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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**IN RE THE MATTER OF THE
EXTRADITION OF EDGAR ORLANDO
CAMELO-GRILLO**

Case No. CV 16-9026 JVS (SS)
**CERTIFICATION OF
EXTRADITABILITY**
[Dkt. No. 20]

I.

INTRODUCTION

This is a proceeding under 18 U.S.C. § 3184 pursuant to a request by the Republic of Colombia ("Colombia"), through the United States Government ("the Government"), for the extradition of Colombian national Edgar Orlando Camelo-Grillo ("Camelo-Grillo") under the provisions of the Treaty of Extradition between the United States of America and the Republic of Colombia, signed on September 14, 1979, S. Treaty Doc. No. 97-8 (1981) ("Treaty").

On December 6, 2016, the Government filed a Request for Extradition, ("Request," Dkt. No. 16), supported by three multi-

1 document exhibits.¹ (Dkt. No. 17). On January 13, 2017, the
2 Government filed a Memorandum of Law in Support of Extradition.
3 ("Memo.," Dkt. No. 20). Camelo-Grillo filed an Opposition on March
4 16, 2017. ("Opp.," Dkt. No. 24). The Government filed a Reply on
5 March 27, 2017, including one multi-document exhibit.² ("Reply,"
6 Dkt. No. 25). On June 6, 2017, the Court conducted a hearing
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8

9 ¹ Exhibit A contains the declaration of Tom Heinemann, a legal
10 adviser in the Office of the Legal Adviser for the Department of
11 State ("Heinemann Decl."). Attached to the Heinemann declaration
12 are copies of the diplomatic notes formally requesting Camelo-
13 Grillo's extradition and the Treaty pursuant to which extradition
14 is sought. (Request at 1). Exhibit B comprises the documentary
15 evidence, in the original Spanish, that accompanied Colombia's
16 extradition request to the State Department. (Id.). Finally,
17 Exhibit C is an English translation of the documents in Exhibit B.
18 (Id.).

15 The Court will cite to these Exhibits simply as "Exh. A," "Exh.
16 B," and "Exh. C" without any further qualifier. Exhibit C is
17 consecutively paginated, but Exhibit A is not. Accordingly, the
18 Court's citations to the attachments to Heinemann's declaration in
19 Exhibit A will be to the CM/ECF page numbers for that Exhibit in
20 Dkt. No. 17.

21 ² Exhibit A to the Reply contains a diplomatic note to which are
22 attached (1) a request for a legal opinion letter sent by the
23 Colombian Ministry of Justice and Law to the International Legal
24 Affairs division of the Colombian Ministry of Foreign Affairs; and
25 (2) a letter by Judge Jorge Enrique Blanco Diagama of the Colombian
26 Court of Execution of Sentences and Precautionary Measures
27 regarding whether Camelo-Grillo's retrial in 2001 constituted
28 double jeopardy under Colombian law. As submitted, the documents,
all in the original Spanish, were neither authenticated nor
accompanied by an English translation. However, on May 17, 2017,
the Government filed a "Notice of Manual Filing" that certified
the authenticity of the documents submitted with the Reply and
provided English translations. (Dkt. No. 28). Accordingly,
citations to Exhibit A of the Reply will be to the translations at
Dkt. No. 28 ("Reply Exh. A"). Because Reply Exhibit A is not
consecutively paginated, the Court will use the CM/ECF numbers.

1 pursuant to 18 U.S.C. § 3184.³ For the reasons set forth below,
2 the Court hereby CERTIFIES to the Secretary of State of the United
3 States the extraditability of Camelo-Grillo on the charged
4 offenses.

5
6 **II.**

7 **BACKGROUND FACTS**

8
9 The instant extradition request arises from a 2001 decision
10 of the Special Criminal Circuit Court 6 in the Judicial District
11 of Bogota. According to the facts set forth in that decision, late
12 on July 11, 1992, three drive-by shooters in Bogota, Colombia
13 killed a man named John Henry Cely-Pinilla and fled. (Exh. C at
14 88, 90, 92). Shortly thereafter, police officers Julio Cesar
15 Gutierrez-Garcia and Juan Sepulveda-Enciso, tipped off by a witness
16 who saw where the shooters had taken refuge, arrived at a nearby
17 residence in pursuit of the killers. (Id.). Shots were fired at
18 the officers from inside the home, one of which struck and killed
19 Officer Gutierrez-Garcia. (Id. at 88, 90). Lieutenant Leonardo
20 Baron-Salazar followed a trail of blood up to the third floor of
21 the home and concluded that one of the home's occupants had leapt
22 through an open window to a neighboring residence. (Id. at 90).
23 There Lieutenant Baron-Salazar found Camelo-Grillo, injured and
24 bloodied, with a revolver, five cartridges and a grenade. (Id. at

25 _____
26 ³ At the hearing, the Court afforded the Parties an opportunity to
27 submit additional briefing on whether Camelo-Grillo's asylum
28 application is a bar to his extradition, as counsel had contended
during oral argument. On June 27, 2017, Camelo-Grillo's counsel
filed a "Status Report" conceding that the asylum application "does
not present a viable defense to extradition." (Dkt. No. 30 at 1).

1 90-91, 93). Cely-Pinilla's brother, an eyewitness to the drive-by
2 shooting, later identified Camelo-Grillo as one of the shooters in
3 the vehicle. (Id. at 92).

4
5 One year later, on July 12, 1993, a criminal court convicted
6 Camelo-Grillo of the murders of Cely-Pinilla and Officer Gutierrez-
7 Garcia, and of illegal carriage of weapons, and sentenced him to a
8 sixteen-year prison term. (Id. at 88; see also id. at 62-69 (July
9 1993 decision)). Three months later, on September 15, 1993,
10 despite the trial court's certainty that Camelo-Grillo had
11 committed both murders, a reviewing court vacated the conviction
12 for the murder of Cely-Pinilla because the indictment did not
13 properly lay out charges for that crime. (Id. at 88; see also id.
14 at 70-83 (September 1993 decision)). At the same time, the court
15 affirmed the convictions for the murder of Officer Gutierrez-Garcia
16 and for illegal carriage of weapons. (Id. at 83). The court then
17 reduced Camelo-Grillo's sentence to a term of ten years and three
18 months on those two surviving convictions. (Id.).

19
20 Just under two years later, on July 26, 1995, the Colombian
21 Supreme Court of Justice, Criminal Cassation Bench, vacated Camelo-
22 Grillo's original murder convictions on procedural grounds. (Id.
23 at 89; see also id. at 41-52 (July 1995 decision)). According to
24 the court, Camelo-Grillo's case should have been assigned to a
25 newly-created "jurisdiction, which was assigned the duties of
26 investigation and trial" for certain "special" matters, including
27
28

1 homicides of police personnel.⁴ (Id. at 45). Pending reassignment
2 of the murder investigation to the proper tribunal, the court
3 granted Camelo-Grillo “the benefit of provisional release”
4 contingent on the lodgment of a surety and his signing a
5 “commitment” as provided in Article 419 of the Colombian Criminal
6 Procedure Code. (Id. at 50).

7
8 The Colombian Special Terrorism Unit issued an indictment
9 against Camelo-Grillo on April 16, 1996 for the crime of homicide
10 “under Article 8 of Decree 2790/1990, amended by Article 1 of
11 Decree 099/1991[,] and Article 2.2 of Decree 2326/1991, adopted as
12 permanent legislation under Article 12 of Decree 2266/1991.” (Id.
13 at 89). Special Criminal Court 6 in Bogota held a public hearing
14 on April 18, 2001, (id.), and on May 8, 2001, convicted Camelo-
15 Grillo in absentia of the murder of Officer Gutierrez-Garcia. (Id.
16 at 88) (stating that the public hearing in Camelo-Grillo’s 2001
17 “criminal trial [was] conducted in his absence”). The court
18 sentenced Camelo-Grillo to a fifteen-year term of imprisonment,
19 “taking account of the time during which he [had previously been]
20 detained due to this case.” (Id. at 96). Arrest warrants issued
21 on September 18, 2001, (id. at 86-87), and appear to have been re-
22 issued by the Sentences and Precautionary Measures Court in Bogota
23 several times, including on April 12, 2013, (id. at 12-13), and
24 June 9, 2014. (Id. at 14-15). The Government represents, and

25
26 _____
27 ⁴ While the Supreme Court declared the murder convictions a nullity,
28 it affirmed the conviction for unlawful carriage of weapons because
the “investigation and trial of which [Camelo-Grillo] was the
object was pursued by the natural and originally competent
authority” on that count. (Id. at 46).

1 Camelo-Grillo does not dispute, that the warrants "remain active
2 and enforceable." (Memo. at 3).

3
4 On June 9, 2015, Colombia tendered a diplomatic note to the
5 Department of State requesting Camelo-Grillo's extradition to serve
6 the remainder of his sentence for Officer Gutierrez-Garcia's
7 murder. (Exh. A at 5). Fourteen months later, on August 12, 2016,
8 the Government filed a complaint in this Court for Camelo-Grillo's
9 arrest and extradition. See United States v. Edgar Orlando Camelo-
10 Grillo, C.D. Cal. Case No. M 16-1621 DUTY, Dkt. No. 1.⁵ Camelo-
11 Grillo was captured in Los Angeles three days later, on August 15,
12 2016. (Exh. A at 7). On September 29, 2016, Colombia submitted
13 another diplomatic note to the State Department, (id. at 6), to
14 which it attached a letter from the Execution of Sentences and
15 Precautionary Measures Court 24 in Bogota responding to the
16 Government's question in a "Verbal Note of September 12, 2016"
17 concerning the statute of limitations in Camelo-Grillo's case.
18 (Id. at 7-8). The instant Request for Extradition followed on
19 December 6, 2016.

20
21 **III.**

22 **LEGAL STANDARDS**

23
24 "'Extradition from the United States is a diplomatic process'
25 that is initiated when a foreign nation requests extradition of an
26 individual from the State Department." Manta v. Chertoff, 518 F.3d

27 _____
28 ⁵ That action was consolidated with the instant action on December
6, 2016 upon the filing of the Request.

1 1134, 1140 (9th Cir. 2008) (quoting Prasoprat v. Benov, 421 F.3d
2 1009, 1010 (9th Cir. 2005)). As such, “[e]xtradition is a matter
3 of foreign policy entirely within the discretion of the executive
4 branch, except to the extent that the statute [18 U.S.C. § 3184]
5 interposes a judicial function.” Vo v. Benov, 447 F.3d 1235, 1237
6 (9th Cir. 2006). The Ninth Circuit has recently summarized the
7 extradition process, and the judiciary’s limited role in it, as
8 follows:

9
10 The process begins when the foreign state seeking
11 extradition makes a request directly to the U.S.
12 Department of State. If the State Department determines
13 that the request falls within the governing extradition
14 treaty, a U.S. Attorney files a complaint in federal
15 district court indicating an intent to extradite and
16 seeking a provisional warrant for the person sought.
17 See [Vo, 447 F.3d at 1237]; see also 18 U.S.C. § 3184.
18 Once the warrant is issued, the district court, which
19 may include a magistrate judge, conducts a hearing to
20 determine “whether there is ‘evidence sufficient to
21 sustain the charge under the provisions of the proper
22 treaty or convention,’ or, in other words, whether there
23 is probable cause.” Vo, 447 F.3d at 1237 (quoting in
24 part 18 U.S.C. § 3184).

25
26 The Supreme Court has described these extradition
27 hearings to determine probable cause as akin to a grand
28 jury investigation or a preliminary hearing under

1 Federal Rule of Criminal Procedure 5.1. See, e.g.,
2 Charlton v. Kelly, 229 U.S. 447, 461-62, 33 S. Ct. 945,
3 57 L. Ed. 1274 (1913); Benson v. McMahon, 127 U.S. 457,
4 463, 8 S. Ct. 1240, 32 L. Ed. 234 (1888); [Ronald J.
5 Hedges, *International Extradition: A Guide for Judges*
6 (Federal Judicial Center 2014) ("FJC Manual")] at
7 10. . . . We have said that the extradition court's
8 review is limited to determining, first, whether the
9 crime of which the person is accused is extraditable,
10 that is, whether it falls within the terms of the
11 extradition treaty between the United States and the
12 requesting state, and second, whether there is probable
13 cause to believe the person committed the crime charged.
14 See, e.g., Cornejo-Barreto v. Seifert, 218 F.3d 1004,
15 1009 (9th Cir. 2000), overruled on other grounds by
16 Trinidad y Garcia v. Thomas, 683 F.3d 952, 957 (9th Cir.
17 2012) (en banc); see also Zanazanian v. United States,
18 729 F.2d 624, 625-26 (9th Cir. 1984) (describing the
19 inquiry as "whether: [1] the extradition judge had
20 jurisdiction to conduct proceedings; [2] the extradition
21 court had jurisdiction over the fugitive; [3] the
22 extradition treaty was in full force and effect; [4] the
23 crime fell within the terms of the treaty; and [5] there
24 was competent legal evidence to support a finding of
25 extraditability").

26
27 [¶] . . . [T]he scope of the extradition court's review
28 "is limited to a narrow set of issues concerning the

1 existence of a treaty, the offense charged, and the
2 quantum of evidence offered. The larger assessment of
3 extradition and its consequences is committed to the
4 Secretary of State." [United States v. Kin-Hong, 110
5 F.3d 103, 110 (1st Cir. 1997)]. . . . [C]ourts have
6 emphasized that "[t]he person charged is not to be tried
7 in this country for crimes he is alleged to have
8 committed in the requesting country. That is the task
9 of the . . . courts of the other country." [Eain v.
10 Wilkes, 641 F.2d 504, 508 (7th Cir. 1981)]; see FJC
11 Manual at 10 ("An extradition hearing is not a criminal
12 trial and is not intended to ascertain guilt."). So
13 long as "the judicial officer determines that there is
14 probable cause, he 'is required to certify the
15 individual as extraditable to the Secretary of State.'" "
16 Vo, 447 F.3d at 1237 (quoting Blaxland v. Commonwealth
17 Dir. of Pub. Prosecutions, 323 F.3d 1198, 1208 (9th Cir.
18 2003)).

19
20 Given the limited nature of extradition proceedings,
21 neither the Federal Rules of Evidence nor the Federal
22 Rules of Criminal Procedure apply. See Mainero v. Gregg,
23 164 F.3d 1199, 1206 (9th Cir. 1999); see also Fed. R.
24 Crim. P. 1(a)(5)(A). Instead, 18 U.S.C. § 3190 provides
25 that evidence may be admitted as long as the evidence is
26 authenticated and would "be received for similar
27 purposes by the tribunals of the foreign country from
28 which the accused party shall have escaped." The

1 accused, however, does not have the right to introduce
2 evidence in defense because that would require the
3 government seeking his extradition "to go into a full
4 trial on the merits in a foreign country." [Collins v.
5 Loisel, 259 U.S. 309, 316 (1922)] (quoting In re Wadge,
6 15 F. 864, 866 (S.D. N.Y. 1883)). . . . [¶]

7
8 If the extradition court determines that there is
9 probable cause to extradite, it enters an order
10 certifying extradition to the Secretary of State, who
11 ultimately decides whether to surrender the individual
12 to the requesting state. 18 U.S.C. § 3186; Vo, 447 F.3d
13 at 1237; [Quinn v. Robinson, 783 F.2d 776, 789 (9th Cir.
14 1986)]; Exec. Order No. 11,517, 35 Fed. Reg. 4,937 (Mar.
15 19, 1970), reprinted in 18 U.S.C. § 3193 Historical &
16 Revision Notes.

17
18 Santos v. Thomas, 830 F.3d 987, 991-93 (9th Cir. 2016) (en banc);
19 see also Manta, 518 F.3d at 1140 (the court "must certify the
20 extradition" if it concludes that "the crime is extraditable" and
21 that "there is probable cause to sustain the charge"). A
22 certification of extraditability "can only be challenged via a writ
23 of habeas corpus, because the order is not final and there is no
24 other statutory provision for direct appeal of an extradition
25 order." Santos, 830 F.3d at 993.

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IV.
DISCUSSION

For the court to certify that Camelo-Grillo is extraditable, the Government must establish that "(1) the extradition judge ha[s] jurisdiction to conduct proceedings; (2) the extradition court ha[s] jurisdiction over the fugitive; (3) the extradition treaty [is] in full force and effect; (4) the crime [falls] within the terms of the treaty; and (5) there [is] competent legal evidence to support a finding of extraditability." Manta, 518 F.3d at 1140; see also Santos, 830 F.3d at 991 (citing Zanazian, 729 F.2d at 625-26)). All of these criteria are satisfied here.

A. Authority Of Judicial Officer

Section 3184 provides that a magistrate judge is competent to hold the hearing required under the statute when "authorized to do so by a court of the United States." 18 U.S.C. § 3184; see also Santos, 830 F.3d at 991 (the district court, "which may include a magistrate judge," is charged with conducting a section 3184 hearing). Here, the Central District's General Order 05-07 delegates the authority to hear extradition matters to magistrate judges. Accordingly, the undersigned is authorized to conduct extradition proceedings.

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1 **B. Jurisdiction Over The Individual Sought**

2
3 A district court has jurisdiction over a fugitive found within
4 its jurisdictional boundaries. See 18 U.S.C. § 3184 (a judge “may,
5 upon complaint made under oath, charging any person found within
6 his jurisdiction, . . . issue his warrant for the apprehension of
7 the person so charged”); see also Caplan v. Vokes, 649 F.2d 1336,
8 1338 n.2 (9th Cir. 1981) (same); accord Cohen v. Benov, 374 F.
9 Supp. 2d 850, 855 (C.D. Cal. 2005). It is undisputed that Camelo-
10 Grillo was arrested in Los Angeles, and thus was “found” in this
11 district. See generally United States v. Edgar Orlando Camelo-
12 Grillo, C.D. Cal. Case No. M 16-1621 DUTY. Accordingly, the Court
13 has personal jurisdiction over Camelo-Grillo.

14
15 **C. Treaty In Full Force And Effect**

16
17 Section 3184 conditions extradition on the existence of a
18 valid treaty between the United States and the foreign government.
19 Tom Heinemann, of the Office of the Legal Adviser for the Department
20 of State, affirms in his declaration that the extradition treaty
21 between the United States and Colombia is “in full force and
22 effect.” (Heinemann Decl. ¶ 3; see also Exh. A at 11-25 (Treaty)).
23 The State Department’s determination of the continuing validity of
24 a treaty is entitled to deference. See Then v. Melendez, 92 F.3d
25 851, 854 (9th Cir. 1996) (the “continuing validity” of an
26 extradition treaty “presents a political question” for the State
27 Departments of the two countries, whose decisions on the matter
28 are controlling). The Ninth Circuit instructs that “the exchange

1 of diplomatic letters" between the United States and a foreign
2 government regarding an extradition request is compelling evidence,
3 even in the absence of a declaration, of the "respective State
4 Departments' views that the . . . Treaty continues to apply between
5 them." Id. Here, the Treaty's continuing validity is undisputed.

6
7 **D. Extraditable Offense**

8
9 The Government must also prove that the offense charged is an
10 extraditable offense covered under the Treaty and that Camelo-
11 Grillo's actions constituting the offense would be criminal in both
12 the United States and Colombia. Camelo-Grillo's 2001 conviction
13 is for homicide under Article 8 of Columbia's criminal code. (Exh.
14 C at 89). Article 8 criminalizes "crimes of illegal constraint,
15 torture, homicide and personal injury committed against any of the
16 persons" listed in Article 6. (Id. at 33). Article 6 protects,
17 among others, members of the National Police, like Officer
18 Gutierrez-Garcia. (Id. at 32).

19
20 Article 2, paragraph 1 of the Treaty provides that acts are
21 extraditable if they fall within any of the offenses listed in the
22 Appendix, or, even if they are not listed, if they are punishable
23 under both the federal laws of the United States and the laws of
24 Colombia. (Exh. A at 16). The Appendix lists murder as an
25 extraditable offense.⁶ (Id. at 24). When considering whether a
26

27 ⁶ Article 2, paragraph 3 of the Treaty further provides that
28 extradition shall be granted only if the offense is punishable by
imprisonment of one year, and, if the person has already been

1 fugitive's acts fall within the extraditable offenses encompassed
2 by a particular treaty, courts must construe the treaty liberally.
3 Manta, 518 F.3d at 1144; see also Cucuzzella v. Keliikoa, 638 F.2d
4 105, 107 n.3 (9th Cir. 1981) ("[T]reaties should be construed to
5 enlarge the rights of the parties.") (citing Factor v.
6 Laubenheimer, 290 U.S. 276, 293-94 (1933)). Heinemann's
7 declaration confirms that the offense for which Colombia seeks
8 Camelo-Grillo's extradition -- murder of a police officer -- is
9 "covered by Article 2 of the Treaty." (Heinemann Decl. ¶ 5).

10
11 Under the principle of "dual criminality," not only must an
12 offense fall under the rubric of extraditable offenses in the
13 applicable treaty, but the acts constituting the offense must also
14 be "criminal in both jurisdictions." Caplan, 649 F.2d at 1343.
15 The name by which the crime is described in the two countries need
16 not be the same; nor is it necessary that the scope of liability
17 for the crimes be coextensive. Collins, 259 U.S. at 312. Instead,
18 "dual criminality exists if the 'essential character' of the acts
19 criminalized by the law of each country are the same and the laws
20 are 'substantially analogous.'" Manta, 518 F.3d at 1141 (quoting
21 Oen Yin-Choy v. Robinson, 858 F.2d 1400, 1404 (9th Cir. 1988));
22 see also Matter of Extradition of Russell, 789 F.2d 801, 803 (9th
23 Cir. 1986) ("'It is enough if the particular variety [of conduct]
24 was criminal in both jurisdictions.'" (quoting Kelly v. Griffin,
25 241 U.S. 6, 14 (1916))). In determining whether the fugitive's acts
26 would be a crime in the United States, the court may look to
27 _____
28 convicted and sentenced, if "at least" six months of the sentence
remain to be served. (Exh. A at 16-17).

1 "federal law or, if none, the law of the place where the fugitive
2 is found or, if none, the law of the preponderance of the states."
3 Cucuzzella, 638 F.2d 1at 107.

4
5 Here, there is no dispute that the crime of which Camelo-
6 Grillo was convicted -- murder -- is covered by the treaty between
7 the United States and Colombia. In addition, the dual criminality
8 requirement is easily met because if Camelo-Grillo's criminal
9 activity had occurred in the United States, it would be subject to
10 prosecution under 18 U.S.C. § 1111, which criminalizes first and
11 second degree murder. Accordingly, the Court finds that the crime
12 for which Colombia seeks Camelo-Grillo's extradition is an
13 extraditable offense.

14
15 **E. Probable Cause**

16
17 Finally, the Court must determine whether there is "evidence
18 sufficient to sustain the charge," i.e., "probable cause to believe
19 the person committed the crime charged." Santos, 830 F.3d at 991
20 (internal quotation marks and citation omitted). "The probable
21 cause standard applied in extradition proceedings . . . has been
22 described as 'evidence sufficient to cause a person of ordinary
23 prudence and caution to conscientiously entertain a reasonable
24 belief of the accused's guilt.'" Sidali v. I.N.S., 107 F.3d 191,
25 199 (3d Cir. 1997) (quoting United States v. Wiebe, 733 F.2d 549,
26 553 (8th Cir. 1984)); see also In re Extradition of Trinidad, 754
27 F. Supp. 2d 1075, 1081 (N.D. Cal. 2010) (same); Matter of
28 Extradition of Moglia, 813 F. Supp. 1438, 1442 (D. Haw. 1993)

1 (same). Probable cause means a "fair probability" in light of the
2 totality of the circumstances, guided by considerations of
3 "practicality, common sense, [and] a fluid and nontechnical
4 conception of probable cause" United States v. Gourde,
5 440 F.3d 1065, 1069-71 (9th Cir. 2006) (en banc). The court need
6 only determine whether there is competent evidence to justify
7 holding the respondent for trial, not whether the evidence is
8 sufficient to justify conviction. Collins, 259 U.S. at 316; see
9 also United States ex rel. Sakaguchi v. Kaulukukui, 520 F.2d 726,
10 730 (9th Cir. 1975) ("The magistrate's function is to determine
11 whether there is 'any' evidence sufficient to establish reasonable
12 or probable cause[.]").⁷

13
14 The admissibility of evidence in extradition matters is
15 controlled by 18 U.S.C. § 3190, which provides that in extradition
16 hearings, documents may be received in evidence if they are
17 "properly and legally authenticated so as to entitle them to be
18 received for similar purposes by the tribunals of the foreign
19 country from which the accused party shall have escaped"
20 18 U.S.C. § 3190. "[A]uthentication is the only requirement for
21 admissibility of evidence under general United States extradition
22 law." Oen Yin-Choy, 858 F.2d at 1406 (citation omitted); see also
23 Barapind v. Enomoto, 400 F.3d 744, 748 (9th Cir. 2005) (en banc)
24 (per curiam) ("With regard to the admissibility of evidence, the
25 general United States extradition law requires only that the

26
27 ⁷ As "part of the magistrate judge's probable cause analysis," the
28 court is "required to determine whether the party before the court
is the party named in the extradition complaint." Manta, 518 F.3d
at 1143 (internal citation omitted).

1 evidence submitted be properly authenticated.'") (quoting Emami v.
2 United States Dist. Court for the N. Dist. of Cal., 834 F.2d 1444,
3 1451 (9th Cir. 1987)). Competent evidence includes hearsay
4 evidence, "and the usual rules of evidence are not applicable in
5 this context." Then, 92 F.3d at 855 (citations omitted).

6
7 Where, as here, the fugitive has already been convicted, the
8 conviction is often considered dispositive of the existence of
9 probable cause. As the Fourth Circuit has explained,

10
11 The principle that foreign convictions generally
12 constitute probable cause under § 3184 is rooted in
13 comity. . . . "Extradition proceedings are grounded in
14 principles of international comity, which would be ill-
15 served by requiring foreign governments to submit their
16 purposes and procedures to the security of United States
17 courts." Koskotas v. Roche, 931 F.2d 169, 174 (1st Cir.
18 1991). To this end, "[q]uestions about the procedural
19 fairness of another sovereign's justice system . . . are
20 within the purview of the executive branch," as are
21 questions about "whether the requesting nation is
22 sincere in its demand for extradition or is merely using
23 the process as a subterfuge." [Ordinola v. Hackman, 478
24 F.3d 588, 608 (4th Cir. 2007)] (Traxler, J.,
25 concurring). Therefore, we refrain "from delving into
26 and assessing the competence of the requesting
27 government's system of justice." Id. To then conclude
28 that foreign convictions "do not constitute probable

1 cause in the United States would require United States
2 judicial officers to review trial records and,
3 consequently, substitute their judgment for that of
4 foreign judges and juries. Such an inquiry would be
5 inconsistent with principles of comity." [Spatola v.
6 United States, 925 F.2d 615, 618 (2nd Cir. 1991)].

7
8 Haxhiaj v. Hackman, 528 F.3d 282, 290-91 (4th Cir. 2008); see also
9 Skaftouros v. United States, 667 F.3d 144, 156 (2d Cir. 2011)
10 ("[I]t has long been recognized that an extradition judge should
11 avoid making determinations regarding foreign law.").

12
13 Accordingly, it is well accepted that a "foreign conviction
14 entered after a trial at which the defendant was present suffices,
15 in and of itself, to establish probable cause." Haxhiaj, 528 F.3d
16 at 290; see also Sidali, 107 F.3d at 199 (same). However, even a
17 conviction obtained in absentia that is supported by the foreign
18 court's written decision setting forth the facts underlying the
19 conviction has been found to "afford[] a reasonable basis upon
20 which to find probable cause." Id. at 289; see also United States
21 v. Struga, __ F. Supp. 3d __, 2017 WL 491937, at *6-7 (E.D. Mich.
22 Feb. 7, 2017) (issuing certification of extraditability despite
23 concerns that the accused's murder conviction was obtained in
24 absentia); Arambasic v. Ashcroft, 403 F. Supp. 2d 951, 962 (D. S.D.
25 2005) ("[T]he fact that [the accused] was convicted in absentia
26 does not alone warrant a denial of extradition. However, where a
27 conviction is the result of a trial in absentia, the conviction is
28 regarded merely as a charge, requiring independent proof of

1 probable cause.”) (citing M. Basiouni, *International Extradition: United States Law and Practice*, Ch. VIII, § 4.8).

2
3
4 The Court may consider the documents submitted by Colombia in
5 support of its extradition request because the documents have been
6 properly authenticated. (Heinemann Decl. ¶¶ 2-3, 6; Exh. B at i-
7 ii; Exh. C at i; Reply Exh. A at 4). This evidence overwhelmingly
8 establishes that there is probable cause to believe that Camelo-
9 Grillo murdered Officer Gutierrez-Garcia.⁸

10
11 There are two relevant outstanding convictions that inform
12 the Court’s probable cause determination: the July 1993 conviction
13 for illegal carriage of weapons, which the Supreme Court affirmed
14 in 1995, and the 2001 conviction for the murder of Officer
15 Gutierrez-Garcia. Camelo-Grillo was present for his original
16 trial, which resulted in convictions for the murders of Cely-
17 Pinilla and Officer Gutierrez-Garcia, and for illegal carriage of
18 weapons. (Exh. C at 62-69). However, as discussed above,
19 Colombia’s Supreme Court of Justice, Criminal Cassation Bench,
20 later declared the murder convictions (but not the weapons
21 conviction) to be a nullity for having been obtained in an improper
22 jurisdiction. Accordingly, the 1993 convictions cannot, by
23 themselves, directly establish probable cause for Officer

24
25 ⁸ Colombia’s extradition packet includes documentation establishing
26 Camelo-Grillo’s identity, including a fingerprint report, (Exh. C
27 at 27), and information about his height, weight, parents’ names,
28 department of birth, etc. (*Id.* at 20). Camelo-Grillo does not
claim mistaken identity. Accordingly, the Court is satisfied that
the person in custody is the Camelo-Grillo sought by the
extradition request.

1 Gutierrez-Garcia's murder, although the Court must accept as proved
2 the facts supporting the illegal carriage of weapons conviction to
3 the extent that they relate to the murder. The other relevant
4 conviction is, of course, the 2001 in absentia murder conviction.
5 The Court adopts the approach taken by the Fourth Circuit in Haxhiaj
6 and other courts, in which an in absentia conviction, supported by
7 the court's summary of the evidence presented, may provide probable
8 cause.⁹ Haxhiaj, 528 F.3d at 289.

9
10 The evidence shows that the chain of events -- from the drive-
11 by shooting of Cely-Pinilla, to the shoot-out at the home where
12 the perpetrators took refuge and killed Officer Gutierrez-Garcia,
13 to Camelo-Grillo's capture with unlawful weapons in a neighboring
14 residence -- was continuous and swift. (See Exh. C at 93). With
15 respect to the conviction for illegal carriage of weapons, the
16 Supreme Court found that Camelo-Grillo had in his possession a
17 "home made" revolver, five cartridges, and a grenade reserved for
18 use by the Colombian army. (Id. at 42, 88, 91). At the very
19 least, this is conclusive evidence that Camelo-Grillo was in the
20 area and had the means to shoot Officer Gutierrez-Garcia.
21 Additional evidence supporting the 2001 murder conviction provides
22 probable cause to believe that Camelo-Grillo was inside the home
23 with his co-conspirators when the shoot-out occurred. An
24 eyewitness put Camelo-Grillo in the drive-by shooters' vehicle,

25 ⁹ All of the court decisions in this case included detailed,
26 consistent summaries of the evidence. However, for the sake of
27 simplicity, the Court's citations below are to the 1995 Supreme
28 Court decision that affirmed Camelo-Grillo's conviction for illegal
carriage of weapons, and to the 2001 decision finding Camelo-Grillo
guilty of the murder of Officer Gutierrez-Garcia.

1 (id. at 92), and another witness directed police to the home where
2 the shooters had fled. (Id. at 42, 92). When the shooting stopped,
3 Camelo-Grillo was found bleeding, with a fresh gunshot wound to
4 his buttocks, which strongly suggests that he was hit by one of
5 the officers during the shoot-out. (Id. at 42, 46, 91). There is
6 also probable cause to believe that Camelo-Grillo actively
7 participated in the shoot-out. Forensic evidence established that
8 when Camelo-Grillo was found, his revolver had recently been fired,
9 (id. at 91), which strongly suggests that he actually shot the gun.
10 (Id. at 42, 90). Furthermore, Camelo-Grillo appeared desperate to
11 avoid capture, as he jumped from the third floor of the home where
12 he was hiding through an open window into a neighboring residence,
13 despite his recent wounds. (Id. at 42, 88, 91).

14
15 In sum, the evidence supplied by Colombia is competent and
16 establishes that there is probable cause to believe that Camelo-
17 Grillo murdered Officer Gutierrez-Garcia in violation of Article 8
18 of the Colombian criminal code.

19
20 **F. Camelo-Grillo's Defenses**

21
22 Camelo-Grillo raises two primary arguments in his Opposition.
23 First, he claims that the Treaty prohibits extradition where
24 conviction for the offense would constitute double jeopardy, and,
25 alternatively, the dual criminality requirement cannot be met
26 because Camelo-Grillo's 2001 retrial would be prohibited on double
27 jeopardy grounds in the United States. (Opp. at 1-7). Second,
28 Camelo-Grillo maintains that Article 14(7) of the International

1 Covenant of Civil and Political Rights ("ICCPR") also prohibits
2 double jeopardy. (Id. at 7-8). Both of these arguments fail.

3
4 **1. Double Jeopardy**

5
6 Camelo-Grillo contends that the Court may not certify his
7 extraditability because his 2001 conviction was obtained in violation
8 of his rights against double jeopardy. According to Camelo-Grillo,
9 the Treaty bars extradition where the fugitive would be subjected
10 to double jeopardy, and even if the conviction did not violate his
11 rights in Colombia, there can be no dual criminality because his
12 2001 prosecution would have been barred on double jeopardy grounds
13 in the United States.

14
15 As a threshold matter, even if Camelo-Grillo's 2001 conviction
16 had been obtained in violation of his rights against double
17 jeopardy under Colombian law, the Treaty's proscription against
18 extradition in cases of double jeopardy would not apply. Article
19 5(1) of the Treaty specifically provides: "Extradition shall not
20 be granted when the person sought has been tried and convicted or
21 acquitted by the Requested State for the offense for which
22 extradition is requested." (Exh. A at 17). Here, Colombia is the
23 Requesting State, and the United States is the "Requested State."
24 The plain terms of the Treaty proscribe extradition only where the
25 fugitive was tried and either convicted or acquitted in the
26 Requested State (i.e., the United States) and would be subject to
27 retrial for the same offense if he were to be extradited to the
28 Requesting State (i.e., Colombia).

1 A requesting party's retrial of a matter already adjudicated
2 by the requested party would infringe on the comity concerns at
3 the heart of extradition proceedings. However, those concerns are
4 not at issue where the prior proceedings were conducted in the
5 requesting party's jurisdiction. Questions about the "procedural
6 fairness" or "competence" of the foreign sovereign's justice system
7 are matters for the executive branch, not the courts, to consider
8 in extradition proceedings. Haxhiaj, 528 F.3d at 290-91.
9 Accordingly, Article 5(1) will not bar extradition. See In re
10 Extradition of Hurtado, 622 F. Supp. 2d 1354, 1356 (S.D. Fla. 2009)
11 ("Because the treaty between the United States and Peru calls for
12 double jeopardy protection only if the respondent has been
13 convicted or acquitted by the requested state, here the United
14 States, double jeopardy is not a defense to the extradition of
15 Hurtado[,] who was tried and acquitted in the requesting state,
16 Peru.").

17
18 Camelo-Grillo's dual criminality argument is also misplaced.
19 The dual criminality requirement does not consider possible
20 affirmative defenses or procedural rules that would bar prosecution
21 by the requesting or requested party. The question is whether the
22 fugitive's acts would be criminal in both countries. See Manta,
23 518 F.3d at 1141 ("[D]ual criminality exists if the 'essential
24 character' of the acts criminalized by the law of each country are
25 the same and the laws are 'substantially analogous.'" (citation
26 omitted); see also Matter of Extradition of Sidali, 899 F. Supp.
27 1342, 1347 (D. N.J. 1995) ("Clearly, the alleged acts are
28 punishable regardless of the notion of double jeopardy. The only

1 inquiry the Court must make here is whether the alleged crime or
2 act is punishable in each country.”) (emphasis in original). There
3 is no serious dispute that murdering a police officer is unlawful
4 in both Colombia and the United States.

5
6 Finally, it appears likely that the entire predicate to
7 Camelo-Grillo’s arguments -- that the 2001 conviction constituted
8 double jeopardy -- is not well taken. Camelo-Grillo repeatedly
9 claims that he was “acquitted in 1995” of the murder of Officer
10 Gutierrez-Garcia. (See, e.g., Opp. at 4). However, the Supreme
11 Court of Justice, Criminal Cassation Bench, did not acquit Camelo-
12 Grillo when it vacated his murder convictions -- it merely declared
13 them to be a nullity on the procedural ground that they were
14 investigated and tried in the wrong court. (Exh. C at 49). The
15 court specifically referred the matter of Officer Gutierrez-
16 Garcia’s murder to the “Regional Prosecution Offices” for further
17 proceedings. (Id. at 50). Furthermore, Judge Blanco-Diagama’s
18 legal opinion letter affirms that “there was no double
19 incrimination” in Camelo-Grillo’s 2001 conviction, (Reply Exh. A
20 at 13), and that Camelo-Grillo’s due process rights were “respected
21 in the case.” (Id. at 14). The Court need not and does not reach
22 whether Camelo-Grillo’s double jeopardy rights under Colombian law
23 were violated by his 2001 conviction. See Skaftouros, 667 F.3d at
24 156 (judges presiding over section 3184 proceedings should “avoid
25 making determinations regarding foreign law”). However, even if
26 it were appropriate or necessary to do so, which it is not, it
27 would appear that there was no violation. Accordingly, Camelo-
28

1 Grillo's double jeopardy arguments do not persuade the Court that
2 Camelo-Grillo is ineligible for extradition.

3
4 **2. International Covenant Of Civil And Political Rights**

5
6 Camelo-Grillo also summarily argues that Article 14(7) of the
7 ICCPR bars his extradition. (Opp. at 7-8). According to Camelo-
8 Grillo, Article 14(7) provides that "[n]o one shall be liable to
9 be tried or punished again for an offense for which he has already
10 been finally convicted or acquitted" (Id.). Camelo-Grillo
11 has not shown that his rights against double jeopardy were
12 violated. Even if he had, the ICCPR would offer no protection in
13 this proceeding.

14
15 "[A] relator seeking to block extradition by relying on an
16 international agreement must show, at a minimum, that the agreement
17 upon which he relies establishes a judicially enforceable right."
18 Patterson v. Wagner, 785 F.3d 1277, 1284 (9th Cir. 2015). As the
19 Supreme Court has explained, "while treaties "may comprise
20 international commitments . . . they are not domestic law unless
21 Congress has either enacted implementing statutes or the treaty
22 itself conveys an intention that it be 'self-executing' and is
23 ratified on these terms.'" Medellin v. Texas, 552 U.S. 491, 505
24 (2008) (quoting Igartua-De La Rosa v. United States, 417 F.3d 145,
25 150 (1st Cir. 2005) (en banc)); see also Matter of Extradition of
26 Cheung, 968 F. Supp. 791, 803 n.17 (D. Conn. 1997) ("It is only
27 when a treaty is self-executing, when it prescribes rules by which
28 private rights may be determined, that it may be relief for

1 enforcement of such rights.") (internal quotation marks omitted).
2 A "self-executing" treaty "has automatic domestic effect as federal
3 law upon ratification. Conversely, a 'non-self-executing' treaty
4 does not by itself give rise to domestically enforceable federal
5 law. Whether such a treaty has domestic effect depends upon
6 implementing legislation passed by Congress." Medellin, 552 U.S.
7 at 505 n.2.

8
9 It is well settled that the ICCPR does not provide any
10 enforceable right in extradition proceedings because the ICCPR "was
11 ratified 'on the express understanding that it was not self-
12 executing and so did not itself create obligations enforceable in
13 the federal courts.'" Serra v. Lappin, 600 F.3d 1191, 1197 (9th
14 Cir. 2010) (quoting Sosa v. Alvarez-Machain, 542 U.S. 692, 735,
15 (2004) (footnote omitted)); see also Hain v. Gibson, 287 F.3d 1224,
16 1243 (10th Cir. 2002) ("When the Senate ratified the ICCPR, it
17 specifically declared that the provisions thereof were not self-
18 executing" and, "since that time, Congress has never enacted
19 implementing legislation for the ICCPR.") (internal quotation marks
20 and citation omitted). "As a non-self-executing treaty, the ICCPR
21 is not judicially enforceable, and therefore, does not provide
22 . . . a defense to this extradition proceeding." Hurtado, 622 F.
23 Supp. 2d at 1357. Accordingly, even if Camelo-Grillo's 2001
24 conviction had violated his rights against double jeopardy, the
25 ICCPR would not bar his extradition.

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III.

CERTIFICATION AND ORDER

IT IS HEREBY CERTIFIED TO THE SECRETARY OF STATE that the evidence against Edgar Orlando Camelo-Grillo is sufficient to sustain the charge of murder against him in Colombia under the applicable Treaty and protocol; that Camelo-Grillo is extraditable under the aforesaid Treaty and protocol; and that further proceedings in extradition may be conducted.

The extradition request and the supporting documents admitted into evidence during the hearing are properly certified and authenticated. Accordingly, the Court certifies the above findings, and all documents admitted into evidence, to the Secretary of State, pursuant to 18 U.S.C. § 3184.

THIS COURT HEREBY CERTIFIES that it has found Edgar Orlando Camelo-Grillo extraditable to the Republic of Colombia. A warrant may be issued, upon the requisition of the proper authorities of the Republic of Colombia, for the surrender of Edgar Orlando Camelo-Grillo according to the Extradition Treaty.

IT IS FURTHER ORDERED that Edgar Orlando Camelo-Grillo is committed to the custody of the United States Marshal, to be confined without bail until the surrender of Edgar Orlando Camelo-Grillo to the Government of Colombia can be effectuated. 18 U.S.C. § 3184.

