

TESTIMONY OF

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Mr. Chairman and members of the Committee:

I am pleased to appear before you today to testify on the subject of “Strengthening the Long Arm of the Law: How are Fugitives Avoiding Extradition, and How Can We Bring Them to Justice?”

The Department of State appreciates this opportunity to discuss international extradition. The growth in transborder criminal activity, especially terrorism, violent crime, drug trafficking, and the laundering of proceeds of organized crime, has confirmed the need for increased international law enforcement cooperation. Extradition is an essential tool in that effort. In my testimony I will address some of the key problems that we are facing in connection with international extradition and the steps that we are taking to address those problems.

Extradition Process

As this Committee is aware, extradition is the process by which a person charged with or convicted of a crime under the law of one state is arrested in another state and returned for trial or punishment. Although nations have no general obligation in international law to extradite, the practice has become widespread, and there now exist hundreds of treaties around the world relating to international extradition. Because of the many unique national legal systems around the world, however, no single set of rules governs the process of international extradition and the conditions under which extradition may be granted vary widely. Because the international extradition process inherently involves the laws of two countries -- the country requesting

extradition and the country where a fugitive is located -- the process of extradition can be challenging and time-consuming for both countries involved.

I am pleased to join Mr. Swartz to discuss this process, including the difficulties we frequently encounter and the steps we are taking to try to overcome those difficulties.

Extradition Treaties

Under U.S. law, fugitives can only be extradited from the United States pursuant to authorization granted by statute or treaty. Most extraditions to and from the United States take place pursuant to bilateral extradition treaties. The Department of State, working closely with the Department of Justice, has aggressively expanded and modernized our extradition treaties in order to make the extradition process more efficient and effective. In many of our recent negotiations, the United States has replaced our older extradition treaties with new treaties. Very frequently, our negotiations replace our older treaties that included a list of extraditable offenses with new treaties based on dual criminality, that is, a regime where fugitives are extraditable if their conduct has been criminalized in both countries. The new treaties also include other improvements to make the process as efficient as possible. In other instances, we have negotiated and brought into force first-ever extradition treaties with important law enforcement partners, such as the Philippines and South Korea.

Since 1990, the United States has negotiated and signed nearly 30 new extradition treaties and protocols that have substantially improved the network of treaties pursuant to which we can make and receive requests for international extradition. Improvements have

included updating the offenses for which extradition is possible, providing for the extradition of nationals, smoothing the procedures for extradition, clarifying the standard of proof for extradition, specifying the applicable statutes of limitations, limiting the political offense exception to extradition, and addressing other issues.

At this point, the United States has extradition treaty relationships with over 100 countries throughout the world. Pursuant to this network of extradition treaties, our extradition requests in recent years have resulted in the return for trial and punishment of persons charged with or convicted of the widest variety of crimes, including murder, white-collar crimes, narcotics traffickers and terrorists. Some of our recent extraditions have included the extradition from France of James Kopp, who murdered abortion doctor Bernard Slepian in Buffalo, New York, and was convicted of second degree murder this year in New York, and of Ira Einhorn, who murdered his girlfriend in Philadelphia, was a fugitive from justice for over 20 years, and was convicted of murder in 2002. Earlier this year we obtained the extradition from Guatemala of Milton Napoleon Marin Castillo, who has been charged with committing a double murder in Ann Arbor, Michigan.

Areas of Concern

While there have been many successes, the existence of an extradition treaty, even a modern one, does not ensure that all will always go well in our extradition requests to our partners. Because of the differences in legal systems around the world, the extradition process is neither simple nor without frequent delays. I will highlight for you today three major areas of

continuing concern for the Administration with respect to our international extradition relationships.

Nationality

One concern has been our ability to obtain the extradition of nationals of the requested state. As a matter of longstanding policy, the U.S. Government extradites U.S. nationals. Most of the treaties we have sent recently to the Senate similarly freely allow for the extradition of nationals. Some countries, however, are prohibited by their constitutions or other legal authority from extraditing their nationals. The U.S. Government has made it a high priority to convince states to agree to extradite their nationals, notwithstanding laws or traditions to the contrary. This is, however, a very sensitive and deep-seated issue, and we have not succeeded in obtaining unqualified approval in all circumstances. A number of our major treaty partners, such as France, Germany, and many countries of Central and South America, still cannot extradite nationals. We continue, however, to work to convince these and all other countries to remove constitutional and other legal restrictions on the extradition of nationals.

In this connection, we have achieved notable successes recently in the Western Hemisphere with respect to the issue of extradition of nationals. Our recent treaties with Argentina, Bolivia, Paraguay, and Peru all provide for extradition of nationals. They represent a watershed in our efforts to convince civil law countries in the Western Hemisphere to obligate themselves to extradite their nationals to the United States. In practical terms, these treaties should help the United States to bring to justice violent criminals and narcotics traffickers, regardless of nationality, who reside or may be found in these countries.

We also are able to make gains in the area of extradition of nationals in some cases by working directly with our treaty partners on modifications of their extradition policies, where their law permits extradition of nationals. For example, largely as a result of our efforts, the Dominican Republic repealed its law prohibiting the extradition of nationals, leading to the extradition to the United States of a number of Dominican nationals on murder and narcotics charges. After many years of discussion, Mexico and Colombia have been extraditing nationals to the United States in recent years, Mexico under the U.S.-Mexico bilateral extradition treaty and Colombia under the authority of its domestic extradition law.

Death Penalty and Life Assurances

Another continuing problem is many countries' concern about the penalties that may be imposed in the requesting state, such as the death penalty or even sentences of life imprisonment. Our modern treaties typically provide that if the offense for which surrender is sought is punishable by death under the laws in the country requesting extradition but not in the country holding the fugitive, extradition may be refused unless the requesting state provides assurances that the death penalty will not be imposed or carried out. In many cases, the United States is in a position to provide such assurances when requested to do so. Prosecuting authorities generally can take measures that rule out the death penalty, and often are prepared to forego the death penalty rather than allow the fugitive to escape U.S. justice. There have been cases, however, where U.S. federal or state prosecutors have not been in a position to provide assurances that they would not seek the death penalty for a particular fugitive, for example, where the crime is such that they would prefer not to give the assurance and instead

take the chance that the fugitive might be returned from a different jurisdiction or otherwise come into the United States.

Beyond death penalty assurances, one troubling development with respect to sentencing is that some of our extradition treaty partners have requested assurances regarding life imprisonment as a prerequisite to extraditing fugitives to the United States, despite an absence of treaty provisions for such assurances. The degree to which U.S. federal and state prosecuting officials can or are willing to comply with such requests varies.

This matter of assurances relating to life imprisonment has become a significant issue in the last two years with respect to Mexico, which I understand is of particular concern to the Committee. In October 2001, the Mexican Supreme Court held that life sentences were unconstitutional under the Mexican Constitution and that, in addition to such sentences being barred in Mexico, no fugitive in Mexico could be extradited to another country if that fugitive faces a life sentence in the state requesting his extradition. Following this judicial ruling, Mexico was obligated to seek assurances from the United States that fugitives who face extradition from Mexico will not be sentenced to life imprisonment if returned, tried, and convicted in the United States.

During the nearly two-year period that this ruling has been in effect, officials in the executive branches of both countries have worked to try to design assurances that will satisfy the Mexican judicial requirement but also will be acceptable, or at least workable, to U.S. prosecutors. At the same time, however, we continue to strongly believe, and have

communicated firmly to the Mexican Government, that the Mexican Supreme Court opinion should be revisited so that our extradition relationship is not subject to this additional burden. Both the State Department and the Justice Department, including the Attorney General and Secretary Powell, have engaged the Mexican Government on this issue. We have pressed, and will continue to press, for the Government of Mexico to seek the reversal of this decision, and at a minimum reduce its adverse impact for as long as it is in effect.

Dual Criminality

As criminal law evolves and different types of conduct are criminalized, such as computer crimes, money laundering, terrorism and terrorist financing, the United States has made concentrated efforts to ensure that our new treaties cover these crimes. The older U.S. treaties negotiated before the late 1970s include a list of covered offenses. For countries with which the United States still has such “list” treaties, a request for extradition for a crime not included in the list would be rejected. In newer treaties concluded in the last 30-35 years, however, this list approach has been replaced by the concept of “dual criminality,” usually providing that offenses covered by the treaty include all those made punishable under the law of both states by imprisonment for more than a year, or a more severe penalty. As long as the offense is a crime punishable by a year or more in both states, it is included as an extraditable offense under the treaty. Dual criminality extradition treaties carry the advantage of reaching the broadest range of felony offense behavior, without requiring the repeated updating of the treaty as new forms of criminality emerge. We have, for example, recently updated our extradition treaties with important partners such as India, France, and South Africa, and have recently signed an updated extradition treaty with the United Kingdom. The recently-signed extradition

agreement with the European Union will make dual criminality the standard for all twenty-five countries that as of next year will be EU members.

Apart from updating the extraditable offenses in individual bilateral extradition treaties, the United States has been a leader in the recent successful series of multilateral negotiations on international narcotics trafficking, organized crime, corruption, and terrorism. Each of these multilateral conventions, such as the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the 1997 UN Convention for the Suppression of Terrorist Bombings, and the 1999 UN Convention for the Suppression of Financing of Terrorism, and the 2000 UN Convention Against Transnational Organized Crime and its Protocols on Trafficking and Smuggling of Persons, include extradition provisions that have the specific effect of updating extradition list treaties between parties to the convention to add the offenses named in the convention. These provisions are a major negotiating goal of the United States because they facilitate the ability of our law enforcement community to obtain the extradition of fugitives from other countries for crimes addressed in those conventions. In this respect, I should note that in the framework of the Council of Europe the United States has recently negotiated and signed an international convention on computer crime that will add major computer crime offenses to the list of crimes in our extradition treaties for which extradition is possible.

Additional Impediments to Extradition

There are other reasons why fugitives sometimes are not returned expeditiously for trial, even where an extradition treaty is in place and a fugitive from one nation can be located and arrested in another nation. Sometimes, in the courts of the United States and the courts of our

treaty partners, there are lengthy judicial proceedings at which fugitives exercise their rights to challenge extradition in trial court and through appeals or other proceedings. In the United States judicial system, fugitives have the right to seek a writ of habeas corpus that reviews a judicial finding of extraditability. Many countries of Latin America have the *amparo* process, which permits challenges to orders of extradition. In some cases, fugitives in Europe have sought relief from the European Court of Human Rights after judicial proceedings are concluded in the country of extradition.

In addition to these procedural rights, evidentiary requirements for extradition differ among legal systems and the process of extradition can become quite complex. Although an extradition hearing is not a full-fledged trial on the merits, the evidentiary requirements vary from legal system to legal system and do not necessarily mirror the requirements of our own “probable cause” standard. Procedural differences can lead to frustrating delays in proceedings. We address these and similar problems through direct consultations with our treaty partners, by amending treaties in some cases, and by increasing our knowledge of relevant aspects of foreign legal systems and thereby enhancing our ability to work more effectively with our law enforcement partners.

The Return of Fugitives Other Than Pursuant to a Bilateral Treaty

Outside of the process of extradition pursuant to bilateral treaties, our law enforcement partners have frequently invoked other means available under their domestic law to assist the United States in obtaining the return of fugitives to our country for trial or punishment. In recent years, Colombia has been extremely helpful in returning dozens of fugitives to the

United States, particularly in narcotics related matters, pursuant to extradition procedures incorporated under its domestic laws. We have also obtained custody of many fugitives from other countries, including Canada and Mexico, through those countries' deportation or expulsion processes. Thus while extradition pursuant to treaty continues to be the most common means of returning fugitives, there are other possibilities that we have pursued and will continue to pursue.

Conclusion

I hope that this overview has been helpful. In summary, while we have had many successes in the area of international extradition, we also face many difficult challenges. Needless to say, the system of international extradition would work more effectively for the United States if all nations had the same constitution, laws and policies that we do. Because this is not the case, our task, to which we are fully committed, is to make the process work as smoothly and efficiently as possible.

We appreciate the Committee's interest in these important issues. I will be happy to address any questions the Committee may have.