

## Spain Extradition Treaty-Supplementary with the United States

February 9, 1988, Date-Signed

July 2, 1993, Date-In-Force

### STATUS:

March 3, 1992, 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

102D CONGRESS

SENATE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, March 3, 1992.

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 Second Supplementary Treaty on Extradition between the United States of America and the Kingdom of Spain, signed at Madrid on February 9, 1988. I also transmit for the information of the Senate the report of the Department of State with respect to this Supplementary Treaty.

The Second Supplementary Treaty supplements and amends the Treaty on Extradition between the United States of America and Spain, signed at Madrid on May 29, 1970, as amended by the Second Supplementary Treaty on Extradition, signed at Madrid on January 25, 1975 and is designed to update and standardize the conditions and procedures for extradition between the United States and Spain. Most significant, it substitutes a dual criminality clause for a current list of extraditable offenses so that, inter alia, certain additional narcotics offenses will be covered by the Treaty. The Second Supplementary Treaty also provides a legal basis for temporarily surrendering prisoners to stand trial for crimes against the laws of the Requesting State.

This Supplementary Treaty further represents an important step in combatting terrorism by excluding from the scope of the political offense exception serious offenses typically committed by terrorists, e.g., murder; voluntary manslaughter; voluntary assault and battery inflicting serious bodily harm; kidnapping; abduction; hostage-taking; illegal detention; the illegal use of explosives, automatic weapons, and incendiary or destructive devices or substances; attempt or participation in such offenses, as well as conspiracy or illicit association to commit such offenses. It also excludes from the reach of the political offense exception a murder or other

willful crime against the person of a Head of State or a member of the first family of a Contracting Party, as well as any offense for which both Contracting Parties have a multilateral treaty obligation to extradite the person or submit the case to prosecution.

The provisions in the Supplementary Treaty follow generally the form and content of extradition treaties recently concluded by the United States. Upon entry into force, it will supplement and amend the existing Extradition Treaty and Supplementary Extradition Treaty between the United States and Spain.

The Supplementary Treaty will make a significant contribution to international cooperation in law enforcement. I recommend that the Senate give early and favorable consideration to the Supplementary

Treaty and give its advice and consent to ratification.

GEORGE BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE, Washington, DC, February 13, 1992.

The PRESIDENT,  
The White House.

THE PRESIDENT: I have the honor to submit to you the Second Supplementary Treaty on Extradition between the United States of America and the Kingdom of Spain signed at Madrid on February 9, 1988. I recommend that this Treaty be transmitted to the Senate for its advice and consent to ratification.

The provisions of this Second Supplementary Treaty follow generally the form and content of extradition treaties recently concluded by the United States. It represents 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 such as narcotics traffickers and terrorists.

Upon entry into force, the Second Supplementary Treaty will supplement and amend the Treaty on Extradition between the United States of America and Spain, signed at Madrid on May 29, 1970 and the Supplementary Treaty on Extradition, signed at Madrid on January 25, 1975.

Article 1 of the Second Supplementary Treaty replaces the text of Article I of the 1970 Treaty in its entirety. It obligates each State to extradite to the other, pursuant to the provisions of the Treaty, as amended, any persons sought for extraditable offenses.

Article 2 of the Second Supplementary Treaty replaces the text of Article II of the 1970 Treaty in its entirety. It adopts a dual criminality approach in determining whether a particular offense is extraditable and eliminates the outdated list of extraditable offenses contained in the 1970 Treaty. This modern extradition practice emphasizes extradition based on underlying criminal conduct rather than the particular designation of the offense contained in our respective criminal codes. A dual criminality clause permits extradition for any conduct that is punishable in both States by imprisonment or other detention for more than one year or, in the case of a sentenced person, for a sentence greater than four months. Inclusion of a dual criminality clause obviates the need to renegotiate or supplement the Treaty as offenses, such as computer-related crimes or money laundering, become punishable under the laws of both States.

The amended article further requires extradition for attempting or participating in the commission of an offense under the Treaty, as well as for conspiracy to commit such an offense, so long as such participation, attempt or conspiracy meets the dual criminality test.

An offense is further extraditable under paragraph E of the amended article, notwithstanding any interstate transportation or mail-use elements required to establish United States federal jurisdiction. This provision will allow the United States to obtain extradition for such offenses even though Spanish law does not include analogous jurisdictional elements for similar underlying criminal behavior.

Article 3 of the Second Supplementary Treaty replaces the text of Article IV of the 1970 Treaty. It continues to permit the requested Party to deny extradition of its nationals but, in such cases, provides a mechanism for the requesting Party to require prosecution instead.

Article 4 of the Second Supplementary Treaty limits the scope of Article V of the 1970 Treaty--the political offense exception. It amends paragraph B of the 1970 Treaty to specify crimes which may not be considered offenses of a political character, namely: murder; voluntary manslaughter; voluntary assault and battery inflicting serious bodily harm; kidnapping; abduction; hostage-taking; illegal detention; illegal use of explosives, automatic weapons, and incendiary or destructive devices or substances; attempt or participation in such offenses, as well as conspiracy or illicit association to commit such offenses.

The amended paragraph B continues to exclude from the reach of the political offense exception a murder or other willful crime against the person of a Head of State or a member of the first family of a Contracting Party. It also expressly excludes from the reach of the political offense exception any offense for which both the United States and Spain have a multilateral treaty obligation to extradite the person or submit the case for prosecution; e.g., aircraft hijacking pursuant to The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague December 16, 1970, and entered into force October 14, aircraft sabotage pursuant to the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal September 23, 1971, and entered into force January 26, 1973; crimes against internationally protected persons under the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, done at New York December 14, 1973, and entered into force February 20, 1977 ; hostage taking, pursuant to the International Convention against the Taking of Hostages, done at New York on December 17, 1979, which entered into force June 3, 1983, and for the United States January 6, 1985; and narcotics trafficking under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna December 20, 1988, and entered into force November 11, 1990. This limitation will also extend to crimes similarly defined in multilateral treaties to which both the United States and Spain become Parties in the future; e.g., maritime terrorism under the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome March 10, 1988 (Spain has ratified; the United States intends to ratify upon the enactment of implementing legislation) and airport terrorism under the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention of September 23, 1971, done at Montreal February 24, 1988 (Spain has ratified; the United States intends to ratify upon the enactment of implementing legislation).

Article 4 of the Second Supplemental Treaty deletes paragraph C of Article V of the 1970 Treaty, as the subject is now covered in the expanded paragraph B.

Article 5 of the Second Supplemental Treaty replaces the text of Article VIII of the 1970 Treaty in its entirety. It allows the requested Party to postpone extradition proceedings if the fugitive who is the subject of the extradition request is being prosecuted or is serving a sentence in its territory. The amended article provides discretion, however, for the requested Party to grant extradition and surrender the fugitive temporarily to the requesting Party for the sole purpose of early prosecution by that Party. This provision will allow a person serving a long sentence in the territory of the requested Party to be tried promptly by the requesting Party and returned to the requested Party to complete his sentence. This alternative of temporary surrender is routinely included in our modern extradition treaties.

Article 6 of the Second Supplementary Treaty amends Article X, paragraph D of the 1970 Treaty prescribing

the documentation and standard of proof requirements for requests relating to persons who have not yet been convicted. The amendment removes the prima facie evidence requirement contained in the 1970 Treaty and substitutes the standard of proof required to submit a comparable case to trial under the laws of the requested Party, i.e., for the United States, the standard of probable cause. This amendment is consistent with provisions in other modern extradition treaties.

Article 7 of the Second Supplementary Treaty supplements Article XI, paragraph A of the 1970 Treaty by authorizing the use of the facilities of the International Criminal Police Organization (Interpol) to transmit provisional arrest requests. This addition is consistent with provisions in other modern extradition treaties.

Article 8 of the Second Supplementary Treaty replaces Article XV, of the 1970 Treaty in its entirety. It continues to require the requested Party to notify the requesting Party promptly of its decision on extradition and to provide an explanation of any denial in whole or in part. It further provides that surrender is subject to the laws of the requested Party. This provision, read together with Article IX of the 1970 Treaty, confirms that extradition is governed not only by the provisions of the Treaty but also by the domestic legal requirements of each Party. If extradition is granted, the fugitive must be removed from the territory of the requested Party within the time prescribed by the law of that State. Otherwise the person may be released from custody and a subsequent request for extradition may be refused.

Article 9 stipulates that the Second Supplementary Treaty is retroactive, in the sense that it applies to offenses committed before as well as after its entry into force, except in cases involving offenses not covered by the 1970

Treaty. In such cases, the amended provisions will only apply if the person sought is found in the territory of the requested Party forty-five days after the entry into force of the Second Supplementary Treaty. The provisions of the 1970 Treaty will continue to apply to extraditions requested before the entry into force of the Second Supplementary Treaty.

Article 10 provides that the Second Supplementary Treaty will enter into force thirty days after the exchange of instruments of ratification. It also provides that termination is governed by the terms of the 1970 Treaty.

A Technical Analysis explaining in detail the provisions of the Treaty is being prepared by the United States negotiating delegation, consisting of representatives from the Departments of Justice and State, and will be submitted separately to the Senate Committee on Foreign Relations.

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

Respectfully submitted,

LAWRENCE

EAGLEBURGER.

## SECOND SUPPLEMENTARY TREATY ON EXTRADITION BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF SPAIN

The United States of America and the Kingdom of Spain;

Desiring to make more effective the Treaty on Extradition between the Contracting Parties, signed at Madrid on May 29, 1970, as amended by the Supplementary Treaty on Extradition, signed at Madrid on January 25, 1975 (hereinafter referred to as "the Extradition Treaty");

Have resolved to conclude a Second Supplementary Treaty and have agreed as

follows: Article 1

Article I of the Extradition Treaty is deleted and replaced by the following:

Pursuant to the provisions of this Treaty, the Contracting Parties agree to extradite to each other for prosecution or to undergo sentence persons sought for extraditable offenses.

Article 2

Article II of the Extradition Treaty is deleted and replaced by the following:

A. An offense shall be an extraditable offense if it is punishable under the laws in both Contracting Parties by deprivation of liberty for a period of more than one year or by a more severe penalty, or in the case of a sentenced person, if the sentence imposed was greater than four months.

B. Extradition shall also be granted for participation in any of these offenses, not only as principals or accomplices, but as accessories, as well as for attempts to commit or conspiracy to commit any of the aforementioned offenses, when such participation, attempt or conspiracy is subject, under the laws of both Parties, to a term of imprisonment exceeding one year.

C. For the purposes of this Article, an offense shall be an extraditable offense whether or not the laws in the Contracting States place the offense within the same category of offenses or describe the offense by the same terminology.

D. If extradition has been 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 less than one year's deprivation of liberty, provided that all other requirements for extradition are met.

E. Extradition shall also be granted for these offenses, even when, in order to recognize the competent federal jurisdiction, circumstances such as the transportation from one State to another, have been taken into account and may be elements of the offense.

Article 3

Article IV of the Extradition Treaty is deleted and replaced by the following:

Neither of the Contracting Parties shall be bound to deliver up its own nationals, but the Executive Authority of the United States and the competent authority of Spain, unless prohibited by their domestic legislation, shall have the power to deliver them up if, in their discretion, it be deemed proper to do so. If extradition is refused solely on the basis of the nationality of the person sought, the requested Party shall, at the request of the requesting Party, submit the case to its authorities for prosecution.

Article 4

Article V, paragraphs B and C of the Extradition Treaty are deleted and replaced by the following:

B. For the purpose of this Treaty, the following offenses shall not be deemed to be offenses of a political character within the meaning of subparagraph A of this Article:

(1) a murder or other willful crime against the person of a Head of State of one of the Contracting Parties, or of a member of the Head of State's family;

(2) an offense for which both Contracting Parties 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;

(3) murder, voluntary manslaughter and voluntary assault and battery inflicting serious bodily harm;

(4) an offense involving kidnapping, abduction, the taking of a hostage, or any other form of illegal

detention; (5) an offense involving the placement or use of an explosive, incendiary or destructive

device or substance, as

well as the use of automatic weapons, to the extent that they cause or are capable of causing serious bodily harm or substantial property damage;

(6) an attempt to commit one of the above-mentioned offenses or the participation as co-author or accomplice of a person who commits or attempts to commit such an offense;

(7) illicit association or bands formed to commit any of the foregoing offenses under the laws of Spain, or a conspiracy to commit any such offenses as provided by the laws in the United States.

#### Article 5

Article VIII of the Extradition Treaty is deleted and replaced by the following:

A. If the extradition request is granted in the case of a person who is being proceeded against or is serving a sentence in the requested State, the requested Party may temporarily surrender the person sought to the requesting Party for the purpose of prosecution. The person so surrendered shall be kept in custody 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 agreement of the Contracting Parties.

B. The requested Party may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that State. The postponement may continue until the prosecution of the person sought has been concluded and any sentence has been served.

#### Article 6

Article X, paragraph D of the Extradition Treaty is deleted and replaced by the following:

When the request relates to a person who has not yet been convicted, it must also be accompanied by a warrant of arrest issued by a judge or other judicial officer of the requesting Party and such information as would justify the committal for trial of the person if the offense had been committed in the requested State. The requested Party may refuse the extradition request if an examination of the case in question shows that the warrant is manifestly ill-founded.

#### Article 7

Article XI, paragraph A of the Extradition Treaty is amended by adding the following third sentence: The facilities of the International Criminal Police Organization (Interpol) may be used to transmit such a request.

#### Article 8

Article XV of the Extradition Treaty is deleted and replaced by the following:

The requested Party shall communicate to the requesting Party as soon as possible through the diplomatic channel the decision on the request for extradition.

In the case of a complete or partial rejection of the extradition request, the requested Party shall indicate the reasons for the rejection.

The surrender shall be subject to the laws of the requested Party.

If the extradition has been granted, the authorities of the requesting and requested Parties shall agree on the time and place of the surrender of the person sought. Surrender shall take place within such times as may be prescribed by the laws of the requested Party.

If the person sought is not removed from the territory of the requested Party within the time prescribed, he may be set at liberty and the requested Party may subsequently refuse to extradite that person for the same offense.

#### Article 9

1. The extraditions requested after the entry into force of this Supplementary Treaty shall be governed by its provisions, whatever the date of the commission of the offense may be, except that in the case of offenses not covered by the 1970 Treaty, this Supplementary Treaty will only be applicable if the requested person is found in the requested State forty-five (45) days after the entry into force of this Supplementary Treaty.

2. The extraditions requested before the entry into force of this Supplementary Treaty shall continue to be processed and shall be resolved in accordance with the provisions of the Treaty of May 29, 1970.

#### Article 10

(1) This Supplementary Treaty shall form an integral part of the Extradition Treaty.

(2) This Supplementary Treaty shall be subject to ratification and the instruments of ratification shall be exchanged at Washington as soon as possible. It shall enter into force thirty days after the exchange of instruments of ratification. It shall be subject to termination in the same manner as the Extradition Treaty.

IN WITNESS WHEREOF, the plenipotentiaries have signed this Supplementary Treaty.

DONE at Madrid this 9th day of February, 1988, in duplicate, in the Spanish and English languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:

FOR THE KINGDOM OF SPAIN: