

**No. 11338**

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**UNITED STATES OF AMERICA  
and  
SPAIN**

**Treaty on extradition. Signed at Madrid on 29 May 1970**

*Authentic texts: English and Spanish.*

*Registered by the United States of America on 21 September 1971.*

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**ÉTATS-UNIS D'AMÉRIQUE  
et  
ESPAGNE**

**Traité d'extradition. Signé à Madrid le 29 mai 1970**

*Textes authentiques: anglais et espagnol.*

*Enregistré par les États-Unis d'Amérique le 21 septembre 1971.*

## TREATY ON EXTRADITION<sup>1</sup> BETWEEN THE UNITED STATES OF AMERICA AND SPAIN

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The President of the United States of America and the Chief of State of Spain, desiring to make more effective the cooperation of the two countries in the repression of crime through the rendering of maximum assistance in matters of extradition,

Have decided to conclude a Treaty and to this end have named as their representatives:

The President of the United States of America, The Honorable William P. Rogers, Secretary of State;

The Chief of State of Spain, His Excellency Señor Gregorio López Bravo de Castro, Minister of Foreign Affairs,

who have agreed as follows:

### *Article I*

In accordance with the conditions established in this Treaty, each Contracting Party agrees to extradite to the other, for prosecution or to undergo sentence, persons found in its territory who have been charged with or convicted of any of the offenses mentioned in Article II of this Treaty committed within the territory of the other, or outside thereof under the conditions specified in Article III.

### *Article II*

A. Persons shall be delivered up according to the provisions of this Treaty for any of the following offenses provided that these offenses are punishable by the laws of both Contracting Parties by a term of imprisonment exceeding one year:

1. Murder; infanticide; parricide; manslaughter.
2. Abortion.
3. Rape; statutory rape; indecent assault, including sodomy and unlawful sexual acts with or upon minors under the age specified by the penal laws of both Contracting Parties.

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<sup>1</sup> Came into force on 16 June 1971 by the exchange of the instruments of ratification, which took place at Washington, in accordance with article XVIII.

4. Aggravated injury or mutilation.
5. Procuration.
6. Willful nonsupport or willful abandonment of a child or spouse when for that reason the life of that child or spouse is or is likely to be endangered.
7. Bigamy.
8. Kidnapping or abduction; child stealing; false imprisonment.
9. Robbery or larceny or burglary; housebreaking.
10. Embezzlement; malversation; breach of fiduciary relationship.
11. Obtaining money, valuable securities or property, by false pretenses, by threat of force or by other fraudulent means including the use of the mails or other means of communication.
12. Any offense relating to extortion or threats.
13. Bribery, including soliciting, offering and accepting.
14. Receiving or transporting any money, valuable securities or other property knowing the same to have been obtained pursuant to a criminal act.
15. Any offense relating to counterfeiting or forgery; making a false statement to a government agency or official.
16. Any offense relating to perjury or false accusation.
17. Arson; malicious injury to property.
18. Any malicious act that endangers the safety of any person in a railroad train, or aircraft or vessel or bus or other means of transportation.
19. Piracy, defined as mutiny or revolt on board an aircraft or vessel against the authority of the captain or commander of such aircraft or vessel, any seizure or exercise of control, by force or violence or threat of force or violence, of an aircraft or vessel.
20. Any offense against the bankruptcy laws.
21. Any offense against the laws relating to narcotic drugs, psychotropic drugs, cocaine and its derivatives, and other dangerous drugs, including cannabis, and chemicals or substances injurious to health.
22. Any offense relating to firearms, explosives, or incendiary devices.
23. Unlawful interference in any administrative or juridical proceedings by bribing, threatening, or injuring by any means, any officer, juror, witness, or duly authorized person.

B. Extradition shall also be granted for participation in any of the offenses mentioned in this article, not only as principal or accomplices, but as accessories, as well as for attempt to commit or conspiracy to commit any of the aforementioned offenses, when such participation, attempt or conspiracy is subject, under the laws of both Parties, to a term of imprisonment exceeding one year.

C. If extradition is requested for any offense listed in paragraphs A or B of this article and that offense is punishable under the laws of both Contracting Parties by a term of imprisonment exceeding one year, such offense shall be extraditable under the provisions of this Treaty whether or not the laws of both Contracting Parties would place that offense within the same category of offenses made extraditable by paragraphs A and B of this article and whether or not the laws of the requested Party denominate the offense by the same terminology.

D. Extradition shall also be granted for the above mentioned offenses, even when, in order to recognize the competent federal jurisdiction, circumstances such as the transportation from one State to another, have been taken into account and may be elements of the offense.

### *Article III*

A. For the purposes of this Treaty the territory of a Contracting Party shall include all 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 or if any such vessel is on the high seas when the offense is committed. For purposes of this Treaty an aircraft shall be considered to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends.

B. Without prejudice to paragraph A, 1 of Article V, when the offense for which extradition has been requested has been committed outside the territory of the requesting Party, extradition may be granted if the laws of the requested Party provide for the punishment of such an offense committed in similar circumstances, and if the person whose surrender is sought is not also the subject of a request from another State whose jurisdiction over the person may take preference for territorial reasons and in respect of which there exists an equal possibility of acceding to a request for extradition.

### *Article IV*

Neither of the Contracting Parties shall be bound to deliver up its own nationals, but the executive authority of the United States and the competent authority of Spain shall have the power to deliver them up, if, in its discretion, it be deemed proper to do so.

### *Article V*

A. Extradition shall not be granted in any of the following circumstances:

1. When the person whose surrender is sought is being proceeded against or has been tried and discharged or punished in the territory of the requested Party for the offense for which his extradition is requested.
2. When the person whose surrender is sought has been tried and acquitted or has undergone his punishment in a third State for the offense for which his extradition is requested.
3. When the prosecution or the enforcement of the penalty for the offense has become barred by lapse of time according to the laws of either of the Contracting Parties.
4. When the offense in respect of which the extradition is requested is regarded by the requested Party as an offense of a political character, or that Party has substantial grounds for believing that the request for extradition has been made for the purpose of trying or punishing a person for an offense of the above mentioned character. If any question arises as to whether a case comes within the provisions of this subparagraph, the authorities of the Government on which the requisition is made shall decide.
5. When the offense is purely military.

B. For the purposes of the application of subparagraph A, 4 of this article, the attempt, whether consummated or not, against the life of the Head of State or of a member of his family shall not be considered a political offense or an act connected with such an offense.

C. For the same purposes of application of subparagraph A, 4 of this article an offense committed by force or intimidation on board a commercial aircraft carrying passengers in scheduled air services or on a charter basis, with the purpose of seizing or exercising control of such aircraft, will be presumed to have a predominant character of a common crime when the consequences of the offense were or could have been grave. The fact that the offense has endangered the life or jeopardized the safety of the passengers or crew will be given special consideration in the determination of the gravity of such consequences.

#### *Article VI*

If a request for extradition is made under this Treaty for a person who at the time of such request is under the age of eighteen years and is considered by the requested Party to be one of its residents, the requested Party, upon a determination that extradition would disrupt the social readjustment and rehabilitation of that person, may recommend to the requesting Party that the request for extradition be withdrawn, specifying the reasons therefor.

*Article VII*

When the offense for which the extradition is requested is punishable by death under the laws of the requesting Party, extradition shall be denied unless the requesting Party provides such assurances as the requested Party considers sufficient that the death penalty shall not be imposed, or, if imposed, shall not be executed.

*Article VIII*

The requested Party may, after a decision on the request has been rendered by a court of competent jurisdiction, defer the surrender of the person whose extradition is requested when that person is being proceeded against or is serving a sentence in the territory of the requested Party for an offense other than that for which extradition has been requested until the conclusion of the proceedings and the full execution of any punishment he may be or may have been awarded.

*Article IX*

The determination that extradition based upon the request therefor should or should not be granted shall be made in accordance with this Treaty and with the law of the requested Party. The person whose extradition is sought shall have the right to use such remedies and recourses as are provided by such law.

*Article X*

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

B. The request shall be accompanied by:

1. A description of the person sought;
2. A statement of the facts of the case;
3. The text of the applicable laws of the requesting Party including the law defining the offense, the law prescribing the punishment for the offense, and the law relating to the limitations of the legal proceedings or the enforcement of the penalty for the offense.

C. 1. When the request relates to a person already convicted, it must be accompanied by:

- When emanating from the United States, a copy of the judgment of conviction and of the sentence, if it has been passed; or
- When emanating from Spain, a copy of the sentence.

2. In any case, a statement showing that the sentence has not been served or how much of the sentence has not been served shall accompany the request.

D. When the request relates to a person who has not yet been convicted, it must also be accompanied by a warrant of arrest issued by a judge or other judicial officer of the requesting Party.

The requested Party may require the requesting Party to produce prima facie evidence to the effect that the person claimed has committed the offense for which extradition is requested. The requested Party may refuse the extradition request if an examination of the case in question shows that the warrant is manifestly ill-founded.

E. If a question arises regarding the identity of the person whose extradition is sought, evidence proving the person requested is the person to whom the warrant of arrest or sentence refers shall be submitted.

F. The documents which, according to this article, shall accompany the extradition request, shall be admitted in evidence when:

- In the case of a request emanating from Spain they bear the signature of a judge or other juridical or public official and are certified by the principal diplomatic or consular officer of the United States in Spain; or
- In the case of a request emanating from the United States they are signed by a judge, magistrate or officer of the United States and they are sealed by the official seal of the Department of State and are certified by the Embassy of Spain in the United States.

G. The documents mentioned in this article shall be accompanied by an official translation into the language of the requested Party which will be at the expense of the requesting Party.

#### *Article XI*

A. In case of urgency a Contracting Party may apply to the other Contracting Party for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel. This application may be made either through the diplomatic channel or directly between the respective Ministries of Justice.

B. The application shall contain a description of the person sought, an indication of intention to request the extradition of the person sought and a statement of the existence of a warrant of arrest or a judgment of conviction or sentence against that person, and such further information, if any, as may be required by the requested Party.

C. On receipt of such an application the requested Party shall take the necessary steps to secure the arrest of the person claimed.

D. A person arrested upon such an application shall be set at liberty upon the expiration of 30 days from the date of his arrest if a request for his extradition accompanied by the documents specified in Article X shall not have been received. However, this stipulation shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

#### *Article XII*

If the requested Party requires additional evidence or information to enable it to decide on the request for extradition, such evidence or information shall be submitted to it within such time as that Party shall require.

If the person sought is under arrest and the additional evidence or information submitted as aforesaid is not sufficient or if such evidence or information is not received within the period specified by the requested Party, he shall be discharged from custody. However, such discharge shall not bar the requesting Party from submitting another request in respect of the same or any other offense.

#### *Article XIII*

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:

1. He has left the territory of the requesting Party after his extradition and has voluntarily returned to it;
2. He has not left the territory of the requesting Party within 45 days after being free to do so; or
3. The requested Party has consented to his detention, trial, punishment or to his extradition to a third State for an offense other than that for which extradition was granted.



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

#### *Article XIV*

A Party which receives two or more requests for the extradition of the same person either for the same offense, or for different offenses, shall determine to which of the requesting States it will extradite the person sought, taking into consideration the existing circumstances and particularly the possibility of a later extradition between the requesting States, the seriousness of each offense, the place where the offense was committed, the nationality of the person sought, the dates upon which the requests were received and the provisions of any extradition agreements between the requested Party and the other requesting State or States.

#### *Article XV*

The requested Party shall promptly communicate to the requesting Party through the diplomatic channel the decision on the request for extradition.

In the case of a complete or partial rejection of the extradition request, the requested Party shall indicate the reasons for the rejection.

If the extradition has been granted, the authorities of the requesting and requested Parties shall agree on the time and place of the surrender of the person sought. Surrender shall take place within such time as may be prescribed by the laws of the requested Party.

If the person sought is not removed from the territory of the requested Party within the time prescribed, he may be set at liberty and the requested Party may subsequently refuse to extradite that person for the same offense.

#### *Article XVI*

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 acquired as a result of the offense or which may be required as evidence shall, if found, be surrendered upon the granting of the extradition request.

Subject to the qualifications of the first paragraph, the above mentioned articles shall be returned to the requesting Party even if the extradition, having been agreed to, cannot be carried out owing to the death or escape of the person sought.

*Article XVII*

Expenses related to the transportation of the person sought shall be paid by the requesting Party. The appropriate legal officers of the country in which the extradition proceedings take place shall, by all legal means within their power, assist the requesting Party before the respective judges and magistrates.

No pecuniary claim, arising out of the arrest, detention, examination and surrender of persons sought under the terms of this Treaty, shall be made by the requested Party against the requesting Party.

*Article XVIII*

The ratifications of this Treaty shall be exchanged in Washington as soon as possible.

This Treaty shall enter into force upon the exchange of ratifications and will continue in force until either Contracting Party shall give notice of termination to the other, which termination shall be effective six months after the date of receipt of such notice.

This Treaty shall terminate and replace the Extradition Treaty between the United States and Spain signed at Madrid June 15, 1904 and the Protocol thereto signed at San Sebastián August 13, 1907;<sup>1</sup> however, the crimes listed in that Treaty and Protocol and committed prior to the entry into force of this Treaty shall nevertheless be subject to extradition pursuant to the provisions of that Treaty and Protocol.

IN WITNESS WHEREOF the Plenipotentiaries have signed this Treaty and have hereunto affixed their seals.

DONE in duplicate, in the English and Spanish languages, both equally authentic, at Madrid this twenty-ninth day of May, one thousand nine hundred seventy.

For the United States of America:  
WILLIAM P. ROGERS

For Spain:  
GREGORIO LÓPEZ BRAVO

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<sup>1</sup> De Martens, *Nouveau Recueil général de Traités*, troisième série, tome III, p. 309.