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EXTRADITING MEXICAN NATIONALS IN THE FIGHT AGAINST INTERNATIONAL NARCOTICS CRIMES

Joshua S. Spector*

In recent years, Mexican narcotics trafficking has become a major threat to the security of the Americas. Mexican narco-traffickers have used their wealth and violence to corrupt political and judicial systems and avoid effective prosecution or penalty in Mexican courts. Historically, Mexico has refused to extradite its nationals in reliance on Mexican law prohibiting the extradition of nationals in all but "exceptional" cases. This Note argues that Mexico should take a step toward controlling the cross-border narcotics trade and recognize international drug trafficking as an "exceptional" crime. Upon recognizing narcotics crimes as "exceptional," Mexico should then begin extraditing Mexican narco-traffickers to the United States.

INTRODUCTION

On September 24, 1997, U.S. law enforcement officials placed Ramón Eduardo Arellano Félix, a Mexican citizen, on the FBI's Ten Most Wanted List.¹ The State Department and the FBI have offered over two million dollars in reward money for his capture.² Ramón Arellano and his brothers are the leaders of the Arellano Félix Organization (AFO), a drug cartel based in Tijuana, Mexico.³ FBI Director Louis J. Freeh has called the AFO "the most vicious, ruthless criminal organization involved in smuggling drugs into the United States."⁴ Thomas A. Constantine, head of the Drug Enforcement Administration (DEA), said the cartel is "one of the most powerful organized crime syndicates in the world today."⁵

* Note Editor, *University of Michigan Journal of Law Reform*, Volume 32, 1998. A.B. 1995, Brown University; J.D. 1999, University of Michigan Law School. I would like to thank Professor Sam Gross for helping me get this Note off the ground. Also, my thanks go out to the *Journal* staff for all their hard work with me on this Note. Finally, to my family, whose support has always been invaluable. Unless otherwise noted, sources in Spanish were translated by the author.

1. See Marcus Stern & S. Lynne Walker, *Tijuana Drug Boss on FBI Most Wanted List*, SAN DIEGO UNION-TRIB., Sept. 25, 1997, at A1.

2. See *id.*

3. See *id.*

4. *Id.*

5. *Id.*

The cartel is well known for high-volume trafficking of cocaine, marijuana, and methamphetamines,⁶ and for violence throughout Mexico and Southern California, including the murders of police officers, prosecutors, and members of rival drug cartels.⁷ A sealed indictment in the U.S. District Court for the Southern District of California in San Diego charges Ramón Arellano with conspiring to smuggle cocaine and marijuana into the United States.⁸ At the time of this writing, his whereabouts are officially unknown to U.S. and Mexican officials.⁹ However, unofficial reports continue to place Arellano in Mexico, living the extravagant lifestyle to which he and his cartel members have grown accustomed.¹⁰ Reports from Mexico state that the Arellano brothers are popular and prominent in Mexican social circles.¹¹ They frequent bars and discos in the wealthy areas of Tijuana.¹² It is widely rumored that they have no worries about capture or prosecution. People are too scared to report them to the police, because the cartel controls the police throughout Baja California.¹³ In addition, Arellano has a reputation for violence and is protected by the AFO's heavily-armed, trained security force.¹⁴ Even if Ramón Arellano were captured by Mexican law enforcement, Mexico's legal prohibition of the extradition of nationals stands in the way of an effective prosecution of Mexican citizens such as the leader of this ruthless cartel.¹⁵

6. See *id.*; Gregory Gross, *Glitz, Violence Mark Cartel Leader's Path*, SAN DIEGO UNION-TRIB., Sept. 25, 1997, at A1.

7. See Stern & Walker, *supra* note 1.

8. See *id.*

9. See *id.*

10. See Gross, *supra* note 6.

11. See *id.*

12. See *id.*

13. See *id.*

14. See *id.*; Donnie Marshall, Acting Deputy Administrator, Drug Enforcement Administration, United States Department of Justice, Prepared Statement Before the House Government Reform and Oversight Committee Subcommittee on National Security, International Affairs, and Criminal Justice (Mar. 18, 1998), available in LEXIS, News Library, Curnews File [hereinafter Marshall Statement].

15. The Mexican Executive has interpreted Mexican extradition law to establish a de facto prohibition on the extradition of its nationals. See *Ley de Extradición Internacional* (Dec. 29, 1975) [hereinafter *Mexican International Extradition Law*]; Alan D. Bersin, *El Tercer País: Reinventing the U.S./Mexico Border*, 48 STAN. L. REV. 1413, 1419 n.7 (1996). On its face, the law allows the extradition of nationals in "exceptional" cases: "Ningún mexicano podrá ser entregado a un Estado extranjero, sino en casos excepcionales a juicio del Ejecutivo. [No Mexican shall be extradited to a foreign state, except in exceptional cases as judged by the Executive.]" *Mexican International Extradition Law*, *supra*, at art. 14. However, the Mexican Executive has

During the weekend of November 8, 1997, Mexican police arrested Arturo Páez Martínez, a suspected Mexican cocaine smuggler and a reputed member of the AFO, in Tijuana.¹⁶ Two days later an indictment was unsealed in San Diego, charging Páez with conspiracy to distribute more than 2,200 pounds of cocaine in the United States.¹⁷ The United States would like to prosecute Páez, who is thought to be a member of the ten-man "board of directors" of the AFO and one of the most powerful members of the cartel.¹⁸ The arrest and conviction of Páez would aid the effort to dismantle the Arellano organization.¹⁹ The U.S. government requested the extradition of Páez, but in April 1998, a Mexican judge denied the request on the grounds that Páez is a Mexican citizen.²⁰ Despite the judicial rejection of the extradition petition, the Mexican Foreign Ministry can still approve the extradition.²¹ Because Páez, like the uncaptured Ramón Arellano, is a Mexican citizen, he is shielded by Mexican law and Mexican resistance to American pressure.²²

In early 1997, American officials in the State Department gave their Mexican counterparts an extradition "wish list" comprised of 20 suspected Mexican drug traffickers.²³ None of these international fugitives have been extradited.²⁴

never recognized the case of a Mexican national as an "exceptional" one warranting extradition to the United States. See discussion *infra* Part III.B.

16. See Tim Golden, *Drug Case in Mexico Tests Pact with U.S.*, N.Y. TIMES, Nov. 11, 1997, at A7.

17. See *id.*

18. See *id.*

19. See *id.*

20. See Gregory Gross, *Mexican Judge Rejects Extradition Bid*, SAN DIEGO UNION-TRIB., Apr. 27, 1998, at B1.

21. See *Mexican International Extradition Law*, *supra* note 15, at art. 30.

22. See *id.*; see also discussion *infra* Part III.B.

23. See Golden, *supra* note 16.

24. See *id.* In 1997, ten Mexican nationals were certified for extradition to the United States, five of whom are wanted for drug-related offenses. See Bureau for Int'l Narcotics & Law Enforcement Affairs, U.S. State Dep't, *International Narcotics Control Strategy Report, 1997: Continuation of Canada, Mexico and Central America—Mexico* (released Mar. 1998, visited Oct. 14, 1998) <http://www.state.gov/www/global/narcotics_law/1997_narc_report/camex97_part2.html> [hereinafter *Strategy Report*]. Certification refers to the judicial determination that an individual may be extradited. In both the United States and Mexico, the judiciary determines whether or not to grant extradition, but the executive makes the final determination. See 18 U.S.C. § 3184 (1994); Bruce Zagaris & Julia Padierna Peralta, *Mexico-United States Extradition and Alternatives: From Fugitive Slaves to Drug Traffickers—150 Years and Beyond the Rio Grande's Winding Courses*, 12 AM. U. J. INT'L L. & POL'Y 519, 541 (1997). Each fugitive has appealed the extradition order. See *Strategy Report*, *supra*. The individual certified for extradition has recourse under Mexican law to challenge the extradition order through an *amparo* demand. See Zagaris & Peralta, *supra*, at 546. The defendant can raise an *amparo* demand [requesting favor, aid, or protection]

Nearly ten years ago, in February 1989, representatives from the United States and Mexico signed the Agreement on Cooperation in Combatting Narcotics Trafficking and Drug Dependency²⁵ in Mexico City. In the agreement, Mexican and American officials pledged to work together to fight the international narcotics "phenomena" that pose a threat to the "security and the essential interests of each of the Parties."²⁶ The countries acknowledge that narcotics trafficking and drug dependency have serious deleterious effects on the people of both nations.²⁷ The agreement's goal is "achieving better cooperation" in the struggle against drug production, trafficking, and use.²⁸ The agreement lists some ways in which the U.S. and Mexico will cooperate to combat narcotics trafficking.²⁹ Goals include reducing the demand for and cultivation of illegal drugs, exchanging information between the countries, and assigning more resources to the fight against drugs.³⁰ Although not mentioned in the Agreement, extradition is another important way that the U.S. and Mexico can cooperate in the fight against international narcotic crimes.³¹

Mexico is the second largest trading partner of the United States.³² In the interest of free and efficient trade, the southern border of the U.S. is a relatively open passageway.³³ An unfortunate by-product of the open border is that it has become the main port of entry for illegal drugs to the United States.³⁴ Mexico and the U.S. must work together to maintain free trade while stemming the flow of drugs from Mexico.³⁵ Alan Bersin,

in order to ask a higher court to examine the final findings or decisions of his case or to raise constitutional issues. *See id.* at 547-48. Included among those appealing extradition in Mexico is Oscar Malherbe, an alleged lieutenant and hit man for Juan Garcia Abrego's Gulf cartel, who was arrested by Mexican law enforcement in February of 1997. *See Strategy Report, supra*; James F. Smith, *Mexico Highlights its Anti-Drug Successes*, L.A. TIMES, Feb. 19, 1998, at A6. Also certified for extradition are four other notorious drug traffickers: Jaime Ladino Avila, Juan Angel Salinas, Tirzo Angel Robles, and Jaime Gonzalez Castro. *See Strategy Report, supra*.

25. Agreement on Cooperation in Combatting Narcotics Trafficking and Drug Dependency, Feb. 23, 1989, U.S.-Mex., T.I.A.S. No. 11,604 (effective July 30, 1990).

26. *Id.* at preamble.

27. *See id.*

28. *Id.* at art. II(i).

29. *See id.* at art. II.

30. *See id.*

31. Cf. M. CHERIF BASSIOUNI, INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE 4 (3d ed. 1996) (noting extradition's evolution "into an international means of cooperation in the suppression of criminality").

32. *See Bersin, supra* note 15, at 1417.

33. *See id.*

34. *See id.* at 1416.

35. *See id.* at 1417-18.

former U.S. Attorney for the Southern District of California, emphasized in May 1996 that the United States and Mexico must acknowledge that drug trafficking is a binational crime that poses a threat to the security of the Americas as a whole and to the continental benefits that arise from cooperation in trade.³⁶

Mexico has begun to professionalize and modernize its law enforcement and to create a more effective judicial and penal system.³⁷ Corruption runs deep in Mexican society, however, and it will be many years before the Mexican system is able to operate without its influence.³⁸ When Mexico becomes capable of apprehending and prosecuting the key figures in the trafficking of narcotics into the United States, the United States should not interfere. Until that time, however, cooperation between the United States and Mexico in fighting drug trafficking is key to the success of any war on drugs staged in the Western Hemisphere.³⁹

This Note suggests that Mexico should extradite Mexican-national narco-traffickers high on the U.S. extradition request list.⁴⁰ The extradition would be in the name of joint security and cooperation and would serve as a sign that Mexico wants to cooperate with the United States in fighting drug trafficking at its source. Mexico's law of extradition, combined with a refusal to acknowledge the magnitude of international drug trafficking, has effectively prevented the extradition of any Mexican national to any foreign country.⁴¹ This Note suggests that it is time for Mexico to either recognize that international drug trafficking is an "exceptional" crime or to change the Mexican International Extradition Law.

Part I of the Note discusses the current extradition treaty between the United States and Mexico. Part II covers the history of extradition, U.S. extradition procedure, and the

36. See *id.* at 1418-19.

37. See *Strategy Report*, *supra* note 24; see also *infra* Part IV (discussing the rebuilding of Mexico's primary anti-narcotics enforcement agency).

38. See *Strategy Report*, *supra* note 24.

39. See Bersin, *supra* note 15.

40. One definition of extradition can be found in CHRISTOPHER L. BLAKESLEY, *TERRORISM, DRUGS, INTERNATIONAL LAW, AND THE PROTECTION OF HUMAN LIBERTY: A COMPARATIVE STUDY OF INTERNATIONAL LAW, ITS NATURE, ROLE, AND IMPACT IN MATTERS OF TERRORISM, DRUG TRAFFICKING, WAR, AND EXTRADITION* 171 (1992): "Extradition is the international judicial rendition of fugitives charged with an extraditable offense and sought for trial, or already convicted and sought for punishment."

41. See *Mexican International Extradition Law*, *supra* note 15, at art. 14; discussion *infra* Parts III.B, IV.

jurisdiction under which the United States can prosecute a Mexican drug trafficker. Part III discusses problems traditionally associated with extradition requests for foreign nationals. In addition, Part III details U.S. beliefs about the extradition of nationals and explains Mexico's hesitation to extradite a national drug trafficker. Part IV proposes that Mexico should either recognize that the extradition of a Mexican drug trafficker fits within the constitutional exception for the extradition of nationals in "exceptional" cases or reform its extradition policy to allow the extradition of a Mexican drug trafficker to the United States.⁴²

I. THE SUBSTANCE OF THE U.S.-MEXICO EXTRADITION TREATY

The current United States-Mexico Extradition Treaty took effect on January 25, 1980.⁴³ The Treaty establishes an obligation to extradite for offenses committed outside the territory of the requested state when: (1) the requested state's laws provide for the punishment of such an offense committed in the same circumstances; or (2) when the subject of the request is a national of the requesting state.⁴⁴ The crime must be punishable by both states, with a deprivation of liberty for no less

42. This Note does not claim that one extradition, or even a series of extraditions, by Mexico would successfully eradicate narcotics-associated problems in North America. Nor does this Note mean to suggest that the relative failure of the fight against drugs in the Americas rests entirely on Mexican shoulders. The United States also has far to go on many fronts, such as reducing demand for, and increasing education about, illegal drugs. See Bersin, *supra* note 15, at 1418-19. Still, an explicit and tangible sign of the joint effort intended by the 1989 agreement, such as a binational effort culminating in the prosecution of a Mexican narco-trafficker in a U.S. federal court, would be an important signal to Mexican drug traffickers that the immunity they currently enjoy is ending.

43. See Extradition Treaty, May 4, 1978, U.S.-Mex., 31 U.S.T. 5059, 5059-60 [hereinafter U.S.-Mex. Extradition Treaty].

44. See *id.* at art. 1(2). The dual criminality requirement ensures that an individual will not be extradited unless the "alleged criminal conduct is considered criminal under the laws of both the surrendering and requesting nations." Clarey v. Gregg, 138 F.3d 764, 765 (9th Cir. 1998) (quoting *U.S. v. Saccoccia*, 18 F.3d 795, 800 n.6 (9th Cir. 1994)). U.S. federal courts have interpreted the requirement to mean that the laws of the two countries are directed at the same category of conduct, regardless of whether the name of the crime or the scope of liability is necessarily the same. See *id.* at 765-66 (holding that although the Mexican charge of "simple homicide" criminalizes a "broader range of conduct than does the United States felony murder statute," the dual criminality requirement was met because the criminal conduct for which the defendant was charged also satisfied the elements of felony murder under U.S. law).

than one year.⁴⁵ The Treaty lists thirty-one crimes for which extradition is authorized.⁴⁶ It authorizes extradition for the commission of an offense as well as for attempts and conspiracies to commit an offense.⁴⁷ The Treaty prohibits extradition of the person sought when the requested state has already prosecuted, acquitted, or convicted her for the same offense.⁴⁸ It also allows either state to refuse extradition when the offense is punishable by death in the requesting state but is not punishable by death in the requested state.⁴⁹ Alternatively, the treaty allows the requested state to extract assurances from the requesting nation that the death penalty will not be imposed if extradition is granted.⁵⁰

The Treaty specifically addresses the problem posed by requests to extradite nationals. Article 9 states: "Neither Contracting Party shall be bound to deliver up its own nationals, *but the executive authority of the requested Party shall, if not prevented by the laws of that Party, have the power to deliver them up if, in its discretion, it be deemed proper to do so.*"⁵¹ If the requested state refuses an extradition request under the nationals exemption, the Treaty requires that it prosecute the subject of the request itself.⁵²

II. A BRIEF HISTORY OF EXTRADITION

As early as the sixteenth century, political theorists recognized the benefit of international obligations ensuring that one nation would not act as a safe haven for a fugitive from another state.⁵³ Emerich de Vattel believed in the existence of a "natural law" duty to extradite fugitives accused of a serious crime from other states.⁵⁴ Other theorists asserted the existence

45. See U.S.-Mex. Extradition Treaty, *supra* note 43, at art. 2(1).

46. See *id.* at app.

47. See *id.* at art. 2(4)(a).

48. See *id.* at art. 6.

49. See *id.* at art. 8.

50. See *id.*

51. *Id.* at art. 9(1) (emphasis added).

52. See *id.* at art. 9(2). This Note argues that Mexico is neither extraditing its nationals nor competently prosecuting them at the present time.

53. See BLAKESLEY, *supra* note 40, at 185-86; BASSIOUNI, *supra* note 31, at 5.

54. See M. CHERIF BASSIOUNI & EDWARD M. WISE, *AUT DEDERE AUT JUDICARE: THE DUTY TO EXTRADITE OR PROSECUTE IN INTERNATIONAL LAW* 23 (1995) (citing Emerich de Vattel, *The Law of Nations*, bk. II, ch. VI, at 136-37 (Charles G. Fenwick, trans., Classics of International Law, 1916) (1758)); BLAKESLEY, *supra* note 40, at 185.

of a natural law duty under international law either to extradite the fugitive accused of a serious crime or to punish that person under the laws of the state.⁵⁵ Early international law scholars in an opposing camp, including Samuel Pufendorf, considered extradition an obligation backed by international law only in the presence of a treaty or comparable agreement.⁵⁶ Today, most countries, including the United States, recognize a legal duty to extradite fugitives only when that duty has been codified in an explicit agreement, such as a bilateral extradition treaty.⁵⁷

A. Procedure

1. *Extradition from the United States*—Most limits that the United States places on extradition are procedural in nature. The provisions of the relevant treaty, supplemented by Title 18, govern the process of extradition.⁵⁸

To request extradition of an individual from the United States, a foreign state must first file a complaint made under oath before a U.S. federal judge or magistrate.⁵⁹ A foreign nation can file a request for extradition in two ways.⁶⁰ First, the foreign government can submit a request to the State Department, which will forward the request to the Department of Justice.⁶¹ The U.S. Attorney in the district in which the fugitive is located will file the complaint.⁶² Second, the foreign govern-

55. See BLAKESLEY, *supra* note 40, at 185 n.58. Writing in the seventeenth century, Hugo Grotius discussed a duty to extradite or prosecute arising from the common interest of all states in securing social and moral order and suppressing crime. See BASSIOUNI & WISE, *supra* note 54, at 22; see also BASSIOUNI, *supra* note 31, at 5 (discussing the views of Grotius and de Vattel); BLAKESLEY, *supra* note 40, at 185 (discussing the views of Jean Bodin, Grotius, and de Vattel).

56. See M. CHERIF BASSIOUNI, INTERNATIONAL EXTRADITION AND WORLD PUBLIC ORDER 7 (1974); BLAKESLEY, *supra* note 40, at 185–86.

57. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS OF THE UNITED STATES § 475 cmt. a (1987); BASSIOUNI, *supra* note 31, at 6, 49. As codified in 18 U.S.C. § 3184, U.S. law does not extradite unless there is a valid extradition treaty in force between the United States and the foreign nation at the time of the request. See 18 U.S.C. § 3184 (1994); BASSIOUNI, *supra* note 31, at 107.

58. See BARRY E. CARTER & PHILLIP R. TRIMBLE, INTERNATIONAL LAW 814 (2d ed. 1995).

59. See *id.*

60. See BASSIOUNI, *supra* note 31, at 655.

61. See *id.*

62. See *id.*

ment may retain private counsel who will file the request in the appropriate federal district court.⁶³

Once the complaint is filed, an arrest warrant is issued, and, once arrested, the fugitive is brought before the issuing magistrate.⁶⁴ At the extradition hearing, the magistrate must make the following findings of fact to certify the fugitive for extradition: (1) there is a valid extradition treaty in force between the United States and the requesting nation; (2) the requested fugitive is the person detained; (3) the fugitive does not fall under an exception in the applicable treaty and therefore may be extradited; and (4) the standard of proof of criminality established in the treaty is met.⁶⁵ Exceptions to extradition include an exemption for those accused of political offenses and the "dual criminality" exemption.⁶⁶ In most extradition treaties, the standard of proof required for extradition is equivalent to probable cause in domestic criminal prosecutions.⁶⁷ If the magistrate certifies the fugitive for extradition, the matter is forwarded to the Secretary of State, who makes the final determination whether or not to surrender the individual.⁶⁸ Usually, once a fugitive has been judicially determined to be appropriate for extradition, the Secretary of

63. See *id.*

64. See CARTER & TRIMBLE, *supra* note 58, at 814.

65. See BASSIOUNI, *supra* note 31, at 703; CARTER & TRIMBLE, *supra* note 58, at 814. Some courts have listed the requirements that the requesting state must meet in a different fashion. For example, two California courts have listed five elements that the judicial officer must establish before certifying a fugitive for extradition: the judicial officer is authorized to conduct extradition proceedings; the court has jurisdiction over the respondent; the applicable treaty is in full force and effect; the crimes for which surrender is sought are included within the terms of the treaty; and, there is probable cause that a crime or crimes were committed and that the respondents participated in or committed it.

See *In re Extradition of Mainero*, 990 F. Supp. 1208, 1216 (S.D. Cal. 1997); *In re Extradition of Garcia*, 890 F. Supp. 914, 917 (S.D. Cal. 1994).

66. See CARTER & TRIMBLE, *supra* note 58, at 814-15. Dual criminality requires that the charged offense be a crime in both countries. See *id.*

67. See *id.* at 815; see also *Collins v. Loisel*, 259 U.S. 309, 314-15 (1922) (holding that magistrate judge need not determine that the evidence supports a conviction, only that evidence justifies holding respondent for trial); *United States ex rel. Sakaguchi v. Kaulukukui*, 520 F.2d 726, 730-31 (9th Cir. 1975) (holding that magistrate judge need only determine that evidence establishes probable cause); *United States v. Barr*, 619 F. Supp. 1068, 1071 (E.D. Pa. 1985) (holding that a probable cause finding in international extradition hearings means sufficient evidence to support a reasonable belief of the guilt of the accused).

68. See 18 U.S.C. § 3184 (1994); CARTER & TRIMBLE, *supra* note 58, at 815.

State will refuse to extradite only if there is an applicable exemption in the relevant treaty.⁶⁹

2. *Extradition from Mexico to the United States*—When U.S. officials wish to prosecute an individual who is in a foreign country, the State Department handles the request to that country. Requests may be made for convicted fugitives who have fled the United States, as well as for persons charged with a crime but not yet convicted.⁷⁰ For an offense against the United States, the U.S. Department of Justice submits a request for extradition to the Secretary of State.⁷¹ As long as there is an extradition treaty in force with the foreign government, the Department of State transmits the request to the appropriate American Embassy or consulate to be presented to foreign government officials.⁷²

U.S. officials initiate a request for the extradition of a fugitive in Mexico by submitting a formal extradition request to the Mexican Ministry of Foreign Affairs.⁷³ U.S. officials must include a certified copy of a warrant for arrest, accompanied by evidence justifying the apprehension of the individual sought,⁷⁴ or if the individual has already been convicted, a certified copy of a conviction against the individual.⁷⁵ If the Ministry of Foreign Affairs determines that the request fulfills the requirements of applicable Mexican law and the U.S.-Mex. Extradition Treaty, the request is forwarded to the Mexican

69. See CARTER & TRIMBLE, *supra* note 58, at 815. The Secretary of State can also use discretion based on technical, political, or humanitarian grounds to refuse to extradite after judicial approval. See BASSIOUNI, *supra* note 31, at 768. Rejection of extradition on technical grounds includes instances in which the Secretary of State finds that there was an error in the judicial finding of probable cause. See *id.* at 768–69. Political and humanitarian grounds are controlled by the executive because such factors are not examined by the judiciary during an extradition hearing. See *id.* at 769. Humanitarian-based denials of extradition exist for instances in which the executive finds that, if the individual is extradited, he or she will be “persecuted . . . or subjected to grave injustice.” *Peroff v. Hylton*, 542 F.2d 1247, 1249 (4th Cir. 1976); see also BASSIOUNI, *supra* note 31, at 769 n.420 (discussing political and humanitarian grounds for executive discretion).

70. See BASSIOUNI, *supra* note 31, at 791–93 (citing a memorandum issued by the Office of the Legal Advisor, Department of State).

71. See *id.* at 791. For an offense against an individual state or territory, the application must be submitted to the State Department by the governor of the state or territory. See *id.*

72. See *id.* at 791–92.

73. See *Mexican International Extradition Law*, *supra* note 15, at art. 3; ZAGARIS & PERALTA, *supra* note 24, at 551.

74. See U.S.-Mex. Extradition Treaty, *supra* note 43, at art. 10(3)(a); *Mexican International Extradition Law*, *supra* note 15, at art. 16.

75. See U.S.-Mex. Extradition Treaty, *supra* note 43, at art. 10(4)(b); *Mexican International Extradition Law*, *supra* note 15, at art. 16.

Attorney General.⁷⁶ A Mexican district judge is assigned to the case and examines the evidence to determine if facts show "probable responsibility," the equivalent of probable cause in the U.S.⁷⁷ If there is sufficient evidence, the subject of the request is arrested and brought before the judge for an extradition hearing.⁷⁸ At the hearing, the accused may defend himself by arguing either that the extradition request does not fulfil the legal or treaty-based requirements⁷⁹ or that he is not the person being sought.⁸⁰ The district judge forwards her opinion to the Ministry of Foreign Affairs, which then makes the final decision whether to grant or deny the extradition request.⁸¹ The Ministry of Foreign Affairs consults the district judge's opinion and the material presented at the extradition hearing but is not required to follow the judge's recommendation.⁸² Following the decision by the Ministry, the individual is either released from custody⁸³ or surrendered to the proper authorities of the United States.⁸⁴

B. Jurisdiction

The territoriality principle can provide a government jurisdiction over a foreign national accused of drug trafficking and related offenses.⁸⁵ Subjective territoriality provides jurisdiction over conduct that occurs within the state, while objective territoriality grants jurisdiction over conduct when its effect impacts the asserting state, even though the conduct itself occurs outside the state's territorial borders.⁸⁶ Organized drug trafficking enterprises fall within the objective territoriality test because they meet the second criterion.⁸⁷

76. See *Mexican International Extradition Law*, *supra* note 15, at art. 21.

77. See Zagaris & Peralta, *supra* note 24, at 544.

78. See *Mexican International Extradition Law*, *supra* note 15, at art. 24.

79. See *id.* at art. 25(I).

80. See *id.* at art. 25(II).

81. See *id.* at art. 29.

82. See *id.* at art. 30; Zagaris & Peralta, *supra* note 24, at 548.

83. See *Mexican International Extradition Law*, *supra* note 15, at art. 31.

84. See U.S.-Mex. Extradition Treaty, *supra* note 43, at art. 14(3).

85. See Zagaris & Peralta, *supra* note 24, at 553.

86. See BLAKESLEY, *supra* note 40, at 96, 106-07, 110; see also Zagaris & Peralta, *supra* note 24, at 553 (discussing subjective and objective territoriality).

87. While operating beyond U.S. borders, foreign drug syndicates have a "direct and deleterious impact on Americans." *Fiscal Year 1999 Commerce, Justice, State Appropriations: Hearings Before the Subcomm. on Commerce, Justice, State and the*

III. THE EXTRADITION OF NATIONALS

Traditionally, governments have been hesitant to extradite their nationals for foreign prosecution.⁸⁸ In the 1970s, the majority of extradition treaties included absolute exceptions to extradition when the subject of the request was a national of the requested state.⁸⁹ Today, most European and other civil law nations, including much of Latin America, refuse to extradite nationals, while common law states generally will extradite.⁹⁰ This reluctance is based on various justifications. First, states feel a general duty to protect their sovereignty and to guard their citizens from mistreatment and harm.⁹¹ Second, states that exempt nationals allow their domestic authorities to prosecute their citizens for acts done abroad, and they maintain that they can, and will, competently prosecute the requested subjects domestically.⁹² Additionally, states are concerned that a punishment prohibited or considered excessive in their judicial system may be imposed upon their extradited citizens.⁹³ They also fear that their citizens will be at a disadvantage in foreign judicial proceedings, because they lack familiarity with, or understanding of, foreign processes.⁹⁴ Those accused of a crime and prosecuted in a foreign court

Judiciary of the Senate Comm. on Appropriations (Mar. 3, 1998) (statement of Thomas A. Constantine, Drug Enforcement Administration), available in 1998 WL 8993445, at *2 [hereinafter Constantine Statement]. Constantine cited, as examples of these effects, drug-related crime and the large costs (an estimated 67 billion dollars in 1997) associated with responding to drug problems in the U.S. See *id.*

88. See ETHAN A. NADELMANN, *COPS ACROSS BORDERS: THE INTERNATIONALIZATION OF U.S. CRIMINAL LAW ENFORCEMENT* 426-27 (1993).

89. See I. A. SHEARER, *EXTRADITION IN INTERNATIONAL LAW* app. II (1971).

90. See BASSIOUNI, *supra* note 31, at 588; NADELMANN, *supra* note 88, at 430-34. Germany, Switzerland, and France absolutely exempt nationals, but Italy will extradite its nationals. Israel is one common law state that refuses to extradite its nationals. In Latin America, Colombia has extradited its nationals in some cases. See NADELMANN, *supra* note 88, at 430-34.

91. See BASSIOUNI, *supra* note 31, at 593; NADELMANN, *supra* note 88, at 427.

92. See Dea Abramschmitt, *Neighboring Countries; Un-Neighborly Acts: A Look at the Extradition Relationships Among the United States, Mexico, and Canada*, 4 J. TRANSNAT'L L. & POL'Y 121, 128-29 (1995).

93. Life imprisonment and capital punishment are examples. Colombia has, at times, extradited nationals to the United States for prosecution. See *United States v. Abello-Silva*, 948 F.2d 1168, 1171 n.1 (10th Cir. 1991). Although Colombian Presidential Decree No. 1860 authorized the extradition of Colombian nationals, the Colombian government insisted that no Colombian would receive a prison sentence longer than 30 years or be sentenced to death. See *id.*

94. See NADELMANN, *supra* note 88, at 427.

may consider themselves punished from the moment of extradition, because they are forcibly transported far from the support of home and family.⁹⁵

The United Nations General Assembly has resolved that refusals to extradite based on nationality are reasonable.⁹⁶ When extradition is refused on this basis, however, the United Nations requests that the requested state take appropriate domestic action against the requested fugitive.⁹⁷ Governments that refuse to extradite nationals generally agree to prosecute the accused domestically in order to appease the requesting nation while avoiding extradition.⁹⁸ Opponents of the blanket exclusion of nationals from extradition argue that a person should be held accountable to the laws and processes of the place where he or she committed an offense.⁹⁹ Thus, an individual who commits an offense in another state must consider the problems associated with foreign prosecution—such as unfamiliarity with the foreign system and trial far from the support of home and family—before committing the offense and should not argue that these concerns exempt him from foreign prosecution.¹⁰⁰

A. U.S. Viewpoints

The first extradition treaties signed by the United States made no mention of extradition exemptions for nationals.¹⁰¹

95. *See id.*

96. *See* G.A. Res. 116, U.N. GAOR, 45th Sess., Annex, Agenda Item 100, at art. 4(a), U.N. Doc. A/RES/45/116 (1991).

97. *See id.*

98. *See* NADELMANN, *supra* note 88, at 431.

99. *See* SHEARER, *supra* note 89, at 121–22.

100. However, fear of a false conviction in a foreign court is different. It is legitimate for a country to be hesitant about sending its citizens for prosecution on false charges. However, in most extradition regimes, the requested country performs a hearing to determine the validity of the charges before certifying an individual for extradition. *See, e.g.*, U.S.-Mex. Extradition Treaty, *supra* note 43, at art. 3; Extradition Treaty, Mar. 3, 1978, U.S.-Japan, art. III, 31 U.S.T. 892 [hereinafter U.S.-Japan Extradition Treaty]; Extradition Treaty, June 7, 1934, U.S.-Iraq, art. I(a), T.S. 907 [hereinafter U.S.-Iraq Extradition Treaty]; Extradition Treaty, Jan. 19–Jan. 21, 1922, U.S.-Venez., art. I, 43 Stat. 1698 [hereinafter U.S.-Venez. Extradition Treaty]. This process protects individuals from false convictions.

101. *See* NADELMANN, *supra* note 88, at 427; ROBERT W. RAFUSE, *THE EXTRADITION OF NATIONALS* 17–19, 79–80 (1939). The extradition treaties with Switzerland (1850), Hawaii (1849), France (1843), and Great Britain (1842) provide for the delivery of all “persons” who commit a crime in one country and are later found in another. *See* RAFUSE, *supra*, at 17–19. Implicitly, these treaties allow the extradition of nationals.

The United States has traditionally opposed treaty clauses that exempt nationals from extradition, and it does not prohibit extradition of U.S. citizens to other states for prosecution.¹⁰² Despite the fact that the U.S. is not opposed to extraditing nationals, most extradition treaties signed by the United States do not obligate either nation to treat nationals on an equal basis with foreigners in extradition proceedings.¹⁰³ One common provision in U.S. extradition treaties provides that "neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention."¹⁰⁴ Some extradition treaties, such as the treaty between Mexico and the United States, give the executive discretionary power to determine whether to extradite a national.¹⁰⁵

The United States has recently extradited U.S. citizens to Mexico.¹⁰⁶ Because of its proximity to the Mexican border and the dedication of former U.S. Attorney Alan Bersin, the U.S. District Court for the Southern District of California in San Diego has been the site of many of these extraditions.¹⁰⁷ For example, in December 1997, the court certified a U.S. citizen for extradition to Mexico to face murder and criminal conspiracy

However, Nadelmann notes that, despite the treaties' words, France refused to extradite its citizens, and Switzerland extradited only one citizen before re-negotiating the treaty. See NADELMANN, *supra* note 88, at 427.

102. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS OF THE UNITED STATES, § 475 reporter's note 4 (1987); SHEARER, *supra* note 89, at 110.

103. See U.S.-Mex. Extradition Treaty, *supra* note 43, at art. 9(1); *infra* note 104 and accompanying text.

104. BASSIOUNI, *supra* note 31, at 589. See also, e.g., U.S.-Mex. Extradition Treaty, *supra* note 43, at art. 9(1) ("Neither Contracting Party shall be bound to deliver Its own nationals."); U.S.-Iraq Extradition Treaty, *supra* note 100, at art. VIII ("[N]either of the High Contracting Parties shall be bound to deliver up its own citizens."); U.S.-Venez. Extradition Treaty, *supra* note 100, at art. VIII ("Under the stipulations of this Convention, neither of the Contracting Parties shall be bound to deliver up its own citizens.").

105. See BASSIOUNI, *supra* note 31, at 589, 767-68; U.S.-Mex. Extradition Treaty, *supra* note 43, at art. 9(1); see also U.S.-Japan Extradition Treaty, *supra* note 100, at art. V (granting each party the discretion to extradite its own nationals).

106. In 1997, the U.S. State Department extradited 21 individuals to Mexico, two of whom were U.S. citizens. See *Strategy Report*, *supra* note 24. Also in 1997, Mexico extradited 13 fugitives to the United States—eight were U.S. citizens and five were third-country nationals. See *id.*

107. The U.S. District Court in San Diego also generally favors the use of international extradition to combat crime. Federal District Judge Marilyn Huff, to whom Alfredo Hodoyan Palacios and Emilio Valdez Mainero argued for reversal of the magistrate's certification of extradition, was quoted by the *San Diego Union-Tribune* as saying that she believed in the use of extradition as a "tool" to fight international drug trafficking and associated violence. Valerie Alvord, *Federal Judge Affirms Extradition of Alleged Tijuana Cartel Hit Men*, SAN DIEGO UNION-TRIB., Jan. 16, 1998, at B4.

charges.¹⁰⁸ Mexico would like to prosecute U.S. citizens, Alfredo Hodoyan Palacios and Emilio Valdez Mainero, both suspected assassins and organizers for the Arellano Félix drug cartel.¹⁰⁹ However, neither man has been sent to Mexico as of the writing of this Note, pending the outcome of an appeal to the Ninth Circuit.¹¹⁰

In addition, the federal court in San Diego granted a petition by Mexico for the extradition of two U.S. citizens to face homicide and weapons offense charges in 1994.¹¹¹ Mexico had requested the extradition of Carlos Enrique Garcia and Jesus Zamora-Salas, members of a San Diego gang and alleged AFO bodyguards and hitmen.¹¹² The two were suspected in a drug-related shooting at the International Airport in Guadalajara, Mexico, in which seven people, including a Roman Catholic Cardinal, were killed.¹¹³ As Title 18 and the extradition treaty require, the petition for approval was granted and forwarded to the Secretary of State for the final decision regarding surrender of the suspects.¹¹⁴

The Southern District of California is not the only forum which has authorized the extradition of U.S. nationals to Mexico. In 1980, the Fifth Circuit refused to block the extradition to Mexico of two U.S. citizens who faced murder, attempted murder, and attempted kidnapping charges.¹¹⁵ The court rejected the

108. See *In re Extradition of Mainero*, 990 F. Supp. 1208, 1230 (S.D. Cal. 1997).

109. See Alvord, *supra* note 107. Hodoyan is implicated in the planning and execution of the assassination of Mexico's top federal drug prosecutor, Ernesto Ibarra Santes, who was ambushed in Mexico City in September 1996. See Julia Preston & Craig Pyes, *Mexico Wins Extradition of Two Defendants from U.S. for Drug-Killing Trial*, N.Y. TIMES, Jan. 24, 1998, at A5. Valdez is wanted in Mexico for various crimes including murder, firearms violations, criminal association charges tying him to drug trafficking, and assassinations for the AFO. See *Mainero*, 990 F. Supp. at 1213-14; see also *infra* Part IV (discussing Mexico's recent problems with corruption).

110. See *Alleged Cartel Hit Man Pleads Guilty*, SAN DIEGO UNION-TRIB., Jan. 22, 1998, at B2. On February 19, 1998, Valdez pleaded guilty to arranging a cocaine deal from prison while awaiting extradition in San Diego. See Nancy Cleeland, *Cartel Suspect Admits Plotting Cocaine Deal*, L.A. TIMES, Feb. 20, 1998, at A3. The mandatory ten year sentence carried by the cocaine charge ensures that Valdez will serve some time in a U.S. prison before the State Department extradites him to Mexico. See *id.*

111. See *In re Extradition of Garcia*, 890 F. Supp. 914, 915 (S.D. Cal. 1994).

112. See *id.* at 917.

113. See *id.* at 916-17.

114. See *id.* at 925. Zamora-Salas was extradited to Mexico but was released from Mexican custody in January 1996. See Sebastian Rotella, *3 Suspects in Slaying of Cardinal Released in Mexico*, L.A. TIMES, Jan. 11, 1996, at A1.

115. See *Escobedo v. United States*, 623 F.2d 1098, 1107 (5th Cir. 1980). The court was compelled to use the 1899 extradition treaty, see *Treaty of Extradition Between the United States of America and the United Mexican States*, Feb. 22, 1899, 31 Stat. 1818, T.S. 242, because the initial extradition request by Mexico had been filed before

petitioners' argument that the United States should refuse extradition requests by Mexico for U.S. citizens, because Mexico has traditionally refused to extradite Mexican nationals.¹¹⁶

The United States has also authorized extradition of nationals to other countries with which it has treaties similar to the U.S.-Mex. Extradition Treaty. For example, the treaty with Colombia does not require that either nation extradite its nationals, but gives the executive branch the discretion to do so in cases it deems appropriate.¹¹⁷ In 1986, the Fifth Circuit certified Robert Henry Russell for extradition to Colombia.¹¹⁸ Russell, an American citizen, was charged and convicted in absentia in Colombia for defrauding the Colombian government of more than 13 million dollars.¹¹⁹

The historical willingness of the United States to extradite U.S. citizens to foreign states can be contrasted to the persistent refusal of Mexico to extradite Mexican nationals.

B. Mexican Viewpoints

Mexico's reluctance to extradite its nationals is manifested in the Mexican law on extradition, which states: "No Mexican

the current treaty went into effect in 1980. *See id.* at 1100 n.1. Article IV of the 1899 extradition treaty gave the executive branches of Mexico and the United States discretion over the extradition of nationals. *See id.* at 1104. Similar language in Article 9 of the current extradition treaty gives the executive office of each country the same discretion that it held under the former (1899) treaty. *See id.* at 1106.

116. *See id.* at 1106-07. The United States does not deny requests based on a lack of reciprocal extraditions by the requesting state. *See* BASSIOUNI, *supra* note 31, at 594.

117. *See* Extradition Treaty U.S.-Colom., Sept. 14, 1979, S. TREATY DOC. NO. 97-8, at art. 8 [hereinafter U.S.-Colom. Extradition Treaty]. Colombia has deemed drug trafficking and money laundering to be crimes for which extradition is appropriate. *See* NADELMANN, *supra* note 88, at 433. In the mid-1980s, Colombia allowed the extradition of drug traffickers to the United States in recognition of the fact that the U.S. criminal justice system was better suited to bring these criminals to justice. *See id.* at 432.

118. *See In re* Extradition of Russell, 805 F.2d 1215, 1218 (5th Cir. 1986). Between 1984 and 1991, the United States extradited a total of three U.S. citizens to Colombia. *See* NADELMANN, *supra* note 88, at 432-33. During that same period, Colombia extradited approximately 40 Colombian citizens to the United States, mostly to face narcotics-related charges. *See id.* In 1991, Colombia adopted a new constitution that explicitly banned extradition of Colombian nationals. *See id.* In November 1997, however, the Colombian Congress passed a law re-establishing the extradition of Colombian drug traffickers. *See U.S. Criticizes Colombian Law on Drug Lords*, N.Y. TIMES, Nov. 27, 1997, at A14.

119. *See Russell*, 805 F.2d at 1216; *Man Convicted in Colombia Freed on Bond*, UNITED PRESS INT'L, Dec. 24, 1986.

shall be surrendered to a foreign state, save in cases considered exceptional by the Executive, who may so determine."¹²⁰ Under Mexican law, the courts have jurisdiction over crimes committed by Mexican citizens no matter where the crimes take place.¹²¹ Mexico justifies its refusal to extradite nationals on the ground that domestic courts will competently prosecute the offenders.¹²²

During the twentieth century, Mexican diplomats have sent a series of mixed messages regarding the extradition of nationals. In 1928, U.S. Secretary of State Frank B. Kellogg questioned Mexican foreign affairs officials about the apparent black-letter refusal to extradite nationals.¹²³ The Mexican government assured Kellogg that Mexico did not have a policy of refusing requests for extradition of Mexican nationals to the United States solely on the basis of their nationality.¹²⁴

History has shown a contrary Mexican intention. In 1957 and 1961, the Mexican Executive denied requests by the United States for the extradition of Mexican citizens accused of murder and violations of narcotics laws without any explanation of why these cases were not considered serious enough to warrant extradition.¹²⁵ Mexican sources report that between 1984 and 1996, the United States submitted 151 extradition requests.¹²⁶ The Mexican Attorney General reported that Mexico extradited 39 U.S. and third-country citizens to the United States between 1988 and 1996.¹²⁷ It was not until 1996, however, that any fugitive of even questionable Mexican nationality was deported or extradited for prosecution in the United States.

In 1996, three individuals who might be considered Mexican citizens were extradited to the United States.¹²⁸ In January 1996, Mexican law enforcement arrested Juan Garcia Abrego and promptly flew him to Houston, where he had already been

120. *Mexican International Extradition Law*, *supra* note 15, at art. 14.

121. See Abramschmitt, *supra* note 92, at 128 (citing MODERN LEGAL SYSTEMS CYCLOPEDIA: THE LEGAL SYSTEM OF MEXICO § 1.30.52 (1988)).

122. See 6 WHITEMAN DIGEST OF INTERNATIONAL LAW 866, 877-78 (1968). *But see* discussion *infra* Part IV (noting that Mexico cannot effectively prosecute major drug traffickers in its domestic courts at this time).

123. See Zagaris & Peralta, *supra* note 24, at 530.

124. See *id.*

125. See WHITEMAN, *supra* note 122, at 867-68.

126. See Zagaris & Peralta, *supra* note 24, at 532.

127. See *id.* at 532 & n.45.

128. See *id.* at 611-12; Sam Dillon, *Mexico Arrests a Top Suspect in Drug Trade*, N.Y. TIMES, Jan. 16, 1996, at A1.

indicted on charges of cocaine possession, cocaine distribution and importation, and money laundering.¹²⁹ In April 1996, Mexico authorized the extradition of Francisco Gámez García and Aaron Morel LeBarón, two more Mexican nationals who were wanted by U.S. law enforcement.¹³⁰ Gámez García had already been convicted in Arizona state courts on charges of sexual abuse and sexual conduct with a minor.¹³¹ LeBarón was a fugitive of Racketeer Influenced and Corrupt Organization (RICO) charges in the U.S. District Court in Houston.¹³²

Mexico was able to rationalize these extraditions without changing its policy against extraditing nationals. The government considered Abrego a dual citizen of Mexico and the United States.¹³³ Therefore, Mexico considered him a foreigner and could expel him without an extradition or deportation hearing.¹³⁴ Mexican officials rationalized the extradition of Gámez García because he had already been tried and convicted in an Arizona state court.¹³⁵ The United States helped Mexico justify its extradition of LeBarón by labeling him a U.S. citizen based on the fact that both his father and mother hold U.S. citizenship.¹³⁶ Additionally, both LeBarón and Gámez García declined to exercise their rights under the Mexican constitution to fight the extradition, which further justified Mexico's decision.¹³⁷ In each of these cases, Mexico found a loophole that allowed it to comply with U.S. requests for extradition while still maintaining its sovereignty.

Nevertheless, U.S. officials touted these extraditions as the light at the end of the tunnel. Bob Weiner, Director of Public Affairs for the White House Office of National Drug Control Policy, called Abrego's arrest and expulsion "a signal that international cooperation can break the formerly impenetrable shield held by the narco-traffickers."¹³⁸ In early 1997, Jonathan Winer, Deputy Assistant Secretary of the Bureau for International Narcotics and Law Enforcement Affairs, called the

129. See John Ward Anderson, *Alleged Drug Kingpin Arrested in Mexico: Abrego, One of FBI's 10 Most Wanted, Flown to Houston to Face '93 Indictment*, WASH. POST, Jan. 16, 1998, at A11; Dillon, *supra* note 128, at A1.

130. See Zagaris & Peralta, *supra* note 24, at 611.

131. See *id.*

132. See *id.* at 612.

133. See Dillon, *supra* note 128.

134. See *id.*

135. See Zagaris & Peralta, *supra* note 24, at 611-12.

136. See *id.* at 612.

137. See *id.* at 611-12.

138. Anderson, *supra* note 129, at A11.

LeBarón and Gámez García extraditions an important step and predicted "additional Mexican extraditions in the near future."¹³⁹ Since the extradition of LeBarón and Gámez García more than two years ago, however, no further progress has been made on this front despite the more than 120 active extradition requests pending with Mexico.¹⁴⁰ Extradition to the United States could be a powerful deterrent to Mexican drug traffickers. However, isolated instances of extradition, coupled with the Mexican government's rationalization, do not represent a change in policy. Therefore, freewheeling narco-traffickers have no more reason to fear extradition today than they did before 1996.

Mexico desperately wants to be considered an equal in its international relations with traditionally stronger and more prominent countries such as the United States.¹⁴¹ There has been a move in recent decades toward cooperation between the United States and Mexico in diverse areas such as law enforcement, trade, and the environment.¹⁴² These measures can only succeed if each country respects the other.

The issue of the United States' disrespect for Mexico was brought to the forefront of inter-American relations in the early 1990s after the United States entered Mexico and forcibly

139. Zagaris & Peralta, *supra* note 24, at 532.

140. See Telephone Interview with Representative of the Office of International Affairs, U.S. Dep't of Justice (Feb. 12, 1998) (on file with the *University of Michigan Journal of Law Reform*). Active extradition requests refer to those for which some action is currently being taken. See *id.* Within the 120 current active requests are crimes and people of all nationalities, including Mexican citizens, U.S. citizens, and other nations' citizens who have fled to Mexico. See *id.* Approximately one-third of those active extradition requests are for narcotics offenses. See *id.* The Office of International Affairs at the DOJ explains that there are not many active requests for Mexican citizens because of Mexico's refusal to extradite. See *id.* First, the Office does not want to work on "futile" cases. See *id.* Second, an extradition request gives the foreign government valuable information on cases of interest to the DOJ and alerts the government, and potentially the subject of the request, to charges about which they may be unaware. See *id.*

141. See Aimee Lee, Comment, *United States v. Alvarez-Machain: The Deleterious Ramifications of Illegal Abductions*, 17 *FORDHAM INT'L L.J.* 126, 186-87 (1993).

142. See, e.g., Mutual Legal Assistance Cooperation Treaty, Dec. 9, 1987, U.S.-Mex., art. 1, S. TREATY DOC. NO. 100-13 (1988) (pledging to provide mutual legal assistance in criminal matters to cooperate in the prevention, investigation, and prosecution of crimes); North American Free Trade Agreement, *opened for signature* Dec. 11, 1992, art. 102, 32 I.L.M. 289 (establishing free trade area, eliminating trade barriers, promoting fair competition, and providing for the resolution of trade disputes); U.S. Trade Representative Office, *North American Agreement on Environmental Cooperation*, in ENVIRONMENTAL IMPACT OF NAFTA 158, 159 (1974) (reconfirming environmental cooperation between the United States, Mexico, and Canada).

abducted a Mexican national, Dr. Humberto Alvarez-Machain.¹⁴³ Alvarez-Machain was brought to the United States to face charges in connection with the kidnapping, torture, and murder of Enrique Camarena-Salazar, a DEA Special Agent, and Alfredo Zavala-Avelar, his Mexican pilot.¹⁴⁴ Mexico considered the abduction an outrageous violation of its sovereignty.¹⁴⁵

The fact that Camarena was a DEA Agent made the issue even more heated than normal. At the time of the abduction, Mexico had never extradited a Mexican national to the United States under the terms of the 1978 treaty.¹⁴⁶ U.S. law enforcement officials were concerned that Mexico would invoke the "nationals exception" and refuse to extradite Alvarez-Machain.¹⁴⁷ DEA officials attempted to secure the presence of Alvarez-Machain in the United States through informal discussions with Mexican police officials.¹⁴⁸ When that failed, they turned to a contact in Mexico to whom they paid \$50,000 plus expenses to kidnap Alvarez-Machain and deliver him to El Paso, Texas.¹⁴⁹ When the plan succeeded, Mexico was furious and publicly protested the abduction and the subsequent 1992 Supreme Court opinion that legitimized the abduction by giving U.S. jurisdiction.¹⁵⁰ Mexico's primary source of indignation was the invasion of its sovereignty, not the guilt or innocence of Alvarez-Machain.¹⁵¹

Ultimately, on December 14, 1992, the U.S. District Court for the Central District of California dismissed the charges against Alvarez-Machain because of a dire lack of direct evidence tying the doctor to the kidnapping, torture, and murder

143. See Lee, *supra* note 141, at 157-61.

144. See *id.* at 157-58.

145. See *id.* at 186.

146. See Mark S. Zaid, *Military Might Versus Sovereign Right: The Kidnapping of Dr. Humberto Alvarez-Machain and the Resulting Fallout*, 19 HOUS. J. INT'L L. 829, 837 n.28 (1997).

147. See Lee, *supra* note 141, at 157, 159.

148. See *United States v. Caro-Quintero*, 745 F. Supp. 599, 602-03 (C.D. Cal. 1990). Although negotiations broke down, the DEA first attempted to secure Alvarez-Machain's presence in the United States through informal cooperative means. See *id.* at 602. The DEA attempted to trade the delivery of Alvarez-Machain by Mexican federal police for the deportation by the United States of Isaac Naredo Moreno, a fugitive of Mexican justice who was living in the United States. See *id.*

149. See *id.* at 602-03.

150. See *U.S. v. Alvarez-Machain*, 504 U.S. 655, 670 (1992); Zaid, *supra* note 146, at 841-42.

151. See Zaid, *supra* note 146, at 841-42.

of Camarena.¹⁵² Alvarez-Machain was released from custody, but significant damage had been done. In an era of movement toward increased cooperation, the United States gravely overstepped its bounds, violated the extradition treaty, and effectively confirmed Mexican suspicions about American disrespect for international standards.

IV. WHY MEXICO SHOULD EXTRADITE A MEXICAN INTERNATIONAL DRUG OFFENDER—AN “EXCEPTIONAL” PROBLEM

Since the nineteenth century, American law enforcement has characterized its counterpart in Mexico as corrupt, ineffective, and unwilling to cooperate in cross-border investigations.¹⁵³ Incidents in recent years have shown that the Mexican state and federal law enforcement agencies, military, and Executive are riddled with corruption.¹⁵⁴ The government organizations instrumental in the fight against drugs are appealing targets for traffickers' corruption efforts.¹⁵⁵ Drug traffickers have the money to entice government officials with lucrative payoffs and the power to ensure cooperation through threats and violence.¹⁵⁶ A common Mexican saying gives insight into the power held by the corrupting forces: “Take the *Plata o plomo*—the silver or the lead”—either take the money or the bullet.¹⁵⁷ Former DEA Chief of Operations Doug Wankel said, “Money

152. See Seth Mydans, *Judge Clears Mexican in Agent's Killing*, N.Y. TIMES, Dec. 15, 1992, at A20. Mydans reported that on Dec. 14, 1992, Judge Edward Rafeedie dismissed the charges against Alvarez-Machain, because the evidence presented by the government “had been based on ‘hunches’ and the ‘wildest speculation’ and had failed to support the charge, that [the doctor] had participated in the torture [or killing] of [Agent] Camarena.” *Id.*; see also Jeffrey J. Carlisle, *Extradition of Government Agents as a Municipal Law Remedy for State-Sponsored Kidnapping*, 81 CAL. L. REV. 1541, 1551 n.63 (1993).

153. See NADELMANN, *supra* note 88, at 61–62.

154. See Mark Fineman & Sebastian Rotella, *The Drug Web that Entangles Mexico: The Nation's Deepening Crises and a New Attack on Corruption Expose the Sinister Ties Between Cartels and Government*, INVESTIGATORS SAY, L.A. TIMES, June 15, 1995, at A1.

155. See Julia Preston, *A General in Mexico's Drug War is Dismissed on Narcotics Charges*, N.Y. TIMES, Feb. 19, 1997, at A1.

156. See Fineman & Rotella, *supra* note 154, at A1; Sebastian Rotella, *Mexico's Cartels Sow Seeds of Corruption, Destruction*, L.A. TIMES, June 16, 1995, at A1; Stern & Walker, *supra* note 1, at A1. American officials estimate that the AFO spends one million dollars each week paying federal, state, and local officials for their non-interference and protection. See Marshall Statement, *supra* note 14, at *7.

157. NADELMANN, *supra* note 88, at 258.

corrupts . . . and in Mexico it's getting to the point where the traffickers can corrupt absolutely."¹⁵⁸

Mexico should extradite international drug offenders to the United States because effective domestic prosecution of these individuals is currently impossible in Mexico.¹⁵⁹ The drug cartels control political, judicial, and law enforcement structures in Mexico and threaten Mexican sovereignty so much that Mexico has classified them as the "principal national security" threat.¹⁶⁰ Because of their especially violent and disruptive nature, drug crimes should be considered "exceptional" and should fit within the exception to Mexico's codified prohibition of extradition of nationals.

An "Exceptional" Problem

Mexican law restricts the extradition of Mexican nationals to those cases determined to be "exceptional" by the Mexican Executive.¹⁶¹ The narco-traffickers requested for extradition by

158. Sam Dillon & Craig Pyes, *Shadow on the Border—A Special Report: Drug Ties Taint 2 Mexican Governors*, N.Y. TIMES, Feb. 23, 1997, at A1.

159. One example is the case of Rafael Muñoz Talavera. See Sam Dillon & Craig Pyes, *Foiled Drug Pursuit of a Mexican Bares a System Rife with Graft*, N.Y. TIMES, Apr. 15, 1998, at A1. Muñoz was arrested in 1989 by Mexican police after he was implicated as the leader of a cartel whose 21.4 tons of cocaine were uncovered in a California drug bust five weeks earlier. See *id.* Muñoz was identified as the leader of the cartel by traffickers arrested during the seizure in the largest single drug bust in history. See *id.* In the first trial against Muñoz, he was acquitted for a lack of strong evidence tying him to the cocaine. See *id.* With the help of Assistant U.S. Attorneys and DEA agents, Muñoz was convicted in a second trial in 1995, but a Mexican appellate panel released him a year later, ruling that he had been tried twice for the same charges. See *id.* American prosecutors complain that the evidence against Muñoz was "overwhelming" and that his ability to evade punishment is the result of bribery of the Federal Police Commander and the Mexican Deputy Attorney General who were in charge of the case against him. See *id.* Mexican and American officials suspect that the first prosecution was rigged by prosecutors who presented only weak evidence to a lenient judge. See *id.*

160. *Strategy Report*, *supra* note 24.

161. See *Mexican International Extradition Law*, *supra* note 15, art. 15. Because the wording of the law has been the same since before the turn of the century, and Mexico has never authorized the extradition of a Mexican national, interpretation of "exceptional" in this law is quite difficult. Compare *id.* with *Ley de Extradición de la República Mexicana*, art. 10(II) (May 18, 1897). In an explanation of its refusal to extradite a Mexican national charged with the larceny of over \$25,000 in 1944, the Mexican Foreign Minister told the U.S. Ambassador to Mexico that Mexico reserves extradition of nationals to "grave cases in the judgement of the Executive. The gravity of the acts should be considered from the international point of view." WHITEMAN, *supra* note 122, at 866. In 1957 and 1961, the Mexican Executive refused to extradite Mexican nationals accused of narcotics law violations and murder without explaining

the United States have committed exceptional crimes. The international drug trade is a unique industry, more far-reaching and disturbing than other criminal activities which plague the hemisphere.¹⁶² There is an estimated 49 billion dollar annual market for illegal drugs in the United States.¹⁶³ The Mexican narco-traffickers are thriving on this demand.¹⁶⁴ The cartels overwhelm Mexico and have ensured that Mexico will not rid itself of violence and corruption any time in the near future.¹⁶⁵

Law enforcement officials in the United States believe that drug corruption in the Mexican criminal justice system makes law enforcement efforts in Mexico largely ineffective.¹⁶⁶ Suspicion on both sides of the border has diminished cooperative measures between the United States and Mexico. Asymmetrical criminal law practices and cultural norms have contributed to ineffective cooperation even when the two countries attempt to work together.¹⁶⁷ American authorities have found that informal means of cross-border cooperation can accomplish objectives more efficiently and effectively than some formal methods.¹⁶⁸ While informal cooperation can be a relatively easy way to solve a problem, it also can lead to international incidents and criticism which hinder progress toward healthy relations, as evidenced by the fallout from the Alvarez-Machain case.¹⁶⁹ One of the first steps that must be taken in

why those cases were not of the "grave" nature for which extradition would be granted. *See id.* at 867.

162. The cartels have infiltrated the Mexican government at all levels, threatening Mexican democratic institutions and severely diminishing their effectiveness in fighting narcotics crime. *See Strategy Report, supra* note 24. International drug trafficking is a multi-billion dollar enterprise for the Mexican cartels. *See Fineman & Rotella, supra* note 154, at A1. The cartels are also the perpetrators of ruthless transnational violence that has taken the lives of law enforcement and other government officials, as well as private citizens. *See Marshall Statement, supra* note 14, at *8.

163. *See Brook Larmer et al., A Leap of Faith, NEWSWEEK, Mar. 10, 1997, at 34, 36.*

164. In 1995, U.S. DEA Chief Thomas Constantine estimated that the leaders of Mexico's major cartels make seven billion dollars in annual profits. *See Fineman & Rotella, supra* note 154.

165. *See id.*

166. *See id.*

167. *See NADELMANN, supra* note 88, at 6-7. Basic differences exist between what conduct countries choose to criminalize and the degree to which those criminal laws will be enforced. *See id.* at 6.

168. *See id.* at 61-62. Informal means of cooperation include the use of tricks to lure fugitives to the United States or to a third country which will more readily extradite the fugitive. *See id.* at 436. Endeavors to seize and kidnap fugitives to the United States also are often conducted with the assistance of local foreign agents. *See id.* at 443.

169. *See id.* at 460.

the war against drugs is to institutionalize cooperative measures, such as extradition of international criminals without regard to nationality.

The Mexican government does not appropriate enough resources to fight the cartels effectively. A study by the *Universidad Nacional Autónoma de México* (National Autonomous University of Mexico) (UNAM) reported that the Mexican Federal Attorney General's annual budget is only about 200 million dollars, while the drug cartels spend as much as 500 million dollars a year bribing officials.¹⁷⁰

The corruption of Mario Ruiz Massieu, Mexico's former top anti-narcotics enforcer, required a reported 17 million dollars.¹⁷¹ The amount is considerably less for the lower-level officials and officers. In 1997, a typical police officer in Mexico made 300 dollars a month, and soldiers made 190 dollars a month, while the cartels paid their bodyguards between 2,000 and 3,000 dollars a week.¹⁷² According to an aide to President Zedillo, "The police have become the personal army of the narcotics traffickers."¹⁷³ When a low-paid official in a position of trust and power is given the chance to earn some extra "salary" by looking the other way or even guarding a shipment of drugs, he can hardly be expected to resist—especially when resistance means a bite of the "Plomo."

On April 30, 1997, Mexican Attorney General Jorge Madrazo Cuellar dismantled the *Esfuerzo Nacional en el Combate al Narcotráfico* (Institute for Combating Drugs) (INCD), the Mexican equivalent of the DEA, after an announcement that the director of the organization and many of its agents were working for drug traffickers. The INCD was created in 1993 to replace other corrupt drug-fighting organizations.¹⁷⁴ General

170. See Fineman & Rotella, *supra* note 154, at A1 (citing a recent study by UNAM).

171. See Todd Robberson, *Mexican Held in U.S. Linked to Drug Cartel: Bribes May Play Role in Probe of Killing*, WASH. POST, Mar. 9, 1995, at A1.

172. See Linda Robinson, *An Inferno Next Door*, U.S. NEWS & WORLD REP., Feb. 24, 1997, at 36, 38.

173. Michael S. Serrill, *Mexico's Black Mood*, TIME INT'L EDITION, Oct. 7, 1996, at 14, available in LEXIS, News Library, Time File.

174. See Sam Dillon, *Mexico Shakes Up Anti-Drug Force*, N.Y. TIMES, May 1, 1997, at A1. In place of the INCD, the Mexican government created the Special Prosecutor's Office for Attention to Drug Crimes under the Office of the Attorney General. See *Strategy Report*, *supra* note 24. The new anti-drug czar, Mariano Herran Salvatti, is taking steps to ensure that the new Special Prosecutor's Office does not end up corrupted like its predecessors. See *id.* at 5. All personnel assigned to the Office, including those previously employed by the INCD, will go through screening, including background checks and financial, psychological, drug, and polygraph

Jesus Gutiérrez Rebollo was dismissed from his post as director of the Institute in February, 1997.¹⁷⁵ He faces accusations of receiving monetary and other material benefits through his association with Amado Carrillo Fuentes, one of the wealthiest and most powerful Mexican drug lords.¹⁷⁶ Gutiérrez was the third high-ranking federal drug official to be accused of taking payments from drug-traffickers in this decade.¹⁷⁷ Javier Coello Trejo, who served as Mexico's drug czar in 1989 and 1990, and Mario Ruiz Massieu, a former Deputy Attorney General who was Mexico's drug coordinator in 1993 and 1994, were both charged with taking large payments from Mexican drug traffickers.¹⁷⁸ American officials also accused the governors of the Mexican states of Sonora and Morelos of taking payoffs from Carrillo in exchange for protecting Carrillo's drug smuggling operations.¹⁷⁹ Mexican defense officials reported that between the February 1997 dismissal of General Gutiérrez and August 1997, thirty-three other officers in the Mexican military, including four generals, were dismissed for corruption and narcotics charges.¹⁸⁰ When sworn into office, each of these men was viewed as honest, but none could resist the monetary power held by drug lords.

Vulnerable Mexican law enforcement officers and prosecutors do not take lightly the threats of violent retribution for non-compliance with drug cartel wishes. Rival drug cartels engage in massive turf wars against each other, catching law enforcement agencies in the middle. The cartels assassinate key political and law enforcement officials and engage in public gun battles armed with automatic weapons.¹⁸¹ In May 1993, hit-men hired by the Arellano Félix cartel pumped fourteen bullets into the body of Cardinal Posadas at the Guadalajara airport, mistaking him for a rival cartel leader.¹⁸² During March and April of 1994, there were three major incidents of

examinations. *See id.* Members of the Office will receive increased training, including specialized training in the United States. *See id.* The Mexican government has also announced that agents will receive premium pay and increased benefits, in an effort to reduce the incentive to accept bribes. *See id.*

175. *See* Preston, *supra* note 155, at A1.

176. *See id.*; Julia Preston, *Another Mexican General is Arrested and Charged with Links to Drug Cartel*, N.Y. TIMES, Mar. 18, 1997, at A8.

177. *See* Preston, *supra* note 155, at A1.

178. *See id.*; Fineman & Rotella, *supra* note 154.

179. *See* Dillon & Pyes, *supra* note 159.

180. *See* Julia Preston & Craig Pyes, *Mexican Tale: Drugs, Crime, Torture and the U.S.*, N.Y. TIMES, Aug. 18, 1997, at A1.

181. *See* Rotella, *supra* note 156.

182. *See id.*; *see also supra* Part III.A.

violence in the state of Baja California.¹⁸³ The first was a close-range battle in March between Ramon Arellano's bodyguards and Mexican elite federal drug enforcement officers and state police officers.¹⁸⁴ Five men were killed in the exchange, including the commander of the federal anti-drug unit.¹⁸⁵ The early 1994 public assassinations of presidential candidate Luis Donaldo Colosio and Federico Benitez Lopez, the reformist chief of the Tijuana police, have been attributed to the Arellano cartel and Tijuana drug lords.¹⁸⁶ In September 1996, First Commander Ernesto Ibarra Santes, Chief of the Federal Judicial Police for Baja California, was assassinated in Mexico City.¹⁸⁷ As the chief drug enforcement official in Baja California, Ibarra had taken a strong stand against the AFO by increasing the number of Tijuana-based agents to fight specifically against the cartel and by speaking out against law enforcement collusion with the traffickers.¹⁸⁸ In March 1997, Brigadier General Alfredo Navarro Lara was arrested after allegedly offering the top federal justice official in Baja California a multimillion-dollar bribe on behalf of the Arellano Felix cartel.¹⁸⁹ The power of the Mexican drug cartels was more fully exposed when Navarro Lara admitted that he had been coerced into making the bribery offer by the Arellano Félix brothers, who had threatened to kill the Brigadier General's child.¹⁹⁰

The violence of the cartels is not limited to government officials and Mexican soil.¹⁹¹ In July 1997, the tortured body of an important witness in a McAllen, Texas trial of seven major Mexican marijuana traffickers was found decomposing across the border in Reynosa, Mexico.¹⁹² The witness was kidnapped in McAllen the day before the trial was set to begin.¹⁹³

Narcotics and associated criminal behavior have overpowered Mexico, and narcotics-related corruption is entangled

183. See Rotella, *supra* note 156.

184. See *id.*

185. See *id.*

186. See *id.*

187. See Serrill, *supra* note 173, at 14.

188. See *id.*; Gross, *supra* note 6, at A1.

189. See Preston, *supra* note 155.

190. See *id.*

191. See Mark Fineman, *Witness' Slaying Blow to Drug Fight*, L.A. TIMES, July 26, 1997, at A1.

192. See *id.*

193. See *id.*

with the Mexican criminal justice system.¹⁹⁴ The reformation of Mexican law enforcement has begun, but the cartels have a tight grasp. While Mexico is reforming, innocent civilians and honest police officers lose their lives, and drugs continue to pour over the border at an alarming rate.¹⁹⁵ Under the current Mexican extradition law, no Mexican will be surrendered to a foreign prosecutor unless it is an "exceptional" case.¹⁹⁶ Mexico should recognize that "exceptional" is the perfect label for the narcotics-related crimes that are overwhelming Mexico and the United States.

CONCLUSION

Mexican cartels are becoming the largest suppliers of cocaine, heroin, marijuana, and methamphetamines that enter the United States.¹⁹⁷ The cartels perpetrate violence and corruption in both the United States and Mexico.¹⁹⁸ Without cooperation between the United States and Mexico, the struggle to put an end to the power held by the drug cartels in Mexico and to stem the flow of illegal drugs out of Mexico is a futile one. Extradition of a major narco-trafficker is a possibility, and for such an extradition to occur, the Mexican Executive must take a strong stand against the cartels.

Mexican law enforcement officials have shown that they are capable of arresting members of major cartels, but the highest-ranking cartel leaders know that the chance of arrest is slim, the chance of conviction even smaller, and the chance of an extended incarceration almost nonexistent.¹⁹⁹ Even if imprisoned

194. See *Strategy Report*, *supra* note 24.

195. The 1995 Annual Report of the U.S. Attorney for the Southern District of California indicated that cocaine seizures at the Southwest Border increased 20% between 1993 and 1995 to 80% of the total cocaine seized in the United States. See Bersin, *supra* note 15, at 1416 (citing 1995 U.S. ATT'Y S.D. CAL. ANN. REP.). Mexico is also a major producer of the marijuana, heroin, and methamphetamines that are imported to the United States. See *Strategy Report*, *supra* note 24.

196. See *Mexican International Extradition Law*, *supra* note 15, at art. 14.

197. See *Strategy Report*, *supra* note 24.

198. See *id.*

199. See discussion *supra* Introduction, Part IV (illustrating recent narcotics-offense arrests made by Mexican law enforcement). Mexico reports that for 1997, its conviction rate for narcotics-related charges was 96%. See *Strategy Report*, *supra* note 24. Many of the cartel leaders continue to run free in Mexico, however. For example, Miguel Caro-Quintero, the leader of the Sonora-based Caro-Quintero cartel, was arrested in Mexico in 1992. See Marshall Statement, *supra* note 14, at *6. Caro-Quintero used "a combination of threats and bribes" to convince a federal judge to dismiss the

in Mexico, cartel leaders may be able to run their drug syndicates from prison using the same corruption techniques that have kept them in business on the outside.

One positive sign is that the Mexican judiciary has recently found the strength and integrity to certify some narco-traffickers for extradition to the United States.²⁰⁰ If the Mexican government will extradite these or other Mexican narco-criminals wanted by U.S. authorities, a federal conviction in the United States will likely lead to a serious sentence. Admittedly, an extradition process remains subject to corruption during the arrest, the judicial certification for extradition, and the physical transfer to the United States. Mexican officials, however, are taking steps to remove corruption from Mexican law enforcement.²⁰¹

Overall, extradition is less susceptible to undue influence than prosecution and incarceration in Mexico, because there are fewer stages at which undue influence can be exerted. The narco-traffickers face a greater chance of punishment in the United States because once they are in U.S. hands, two phases of prosecution that are vulnerable to Mexican corruption are eliminated. First, since the only Mexican judges in the process will be those determining the eligibility of the individual for extradition, there will be fewer judges involved in the criminal process and therefore fewer opportunities for judicial bribery and threats. A trial held on U.S. soil will hopefully ensure a trial untainted by the power of the accused.²⁰² Second, because sentencing and imprisonment will take place in the United States, the trafficker presumably will have less leverage to bribe, threaten, or coordinate a lenient sentence or to continue coordinating his criminal enterprise from prison.²⁰³

More importantly, once Mexico extradites a few narco-traffickers to the United States, the message will be clear that immunity has lapsed. The people of Mexico will see that the

charges against him and set him loose to operate freely. *Id.* Also, although he is a fugitive wanted by both U.S. and Mexican law enforcement with a two million dollar bounty on his head, Ramón Arellano continues to live a public life at clubs and social events in Mexico. See Gross, *supra* note 6, at A1.

200. See discussion *supra* note 24.

201. See discussion *supra* Part IV.

202. One can always be optimistic that the extradition of narco-traffickers from Mexico would not lead to increased corruption in the United States. See NADELMANN, *supra* note 88, at 265.

203. While the United States may not be perfect, by relative standards, U.S. law enforcement agencies, federal government officials, and the federal judiciary are nearly free of corruption. See NADELMANN, *supra* note 88, at 264-66.

cartels no longer hold near-complete control, which may embolden the populace to take a stand against the cartels, effectively taking away yet another line of the traffickers' defense. Aid from the United States in the form of the prosecution and punishment of these individuals will help Mexico revive its law enforcement and prepare for an untainted future by removing some of the opportunity that Mexican cartels have to corrupt Mexican officials. Prosecution in the United States will also ease the workload of Mexican prosecutors and judges, allowing them to concentrate their efforts on the reduced number of cases in front of them.

The Mexican Executive needs to declare that the power and violence generated by the cartels create an "exceptional" drug trafficking problem. Once this fact is acknowledged, the Mexican Executive can justify the expulsion of major drug traffickers without reforming current laws.

Alternatively, Mexico could amend the 1975 extradition law and erase the exception for nationals. The Mexican government could lower the threshold requirement under which extradition of nationals is permitted. For example, the amended Article 14 could read: "A Mexican will be surrendered to a foreign state when the Executive deems appropriate." By replacing the phrases, "No Mexican shall,"²⁰⁴ and "cases considered exceptional,"²⁰⁵ with phrases indicating more discretion and a lower threshold, the Mexican executive will have more flexibility to authorize extradition.

In order to assuage foreign concerns regarding the treatment of their nationals in U.S. courts, agreements to extradite for prosecution can be made subject to limitations put in place by either state.²⁰⁶ For example, in 1989 and 1990, Colombia extradited more than two dozen accused Colombian drug traffickers and money launderers to the United States.²⁰⁷ Accompanying the Colombian Presidential Decree that allowed those extraditions were the conditions that no Colombian national would receive a prison sentence for longer than thirty years, and that none would be sentenced to death.²⁰⁸ The current extradition treaty between Mexico and the United States contains a clause that severely limits the imposition of the death penalty for the punishment of

204. *Mexican International Extradition Law*, *supra* note 15, at art. 14.

205. *Id.*

206. See BASSIOUNI, *supra* note 31, at 772.

207. See NADELMANN, *supra* note 88, at 433.

208. See *United States v. Abello-Silva*, 948 F.2d 1168, 1171 n.1 (10th Cir. 1991).

extraditees.²⁰⁹ Although Mexican courts can impose death sentences in some cases, the penalty is generally disfavored by Mexico and has not been employed by that country since 1937.²¹⁰ An agreement with Mexico to extradite Mexican nationals could include stronger wording ensuring that no convicted Mexican would be sentenced to death.

Extradition to the United States should not be a permanent solution. Mexican sovereignty is at stake. But continued refusals to extradite narco-traffickers threaten Mexican sovereignty as well, and probably to a much greater degree.²¹¹ A concession by Mexican political leaders that prosecutions could be handled better in American courts will require the Mexican government to swallow its pride. Fears that the United States is intruding on Mexican sovereignty, similar to the concerns raised in the wake of the Alvarez-Machain incident,²¹² will surely be voiced as soon as a Mexican national is extradited to the United States. Mexican political leaders will likely suffer in the Mexican public eye at first, but the strength of political leaders on both sides of the border will make the difference. Policy-makers in the United States can make concessions as well. First, and foremost, U.S. officials need to promise that they will respect Mexico and its sovereignty. For example, assurances that no more kidnappings or irregular renditions of Mexican citizens will take place and promises to cooperate fully with Mexican law enforcement, including disclosure of enforcement activities which affect Mexico, should make Mexican concessions to extradite nationals seem more reciprocal in nature.

In large measure, the success or failure of the fight against Mexican drug traffickers depends upon the willingness of Mexico's political leaders to take the resolute first step. A commitment by those atop the Mexican political hierarchy will instill the confidence necessary to achieve long-term gains. Once Mexico begins to extradite individuals wanted by the

209. See U.S.-Mex. Extradition Treaty, *supra* note 43, at art. 8. The Treaty states that when the offense is punishable by death in the requesting state but the laws of the requested party prohibit capital punishment for the offense, the requested state can require assurances that the death penalty will not be employed. See *id.*

210. See AMNESTY INTERNATIONAL, WHEN THE STATE KILLS ... THE DEATH PENALTY: A HUMAN RIGHTS ISSUE 176-77 (1989).

211. See discussion *supra* Part IV.

212. See discussion *supra* Part III.B. (discussing the anger expressed by Mexico after the kidnapping of Alvarez-Machain). For a more detailed discussion, including the perspectives of third-countries, see Zaid, *supra* note 146, and Lee, *supra* note 141, at 186-87.

United States, the control held by the cartels will diminish and their extravagant lifestyles will end.

Mexico is attempting to improve its anti-drug mechanisms and may soon be able to combat the narco-traffickers domestically.²¹³ Once Mexico is able to impart the message that it will not tolerate drug trafficking and corruption, the prosecution of these individuals should be handled by its domestic legal system. Until then, the prosecution of individuals in the United States is the best alternative.

213. For example, on March 3, 1998 in Mexico, General Jesus Gutiérrez Rebollo, the former head of Mexico's anti-drug program, was sentenced to almost 14 years in prison for weapons violations and abuse of his authority on behalf of the Juarez-based Amado Carillo Fuentes cartel. *See supra* Part IV. The conviction and sentence is considered a big step by Mexico, because Gutiérrez was the highest-ranking Mexican official to face a narcotics-corruption trial. *See* Mary Beth Sheridan & Jodi Wilgoren, *Ex-Leader of Mexico's War on Drugs Sentenced*, L.A. TIMES, Mar. 4, 1998, at A1. Mexico is also making considerable efforts to ensure that the anti-drug program will not continue to be soiled with corruption. *See supra* Part IV.

