witnesses' statements. For example, hypothetically, Martinez might wish to argue at a trial that *Vela Miranda* was the armed individual, and after a brief struggle Martinez was able to turn the gun away from him as it fired, killing Vela Miranda. The jury might believe Martinez and disbelieve the eyewitnesses, given the slight inconsistencies in the eyewitnesses' statements given to the authorities at various points. This kind of testimony might even result in an acquittal. But it is just as easy to interpret the evidence as indicating Martinez pulled a gun, aimed it at Vela Miranda, and just before Martinez pulled the trigger, Vela Miranda attempted to wrest it away with his right hand. These potential interpretations do not indicate a lack of evidence, as Martinez argues, but instead go to the credibility of the eyewitnesses' statements, any contrary statement Martinez might make, and these facts' correlation with the hard evidence in this case. See Sainez v. Venables, 588 F.3d 713, 717 (9th Cir. 2009) (finding that sworn statements of witnesses can form the basis of a probable cause determination, and reminding that an extradition proceeding "makes no determination of guilt or innocence[;] guilt remains to be determined in the courts of the demanding country").

The same logic applies to Martinez's request for the court to admit and consider the additional forensic report, attached as Exhibit 1 to the opposition motion—that it is contradictory in nature. (ECF No. 51-1.) Martinez argued at the hearing that the extradition packet references this forensic report, but Mexico did not include the report itself. Thus, he contends the report should be admitted as "explanatory" evidence because it further elaborates on those references in the extradition packet. See Hooker v. Klein, 573 F.2d 1360, 1368 (9th Cir. 1978) (holding that "the fugitive . . . is not permitted to introduce evidence on the issue of guilt or innocence but can only offer evidence that tends to explain the government's case of probable cause.") The court recognizes that it "has broad discretion to determine the admissibility of the evidence before it,"

and is reminded that the line between what is 'explanatory' and what is 'contradictory' is "easier stated than applied." Santos, 830 F.3d at 992, 1007. However, it appears that Martinez's true purpose in offering this exhibit is to argue that Vela Miranda himself was armed, which arguably calls into question the "unfair advantage" portion of the charge. There is no other apparent reason that the defendant wants to "explain" the government's evidence. Similar to the eyewitness statements, this seems to be a question of fact for Mexican jurors to resolve. To wit, if the jury believes Vela Miranda was armed, this may result in an acquittal on this charge due to the failure of the prosecutor to prove the "unfair advantage" element; however, the jury could just as easily believe Vela Miranda had residue on his hand because he reached for Martinez's gun just before Martinez pulled the trigger. This issue is not one for the court to consider here but is left for trial in Mexico. See, e.g., Gomez v. United States, 2023 WL 2163474, at *6 (D. Or. Feb. 21, 2023) (finding fugitive's proffered evidence properly excluded where the "crux" of the evidence was to contradict whether the victim held a gun and was shooting at the fugitive, in the face of evidence indicating the victim was found unarmed and no witnesses saw the victim aim or shoot at the fugitive); Manrique v. O'Keefe, 2022 WL 1212018, at *12 (N.D. Cal. Apr. 22, 2022) (finding document properly excluded in extradition hearing where, even though it was being offered to explain ambiguities, it ultimately would only be useful in contradicting evidence in the extradition packet; noting that courts in California "have generally admitted evidence in extradition proceedings where the evidence would completely negate probable cause."). Thus, because Martinez's exhibit does not "obliterate" probable cause, the court declines to admit the forensic report. Santos, 830 F.3d at 992-93.

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ORDER

For the reasons stated above, the court GRANTS the U.S.'s motion for certification of extradition. (ECF Nos. 6, 45.) The Clerk of the Court shall forward a certified copy of this Certification, together with a copy of the evidence presented in this case, to the Secretary of State.[3]

Dated: February 24, 2023

KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

sant.125

[3] The undersigned also denied government's request to immediately remand Martinez into custody.

Appendix E

No. 19462

UNITED STATES OF AMERICA
and
MEXICO

Extradition Treaty (with appendix). Signed at Mexico City on 4 May 1978

Authentic texts: English and Spanish.
Registered by the United States of America on 9 December 1980.

ÉTATS-UNIS D'AMÉRIQUE
et
MEXIQUE

Traité d'extradition (avec annexe). Signé à Mexico le 4 mai 1978

Textes authentiques : anglais et espagnol.
Enregistré par les États-Unis d'Amérique le 9 décembre 1980.

EXTRADITION TREATY[1] BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES

The Government of the United States of America and the Government of the United Mexican States,

Desiring to cooperate more closely in the fight against crime and, to this end, to mutually render better assistance in matters of extradition,

Have agreed as follows:

Article 1. Obligation to Extradite

1. The Contracting Parties agree to mutually extradite, subject to the provisions of this Treaty, persons who the competent authorities of the requesting Party have charged with an offense or have found guilty of committing an offense, or are wanted by said authorities to complete a judicially pronounced penalty of deprivation of liberty for an offense committed within the territory of the requesting Party.

2. For an offense committed outside the territory of the requesting Party, the requested Party shall grant extradition if:

(*a*) Its laws would provide for the punishment of such an offense committed in similar circumstances, or

(*b*) The person sought is a national of the requesting Party, and that Party has jurisdiction under its own laws to try that person.

Article 2. Extraditable Offenses

1. Extradition shall take place, subject to this Treaty, for wilful acts which fall within any of the clauses of the Appendix and are punishable in accordance with the laws of both Contracting Parties by deprivation of liberty, the maximum of which shall not be less than one year.

2. If extradition is requested for the execution of a sentence, there shall be the additional requirement that the part of the sentence remaining to be served shall not be less than six months.

3. Extradition shall also be granted for wilful acts which, although not being included in the Appendix, are punishable, in accordance with the federal laws of both Contracting Parties, by a deprivation of liberty, the maximum of which shall not be less than one year.

4. Subject to the conditions established in paragraphs 1, 2 and 3, extradition shall also be granted:

(*a*) For the attempt to commit an offense; conspiracy to commit an offense; or the participation in the execution of an offense; or

(*b*) When, for the purpose of granting jurisdiction to the United States government, transportation of persons or property, the use of the mail or other means of carrying out interstate or foreign commerce is also an element of the offense.

[1] Came into force on 25 January 1980 by the exchange of the instruments of ratification, which took place at Washington, in accordance with article 23 (2).

Article 3. EVIDENCE REQUIRED

Extradition shall be granted only if the evidence be found sufficient, according to the laws of the requested Party, either to justify the committal for trial of the person sought if the offense of which he has been accused had been committed in that place, or to prove that he is the person convicted by the courts of the requesting Party.

Article 4. TERRITORIAL APPLICATION

1. For the purposes of this Treaty, the territory of a Contracting Party shall include all the territory under the jurisdiction of that Contracting Party, including airspace and territorial waters and vessels and aircraft registered in that Contracting Party if any such aircraft is in flight when the offense is committed.

2. For the purposes of this Treaty, an aircraft shall be considered to be in flight at any time from the moment when all its external doors are closed following the embarkation until the moment when any such door is opened for disembarkation.

Article 5. POLITICAL AND MILITARY OFFENSES

1. Extradition shall not be granted when the offense for which it is requested is political or of a political character.

If any question arises as to the application of the foregoing paragraph, the Executive authority of the requested Party shall decide.

2. For the purpose of this Treaty, the following offenses shall not be considered to be offenses included in paragraph 1:

(*a*) The murder or other wilful crime against the life or physical integrity of a Head of State or Head of Government or of his family, including attempts to commit such an offense.

(*b*) An offense which the Contracting Parties may have the obligation to prosecute by reason of a multilateral international agreement.

3. Extradition shall not be granted when the offense for which extradition is requested is a purely military offense.

Article 6. "NON BIS IN IDEM"

Extradition shall not be granted when the person sought has been prosecuted or has been tried and convicted or acquitted by the requested Party for the offense for which extradition is requested.

Article 7. LAPSE OF TIME

Extradition shall not be granted when the prosecution or the enforcement of the penalty for the offense for which extradition has been sought has become barred by lapse of time according to the laws of the requesting or requested Party.

Article 8. CAPITAL PUNISHMENT

When the offense for which extradition is requested is punishable by death under the laws of the requesting Party and the laws of the requested Party do not permit such punishment for that offense, extradition may be refused, unless the requesting Party furnishes such assurances as the requested Party considers sufficient that the death penalty shall not be imposed, or, if imposed, shall not be executed.

Article 9. EXTRADITION OF NATIONALS

1. Neither Contracting Party shall be bound to deliver up its own nationals, but the executive authority of the requested Party shall, if not prevented by the laws of that Party, have the power to deliver them up if, in its discretion, it be deemed proper to do so.

2. If extradition is not granted pursuant to paragraph 1 of this article, the requested Party shall submit the case to its competent authorities for the purpose of prosecution, provided that Party has jurisdiction over the offense.

Article 10. EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

1. The request for extradition shall be made through the diplomatic channel.

2. The request for extradition shall contain the description of the offense for which extradition is requested and shall be accompanied by:

(*a*) A statement of the facts of the case;

(*b*) The text of the legal provisions describing the essential elements of the offense;

(*c*) The text of the legal provisions describing the punishment for the offense;

(*d*) The text of the legal provisions relating to the time-limit on the prosecution or the execution of the punishment of the offense;

(*e*) The facts and personal information of the person sought which will permit his identification and, where possible, information concerning his location.

3. In addition, when the request for extradition relates to a person who has not yet been convicted, it shall be accompanied by:

(*a*) A certified copy of the warrant of arrest issued by a judge or other judicial officer of the requesting Party;

(*b*) Evidence which, in accordance with the laws of the requested Party, would justify the apprehension and commitment for trial of the person sought if the offense had been committed there.

4. When the request for extradition relates to a convicted person, it shall be accompanied by a certified copy of the judgment of conviction imposed by a court of the requesting Party.

If the person was found guilty but not sentenced, the extradition request shall be accompanied by a certification to that effect and a certified copy of the warrant of arrest.

If such person has already been sentenced, the request for extradition shall be accompanied by a certification of the sentence imposed and a statement indicating which part of the sentence has not been carried out.

5. All the documents that must be presented by the requesting Party in accordance with the provisions of this Treaty shall be accompanied by a translation in the language of the requested Party.

6. The documents which, according to this article, shall accompany the request for extradition, shall be received in evidence when:

(*a*) In the case of a request emanating from the United States, they are authenticated by the official seal of the Department of State and legalized by the manner prescribed by the Mexican law;

(*b*) In the case of a request emanating from the United Mexican States, they are certified by the principle diplomatic or consular officer of the United States in Mexico.

Article 11. PROVISIONAL ARREST

1. In the case of urgency, either Contracting Party may request, through the diplomatic channel, the provisional arrest of an accused or convicted person. The application shall contain a description of the offense for which the extradition is requested, a description of the person sought and his whereabouts, an undertaking to formalize the request for extradition, and a declaration of the existence of a warrant of arrest issued by a competent judicial authority or a judgment of conviction issued against the person sought.

2. On receipt of such a request, the requested Party shall take the necessary steps to secure the arrest of the person claimed.

3. Provisional arrest shall be terminated if, within a period of 60 days after the apprehension of the person claimed, the executive authority of the requested Party has not received the formal request for extradition and the documents mentioned in article 10.

4. The fact that the provisional arrest is terminated pursuant to paragraph 3 shall not prejudice the extradition of the person sought if the request for extradition and the necessary documents mentioned in article 10 are delivered at a later date.

Article 12. ADDITIONAL EVIDENCE

If the executive authority of the requested Party considers that the evidence furnished in support of the request for extradition is not sufficient in order to fulfill the requirements of this Treaty, that Party shall request the presentation of the necessary additional evidence.

Article 13. PROCEDURE

1. The request for extradition shall be processed in accordance with the legislation of the requested Party.

2. The requested Party shall make all arrangements necessary for internal procedures arising out of the request for extradition.

3. The competent legal authorities of the requested Party shall be authorized to employ all legal means within their power to obtain from the judicial authorities the decisions necessary for the resolution of the request for extradition.

Article 14. DECISION AND SURRENDER

1. The requested Party shall promptly communicate to the requesting Party its decision on the request for extradition.

2. In the case of complete or partial rejection of a request for extradition, the requested Party shall give the reasons on which it was based.

3. If the extradition is granted, the surrender of the person sought shall take place within such time as may be prescribed by the laws of the requested Party. The competent authorities of the Contracting Parties shall agree on the date and place of the surrender of the person sought.

4. If the competent authority has issued the warrant or order for the extradition of the person sought and he is not removed from the territory of the requested Party within the prescribed period, he shall be set at liberty and the requested Party may subsequently refuse to extradite him for the same offense.

Article 15. DELAYED SURRENDER

The requested Party, after granting the extradition, may defer the surrender of the person sought when that person is being proceeded against or is serving a sentence in the territory of the requested Party for a different offense, until the conclusion of the proceeding or the full execution of the punishment that has been imposed.

Article 16. REQUESTS FOR EXTRADITION MADE BY THIRD STATES

The requested Party, in the case of receiving requests from the other Contracting Party and from one or more third States for the extradition of the same person, be it for the same offense or for different offenses, shall decide to which requesting State it shall grant the extradition of that person.

Article 17. RULE OF SPECIALITY

1. A person extradited under the present Treaty shall not be detained, tried or punished in the territory of the requesting Party for an offense other than that for which extradition has been granted nor be extradited by that Party to a third State unless:

(*a*) He has left the territory of the requesting Party after his extradition and has voluntarily returned to it;

(*b*) He has not left the territory of the requesting Party within 60 days after being free to do so; or

(*c*) The requested Party has given its consent to his detention, trial, punishment or extradition to a third State for an offense other than that for which the extradition was granted.

These stipulations shall not apply to offenses committed after the extradition.

2. If, in the course of the procedure, the classification of the offense is changed for which the person requested was extradited, he shall be tried and sentenced on the condition that the offense, in its new legal form:

(*a*) Is based on the same group of facts established in the request for extradition and in the documents presented in its support; and

(*b*) Is punishable with the same maximum sentence as the crime for which he was extradited or with a lesser sentence.

Article 18. SUMMARY EXTRADITION

If the person sought informs the competent authorities of the requested Party that he agrees to be extradited, that Party may grant his extradition without further proceedings, and shall take all measures permitted under its laws to expedite the extradition. In such cases article 17 shall not be applicable.

Article 19. SURRENDER OF PROPERTY

1. To the extent permitted under the law of the requested Party and subject to the rights of third parties, which shall be duly respected, all articles, instruments, objects of value or documents relating to the offense, whether or not used for its execution, or which in any other manner may be material evidence for the prosecution, shall be surrendered upon the granting of the extradition even when extradition cannot be effected due to the death, disappearance, or escape of the accused.

2. The requested Party may condition the surrender of articles upon a satisfactory assurance from the requesting Party that the articles will be returned to the requested Party as soon as possible.

Article 20. TRANSIT

1. The right to transport through the territory of one of the Contracting Parties a person who is not a national of that Contracting Party surrendered to the other Contracting Party by a third State shall be granted on presentation made through the diplomatic channel of a certified copy of the decision on extradition, provided that reasons of public order are not opposed to the transit.

2. The authorities of the transit State shall be in charge of the custody of the extradited person while that person is in its territory.

3. The Party to which the person has been extradited shall reimburse the State through whose territory such person is transported for any expenses incurred by the latter in connection with such transportation.

Article 21. EXPENSES

The requested Party shall bear the expenses of the arrangements referred to in article 13, with the exception that the expenses incurred for the translation of documents and, if applicable, for the transportation of the person ordered extradited shall be paid by the requesting Party.

Article 22. SCOPE OF APPLICATION

1. This Treaty shall apply to offenses specified in article 2 committed before and after this Treaty enters into force.

2. Requests for extradition that are under process on the date of the entry into force of this Treaty shall be resolved in accordance with the provisions of the Treaty of 22 February 1899, and the Additional Conventions on Extradition of 25 June 1902, 23 December 1925,[1] and 16 August 1939.[2]

Article 23. RATIFICATION, ENTRY INTO FORCE, DENUNCIATION

1. This Treaty shall be subject to ratification; the exchange of instruments of ratification shall take place in Washington as soon as possible.

2. This Treaty shall enter into force on the date of exchange of the instruments of ratification.

3. On entry into force of this Treaty, the Treaty of Extradition of 22 February 1899 and the Additional Conventions on Extradition of 25 June 1902, 23 December 1925 and 16 August 1939 between the United States of America and the United Mexican States shall cease to have effect without prejudice to the provisions of article 22.

4. Either Contracting Party may terminate this Treaty by giving notice to the other Party. The termination shall take effect six months after the receipt of such notice.

[1] League of Nations, *Treaty Series*, vol. LIV, p. 441.
[2] *Ibid.*, vol. CCIV, p. 159.

DONE in two originals, in the English and Spanish languages, both equally authentic, at Mexico City this fourth day of May, one thousand nine hundred seventy-eight.

[*Signed — Signé*][1]

For the Government
of the United States of America

[*Signed — Signé*][2]

For the Government
of the United Mexican States

APPENDIX

1. Murder or manslaughter; abortion.
2. Malicious wounding or injury.
3. Abandonment of minors or other dependents when there is danger of injury or death.
4. Kidnapping; child stealing; abduction; false imprisonment.
5. Rape; statutory rape; indecent assault; corruption of minors, including unlawful sexual acts with or upon children under the age of consent.
6. Procuration; promoting or facilitating prostitution.
7. Robbery; burglary; larceny.
8. Fraud.
9. Embezzlement.
10. An offense against the laws relating to counterfeiting and forgery.
11. Extortion.
12. Receiving or transporting any money, valuable securities, or other property knowing the same to have been unlawfully obtained.
13. Arson; malicious injury to property.
14. Offenses against the laws relating to the traffic in, possession, production, manufacture, importation or exportation of dangerous drugs and chemicals, including narcotic drugs, cannabis, psychotropic drugs, opium, cocaine, or their derivatives.
15. Offenses against the laws relating to the cntrol of poisonous chemicals or substances injurious to health.
16. Piracy.
17. Offenses against the safety of means of transportation including any act that would endanger a person in a means of transportation.
18. An offense relating to unlawful seizure or exercise of control of trains, aircraft, vessels, or other means of transportation.
19. Offenses against the laws relating to prohibited weapons, and the control of firearms, ammunition, explosives, incendiary devices or nuclear materials.
20. An offense against the laws relating to international trade and transfers of funds or valuable metals.
21. An offense against the laws relating to the importation, exportation, or international transit of goods, articles, or merchandise, including historical or archeological items.
22. Violations of the customs laws.
23. Offenses against the laws relating to the control of companies, banking institutions, or other corporations.

[1] Signed by Cyrus Vance — Signé par Cyrus Vance.
[2] Signed by S. Roel — Signé par S. Roel.

24. Offenses against the laws relating to the sale of securities, including stocks, bonds and instruments of credit.
25. Offenses against the laws relating to bankruptcy or rehabilitation of a corporation.
26. Offenses against the laws relating to prohibition of monopoly or unfair transactions.
27. Offenses against the laws relating to protection of industrial property or copyright.
28. Offenses against the laws relating to abuse of official authority.
29. Bribery, including soliciting, offering and accepting bribes.
30. Perjury; false statements to any governmental authority. Subornation of perjury or false statements.
31. Offenses against the laws relating to obstruction of justice, including harboring criminals and suppressing evidence.