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Extradition as a Tool for International Cooperation: Lessons from the U.S.-Mexico Relationship

EMILY EDMONDS-POLI AND DAVID A. SHIRK[†]

I. INTRODUCTION

Whereas globalization offers limitless opportunities for criminal actors to engage in illicit activities, law enforcement agencies typically operate within strictly delimited national boundaries and jurisdictions.¹ Thus, in the era of trans-nationalism, cooperation through the use of international extradition offers a potentially promising tool for countries seeking to extend the long arm of the law beyond borders. The subject has been well studied by historians and legal experts, who have written insightfully on the historical and technical aspects of extradition.² However, there is considerably less analysis of many of the practical and political considerations involved in extradition, and very few studies that explicitly examine the power relationships, strategic dynamics, and political considerations related to extradition.³

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1. PETER ANDREAS, *POLICING THE GLOBE: CRIMINALIZATION AND CRIME CONTROL IN INTERNATIONAL RELATIONS* 14 (2006).

2. A review of available scholarly articles registered on Academic Search Premier from 1899 to 2017 produced a list of 94 articles, 79 of which were generated since the year 2000. The vast majority of these articles are found in law journals, and focus primarily on legal procedure, due process, and human rights issues.

3. Some exceptions include, for example, George Ginsburgs, *Extradition Issues in*

With this in mind, this article focuses on the use of extradition as a foreign policy tool, and considers when and how extradition serves as a mechanism for cooperation in international relations.

Examining its use in the U.S.-Mexico context, specifically, this article helps to illustrate some of the legal, procedural, and policy considerations involved in the use of extradition. The U.S.-Mexico case is an interesting one because of the long-standing existence of a bilateral extradition treaty and the dramatic increase in the use of extradition between the two countries in recent years.⁴

While there was a flurry of research on extradition in the U.S.-Mexico context in the late 1980s and 1990s, there have been surprisingly few scholarly books or articles in the last decade or so.⁵ Therefore, our work addresses an important lacuna in the literature that seeks to understand how and when the two countries use extradition is used as a foreign policy tool. The subsequent discussion provides a primarily descriptive overview of the use of extradition in the U.S.-Mexico context. It is comprised of three sections: the first briefly explains the history of extradition, the general structure of extradition treaties, and the bureaucratic steps in the extradition process.⁶ The next section highlights some peculiarities of the extradition treaty and dynamics between the United States and Mexico.⁷ The final section provides a systematic examination of the trends in extradition between the two countries.⁸ Throughout, the authors rely upon the existing literature, official government data, and author interviews with U.S. and Mexican diplomatic and law enforcement officials.

II. STRUCTURING COOPERATION: UNDERSTANDING INTERNATIONAL EXTRADITION LAW

In order to understand the use of international extradition as a law enforcement tool, it is first necessary to review the relevant legal norms

Russian-Turkmen Relations, 29 REV. OF CENT. & E. EUR. L. 437, 437–456 (2004); CHRISTOPHER H. PYLE, EXTRADITION, POLITICS, AND HUMAN RIGHTS (2001).

4. EMILY EDMONDS-POLI & DAVID SHIRK, CONTEMPORARY MEXICAN POLITICS (2d. ed. 2016).

5. A few exceptions include DANIEL S. MARGOLIES, SPACES OF LAW IN AMERICAN FOREIGN RELATIONS: EXTRADITION AND EXTRATERRITORIALITY IN THE BORDERLANDS AND BEYOND, 1877–1898 (2011); Sara Pérez Kasparian, *México y la Extradición Internacional*, 3 AMARIO MEXICANO DE DERECHO INTERNACIONAL 807 (2008). However, these examples predate the dramatic surge in U.S.-Mexico extraditions that we document in this paper.

6. *See infra* Part III.

7. *See infra* Part IV.

8. *See infra* Part V.

and procedures. In this section, we provide a brief background on the practice of extradition, and examine how extradition treaties are structured.

A. *International Extradition Treaties*

Extradition was used in ancient Egypt and evolved over time into a widely-accepted principle of international law.⁹ In the mid-1700s, countries began to codify extradition practices in bilateral treaties designed to establish the terms and conditions under which one country's authorities would surrender an individual within their territory or possession to the authorities of another country.¹⁰ According to Blakesley (1981), the term "extradition" was first used officially in France's *décret-loi* in 1791, and the term began to be used in international treaties in the late 1820s.¹¹ A content analysis of books dating back to 1800 shows that use of the term "extradition" in books surged to its highest point during the late 19th century, and has experienced ebbs and flows since the turn of the 20th century.¹²

Historically, the use of extradition in treaties has been primarily bilateral and rested heavily on the principal of reciprocity.¹³ That is, most extradition treaties have been established to ensure mutual rendition of fugitives, and did not rely on mediation or enforcement mechanisms—such as international tribunals—to address grievances.¹⁴ Instead, countries are expected to abide by a treaty's established terms because failing to do so could undermine the prospect of future extraditions or cooperation in other areas of the international relationship.¹⁵

Thus, the stakes involved in such an agreement are considerable, and there are major implications for all parties involved. In signing a treaty, a sending country agrees to relinquish its jurisdiction—at least temporarily—over the individual that is subject to extradition.¹⁶ In so

9. Christopher L. Blakesley, *The Practice of Extradition from Antiquity to Modern France and the United States: A Brief History*, 4 B.C. INT'L & COMP. L. REV. 39, 41–42 (1981).

10. MICHAEL JOHN GARCIA & CHARLES DOYLE, CONG. RESEARCH SERV., RL98958, EXTRADITION TO AND FROM THE UNITED STATES: OVERVIEW OF THE LAW AND RECENT TREATIES (2010).

11. Blakesley, *supra* note 9.

12. Includes references in a sample of millions of publications digitized by Google Books from 1800 to 2008, the most recent year available, based on an online search conducted on October 1, 2017. *Ngram Viewer*, GOOGLE BOOKS, <https://books.google.com/ngrams>.

13. Blakesley, *supra* note 9, at 44.

14. *Id.*

15. *Id.*

16. GARCIA & DOYLE, *supra* note 10.

doing, the Sending country effectively agrees to surrender its unique coercive powers of the Receiving country.¹⁷ Meanwhile, for the Receiving country, the treaty establishes the terms and conditions under which extradition may be granted and the expectations of how the individual in question shall be treated.¹⁸

International extradition treaties generally share a set of provisions that outline extraditable crimes, non-extraditable offenses, jurisdictional limits, rules for extraditing nationals, and procedural limitations.¹⁹ We will briefly discuss each of these in turn before examining the specific procedures used by the United States and Mexico for requesting or responding to extradition requests.

In most cases, extradition is limited to offenses specifically listed in an international treaty. Until the late twentieth century, these crimes were specifically listed by name (e.g., murder, aggravated assault, rape, kidnapping, larceny, embezzlement, bribery, fraud, etc.).²⁰ However, it is now common for treaties simply to state that all felonies are extraditable unless specifically excluded elsewhere in the treaty.²¹ All extraditable offenses must meet the standard of dual criminality.²² That is, both sides must each recognize the offense as a crime, and demonstrate it as such by referring to specific local or national criminal statutes in the extradition documents submitted to their counterpart.²³ It is also common for extradition treaties to specifically outline non-extraditable crimes.²⁴

Historically, the types of crimes listed in international extradition treaties have excluded military and political offenses.²⁵ However, in recent times, countries like the United States have begun to distinguish between prosecutions that are motivated by discriminatory or political interests from those designed to punish criminal acts such as terrorism and other violent crimes, which may be political in nature, but are specified in treaties to be extraditable offenses.²⁶ Furthermore, a number of countries deny extradition when the suspect faces capital

17. Ann Powers, *Justice Denied? The Adjudication of Extradition Applications*, 37 TEX. INT'L L.J. 277, 284 (2002).

18. GARCIA & DOYLE, *supra* note 10.

19. Powers, *supra* note 17.

20. *Id.*

21. GARCIA & DOYLE, *supra* note 10.

22. *Id.* at 9–10.

23. *Id.* at 9.

24. *Id.* at 5.

25. *Id.* at 7.

26. *Id.* at 7–8.

punishment and/or life imprisonment.²⁷ In some of these cases the treaties specify that extradition will be refused unless the Sending country receives assurance that the suspect will not be executed and that the maximum sentence sought will not approximate a life term.²⁸

It is generally the case that countries seek the transfer of suspects that are thought to be guilty of committing crimes in their territory. However, some countries' constitutions allow them to prosecute crimes by their nationals committed anywhere in the world.²⁹ Therefore, provisions defining territorial and extraterritorial prosecution are an important element of most extradition treaties.³⁰ Similarly, countries often disagree over whether it is appropriate to extradite their own nationals, so many treaties also contain a statement that clarifies whether countries can be bound to surrender their own citizens.³¹

Procedural limitations such as a prohibition on double jeopardy and respect for statutes of limitations are other common features of extradition treaties, yet here again there is not always perfect agreement, since some countries allow extradition for prosecution of the "same acts" but not the "same offenses."³² Furthermore, some treaties privilege time limit provisions in the Requesting state, others privilege time limits in the Sending state, while still others make it clear that no country's statute of limitations can prevent extradition.³³

International extradition treaties also commonly contain clauses that determine the distribution of expenses associated with representation, translation of documents and proceedings, and the suspect's transportation.³⁴ Furthermore, they outline rules regarding transfer of evidence, as well as the required procedural steps in a

27. Mexico is one such country. Ley de Extradición Internacional [LEI], Diario Oficial de la Federación [DOF] 29-12-1975.

28. *Id.*

29. *Id.*

30. The rise of terrorism and drug trafficking has increased interest in this area, in cases where two countries have different laws regulating extraterritorial jurisdiction, cooperation tends to be difficult and infrequent.

31. This is the case in Mexico. Ley de Extradición Internacional [LEI], *supra* note 27.

32. Yvonne M. Dutton, *U.S.–Mexico Extradition and Cross-Border Prosecution*, TRANS-BORDER INSTITUTE, U. OF SAN DIEGO (Dec. 1, 2004).

33. GARCIA & DOYLE, *supra* note 10, at 15–16.

34. Interview with a representative of the California Prosecutor's Office [hereinafter CPO]. Interviews cited in this article were conducted under the premise of confidentiality. Out of respect for those interviewed, their names, and the dates of the interviews, will not be disclosed.

formal extradition request.³⁵

B. The Extradition Process

In order to carry out an extradition, countries typically follow a set of strict procedures that is outlined in accordance with domestic law and, where applicable, international treaties.³⁶ In practical terms, this means that the process generally unfolds through a well-defined set of steps in which the Requesting country formally requests the extradition of a fugitive or wanted individual from the Sending country in which they currently reside.³⁷ As an example, the U.S. procedure for requesting extradition from a foreign country is outlined below.

First, in order to begin the process of extradition, U.S. federal or state-level prosecutors meet with the corresponding law enforcement agency to learn about the nature of a crime and determine whether it is an extraditable offense.³⁸ Because of the extended time and considerable resources required for extradition, prosecutors tend to pursue only those cases that are likely to end with a significant sentence.³⁹

Once a prosecutor decides to pursue a case, their agency prepares a “package,” which has two main components.⁴⁰ First is the prosecutor’s affidavit, which explains the domestic laws broken (including punishment and any relevant statutes of limitations) and verifies that the offense is extraditable under the bilateral treaty.⁴¹ The second is an investigator’s affidavit, which explains the facts of the case and demonstrates that there is sufficient evidence (including copies of arrest warrants, photographs, other documentation and physical evidence) linking the suspect to the crime, and information on the probable location (jurisdiction) of the suspect.⁴²

This package is sent to the Office of International Affairs (“OIA”), the office within the U.S. Department of Justice (“DOJ”),

35. *Id.*

36. *Id.* See also Powers, *supra* note 17, at 284–85.

37. Interview with CPO representative, *supra* note 34. See also Powers, *supra* note 17, at 284–85.

38. Interview with CPO representative, *supra* note 34.

39. *Id.*

40. *Id.*

41. In cases (such as Mexico) where countries refuse to extradite suspects facing capital punishment, the package must also include the prosecutor’s assurance that a guilty sentence will not be punished by death. *Id.*

42. *Id.*

which reviews all extradition requests.⁴³ Once OIA approves the petition, it is sent to the U.S. State Department (“DOS”) for its review and approval.⁴⁴ Cases approved by DOS are forwarded to the U.S. Embassy in the relevant country, where lawyers convert the package into a Diplomatic Note to be sent to the Sending country’s Ministry of Foreign Affairs.⁴⁵

National rules governing how the sending nation handles extradition requests varies, however they tend to follow a standard sequence in which the Ministry of Foreign Affairs reviews and evaluates the extradition request to ensure that it complies and meets the requirements set forth by its bilateral treaty with the United States.⁴⁶ If it does, the petition is turned over to that country’s Attorney General who presents it to a federal/national judge, who then issues a detention order for the suspect for the purpose of extradition.⁴⁷

The Attorney General’s office then works with law enforcement to execute the warrant and apprehend the suspect.⁴⁸ Once the suspect is in custody, s/he must be presented with the extradition order.⁴⁹ Again, each country’s laws governing the legal options available to suspects will vary, but in most Western countries, suspects have an opportunity to appeal or make a case for why they should not be extradited.⁵⁰

Once the appeal process has been exhausted, either the U.S. prosecutor’s office or the OIA arranges with foreign law enforcement agency for the transfer of the suspect to the United States where s/he will stand trial only for the offenses included in the extradition package.⁵¹

Clearly, the extradition process is both complex and cumbersome. It should come as no surprise that an average extradition generally takes six months, and more likely up to a year to complete.⁵² As a

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. This is the rule of specialty: U.S. prosecutors cannot add new charges against a suspect even if incriminating evidence is discovered later. This means that if the extradition process begins too early, a suspect may face only a limited number of charges and therefore serve a shorter sentence than s/he otherwise might have. *Id.*

52. *Id.*

result, the two countries have historically looked for alternative ways to exchange suspects more expeditiously.⁵³

III. EXTRADITION IN THE U.S.-MEXICO CONTEXT

An examination of how extradition is used in the U.S.-Mexico context is useful both because of the special relationship that these two countries share and because of the growing use of extradition between them since the signing of the current U.S.-Mexico Extradition Treaty in 1978. Below we provide a brief discussion of the historical relationship between the United States and Mexico and the implications for international cooperation through extradition. Next, we delve into the particulars of the current U.S.-Mexico extradition treaty and recent cooperation on law enforcement and security issues.

A. Cooperation and Sensitivities in the U.S.-Mexico Relationship

The United States and Mexico share a nearly 2000-mile territorial border.⁵⁴ It is the world's longest border between a developed and developing country.⁵⁵ There is significant economic disparity between the two countries, with the average U.S. household earning almost four times that of the average Mexican household.⁵⁶ Despite their economic asymmetries, the two countries are intimately linked together by active cross-border commerce and demographic ties that stretch well beyond the shared border.⁵⁷ In recent decades, U.S. and Mexican authorities have worked together to build a strong relationship, forging agreements at all levels of government to promote cooperation on trade, natural resource management, environmental protection, and law enforcement.⁵⁸

53. A detailed discussion of the alternatives falls beyond the scope of this paper, however it is worth mentioning that diplomatic and law enforcement agencies on both sides have often worked together to exchange suspects using deportation and, more controversially, surreptitious surrender of suspects at a port of entry. Less frequent, but even more controversial is the use of extraterritorial abductions to obtain wanted suspects. This issue is discussed in greater detail later in this paper. 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 (1995).

54. JANICE CHERYL BEAVER, CONG. RESEARCH SERV., RS21729, U.S. INTERNATIONAL BORDERS: BRIEF FACTS (2006).

55. PAUL GANSTER, *THE U.S.-MEXICAN BORDER TODAY: CONFLICT AND COOPERATION IN HISTORICAL PERSPECTIVE* (3d ed. 2016).

56. JOAN B. ANDERSON & JAMES GERBER, *FIFTY YEARS OF CHANGE ON THE U.S.-MEXICO BORDER: GROWTH, DEVELOPMENT, AND QUALITY OF LIFE* (2008).

57. CHRISTOPHER E. WILSON, *WORKING TOGETHER: ECONOMIC TIES BETWEEN THE UNITED STATES AND MEXICO* (2011).

58. ANDREW SELEE & PETER SMITH, *MEXICO AND THE UNITED STATES: THE POLITICS OF*

Still, it is an understatement to say that the U.S.-Mexico relationship has not always been a cooperative one and, to this day, there remain a number of tensions, challenges, and sensitivities that complicate the relationship. Many of these date back to the time that Mexico came into existence in 1821, after a hard fought, decade-long war for independence.⁵⁹ While the United States initially recognized Mexico and the original boundaries negotiated with Spain under the Adams-Onís Treaty, the two countries went to war in 1846, over territorial disputes related to the U.S. annexation of Texas.⁶⁰

By the end of hostilities in 1848, the Treaty of Guadalupe Hidalgo redrew the U.S.-Mexico land border, granting the United States a vast swath of Mexican territory as reparations.⁶¹ Thereafter, multiple generations of Mexicans harbored resentments against the United States and remained on guard against further U.S. expansionism and intervention in Mexico's affairs.⁶² With the U.S. ascendance to great power status, Mexico remained acutely aware and suspicious of the power asymmetry between the two countries.⁶³

Thus, for Mexico, cooperation on law enforcement and security matters has long been a sensitive topic. The prospect of U.S. police, soldiers, or intelligence officers operating on Mexican soil is something for which many Mexicans have little tolerance.⁶⁴ Extradition, which compels a citizen of one country to face justice in another, is clearly an especially delicate issue. As a result, Mexico has been historically reluctant to extradite its citizens to the United States, particularly in the face of several perceived trespasses on Mexican sovereignty by U.S. law enforcement in the pursuit of suspects.⁶⁵

Nonetheless, between two countries with substantial cultural ties and cross-border flows of people and goods (both legal and illicit), there is a real practical need to address the problem of international fugitives and cross-border crimes. Some of these challenges can be addressed through various forms of cooperation between law enforcement agencies, such as intelligence and evidence sharing,

PARTNERSHIP (2013).

59. PETER SMITH, *TALONS OF THE EAGLE: LATIN AMERICA, THE UNITED STATES AND THE WORLD* (4th ed. 2012).

60. *Id.*

61. Facing devastating war debt, Mexico subsequently agreed to sell what is now much of southern Arizona and New Mexico in the Gadsden Purchase of 1854. *Id.*

62. *Id.*

63. *Id.*

64. JEFFREY DAVIDOW, *THE U.S. AND MEXICO: THE BEAR AND THE PORCUPINE* (2004).

65. Dutton, *supra* note 32; DAVIDOW, *supra* note 64.

international legal assistance, and even cross-border prosecutions. However, in recent years, both countries have increasingly relied on extradition as a tool to aid law enforcement, albeit with different objectives and priorities.⁶⁶

B. U.S.-Mexico Treaty and Cooperation on Extradition

The first extradition treaty between the United States and Mexico was signed in 1861 and identified twelve extraditable crimes.⁶⁷ Like many such treaties, the U.S.-Mexico extradition treaty has been amended and updated over time to reflect evolving domestic and foreign policies.⁶⁸ For example, according to Zagaris and Padierna (1997), the original 1861 treaty came about after years of tension over the issue of fugitive slaves crossing into Mexico.⁶⁹ The treaty, signed in the midst of the U.S. civil war and the year before Lincoln's Gettysburg address, prohibited the return of fugitive slaves.⁷⁰

The 1861 treaty also established that neither country was bound to extradite its own citizens, a provision the courts generally interpreted to be a prohibition on the extradition of nationals.⁷¹ By the late 19th century, the practice of exempting nationals became an obstacle to cooperation in the face of frequent cattle rustling, smuggling, and criminal raids over the U.S.-Mexico border.⁷² The lack of an effective legal solution led law enforcement from both sides to pursue suspects across the border without government consent.⁷³ The resulting tensions led to an amended treaty in 1899, which maintained that neither country was bound to give up its own citizens, but specified that the executive had the power to do so at its own discretion.⁷⁴

For its part, Mexico has signed over thirty bilateral extradition

66. EDMONDS-POLI & SHIRK, *supra* note 4.

67. The United States has extradition treaties with approximately 114 countries, while Mexico has approximately 35, plus over one hundred conventions that seek to normalize the practice. For a brief but informative discussion of the development of extradition policy in the United States, see Aimee Lee, *United States v. Alvarez-Machain: The Deleterious Ramifications of Illegal Abductions*, 17 FORDHAM INT'L L. J. 126, 132-34 (1993). See also Abraham Abramovsky, *Extraterritorial Abductions: America's "Catch and Snatch" Policy Run Amok*, 31 VA. J. INT'L L. 151, 154-55 (1990-91).

68. The 1861 treaty was amended in 1899, 1902, 1925, and 1939.

69. Bruce Zagaris & Julia Padierna Peratta, *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. INT'L L. REV. 519, 519-627 (1997).

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

treaties.⁷⁵ Mexico is also a signatory to over a hundred conventions that may have bearing on extradition.⁷⁶ The United States is not a signatory to some of these conventions (such as the 2000 Rome Statute for the International Criminal Court, which was ratified by Mexico in 2005).⁷⁷ For countries with which Mexico does not have an explicit treaty, domestic law allows for extradition through comity.⁷⁸

Article 15 of the Mexican Constitution outlines the framework for the extradition of an individual, but expressly forbids the use of extradition against persons wanted for political crimes, enslaved individuals, and for other individuals whose rights under the Mexican constitution would be undermined by extradition.⁷⁹ The 1975 International Extradition Law (*Ley de Extradición Internacional*) provides the current regulatory framework and procedure guidelines for extraditions.⁸⁰ As a general practice, extraditions requested by the government of Mexico are referred to as “active extraditions” (*extradiciones activas*), while extraditions requested by other nations are referred to as “passive extraditions” (*extradiciones pasivas*).⁸¹

The current U.S.-Mexico extradition treaty was signed in May 1978 and went into effect in January 1980.⁸² It consists of twenty-three articles that specify the conditions that must apply for a suspect to be extradited from one country to the other.⁸³ For example, Article 2 lists the 4 extraditable offenses, Article 3 establishes the required evidence, Article 6 prevents double jeopardy, and Article 7 prohibits prosecution

75. In addition to the United States, Mexico has bilateral treaties with Australia, Belize, Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, El Salvador, Ecuador, France, Greece, Guatemala, India, Italy, South Korea, Nicaragua, Panama, Paraguay, Portugal, Spain, United Kingdom, Uruguay, and Venezuela. Interview with a former Mexican Government official, *see supra* note 34. Gabriel Mario Santos Villarreal, *Instrumentos Internacionales firmados por México en materia de Extradición*, 66 CONGRESO DE LA UNIÓN 1 (2009).

76. Others conventions include 1933 Inter-American Convention on Extradition (ratified by Mexico in 1936); the 1948 Convention to Prevent and Sanction the Crime of Genocide; the 1996 Inter-American Convention on Corruption (ratified by Mexico in 1997); the 2003 United Nations Convention on Corruption (ratified by Mexico in 2004). *Id.*

77. Michael P. Scharf, *The Politics Behind U.S. Opposition to the International Criminal Court*, 6 BROWN J. WORLD AFF. 97 (1999).

78. *Ley de Extradición Internacional [LEI]*, *supra* note 27.

79. *Constitución Política de los Estados Unidos Mexicanos*, CPEUM, Diario Oficial de la Federación [DOF] 05-02-1917.

80. *Ley de Extradición Internacional [LEI]*, *supra* note 27.

81. Interview with a former Mexican Secretary of Foreign Relations personnel, *see supra* note 34.

82. *See* Extradition Treaty Between the United States of America and The United Mexican States, Mex.-U.S., May 4, 1978, 31 U.S.T. 5059.

83. *Id.* Article 15 (on delayed and temporary surrender) was amended in 1997.

of cases where the statute of limitations has run out in either country.⁸⁴

Following previous iterations, the 1978 treaty specifies the circumstances under which countries can refuse to extradite a suspect.⁸⁵ For example, Article 5 prohibits extradition of those accused of political or military crimes, Article 8 states that extradition may be refused for suspects facing capital punishment unless there are assurances that the death penalty will not be imposed, and Article 9 establishes that neither country is bound to surrender its own citizens, but that the executive branch of each country may decide to do so at its own discretion.⁸⁶

In practice, Articles 8 and 9 have created the most serious obstacles to cooperation on extradition cases.⁸⁷ As mentioned earlier, Mexico refused to surrender Mexican nationals to the United States until fairly recently.⁸⁸ Disagreement over this issue led to tit-for-tat refusals through most of the twentieth century and in some cases had a detrimental effect on the broader bilateral relationship.⁸⁹ Mexico's justification in many cases was that it had the ability to seek justice using the domestic judicial process.⁹⁰ However, actors in the United States frequently found such efforts slow and unsatisfactory, which led them to pursue alternatives such as irregular rendition of suspects.⁹¹ Predictably, such actions were perceived as the U.S. using its power differential to violate Mexican sovereignty and had controversial consequences.⁹²

Another obstacle to cooperation was Mexico's refusal to extradite suspects (regardless of nationality) who faced the death penalty.⁹³ Mexico outlawed capital punishment in 1975 and therefore insisted that any international extradition respect this law.⁹⁴ The United States

84. *Id.*

85. *Id.*

86. *Id.*

87. Dutton, *supra* note 32.

88. *Id.*

89. DAVIDOW, *supra* note 64.

90. Kasparian, *supra* note 5.

91. Michael R. Wing, *Extradition Treaties – International Law – The United States Supreme Court Approves Extraterritorial Abduction of Foreign Criminals – United States v. Alvarez-Machain*, 112 S. Ct. 2188 (1992), 23 GA. J. INT'L & COMP. L. 435 (1993).

92. *United States v. Alvarez-Machain*, 504 U.S. 655 (1992). The most notorious case was *Alvarez-Machain*, which is discussed *infra*.

93. Dutton, *supra* note 32.

94. Capital punishment was deemed unconstitutional in 1930, but it was not entirely eliminated from state penal codes until 1975. That said, capital punishment can still be applied in Mexican military courts for the crimes of insubordination and treason. *Id.*

objected to this article of the treaty and put pressure on Mexico to grant exceptions so that it would be possible to prosecute drug traffickers and others suspected of perpetrating serious crimes.⁹⁵

These efforts were clearly undermined in the 1980s by the Camarena affair.⁹⁶ In 1985, a U.S. DEA Agent named Enrique (Kiki) Camarena was conducting an undercover narco-trafficking investigation in Mexico, when a corrupt Mexican official is believed to have blown his cover.⁹⁷ Subsequently, Camarena and his Mexican pilot were abducted, tortured, and murdered, allegedly with the knowledge and possible collusion of corrupt Mexican officials.⁹⁸ The U.S. government, and especially law enforcement agencies, were outraged and frustrated by their perception that Mexican authorities may have been involved and were doing little to investigate Camarena's murder.⁹⁹

Years later, under evident direction from DEA officials, U.S. bounty hunters abducted a Mexican doctor named Humberto Álvarez Machaín, who was accused of collaborating in Camarena's torture and murder.¹⁰⁰ This irregular rendition was eventually challenged before the U.S. Supreme Court in the case of *United States v. Alvarez-Machain*, but its legality was ultimately upheld.¹⁰¹ Not surprisingly, the Mexican government was outraged by this breach of Mexican sovereignty.¹⁰² At few times in the 20th century were the frictions between the two countries greater than at this time.¹⁰³

Ultimately, though, the two countries made significant progress on bilateral cooperation on extradition. While the two countries exchanged just thirty-eight suspects between 1980 and 1994 (eight from Mexico to the U.S., and 30 from the U.S. to Mexico), this number rose to a total of 147 extraditions between 1995 and 2000.¹⁰⁴ Moreover, during that period, Mexico broke with the past by sending seven of its

95. Interview with a former official in U.S. Attorney's Office, *see supra* note 34.

96. DAVIDOW, *supra* note 64.

97. *Id.*

98. *Id.*

99. *Id.*

100. Abramschmitt, *supra* note 53.

101. *Alvarez-Machain*, 504 U.S.; Abramschmitt, *supra* note 53.

102. Bradley Thrush, *United States' Sanctioned Kidnappings Abroad: Can the United States Restore International Confidence in Its Extradition Treaties*, 11 ARIZ. J. INT'L & COMP. L. 181 (1994).

103. Abramovsky, *supra* note 67. *See also* Lee, *supra* note 67; Abramschmitt, *supra* note 53.

104. Dutton, *supra* note 32.

nationals to face justice in the United States, a dramatic change that prompted domestic opposition and constitutional challenges to the international treaty.¹⁰⁵ Bolstering executive authority, in January 2001, the Mexican Supreme Court affirmed the executive branch's discretion to extradite Mexican nationals for foreign prosecution.¹⁰⁶ Since that time, Article 9 has not posed a major obstacle to bilateral cooperation, as our findings demonstrate below.¹⁰⁷

To be sure, extradition efforts were temporarily set back when the Mexican Supreme Court ruled in October 2001 that the U.S. government could not extradite suspects who faced the possibility of a life sentence.¹⁰⁸ The court reasoned that such a punishment did not present the possibility of rehabilitation and was inconsistent with Mexican law, and therefore considered it unconstitutional.¹⁰⁹ However, for U.S. law enforcement this presented a vexing problem because, mandatory sentencing guidelines often included the possibility of a life sentence (e.g., thirty years to life).¹¹⁰ Not surprisingly, the Mexican Supreme Court ruling prompted vocal and coordinated opposition in the United States, with U.S. law enforcement officials calling for the Bush administration to take up the issue with their Mexican counterparts and perhaps even demand a renegotiation of the extradition treaty.¹¹¹ The controversy was resolved when the Mexican Supreme Court reversed itself in 2005, reasoning that some Mexican states had since adopted the use of compound sentences that were the equivalent of life sentences.¹¹²

Overall, the two governments have worked to ensure that restrictions in the 1978 treaty has not hindered the success of U.S.-Mexico cooperation on extradition. On the U.S. side this has meant providing assurances (often by amending charges) to the Mexican government that a suspect will not face life imprisonment or the death

105. *Id.*

106. *Id.*

107. *Id.*

108. At the time, Mexico allowed a maximum prison sentence of 40 years, with the possibility of a 60-year term in special cases. Tim Weiner, *Extraditions are Limited by a Ruling in Mexico*, N.Y. TIMES (Jan. 20, 2005), <http://www.nytimes.com/2002/01/20/world/extraditions-are-limited-by-a-ruling-in-mexico.html>.

109. Dutton, *supra* note 32.

110. *Id.*

111. *Id.*

112. Hugh Dellios, *Mexico's High Court Decision Opens an Extradition Pipeline*, CHICAGO TRIBUNE (Dec. 18, 2005), http://articles.chicagotribune.com/2005-12-18/news/0512180245_1_extradition-requests-extradition-case-mexican-officials.

penalty. On the Mexican side this has meant providing assurances to the U.S. government that the executive, rather than the judiciary, has the authority and ability to determine whether the type or length of a particular sentence qualifies as life imprisonment.¹¹³ As we will discuss in greater detail below, the willingness of the two countries to work together to strengthen cooperation on extradition appears to reflect improvements in the overall quality of the bilateral relationship.

IV. EXTRADITION TRENDS AND ANALYSIS

Of the hundreds of extraditions to the United States in any given year, a significant percentage comes from Mexico.¹¹⁴ Indeed, according to data from the U.S. Marshals Service and the Department of Justice, on average about 1-in-10 extraditions handled by their agency over the last decade have been from Mexico.¹¹⁵ Thus, Mexico provides a useful case study for understanding how extradition works, when and why it is used (or not), and its overall utility as a tool for international cooperation in law enforcement. In this section, we first briefly look at general extradition trends between the United States and the rest of the world before turning to a closer examination of the overall trends in U.S.-Mexico extraditions, and the factors that appear to influence them.

A. Recent Data and Analysis on International Extraditions to the United States

It is worth noting that data on international extraditions is not as readily available as one might expect for at least two reasons. First, detailed information on many extraditions is generally not disclosed publicly because there are sensitive law enforcement issues involved. For example, some individuals subject to extradition may be under consideration as cooperating witnesses in ongoing criminal investigations.¹¹⁶ Second, extraditions are handled by multiple agencies that have different patterns of reporting, which may also relate to law enforcement sensitivities.¹¹⁷ For example, if a particular U.S. agency is working covertly with a foreign government's permission, it may not wish to publicize extraditions that it handles in said country, either for law enforcement or due to mutually recognized

113. In practice this has taken the form of accepting the argument that any suspect eligible for parole is not, strictly speaking, serving a life sentence. *See* Dutton, *supra* note 32.

114. U.S. Marshal's data demonstrate this, *see infra* Figure 1.

115. *Id.*

116. Interview with CPO representative, *supra* note 34.

117. *Id.*

political concerns.

With these limitations in mind, the authors reviewed detailed agency level data from the U.S. Marshals Service, the agency that handles the vast majority of international extraditions to the United States.¹¹⁸ As a general trend, the available data show that for the period between 2003 and 2016, the use of extradition to United States was robust (see

FIGURE 1) and clearly represented a marked increase from the past (see Figure 2).¹¹⁹ It is also worth noting that within this same period, there was a sizeable increase. For example, while there were nearly 400 extraditions in 2004, the number rose by well over 25% in subsequent years, peaking at roughly 600 annually in 2008 and 2009. The number of international extraditions to the United States remained at around 500 or more until 2014, when it dropped to less than 400 extraditions again in 2015 and 2016.

The general patterns found in these data raise questions about the factors that cause the number of extraditions to rise and fall. For example, to what extent are the trends a function of actual criminal violence, trans-nationalism, bureaucratic capability, political will, or other factors such as economic ties or power asymmetries?¹²⁰ On the one hand, some point to growing threats from transnational actors and groups as a motivation for increased use of extradition, as well as the growing propensity of the United States to expand the

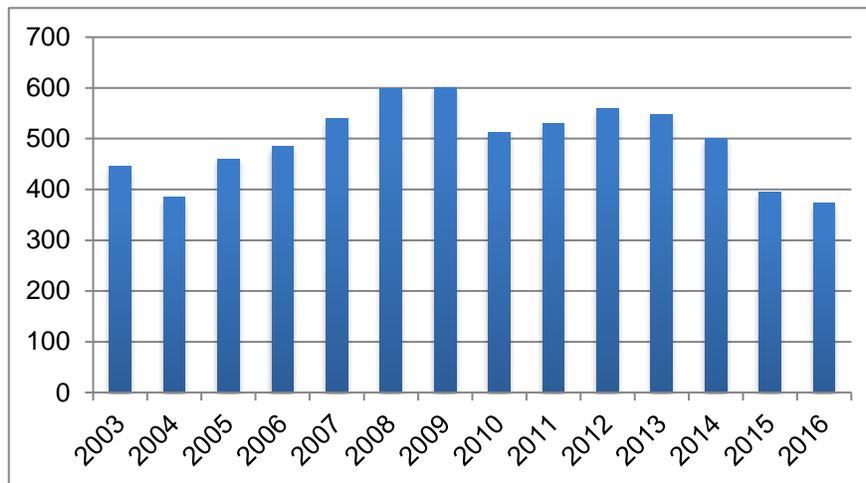
118. Data from U.S. Marshals Service included detailed information from 2003 to 2016 on the Sending nation, requesting jurisdiction, citizenship of the individual extradited, and the charge for which they were being extradited. Data for 2000–2002 were not available.

119. While we lack comprehensive data on the number of extraditions to the United States before 2003, evidence from Mexico, *infra* Figure 2, may serve as a proxy for a broader trend that shows increased use of extradition beginning in the early 2000s.

120. Note that the war on terror and the war on drugs have increased the propensity of the United States to seek extradition and otherwise expand the extraterritoriality of U.S. laws. GARCIA & DOYLE, *supra* note 10.

extraterritoriality of its laws in this context.¹²¹

FIGURE 1: INTERNATIONAL EXTRADITIONS TO THE UNITED STATES¹²²



On the other hand, the data in Figure 1 suggest that the use of extradition may reflect partisan preferences or the strategy of a specific administration: the Bush administration appears to have been more willing to or more successful at using extradition as a policy tool than the Obama administration, which may reflect to different strategies in counter-terrorism efforts.¹²³ Although addressing these broader questions falls outside the scope of this paper, the findings from the U.S.-Mexico case help us gain some further insight on the dynamics of extradition, and thereby bring us a step closer to explaining more

121. See PYLE, *supra* note 3.

122. Source: U.S. Marshals Service.

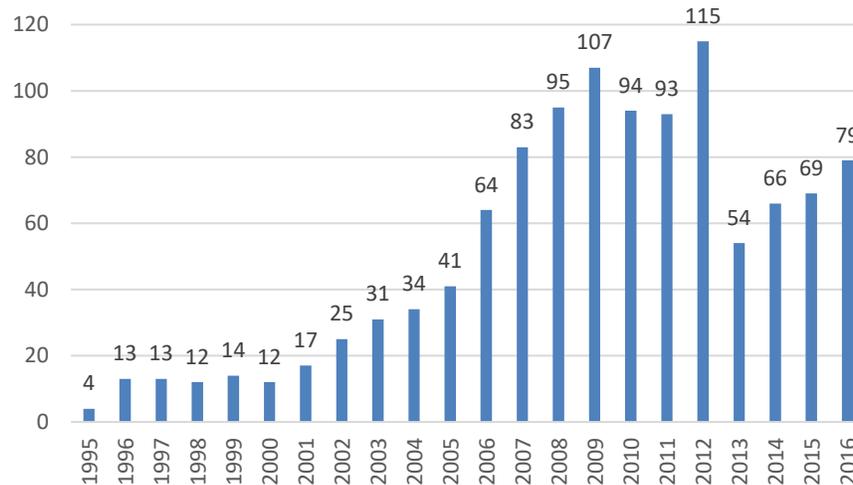
123. Given that extradition is a lengthy process, it is worth noting that most of the extraditions that took place in 2008 and 2009 were likely initiated by the second Bush administration (2004–2008).

general variations in the use of extradition as a foreign policy tool.

B. Data on Mexican Extraditions to the United States

In addition to the case-level U.S. Marshals Service data, the authors also referenced data compiled by the Congressional Research Service (“CRS”), which include extraditions from Mexico to the United States handled by other federal agencies (e.g., FBI or DEA), and therefore presumably provide a more complete picture of the aggregated number of extraditions each year. The authors also reviewed documents from the *Centro de Documentación, Información y Análisis*, a research arm of the Mexican Congress. According to these various sources, the number of extraditions from Mexico to the United States grew from just eight between 1980–1994, to sixty-one between 1995–2000, 148 between 2001–2005, 443 between 2006–2010, and 397 between 2011–15.¹²⁴ The dramatic increase in annual apprehensions in the 2006–2010 period is especially noticeable in Figure 2.

FIGURE 2: TOTAL ANNUAL EXTRADITIONS FROM MEXICO TO UNITED STATES, 1995–2016¹²⁵



124. Note that the authors were unable to obtain annualized data referencing the period before 1995. These data are reported at somewhat uneven intervals because they come from sources using different time periods. *See infra* Figure 2.

125. Adapted from Clare Ribando Seelke and Kristin Finklea, “U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond,” Congressional Research Service, Report Number R41349, June 29, 2017, p. 26.

Case-level data from the U.S.-Marshalls service shown in Figure 3 illustrates that the decade-long surge in the number of extraditions from Mexico to the United States between 2003 and 2016 brought variation in the type of cases for which extradition was employed. All told, drug-related crimes were the primary offense in the largest share of cases handled during this period, as can be seen clearly in Figure 4. However, it is also noticeable that over the years there has been a growing number of cases involving other types of offenses, including homicide, sex crimes involving a minor, and other types of sex crimes.

Indeed, during the height of U.S.-Mexico counter-drug efforts under President Felipe Calderón (2006–2012), the U.S. Marshalls Service handled extraditions for 108 individuals wanted on homicide charges, fifty-five wanted for sex crimes involving a minor, twenty-two wanted for other sexual offenses, and forty-seven wanted for various other crimes (such as alien smuggling, weapons violations, and assault). Hence, an important finding of this research is that the impetus to cooperate on extradition in drug-related cases likely opened the door for bilateral cooperation on other types of cases.

FIGURE 3: EXTRADITIONS FROM MEXICO TO UNITED STATES, BY CHARGE, 2003–2016¹²⁶

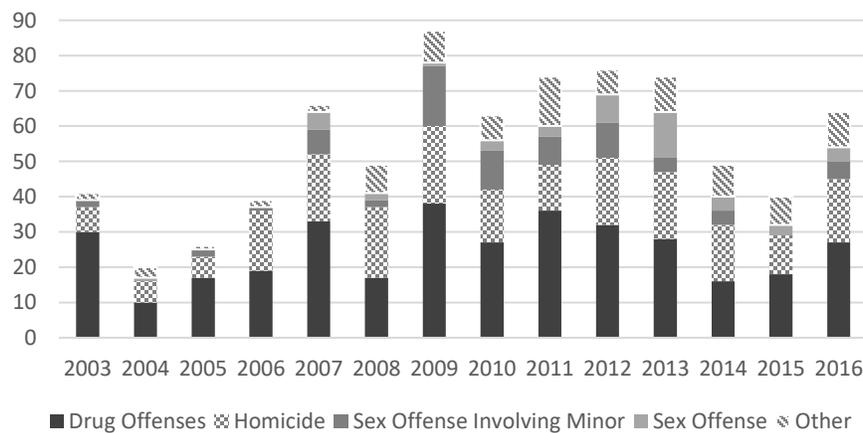
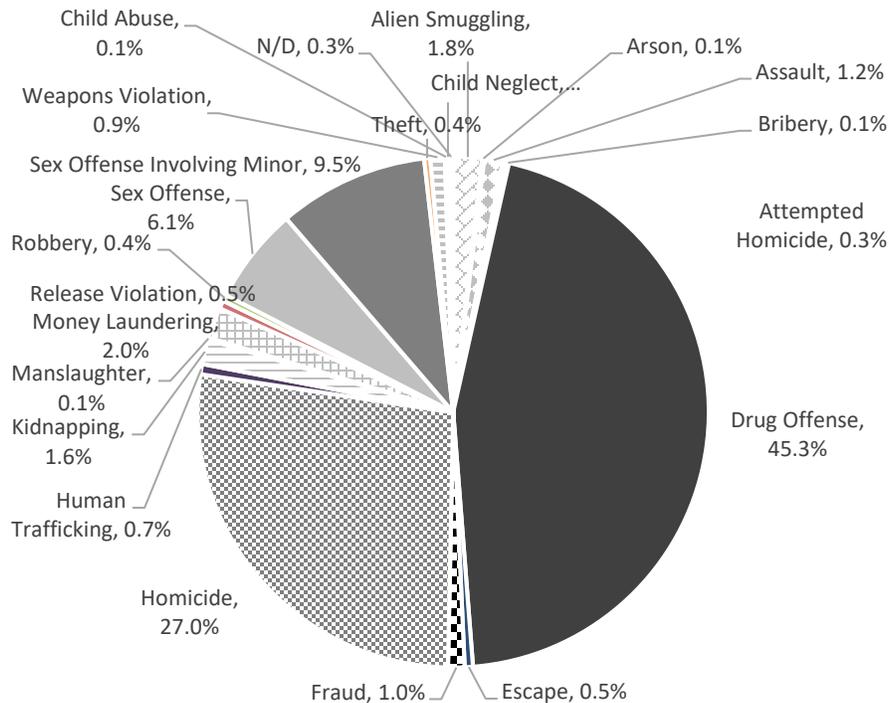


Figure 4 further illustrates these trends: Nearly half (45%) of Mexican extraditions to the United States from 2003 to 2016 were cases involving drug charges, while roughly a quarter (27%) were cases involving homicide charges. As we will see below, this is a

126. Source: U.S. Marshalls Service.

different pattern that that exhibited in extraditions from the United States to Mexico. There are differences in the number and type of extradition cases in which Mexico extradited fugitives from the United States. Also, it should be noted that, according to the Marshalls Service data, a large majority (76%) of individuals that Mexico extradited to the United States during this period were Mexican nationals, while roughly one in six (17%) were U.S. citizens and the remainder came from various other countries. Hence, a key finding here is that in the 2000s Mexico was clearly more willing than in the past to send its own citizens to the United States to face justice.

FIGURE 4: TOTAL EXTRADITIONS FROM MEXICO TO UNITED STATES, BY CHARGE, 2003–2016¹²⁷



C. Data on U.S. Extraditions to Mexico

Based on available data from the U.S. Marshalls Service, there were 254 suspects extradited from the United States to Mexico between 2003 and 2016. While these numbers represent a significant increase

127. Source: U.S. Marshalls Service

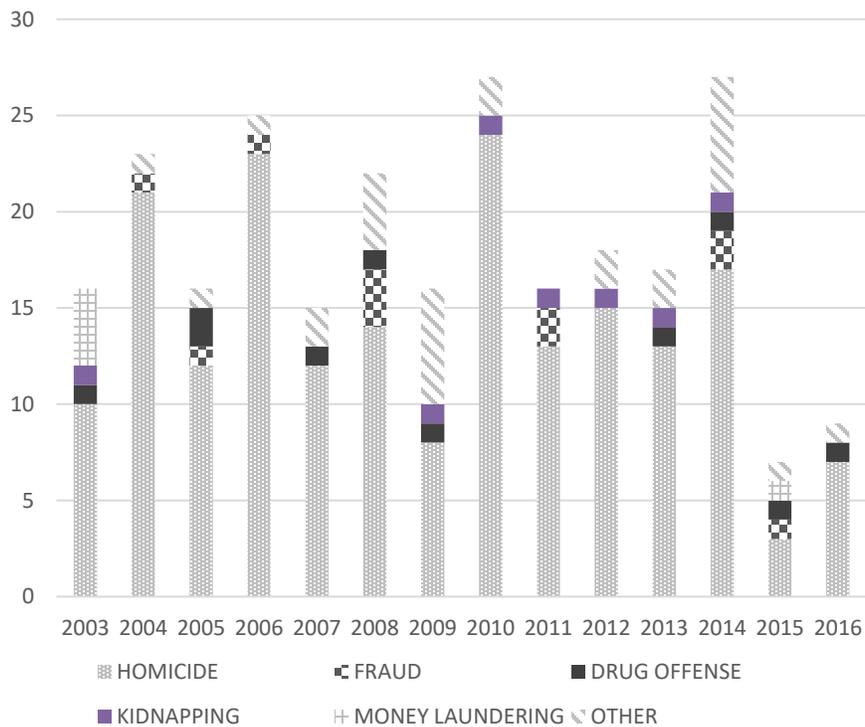
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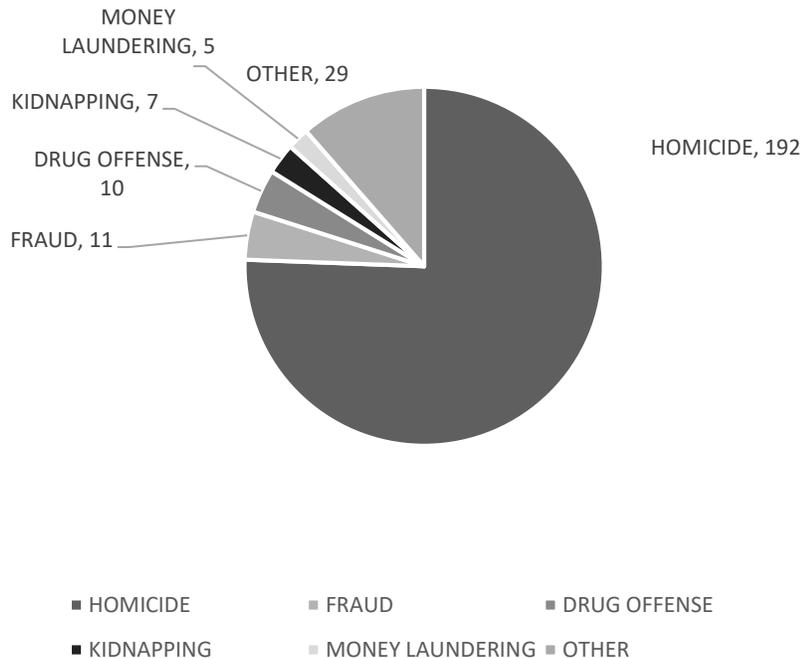
over past practices, it was not as dramatic as that seen in the other direction: Rather than a continuous upward trend, we see more fluctuations in the yearly number of suspects sent to Mexico, and rather than dramatic increases in the hundreds, we see yearly variations in the number of suspects extradited is in the tens. Still, it is worth noting that overall, the United States was more willing to extradite suspects to Mexico. However, as was also the case with northbound extraditions, there was also a dramatic decline in the number of extraditions from the United States to Mexico in the last two years available, as the number of cases dropped from twenty-seven in 2014 to just seven in 2015.

FIGURE 5: EXTRADITIONS FROM UNITED STATES TO MEXICO, 2003–2016¹²⁸



128. Source: U.S. Marshalls Service

FIGURE 6: EXTRADITIONS FROM THE UNITED STATES TO MEXICO, BY OFFENSE, 2003–2016¹²⁹



As Figure 6 illustrates, over three quarters (76%) of U.S. extraditions to Mexico from 2003 to 2016 were cases involving homicide, while the next largest set of cases involved fraud (11%), drug offenses (10%), and kidnapping (7%). In this sense it seems clear that, when it comes to extradition, there is a clear difference in the priorities of Mexican law enforcement compared to their U.S. counterparts. These differences and the possible explanations are explored in greater detail below.

D. Analyzing Trends in U.S.-Mexico Extraditions

As we have discussed, U.S.-Mexican relations have long been characterized by tension and mistrust, even amid their growing economic integration and frequent collaboration. The asymmetry of the relationship is often a factor that contributes to this dynamic, as it

129. Source: U.S. Marshalls Service

contributes to an overbearing U.S. attitude toward Mexico, and Mexico's frustration and reluctance to capitulate to the United States. A glance at the data shows clear asymmetries and differences, particularly in the number and type of cases for which the United States and Mexico have employed extradition in recent years. While this was not the case in earlier decades starting in the mid-1990s, there were far more extraditions from Mexico to the United States than vice versa.¹³⁰ By the 2000s, Mexico was typically sending more than three times as many fugitives as the United States in any given year, and most of these were Mexican nationals.¹³¹

The priorities of the two countries also appear to be very different. Whereas the large majority of U.S. extraditions to Mexico involve homicide charges, these represent only a small minority share of Mexican extraditions to the United States. Among Mexico's extraditions to the United States, nearly one in six cases involves sexual crimes (including those involving minors), while such cases represent a fairly insignificant number of U.S. extraditions to Mexico. These differences clearly suggest that the two countries have different law enforcement priorities. In addition, the ability of the United States to seek extradition in a large number and wide range of cases also partly reflects the resources and capacity to do so. Former Mexican Secretary of Foreign Relations personnel interviewed confidentially for this article noted that their U.S. counterparts were able to dedicate comparatively more staff and funding to extradition requests.¹³²

Yet, more than the differences between them, what is particularly striking is the extent to which there was a clear increase in the propensity of both countries to use extradition in the 2000s. This would not have been possible without a gradual rebuilding of trust between law enforcement agencies in the two countries after the troubled years that followed the earlier mentioned murder of DEA agent Enrique Camarena in Mexico. Building the trust necessary to repair law enforcement cooperation took several years, and tended to progress in fits and starts. The first signs of rapprochement occurred in 1996 when the Zedillo and Clinton administrations created a High-Level Contact group to coordinate efforts to combat cross-border narco-trafficking, which helped to establish regular meetings and communications

130. See *supra* Figure 2, Figure 5.

131. *Id.*

132. Interview with a former Mexican Secretary of Foreign Relations personnel, see *supra* note 34.

between law enforcement officials from both countries.¹³³

However, bilateral ties were damaged a short time later, when Mexico's drug czar was revealed to have ties to the Juárez drug cartel.¹³⁴ The relationship was dealt an additional blow when it came to light that U.S. law enforcement agencies had conducted an unauthorized investigation against the Colombian Cali cartel on Mexican soil between 1995 and 1998.¹³⁵ Yet despite these setbacks, U.S. and Mexican officials were able to gradually build working relationships based on mutual respect and cooperation.¹³⁶

For example, Mexico demonstrated its good will and desire to work with the United States to combat drug trafficking in 1997 when SRE approved the U.S.'s request to detain and extradite Everardo Arturo "Kitty" Paez, a top lieutenant in the Arellano Félix Organization, arguably Mexico's most powerful drug cartel at the time.¹³⁷ Mexican authorities arrested Paez in Tijuana, but his extradition was blocked by legal challenges questioning the constitutionality of extraditing Mexican nationals.¹³⁸ The Mexican Supreme Court's decision in January 2001 upholding the constitutionality of extraditing Mexican citizens paved the way for Paez's transfer to the United States just four months later.¹³⁹ Yet without the preceding shift in diplomatic relations and clear political will on the part of the Zedillo and Fox administrations, it is unlikely that extradition would have been seen as the viable foreign policy tool that it became.

Under President Calderón (2006–2012), U.S.-Mexico security cooperation reached a high-water mark.¹⁴⁰ President Calderón made

133. PETER ANDREAS, *BORDER GAMES: POLICING THE U.S.-MEXICO DIVIDE* 71 (1st ed. 2000).

134. General Jesús Gutierrez Rebollo was arrested in 1997 and later sentenced to 40 years in prison. Tracy Wilkinson, *Jose De Jesus Gutierrez Rebollo Dies at 79; Disgraced Mexican General*, L.A. TIMES, (De. 20, 2013), <http://articles.latimes.com/2013/dec/20/local/la-me-jose-gutierrez-rebollo-20131221>.

135. DAVIDOW, *supra* note 64.

136. Importantly, the collaborative approach survived changes in administrations in both countries, as Presidents Bush and Fox sought to maintain strong bilateral ties. *Id.*

137. Ken Ellingwood, *Drug Trafficker Pleads Guilty*, L.A. TIMES (Oct. 12, 2001), <http://articles.latimes.com/2001/oct/12/local/me-56308>.

138. *Id.*

139. Paez was the first Mexican citizen to be extradited to the United States to face drug trafficking charges. He was convicted of cocaine trafficking and criminal association, and sentenced to 30 years in prison. Later (after the arrest/murder of Benjamin and Ramon Arellano Félix) he provided information that proved invaluable to the dismantling of the AFO. *Id.*

140. EDMONDS-POLI & SHIRK, *supra* note 4.

counter-narcotics efforts and U.S.-Mexico law enforcement cooperation a top priority during his administration.¹⁴¹ Seeking U.S. material support for these efforts, Calderón negotiated the three-year \$1.4 billion Mérida Agreement with President George W. Bush, as both argued that the United States had a shared responsibility to contribute to Mexico's counter-drug efforts.¹⁴² In part because Calderón's efforts relied heavily on the "kingpin" strategy of targeting top organized crime leaders for arrest in order to disrupt criminal networks, the use of extradition played a central role in the Calderón government's efforts.¹⁴³ Because of the lack of integrity in Mexican prisons, extradition provided a means to ensure that key organized crime leaders would not be able to continue to oversee their criminal operations from behind bars or even escape from custody.¹⁴⁴

The Mérida Initiative continued at a similar rate of annual funding under President Barack Obama.¹⁴⁵ Among other things, the program bolstered U.S.-Mexican intelligence sharing to dismantle organized crime groups, Mexican judicial and law enforcement capacity, southbound inspections to detect illicit bulk cash and arms shipments, and investments in crime prevention programs.¹⁴⁶ Thanks to the Mérida Initiative, U.S. officials regularly expressed great praise and admiration for President Calderón, frequently emphasizing his courage in the fight against organized crime, and one measure of the program's success was the steady stream of extradited kingpins sent to the United States.¹⁴⁷

Under Calderón's successor, President Enrique Peña Nieto (2012–2018), the total number of extraditions for drug-related offenses declined sharply from thirty-two in 2013 to sixteen in 2015, while the number of extraditions in other categories remained fairly constant. This presents a small puzzle, since it is reasonable to assume that the number of individuals wanted by the United States for drug offenses—which included Joaquín "Chapo" Guzmán at that time—would have

141. *Id.*

142. CLARE RIBANDO-SEELKE & KRISTIN FINKLEA, CONG. RESEARCH SERV., RL41349, U.S.-MEXICAN SECURITY COOPERATION: THE MÉRIDA INITIATIVE AND BEYOND (2017).

143. Luis Astorga & David A. Shirk, *Drugs, Crime, and Violence*, in SELEE & SMITH, note 58.

144. Ken Ellingwood, *Mexico Drug Suspects Extradited at Record Pace*, L.A. TIMES (Nov. 30, 2008), <http://www.latimes.com/world/la-fg-extradition30-2008nov30-story.html>.

145. RIBANDO-SEELKE & FINKLEA, *supra* note 142.

146. Eric L. Olson & Christopher E. Wilson, *Beyond Merida: The Evolving Approach to Security Cooperation*, WOODROW WILSON INT'L CENTER FOR SCHOLARS (2010), https://www.wilsoncenter.org/sites/default/files/beyond_merida.pdf.

147. Ellingwood, *Mexico Drug Suspects Extradited at Record Pace*, *supra* note 137.

remained high, particularly in light of the numerous drug arrests made in the preceding years. Our explanation for the decline in extraditions for drug offenses, based partly on confidential interviews with U.S. government personnel, is that there was a deliberate policy shift under the Peña Nieto administration.

On taking office, Peña Nieto initially took a markedly different stance from Calderón on the drug war.¹⁴⁸ In an overt bid to move Mexico to focus on promoting economic progress, Peña Nieto took great pains to shift the narrative about Mexico from one focused on crime and violence to one more focused on Mexico's economic achievements and opportunities.¹⁴⁹ Peña Nieto also asserted that he would break from the Calderón administration's focus on organized crime, and drug-trafficking specifically, in order to prioritize citizen security issues that directly affected ordinary Mexicans, notably homicide, kidnapping, and extortion.¹⁵⁰ Peña Nieto also appeared to take a dim view of the Calderón administration's close cooperation with the United States, in part due to U.S. spying on his election campaign.¹⁵¹ To keep a close eye on such cooperation, Peña Nieto administration officials that U.S.-Mexico security relations would now be more centrally managed through the "single window" (*ventanilla única*) of Mexico's interior ministry.¹⁵² No doubt these shifts in policy had a dampening effect on drug-related extraditions in the initial years of the Peña Nieto administration.

However, the Peña Nieto administration's openness to U.S.-Mexico security cooperation, particularly on drug offenses, appeared to rebound in 2015 and 2016. This may have been attributable to a number of developments that appear to have changed the Peña Nieto administration's stance on counter-drug cooperation. Notably, after improvements in 2012 and 2013, Mexico's security situation appeared to worsen again in 2014. That year brought widespread domestic and

148. EDMONDS-POLI & SHIRK, *supra* note 4.

149. Alejandro Hope, *Menos Ruido, Misma Furia*, NEXOS (July 1, 2013), <http://www.nexos.com.mx/?p=15373>.

150. Richard Fausset, *Peña Nieto Team Decries Past Drug Cartel Strategy*, L.A. TIMES (Dec. 21, 2012), <http://articles.latimes.com/2012/dec/21/world/la-fg-mexico-kingpin-20121222>.

151. Associated Press, *Mexican Diplomats Say Obama Promises Investigation into NSA Spying*, THE GUARDIAN (Oct. 22, 2013, 4:38 PM), <https://www.theguardian.com/world/2013/oct/22/mexico-president-nsa-spying-email>.

152. U.S. officials were previously able to interface directly with their Mexican counterparts at various Mexican agencies and at both the national and subnational level, generally without having to obtain explicit approval from Los Pinos. Kimberly Heinle, et al., *Drug Violence in Mexico: Data and Analysis Through 2013*, JUSTICE IN MEX. PROJECT (Apr. 2004), https://justiceinmexico.org/wp-content/uploads/2014/09/2014_DVM.pdf.

international concern about the emergence of new paramilitary style organizations in the state of Michoacán, the military's extrajudicial killing of nearly two dozen suspects detained in the state of Mexico, and the murder and disappearance of dozens of students and protesters originating from the town of Ayotzinapa in the state of Guerrero.¹⁵³ Such incidents put pressure on the Peña Nieto administration to continue its counter-drug efforts and beef up security. At the same time, U.S. government officials interviewed for this paper suggest that continued efforts to build trust and cooperation through the Mérida Initiative helped to increase the Peña Nieto administration's openness to cooperation with the United States.¹⁵⁴

The most symbolic indication of the rebound in extraditions for drug-related offenses was Mexico's decision to extradite Guzmán to the United States on January 19, 2017 in order to face charges in New York.¹⁵⁵ This move was a surprise for many, given Guzmán's high profile and the swiftness with which his extradition moved forward. Some observers suggested that Guzmán's extradition was a salute to the outgoing U.S. presidential administration on President Barack Obama's last day in office.¹⁵⁶ Others saw it as a hedge against pending political changes in Washington, since Mexican officials viewed incarcerating Guzmán at home as a liability, but also felt less inclined to extradite Guzmán under a hostile Trump administration.¹⁵⁷ Whatever the reason, Guzmán case was routed for prosecution to New York's Eastern District Court in Brooklyn on a 17-count indictment, marking another milestone in U.S.-Mexico cooperation on extradition.¹⁵⁸

V. CONCLUSIONS

As illustrated by the data presented in this paper, until about 1990, the number of extraditions between the United States and Mexico was

153. EDMONDS-POLI & SHIRK, *supra* note 4.

154. Interview with a former Mexican Secretary of Foreign Relations personnel, *see supra* note 34.

155. Brian Bennett & Deborah Bonello, *Prosecutors in These Seven Courtrooms Want 'El Chapo'*, L.A. TIMES (Jan. 11, 2016), <http://www.latimes.com/world/mexico-americas/la-fg-mexico-guzman-extradition-20160112-story.html>.

156. Peter Orsi, *Timing of Mexico Drug Lord's Extradition Seen as Political*, U.S. NEWS (Jan. 20, 2017, 12:06 PM), <https://www.usnews.com/news/world/articles/2017-01-20/timing-of-mexico-drug-lords-extradition-seen-as-political>.

157. *Id.*

158. Joaquín 'El Chapo' Guzman Loera Faces Charges in New York for Leading a Continuing Criminal Enterprise and other Drug-Related Charges, U.S. DEPT. OF JUSTICE (Jan. 20, 2017), <https://www.justice.gov/opa/pr/joaquin-el-chapo-guzman-loera-faces-charges-new-york-leading-continuing-criminal-enterprise>.

relatively small. This changed after 1995, when the number gradually increased, reaching unprecedented levels in the 2000s. Since Donald Trump's election, however, the tenor and substance of U.S.-Mexican relations appear to be at a low not seen since the mid-1980s.¹⁵⁹ The tensions between Presidents Trump and Peña, while not as intense as they were during the first two months of Trump's administration, have yet to be fully repaired. Moreover, the two sides appear to be digging into their positions not to give in to the demands of the other. These stances do not appear to bode well for future bilateral cooperation on a number of issues, including extradition. Judging by the rhetoric of the current administrations, we might expect to see fewer extraditions during the next two years to four years.

That said, it is also possible that things are not as bad as they seem. Indeed, there are a number of signs that Mexico and the United States are continuing to work together closely in the area of law enforcement cooperation. It may be that the diplomatic foundation built over the past twenty years by several presidents, and perhaps more importantly, by the diplomatic core and law enforcement agencies, is strong enough to withstand, and least in the short term, the storms raging in the White House and Los Pinos.

There are at least two reasons to believe that Mexico's cooperation with the United States is likely to continue. First, given Peña's dismal public approval ratings and accusations that he has been slow to go after government officials accused of criminal activity, there are domestic political benefits to be gained from publicly going after corrupt government officials and violent thugs, especially as Mexico enters the summer electoral season. Second, there may be an interest in paving the way for cordial and constructive discussions on the future of NAFTA. In helping the United States achieve its goal of prosecuting nefarious characters, the Peña administration may be sending a signal about its desire to maintain cordial and cooperative relations in other areas—most notably, trade and investment.

What is clear is that extradition is a process made more complex by the fact that it involves many actors, scarce resources, multiple veto points, and is sensitive to the national political climate.¹⁶⁰ At the same

159. Azam Ahmed, *Mexico's President Cancels Meeting with Trump over Wall*, N.Y. TIMES (Jan. 26, 2017), <https://www.nytimes.com/2017/01/26/world/mexicos-president-cancels-meeting-with-trump-over-wall.html>.

160. Another interesting test of the strength of the bilateral ties, will be whether the United States chooses to cooperate with the Mexican government on the case of Cesar Duarte, a fugitive former governor of the state of Chihuahua wanted on corruption charges and said to have fled to El Paso, Texas. Patrick McDonnell, *The Sordid Record of Former Mexican*

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time, extradition is a valuable tool that can be used in a variety of ways by states seeking to advance their foreign policy goals, even in asymmetrical power situations. While further research is needed to clarify the depth and nuanced nature of the use of extradition in the U.S.-Mexico context, evidence presented here suggests that it serves as an important barometer of the bilateral relationship.

Governors: 3 in Prison, 3 Under Investigation and 4 Wanted by Authorities, L.A. TIMES (Mar. 31, 2017), <http://www.latimes.com/world/mexico-americas/la-fg-mexico-governors-20170331-story.html>.