

LAW ENFORCEMENT

Mutual Legal Assistance

**Treaty Between the
UNITED STATES OF AMERICA
and JAMAICA**

Signed at Kingston July 7, 1989

with

Forms



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

JAMAICA

Law Enforcement: Mutual Legal Assistance

Treaty, with forms, signed at Kingston July 7, 1989;
Transmitted by the President of the United States of America
to the Senate October 25, 1991 (Treaty Doc. 102-16,
102d Congress, 1st Session);
Reported favorably by the Senate Committee on Foreign Relations
May 7, 1992 (Senate Executive Report No. 102-32,
102d Congress, 2d Session);
Advice and consent to ratification by the Senate
July 2, 1992;
Ratified by the President October 9, 1992;
Ratified by Jamaica July 17, 1995;
Ratifications exchanged at Williamsburg, Virginia July 25, 1995;
Entered into force July 25, 1995.

TREATY BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF JAMAICA
ON
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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

Recognizing the importance of more effective cooperation between the two States in the suppression of crime;

Affirming the importance of the principles of sovereign equality, mutual respect, and friendly relations; and

Desiring to conclude a Treaty on mutual legal assistance in criminal matters,

Have agreed as follows:

ARTICLE 1

Obligation to Assist

1. The Contracting Parties undertake to assist each other, upon request and in accordance with the provisions of this Treaty, in investigations and proceedings for criminal law enforcement purposes.

2. Assistance pursuant to this Treaty shall include:

- (a) locating persons;
- (b) serving documents;
- (c) providing records;
- (d) taking testimony or statements of persons;
- (e) producing documents;
- (f) executing requests for searches and seizures;
- (g) facilitating the personal appearance of witnesses;
- (h) transferring persons in custody for testimonial purposes connected with the giving of evidence; and
- (i) cooperating in any other criminal law enforcement matter deemed appropriate by the Contracting Parties.

3. Assistance shall be rendered subject to the provisions of this Treaty if the acts which are the subject matter of the investigation or proceeding are prohibited under the laws of the Requesting State and regardless of whether those acts are prohibited under the laws of the Requested State or whether that State would have jurisdiction with respect to similar acts in corresponding circumstances. However, the

Requested State may, in its discretion, refuse to comply in whole or in part with a request for assistance under this Treaty to the extent that it appears to the Central Authority of the Requested State to concern conduct which would not constitute an offence under the laws of the Requested State.

4. This Treaty is intended solely for mutual legal assistance between the criminal law enforcement authorities of the Contracting Parties. The provisions of this Treaty shall not create any right on the part of any private person to obtain or exclude any evidence or to impede the execution of any request.

5. For the purposes of this Treaty, "proceedings" means any proceedings conducted by:

(a) any court in a criminal matter, including a pretrial hearing;

(b) any grand jury in the United States, or any committal proceeding or coroner's inquest; or

(c) any court or administrative agency which could result in an order imposing forfeiture of proceeds or instrumentalities of drug trafficking,

and includes the enforcement of any order or penalty imposed as a result of those proceedings.

ARTICLE 2

Limitations on Assistance

1. The Central Authority of the Requested State may deny a request if it determines that:

- (a) the execution of the request would prejudice the security or other essential public interests of the Requested State;
- (b) the request relates to a political offence;
- (c) the request relates to an offence under military law which is not an offence under ordinary criminal law;
- (d) the request does not show either that proceedings for criminal law enforcement purposes have been instituted in the Requesting State or that there are reasonable grounds for believing that a criminal offence has been committed or is likely to be committed;
- (e) execution of the request would be contrary to the Constitution of the Requested State; or
- (f) the request should be denied for any other reason provided for in this Treaty.

2. Paragraph 1(b) shall not apply to an offence specified in a Treaty or Convention to which both States are parties the purpose of which is to prevent or repress a specific category of offences and which imposes on States an obligation to either extradite the offender or submit the matter to the competent authorities for decision as to prosecution.

3. In exercising its discretion under paragraph 1, the Central Authority of the Requested State shall determine whether assistance can be given subject to such conditions as it deems necessary.

4. If execution of the request would interfere with an ongoing investigation or legal proceeding in the Requested State, execution of the request may be postponed. In considering whether or not to postpone

the execution of a request pursuant to this paragraph, the Requested State shall determine whether assistance can be granted in part without postponement or subject to such conditions as it deems necessary.

5. If the Requesting State accepts assistance subject to conditions, it shall comply with those conditions.

6. The Central Authority of the Requested State shall immediately inform the Central Authority of the Requesting State of the reason for denying or postponing the execution of a request.

ARTICLE 3

Central Authority

1. There shall be a Central Authority for each Contracting Party.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by him. For Jamaica, the Central Authority shall be the Minister responsible for justice or a person designated by him for purposes specified in the designation.

3. Requests under this Treaty shall be made by the Central Authority of the Requesting State to the Central Authority of the Requested State. The Central Authorities may communicate directly with each other for the purposes of this Treaty.

ARTICLE 4

Contents of Requests

1. Requests for assistance shall normally be in writing and if made otherwise shall be communicated in written form within a period of time to be agreed upon by the Central Authorities.

2. A request for assistance shall indicate:

- (a) the law enforcement authority conducting the investigation or proceeding to which the request relates;
- (b) the subject matter and nature of the investigation or proceeding;
- (c) the evidence or information sought or the acts to be performed; and
- (d) the purpose for which the evidence, information or action is sought.

3. To the extent necessary and possible, a request shall include:

- (a) available information on the identity and whereabouts of a person to be located;
- (b) the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;
- (c) the identity and location of a person from whom evidence is sought;

- (d) a description of the manner in which any testimony is to be taken and recorded;
- (e) a list of questions to be answered;
- (f) a precise description of the place to be searched and the objects to be seized;
- (g) a description of any particular procedure to be followed in executing the request; and
- (h) information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled.

4. Nothing in paragraphs 2 and 3 precludes the Requested State from seeking further information from the Requesting State where such information is considered necessary for the execution of the request.

ARTICLE 5

Execution of Requests

1. The Central Authority of the Requested State shall promptly examine each request to determine whether it complies with the Treaty.

2. If the Central Authority of the Requested State considers that a request does not comply with the provisions of this Treaty, or decides to deny the request on any of the grounds provided for in this Treaty, it shall immediately so advise the Central Authority of the Requesting State, specifying the objections to the request.

3. If the request complies with this Treaty and is not denied on any of the grounds provided for in this Treaty, the Central Authority of the

Requested State shall expeditiously execute the request or, if necessary, transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request as expeditiously as possible.

4. Where the execution of the request requires judicial or administrative action, the request shall be presented to the appropriate authorities by the persons designated by the Central Authority of the Requested State. The competent judicial authorities of the Requested State shall have power to issue subpoenas, search warrants, or other process necessary for the execution of requests.

5. Requests shall be executed according to the internal laws and procedures of the Requested State except to the extent that this Treaty provides otherwise. Procedures specified in the request shall be followed except to the extent that those procedures cannot lawfully be followed in the Requested State. Where neither the Treaty nor the request specifies a particular procedure, the request shall be executed in accordance with the appropriate procedure under the laws applicable for investigations or proceedings in the Requested State.

ARTICLE 6

Return of Requests and Furnishing of Documents

1. Upon execution of the request in whole or in part, or upon determining that the request cannot be executed, the Requested State shall, unless otherwise agreed, return the original request to the Requesting State. The Requested State shall also furnish all information

and evidence obtained pursuant to the request and indicate the date and place of execution.

2. To the extent possible, all documents and records to be furnished pursuant to a request under the Treaty shall be complete and in unedited form. Upon application by the Requesting State, the Requested State shall use its best efforts to furnish original documents and records.

ARTICLE 7

Costs

1. The following expenses incurred by an authority in the Requested State in carrying out a request shall be paid or reimbursed by the Requesting State:

- (a) travel and incidental expenses of a person travelling to the Requesting State, including those of accompanying officials;
- (b) fees of expert witnesses retained with the approval of the Requesting State;
- (c) fees of private counsel appointed or retained with the approval of the Requesting State for a person giving testimony or for a defendant;
- (d) costs of stenographic reports requested by the Central Authority of the Requesting State other than reports prepared by a salaried government employee; and
- (e) costs of interpreters or translators.

2. The Requested State shall, subject to paragraph 3, pay or reimburse any other expenses associated with the execution of a request and shall make no claim for reimbursement from the Requesting State.

3. If it becomes apparent that expenses of an extraordinary nature are required to execute the request, the Central Authorities shall consult with each other to determine the terms and conditions under which the request will be executed.

ARTICLE 8

Protecting Confidentiality and Restricting Use

1. The Requested State may require that information or evidence furnished under this Treaty be kept confidential in accordance with conditions which it shall specify. In that case, the Requesting State shall comply with the conditions except to the extent that disclosure of the information or evidence is necessary as evidence in proceedings for criminal law enforcement purposes.

2. The Requesting State may require that the request for assistance and related documents be kept confidential. If the request cannot be executed without breaching the required confidentiality, the Requested State shall so inform the Requesting State, which shall then determine whether the request should nevertheless be executed.

3. The Requesting State shall not use any evidence or information obtained under this Treaty for purposes other than those stated in the request, without the prior consent of the Requested State.

4. Any information or evidence obtained under this Treaty which has been made public in the Requesting State in accordance with this Article may be used for any purpose.

ARTICLE 9

Taking Testimony and Producing Documents in the Requested State

1. A person from whom evidence is sought may be required to appear and testify before, or produce documents, records and articles to, a judge, court, tribunal, or other appropriate authority in or of the Requested State and, if necessary, shall be compelled by subpoena to do so.

2. The Requested State shall, on request and in so far as may be practicable, furnish to the Requesting State advance information of the date and place of any hearing pursuant to this Article.

3. Where evidence is being taken pursuant to this Article, the Requested State shall permit the presence of a defendant, counsel, or any other person specified in the request.

4. The judge, court, tribunal, or other appropriate authority shall allow counsel for the Requested State and for the Requesting State, and the defendant or his counsel, the opportunity to question the person whose testimony is sought, and may permit any other person specified in the request to ask questions of the person whose testimony is sought.

5. Business records produced under this Article shall be authenticated in the manner set out in Form A, appended to this Treaty. No further authentication regarding the information contained in Form A shall be required. Documents authenticated under this paragraph shall be admissible as evidence of the facts stated therein to the extent that the laws of the Requesting State permit.

ARTICLE 10

Personal Appearance of Witness in the Requesting State

1. The Central Authority of the Requesting State may request that the Central Authority of the Requested State invite a person who is in the Requested State to appear in the Requesting State in connection with criminal investigations or proceedings in that State. The request shall indicate the importance of that person's appearance in the investigations or proceedings, the subject matter about which the person is to be examined, and the kind and amount of allowances and expenses payable.

2. When so requested, the Requested State shall invite such person to appear before the authority of the Requesting State and shall ask the person whether he agrees to the appearance. The Requested State shall promptly notify the Requesting State of the response to the invitation.

ARTICLE 11

Transferring Persons in Custody to the Requesting State

1. A person in the custody of the Requested State who is needed in the Requesting State for purposes of identification, as a witness, or

with respect to any other form of assistance provided for in this Treaty, shall be transferred to the Requesting State if:

- (a) the person in custody consents; and
- (b) the Requested State has no reason to deny the transfer.

2. The Requested State shall inform the Requesting State of the period of any sentence being served by the person transferred under this Article, the date of expiration of any sentence, and any other factor likely to affect the date of release of such person.

3. The Requesting State shall have authority and be obligated to keep in custody the person transferred under this Article unless the Requested State has authorized his release.

4. A person transferred under this Article shall be returned by the Requesting State to the custody of the Requested State as soon as circumstances permit, and in any event shall, subject to paragraph 5, be returned:

- (a) if he is serving a sentence, no later than the date immediately preceding the date of the expiration of the sentence;
or
- (b) in any other case, no later than the date of the expiration of the period during which he may be kept in custody by the Requested State.

5. The requirement that a person transferred shall be returned to the Requested State before a date specified in paragraph 4 may, if that person's presence in the Requesting State is still needed, be waived by agreement between the person transferred and both States. When the presence of the person transferred is no longer needed in the Requesting State, that State shall return him to the Requested State unless the person and both States agree otherwise.

6. The fact that the person transferred is a national of the Requesting State shall not affect any obligation of that State under this Treaty to return that person to the Requested State.

7. The return to the Requested State pursuant to this Article of a person transferred under this Article shall not require extradition proceedings.

ARTICLE 12

Transferring Persons in Custody to the Requested State

1. A person in the custody of the Requesting State may be transferred by that State to the Requested State for purposes of identification, as a witness, or with respect to any other form of assistance provided for in this Treaty if:

- (a) the person consents; and
- (b) the Requested State agrees to the transfer.

2. The Requesting State shall inform the Requested State of the period of any sentence being served by the person transferred under this Article, the date of expiration of any sentence, and any other factor likely to affect the date of release of such person.

3. The Requested State shall have authority and be obligated to keep in custody the person transferred under this Article unless the Requesting State has authorized his release.

4. A person transferred under this Article shall be returned by the Requested State to the custody of the Requesting State as soon as circumstances permit, and in any event shall, subject to paragraph 5, be returned:

(a) if he is serving a sentence, no later than the date immediately preceding the date of the expiration of the sentence;
or

(b) in any other case, no later than the date of the expiration of the period during which he may be kept in custody by the Requesting State.

5. The requirement that a person transferred shall be returned to the Requesting State before a date specified in paragraph 4 may, if that person's presence in the Requested State is still needed, be waived by agreement between the person transferred and both States. When the

presence of the person transferred is no longer needed in the Requested State, that State shall return him to the Requesting State unless the person and both States agree otherwise.

6. The fact that the person transferred is a national of the Requested State shall not affect any obligation of that State under this Treaty to return that person to the Requesting State.

7. The return to the Requesting State pursuant to this Article of a person transferred under this Article shall not require extradition proceedings.

ARTICLE 13

Protection from Legal Process

1. A person appearing before an authority in the Requesting or Requested State, having travelled to that State pursuant to a request under Article 10, 11, or 12, shall not be subject to service of process, or be detained or subjected to any other restriction of personal liberty, with respect to any act or conviction which preceded departure for or transfer to the State except as provided in Articles 11 and 12.

2. Paragraph 1 shall cease to apply if the person, having left the relevant State, voluntarily returns to it, or if ten days after the person has been notified in writing by the appropriate authorities of the relevant State that his presence is no longer required in that State, that person, being free to leave, has not left.

ARTICLE 14

Providing Records of Government Offices or Agencies

1. The Requested State shall, upon request, furnish to the Requesting State copies of publicly available records in the possession of a government office or agency.

2. The Requested State may, in its discretion, furnish to the Requesting State upon request copies of records in the possession of a government office or agency, but not publicly available, to the same extent and under the same conditions as such records would be available to its own law enforcement or judicial authorities.

3. Documents furnished under this Article shall be authenticated by the official having custody or control of them or by the Central Authority of the Requested State in the manner set out in Form B, appended to this Treaty. Where a document is authenticated by an official other than the Central Authority of the Requested State, the name and official position of that official shall be certified by the Central Authority of the Requested State or by a consular officer of either the Requesting State or the Requested State. No further evidence as to authenticity shall be required.

4. The original or a copy of any record furnished under this Article shall be admissible in evidence in the Requesting State without any additional foundation or authentication if it is authenticated pursuant to this Article and is otherwise admissible.

ARTICLE 15

Return of Documents, Records or Articles

The Requesting State shall return any documents, records, or articles of evidence or articles furnished in execution of a request as soon as possible, having regard to the purpose for which the request was made, unless the Requested State waives their return.

ARTICLE 16

Searches and Seizures

1. A request that any object be searched for, seized, and transferred to the Requesting State shall be carried out in accordance with and to the extent permitted under the laws of the Requested State.

2. Upon execution of a request under this Article, the Requested State shall provide such certification as may be required by the Requesting State concerning, but not limited to, the circumstances of the seizure, the identity of the item seized, the integrity of its condition, and the continuity of possession thereof. Such certification shall be admissible in evidence in the Requesting State as evidence of any facts stated therein.

3. The Central Authority of the Requested State may require that the Requesting State agree to terms and conditions for the protection of third party interests in any item to be transferred.

ARTICLE 17

Location of Persons

The Requested State shall, upon request, use its best efforts to locate a person whom the Requesting State believes to be in the Requested State and shall communicate the results to the Requesting State as soon as possible.

ARTICLE 18

Serving Documents

1. The Requested State shall effect service of any document relating to or forming part of any request for assistance properly made under the provisions of this Treaty transmitted to it for this purpose by the Requesting State; provided that the Requested State may in its discretion decline to serve any subpoena or other process requiring the attendance of any person before any authority or tribunal in the Requesting State.

2. Any request under this Article for assistance in the service of a document requiring the appearance of a person before an authority in the Requesting State shall be transmitted a reasonable time before the scheduled appearance.

ARTICLE 19

Other Treaties and Internal Laws

Assistance and procedures provided for by this Treaty shall not prevent either Contracting Party from granting assistance under any other international conventions or arrangements or under the respective laws and practices of the Contracting Parties.

ARTICLE 20

Proceeds of Crime

1. The Central Authority of either Party may notify the Central Authority of the other Party when proceeds of criminal offences are believed to be located in the territory of the other Party.

2. The Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds of criminal offences, restitution to the victims of criminal offences, and the collection of fines imposed as a sentence in prosecutions for criminal offences.

Article 21

Ratification and Entry Into Force and Termination

1. This Treaty shall be ratified, and the instruments of ratification shall be exchanged at Washington as soon as possible.

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

3. Either Party may terminate this Treaty by means of written notice to the other Party at any time. Termination shall become effective six months after receipt of such notice.

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

DONE at Kingston, in duplicate, this 7th day of JULY 1989.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

Michael Fortino

FOR THE GOVERNMENT OF
JAMAICA:

A. Care Rattray

Form A

CERTIFICATE OF AUTHENTICITY
OF
BUSINESS RECORDS

I, _____, attest on penalty of criminal punishment for
(Name)

false statement or false attestation that I am employed by

_____ and that my official
(Name of business from which documents are sought)

title is _____. I further state that each of the
records attached hereto is the original or a duplicate of the original
records in the custody of _____.
(Name of business from which documents are sought)

I further state that:

(A) such records were made, at or near the time of the occurrence
of the matters set forth, by (or from information transmitted by)
a person with knowledge of those matters;

(B) such records were kept in the course of a regularly conducted
business activity;

(C) the business activity made such records as a regular practice;
and

(D) if such record is not the original, such record is a duplicate
of the original.

Signature

Date

Sworn to or affirmed before me, _____,
(Name)

a _____, this ____ day of
(notary public, judicial officer, etc.)

_____, 19__.

Form B

CERTIFICATE OF AUTHENTICITY
OF
FOREIGN PUBLIC DOCUMENTS

I, _____, attest on penalty of criminal
(Name)

punishment for false statement or attestation that my position with
the Government of _____ is _____ and
(Country) (Official Title)
that in that position I am authorized by the law of _____.
(Country)

to attest that the documents attached and described below are true
and accurate copies of original official records which are recorded
or filed in _____, which is a government
(Name of Office or Agency)
office or agency of _____.
(Country)

Description of documents:

Signature

Date

Sworn to or affirmed before me, _____,
(Name)

a _____, this _____ day of
(notary public, judicial officer, etc.)

_____, 19__.