

Costa Rica International Extradition Treaty with the United States

December 4, 1982 and December 16, 1982, Date-Signed

October 11, 1991, Date-In-Force

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

98TH CONGRESS

2d Session

SENATE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, April 17, 1984.

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 Treaty on Extradition between the United States of America and Costa Rica, signed at San Jose on December 4, 1982, together with a related exchange of notes signed on December 16, 1982.

I transmit also, for the information of the Senate, the Report of the Department of State with respect to the Treaty.

The Treaty will facilitate United States efforts to prosecute narcotics conspiracies by expressly providing that conspiracies and attempts to commit extraditable offenses constitute extraditable offenses. The Treaty also provides a legal basis for temporarily surrendering prisoners to stand trial for crimes which occurred in the requesting State.

The Treaty follows generally the form and content of extradition treaties recently concluded by this Government. Upon entry into force, it will terminate and supersede the existing extradition treaty between the United States and Costa Rica.

This Treaty will make a significant contribution to the international cooperation in law enforcement. I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,

Washington, April 11, 1984.

The PRESIDENT,

The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty on Extradition between the United States of America and Costa Rica, signed at San Jose on December 4, 1982, together with a related exchange of notes signed on December 16, 1982. I recommend that the Treaty and the related exchange of notes be transmitted to the Senate for advice and consent to ratification.

The Treaty follows generally the form and content of extradition treaties recently concluded by this Government.

Article 1 obligates each State to extradite to the other, in accordance with the provisions of the Treaty, any persons who are charged with, or have been convicted of, an extraditable offense. (Extradition shall also be granted, Article 2 explains, for attempts and conspiracies to commit extraditable offenses, as well as for participation in such offenses.)

Article 2 permits extradition for any offense punishable under the laws of both States by imprisonment for more than one year. Instead of listing each offense for which extradition may be granted, as was United States practice until recently, this Treaty adopts the modern practice of permitting extradition for any crime punishable under the laws of both contracting Parties for a minimum period. This obviates the need to renegotiate or supplement the Treaty should both States pass laws covering new types of criminal activity, such as computer-related crimes.

Article 2 also follows the practice of recent United States extradition treaties in indicating that the dual criminality standard should be interpreted liberally in order to effectuate the intent of the Parties that fugitives be brought to justice. The interpretive diplomatic notes which accompany the Treaty expressly confirm this interpretation. The interpretive notes also state that fiscal offenses are extraditable offenses. Article 2 further provides that, if extradition is granted for an extraditable offense, it may also be granted for offenses which are punishable by less than a year's imprisonment.

Article 3 provides that extradition shall be granted for an extraditable offense regardless of where it was committed.

Articles 4, 6 and 7 state mandatory grounds for refusal of extradition. Article 4 provides that extradition shall be denied when the offense for which extradition is requested is a political or military offense. Article 6 states that extradition shall be denied when the person sought has been in jeopardy in the requested State for the same offense. Article 7 provides that extradition shall be denied when the statute of limitations of the requesting State bars the prosecution or the enforcement of the penalty.

Article 5 provides that extradition may be refused when the offense is punishable by death in the requesting, but not the requested, State, unless satisfactory assurances are received that the death penalty, if imposed, will not be carried out.

Article 8 states the obligation of the requested State concerning extradition of its nationals. It provides, in brief, that if extradition is denied on the basis of nationality, the requested State shall, upon request, submit the case to its competent authorities for prosecution.

Articles 9-13 specify the procedures by which extradition is to be accomplished. The procedures provided therein are similar to those found in other modern extradition treaties.

Article 14 provides that if the person sought is being prosecuted or is serving a sentence in the requested State for a different offense, that State may either (a) defer surrender until the proceedings are concluded or the sentence has been served, or (b) temporarily surrender the person solely for the purpose of prosecution. Temporary surrender is an innovative feature found in recent United States extradition treaties (Italy, The Netherlands and Sweden).

Article 15 sets forth a non-exclusive list of factors to be considered by the requested Party in determining to which State to surrender a person sought by more than one State.

Article 16 expressly incorporates into the Treaty the rule of specialty. This article provides, subject to specified exceptions, that a person extradited under the Treaty may not be detained, tried or punished for an offense other than that for which extradition has been granted.

Article 17 permits surrender without formal proceedings where the person sought agrees in writing to surrender after having been advised by a competent judicial authority of his or her right to a formal proceeding and that the surrender shall not be subject to the rule of specialty.

Article 18 provides for the seizure and surrender to the requesting State of all property related to the offense for which extradition is requested. This obligation is subject to the rights of third parties.

Article 19 governs transit through the territory of one of the contracting Parties of a person being surrendered to the other Party by a third country.

Article 20 provides that the requested State shall represent the requesting State in any proceedings in the requested State arising out of a request for extradition.

Article 21 governs expenses in a manner similar to other recent United States extradition treaties.

Article 22, like the parallel provision of almost all recent United States extradition treaties, stipulates that the Treaty is retroactive, in the sense that it applies to offenses committed before as well as after its entry into force.

Article 23 provides that the Treaty will enter into force immediately upon the exchange of the instruments of ratification. Upon entry into force, this Treaty will terminate the Treaty on Extradition between the United States and Costa Rica signed on November 10, 1922.

Article 24 provides for denunciation of the Treaty by either Party upon six months written notice to the other.

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

Respectfully submitted,

GEORGE P. SHULTZ.

EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE
UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE
REPUBLIC OF COSTA RICA

The Government of the United States of America and the Government of
the Republic of Costa Rica,

Desiring to provide for more effective cooperation between the two States
in the repression of crime; and

Desiring to conclude a new Treaty for the reciprocal extradition of

fugitives from justice,

Have agreed as follows:

ARTICLE 1

Obligation to Extradite

The Contracting Parties agree to extradite to each other, subject to the provisions in this Treaty, persons found in the territory of one of the Contracting Parties who have been charged with, are being tried for, or have been found guilty of an extraditable offense in the Requesting State.

ARTICLE 2

Extraditable Offenses

(1) An offense shall be an extraditable offense if it may be punished under the laws of both Contracting Parties by deprivation of liberty for a maximum period of more than one year or by any greater punishment.

(2) An offense shall also be extraditable if it consists of an attempt to commit or participation in the commission of any offense described in paragraph (1) of this Article. Extradition shall also be granted for illicit association, as provided by the laws of Costa Rica, to commit any offense described in paragraph (1) of this Article, and for conspiring as provided by the laws of the United States of America, to commit any such offense.

(3) For the purpose of this Article, an offense shall be an extraditable offense:

(a) Whether or not the laws of the Contracting Parties place the offense within the same category of offenses or denominate the offense by the same terminology; or

(b) Whether or not the offense is one for which United States federal law requires, for the purpose of establishing jurisdiction in a United States federal court, proof of interstate transportation, or use of, or effect on, the mails or other facilities affecting interstate or foreign commerce.

(4) When extradition has been granted for an extraditable offense, it may also be granted for any other offense specified in the request for extradition, even if the other offense may be punished by less than one year's deprivation of liberty in either State, provided that all other requirements for extradition are met. The Requesting State shall submit the documentation required by Article 9 for each offense for which

extradition is requested pursuant to this paragraph.

ARTICLE 3

Jurisdiction

Extradition shall be granted for an extraditable offense regardless of where the act or acts constituting the offense were committed.

ARTICLE 4

Political and Military Offenses

(1) Extradition shall not be granted when the offense for which extradition is requested is a political offense or if the Requested State determines that extradition has been requested for the principal purpose of prosecuting or punishing a person for an offense of a political character. Costa Rica shall not grant extradition for an offense connected with a political offense as long as its Constitution prohibits extradition for such an offense.

(2) For the purposes of this Treaty, the following offenses shall not be considered to be included in paragraph (1) of this Article:

(a) The murder or other willful crime against the life or physical integrity of a Head of State or Head of Government or of his family, including attempts to commit such an offense.

(b) An offense with respect to which the Contracting Parties have the obligation to prosecute or to grant extradition by reason of a multilateral international agreement.

(3) Extradition shall not be granted when the offense for which extradition is requested is an offense of a purely military nature.

ARTICLE 5

Capital Punishment

When the offense for which extradition is requested is punishable by death under the laws of the Requesting State and the laws of the Requested State do not permit such punishment for that offense, extradition may be refused, unless, before extradition is granted, the Requesting State furnishes such assurances as the Requested State considers sufficient, that the death penalty shall not be imposed, or, if imposed, shall not be executed.

ARTICLE 6

Prior Jeopardy for the Same Offense

(1) Extradition shall not be granted when the person sought is being tried; has been convicted, acquitted, or pardoned; or has served the sentence imposed by the Requested State for the same offense arising out of the same acts for which extradition is requested.

(2) Extradition may be granted, however, even if the competent authorities of the Requested State have decided to refrain from prosecuting the person sought for the acts for which extradition is requested or to discontinue any criminal proceedings which have been initiated against the person sought.

ARTICLE 7

Statute of Limitations

Extradition shall not be granted when the prosecution or the enforcement of the penalty for the offense for which extradition has been sought has become barred by lapse of time pursuant to the laws of the Requesting State.

ARTICLE 8

Extradition of Nationals

(1) Neither of the Contracting Parties shall be bound to surrender its nationals. The Requested State, however, shall have the power to grant the extradition of its nationals if, in its discretion, this is deemed proper to do and provided the constitution of the Requested State does not so preclude. In no event may either Contracting Party refuse to extradite one of its nationals on the basis of nationality after the person's nationality has been cancelled in accordance with the law of the Requested State.

(2) The Requested State shall undertake all available legal measures to suspend proceedings for the naturalization of the person sought until a decision is made on the request for extradition and, if that request is granted, until that person is surrendered.

(3) If the Requested State refuses extradition on the basis of nationality, it shall, at the request of the Requesting State, submit the case to its competent authorities for prosecution. If the Requested State requires additional documents or evidence, such documents or evidence shall be

submitted without charge to that State. The Requesting State shall be informed of the result of its request.

ARTICLE 9

Extradition Procedures and Required Documents

(1) The request for extradition shall be made by a diplomatic agent of the Requesting State or, if none is present, by a consular officer of that State.

(2) The request for extradition shall contain:

(a) Information concerning the identity of the person sought and the location where the person may be found, if known; and

(b) A brief statement of the facts of the case.

(3) The request for extradition shall be accompanied by documents which contain:

(a) A detailed explanation of the pertinent facts of the case;

(b) Evidence that the person sought is the person charged or convicted;

(c) The text and an explanation of the law describing the offenses and the penalties therefor; and

(d) The text and an explanation of the law setting forth the statute of limitations applicable to the trial and punishment therefor.

(4) When the request for extradition relates to a person who has not yet been convicted, it shall be accompanied by:

(a) A copy of the charging document, or an equivalent document issued by a judge or judicial authority; and

(b) Such evidence, as in accordance with the laws of the Requested State, would be necessary to justify the apprehension and commitment for trial of the person sought if the offense had been committed there.

(5) When the request for extradition relates to a convicted person, it shall be accompanied by a copy of the judgment of conviction or a statement by a competent judicial authority of the Requesting State that the person has been convicted.

(6) All documents transmitted by the Requesting State shall be translated,

in either the Requesting or the Requested State, into the language of the Requested State.

ARTICLE 10

Additional Documentation

(1) If the Requested State considers that the documents furnished in support of the request for the extradition of a person sought are not sufficient to fulfill the requirements of this Treaty, that State shall request the submission of necessary additional documents. The Requested State may set a time limit for the submission of such documents, and may grant a reasonable extension of the time limit upon application of the Requesting State setting forth reasons therefor.

(2) If the person sought is in custody and the additional documents submitted are not sufficient, or if such documents are not received within the period specified by the Requested State, that person may be discharged from custody. Such discharge shall not prejudice the rearrest and the extradition of the person if the additional documents are subsequently received.

ARTICLE 11

Provisional Detention

(1) In case of urgency, either Contracting Party may request the provisional detention of any charged or convicted person. Application for provisional detention shall be made either through the diplomatic channel or directly between the Department of Justice of the United States of America and the Ministerio de Justicia of the Republic of Costa Rica.

(2) The application shall contain information identifying the person sought; the location of that person, if known; a brief statement of the facts of the case; a statement of the existence of a warrant of arrest or an order of detention issued by a judicial authority, or a judgment of conviction against that person; and a statement that a request for extradition of the person will follow.

(3) On receipt of such an application, the Requested State shall take the appropriate steps to secure the detention of the person sought. The Requesting State shall be promptly notified of the results of its application.

(4) Provisional detention shall be terminated if, within a period of 60 days after the apprehension of the person sought, the Requested State has not

received the request for extradition and the supporting documents required by Article 9.

(5) The termination of provisional detention pursuant to paragraph (4) of this Article shall not prejudice the extradition of the person sought if the extradition request and the documents mentioned in Article 9 are delivered later.

ARTICLE 12

Detention and Release

A person detained pursuant to the Treaty shall not be released until the extradition request has been finally decided, unless such release is required under the extradition law of the Requested State or unless this Treaty provides for such release.

ARTICLE 13

Decision and Surrender

(1) The Requested State shall promptly communicate through the diplomatic channel to the Requesting State its decision on the request for extradition.

(2) The Requested State shall provide the reasons for any partial or complete rejection of the request for extradition.

(3) If extradition has been granted, surrender of the person shall take place within such time as may be prescribed by the law of the Requested State. The Contracting Parties shall agree on the time and place of the surrender of the person sought. If, however, that person has not left the territory of the Requested State within the prescribed time, that person may be set at liberty.

ARTICLE 14

Deferred Surrender or Temporary Surrender

(1) If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the territory of the Requested State for a different offense, the Requested State may defer the surrender of the person sought until the conclusion of the proceedings against that person or the full execution of the sentence that may be, or may have been, imposed.

(2) If the extradition request is granted in the case of a person who is serving a sentence in the territory of the Requested State for a different offense, the Requested State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody while in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person in accordance with conditions to be determined by mutual agreement of the Contracting Parties.

ARTICLE 15

Requests by Several States

(1) The Requested State, upon receiving requests from the other Contracting Party and from one or more other States for the extradition of the same person, either for the same offense or for different offenses, shall, in its discretion, determine to which State it will surrender that person. In making its decision, it may consider relevant factors including:

- (a) The State in which the offense was committed;
- (b) The gravity of the offenses if the States are seeking the person for different offenses;
- (c) The possibility of reextradition between the Requesting States; and
- (d) The order in which the requests were received from the Requesting States.

(2) Preference shall always be given to an extradition request made pursuant to an extradition treaty.

ARTICLE 16

Rule of Speciality

(1) A person extradited under this Treaty may be detained, tried, or punished in the Requesting State only for:

- (a) The offense for which extradition has been granted;
- (b) A lesser included offense;
- (c) An offense committed after the extradition; or
- (d) Any offense for which the Requested State consents to the person's

detention, trial, or punishment. For purposes of this paragraph, the Requested State may require the submission of the documents mentioned in Article 9.

(2) A person extradited under this Treaty may not be extradited to a third State unless the Requested State consents.

(3) Nothing in paragraphs (1) and (2) of this Article shall prevent the detention, trial, or punishment of an extradited person in accordance with the laws of the Requesting State or the extradition of that person to a third State, if:

(a) The person has left the territory of the Requesting State after extradition and has voluntarily returned to it; or

(b) The person has not left the territory of the Requesting State within 30 days from the day on which that person was free to leave.

ARTICLE 17

Simplified Extradition

If the person sought agrees in writing to removal to the Requesting State after personally being advised by a competent judicial authority that the person sought has the right to a formal extradition proceeding and that the surrender shall not be subject to Article 16, the Requested State may surrender that person without such a proceeding.

ARTICLE 18

Surrender of Articles, Instruments, Objects, and Documents

(1) All articles, instruments, objects of value, documents, and other evidence relating to the offense may be seized and, upon granting of extradition, surrendered to the Requesting State. The property mentioned in this Article may be surrendered even when extradition cannot be granted or effected due to the death, disappearance, or escape of the person sought. The rights of third parties in such property shall be duly respected.

(2) The Requested State may condition the surrender of the property upon satisfactory assurances from the Requesting State that the property will be returned to the Requested State as soon as practicable, and may defer its surrender if it is needed as evidence in the Requested State.

ARTICLE 19

Transit

(1) Either Contracting Party may authorize transit through its territory of a person surrendered to the other Party by a third State. The Contracting Party requesting transit shall provide the transit State, through diplomatic channels, with a request for transit which shall contain a description of the person being transmitted and a brief statement of the facts of the case.

(2) No such authorization is required where air transportation is used and no landing is scheduled in the territory of the other Contracting Party. If an unscheduled landing occurs within the territory of that Party, it shall detain the person for a period not exceeding 96 hours while awaiting the request for transit pursuant to paragraph (1) of this Article.

ARTICLE 20

Representation

(1) The Department of Justice of the United States of America shall advise, assist, and represent, or provide for the representation of, the Republic of Costa Rica in any proceedings in the United States arising out of a request for extradition made by Costa Rica.

(2) The Procuraduria General of the Republic of Costa Rica shall advise, assist, and represent, or provide for the representation of, the United States of America in any proceedings in Costa Rica arising out of a request for extradition made by the United States.

(3) The representation functions set forth in paragraphs (1) and (2) of this Article may be assumed by any successor agency designated by the laws of the affected State.

ARTICLE 21

Expenses

(1) The Requesting State shall pay expenses related to the translation of documents and the transportation of the person sought from the place of the extradition proceeding to the Requesting State. The Requested State shall pay all other expenses related to the extradition request and proceedings.

(2) The Requested State shall make no pecuniary claim against the Requesting State arising out of the arrest, detention, examination, and surrender of persons sought under the terms of this Treaty.

ARTICLE 22

Scope of Application

The procedures established by this Treaty shall apply to offenses committed before as well as after the date this Treaty enters into force.

ARTICLE 23

Ratification and Entry into Force

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

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

(3) Upon the entry into force of this Treaty, the Treaty between the United States of America and the Republic of Costa Rica, signed at San Jose, November 10, 1922, shall cease to have effect.

ARTICLE 24

Denunciation

Either Contracting Party may denounce this Treaty at any time by giving written notice to the other Party, and the denunciation shall be effective six months after the date of receipt of such notice.

DONE at San Jose, in duplicate, in the English and Spanish languages, both texts being equally authentic, this fourth day of December, 1982.

FOR THE UNITED STATES OF AMERICA:

President of the United States of America

FOR THE REPUBLIC OF COSTA RICA:

President of the Republic of Costa Rica

SAN JOSE, December 16, 1982.

His Excellency FERNANDO VOLIO JIMENEZ,

Ministry of Foreign Relations, Republic of Costa Rica

EXCELLENCY: I have the honor to refer to the Extradition Treaty between the United States of America and the Republic of Costa Rica signed on December 4, 1982, and in particular to Articles 2 and 16 thereof.

Article 2 of the Treaty broadly defines offenses which are extraditable in order to insure that all felonies punishable under the laws of both Contracting Parties are extraditable. During the negotiations, questions arose as to whether offenses under certain complex United States statutes fall within the definition of extraditable offenses. It is understood that, notwithstanding any differences in the categorization of the offenses under the laws of the Contracting Parties and the terminology used to define those offenses, it is the intent of both Parties that such offenses be covered as long as there is an analogous offense under the laws of each Party. For example, it is understood that an offense under Section 848, Title 21, United States Code, which proscribes engaging in a continuing criminal enterprise with five or more other persons to commit a series of serious offenses under the narcotics control laws of the United States, will be considered by the Government of Costa Rica to be analogous to the offenses proscribed by Article 272 or Article 372 of the Penal Code of Costa Rica, and, therefore, to be an extraditable offense under the Treaty. As another example, it is understood that an offense under Section 1962(c), Title 18, United States Code, which prohibits participating in conducting the affairs of an enterprise through a pattern of racketeering activity, will be considered by the Government of Costa Rica to be analogous to the offense of illicit association under Article 272 of its law and, therefore, to be an extraditable offense.

It is also understood that fiscal offenses which may be punished by a maximum period of deprivation of liberty in excess of one year in both States are extraditable offenses under the Treaty.

Article 16 of the Treaty sets forth the rule of speciality applicable to extradited persons. Paragraph (1)(b) of that Article provides that a person who has been extradited under the Treaty may be detained, tried, or punished in the Requesting State not only for the offense for which that person was extradited, but also for an offense of a lesser degree of culpability which is based on the same facts as the offense for which extradition was granted. For example, this paragraph would permit the Requesting State to try a person for involuntary manslaughter after the person had been extradited for murder, without first obtaining the consent of the Requested State. While the English and Spanish texts use different terminology in paragraph (1)(b) of Article 16, it is understood that the terminology used has the same effect in the legal systems of the United States and Costa Rica.

I would appreciate a note from your Excellency confirming that the understandings described above are also the understandings of the Government of Costa Rica.

Accept, Excellency, the renewed assurances of my highest and most distinguished consideration.

FRANCIS J. McNEIL.

DEPARTMENT OF STATE, DIVISION OF LANGUAGE SERVICES,

San Jose, December 16, 1982.

(TRANSLATION)

Spanish

His Excellency FRANCIS J. McNEIL,

Ambassador, Embassy of the United States of America, San Jose.

MR. AMBASSADOR: I have the honor to acknowledge receipt of Your Excellency's note No. 202 of this date, which reads as follows:

[The Spanish translation of note No. 202 agrees in all substantive respects with the original English text.]

I am happy to inform Your Excellency that the Government of Costa Rica fully agrees with the above note, whose text is absolutely correct.

I avail myself of this opportunity to renew to Your Excellency the assurances of my distinguished consideration.

FERNANDO VOLIO JIMENEZ,

Minister of Foreign Affairs and Worship, Republic of Costa Rica.