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# EXTRADITION TREATY WITH THE REPUBLIC OF SERBIA

## MESSAGE

FROM

# THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

EXTRADITION TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF SERBIA (THE "TREATY"), SIGNED AT BELGRADE ON AUGUST 15, 2016

JANUARY 17, 2017.—Treaty 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 PUBLISHING OFFICE
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## LETTER OF TRANSMITTAL

THE WHITE HOUSE, *January 17, 2017.*

*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 Extradition Treaty between the United States of America and the Republic of Serbia (the "Treaty"), signed at Belgrade on August 15, 2016. I also transmit, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty would replace the Treaty between the United States of America and the Kingdom of Servia for the Mutual Extradition of Fugitives from Justice, signed October 25, 1901 (the "1901 Treaty"), which applies to the Republic of Serbia as a successor state to the former Socialist Federal Republic of Yugoslavia. The Treaty follows generally the form and content of other extradition treaties recently concluded by the United States. It would replace an outmoded list of extraditable offenses with a modern "dual criminality" approach, which would enable extradition for such offenses as money laundering, cyber-related crimes, and other newer offenses not appearing on the 1901 Treaty list. The Treaty also provides that extradition shall not be refused based on the nationality of the person sought and contains a modernized "political offense" clause. Finally, the Treaty incorporates a series of procedural improvements to streamline and expedite the extradition process.

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

BARACK OBAMA.

## LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
*Washington, January 3, 2017.*

THE PRESIDENT,
*The White House.*

DEAR MR. PRESIDENT: I have the honor to submit to you the Treaty between the United States of America and the Republic of Serbia on Extradition, signed at Belgrade on August 15, 2016 (the "Treaty"). Upon its entry into force, the Treaty would replace the Treaty between the United States of America and the Kingdom of Servia for the Mutual Extradition of Fugitives from Justice, signed October 25, 1901 ("the 1901 Treaty"), which applies to the Republic of Serbia as a successor state to the former Socialist Federal Republic of Yugoslavia. I recommend that the Treaty be transmitted to the Senate for its advice and consent to ratification.

The Treaty follows generally the form and content of other extradition treaties recently concluded by the United States. It is an important part of a concerted effort by the Department of State and the Department of Justice to modernize the legal tools available for the extradition of serious offenders. The Treaty is self-executing and will not require implementing legislation.

An overview of the Treaty, including a detailed article-by-article analysis, is enclosed with this report. The Department of Justice joins the Department of State in favoring approval of the Treaty by the Senate at the earliest possible date.

Respectfully submitted.

JOHN F. KERRY.

Enclosures: As stated.

**Treaty between the United States of America and the Republic of Serbia on Extradition**

**Overview**

Introduction

The Treaty between the United States of America and the Republic of Serbia on Extradition (the "Treaty") replaces the extradition treaty currently in force between the two countries, which was concluded in 1901 by the United States of America and the Kingdom of Servia and applies to the Republic of Serbia as a successor state to the former Socialist Federal Republic of Yugoslavia (the "1901 Treaty").

Article-by-Article Analysis

The following is an article-by-article description of the provisions of the Treaty:

Article 1 obligates each State to extradite to the other State persons sought by the Requesting State for prosecution or for imposition or service of a sentence for an extraditable offense.

Article 2 defines extraditable offenses. Under Article 2(1), an offense is extraditable if it is punishable under the laws of both States by deprivation of liberty for a period of more than one year or by a more severe penalty. This formulation is consistent with the modern "dual criminality" approach. The new Treaty eliminates the requirement of the 1901 Treaty that the offense be among those listed in the Treaty. The dual criminality formulation also obviates the need to renegotiate or supplement the Treaty as additional offenses become punishable under the laws of both States. It ensures comprehensive coverage of criminal conduct for which extradition may be sought.

Article 2(2) is designed to include within the realm of extraditable offenses an attempt or conspiracy to commit, or participation in the commission of, offenses described in Article 2(1). By using the broad term "participation," the Treaty covers such offenses as aiding, abetting, counseling, or procuring the commission of an offense, as well as being an accessory to an offense, at whatever stage of development of the criminal conduct and regardless of the alleged offender's degree of involvement.

Additionally, Article 2(3) identifies a number of situations in which an offense will be extraditable despite potential differences in the criminal laws of both States. For instance, an offense shall be extraditable whether or not the laws of the Requesting and Requested States place the acts constituting the offense within the same category of offenses or describe the offense by the same terminology. This provision also makes explicit that an offense is extraditable even where the evidence provided does not support the existence of certain facts that are merely necessary to establish U.S. federal jurisdiction, such as evidence of interstate transportation or use of the mails or of other facilities affecting interstate or foreign commerce. This clarifies an important issue for the United

States in requesting extradition for certain federal crimes. In addition, an offense involving tax fraud or tax evasion, customs duties, or import/export controls shall be extraditable regardless of whether the Requested State provides for the same sort of taxes, duties, or controls.

Article 2(4) addresses issues of territorial jurisdiction. It specifies that where the Requesting State seeks extradition for an offense that occurred outside its territory, the Requested State shall grant extradition if the laws of the Requested State would provide for punishment of the extraterritorial offense in similar circumstances. If the Requested State's laws would not provide for punishment of the extraterritorial offense in similar circumstances, the Requested State nonetheless retains discretion to grant extradition provided the other requirements of the Treaty are met.

Article 2(5) prescribes that if extradition is granted for an extraditable offense, it shall also be granted for any other offense specified in the request even if the latter offense is punishable by a maximum of one year's deprivation of liberty or less, provided that all other requirements for extradition are met.

Article 2(6) provides that where the extradition request is for service of a sentence of imprisonment for an extraditable offense, the Requested State may only grant extradition if at least six months imprisonment remains to be served.

Article 3 establishes that extradition shall not be refused based on the nationality of the person sought.

Article 4 establishes an exception for political and military offenses. Article 4(1) states generally that extradition shall not be granted if the offense for which extradition is requested is a political offense.

Article 4(2), however, describes five categories of offenses that shall not be considered political offenses. A near identical list of these limitations was included in the extradition treaties between the United States and Chile (signed 2013), the United States and the Dominican Republic (signed 2015), and the United States and Kosovo (signed 2016). The list of limitations in each of these most recent treaties is slightly broader than similar lists that appear in other modern treaties, including those with Hungary (signed 1994), Poland (signed 1997), the United Kingdom (signed 2003), Bulgaria (signed 2007) and Romania (signed 2007). In addition to offenses that involve the possession, placement, use or threatened use of an explosive, incendiary, or destructive device when such device is capable of endangering life or causing substantial bodily harm or substantial property damage, Article 4(2)(d) now also establishes that political offenses cannot include offenses involving similarly serious biological, chemical or radiological agents. Further, Article 4(2)(e) makes clear that conspiracy or attempt to commit non-political offenses, or aiding or abetting another person who commits or attempts to commit such offenses, also shall not be considered political offenses. This slight narrowing of extraditable offenses to exclude political offenses aligns with a major priority of the United States to ensure that an overbroad definition of "political offense" does not impede the extradition of terrorists.

Notwithstanding Article 4(2), Article 4(3) provides that extradition shall not be granted if the competent authority of the Requested State determines that the request was politically motivated.

Under Article 4(4), the competent authority of the Requested State may refuse extradition for offenses under military law that are not offenses under ordinary criminal law. Desertion would be an example of such an offense.

Article 5(1) prohibits extradition in instances where a person sought has been previously convicted, acquitted, or discharged from proceedings with final and binding effect by the Requested State for the offense for which extradition is requested. Under Article 5(2), however, a person shall not be considered to have been convicted, acquitted, or discharged in the Requested State when the authorities of the Requested State: (a) have decided not to prosecute the person sought for the acts for which extradition is requested, or (b) are still investigating or proceeding against the person sought for those acts.

Article 6 provides that only the laws of the Requesting State regarding lapse of time may be considered for purposes of deciding whether or not to grant extradition. In this regard, the Requested State is bound by the statement of the Requesting State that the statute of limitations has not expired.

Article 7 addresses capital punishment. When an offense for which extradition is sought is punishable by death under the laws of the Requesting State but not under the laws of the Requested State, the Requested State may refuse extradition unless the Requesting State provides assurances that: (a) the death penalty shall not be imposed on the person sought, or (b) the death penalty, if imposed, shall not be carried out against the person sought. If either condition is satisfied, the Requested State must comply with the extradition request, and the Requesting State must abide by its assurances.

Article 8 specifies the procedures and documents required to support a request for extradition. Article 8(1) requires all extradition requests to be submitted through the diplomatic channel. Among several other requirements, Article 8(3)(c) establishes that extradition requests must be supported by information that would provide a sufficient basis to establish that it is probable that the person sought committed the offense(s) for which extradition is requested. Notably, this language is understood as equivalent to the probable cause standard applied in U.S. criminal law and applied by U.S. courts in determining whether to certify to the Secretary of State that a fugitive's extradition would be lawful under the applicable treaty and U.S. law. Article 8(6) permits the submission of additional information to enable the Requested State to decide on the extradition request. Article 8(7) deals with circumstances where the Requesting State is considering submitting particularly sensitive information to support its request for extradition. In such a case, if the Requesting State is not satisfied that the Requested State can adequately protect the sensitive information, the Requesting State must determine whether the sensitive information should be submitted nonetheless.

Article 9 sets out the procedures for the certification and admissibility of documents in extradition proceedings.

Article 10 requires all documents submitted by the Requesting State under the Treaty to be accompanied by an official translation into the language of the Requested State, unless otherwise agreed.

Article 11 provides that, in cases of urgency, the Requesting State may request the provisional arrest of fugitives and sets forth the procedures for making such a request pending presentation of the formal extradition request. Article 11(2) specifies the information that must accompany a provisional arrest request. Article 11(3) provides that the Requesting State shall be notified without delay of the date of a provisional arrest or the reasons why the Requested State cannot proceed with the request. Article 11(4) permits the release of the person provisionally arrested if the executive authority of the Requested State does not receive the formal extradition request and supporting documents within 60 days of the date on which the person was provisionally arrested. For the purposes of applying the 60-day time limitation, receipt of the supporting documents by the embassy of the Requested State located in the Requesting State constitutes receipt by the executive authority of the Requested State. Article 11(5) makes clear that the release of a person pursuant to Article 11(4) does not prevent the person's re-arrest and extradition if the Requested State receives the formal extradition request and supporting documents at a later date.

Article 12 requires the Requested State to promptly notify the Requesting State of its decision regarding an extradition request. If the Requested State denies extradition, Article 12(2) requires the Requested State to explain the reasons for denial. If the Requested State agrees to grant extradition, Article 12(3) requires the Requested and Requesting States to coordinate the date and place for surrendering the person sought. Article 12(4) provides that if the person to be surrendered is not removed from the territory of the Requested State within the time prescribed by the Requested State's laws, the Requested State may discharge the person sought from custody and subsequently refuse extradition for the same offense.

Article 13 addresses deferred extradition proceedings and deferred or temporary surrender of the person sought. Under Article 13(1), if the person sought is being proceeded against in the Requested State, the Requested State may defer the extradition proceedings until its own proceedings have been concluded. Article 13(2) addresses circumstances where extradition proceedings have concluded and extradition has been authorized, but the person sought is being proceeded against or is serving a sentence in the Requested State. In such cases, the Requested State may either defer the surrender of the person sought or temporarily surrender the person to the Requesting State for the purpose of prosecution. Article 13(3) explains that if the Requested State elects to defer surrender, it may detain the person sought until surrender. Under Article 13(4), however, if the Requested State elects to temporarily surrender the person to the Requesting State, the Requesting State must detain the temporarily surrendered person during proceedings and return the person when proceedings conclude. The person's return to the Requested State shall not require any further extradition request or proceedings.

Pursuant to Article 14, if the Requested State receives extradition requests for the same person from the Requesting State and from any other State or States, either for the same offense or for different offenses, the executive authority of the Requested State shall determine to which State, if any, it will surrender that person. Article 14 requires the Requested State to consider several non-exclusive factors when making its decision.

Article 15 provides that, subject to certain conditions, the Requested State may seize and surrender to the Requesting State all items that are connected with the offense for which extradition is sought or that may be required as evidence in the Requesting State.

Article 16(1) sets forth the rule of specialty, which prohibits a person extradited under the Treaty from being detained, tried, or punished in the Requesting State, except where the detention, trial, or punishment: (a) is for an offense for which extradition was granted, or for a differently denominated offense carrying the same or lesser penalty that is based on the same facts as the offense for which extradition was granted, provided such offense is extraditable or is a lesser included offense; (b) is for an offense committed after that person's extradition to the Requesting State; or (c) occurs with the consent of the competent authority of the Requested State. If the Requested State consents to the person's detention, trial or punishment for a different offense, the Requested State may require the Requesting State to submit the documentation required under Article 8.

Similarly, Article 16(2) provides that a person extradited under the Treaty may not be the subject of onward extradition or surrender for any offense committed prior to extradition, unless the Requested State consents. This provision would preclude the Republic of Serbia from transferring to a third State or an international tribunal a fugitive that the United States surrendered to the Republic of Serbia, unless the United States consents. Article 16(3), however, permits the Requesting State to detain, try, punish, extradite, or surrender the same person if that person: (a) leaves and voluntarily returns to the Requesting State, or (b) chooses not leave the Requesting State within 15 days of the day that person is free to leave.

Article 17 allows the Requesting State to expedite the transfer of the person whose extradition is sought to the Requesting State. If the person consents to be surrendered to the Requesting State in writing, the Requested State may surrender the person as expeditiously as possible. While Serbian law provides for this consent-based expedited surrender, it does not permit a fugitive to waive the extradition process entirely. U.S. law and practice permit both consent to extradition and waiver of the extradition process, in the latter of which surrender may occur without further judicial or executive branch proceedings and the rule of specialty would not apply.

Article 18 allows either State to authorize transportation through its territory of a person being extradited or otherwise transferred to the other State by a third State or from the other State to a third State for the purposes of prosecution, imposition of a sentence, or service of a sentence. It also specifies the procedures for requesting such transit and makes clear that a person who is being transported pursuant to this Article may be detained during the period of transit. Under Article 18(2), authorization is not required when the other State only uses air transportation and no landing is scheduled on the State's territory. Should an unscheduled

landing occur, however, the State may require submission of a formal transit request within 96 hours.

Article 19 requires the Requested State to advise, assist, appear in court on behalf of, and represent the interests of, the Requesting State in any proceedings arising out of an extradition request. Additionally, the Requested State must bear all expenses incurred in that State in connection with the extradition proceedings, except for expenses related to translation of documents and transportation of the person surrendered.

Article 20 provides that the U.S. Department of Justice and the Ministry of Justice of the Republic of Serbia may consult with each other directly in connection with individual cases and in furtherance of efficient implementation of the Treaty.

Article 21 establishes that the Treaty applies to offenses committed both before and after the date it enters into force. However, the Executive Authority of the Requested State retains the discretion to deny a request for extradition of its national, Article 3 notwithstanding, if the offense(s) for which extradition is sought were committed prior to January 1, 2005.

Article 22 notes that the Treaty is subject to ratification and shall enter into force upon the exchange of the instruments of ratification. Article 22(3) provides that, upon entry into force, the Treaty will supersede the 1901 Treaty with respect to all requests submitted on or after the date of ratification and to all pending requests.

Under Article 23, either State may terminate the Treaty by giving written notice to the other State through the diplomatic channel. The termination shall be effective six months after the date of such notice.

TREATY

BETWEEN

THE UNITED STATES OF AMERICA

AND

THE REPUBLIC OF SERBIA

ON EXTRADITION

The United States of America and the Republic of Serbia (hereinafter referred to as "the Parties"),

Recalling the *Treaty between the United States of America and the Kingdom of Servia for the Mutual Extradition of Fugitives from Justice, signed at Belgrade October 25, 1901*,

Noting that both the United States of America and the Republic of Serbia currently apply the terms of that Treaty, and

Desiring to provide for more effective cooperation between the two States to combat crime, and, for that purpose, to conclude a new extradition treaty;

Have agreed as follows:

Article 1

Obligation to Extradite

The Parties agree to extradite to each other, pursuant to the provisions of this Treaty, persons sought by authorities in the Requesting State for prosecution or for imposition or enforcement of a sentence for an extraditable offense.

Article 2

Extraditable Offenses

1. An offense shall be an extraditable offense if it is punishable under the laws in the Requesting and Requested States by deprivation of liberty for a period of more than one year or by a more severe penalty.

2. An offense shall also be an extraditable offense if it consists of an attempt or conspiracy to commit, or participation in the commission of, an extraditable offense.

3. For the purposes of this Article, an offense shall be an extraditable offense:

   (a) whether or not the laws in the Requesting and Requested States place the acts or omissions constituting the offense within the same category of offenses or describe the offense by the same terminology;

   (b) whether or not the offense is one for which United States federal law requires the showing of certain matters for the purpose of establishing jurisdiction in a United States federal court, including but not limited to interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce; or

   (c) for offenses involving fraud or evasion of obligations with respect to taxes, customs duties, or controls on the import or export of commodities or currency or money, whether or not the laws of the Requesting and Requested States provide for the same sort of taxes or duties or for controls on the same sorts of commodities or on the same amounts of currency.

4. If the offense has been committed outside the territory of the Requesting State, extradition shall be granted if the laws in the Requested State provide for the punishment of an offense committed outside its territory in similar circumstances. If the laws in the Requested State do not provide for punishment of an offense committed outside of its territory in similar circumstances, the competent authority of the Requested State, in its discretion, may grant extradition provided that all other requirements of this Treaty are met. In the United States, the competent authority shall be the executive authority.

5. If extradition has been granted for an offense specified in paragraphs 1 or 2, it shall also be granted for any other offense specified in the request even if the latter offense is punishable by imprisonment of up to one year, provided that all other requirements for extradition are met as per this Treaty.

6. When the request for extradition refers to a person sought for service of a sentence of imprisonment, the competent authority of the Requested State, which in the United States shall be the executive authority, may deny extradition if, at the time of the request, the remainder of the sentence to be served is less than six months.

Article 3

Nationality

Extradition shall not be refused based on the nationality of the person sought.

Article 4

Political and Military Offenses

1. Extradition shall not be granted if the offense for which extradition is requested is a political offense.

2. For the purposes of this Treaty, the following offenses shall not be considered political offenses:

(a) an offense for which both the Requesting and Requested States have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for the purpose of prosecution;

(b) murder, manslaughter, malicious wounding, inflicting grievous bodily harm, assault with intent to cause serious physical injury, and serious sexual assault;

(c) an offense involving kidnapping, abduction, or any form of unlawful detention, including the taking of a hostage;

(d) an offense involving placing, using, threatening the use of, or possessing an explosive, incendiary, or destructive device, or a biological, chemical, or radiological agent, where such device or agent is capable of endangering life, causing substantial bodily harm, or causing substantial property damage; and

(c) a conspiracy or attempt to commit any of the foregoing offenses, or aiding or abetting a person who commits or attempts to commit such offenses.

3. Notwithstanding the terms of paragraph 2 of this Article, extradition shall not be granted if the competent authority of the Requested State, which in the United States shall be the executive authority, determines that the request for extradition was politically motivated.

4. The competent authority of the Requested State, which in the United States shall be the executive authority, may refuse extradition for violations of military duties that do not constitute crimes under ordinary criminal law.

Article 5

*Non bis in idem*

1. Extradition shall be denied when the person sought has been convicted or acquitted or discharged from proceedings with final and binding effect by the competent authorities in the Requested State for the offense for which extradition is requested.

2. For purposes of this Article, a person shall not be considered to have been convicted or acquitted or discharged from proceedings with final and binding effect where the competent authorities of the Requested State:

(a) have decided not to prosecute the person sought for the acts for which extradition is requested; or

(b) are still investigating or otherwise proceeding against the person sought for the same acts for which extradition is sought.

Article 6

Lapse of Time

Extradition may be denied if prosecution of the offense or execution of the penalty is barred by lapse of time under the laws of the Requesting State.

Article 7

Death Penalty

When the offense for which extradition is sought is punishable by death under the laws in the Requesting State and is not punishable by death under the laws in the Requested State, the executive authority of the Requested State may refuse extradition unless the Requesting State provides the executive authority of the Requested State with an assurance that the death penalty will not be imposed or, if for procedural reasons such an assurance cannot be provided by the Requesting State, with an assurance that the death penalty, if imposed, will not be carried out. If the Requesting State provides an assurance pursuant to this Article, the Requested State shall grant the extradition, and the Requesting State shall comply with the assurance.

Article 8

Extradition Procedures and Required Documents

1. All requests for extradition shall be submitted through the diplomatic channel, which shall include transmission as provided for in Article 11(4).

2. All requests shall be supported by the following:

   (a) documents, statements, or other types of information that describe the identity, nationality, and probable location of the person sought;

   (b) information describing the facts of the offense and the procedural history of the case;

   (c) the provisions of the law or laws describing the offense or offenses for which extradition is requested and the applicable penalty or penalties;

   (d) the text of the law describing any time limit on the prosecution or imposition or enforcement of a sentence and a description of the application of that law to the offense for which extradition is sought; and

   (e) the documents, statements or other types of information specified in either paragraph 3 or paragraph 4 of this Article, as applicable.

3. In addition to the submissions described in paragraph 2 of this Article, a request for extradition of a person who is sought for prosecution shall also be supported by:

   (a) a copy of the warrant or order of arrest, or ruling on detention, issued by a judge or other competent authority;

   (b) a copy of the charging document; and

   (c) information as would provide a sufficient basis to establish that it is probable that the person sought committed the offense or offenses for which extradition is requested.

4. In addition to the submissions described in paragraph 2 of this Article, a request for extradition relating to a person who is sought for imposition or enforcement of a sentence shall also be supported by:

   (a) a copy of the judgment of conviction, or, if a copy is not available, a statement by a judicial or other competent authority that the person has been convicted or found guilty;

   (b) information establishing that the person sought is the person who was found guilty; and

   (c) if the person has been sentenced, a copy of the sentence imposed or, if a copy is not available, a statement by a judicial or other competent authority stating what sentence was imposed, as well as a statement establishing to what extent the sentence has been carried out.

5. If the person sought has been convicted or found guilty <u>in absentia</u>, the Requesting State shall submit the information required in paragraphs 2, 3(c) and 4 of this Article and a statement to the executive authority of the Requested State regarding the

circumstances under which the person was absent from the proceedings and the procedures, if any, that would be available to the person sought to have a new trial or other judicial review of the proceedings if the person were extradited. The determination of whether the circumstances are of a nature such that extradition would be appropriate rests with the executive authority of the Requested State.

6. If the Requested State requires additional information to enable it to decide on the request for extradition, the Requesting State may provide such information within the period specified by the Requested State. Such supplementary information may be requested and furnished directly between the United States Department of Justice and the Republic of Serbia Ministry of Justice.

7. Where the Requesting State contemplates the submission of particularly sensitive information in support of its request for extradition, it may consult with the Requested State to determine the extent to which the information can be protected by the Requested State. If the Requested State cannot protect the information in the manner sought by the Requesting State, the Requesting State shall determine whether the information shall nonetheless be submitted.

Article 9

Admissibility of Documents

1. The documents, statements, and other types of information that accompany an extradition request shall be received and admitted as evidence in extradition proceedings if:

   (a) they bear the certificate or seal of the ministry or department of justice or ministry or department responsible for foreign affairs of the Requesting State; or

   (b) they are certified or authenticated in any other manner acceptable under the laws in the Requested State.

2. Documents certified or authenticated pursuant to this Article shall not require further certification, authentication, or other legalization.

Article 10

Translation

All documents submitted under this Treaty by the Requesting State shall be accompanied by a translation into the language of the Requested State, unless otherwise agreed.

Article 11

Provisional Arrest

1. In case of urgency, the Requesting State may request the provisional arrest and detention of the person sought pending presentation of the extradition request and supporting documents. A request for provisional arrest may be transmitted directly between the United States Department of Justice and the Republic of Serbia Ministry of Justice, or through the International Criminal Police Organization ("Interpol").

2. The application for provisional arrest shall contain:

   (a) a description of the person sought and such other information as may be useful in identifying the person;

   (b) the location of the person sought, if known;

   (c) a brief statement of the facts of the case, including, if possible, the time and location of the offense;

   (d) a description of the law(s) violated;

   (e) information concerning the warrant or order of arrest, or ruling on detention; and

   (f) a statement that the extradition request and supporting documents will follow within the time specified in this Treaty.

3. The Requesting State shall be notified without delay of the date that the person sought is provisionally arrested or the reasons for any inability to proceed with the request.

4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of provisional arrest pursuant to this Treaty if the executive authority of the Requested State has not received the extradition request and supporting documents required in Article 8 of this Treaty. For this purpose, receipt of the supporting documents by the Embassy of the Requested State in the Requesting State shall constitute receipt by the executive authority of the Requested State.

5. The fact that the person sought has been discharged from custody pursuant to paragraph 4 of this Article shall not prejudice the subsequent re-arrest and extradition of that person if the extradition request and supporting documents are delivered at a later date.

## Article 12

### Decision and Surrender

1. The Requested State shall promptly notify the Requesting State through the diplomatic channel and may also notify the Requesting State by other means as appropriate of its decision on the request for extradition.

2. If the request is denied in whole or in part, the Requested State shall provide an explanation of the reasons for the denial. The Requested State shall provide copies of the pertinent judicial decisions upon request.

3. If the request for extradition is granted, the executive authorities of the Requesting and Requested States shall agree on the time and place for the surrender of the person sought.

4. If the person sought is not removed from the territory of the Requested State by the Requesting State within the time prescribed by the law of the Requested State, the person sought may be discharged from custody, and the Requested State, in its discretion, may subsequently refuse extradition for the same offense.

Article 13

Deferral of Extradition Proceedings and Deferred or Temporary Surrender

1. When the person whose extradition is sought is being proceeded against in the Requested State, that State may defer the extradition proceedings against the person sought until its own proceedings have been concluded.

2. When the extradition proceedings have been concluded and extradition has been authorized, but the person sought is being proceeded against or is serving a sentence in the Requested State, that State may:

   (a) defer the surrender of the person sought until the proceedings have been concluded or until the sentence has been served; or

   (b) temporarily surrender the person to the Requesting State for the purpose of prosecution.

3. In the case of deferred surrender, the person may be kept in custody until surrendered.

4. A person temporarily surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the Requesting State's proceedings against that person, in accordance with any conditions that may be agreed to by the Parties. The return of the person to the Requested State shall not require any further extradition request or proceedings.

Article 14

Conflicting Requests

If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the executive authority of the Requested State shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences; the chronological order in which the requests were received from the Requesting States; whether the requests were made pursuant to a Treaty; the nationality of the victim; and the possibility of any subsequent extradition between the Requesting States.

Article 15

Seizure and Surrender of Items

1. To the extent permitted under its law, the Requested State may seize and surrender to the Requesting State all items that are connected with any offense for which extradition is sought or that may be required as evidence in the Requesting State. The items mentioned in this Article may be surrendered even when the extradition cannot be effected due to the death, disappearance, or escape of the person sought.

2. The Requested State may condition the surrender of the items upon satisfactory assurances from the Requesting State that the items will be returned to the Requested State as soon as practicable. The Requested State may also defer the surrender of such items, if they are required as evidence in the Requested State.

3. The rights of third parties in such items shall be duly respected in accordance with the laws of the Requested State.

Article 16

Rule of Specialty

1. A person extradited under this Treaty may not be detained, tried, or punished in the Requesting State, except for:

   (a) any offense for which extradition was granted, or a differently denominated offense carrying the same or lesser penalty and based on the same facts as the offense for which extradition was granted, provided such offense is extraditable, or is a lesser included offense;

   (b) any offense committed after the extradition of the person; or

   (c) any offense for which the competent authority of the Requested State, which for the United States shall be the executive authority, consents to the person's detention, trial, or punishment. For the purpose of this subparagraph the Requested State may require the submission of the documentation called for in Article 8 and the person extradited may be detained by the Requesting State for 90 days, or for such longer period of time as the Requested State may authorize, while the request is being processed.

2. A person extradited under this Treaty may not be the subject of onward extradition or surrender for any offense committed prior to extradition unless the Requested State consents.

3. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the onward extradition or surrender of that person, if:

   (a) that person leaves the territory of the Requesting State after extradition and voluntarily returns to it; or

   (b) that person does not leave the territory of the Requesting State within 15 days of the day that person is free to leave.

Article 17

Waiver and Simplified Extradition

If the person sought consents to be surrendered to the Requesting State, and does so in writing, the Requested State may, in accordance with the principles and procedures provided for under its legal system, surrender the person as expeditiously as possible. For the United States, surrender may occur without further proceedings. The consent of the person sought may include agreement to waiver of protection of the rule of specialty.

Article 18

Transit

1. Either State may authorize transportation through its territory of a person being extradited or otherwise transferred to the other State by a third State or from the other State to a third State for purposes of prosecution or imposition or enforcement of a sentence. A request for transit shall be transmitted through the diplomatic channel, directly between the United States Department of Justice and the Republic of Serbia Ministry of Justice, or through Interpol. The request for transit shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit may be detained in custody during the period of transit.

2. Authorization is not required when air transportation is used by one State and no landing is scheduled on the territory of the other State. If an unscheduled landing does occur, the State in which the unscheduled landing occurs may require a request for transit pursuant to paragraph 1, and it may detain the person until the request for transit is received and the transit is effected, as long as the request is received within 96 hours of the unscheduled landing.

Article 19

Representation and Expenses

1. The Requested State shall advise, assist, appear in court on behalf of, and represent the interests of the Requesting State in any proceedings arising out of a request for extradition. The appearance before a court in the Republic of Serbia is vested in the Republic Public Prosecutor's office of the Republic of Serbia.

2. The Requesting State shall pay all the expenses related to the translation of extradition documents and the transportation of the person surrendered. The Requested State shall pay all other expenses incurred in that State in connection with the extradition proceedings.

3. Neither State shall make any pecuniary claim against the other State arising out of the arrest, detention, examination, or surrender of persons under this Treaty.

Article 20

Consultation

The United States Department of Justice and the Republic of Serbia Ministry of Justice may consult with each other directly in connection with individual cases and in furtherance of efficient implementation of this Treaty.

Article 21

Application

This Treaty shall apply to offenses committed before as well as after the date it enters into force, provided, however, that the Executive Authority of the Requested State may, in its discretion, not apply Article 3 to offenses committed before January 1, 2005.

Article 22

Ratification and Entry into Force

1. This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged as soon as possible.

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

3. Upon its entry into force, this Treaty shall supersede the *Treaty between the United States and the Kingdom of Servia for the Mutual Extradition of Fugitives from Justice, signed at Belgrade, October 25, 1901* (the 1901 Treaty) and apply to all pending requests made under the 1901 Treaty.

Article 23

Termination

Either Party may terminate this Treaty at any time by giving written notice to the other Party through the diplomatic channel, and the termination shall be effective six months after the date of such notice.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

DONE at Belgrade, in duplicate, this 15 day of August, 2016, in the English and Serbian languages, both texts being equally authentic.

| FOR THE UNITED STATES OF AMERICA: | FOR THE REPUBLIC OF SERBIA: |
|---|---|
| Kyle Scott | Nela Kuburović |
| Ambassador | Minister of Justice |