

## Author



Research in political science has its own academic perks. Heather Smith found herself building skills in diplomacy and public relations when she got into an argument with Gil Garcetti's Public Relations Officer during an interview. "The individual was convinced I was a member of the press attempting to slander Garcetti in an article," Smith said. To others interested in doing research, Smith recommends: "On some long nights in the library your genuine interest in the topic may be all you have to keep you going." The research presented here won the Harry Eckstein Prize and was co-winner for the Alice B. Macy award, both given for outstanding undergraduate research.

### Key Terms

- Burden of Maintenance
- Capital Punishment
- Cultural Conflicts
- Evidence-gathering Techniques
- Extradition
- Human Rights
- Interpretation Disputes

# International Extradition: A Case Study Between the U.S. and Mexico

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## Abstract

The U.S. and Mexico have many problems in acquiring jurisdiction of criminals despite the bilateral extradition treaty in force between them since 1978. These problems can lead to delays of up to two years in the processing of extradition requests, which in turn lead to delays in trials of the accused. The recent cases of Jose Luis Del Toro and David Alvarez, American citizens accused of crimes in the U.S. who fled to Mexico, help illustrate U.S. frustrations over the Mexican capital punishment policy. Conversely, instances of Mexican extradition requests, such as Mario Ruiz Massieu and the Palacios-Valdez cases, illustrate Mexican frustration over U.S. evidence-gathering requirements. While many authors have suggested a broad range of problems encountered during international extradition negotiations in general, few have attempted to isolate the specific problems that occur between states. This study takes an in-depth look at specific problems in international extradition arrangements, arguing that delays in the processing of extradition requests are the result of specific problems between the U.S. and Mexico. The findings of this study isolate the key problems in recent controversial extradition cases between the U.S. and Mexico and increase our understanding of the U.S./Mexican extradition relationship as a whole.

## Faculty Mentor



Heather Smith's project enhances our understanding of how domestic politics and laws can often constrain and strain relationships between sovereign nations, even when both nations share a common border and, in this instance, similar goals of law enforcement. Heather's project also illustrates that undergraduate research can certainly be a mutually rewarding experience for both the faculty mentor and the student. I learned a tremendous amount about the common problems in extradition treaties and far more than I wish to admit about the Mexican legal system by working with Heather. Heather's thesis won the 2000 Harry Eckstein Award for "Outstanding Honors Thesis" in political science and was co-winner of the 2000 Alice B. Macy Award for "Outstanding Undergraduate Paper" in the School of Social Sciences. It is an exemplar of independent research.

Mark P. Petracca

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## Introduction

Hollywood movies provide satisfying accounts of heroic American fugitives evading punishment by fleeing to Mexico. However, in reality, dangerous felons sometimes attempt to cross the U.S./Mexican border to evade punishment for their crimes. Consider the case of David Alvarez, who stabbed six people, including two young girls in Baldwin Park, California in 1996, and subsequently fled to Mexico. The situation required a heightened degree of cooperation between the U.S. and Mexican governments in order to ensure that Alvarez was punished for his crimes. When nation-states begin international negotiations to acquire jurisdiction of accused criminals there are inevitable complications. Where and when should criminals be punished? How should the transfer between governments be expedited? International extradition treaties have been created to simplify this process between states. Yet controversy and strife plague the U.S./Mexican extradition relationship. This article examines the nature of the problems that surface between the U.S. and Mexico in the course of international extradition negotiations and attempts to determine how consistent these problems are with scholarly expectation.

## Materials and Methods

### *A definition of extradition*

One would assume that with thousands of pages of extradition literature spanning a considerable amount of time there would be a universal definition of extradition. However, no fundamental definition of extradition exists. There is considerable disagreement among extradition scholars over the definition of extradition itself. This phenomenon is evidenced in the multiple definitions of extradition that currently exist in extradition literature. This section will briefly explore some of these definitions in order to answer the basic question, "What is International Extradition?"

United States Statute defines international extradition as "the surrender by one nation to another of an individual accused or convicted of an offense outside of its own territory and within the territorial jurisdiction of the other which, being competent to try and punish him, demands the surrender"(U.S.C. 18 3181). United States law, one of the primary sources of international extradition norms, requires that an offense has taken place in order to begin the extradition process (Thatcher, 1998). The individual in question must have either a) been accused, or b) been both accused and convicted of the crime in question. The "surrendering" nation is that in which the accused criminal currently resides. In

other words, the surrendering nation has jurisdiction over the accused. The other nation, usually termed the "requesting nation," is the nation in whose jurisdiction the criminal has committed the crime. U.S. law further requires that the requesting nation be competent to follow through with the ultimate punishment of the accused (Thatcher, 1998). This definition primarily emphasizes the action of requesting jurisdiction over an accused criminal.

Of the various definitions in existence, there is at least minimal consensus that the U.S. Statutory definition of extradition is reasonable. A few authors have used this definition to establish the foundations for their extradition research (McHam, 1998). Others have chosen to create their own definitions.

Cherif Bassiouni, a well-established scholar of international extradition and international law, defines extradition as "the delivery of an individual, usually a fugitive from justice, by one nation-state to another. This process may be based on an explicit agreement between the states in the form of a treaty, or on reciprocity or comity" (Bassiouni, 1996). Unlike the U.S. Statutory definition, which regards the request of jurisdiction as the fundamental element of extradition, Bassiouni's definition emphasizes the actual delivery of the requested individual as the basic tenet of extradition.

Other authors, such as John Murphy, stress prosecution as the defining component of extradition. In his book, *Punishing International Terrorists*, Murphy looks at international extradition strictly as a tool for punishing international terrorists. He defines extradition by stating, "in most instances where a terrorist has committed his actions in one state and flees to another, he will be prosecuted for his crimes only if the country where he is apprehended (requested country) agrees to return him to the country where he committed his crimes (requesting country)" (1985). Murphy's definition calls attention to the necessary conditions for prosecution of an international terrorist. Prosecution, the ultimate goal, can occur only if an agreement is made between the requested and requesting state. Unlike Bassiouni, who focuses on the actual delivery of the criminal, and U.S. Statute, which focuses on the request for jurisdiction of the criminal, Murphy's definition focuses on the prosecution of the criminal.

It seems that each of these definitions fall short of accurately defining international extradition. The points brought up by each individual author (request, delivery and prosecution) are all fundamental to the extradition process. However, these points do not formulate a comprehensive definition of ex-

tradition as they now stand, in isolation from one another. For the purpose of this research, international extradition will be defined as the request for surrender and delivery by one state to another of an individual either a) accused, or b) convicted of a crime in the requested state's jurisdiction for the purpose of allowing the accused to stand trial or serve his sentence. Outlining a basic working definition of extradition is necessary because some extradition problems occur as a result of interpretation problems. The request, delivery and prosecution of the accused is used as a reference point for discussing the actual creation of extradition arrangements between states.

### ***Development of Extradition Arrangements***

Some authors assert that the primary sources of extradition arrangements are treaties (Bassiouni, 1996). Other authors insist that U.S. Statute forms the basis of extradition procedure (Thatcher, 1998). In reality, the U.S. extradition procedure is equally based on both treaties and statutes. Statutes establish the internal procedures and requirements for extradition to take place (U.S.C. 18 3181, 1988). For example, U.S. Code dictates that the State Department receive a request for extradition from a foreign nation-state and then forward it to the Justice Department, where the Attorney General will issue an arrest order for the accused (Bassiouni, 1996). Treaties, then, create the actual arrangements between nation-states. For example, the bilateral extradition treaty between the U.S. and Mexico stipulates that the requesting state has 60 days to present evidence to support the extradition request. Treaties and statutes are equally important to the extradition process. Statutes are necessary to govern the basic guidelines of extradition arrangements. Treaties are necessary for carrying out the extradition process between states.

#### *The role of statutes*

The provisions of 18 U.S.C. 3181-3196 deal specifically with United States procedure in both interstate and international extradition. United States Statute dictates that the right to create international extradition treaties is reserved to the federal government (Bassiouni, 1996). Each branch of U.S. government is involved in the process of establishing extradition arrangements. The executive is given sole authority to create international treaties of extradition. The legislature advises the executive and creates the statutes. Finally, the judiciary interprets statutes and treaties as they apply to individual cases.

#### *The role of treaties*

There are two types of extradition treaties: bilateral and multilateral. Bilateral treaties establish extradition obligations only between the two involved states. Treaties signed by more

than two states are considered multilateral. Both types of treaties establish the obligation to extradite only for signatory states. Extradition scholars note that bilateral treaties are the most common forms of extradition arrangements between states (Bassiouni, 1996). The United States, for instance, is party to over 100 bilateral extradition treaties (Yarnold, 1991).

The basic reference for the creation of bilateral treaties is the United Nations Model Treaty on Extradition. Article One of the treaty establishes an obligation to extradite. Absent a treaty, there is no obligation to extradite between states (Thatcher, 1998). In reality, most states will not allow the extradition of a criminal if there is no treaty in effect. Thus, the first article of the Model Treaty on Extradition is crucial to the entire extradition process. The treaty also helps to outline what are considered norms in the process of international extradition.

Among those norms are dual criminality and the political offense exception. Dual criminality requires that the crime for which the accused is being sought be punishable by both states involved. Article Two of the Model Treaty explains:

For the Purposes of the present treaty, extraditable offenses are offenses that are punishable under the laws of both parties by imprisonment or other deprivation of liberty for a maximum period of at least one/two year(s), or by a more severe penalty. (Article 2)

Dual criminality serves to ensure that the accused/convicted will stand trial or serve out his sentence, regardless of the state that maintains jurisdiction over him. While this norm details a necessary tenet of the extradition process, the political offense exception establishes grounds for the refusal of extradition.

Article Three of the Model Treaty, "Mandatory Grounds for Refusal of Extradition," addresses the political offense exception. If the requested state regards the crime for which the accused is sought as political, then extradition can be denied. In other words, if the accused has entered the requested state seeking some degree of political asylum, then he may not be returned to the state from which he fled. The Model Treaty regards the political offense exception as a mandatory ground for refusal of extradition. Many states, including the U.S., abide by this standard and have integrated the political offense exception into their extradition arrangements (Bassiouni, 1996).

The Model Treaty serves as a reference point for states when creating bilateral extradition arrangements. It further outlines the documents required for extradition. These documents are “an accurate description of the person sought,” as well as the “text of the relevant provision of the law creating the offense (Article 5).” The United Nations Model Treaty on Extradition should simplify the otherwise complex process of international extradition between states. Despite the existence of this Model Treaty, the process of bilateral international extradition is fraught with complications.

Multilateral treaties are also, although to a lesser degree than bilateral treaties, used as the basis for executing international extradition arrangements. The United States is party to the Multilateral Convention on Extradition (18 U.S.C. Sec. 3181). Other states that have signed the Multilateral Convention on Extradition, thus creating an extradition obligation, are Argentina, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and Panama (Article 17).

### ***General Problems Associated with International Extradition Arrangements***

There are many possible obstacles to successfully executing international extradition arrangements such as human rights violations, interpretation problems between states, and cultural conflicts. However, there seems to be one underlying problem. Despite the lack of general consensus among extradition scholars, they do agree that no formal obligation to extradite exists absent an extradition treaty (Yarnold, 1991). Should states, then, be formally obligated to extradite regardless of whether a treaty exists? If extradition is not granted, should the requested state bring the accused to justice based on its own laws? Or will the accused simply evade punishment altogether? This uncertainty in the extradition process sometimes leads to frustration on the part of the requesting state.

### ***Human rights violations***

There are multiple opportunities for the accused to suffer human rights violations in the course of international extradition proceedings. Darien Bifani, a respected extradition scholar, explains that in the U.S., extradition hearings are not considered criminal trials and as such deny the accused the rights that apply in criminal cases (1993). For example, in the case of *Collins v. Miller* (252 U.S. 364, 1920) the accused was denied an appeal in an extradition hearing. U.S. Courts have also rejected some constitutional protections applicable to criminal cases in extradition proceedings (Bifani, 1993). Clearly the rights of the accused in extradition hearings are some-

what limited. But even the method through which the state acquires jurisdiction over the accused can be controversial.

Barbara Yarnold discusses instances of state-sponsored abduction of accused offenders. States such as Israel, in the Eichmann case, and the U.S., in the Noriega case, kidnapped accused offenders for the purpose of bringing them to trial (Yarnold, 1991). Is kidnapping a valid method of bringing an accused criminal to justice? There is no consensus among extradition scholars regarding the answers to this question. However, state-sponsored kidnapping, or illegal extradition, is a considerable obstacle to legitimizing formal extradition arrangements.

The possibility for human rights violations is not eliminated once an extradition request has been successfully executed. Yarnold discusses how even the “best case scenario” in an extradition arrangement can still lead to human rights violations of the accused:

Even if the extradition itself went smoothly, the extradited individual may not receive a fair trial in the country to which he or she has been delivered, or may fall victim to excessive punishment and other violations of national and international human rights standards. (1991)

Clearly, formal extradition proceedings present the opportunity for violations of human rights. The accused can be denied basic constitutional protections guaranteed for accused criminals.

### ***Interpretation problems***

The interpretation of extradition statutes and treaties in the judiciary has proven to be problematic. Problems result from the lack of uniform interpretation methods used by the courts. Hugh Thatcher explains that there are three basic approaches to the interpretation of extradition statutes and treaties. The first of these methods, the “textual approach,” relies primarily on the language used to construct the document. The literal text of the document is examined to understand its meaning. In the “intent-oriented approach,” courts attempt to find the intent of the document rather than looking to the text of the document to decipher its true meaning. Thatcher explains that it is common for courts that interpret treaties and statutes in this manner to examine the negotiating history of the parties involved as well as their subsequent practice. The final method of interpretation is the “application of interpretive methods” approach, which involves the blending of the first two methods (Thatcher, 1998).

Extradition scholars seem to agree that the use of the various methods of interpretation among courts in extradition statutes and treaties leads to confusion and complication in the extradition process (Yarnold, 1991; Thatcher, 1998). Thatcher further explains that some courts have failed to use any of the basic interpretation methods. Instead, these courts have opted to use the interpretation methods outlined in the Vienna Convention on the Law of Treaties (Thatcher, 1998). The actual methods the courts choose seem less significant than the fact that they fail to use the same method. We will look at the U.S./Mexican extradition relationship to determine whether or not interpretation problems play a role in their difficulties.

### *Cultural conflicts between states*

Broadly defined, cultural conflicts can include differences in language and legal systems, as well as social and political values. In her discussion of history of extradition arrangements between the United States and Mexico, Monica McHam explains that all of these factors taken together can lead to turbulent relations between states. The United States and Mexico maintain different policies on capital punishment. The U.S. has remained a strong proponent of the death penalty, while Mexico outlawed the practice in 1937 (Amnesty International Report, 1999). This seems to create tensions and delays in the extradition process between these two states. Often Mexico will not agree to extradite a criminal to the U.S. if he may receive the death penalty. Usually, after extensive negotiations sometimes lasting more than two years, the U.S. grudgingly concedes and eliminates the possibility of capital punishment for the accused. The heart of this issue is grounded in a fundamental cultural difference in the value of human life. The different values and judicial systems of two states can lead to the delay or possibly the termination of extradition.

### *The burden of maintaining a large number of extradition treaties*

Yarnold discusses the burden that modern states must accept in order to take part in international extradition arrangements; this burden can be central to a state's extradition concerns. The treaties are complicated and require much input from the states themselves. For example, enumerating the crimes for which extradition will be granted between two states is no small task. For a nation with more than 100 extradition treaties the maintenance of these treaties can be time-consuming and problematic.

If treaties are neglected, criminals have increased opportunities to manipulate loopholes and avoid arrest. All the effort

of negotiating a fair and acceptable treaty between two states proves useless if the treaty fails to ensure extradition.

The problems associated with international extradition are varied and complex. This research will illustrate the ways in which these problems can apply to inter-state extradition relations. The U.S. and Mexico have negotiated extradition arrangements for more than 100 years and yet even today these negotiations rarely seem to go smoothly or quickly. It is not unusual to hear about a fugitive either in the U.S. or Mexico who will not be sent back to his country of origin to stand trial for his crime because extradition was refused. But even when extradition negotiations are successful, there are often months or years of delays before the extradited individual is flown back to his country of origin. This research examines the degree of consistency between scholarly expectations of problems arising in the course of international extradition negotiations and those that do surface between the U.S. and Mexico.

## Discussion of Findings

### *Parallels Between Scholarly Work and U.S./Mexican Extradition Practice*

Extradition literature tends to identify general problems that occur during and as a result of extradition requests. Rather than focus on the unique problems that surface between individual states in the process of extradition, scholarly research generally attempts to isolate trends which encompass many nation-states. Despite its general nature, the research of extradition scholars has identified two problems consistent with those in the U.S./Mexican extradition relationship: human rights violations and cultural conflicts. These are considered major obstacles to international extradition and seem consistent with those seen in recent cases between the U.S. and Mexico.

### *Human rights violations*

Bifani notes that human rights violations of the accused are a major problem in international extradition (1993). In the U.S. for example, individuals have no right to appeal if a U.S. Magistrate has ordered their extradition. However, an individual may file for a writ of *habeas corpus* in a federal district court (Bassiouni, 1996). This procedure allows for a review of the extradition decision only by the magistrate who originally made the decision. The only other option available when an individual has been deemed extraditable is to request that the presiding magistrate be transferred and replaced. Extradition scholars note that this is a controversial measure because of its potential to alienate the magistrate (Bassiouni,

1996). When all four of Mexico's requests for Mario Ruiz Massieu had been denied, the U.S. petitioned to have the Magistrate transferred and the request heard by another magistrate. The petition was denied and ultimately the extradition of Massieu was also denied. The Mexican government believed the request was denied because the Magistrate was alienated by the transfer request. This alienation, they felt, strengthened his resolve to prevent the extradition ("Mexico Requests Extradition," 1995). The U.S./Mexican extradition relationship is consistent with Bifani's speculation that human rights violations occur as a result of international extradition.

Accused criminals are often left to sit in prison, waiting for months or years for states to negotiate their extradition. These delays, discussed in extradition literature, are yet another instance of human rights violations during extradition negotiations. The U.S. right to *habeas corpus* prevents citizens from being imprisoned absent formal charges. When U.S. citizens commit crimes and flee to Mexico, the process of international extradition leads to long delays and months of international negotiations, often robbing U.S. citizens of their *habeas corpus* rights. Jose Luis Del Toro, arrested in Mexico at the request of the U.S., was held for 20 months while Mexican justices decided if they would extradite him (Minai, 1999). During this time there were no formal charges against Del Toro. Similarly, David Alvarez was detained in Mexico for one year without formal charges before Mexican justices decided to deny the U.S. request for his extradition (Condon, 1997). The U.S./Mexican extradition relationship leads to undeniable violations of human rights, and is thus consistent with extradition literature in general.

### *Cultural conflicts*

The second problem in international extradition identified by the literature is cultural conflicts between states. As McHam explains, cultural conflicts may arise from insensitivity to differing legal systems, political policies, or social values (McHam, 1998). For the U.S. and Mexico, cultural conflicts are major obstacles to extradition. The Mexican *amparo* process, a fundamental element of the Mexican legal system, gives criminals the ability to appeal any and all charges against them, including extradition decisions (Warren, 1999). *Amparo*, while intended to prevent human rights violations, leads to long delays in the processing of extradition requests because criminal defendants in Mexico can tie up multiple Mexican courts with the same appeal. Jose Luis Del Toro filed two separate claims in three separate Mexican courts, contributing to the delay of his return to the U.S. (Warren, 1999). In a subcommittee hearing concerning the Del Toro case, the State Attorney of Florida and the United States Deputy Assistant Attor-

ney General complained that the Mexican *amparo* process is in dire need of reform (Warren, 1999). Conversely, when the Mexican government requested the extradition of Mario Ruiz Massieu, frustrations arose as a result of the U.S. Magistrate system. Specifically, the Mexican government was aggravated when the same U.S. Magistrate was called upon to decide Massieu's extradition on three separate occasions (Zagaris and Peralta, 1996). Mexican frustration in the Massieu case, much like U.S. frustration in the Del Toro case, was a result of cultural insensitivities to legal procedure in the requested state. The Mexican/U.S. extradition relationship is consistent with the assertions of extradition scholars in the areas of human rights and cultural conflicts.

### ***Challenges to Extradition Scholarship in U.S./Mexican Arrangements***

This section will illustrate general problems in international extradition arrangements identified by extradition scholars that deviate from the U.S./Mexican arrangement. Extradition scholars assert that lack of obligation to extradite, and interpretation problems are the major obstacles in international extradition. These assertions are inconsistent with the U.S./Mexican extradition relationship.

#### *Lack of obligation*

Absent a treaty, states are not obligated to extradite an accused criminal even if requested by another state. Extradition scholars such as Yarnold and Bassiouni identify this lack of obligation to extradite as one of the most basic and fundamental obstacles in international extradition (Yarnold, 1991; Bassiouni, 1996). The scholars are correct to the extent that in most cases states seem to be unwilling to extradite if a bilateral treaty has not been established. Ironically, this does not mean that when states do have a formal bilateral extradition treaty they will rely on the terms contained therein to extradite criminals. If relations between two states are good and extradition is requested, they usually circumvent the treaty and employ more informal methods such as deportation.

Nevertheless, the U.S./Mexican extradition relationship presents an interesting exception to this fundamental problem noted by extradition scholars. As previously discussed, the U.S. and Mexico have had a bilateral extradition treaty consistently since 1864, yet many attempts at international extradition between them fail. For instance, in 1997 U.S. Magistrates denied four separate extradition requests from the Mexican government for the return of Mario Ruiz Massieu ("U.S. Appellate Court," 1996). If there was no extradition treaty between the U.S. and Mexico, extradition scholars could easily explain the denial of the Mexican government's request

by referring to the lack of obligation to extradite without a treaty. Yet a treaty does exist between them, and thus there is an obligation to extradite. The lack of obligation problem identified by scholars is too narrow and does not apply to the U.S./Mexico situation.

### *Interpretation disputes*

Extradition scholars would be hard pressed to explain U.S./Mexican extradition problems occurring as a result of interpretation disputes. Interpretation disputes in extradition generally occur between multiple courts in the same state. For example, in his article, "The doctrine of specialty: an argument for a more restrictive Rauscher interpretation," Thatcher uses *State v. Pang* to explain how interpretation problems can occur between courts. On January 5, 1995 in Seattle, Washington a warehouse owned by the parents of Martin Shaw Pang burned to the ground as the result of arson. Four Seattle firefighters died attempting to extinguish the fire. Martin Pang, who subsequently fled to Rio de Janeiro, Brazil, was charged in the U.S. with arson and murder. The U.S. government successfully petitioned Brazilian courts for Pang's extradition. However, Brazil would only allow Pang's extradition for the arson charge, not the murder charge. The U.S. agreed and Pang was flown back to Seattle (Thatcher, 1998).

When he arrived in Seattle, Pang was formally charged with arson and murder, despite the extradition agreement. The doctrine of specialty dictates that accused criminals may only be tried for those offenses agreed to in extradition proceedings. Pang moved to dismiss the murder charge because it violated the terms of the extradition agreement. The trial court dismissed his claim, arguing that he had no standing, thus ignoring the norm of specialty. The Supreme Court of Washington reversed the trial court's decision and dismissed the murder charge (Thatcher, 1998). The trial court chose to employ a loose interpretation of the norm of specialty. The murder charges against Pang clearly violated the terms of the extradition agreement and should have been dismissed. The Washington Supreme court chose to employ a more restrictive interpretation of the norm of specialty. The relevant issue in the Pang case is that interpretation disputes arose between courts within the same state. Unlike what might be expected, interpretation problems are more a conflict between courts in the same state than one between foreign governments.

When these types of interpretation disputes occur between courts in the same state, delays in extradition decisions are the inevitable result. However, when we look at recent cases of extradition between the U.S. and Mexico, interpretation dis-

putes are strikingly absent. Perhaps due to the various other problems encountered by the U.S. and Mexico in the course of international extradition negotiations, interpretation disputes do not seem to contribute to their difficulties.

### ***Major Obstacles Between the U.S. and Mexico Neglected By Extradition Scholars***

Instances of extradition conflicts between the U.S. and Mexico in recent cases almost always seem to involve extended delays. These delays are the result of other, more fundamental problems between the two states. This section argues that scholars have overlooked Mexican evidence gathering techniques as the cause of major delays when extradition is requested by Mexico to the U.S. and that conflicts over capital punishment policy are the cause of major delays when the U.S. requests extradition from Mexico.

### *Delays*

Postponing the decision to extradite for more than twelve months is not abnormal in recent U.S./Mexican extradition cases. For instance, in 1999 after more than five and a half years of negotiations between the U.S. and Mexico, William Brian Martin was delivered to the U.S. to stand trial for drug trafficking charges (Labardini, 1997). Jose Luis Del Toro, an American citizen accused of murder in Florida, fled to Mexico. Once apprehended by Mexican officials at the request of the U.S., Del Toro was held for 20 months before the Mexican government decided to officially extradite him. Of the four recent extradition cases explored in this article, the minimum delay in the processing of the extradition request was one year. David Alvarez, for example, was accused of quadruple murder in Baldwin Park, California in 1997. He subsequently fled to Mexico in an effort to avoid arrest by Los Angeles police. The Mexican government decided after one year of negotiations with the U.S. to deny the request for Alvarez's extradition (Irevino, 1998). The case of Mario Ruiz Massieu, a top Federal Prosecutor for the Mexican government, also illustrates the long delays that ensue in the course of negotiating extradition arrangements. Massieu resigned his position as the Federal Prosecutor after his brother, a high-ranking political figure in Mexico's ruling party, was assassinated. Amid allegations that he was involved in hindering the investigation into his own brother's murder and that he had accepted millions of dollars in bribes while working as the Mexican federal prosecutor, Massieu fled from Mexico. He boarded a plane bound for Spain, but was arrested by U.S. officials during a layover in the United States for failing to declare the \$46,000 in cash he was carrying. Upon his arrest in the U.S., the Mexican government immediately requested Massieu's extradition. The U.S. government

took one year before denying the request for extradition. The final case involves two young men, Palacios and Valdez, who worked as henchmen for a Mexican drug cartel and were wanted by Mexican authorities for their part in the 1996 murder of Ernesto Ibarra, a top Tijuana federal drug prosecutor. The two men fled to the U.S. to avoid arrest by Mexican officials. U.S. authorities in San Diego, California eventually caught them. The extradition of the pair was negotiated for 16 months before the U.S. extradited them back to Mexico (“Mexican Extradition for Drug Trafficker Pends,” 1997). These delays, while frustrating, are not an obstacle to extradition between the U.S. and Mexico, rather, they are the result of other problems in the U.S./Mexican extradition relationship.

### *Capital punishment policies*

Differing policies on capital punishment have been at the heart of the delays in recent extradition cases between the U.S. and Mexico. Capital punishment remains legal in 37 U.S. states (Leiter, 1997) including California, Arizona and Texas, each of which borders Mexico. The last execution in Mexico took place in 1937 (Amnesty International, 1999). Moreover, Article Eight of the 1978 treaty allows Mexico to refuse to extradite a criminal back to the U.S. if they are in danger of receiving the death penalty (Bevans). These differing policies on capital punishment become a problem when the U.S. and Mexico must negotiate the extradition of an accused criminal.

The Del Toro case illustrates the frustration U.S. officials endure as a result of Mexican capital punishment policy. Under Article Eight of the 1978 extradition treaty the Florida State Attorney was required to eliminate the death penalty as a possible punishment for Del Toro despite his crimes (Bevans). The delay in Del Toro’s extradition was a direct result of the negotiations over the death penalty between the U.S. and Mexico. This pattern of death penalty debates leading to delays in justice was repeated in the Alvarez case.

Negotiations between the Mexican government and the Los Angeles District Attorney Gil Garcetti lasted for 12 months before Alvarez was ultimately determined non-extraditable by the Mexican government (Trevino, 1998). The reason the Mexican government chose to try Alvarez rather than send him back to California to stand trial was the imminent possibility that he would receive the death penalty there. The Los Angeles District Attorney’s office asserts that failure to waive the death penalty was the fundamental obstacle in Alvarez’s extradition. They are unwilling to discuss the possibility of any other contributing factors (Gibbons, 2000). The

Alvarez and Del Toro cases are two of the most recent and controversial examples of extradition requests from the U.S. to Mexico. The decision in both cases was delayed due to conflicting capital punishment policies between the U.S. and Mexico, despite the stipulations in the extradition treaty between them.

### *Evidence-gathering techniques*

According to a 1997 Amnesty International report, “torture and ill-treatment by law enforcement officers in Mexico continue to be of major concern.” Amnesty International is not alone in its concern over the treatment of the public by Mexican law enforcement officials. U.S. courts have delayed decisions in two recent extradition cases because witnesses claimed they were tortured at the hands of Mexican law enforcement officials, yet extradition scholars never mention torture as a possible obstacle in international extradition.

The use of torture for gathering evidence in criminal cases is widely practiced by law enforcement officials in Mexico. Amnesty International reported in 1997 that the most popular forms of torture used by law enforcement are:

Electric shocks; semi-asphyxiation with plastic bags or by submersion under water; death threats; mock executions; beatings using sharp objects, stick or rifle butts; rape and sexual abuse; forcing carbonated water up the detainee’s nose or slapping both ears at once. (Amnesty International, AMR 41/17/97)

After being subjected to such atrocities, detainees are often forced to sign a confession of guilt. Because Mexican courts are inclined to accept the detainee’s first confession regardless of subsequent recantation, Mexican law enforcement officials are under added pressure to secure a confession quickly (Amnesty International, 1997). Such practices are also used to secure evidence and confessions when submitting the preliminary extradition request and supporting documents to the U.S.

Massieu was arrested in the U.S. for failing to declare \$46,000 in cash to customs officials at the Newark, New Jersey airport. Eventually his connection to the “Gulf Cartel” run by Juan Garcia Abrego in Tijuana, Mexico was uncovered. Once in U.S. custody, the Mexican government was quick to request Massieu’s extradition. However, a U.S. extradition Magistrate dismissed the initial extradition request because the only evidence presented by the Mexican government of Massieu’s guilt was obtained through torture (Zagaris and Peralta, 1996). Details of the alleged torture are not available



to the public. The Massieu case demonstrates the extent to which U.S. doubts over Mexican evidence-gathering techniques can hinder international extradition.

The Palacios and Valdez cases illustrate the same trend. Four of the key witnesses in Mexico's case against the two men have argued that their statements implicating Valdez and Palacios in the murder of Ibarra were coerced through torture. One of the witnesses was able to prove his torture claim by showing multiple cigarette burns and bruises on his body.

The important aspect of the Valdez and Palacios case is that it illustrates the extent to which U.S. doubts over Mexican evidence-gathering techniques lead to delays in the processing of international extradition requests. However, evidence-gathering concerns are not mentioned in the 1978 treaty or in any of the leading extradition literature.

### Conclusion

Some aspects of the U.S./Mexican extradition relationship are consistent with scholarly expectations including human rights violations and cultural conflicts. Other obstacles in their extradition relationship illustrate a deviation from the norm of international extradition practice. The delays in recent bilateral extradition attempts between the U.S. and Mexico seem to be the result of two problems, largely ignored by extradition scholars: U.S. doubts over Mexican evidence-gathering techniques and capital punishment disputes.

The U.S. and Mexico have the power to eliminate these two obstacles in their extradition relationship. In order to prevent allegations of torture stemming from witnesses used to support Mexican extradition requests, requirements for obtaining evidence should be added through supplementary convention to the 1978 treaty. If it can be shown that these requirements are not met (if the witnesses are tortured) then the requested state should have the power to automatically deny the extradition request. By giving the requested state the power to deny the request if witnesses are tortured, the requesting state has an incentive to comply with the evidence gathering requirements outlined in the treaty.

Article Eight of the 1978 extradition treaty should also be amended by supplementary convention. This article allows Mexico to deny a U.S. request for extradition of a fugitive charged with a capital offense. Delays in the processing of extradition requests result from extended negotiations between U.S. State Attorneys and the Mexican Government.

The Mexican Government is generally willing to send a fugitive back to the U.S. only if the State Attorney will waive the possibility of the death penalty. The extradition process can be delayed by years if the State Attorney and the Mexican Government cannot agree. Article Eight should be amended to limit the negotiating time between the State Attorney and the Mexican Government. If, after a given amount of time, the State Attorney and the Mexican Government cannot resolve the issue, then Mexico should simply deny the request. By amending the treaty to include a time constraint, the possibility for years of delays in the processing of the extradition request is eliminated.

Mexico and the United States can resolve these problems in their extradition relations. Their extradition treaty was used for more than 100 years because they chose to revise it through supplementary conventions. By amending the current bilateral treaty to account for evidence-gathering techniques and different capital punishment policies, delays in the processing of extradition requests could be significantly decreased.

### Acknowledgments

I would like to thank Dr. Mark Petracca, my faculty advisor for his role in this research. His endless guidance and patience made this investigation possible. A very special thanks to Mom, Dad, Dr. Veronika Tracy-Smith, Rebecca Kanter, and Simrun Kalra for their moral support and countless hours spent editing my work. This research would not have been possible without a generous grant from UROP.

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