

DE FACTO LIFE IMPRISONMENT IN MEXICO AND THE U.S.-MEXICO EXTRADITION TREATY OF 1978

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“¡Pobre México! Tan lejos de Dios y tan cerca de los Estados Unidos.”

— Porfirio Díaz, President of Mexico (1910)¹

I. INTRODUCTION

On September 6, 2005, the *Suprema Corte de Justicia de la Nación* (Mexican Supreme Court), in an eight-to-two vote, ruled de facto life imprisonment constitutional, marking an unprecedented departure from its long-standing legal tradition.² Turning away from Mexico’s

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¹ “Poor Mexico! So far from God and so close to the United States.” Earl Weisbaum et al., *Mexican Law for Norteamericanos*, 68 LAW LIBR. J. 395, 395 (1975).

² See ARRAIGO PENAL. EL ARTÍCULO 122 BIS DEL CÓDIGO DE PROCEDIMIENTOS PENALES DEL ESTADO DE CHIHUAHUA QUE LO ESTABLECE, VIOLA LA GARANTÍA DE LIBERTAD PERSONAL QUE CONSAGRAN LOS ARTÍCULOS 14, 16, Y 21 DE LA CONSTITUCIÓN FEDERAL, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, Novena Epoca, tomo XXII, Septiembre de 2005, Tesis Pleno XXII/2006, Página 9 (Mex.) [hereinafter September 2005 Decision] (holding that Article 122 of the State of Chihuahua’s Penal Code is unconstitutional) (on file with author); PRISIÓN VITALICIA. LA ACUMULACIÓN MATERIAL DE PENAS ESTABLECIDA EN EL ARTÍCULO 27 DEL CÓDIGO PENAL DEL ESTADO DE CHIHUAHUA, EQUIVALE A UNA PENA DE TAL NATURALEZA (LEGISLACIÓN VIGENTE A PARTIR DEL 28 DE AGOSTO DE 2003), Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, Novena Epoca, tomo XIV, Enero de 2006, Tesis XX/2006, Página 12 (Mex.) (holding that an accused may be sentenced to 105 years in prison); EXTRADICIÓN. LA PRISIÓN VITALICIA NO CONSTITUYE UNA PENA INUSITADA DE LAS PROHIBIDAS POR EL ARTÍCULO 22 DE LA CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS, POR LO QUE CUANDO AQUÉLLA SE SOLICITA ES INNECESARIO QUE EL ESTADO REQUIRENTE SE COMPROMETA A NO APLICARLA O A IMPONER UNA MENOR QUE FIJE SU LEGISLACIÓN, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court],

historic treatment that most life imprisonment constitutes “cruel and unusual punishment,”³ the Mexican Supreme Court allowed consecutive prison terms for kidnappings or murders, even if the total surpassed one hundred years.⁴ Setting new precedent, the Mexican Supreme Court ruled Article 27 of the State of Chihuahua’s Penal Code⁵ and Article 122 of the Criminal Procedure Code⁶ constitutional.⁷ The State of Chihuahua’s salient purpose in enacting Articles 27 and 122 was to dissuade the high levels of crime committed against women and children in Ciudad Juarez, Mexico.⁸ However, aside from taking an abrupt and

Semanario Judicial de la Federación y su Gaceta, Novena Epoca, tomo XIV, Noviembre de 2005, Tesis P./J. 2/2006, Página 9 (Mex.) (finding that life imprisonment does not violate Article 22 of the Mexican Constitution). *But see infra* note 74 and accompanying text (relating to Mexico’s jurisprudential practice not to impose life imprisonment since 1931).

³ Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, Artículo 22, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.), *available at* <http://www.constitucion.gob.mx/docs/constitucion.pdf>. “Quedan prohibidas las penas de mutilación y de infamia, la marca, los azotes, los palos, el tormento de cualquier especie, la multa excesiva, la confiscación de bienes y *cualesquiera otras penas inusitadas y trascendentales*” (“That punishment by mutilation and infamy, branding, flogging, beating with sticks, torture of any kind, excessive fines, confiscation of property *and any other unusual or extreme penalties are prohibited*”) (emphasis added). Before the September 6, 2005, ruling, life imprisonment was characterized as an “unusual or extreme penalty” in Mexican jurisprudence. *See supra* note 2.

⁴ *See* September 2005 Decision, *supra* note 2. “[E]l delincuente podría estar privado de su libertad hasta por 105 años o más” (“The convict may lose his or her liberty for up to 105 years or more”); *see also* Michael Marizco, *U.S. Hopes Ruling in Mexico Allows 2 Drug Extraditions*, ARIZONA DAILY STAR, Sept. 8, 2005, *available at* <http://www.azstarnet.com/dailystar/relatedarticles92349.php>.

⁵ Código Penal del Estado de Chihuahua [C.P.] [Chihuahua Criminal Code], *as amended*, Diario Oficial de la Federación [D.O.], 1 de Febrero de 2004, Artículo 27 (Mex.) [hereinafter Chihuahua Criminal Code] *available at* <http://www.ordenjuridico.gob.mx/Estatal/CHIHUAHUA/Codigos/CHICod8.pdf>. “Tratándose del delito de homicidio doloso en perjuicio de mujeres o de menores de edad, o del delito de secuestro, deberá imponerse pena por cada delito cometido aún y cuando con ello se exceda el máximo de la pena de prisión” (“Whenever a crime is committed against women and children, such as homicide and kidnapping, a sentence should be imposed for each crime regardless of whether it exceeds the maximum prison sentence allowed”). *Id.*

⁶ Código de Procedimientos Penales del Estado de Chihuahua [C.P.C.] [Chihuahua Criminal Procedure Code], *as amended*, Diario Oficial de la Federación [D.O.], 24 de Abril de 2004, Artículo 122 bis. (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Estatal/CHIHUAHUA/Codigos/CHICod4.pdf>.

⁷ *See* September 2005 decision, *supra* note 2.

⁸ *See* Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, *Resolución de la Suprema Corte de Justicia de la Nación Sobre Acumulación de Penas Viola Derechos Humanos* (Aug. 8, 2005) [hereinafter CMDPDH], *available at* <http://www.laneta.apc.org/cmdpdh/comunicados05/bol%2008sep05%20cadenaperpetua.htm>. *But see* Jesus Aranda, *Revira la SCJN Sobre la Cadena Perpetua*, LA JORNADA, Sept. 7, 2005, *available at* <http://www.jornada.unam.mx/2005/09/07/055n/soc/php> (arguing that Article 27 of the Chihuahua Criminal Code is

unparalleled departure from its traditional jurisprudence, the Mexican Supreme Court, in declaring de facto life imprisonment constitutional, has opened the possibility of extraditing Mexican nationals to the United States, even if life imprisonment is sought.

Historically, extraditions have been the source of vast discord between Mexico and the United States.⁹ Sitting in the middle of this conflict, the U.S.-Mexico Extradition Treaty of 1978 has brought little, if any, resolution to this fray.¹⁰ Adding to this debate have been Mexico's judicial interpretations,¹¹ which have repeatedly rejected extraditions where a death sentence or life imprisonment was likely to be imposed.¹²

unconstitutional because it punishes those who murder women and children more severely than those who murder men and the elderly).

⁹ See generally Rishi Hingoraney, *International Extradition of Mexican Narcotics Traffickers: Prospects and Pitfalls for the New Millennium*, 30 GA. J. INT'L & COMP. L. 331, 331 (2002) ("The history of international extradition between the United States and Mexico has not been one characterized by emphatic cooperation on either side. It has been plagued by reluctance and mistrust."); see also Monica L. McHam, *All's Well that Ends Well: A Pragmatic Look at International Criminal Extradition*, 20 HOUS. J. INT'L L. 419, 431-32 (1998) ("The historical relationship between the United States and Mexico has been fraught with suspicion and can be characterized as discordant and fractious.").

¹⁰ Extradition Treaty, U.S.-Mex., May 4, 1978, 31 U.S.T. 5059 [hereinafter U.S.-Mexico Extradition Treaty]. See also 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, 213-14 (1994) (asserting that congressional legislation is needed to restore international confidence in the United States' extradition treaties).

¹¹ See EXTRADICIÓN. LA POSIBILIDAD DE QUE UN MEXICANO SEA JUZGADO EN LA REPÚBLICA CONFORME AL ARTÍCULO 40. DEL CÓDIGO PENAL FEDERAL, NO IMPIDE AL PODER EJECUTIVO OBSEQUIARLA, EJERCIENDO LA FACULTAD DISCRECIONAL QUE LE CONCEDE EL TRATADO DE EXTRADICIÓN ENTRE LOS ESTADOS UNIDOS MEXICANOS Y LOS ESTADOS UNIDOS DE AMÉRICA, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, Novena Epoca, tomo XIII, Enero de 2001, Tesis P./J. 11/2001, Página 9 (Mex.) [hereinafter January 2001 Decision] (holding that Mexico can extradite Mexican nationals to the United States). But see EXTRADICIÓN. LA PENA DE PRISIÓN VITALICIA CONSTITUYE UNA PENA INUSITADA PROHIBIDA POR EL ARTÍCULO 22 DE LA CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS, POR LO QUE PARA QUE SE TRAMITE AQUÉLLA, EL ESTADO SOLICITANTE DEBE COMPROMETERSE A NO APLICARLA O A IMPONER UNA MENOR QUE FIJE SU LEGISLACIÓN, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, Novena Epoca, Octubre de 2001, Tesis P./J. 125/2001, Página 13 (Mex.) [hereinafter October 2001 Decision] (holding that Mexico will not extradite those who face a potential life sentence in the country requesting the extradition pursuant to Article 22 of the Mexican Constitution).

¹² William A. Schabas, *Indirect Abolition: Capital Punishment's Role in Extradition Law and Practice*, 25 LOY. L.A. INT'L & COMP. L. REV. 581, 604 (2003) (stating that "Mexico even refuses extradition in cases where life sentences with no possibility of parole could be imposed"); Vanessa Maaskamp, *Extradition and Life Imprisonment*, 25 LOY. L.A. INT'L & COMP. L. REV. 741, 743 (2003) ("Extradition between the United States and Mexico is also hampered by the differing views each country has with respect to the death penalty").

Before an extradition took place, Mexico customarily requested the United States to guarantee that it would not subject the extraditee to life imprisonment;¹³ yet, this stipulation may be subject to change.

Arising out of this context, this Comment argues that Mexico's recent effort to impose life imprisonment will eventually result in a temporary upsurge in extraditions from Mexico to the United States. It contends that the feasibility of this result is contingent on how endemic Chihuahua's life imprisonment scheme will be in Mexico. That is, will other Mexican states apply similar sentencing guidelines to abate crime or is this just an anomaly in the State of Chihuahua, prompted by the incessant crimes in Ciudad Juarez? At the same time, this Comment parenthetically posits that this ruling will not likely survive judicial scrutiny because of Mexico's precarious judicial framework and the structural composition of the Mexican Supreme Court.

Part II of this Comment provides an overview of extradition law. In particular, it provides a comprehensive look at the U.S.-Mexico Extradition Treaty of 1978 and the extradition procedures of both countries. Part III expounds on Mexico's legal system in an effort to trace the historical progression of Mexico's reluctance to impose life imprisonment. Part III also outlines how the Mexican Supreme Court's incoherent disposition has led the nation along a conflicting path in its review of extradition proceedings. Against this background, Part IV analyzes the Mexican Supreme Court's ruling that authorized the State of Chihuahua to allow consecutive prison terms for kidnappings or murders involving women and children, thus enabling *de facto* life imprisonment. Accordingly, Part IV contends that the Mexican Supreme Court's decision is constitutionally suspect since it runs afoul from traditional civil jurisprudence, where the judiciary must abide by an interpretation that is in conformity with the general principles of the law. Finally, Part V concludes by predicting the reversal of the September 6, 2005, decision based on Mexico's weak judicial branch and its inherent limitations.

¹³ See October 2001 Decision, *supra* note 11.

II. EXTRADITIONS BETWEEN MEXICO & THE UNITED STATES

A. ORIGIN OF U.S. EXTRADITION LAWS

The origins of extradition law in the United States can be traced to the late 1700s.¹⁴ Extradition may be sufficiently defined as “the surrender by one nation to another of an individual accused or convicted of an offense outside of its own territory, and within the territorial jurisdiction of the other, which, being competent to try and to punish him, demand the surrender.”¹⁵ Extraditions stemmed from the principle of *quidquid est in territorio est etiam de territorio*, the notion that a state has supreme authority over all individuals and property within its boundaries.¹⁶ Derived from this principle, extradition agreements between nations were largely orchestrated to “proscribe, prosecute, or punish” international offenses.¹⁷

At the outset, the United States was reluctant to enter into extradition agreements, fearing that extradition policies might thwart the flow of immigrants to the newly established republic.¹⁸ By the mid-1800s, however, the need to combat transnational crime changed the United States’ outlook on extradition.¹⁹ As a palliative to those concerns,

¹⁴ M. Cherif Bassiouni, *Reforming International Extradition: Lessons of the Past for a Radical New Approach*, 25 LOY. L.A. INT’L & COMP. L. REV. 389, 389 (2003). See generally *United States v. Robbins*, 27 F. Cas. 825 (D.S.C. 1799) (holding that by virtue of the 27th article of the treaty of amity and commerce the prisoner should be extradited to Great Britain under murder charges); *In re Metzger*, 17 F. Cas. 232 (S.D.N.Y. 1847) (holding that the court had subject-matter jurisdiction under a treaty with France to provide extradition of a prisoner who had committed forgery); *In re Kaine*, 55 U.S. 103 (14 How. 1852) (holding that a foreign national should be extradited to Great Britain for assault with intent to commit murder). For a complete review of the historical development of extradition in the ancient world, see GEOFF GILBERT, *ASPECTS OF EXTRADITION LAW* 9-11 (1991). For a historical overview of extradition solely on the United States, see Robert L. Tanner, *Elements of Extradition*, 6 U. KAN. L. REV. 475, 475-76 (1958).

¹⁵ *Terlinden v. Ames*, 184 U.S. 270, 289 (1902).

¹⁶ Hingoraney, *supra* note 9, at 334. “Under the principle of *quidquid est in territorio est etiam de territorio*, all individuals and all property within the territory of a state are under its domain and sway.” S.D. BEDI, *EXTRADITION IN INTERNATIONAL LAW AND PRACTICE* 28 (1966).

¹⁷ M. CHERIF BASSIOUNI & EDWARD M. WISE, *AUT DEDERE AUT JUDICARE: THE DUTY TO EXTRADITE OR PROSECUTE IN INTERNATIONAL LAW* 8 (1995) (emphasizing the onus to extradite or prosecute in international extradition agreements).

¹⁸ Abraham Abramovsky, *The Political Offense Exception and the Extradition Process: The Enhancement of the Role of the U.S. Judiciary*, 13 HASTINGS INT’L & COMP. L. REV. 1, 8 (1990).

¹⁹ *Id.* at 9.

in 1899, the United States and Mexico first entered into an extradition treaty.²⁰ To better administer justice and deter crime, the two nations agreed to extradite individuals who were charged or convicted of one of the crimes enumerated in the treaty.²¹ Then, in 1925, after the United States and Mexico convened to amend the 1899 treaty, a second agreement was signed.²² Fourteen years later, in 1939, the treaty was amended yet again, this time to expand its scope by encompassing accessories to any crimes formerly recorded as extraditable.²³ Finally, in 1978, both countries utterly modified their extradition policies, thus signing today's germane treaty—the U.S.-Mexico Extradition Treaty of 1978.²⁴

B. U.S.-MEXICO EXTRADITION TREATY OF 1978

The U.S.-Mexico Extradition Treaty of 1978 was signed in Mexico City on May 4, 1978, to foster cooperation in the fight against crime and to allow for better assistance in matters of extradition.²⁵ Article 2 of the U.S.-Mexico Extradition Treaty requires dual criminality,²⁶ which consists of crimes “punishable in accordance with the laws of both [countries].”²⁷ Under the treaty, “[e]xtradition shall be granted only if the evidence [is] sufficient, according to the laws of the requested Party, to justify the committal for trial of the person sought”²⁸ If, however, “the requested party considers that the evidence furnished in support of the request for extradition is not sufficient to fulfill the requirements of [the] Treaty that Party shall request the presentation of the necessary additional evidence.”²⁹

²⁰ Extradition Treaty, U.S.-Mex., Feb. 22, 1899, 31 Stat. 1818. *See also* McHam, *supra* note 9, at 433.

²¹ Rita Patel, *One More Effect of NAFTA—A Multilateral Extradition Treaty?*, 14 DICK. J. INT'L L. 153, 165-66 (1995).

²² *Id.* at 167. *See also* U.S.-Mexico Extradition Treaty, *supra* note 10, art. 23, ¶ 3.

²³ Patel, *supra* note 21, at 167. *See also* U.S.-Mexico Extradition Treaty, *supra* note 10, art. 23, ¶ 3.

²⁴ U.S.-Mexico Extradition Treaty, *supra* note 10. *See also* McHam, *supra* note 9, at 433.

²⁵ U.S.-Mexico Extradition Treaty, *supra* note 10. The treaty, despite being signed on May 4, 1978, entered into force almost two years later on Jan. 25, 1980. *Id.*

²⁶ McHam, *supra* note 9, at 433; U.S.-Mexico Extradition Treaty, *supra* note 10, art. 2, ¶ 1.

²⁷ Among the offenses listed are fraud, murder, rape, kidnapping, prostitution, embezzlement, arson, drug possession, abortion, abandonment of minors, extortion, control of poisonous chemicals, perjury, and obstruction of justice. U.S.-Mexico Extradition Treaty, *supra* note 10, app.

²⁸ U.S.-Mexico Extradition Treaty, *supra* note 10, art. 3.

²⁹ *Id.* art. 13.

The U.S.-Mexico Extradition Treaty of 1978, nevertheless, has a limited purview.³⁰ Political and military offenses, for instance, fall outside the general realm of the treaty and are thus not extraditable.³¹ Aside from political and military offenses, “[w]hen the offense for which extradition is requested is punishable by death under the laws of the requesting Party and the laws of the requested Party do not permit such punishment for that offense, extradition may be refused, unless the requesting party furnishes such assurances . . . that the death penalty shall not be imposed.”³² The treaty carries with it an additional constraint, namely, that “[n]either Contracting Party shall be bound to deliver up its own nationals.”³³ This limitation, nonetheless, can be defeated “if the requested party, upon its discretion, deems it proper to do so.”³⁴ Another striking limitation is that the requested party who granted the extradition may subsequently “defer the surrender of the person sought when that person . . . is serving a sentence in the territory of the requested Party for a different offense;”³⁵ that is, if a suspect is being

³⁰ EXTRADICIÓN, TRATADOS DE, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación*, Quinta Epoca, tomo XXXI, Enero de 1931, amparo administrativo en revisión 2339/30, Página 348 (Mex.) (finding that extradition treaties cannot abrogate or alter civil liberties).

³¹ U.S.-Mexico Extradition Treaty, *supra* note 10, art. 5. “No se autoriza la celebración de tratados para la extradición de reos políticos, ni para la de aquellos delincuentes del orden común que hayan tenido en el país donde cometieron el delito, la condición de esclavos; ni de convenios o tratados en virtud de los que se alteren las garantías y derechos establecidos por esta Constitución para el hombre y el ciudadano.” Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, Artículo 15, *Diario Oficial de la Federación* [D.O.], 5 de Febrero de 1917 (Mex.) (prohibiting “extradition for political offenses or when the defendant has been subject to slavery in the country where the offense has been committed”); 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, 534 (1997). “The underlying rationale for excluding political offenses may well be that these offenses pose such a danger to a nation’s system of government that the release of the offender, even for completion of the sentence elsewhere, would be improper.” Abraham Abramovsky & Steven J. Eagle, *A Critical Evaluation of the Mexican-American Transfer of Penal Sanctions Treaty*, 64 IOWA L. REV. 275, 281 (1979).

³² U.S.-Mexico Extradition Treaty, *supra* note 10, art. 8.

³³ *Id.* art. 9. See EXTRADICIÓN DE NACIONALES. EL ARTÍCULO 9o., NUMERAL 1, DEL TRATADO DE EXTRADICIÓN ENTRE LOS ESTADOS UNIDOS MEXICANOS Y LOS ESTADOS UNIDOS DE AMÉRICA, QUE PREVÉ LA FACULTAD DISCRECIONAL DEL PODER EJECUTIVO PARA REALIZARLA, NO VIOLA LA GARANTÍA DE LEGALIDAD, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, Novena Epoca, Enero de 2005, Tesis 1a. CLXI/2004, Página 418 (Mex.) (noting that Article 9 of the U.S.-Mexico Extradition Treaty of 1978, which confers the executive with discretion to extradite its own nationals, is not unconstitutional).

³⁴ U.S.-Mexico Extradition Treaty, *supra* note 10, art. 9. The Treaty, however, does not specify what would be deemed “proper.”

³⁵ *Id.* art. 15.

punished at the time the extradition request is granted, the requested party reserves the right to defer the extradition “until the conclusion of the proceeding or the full execution of the punishment.”³⁶ Although the U.S.-Mexico Extradition Treaty of 1978 provides the applicable rules governing extraditions, Mexico and the United States differ in their extradition procedures.

C. EXTRADITION PROCEDURES

1. EXTRADITIONS FROM THE UNITED STATES

In the United States, extraditions, which ultimately fall under the compass of the federal government,³⁷ may be granted only pursuant to a treaty,³⁸ supplemented by Title 18 of the United States Code.³⁹ A foreign state, to request extradition of a suspect from the United States, “must first file a complaint made under oath before a U.S. federal judge or magistrate.”⁴⁰ An arrest warrant will be issued, and the suspect will be brought before a magistrate.⁴¹ To determine the question of extraditability, a federal magistrate judge must establish whether there is probable cause to believe that the person before the court is extraditable.⁴² As such, “[i]f a magistrate judge finds a defendant extraditable, the Secretary of State decides whether to surrender the defendant to the requesting state.”⁴³ Unless there is an applicable exemption under the pertinent extradition treaty,⁴⁴ the Secretary of State signs a surrender warrant,⁴⁵ leaving the U.S. Marshal to handle the

³⁶ *Id.*

³⁷ Maaskamp, *supra* note 12, at 746.

³⁸ Abramovsky, *supra* note 18, at 10.

³⁹ Joshua S. Spector, Note, *Extraditing Mexican Nationals in the Fight Against International Narcotics Crimes*, 31 U. MICH. J.L. REFORM 1007, 1014 (1998).

⁴⁰ *Id.*

⁴¹ *Id.* at 1015.

⁴² Abramovsky, *supra* note 18, at 11. When extraditing from the United States, federal courts generally abide by the “rule of non-inquiry,” which “means that the court does not inquire into the human rights conditions and the quality of justice in the requesting nation, deeming both of these issues a political and foreign policy matter for the secretary of state.” Ann Powers, *Justice Denied? The Adjudication of Extradition Applications*, 37 TEX. INT’L L.J. 277, 314 (2002).

⁴³ See Abramovsky, *supra* note 18, at 11; Maaskamp, *supra* note 12, at 746.

⁴⁴ Spector, *supra* note 39, at 1016.

⁴⁵ See Abramovsky, *supra* note 18, at 10; Maaskamp, *supra* note 12, at 746.

transfer of the extraditee.⁴⁶ Mexico, on the other hand, employs a broader discretion when determining whether extradition is warranted.

2. EXTRADITION FROM MEXICO TO THE UNITED STATES

From the outset, “[e]very request for extradition must be approved by the U.S. Department of Justice;”⁴⁷ however, as long as there is an extradition treaty in force with the foreign government, the Department of State is responsible for transmitting the request to the appropriate American Embassy or consulate to be presented to foreign government officials.⁴⁸ Through diplomatic channels,⁴⁹ the U.S. State Department presents extradition requests to the *Secretaría de Relaciones Exteriores* (Mexican Ministry of Foreign Affairs).⁵⁰ The request must include “a certified copy of a warrant for arrest, accompanied by evidence justifying the apprehension of the individual sought,” if the offense had been committed there, “or if the individual has already been convicted, a certified copy of a conviction against the individual.”⁵¹

⁴⁶ Maaskamp, *supra* note 12, at 746.

⁴⁷ Hingoraney, *supra* note 9, at 338.

⁴⁸ Spector, *supra* note 39, at 1016. *See also* GEOFF GILBERT, TRANSNATIONAL FUGITIVE OFFENDERS IN INTERNATIONAL LAW: EXTRADITION AND OTHER MECHANISMS 78 (1998) (asserting that extradition procedures and requests interconnect the judiciary and executive branches).

⁴⁹ U.S.-Mexico Extradition Treaty, *supra* note 10, art. 10(1). *See also* NOTAS DIPLOMÁTICAS EN LAS QUE SE SOLICITA LA DETENCIÓN PROVISIONAL DE UNA PERSONA. TIENEN PLENA EFICACIA Y VALIDEZ SI CONTIENEN NOMBRE Y FIRMA DE LA AUTORIDAD QUE LAS SUSCRIBE Y EL SELLO DEL DEPARTAMENTO DE ESTADO DE LOS ESTADOS UNIDOS DE AMÉRICA QUE LAS EMITE, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], Semanario Judicial de la Federación y su Gaceta, Novena Epoca, tomo XX, Julio de 2004, Tesis 1a./J. 41/2004, Página 122 (Mex.) (finding that when the United States engages in diplomatic channels to request the provisional detention of a suspect it must include the name and signature of the requesting official and the seal of the United States in order to be valid).

⁵⁰ Maaskamp, *supra* note 12, at 747-48. *See* Zagari & Peralta, *supra* note 31, at 551; *see also* EXTRADICIÓN. ES UN PROCEDIMIENTO ADMINISTRATIVO SEGUIDO EN FORMA DE JUICIO QUE INICIA CON SU PETICIÓN FORMAL Y TERMINA CON LA RESOLUCIÓN DEFINITIVA DE LA SECRETARÍA DE RELACIONES EXTERIORES EN QUE LA CONCEDE O LA REHÚSA (INTERRUPCIÓN DE LA TESIS PLENARIA CLXV/2000), Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], Semanario Judicial de la Federación y su Gaceta, Novena Epoca, tomo XX, Agosto de 2004, Tesis Aislada P. XXXVI/2004, Página 11 (Mex.) (holding that the Mexican Ministry of Foreign Affairs can accept or refuse extradition requests).

⁵¹ Spector, *supra* note 39, at 1016; Hingoraney, *supra* note 9, at 339. *See also* U.S.-Mexico Extradition Treaty, *supra* note 10, art. 10(3)(a), 10(4); EXTRADICIÓN, ORDEN DE, RESPECTO DE UNA PERSONA QUE AÚN NO HA SIDO SENTENCIADA. PARA QUE SE CONCEDA, ES REQUISITO INDISPENSABLE QUE LAS PRUEBAS APORTADAS POR

If the extradition request meets these requirements, the matter is subsequently handed down to the *Procuraduría General de la República* (Mexican Attorney General).⁵² Accordingly, a Mexican district judge must next ascertain whether there is probable cause⁵³ to extradite the suspect.⁵⁴ Upon such a finding, “the requested suspect is arrested and an

EL PAÍS REQUERENTE SEAN SUFICIENTES PARA JUSTIFICAR LA APREHENSIÓN Y ENJUICIAMIENTO DEL RECLAMADO, CONFORME A LAS LEYES FEDERALES MEXICANAS, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], Semanario Judicial de la Federación y su Gaceta, Novena Epoca, tomo XVI, Septiembre de 2002, Tesis Aislada I 1o.P.76 P, Página 1366 (Mex.) (ruling that Article 10(3)(b) of the U.S.-Mexico Extradition Treaty places the burden of proof on the country requesting the extradition); EXTRADICIÓN INTERNACIONAL. LA DETENCIÓN PROVISIONAL QUE PREVE SE BASA EN PRUEBAS QUE ACREDITAN EL CUERPO DEL DELITO Y LA PROBABLE RESPONSABILIDAD DE LA PERSONA RECLAMADA, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], Semanario Judicial de la Federación y su Gaceta, Novena Epoca, tomo VII, Mayo de 1998, Tesis Aislada P. XLVII/98, Página 131 (Mex.) (holding that an extradition petition alone is not enough to meet the burden of proof).

⁵² Maaskamp, *supra* note 12, at 746; Hingoraney, *supra* note 9, at 339; Spector, *supra* note 39, at 1016-17.

⁵³ However, probable cause is not needed for a provisional arrest of a suspect facing extradition if extradition has not been formally requested. See EXTRADICIÓN. PARA LIBRAR UNA ORDEN DE DETENCIÓN PROVISIONAL CON ESOS FINES, SOLICITADA POR LOS ESTADOS UNIDOS DE AMÉRICA, ES INNECESARIO QUE APORTE PRUEBAS QUE ACREDITEN EL CUERPO DEL DELITO Y LA PROBABLE RESPONSABILIDAD DEL REQUERIDO, SI AQUÉLLA NO SE HA SOLICITADO FORMALMENTE, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], Semanario Judicial de la Federación y su Gaceta, Novena Epoca, tomo XVI, Septiembre de 2002, Tesis Aislada I.7o.P.11 P, Página 1367 (Mex.); see also Lis Wiehl, *Extradition Law at the Crossroads: The Trend Toward Extending Greater Constitutional Procedural Protections to Fugitives Fighting Extradition from the United States*, 19 MICH. J. INT'L L. 729, 744 (1998) (“One of the most important quirks of extradition law has been the government’s ability to obtain a provisional arrest warrant from a judge or magistrate in aid of an impending extradition request by a foreign government without having to make an evidentiary showing of probable cause to believe that the fugitive actually committed the crime charged abroad”). Likewise, the United States does not have to guarantee that it will not impose capital punishment when requesting Mexico to provisionally detain a suspect facing extradition if a formal extradition request has not been made. See EXTRADICIÓN. PARA LIBRAR UNA ORDEN DE DETENCIÓN PROVISIONAL CON ESOS FINES, SOLICITADA POR LOS ESTADOS UNIDOS DE AMÉRICA, ES INNECESARIO QUE SE COMPROMETA A NO APLICAR LA PRISIÓN VITALICIA SI AQUÉLLA NO SE HA SOLICITADO FORMALMENTE, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], Semanario Judicial de la Federación y su Gaceta, Novena Epoca, tomo XVI, Septiembre de 2002, Tesis Aislada I.7o.P.12 P, Página 1368 (Mex.).

⁵⁴ Maaskamp, *supra* note 12, at 746. See also Hingoraney, *supra* note 9, at 339; Spector, *supra* note 39, at 1017. “Corresponde a los Tribunales de la Federación conocer de todas las controversias del orden civil o criminal que se susciten sobre el cumplimiento y aplicación de leyes federales o de los tratados internacionales celebrados por el Estado Mexicano.” Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, Artículo 104, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.) (“Federal civil and criminal controversies, as well as matters of treaty interpretation, fall within the general competence of federal district judges”); Zagaris & Peralta, *supra* note 31, at 557.

extradition hearing is held before the [district] judge.”⁵⁵ After the district judge makes the recommendation of whether to extradite the suspect, the Ministry of Foreign Affairs also reviews the decision.⁵⁶ The Ministry of Foreign Affairs, however, as the final arbiter, is not obliged to abide by the judge’s recommendation, sometimes employing a broader discretion when dealing with a request to extradite a Mexican national.⁵⁷ In the past, Mexico summarily drew upon this discretion by requesting the United States to guarantee that it would not impose life imprisonment, which ultimately gave rise to a host of misgivings between these neighboring countries.⁵⁸ To appreciate this acute variance in extradition and penological policies between Mexico and the United States and to further ascertain how the recent constitutionality of life imprisonment will shape the future of extraditions, we must first delve headlong into Mexico’s legal system.⁵⁹

⁵⁵ Maaskamp, *supra* note 12, at 746; Hingoraney, *supra* note 9, at 339; Spector, *supra* note 39, at 1017.

⁵⁶ Maaskamp, *supra* note 12, at 746; Hingoraney, *supra* note 9, at 339; Spector, *supra* note 39, at 1017. “Las extradiciones a requerimiento de Estado extranjero serán tramitadas por el Ejecutivo Federal, con la intervención de la autoridad judicial en los términos de esta Constitución, los Tratados Internacionales que al respecto se suscriban y las leyes reglamentarias. En esos casos, el auto del juez que mande cumplir la requisitoria será bastante para motivar la detención hasta por sesenta días naturales.” Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, Artículo 119, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.) (“International extradition procedures are mainly handled by the Federal Executive, with the intervention of the Judiciary, and that in international extradition cases the suspect may be detained up to two months”); Zagaris & Peralta, *supra* note 31, at 548.

⁵⁷ Hingoraney, *supra* note 9, at 340. EXTRADICIÓN. CONSISTE EN LA ENTREGA DE UNA PERSONA QUE EL ESTADO REQUERIDO HACE AL ESTADO REQUIRENTE, PERO CONSTITUYENDO UN ACTO EXCEPCIONAL EN RELACIÓN CON SU SOBERANÍA, LA SOLICITUD PUEDE VÁLIDAMENTE SER NEGADA SI NO SE CUMPLEN LOS REQUISITOS LEGALES ESTABLECIDOS, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], Semanario Judicial de la Federación y su Gaceta, Novena Epoca, tomo XIV, Octubre de 2001, Tesis P. XIX/2001, Página 21 (Mex.) (stating that if the legal requirements are not satisfied the extradition will be denied). *See also* EXTRADICIÓN DE NACIONALES. EL PODER EJECUTIVO EN EJERCICIO DE ESTA FACULTAD DISCRECIONAL DEBE MOTIVAR DEBIDAMENTE SI LOS HECHOS IMPUTADOS AL REQUERIDO JUSTIFICAN UN CASO DE EXCEPCIÓN QUE LA HAGA PROCEDENTE, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], Semanario Judicial de la Federación y su Gaceta, Novena Epoca, tomo XVI, Abril de 2005, Tesis Aislada I.3o.P., Página 78 (Mex.) (mentioning that the executive branch has discretionary power to extradite if the germane facts justify executive intervention).

⁵⁸ *See supra* note 9 and accompanying text.

⁵⁹ *See* M. CHERIF BASSIOUNI, INTERNATIONAL EXTRADITION AND WORLD PUBLIC ORDER 465 (1974); *see also* Luis Fernandez Doblado, *International Cooperation in Penal Matters Between Mexico and the United States*, 1986 ARIZ. J. INT’L & COMP. L. 201, 202 (1986) (“The distinct nature of each penal system limits the possibility of achieving uniformity and compatibility in the means and principles of [U.S.-Mexico] international cooperation”).

III. HISTORY OF CONFLICT AND DISARRAY

A. MEXICO'S CONSTITUTIONAL FRAMEWORK

Established by the Treaty of Guadalupe Hidalgo 159 years ago, “Mexico and the United States share an international boundary of 1952 miles.”⁶⁰ Not only does “[this] boundary separate two societies [with] contrasting [cultural] differences” but also “two nations with profoundly different conceptions of the law.”⁶¹ These intangible differences “apply not only to the substantive and procedural legal aspects of their respective legal systems but, more importantly, to the role law plays as an instrument to shape society.”⁶² Putting differences aside, though, it is important to recognize that Mexico’s constitutional framework, despite its initial adherence to European principles,⁶³ has been largely influenced by the U.S. Constitution, from which many of its constitutional postulates have been adopted.⁶⁴ Yet, only Articles 18⁶⁵ and 22 were dispositive in the Mexican Supreme Court’s unexpected determination that de facto life imprisonment is constitutional.

1. ARTICLE 18: SOCIAL “READAPTATION”

Article 18 of the Mexican Constitution acknowledges only social “readaptation”⁶⁶ as the premier goal of incarceration.⁶⁷ Thus,

⁶⁰ JORGE A. VARGAS, MEXICAN LAW: A TREATISE FOR LEGAL PRACTITIONERS AND INTERNATIONAL INVESTORS 5 (1998).

⁶¹ *Id.*

⁶² *Id.* at 6.

⁶³ Weisbaum et al., *supra* note 1, at 396.

⁶⁴ VARGAS, *supra* note 60, at 38-89. “At least 40 forms of government were experimented with [in Mexico], including federal and centralized organizations, a constitutional monarchy, some dictatorships, and a representative democratic regime.” HELEN L. CLAGETT & DAVID M. VALDERRAMA, A REVISED GUIDE TO THE LAW & LEGAL LITERATURE OF MEXICO 1 (1973).

⁶⁵ For a thorough analysis of Article 18’s rehabilitative goals, see generally Ley Que Establece Las Normas Mínimas Sobre Readaptación Social de Sentenciados, *as amended*, Diario Oficial de la Federación [D.O.], 19 de Mayo de 1971 (Mex.), available at [http://www.ordenjuridico.gob.mx/Federal/PL/CU/Leyes/19051971\(1\).pdf](http://www.ordenjuridico.gob.mx/Federal/PL/CU/Leyes/19051971(1).pdf).

⁶⁶ Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, Artículo 18, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.). “Los Gobiernos de la Federación y de los Estados organizarán el sistema penal, en sus respectivas jurisdicciones, sobre la base del trabajo, la capacitación para el mismo y la educación como medios para la *readaptación social del delincuente*” (“The federal and state governments shall organize the penal system within their respective jurisdictions on the basis of labor, training, and education as a means of *social readjustment of the offender*”) (emphasis added). See also Código Penal

“[r]ehabilitation is a bedrock principle of the Mexican judicial system, so much so that . . . life imprisonment [was not historically] allowed under law.”⁶⁸ This outlook on incarceration often clashed with the United States’ penological policies, where its tougher sentencing schemes accentuate deterrence, retribution, incapacitation, and public safety—but not rehabilitation.⁶⁹ This stark divergence in penological theories, therefore, generated high levels of friction between these two countries.⁷⁰ Prior to the September 6, 2005 ruling, Article 18 served as an impervious obstacle for U.S. extraditions since the Mexican Supreme Court pointedly recognized life imprisonment as unconstitutional because it failed to allow for the possibility of rehabilitation as stipulated under

Federal [C.P.F.] [Federal Criminal Code], *as amended*, Artículo 27, Diario Oficial de la Federación [D.O.], 14 de Agosto de 1931 (Mex.); SERGIO GARCÍA RAMÍREZ, EL ARTÍCULO 18 CONSTITUCIONAL: PRISIÓN PREVENTIVA, SISTEMA PENITENCIARIO, MENORES INFRACTORES 71 (1967) (recognizing that Article 18 of the Mexican Constitution encompasses two rehabilitative elements: labor and education).

⁶⁷ Código Penal Federal [C.P.F.] [Federal Criminal Code], *as amended*, Artículo 24, Diario Oficial de la Federación [D.O.], 14 de Agosto de 1931 (Mex.) (omitting capital punishment as a possible punishment or security measure); Jose Almaraz, *Progress in Mexican Penal Legislation*, 24 J. CRIM L. & CRIMINOLOGY 271, 272 (1934) (“The ultimate aims [of punishment in Mexico] are the prevention of crime, *the rehabilitation of the offender* and the elimination of the hopelessly criminal by applying to each type of delinquent the education, adaptation or correction that his condition and the protection of society demand”) (emphasis added).

⁶⁸ Mary Jordan, *Convicts are Condemned to a Paradise in Mexico*, WASH. POST, Feb. 3, 2002, at A22. In the United States, contrary to Mexican jurisprudence, Americans favor life imprisonment without parole. Richard C. Dieter, *Sentencing For Life: Americans Embrace Alternatives to the Death Penalty*, Apr. 1993, <http://www.deathpenaltyinfo.org/article.php?scid=45&did=481> (last visited Feb. 22, 2007).

⁶⁹ Devin R. Reitz, *The Disassembly and Resassembly of U.S. Sentencing Practices*, in SENTENCING AND SANCTIONS IN WESTERN COUNTRIES 238-39 (Michael Tonry & Richard S. Frase eds., 2001). See also ANDREW VON HIRSCH ET AL., CRIMINAL DETERRENCE AND SENTENCE SEVERITY: AN ANALYSIS OF RECENT RESEARCH 27 (1999). See generally Sentencing Reform Act of 1984, 18 U.S.C. § 3551 *et seq.* (2005). See, e.g., *Mistretta v. United States*, 488 U.S. 361, 367 (1989) (“It rejects imprisonment as a means of promoting rehabilitation, 28 U.S.C. § 994(k), and it states that punishment should serve retributive, educational, deterrent, and incapacitative goals, 18 U.S.C. § 3553(a)(2)”).

⁷⁰ Even though Mexico would not extradite its nationals to the United States, it still had the power to punish those offenders who committed crimes in U.S. territory if three conditions were satisfied: (1) the accused must be located in Mexico; (2) the accused must not have been tried and convicted in the foreign nation; and (3) the crime must also be punishable in Mexico. Código Penal Federal [C.P.F.] [Federal Criminal Code], *as amended*, Artículo 4, Diario Oficial de la Federación [D.O.], 14 de Agosto de 1931 (Mex.). For a comprehensive review on the process of prosecution under Article 4 of the Mexican Federal Criminal Code, see Raquel Arellano, *Article 4 of the Federal District Criminal Code of Mexico: An Alternative to Extradition to the United States*, 1988 ARIZ. J. INT’L & COMP. L. 182, 185-87 (1988).

Article 18.⁷¹ As a result, to escape the United States' rigorous sentencing schemes, many Mexican and U.S. criminals fled to Mexico.⁷²

Indeed, at the moment, it seemed Mexico had the upper hand on extraditions. The United States, nevertheless, was reluctant to shy away from life imprisonment since the offenders it sought were mostly individuals wanted for committing heinous crimes in the United States; but without an extradition guarantee, there was little the United States could do.⁷³ Aside from Article 18 of the Mexican Constitution, however, Article 22, which prohibits "cruel and unusual" punishment, also thwarted the flow of extraditions from Mexico to the United States, given that the Mexican Supreme Court historically characterized life imprisonment as cruel and unusual punishment.⁷⁴

2. ARTICLE 22: "CRUEL & UNUSUAL" PUNISHMENT

Article 22 of the Mexican Constitution prohibits cruel and unusual punishment.⁷⁵ Cruel and unusual punishment is described as any punishment that is inhumane, cruel, infamous, excessive, or any

⁷¹ See October 2001 Decision, *supra* note 11. For a historical summary of life imprisonment, see DIRK VAN ZYL SMIT, *TAKING LIFE IMPRISONMENT SERIOUSLY* 4-7 (2002) (noting that "[t]he gradual introduction of life imprisonment as a formal punishment . . . had much to do with the rise of the . . . Catholic Church" during the Middle Ages).

⁷² See generally J.M. Kalil, *Special Report: Running for the Border*, LAS VEGAS REV.-J., Dec. 15, 2002, available at http://www.reviewjournal.com/lvrj_home/2002/Dec-15-Sun-2002/news/20283915.html.

⁷³ See *Mexico Alters Extradition Rules*, BBC NEWS, Nov. 30, 2005, <http://news.bbc.co.uk/1/hi/world/americas/4483746.stm>.

⁷⁴ See generally PENA INUSITADA, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación*, Sexta Epoca, tomo XX, Febrero de 1959, Tesis Aislada, Página 151 (Mex.); PENAS INUSITADAS Y TRASCENDENTALES, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación*, Quinta Epoca, tomo XLII, Octubre de 1934, Tesis Aislada, Página 2103(Mex.); PENAS INUSITADAS, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación*, Quinta Epoca, tomo XXXI, Enero de 1931, Tesis Aislada, Página 348 (Mex.); see also September 2005 decision, *supra* note 2. PRISIÓN VITALICIA. SE EQUIPARA A ÉSTA LA PENA DE PRISIÓN CUYA DURACIÓN REBASE OSTENSIBLEMENTE EL TIEMPO DE VIDA DEL SER HUMANO, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, Novena Epoca, tomo XIII, Enero de 2006, Tesis XXI/2006 (Mex.) (holding that life imprisonment may surpass an accused's life expectancy).

⁷⁵ PRISIÓN VITALICIA. CONSTITUYE UNA PENA INUSITADA DE LAS PROHIBIDAS POR EL ARTÍCULO 22 CONSTITUCIONAL, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, Novena Epoca, tomo XIII, Octubre de 2001, Tesis P./J. 127/2001 (Mex.) (ruling that life imprisonment is cruel and unusual punishment pursuant to Article 22 of the Mexican Constitution).

punishment that is not consonant with Mexico's penological goals.⁷⁶ Besides banning torture and excessive fines, Article 22 forbids the application of punishments that have not been previously employed in Mexico's jurisprudence.⁷⁷ Hence, because life imprisonment was a punishment that was scarcely imposed in Mexico, the Mexican Supreme Court consistently depicted it as cruel and unusual.⁷⁸

Despite Mexico's reluctance to impose life imprisonment, it failed to stipulate this condition on the U.S.-Mexico Extradition Treaty of 1978.⁷⁹ Therefore, "in the absence of any uniform practice," Mexico relied on its "own humanitarian concepts and national regulations [to] decline to surrender fugitive offenders if they [thought] that the requesting state is known for its harsh treatment toward prisoners."⁸⁰ Even though this proviso was not included in the treaty, in practice Mexico continued to categorically refuse to extradite its nationals to the United States without first being assured that life imprisonment would not be sought.⁸¹

On September 6, 2005, however, the Mexican Supreme Court deemed it necessary to revisit Article 22 and its underpinnings.⁸² This was the third time in less than five years that the Mexican Supreme Court determined whether life imprisonment was constitutional.⁸³ Discarding over seventy years of Article 22 jurisprudence, the Mexican Supreme Court ruled that life imprisonment does not violate Article 22,⁸⁴ thereby stirring a gamut of criticism. Some commentators argued that the Mexican Supreme Court's ruling was in response to U.S. pressure,⁸⁵

⁷⁶ See PENA INUSITADA. SU ACEPCIÓN CONSTITUCIONAL, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, Novena Época, tomo XIV, Octubre de 2001, Tesis P./J. 126/2001 (Mex.).

⁷⁷ See *supra* note 76 and accompanying text.

⁷⁸ See *supra* note 75 and accompanying text.

⁷⁹ See U.S.-Mexico Extradition Treaty, *supra* note 10; see also SATYADEVA BEDI, EXTRADITION: A TREATISE ON THE LAWS RELEVANT TO THE FUGITIVE OFFENDERS WITHIN AND WITH THE COMMONWEALTH COUNTRIES 439 (2002) (noting that no bilateral or multilateral convention has been signed that requests states not to inflict cruel and unusual punishment).

⁸⁰ BEDI, *supra* note 79, at 439.

⁸¹ Schabas, *supra* note 12, at 604.

⁸² See John Rice, *Mexico Supreme Court Approves Virtual Lifetime Sentences, Could Affect Extraditions*, SAN DIEGO UNION-TRIBUNE, Sept. 25, 2005, available at <http://www.signonsandiego.com>.

⁸³ Carlos Avilés, *Dirime la Corte Penas Vitalicias*, EL UNIVERSAL, Sept. 5, 2005, at 28.

⁸⁴ See September 2005 decision, *supra* note 2.

⁸⁵ Alfredo Mendez Ortiz, *La Decision, Por Presiones de EU Para Que Se Extradite a Narcos: Juristas*, LA JORNADA, Sept. 8, 2005, available at <http://www.jornada.unam.mx/2005/09/08/053n2soc.php>. See also Roger F. Noriega, Assist. Sec'y for W. Hemis. Affairs, U.S.

namely, the recently enacted Foreign Operations, Export Financing, and Related Programs Appropriations Act, which prohibits financial assistance to any country that refuses to extradite on the grounds of life imprisonment.⁸⁶ Others believed this landmark ruling represented the latest chapter in Mexico's continuing effort to improve its vexing extradition policies with the United States.⁸⁷ Still others, however, considered this as a step forward to combat Mexico's astounding crime rates in Ciudad Juarez.⁸⁸

Whatever the underlying reasons, the Mexican Supreme Court's ruling still represents a transcending decision that may lead to a temporary upsurge of extraditions to the United States. Although it is difficult to predict the magnitude of this unparalleled ruling, it is likely that the Mexican Supreme Court's decision to impose life imprisonment will be short-lived because Mexican *jurisprudencia* (case law), as with any civil legal system, lacks judicial clout.

B. MEXICAN JURISPRUDENCIA AND HAPHAZARD INTERPRETATIONS

Perhaps the chief distinction between Mexico and the United States is that Mexico subscribes to a civil legal system.⁸⁹ Unlike common law states, the Mexican civil system does not have jury trials or

Relationship with Mexico, Statement before the Senate Foreign Relations Committee (Mar. 23, 2004) ("We have also voiced our concerns about the quantity and type of evidence required by the Mexican courts. Denial of extradition by courts asserting a 'lack of evidence' is in part due to differences between our two legal systems. We are working with the Mexican Government to address these issues and hope that the Mexican Supreme Court will have occasion to revisit the issue of life imprisonment."), available at <http://www.state.gov/p/wha/rls/rm/30790.htm>.

⁸⁶ H.R. 3057, 109th Cong. § 583 (2006) ("None of the funds made available in this Act for the Department of State, other than funds provided under the heading 'International Narcotics Control and Law Enforcement', may be used to provide assistance to the central government of a country with which the United States has an extradition treaty and which government has notified the Department of State of its refusal to extradite to the United States any individual indicted for a criminal offense for which the maximum penalty is life imprisonment without the possibility of parole, unless the Secretary of State certifies to the Committees on Appropriations in writing that the application of this restriction to a country or countries is contrary to the national interest of the United States").

⁸⁷ Jesus Aranda, *Allana la Corte el Camino Para Extraditar a Connacionales a EU*, LA JORNADA, Feb. 1, 2006, available at <http://www.jornada.unam.mx/2006/02/01/018n2pol.php> (noting that the death penalty is the only limitation on extradition requests).

⁸⁸ See *Pide el PVEM Legislar Sobre Cadena Perpetua*, DIARIO DE MÉXICO, July 5, 2004, http://www.diariodemexico.com.mx/?module=displaystory&story_id=29668&edition_id=362&format=html.

⁸⁹ FRANCISCO A. AVALOS, *THE MEXICAN LEGAL SYSTEM* 13 (1992) ("Mexico's legal system stems from the civil law tradition, [which] occurred as a result of Mexico's long association with Spain [and France]").

any notion of stare decisis.⁹⁰ With the absence of stare decisis, “appellate decisions have no legally binding effect in Mexico.”⁹¹ Suffice it to say that the legal character and breadth of Mexican *jurisprudencia* has always been a contentious subject “given the rigid doctrinal separation of the legislative and adjudicative functions normally prevailing in civil law systems.”⁹²

To create *jurisprudencia*, the Mexican Supreme Court must hear the case en banc, and it must render five consecutive decisions to the same effect, uninterrupted by any incompatible rulings.⁹³ Accordingly, at this juncture, the September 6, 2005, decision is not binding case law and may be easily overruled unless four other similar decisions are issued consecutively. Although Mexican case law carries little weight, the Mexican Supreme Court, with its haphazard interpretations, has clearly led the nation along a conflicting path in its review of extradition proceedings.

1. SANCTIONING THE EXTRADITION OF MEXICAN NATIONALS

On January 18, 2001, for example, the Mexican Supreme Court declared that the extradition of Mexican nationals was legal.⁹⁴ Marking a drastic change in Mexico’s extradition policies, this ruling gave the Mexican federal government discretionary power, as specified under the U.S.-Mexico Extradition Treaty of 1978, to extradite Mexican nationals if they were sentenced according to Mexican guidelines.⁹⁵ However, almost nine months after sanctioning extraditions to the United States, on October 2, 2001, the Mexican Supreme Court clarified its previous ruling.⁹⁶ Constricting its previous interpretation of the U.S.-Mexico Extradition Treaty, the Mexican Supreme Court held that Mexico would not extradite suspects who faced a potential life sentence in the country

⁹⁰ VARGAS, *supra* note 60, at 6.

⁹¹ *Id.*

⁹² RICHARD D. BAKER, JUDICIAL REVIEW IN MEXICO: A STUDY OF THE AMPARO SUIT 252 (1971).

⁹³ *Id.* at 256. These decisions are called *tesis jurisprudenciales* (jurisprudential theses), which normally consist of a brief restatement of a single point of law abstracted and summarized from the *considerandos* (conclusions of law). *Id.* See, e.g., Ley de Amparo [L.A.] [Constitutional Protection Law], as amended, Artículo 192, Diario Oficial de la Federación [D.O.], 10 de Enero de 1936 (Mex.).

⁹⁴ January 2001 Decision, *supra* note 11.

⁹⁵ Maaskamp, *supra* note 12, at 746.

⁹⁶ October 2001 Decision, *supra* note 11.

requesting extradition.⁹⁷ Based on Article 22 of the Mexican Constitution, which prohibits life imprisonment, the Mexican Supreme Court held that the nation requesting extradition must provide assurances that life imprisonment would not be imposed.⁹⁸ Accordingly, the person extradited would not be excluded from those civil liberties originally entrusted by the Mexican Constitution.⁹⁹ The requesting nation, therefore, had to guarantee that no unusual punishment would be imposed at the time the formal petition was made or within sixty days of the request.¹⁰⁰

2. DISREGARDING THE U.S.-MEXICO EXTRADITION TREATY OF 1978

Although the Mexican Supreme Court originally denied extraditions to the United States, it still regarded the U.S.-Mexico Extradition Treaty of 1978 as “the law of the land.”¹⁰¹ On April 13,

⁹⁷ *Id.*

⁹⁸ Maaskamp, *supra* note 12, at 749.

⁹⁹ EXTRADICIÓN. NO EXCLUYE AL EXTRADITADO DE DISFRUTAR DE LAS GARANTÍAS INDIVIDUALES QUE CONSAGRA LA CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, Novena Epoca, tomo XIV, Octubre de 2001, Tesis Aislada P. XX/2001, Página 23 (Mex.) (finding that the extraditee shall not be excluded from guarantees under the Mexican Constitution).

¹⁰⁰ EXTRADICIÓN. LA CARTA COMPROMISO DE NO IMPONER PENAS INUSITADAS ES UN REQUISITO DE PROCEDIBILIDAD QUE DEBE SATISFACERSE AL HACER LA PETICIÓN FORMAL DE EXTRADICIÓN, O BIEN, DENTRO DEL TÉRMINO DE SESENTA DÍAS QUE ESTABLECE LA PROPIA LEY, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, Novena Epoca, tomo XIX, Marzo de 2004, Tesis Aislada I. 1o.P90 P, Página 1557 (Mex.) (finding that the requesting party must not impose unusual punishments). *See also* EXTRADICIÓN. EL TRATADO CELEBRADO ENTRE LOS ESTADOS UNIDOS MEXICANOS Y LOS ESTADOS UNIDOS DE AMÉRICA NO ESTABLECE EL REQUISITO DE EXHIBIR CON LA PETICIÓN FORMAL LA CARTA COMPROMISO DE NO IMPONER ALGUNA PENA INUSITADA, POR LO QUE DICHO DOCUMENTO PUEDE PRESENTARSE HASTA ANTES DE LA RESOLUCIÓN QUE LA CONCEDE, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, Novena Epoca, tomo XVII, Febrero de 2004, Tesis Aislada I.7o.P.23 P, Página 1061 (Mex.).

¹⁰¹ *See* EXTRADICIÓN. EL TRATADO CELEBRADO ENTRE LOS ESTADOS UNIDOS MEXICANOS Y LOS ESTADOS UNIDOS DE AMÉRICA, POR SER NORMA ESPECIAL, PREVALECE SOBRE LA LEY DE EXTRADICIÓN INTERNACIONAL, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, Novena Epoca, tomo XVI, Septiembre de 2002, Tesis I.7o.P.10 P, Página 1366 (Mex.) (finding that the U.S.-Mexico Extradition Treaty of 1978 prevails over Mexico’s Law of International Extradition); *see also* TRATADO DE EXTRADICIÓN INTERNACIONAL CELEBRADO ENTRE MÉXICO Y ESTADOS UNIDOS DE NORTEAMÉRICA EL CUATRO DE MAYO DE MIL NOVECIENTOS SETENTA Y OCHO. NO ES INCONSTITUCIONAL POR LA CIRCUNSTANCIA DE QUE EL PRESIDENTE DE LA REPÚBLICA NO LO HAYA

2004, however, the Mexican Supreme Court inexplicably failed to consider the U.S.-Mexico Extradition Treaty of 1978 on pending extradition requests.¹⁰² Instead of resorting to the treaty, the Mexican Supreme Court ruled that the United States must now comply with Section V of Article 10 of Mexico's *Ley de Extradición Internacional* (International Law of Extradition),¹⁰³ a law not previously accounted for in the U.S.-Mexico Extradition Treaty of 1978. Correspondingly, the Mexican International Law of Extradition required a guarantee by the requesting party not to impose life imprisonment.¹⁰⁴ If the requesting country did not observe this qualification, then the extraditee would be afforded *amparo* (constitutional protection)¹⁰⁵ and the extradition request

SUSCRITO PERSONALMENTE, SI INSTRUYÓ AL SECRETARIO DE RELACIONES EXTERIORES PARA SU NEGOCIACIÓN, Y LUEGO LO RATIFICÓ PERSONALMENTE, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, Novena Epoca, Tomo VII, Mayo de 1998, Tesis Aislada P. XLV/98, Página 133 (Mex.) (ruling the U.S.-Mexico Extradition Treaty of 1978 constitutional because it was ratified by the president).

¹⁰² See EXTRADICIÓN. LA CONDICIÓN PREVISTA EN LA FRACCIÓN V DEL ARTÍCULO 10 DE LA LEY DE EXTRADICIÓN INTERNACIONAL ES DE CARÁCTER ADJETIVO Y, POR TANTO, DEBE EXIGIRSE PARA TRAMITAR UNA SOLICITUD FORMULADA POR LOS ESTADOS UNIDOS DE AMÉRICA, PORQUE EL ARTÍCULO 13 DEL TRATADO DE EXTRADICIÓN INTERNACIONAL RESPECTIVO REMITE EXPRESAMENTE A DICHA LEY, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, Novena Epoca, Tomo XIV, Octubre de 2001, Tesis Aislada P. XVIII/2001, Página 22 (Mex.); see also EXTRADICIÓN. EFECTO DE LA SENTENCIA QUE OTORGA EL AMPARO CONTRA LA RESOLUCIÓN QUE LA CONCEDE, POR FALTA DEL COMPROMISO A QUE SE REFIERE LA FRACCIÓN V DEL ARTÍCULO 10 DE LA LEY DE EXTRADICIÓN INTERNACIONAL, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, Novena Epoca, tomo XIX, Abril de 2004, Tesis P./J. 26/2004, Página 96 (Mex.) [hereinafter April 2004 decision].

¹⁰³ See April 2004 Decision, *supra* note 102.

¹⁰⁴ Ley de Extradición Internacional [International Extradition Law], *as amended*, Artículo 10 § 5, *Diario Oficial de la Federación* [D.O.], 18 de Mayo de 1999 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/36.pdf>. “El Estado Mexicano exigirá para el trámite de la petición, que el Estado solicitante se comprometa: Que si el delito que se impute al reclamado es punible en su legislación hasta con la pena de muerte o alguna de las señaladas en el artículo 22 constitucional, sólo se impondrá la de prisión o cualquier otra de menor gravedad que esa legislación fije para el caso, ya sea directamente o por substitución o conmutación” (“In dealing with an extradition request, the Mexican state shall require the requesting state, whenever the suspect's crime is punishable by death or any of the punishments enumerated in Article 22 of the Mexican Constitution, to commute a prison sentence or substitute a punishment that is less severe”). *Id.*

¹⁰⁵ See generally HUMBERTO BRISEÑO SIERRA, *TEORÍA Y TÉCNICA DEL AMPARO* (1966). See IGNACIO BURGOA, *EL JUICIO DE AMPARO* 170-71 (1992) (indicating that the writ of *amparo*, similar to a writ of habeas corpus, is a “judicial guarantee” vested in the Mexican Constitution that is employed whenever a law is unconstitutional). The writ of *amparo* is used to protect “private persons from laws or acts of government authorities that are in violation of individual rights guaranteed by the Constitution . . . [and can be used] as an effective device to appeal some decisions of lower federal and local courts for which there is no other appellate recourse.” Lyon

would be denied.¹⁰⁶ This ruling generated confusion among judges and magistrates,¹⁰⁷ begging the question of why the Mexican Supreme Court was arbitrarily relying on the Mexican International Law of Extradition instead of the binding U.S.-Mexico Extradition Treaty of 1978.¹⁰⁸

Based on this astounding criterion, the *Tercer Tribunal Colegiado en Materia Penal del Distrito Federal* (Third Collegiate Circuit Court) granted an *amparo* to Jorge Gustavo Mendoza Pérez, a member of the infamous narco-trafficking organization headed by Arellano Felix,¹⁰⁹ because the United States did not grant all the guarantees established by Mexico's International Extradition Law.¹¹⁰ Since there is no notion of *stare decisis* in Mexico, some lower circuit courts, specifically the *Segundo y Séptimo Tribunales Colegiados en Materia Penal del Distrito Federal* (Second and Seventh Collegiate Circuit Courts), deviated from the Mexican Supreme Court's April 2004 decision, holding that when an extradition treaty exists, like the U.S.-Mexico Extradition Treaty of 1978, Mexico's International Extradition Law should not apply.¹¹¹ Mexico's International Extradition Law is germane, the circuit courts intoned, only when there is no binding extradition treaty with the requesting nation.¹¹² Mexico's Attorney General concurred with the lower courts' posture and stressed the circuit

L. Brinsmade, *Mexican Law—An Outline and Bibliography of English Source Materials Relating to Certain Aspects Thereof*, 6 INT'L LAW. 829, 840 (1972).

¹⁰⁶ See April 2004 Decision, *supra* note 102.

¹⁰⁷ See Noriega, *supra* note 85 (“[A] 2001 Mexican Supreme Court ban on the extradition of fugitives facing life imprisonment without parole, coupled with confusion in some lower courts that are applying the ban too broadly, is a serious concern. This has kept high-level drug traffickers and some of those alleged to have committed the most heinous state crimes from being extradited.”).

¹⁰⁸ See José de Jesús Gudiño Pelayo, *Contemporary Judicial Dialogue in Mexico*, 40 TEX. INT'L L.J. 585, 589 (2004) (“[T]he [Mexican] judicial branch defines delicate topics, such as the normative hierarchy that international treaties will have regarding the internal legal order, the decision of which will depend greatly on the protective reach of the treaties and the manner in which they are applied”).

¹⁰⁹ Carlos Avilés, *Revisan Tratado de Extradición con EU*, EL UNIVERSAL, Jan. 31, 2006, available at <http://www.eluniversal.com.mx/nacion/134617.html>. See also Comunicado de Prensa 073/00, Secretaría de Hacienda y Crédito Público Unidad de Comunicación Social (May 31, 2000), *Posición del Gobierno de México en Relación con la Aplicación de la Ley Estadounidense para la Designación de Narcotraficantes Extranjeros*, available at http://www.apartados.hacienda.gob.mx/boletines_prensa/documentos/2000/b073-00.html.

¹¹⁰ Avilés, *supra* note 109. See also Martín Velasco, *Impide Juez Extradición a EU de “El Taca”*, *Sicario de Narcos*, DIARIO DE MÉXICO, July 10, 2004.

¹¹¹ Avilés, *supra* note 109.

¹¹² See *id.*

split, urging the Mexican Supreme Court to immediately resolve this developing conflict.¹¹³

The Mexican Supreme Court lamentably missed an opportunity to remedy this matter when on September 9, 2004, it granted an *amparo* to Javier Barrón Aragón, who was wanted for homicide in Phoenix,¹¹⁴ because the United States did not abide by Article 10 of Mexico's International Extradition Law.¹¹⁵ While the matter was being disputed, Barrón was freed and escaped.¹¹⁶ The same was about to happen to Héctor (a.k.a. "*El Güero*") Palma Salazar, a notorious Mexican drug lord, but the Mexican Attorney General interjected and prevented his release while Mexico tried to obtain the International Extradition Law guarantees from the United States.¹¹⁷ The Mexican Attorney General once again urged the Mexican Supreme Court to resolve and clarify the extradition process to ameliorate Mexico's cumbersome relationship with the United States.¹¹⁸ A year later, on September 6, 2005, the Mexican Supreme Court came down with its unprecedented decision.¹¹⁹

¹¹³ *See id.*

¹¹⁴ Procuraduría General de la República, *México Extradita a EUA a Presunto Narcotraficante y Detiene a Homicida de Aquel País*, Boletín 1022/04 (Oct. 19, 2004), available at <http://www.whm.pgr.gob.mx/> (follow "Nota completa en la sección de boletines" hyperlink; then follow "Otros boletines" hyperlink; then follow "2004" hyperlink; then follow "Octubre" hyperlink; then follow "1022/04" hyperlink).

¹¹⁵ Avilés, *supra* note 109.

¹¹⁶ EXTRADICIÓN, DETENCIÓN PROVISIONAL CON FINES DE. NO PROCEDE CONCEDER LA LIBERTAD PROVISIONAL BAJO CAUCIÓN, EN TANTO NO SE EXHIBA LA SOLICITUD FORMAL DE EXTRADICIÓN DEL ESTADO REQUIRENTE, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, Novena Época, tomo XVII, Febrero de 2003, Tesis I.7o.P.24 P, Página 1060 (Mex.) (noting that there exists the possibility of a provisional release of a suspect facing extradition if the crime is one that would warrant release if committed in Mexico).

¹¹⁷ Carlos Avilés, *Ambigüedades de Corte Frenan las Extradiciones*, EL UNIVERSAL, Oct. 4, 2005, available at http://www2.eluniversal.com.mx/pls/impreso/noticia.html?id_nota=130299&tabla=nacion.

¹¹⁸ *Id.*

¹¹⁹ *See* September 2005 decision, *supra* note 2.

IV. MARKING A DRASTIC DEPARTURE FROM MEXICAN JURISPRUDENCE

A. THE CONSTITUTIONALITY OF LIFE IMPRISONMENT

Members of Chihuahua's sixtieth Congress brought an action against the state's congress and governor, alleging that Article 27 of Chihuahua's Penal Code and Article 122 of the Criminal Procedure Code, which authorized consecutive prison terms for kidnappings or murders, were unconstitutional.¹²⁰ Because the accumulation of prison terms could surpass one hundred years, their chief contention was exclusively anchored on the premise that these statutes were in derogation of Articles 18 and 22 of the Mexican Constitution because they failed to provide for rehabilitation and amounted to cruel and unusual punishment.¹²¹ The Mexican Supreme Court, nevertheless, ruled Chihuahua's consecutive prison terms constitutional, making *de facto* life imprisonment available only in Chihuahua.¹²² The question remains, therefore, whether other Mexican states will endorse Chihuahua's life imprisonment scheme to abate crime.

Under Article 124 of the Mexican Constitution, each state has the legislative faculty to enact its own penal codes and criminal procedures.¹²³ Despite being vested with this lawmaking autonomy, all Mexican states have chosen not to impose life imprisonment, limiting total prison terms to forty years, regardless of the number or type of charges brought against a defendant.¹²⁴ Cognizant that there is no

¹²⁰ CMDPDH, *supra* note 8.

¹²¹ *See id.*

¹²² *See* September 2005 Decision, *supra* note 2.

¹²³ Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, Artículo 124, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.), *available at* <http://www.constitucion.presidencia.gob.mx/docs/constitucion.pdf>.

¹²⁴ *See generally* Código Penal del Estado de Coahuila [C.P.] [Coahuila Criminal Code], *as amended*, Artículo 336, 30 de Noviembre de 1999 (Mex.) (18 to 40 years in prison for intentional homicide); Código Penal del Estado de Jalisco [C.P.] [Jalisco Criminal Code], *as amended*, Artículo 213, 29 de Enero de 2004 (Mex.) (20 to 40 years in prison for intentional homicide); Código Penal del Estado de Nuevo Leon [C.P.] [Nuevo Leon Criminal Code], *as amended*, Artículo 318, 26 de Marzo de 1990 (Mex.) (25 to 40 years in prison for intentional homicide); Código Penal del Estado de Zacatecas [C.P.] [Zacatecas Criminal Code], *as amended*, Artículo 299, 17 de Mayo de 1986 (Mex.) (16 to 30 years in prison for intentional homicide). The Mexican federal penal system, however, allows for a maximum of 60 years in prison. Código Penal Federal [C.P.F.] [Federal Criminal Code], *as amended*, Artículo 25, Diario Oficial de la Federación [D.O.], 14 de Agosto de 1931 (Mex.).

correlation between tougher sentencing schemes and crime reduction, life imprisonment has been unpopular in virtually all Mexican states.¹²⁵

Although life imprisonment carries little political resonance in Mexico, politicians have recently raised the issue and adopted it into their political platforms—but to no avail. In 2004, for instance, Mexico City's *Secretario de Seguridad Publica del Distrito Federal* (Secretary of Security and Public Safety), Marcelo Ebrard Casaubón, spearheaded a campaign to allow life imprisonment for kidnappers in an attempt to counter the city's staggering crime rates.¹²⁶ To achieve this bold objective, Ebrard Casaubón needed the unyielding government cooperation of neighboring states, namely, Morelos, Estado de México, Tlaxcala, Hidalgo, Puebla, and Querétaro;¹²⁷ however, his punitive measures failed resoundingly.¹²⁸ That same year, Senator Erika Larregui Nagel of the Green Party attempted to amend the Mexican Constitution and the Federal Penal Code to encompass life imprisonment; yet, her efforts, like those of Ebrard Casaubón, were also unsuccessful.¹²⁹ Given that Mexico was recently on the heels of a presidential election, Roberto Madrazo, an unsuccessful presidential candidate for the PRI Party (Revolutionary Institutional Party), proposed life imprisonment for sex offenders.¹³⁰ Although not elected, judging by the recent fate encountered by Ebrard Casaubón and Larregui Nagel, Madrazo might have likewise faced serious opposition from state governments for his intrepid life imprisonment proposal. Apart from the historical state opposition to life imprisonment, the Mexican Supreme Court's ruling may only result in a transient upsurge of extraditions to the United States due, in part, to the Court's embedded structural problems and its inherent limitations.

¹²⁵ Aranda, *supra* note 8.

¹²⁶ *Piden Cadena Perpetua Para Secuestradores*, DIARIO DE MÉXICO, June 22, 2004, available at <http://www.diariodemexico.com.mx> (mentioning Ebrard Casaubón's life imprisonment proposal geared toward kidnappers).

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *See Pide el PVEM Legislar Sobre Cadena Perpetua*, *supra* note 88.

¹³⁰ Evangelina Hernández, *Propone Madrazo Cadena Perpetua a Violadores* (Mar. 8, 2006), <http://www.esmas.com/noticierostelevisa/mexico/518297.html>.

B. A PRECARIOUS JUDICIARY AND THE TEMPORARY UPSURGE OF EXTRADITIONS

Mexico's "judiciary has historically been in the shadow of the executive."¹³¹ Although "[a]lmost all Latin American constitutions have established republican states based on the historical tripartite division of power among the [three political branches]," the executive has always exerted more legal clout than the rest.¹³² Heavily politicized, "[m]any Latin American judicial systems," have been plagued with "corruption, and thus [are] unable, absent significant reforms, to serve as independent and effective guarantors of political and economic rights."¹³³ In response to these deeper structural problems, former Mexican President Ernesto Zedillo Ponce de León, on January 1, 1995, submitted twenty-seven constitutional amendments, which were passed in only ten days,¹³⁴ to "reform the structure and powers of the Mexican federal judicial system."¹³⁵ Serving as a mere rubber stamp, Congress approved President Zedillo's "legislation that was heralded as the cure to the most endemic problems in the administration of justice."¹³⁶

Acting with "executive arrogance and questionable constitutionality,"¹³⁷ President Zedillo fired "all of the current justices on the Supreme Court in order to select his own judges,"¹³⁸ making "the

¹³¹ Alicia E. Yamin & Ma. Pilar Noriega García, *The Absence of the Rule of Law in Mexico: Diagnosis and Implications for a Mexican Transition to Democracy*, 21 LOY. L.A. INT'L & COMP. L.REV. 467, 490 (1999). See also Luis C. Ugalde, *The Transformation of Mexican Presidentialism, 1929-2000*, 25 FLETCHER F. WORLD AFF. 115, 116 (2001) ("The president is the most important figure in Mexican politics, and the presidency is the most powerful organization in the political system").

¹³² Yamin & García, *supra* note 131, at 490-91.

¹³³ LAWYERS COMM. FOR HUMAN RIGHTS & THE VENEZ. PROGRAM FOR HUMAN RIGHTS EDU. & ACTION, *HALFWAY TO REFORM: THE WORLD BANK AND THE VENEZUELAN JUSTICE SYSTEM* 1 (1996).

¹³⁴ Alberto Székely, *Democracy, Judicial Reform, the Rule of Law, and Environmental Justice in Mexico*, 21 HOUS. J. INT'L L. 385, 404 (1999).

¹³⁵ Alexis James Gilman, *Making Amends with the Mexican Constitution: Reassessing the 1995 Judicial Reforms and Considering Prospects for Further Reform*, 35 GEO. WASH. INT'L L. REV. 947, 947 (2003).

¹³⁶ Székely, *supra* note 134, at 404. In addition to changes made to the Mexican Supreme Court, President Zedillo also formed the Federal Council of the Judicature to counter the balance of power between the three political branches. See generally Mario Melgar Adalid, *Mexican Justice Towards the 21st Century: The Federal Council of the Judicature; Formation, Branches, and Operation*, 6 U.S.-MEX. L.J. 23 (1998).

¹³⁷ Gilman, *supra* note 135, at 965.

¹³⁸ Yamin & García, *supra* note 131, at 502.

Court . . . more susceptible . . . to political influence.”¹³⁹ Under the new reforms, when a judicial seat is vacant, for instance, the president must nominate three justices; these require the approval of two-thirds of the senate, up from a single majority vote.¹⁴⁰ The president, however, exercises virtually unfettered discretion in the selection process since “the reform allows the President to appoint a justice to an open seat if his candidates are rejected by the Senate on two successive occasions.”¹⁴¹ Zedillo’s reform gives the president vast tactical leeway, as one commentator suitably noted:

Hypothetically, if the President and the Congress are of different political parties, this presents an opportunity for the President to submit six candidates who are all objectionable—overly political, unqualified, or unacceptable in some other way—to the majority in Congress. The President’s first list would contain three candidates who were entirely repulsive and sure to be rejected by the Congress. The rejection of all the candidates would not be disappointing to the President, who, for his second submission, would nominate a list that was nearly as objectionable, but contained his preferred candidate. Rejection by the Senate would then allow the President to appoint this favored nominee.¹⁴²

Aside from giving the president the power to appoint justices to the Supreme Court with little, if any, opposition, President Zedillo truncated the Mexican Supreme Court from twenty-six to eleven justices and took away the justices’ lifetime tenure.¹⁴³ Under the guise of judicial reform, the justices now serve a fifteen-year term without the possibility for re-appointment,¹⁴⁴ leaving the judiciary institutionally weak and without continuity.¹⁴⁵ Without judicial stability and independence, the survival of life imprisonment may be only momentary, as new justices could enter the Supreme Court with contrasting legal philosophies and

¹³⁹ See generally Zach V. Chayet, *The Selection of Mexican Federal Judges*, 20 CAL. W. INT’L L.J. 3 (1990) (explaining how federal judges were selected before the 1995 reforms).

¹⁴⁰ Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, Artículo 96, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.), available at <http://www.constitucion.presidencia.gob.mx/docs/constitucion.pdf>. Unlike the United States, however, the Mexican Supreme Court—not the President—elects the Chief Justice. Lucio Cabrera A., *History of the Mexican Judiciary*, 11 MIAMI L.Q. 439, 447 (1957).

¹⁴¹ Yamin & García, *supra* note 131, at 502.

¹⁴² Gilman, *supra* note 135, at 963.

¹⁴³ See, e.g., Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, Artículo 94, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.), available at <http://www.constitucion.presidencia.gob.mx/docs/constitucion.pdf>.

¹⁴⁴ *Id.*

¹⁴⁵ See Yamin & García, *supra* note 131, at 502.

overrule this noteworthy decision. A weak judiciary, compounded with the absence of stare decisis and the Court's history of haphazard interpretations, leaves the September 6, 2005, decision and the future of U.S.-Mexico extraditions in limbo.

C. WHY THE MEXICAN SUPREME COURT GOT IT WRONG

Despite the Court's intrinsic limitations, its ruling to impose de facto life imprisonment represents a blatant deviation from Mexico's civil jurisprudence. Contrary to common law, in a civil legal system, the only branch that can reform the constitution is the legislature—not the courts.¹⁴⁶ The judiciary is solely obliged to apply the constitution and its laws.¹⁴⁷ Article 133 of the Mexican Constitution provides that the constitution, the laws of Congress, and every treaty should be the supreme law of the land by which each state must abide, despite conflicting laws.¹⁴⁸

Although life imprisonment is not accounted for in the constitution or the Federal Penal Code, congressional silence does not serve as an impediment for the Mexican judiciary.¹⁴⁹ Under such a controversy, courts must abide by a judicial interpretation that is in conformity to the general principles of the law.¹⁵⁰ Life imprisonment,

¹⁴⁶ Raul Carranca y Rivas, *Pifia de los Ministros*, EL SOL DE MÉXICO, Sept. 8, 2005, available at <http://www.doctorraulcarrancayrivas.com/050908.htm>.

¹⁴⁷ *Id.*

¹⁴⁸ Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, Artículo 133, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.), available at <http://www.constitucion.presidencia.gob.mx/docs/constitucion.pdf>. Article 133 states that: “Esta Constitución, las leyes del Congreso de la Unión que emanen de ella y todos los Tratados que estén de acuerdo con la misma . . . serán la Ley Suprema de toda la Unión. Los jueces de cada Estado se arreglarán a dicha Constitución, leyes y tratados a pesar de las disposiciones en contrario que pueda haber en las Constituciones o leyes de los Estados.” (“This Constitution, the laws of Congress, and all applicable treaties shall be the supreme law of the union. All judges shall abide by the Constitution, all laws, and treaties despite conflicting laws within the Constitution or the laws of each state.”) (emphasis added). *Id.*

¹⁴⁹ Código Civil Federal [C.C.F.] [Federal Civil Code], as amended, Artículo 18, Diario Oficial de la Federación [D.O.], 26 de mayo de 1928 (Mex.) (“El silencio, obscuridad o insuficiencia de la ley no autorizan a los jueces o tribunales para dejar de resolver una controversia.”) (“Silence, obscurity, or insufficiency of the law does not prevent judges or tribunals from resolving the controversy.”).

¹⁵⁰ Código Civil Federal [C.C.F.] [Federal Civil Code], as amended, Artículo 19, Diario Oficial de la Federación [D.O.], 26 de mayo de 1928 (Mex.) (“Las controversias judiciales del orden civil deberán resolverse conforme a la letra de la ley o a su interpretación jurídica. A falta de ley se resolverán conforme a los principios generales de derecho.”) (“Civil judicial controversies should be resolved in conformity with the letter of the law or its judicial interpretation. Absent an applicable law, the matter shall be resolved by resorting to general principles of civil law.”).

however, is not in accordance with Articles 18 and 22 of the Mexican Constitution because it divests individuals of their right to rehabilitation, amounting to cruel and unusual punishment. Thus, “for the judiciary to enunciate new legal norms, that is, norms not founded directly upon pre-existing legislative enactments or constitutional provisions and limited to the clarification and the necessary elaboration of their meaning, [is] an unconstitutional usurpation of power.”¹⁵¹ Article 128 of the Mexican Constitution clearly provides that every federal employee, without exception, should uphold the constitution and the laws that emanate from it.¹⁵² The Mexican Supreme Court, however, by declaring de facto life imprisonment constitutional, blatantly runs afoul from this imperative doctrine.

V.CONCLUSION

For the past ten years, “Mexico has repeatedly failed to respect over 275 extradition requests” to the United States.¹⁵³ Recently, however, extraditions have been slightly increasing. In 2003, for instance, “Mexico extradited thirty-one fugitives to the United States . . .

Aside from the Federal Civil Code, this principle is also embodied in Articles 14 and 16 of the Mexican Constitution. See generally Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, Artículo 14, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.), available at <http://www.constitucion.presidencia.gob.mx/docs/constitucion.pdf> (“En los juicios del orden criminal queda prohibido imponer, por simple analogía, y aún por mayoría de razón, pena alguna que no esté decretada por una ley exactamente aplicable al delito de que se trata. En los juicios del orden civil, la sentencia definitiva deberá ser conforme a la letra o a la interpretación jurídica de la ley, y a falta de ésta se fundará en los principios generales del derecho.”) (“In criminal cases, no penalty shall be imposed by mere analogy or convincing rationale but rather *must be based on a law* which is precisely applicable to the crime in question. In civil suits the *final judgment shall conform to the letter of or the judicial interpretation of the law*; in the absence of those, it shall be based on general principles of the law.”) (emphasis added); see also Dale Beck Furnish, *Judicial Review in Mexico*, 7 SW. J. L. & TRADE AM. 235, 238 (2000).

¹⁵¹ BAKER, *supra* note 92, at 253.

¹⁵² Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, Artículo 128, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.), available at <http://www.constitucion.presidencia.gob.mx/docs/constitucion.pdf>. Article 128 states that: “Todo funcionario público, sin excepción alguna, antes de tomar posesión de su encargo, prestará la protesta de *guardar la Constitución y las leyes que de ella emanen*” (“Every public servant, without exception, before assuming her role, shall *comply with the Constitution and the laws that emanate from it*”) (emphasis added). *Id.*

¹⁵³ *Getting Away with Murder, Is Mexico a Safe Haven for Killers?: The Del Toro Case: Hearing Before the Subcomm. on Criminal Justice, Drug Policy, and Human Resources and the Comm. on Government Reform*, 106th Cong. 2 (1999) (statement of Rep. John L. Mica, Chairman, Subcomm. on Criminal Justice, Drug Policy, and Human Resources).

surpassing the 2002 record of twenty-five.”¹⁵⁴ That same year, “Mexico deported or expelled an additional eighty-eight fugitives to the United States for immigration violations.”¹⁵⁵ Mexico, under President Vicente Fox’s administration, cooperated more closely with the United States to increase extraditions;¹⁵⁶ yet, this upsurge, which will ostensibly increase due to the constitutionality of life imprisonment, will likely be transient because of Mexico’s inherently weak judiciary,¹⁵⁷ the lack of stare decisis, and the Court’s misplaced rationale. Although it is difficult to predict whether this decision on the State of Chihuahua will have a substantial impact on other Mexican states, it is safe to say that foreign relations between Mexico and the United States vis-à-vis extraditions may momentarily improve.

¹⁵⁴ Noriega, *supra* note 85.

¹⁵⁵ *Id.*

¹⁵⁶ K. LARRY STORRS, FOREIGN AFFAIRS, DEFENSE, AND TRADE DIVISION, ISSUE BRIEF FOR CONGRESS; MEXICO–U.S. RELATIONS: ISSUES FOR CONGRESS, at 10 (Dec. 10, 2002), *available at* <http://www.fpc.state.gov/documents/organization/16256.pdf>.

¹⁵⁷ Michael C. Taylor, Why no Rule of Law in Mexico? Explaining the Weakness of Mexico’s Judicial Branch, 27 N.M. L. Rev. 141, 141-42 (1997).