

105TH CONGRESS }
2d Session }

SENATE

{ TREATY DOC.
105-46 }

PROTOCOL TO EXTRADITION TREATY
WITH MEXICO

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROTOCOL TO THE EXTRADITION TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES OF MAY 4, 1978, SIGNED AT WASHINGTON ON NOVEMBER 13, 1997



MAY 21, 1998.—Protocol was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

59-118

WASHINGTON : 1998

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *May 21, 1998.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Protocol to the Extradition Treaty Between the United States of America and the United Mexican States of May 4, 1978, signed at Washington on November 13, 1997.

In addition, I transmit, for the information of the Senate, the report of the Department of State with respect to the Protocol. As the report explains, the Protocol will not require implementing legislation.

This Protocol will, upon entry into force, enhance cooperation between the law enforcement communities of both countries. The Protocol incorporates into the 1978 Extradition Treaty with Mexico a provision on temporary surrender of persons that is a standard provision in more recent U.S. bilateral extradition treaties.

I recommend that the Senate give early and favorable consideration to the Protocol and give its advice and consent to ratification.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 7, 1998.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Protocol to the Extradition Treaty Between the United States of America and the United Mexican States of May 4, 1978 ("the Protocol"), signed at Washington on November 13, 1997. I recommend that the Protocol be transmitted to the Senate for its advice and consent to ratification.

The Protocol represents the fulfillment of a pledge made in the Declaration of the Mexican/U.S. Alliance Against Drugs, signed at Mexico City on May 6, 1997, to "ensure that fugitives are expeditiously and with due legal process brought to justice and are unable to evade justice in one country by fleeing to or remaining in the other."

The Protocol incorporates into the 1978 Extradition Treaty with Mexico (the "1978 Treaty") a provision on temporary surrender of persons which has become a standard provision in more recent United States bilateral extradition treaties. Temporary surrender can be an important tool for use in cases where serious crimes have been committed in one country which might go unpunished if trial in that country were to be delayed for a long period while a sentence was being served for different crimes committed in the other country. It thus enables sequential trials of individuals who have committed extraditable offenses in both countries at a time when witnesses and evidence to both crimes are readily available.

Article 1(1) of the Protocol amends the title of Article 15 of the 1978 Treaty to include reference to temporary surrender. Article 1(2) sets out the new text to be added to Article 15 regarding temporary surrender, which will form new paragraphs (2) and (3) of that Article.

New Article 15(2) provides that a Party which has granted an extradition request (the "Requested Party") made by the other Party (the "Requesting Party") in accordance with the Treaty, with respect to a person who already has been convicted and sentenced in the Requested Party, may temporarily surrender the person to the Requesting Party before or during service of sentence for the crimes committed in the Requested Party. It further provides that the person so surrendered shall be kept in custody in the Requesting Party, and shall be returned to the Requested Party after conclusion of the proceedings in the Requesting Party, in accordance with conditions to be determined by agreement of the Parties.

It is anticipated that extradition authorities in both countries, which in some cases will include state-level authorities, would consult in order to develop the case-specific agreement necessary to effect a temporary transfer. Such agreements would address arrangements for transferring custody of, and for returning, the prisoner, as well as authorizing further consultations on any extraordinary circumstances which may arise. By establishing a treaty-based legal framework for case-specific agreements, it should now prove possible for state-level authorities to offer the necessary assurances of custody and return, without which past efforts to effect temporary surrenders with Mexico have been frustrated. Consistent with our normal extradition practice any case-specific agreements or assurances would be concluded by the federal authorities on behalf of the state authorities.

New Article 15(3) addresses one possible outcome of a temporary surrender—a finding at trial in the Requesting Party that the person surrendered is not guilty of the offenses charged. In that circumstance, the Protocol provides that the period of time spent in custody in the Requesting Party shall be credited towards completion of the sentence remaining to be served in the Requested Party which originally surrendered the person. This provision is intended to ensure that the person receives credit somewhere for time in custody even when the general sentencing practice of the Requested Party would not normally recognize time served in another jurisdiction.

Article 2 addresses the relationship between the Protocol and other international instruments with Mexico. Paragraph (1) provides that the Protocol forms an integral part of the 1978 Treaty, and that accordingly its interpretation is governed by the principles contained in the Treaty, such as the rule of specialty. Paragraph (2) clarifies that the requirements of the 1976 Treaty on the Execution of Penal Sentences (the “Prisoner Transfer Treaty”), which generally governs prisoner transfers, does not apply to a temporary surrender under this Protocol.

Unlike prisoner transfer, a temporary surrender does not relocate a prisoner for purposes of serving a sentence, but only for purposes of trial, after which he or she is to be returned to serve sentences imposed in the respective Parties. At the same time, the Protocol does not preclude the subsequent operation of the Prisoner Transfer Treaty with respect to a person who has been temporarily surrendered, tried, and convicted.

Article 2(3) provides that the Protocol is subject to ratification, and enters into force on the date of exchange of instruments of ratification. It terminates upon termination of the Extradition Treaty.

The Protocol does not require implementing legislation.

A Technical Analysis explaining in detail the provisions of the Protocol is being prepared by the United States negotiating delegation and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of Justice joins the Department of State in favoring approval of this Protocol by the Senate at an early date.

Respectfully submitted,

STROBE TALBOT.

**PROTOCOL TO THE EXTRADITION TREATY BETWEEN
THE UNITED STATES OF AMERICA AND
THE UNITED MEXICAN STATES OF MAY 4, 1978**

The United States of America and the United Mexican States (hereafter "the Parties");

Recognizing the close bilateral relationship which exists between them, reflected in numerous instruments and mechanisms of legal cooperation;

Committed to strengthening legal cooperation in the fight against crime; and

Desiring to make more effective the Extradition Treaty between the Parties, signed at Mexico City on May 4, 1978 (hereafter "the Treaty");

Have agreed as follows:

ARTICLE 1

1. The title of Article 15 of the Treaty is hereby amended to read "Delayed and Temporary Surrender" and the existing text of such Article shall be numbered as Paragraph 1.

2. The following text shall be added as Paragraphs 2 and 3 of Article 15:

(2) The Requested Party, after granting an extradition request made in accordance with this Treaty, may temporarily surrender a person who has been convicted and sentenced in the Requested Party, in order that the person sought may be prosecuted in the Requesting Party before or during service of sentence in the Requested Party. The person so surrendered shall be kept in custody in the Requesting Party, and shall be returned to the Requested Party after conclusion of the proceedings, in accordance with conditions to be determined by agreement of the Parties for that purpose.

(3) In cases in which the person temporarily surrendered is found not guilty in the Requesting Party, the period of time spent in custody in the Requesting Party shall be credited to the sentence in the Requested Party.

ARTICLE 2

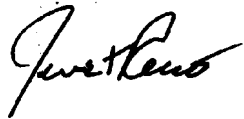
1. This Protocol shall form an integral part of the Treaty, and its interpretation shall be governed by the principles contained in the Treaty.

2. The requirements of the Treaty between the United States of America and the United Mexican States on the Execution of Penal Sentences, signed at Mexico City on November 25, 1976, shall not apply to a temporary surrender under this Protocol.

3. This Protocol shall be subject to ratification, and shall enter into force on the date of exchange of instruments of ratification. It shall terminate upon termination of the Treaty.

DONE at Washington this thirteenth day of November, 1997, in duplicate, in the English and Spanish languages, both texts being equally authentic.

FOR THE UNITED STATES
OF AMERICA:



FOR THE UNITED MEXICAN STATES:

