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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

IN THE MATTER OF THE)	NO. ED CV 16-1766-R (KS)
EXTRADITION OF)	
JOSE MANUEL CERVANTES)	
ACEVEDO)	CERTIFICATION OF EXTRADITABILITY
)	
A Fugitive from the Government of)	
Mexico.)	
)	
_____)	
)	
)	

BACKGROUND

The Government of Mexico has requested the extradition of Jose Manuel Cervantes Acevedo (“Acevedo”). Acevedo opposes extradition.

On November 9, 2012, the Government of the United States (“Government”) filed a “Complaint for Arrest Warrant and Extradition” pursuant to 18 U.S.C. section 3184 “In the Matter of the Extradition of Jose Manuel Cervantes Acevedo,” in case number 12-mj-406. Extradition is sought pursuant to the Extradition Treaty between the United States of America and the United Mexican States, 31 U.S.T. 5059, T.I.A.S. 9656 (‘the “Treaty”). (See

1 Complaint, redacted Exhibit 1 in case no. 12-MJ-406, Dkt. No. 1.) Acevedo was arrested in
2 this District on April 18, 2016.

3
4 On August 17, 2016, the Government filed its sealed “Original Formal Extradition
5 Papers Without Copies or Service of Original Formal Extradition Document; and related
6 Exhibits (Dkt. No. 19), along with a Redacted Copy of Formal Extradition Papers, and
7 Request for Extradition (the “Request for Extradition”). (Dkt. No. 27.)¹ The Request for
8 Extradition included, at Exhibit A, the original formal extradition documents; and, at Exhibit
9 B, a diplomatic note from the Government of Mexico bearing ribbons and seals. (Dkt. No.
10 27.) Also on August 17, 2016, the matter was referred to the undersigned United States
11 Magistrate Judge (Dkt. No. 20), and this civil matter was consolidated with the criminal
12 filings made in the matter captioned “In the Matter of the Extradition of Jose Manuel
13 Cervantes Acevedo, A Fugitive from the Government of Mexico,” case number 12-MJ-406.
14 (Dkt. Nos. 21, 22).

15
16 On January 30, 2017, the Government filed the “United States’ Extradition
17 Memorandum” (“Government’s Memorandum”). (Dkt. No. 39.) On March 30, 2017,
18 Acevedo filed his Opposition to Request for Extradition (“Opposition”), along the
19 Declaration of Silvester Cervantes Acevedo (“Silvester Decl.” or “Silvester Declaration”);
20 Declaration of Alejandro Cervantes Acevedo (“Alejandro Decl.” or “Alejandro
21 Declaration”); and Exhibit A, which is a copy of a Certificate of Live Birth for Jose Manuel
22 Cervantes issued by the Los Angeles County Clerk. (Dkt. No. 43.) On June 8, 2017, the
23 Government filed a Memorandum in Opposition to Jose Manuel Cervantes Acevedo’s
24 Opposition (the “Reply”). (Dkt. No. 48.) On June 20, 2017, the Government filed a
25 “Supplement To Government’s Reply in Support of Its Extradition Memorandum;” a
26 Memorandum of Points and Authorities; and Declaration of John J. Lulejian with an
27

28 ¹ Docket No. 27 is the redacted copy of the Formal Extradition Papers and Request for Extradition.

1 accompanying redacted exhibit (“Gov’t’s Supplemental Reply”). (Dkt. No. 50.) The exhibit
2 to the Gov’t’s Supplemental Reply includes a diplomatic note from the Embassy of Mexico
3 to the U.S. Department of State and a certified translation of an affidavit from Esmeralda
4 Garcíá Cervantes (“Garcíá Cervantes”), former Public Prosecutor at the Attorney General’s
5 Office of Michoacan State, who took Alejandro’s 2007 sworn statement as an eyewitness to
6 the murder of Prado Gonzales. (Dkt. No 48, Ex. A. at pp. 3 (diplomatic note); 7-8
7 (affidavit).) Exhibit A also includes a document authenticating Garcíá Cervantes’s affidavit.
8 (*Id.* at p. 10.)

9
10 The Magistrate Judge held an extradition hearing on June 21, 2017. (Dkt. No. 53.)
11 Following the extradition hearing, the Court issued a Minute Order permitting Acevedo to
12 file a response to the Gov’t’s Supplemental Reply and the 2017 affidavit from former
13 Michoacan prosecutor, Garcíá Cervantes. (*See* Dkt No. 54.) On July 14, 2017, Acevedo
14 filed a “Supplemental Response to Government’s Supplement to Government’s Reply in
15 Support of its Extradition Memorandum” (“Acevedo’s Supp. Response”). (Dkt. No. 58.)
16 The matter is now fully briefed and under submission for decision without further oral
17 argument.

18 19 **FINDINGS AN CONCLUSIONS RE: EXTRADITION**

20 21 **I. Jurisdiction**

22
23 This Court has jurisdiction to conduct extradition proceedings pursuant to 18 U.S.C.
24 section 3184, Local Rule 72-1, and General Order No. 05-07 of the United States Court for
25 the Central District of California. The Court has jurisdiction over Acevedo pursuant to the
26 personal jurisdiction requirements of 18 U.S.C. section 3184 because Acevedo was “found”
27 in this district when he was arrested in Riverside County on the extradition warrant on April
28

1 18, 2016. *See In re Extradition of Emilio Valdez Mainero*, 990 F. Supp. 1208, 1216 (S.D.
2 Cal. 1997) (hereafter “*Mainero*”).

3 **II. Treaty**

4
5 The Treaty is in full force and effect. *See* Complaint ¶ 2, Exhibit 1, (Treaty) [Dkt. No.
6 1 in case no. 12-MJ-406]; Government’s Extradition Memorandum at 14.

7
8 **III. Identity**

9
10 Acevedo, a United States citizen, does not contest identity.² *See* Government’s
11 Extradition Memorandum at 14; Opposition at 3. The Jose Manuel Cervantes Acevedo
12 appearing before this Court is the same Jose Manuel Cervantes Acevedo sought by the
13 Government of Mexico.

14
15 **IV. Request for Extradition; Procedural Requirements**

16
17 The Request or Extradition filed with this Court by the Government of Mexico, as
18 augmented by subsequent filings, complies with the procedural requirements of the Treaty.

19
20 **V. Charge**

21
22 A criminal complaint is pending against Acevedo in the community of Jaripo,
23 Municipality of Villamar Michoacan, Mexico, charging Acevedo with aggravated homicide
24 for the stabbing death of his cousin, Rigoberto Prado Gonzalez (“Prado Gonzalez”), on July
25 14, 2007. Request for Extradition [Dkt. No. 27 at pp. 1-12].

26
27 _____
28 ² There is no legal bar precluding extradition of a United States citizen to a foreign country. *Charlton v. Kelly*,
229 U.S. 447, 467 (1913); *and see Mainero*, 990 F. Supp. at 1227-28 (finding probable cause for extradition of U.S.
citizen to Mexico on homicide charges).

1 According to the evidence submitted by Mexico, Acevedo allegedly violated “articles
2 260, 279, section I, paragraph 7, section 1, paragraph 17, section I and provided for by
3 article 267 of the Criminal Code of the State of Michoacan, which was in force at the time of
4 the facts [alleged in this proceeding].” *Id.* at 6; and Request for Extradition (Affidavit of
5 Daisy Alvarez Zavala attaching relevant portions of Federal Criminal Procedure in Mexican
6 Law (State of Michoacan) and Criminal Code of the State of Michoacan), *see* Dkt. No. 27-1
7 at pp. 4-5; 6-8.³

8
9 Article 260 provides: “The crime of homicide is perpetrated by whomever takes
10 another’s life.” (*Id.*) Article 267 calls for “[a]n imprisonment penalty from twenty to forty
11 years shall be imposed upon the person who commits an aggravated homicide.” (*Id.*)
12 Finally, Article 279 of the Michoacan Criminal Code defines aggravated homicide as
13 follows:

14
15 Bodily injuries and homicide are aggravated when

- 16 I. They are committed with premeditation, unfair advantage, malice of
17 aforethought or treachery. Premeditation exists when the defendant
18 intentionally causes an injury, after having thought over the crime he is
19 going to commit. Unfair advantage exists when the perpetrator does not
20 run the risk of been [sic] killed or injured by the victim. Malice of
21 aforethought exists when someone is intentionally taken by surprise or
22 when the perpetrator lies in wait for the victim. Treachery exists when
23 there is a breach of the trust or of the protection that the victim had a
24 right to expect from the person accused.

25 (*Id.*)

26
27

³ Exhibits 1-10 attached to the Request for Extradition are not sequentially numbered, therefore, for ease of
28 reference, the Court cites to these documents using the page identifiers assigned by the court’s CM-ECF docketing
system.

1 **VI. Dual Criminality**

2
3 The Treaty provides that “[e]xtradition shall be granted only if the evidence be found
4 sufficient, according to the laws of the requested Party . . . to justify the committal for trial of
5 the person sought if the offense of which he has been accused had been committed in that
6 place. Treaty, art. 3, May 4, 1978, T.I.A.S. no. 9656 (Complaint, Ex. 1.) “Dual criminality
7 exists if the ‘essential character’ of the acts criminalized by the laws of each country are the
8 same and the laws are ‘substantially analogous.’” *Manta v. Chertoff*, 518 F.3d at 1141. The
9 scope of liability need not be the same. *Id.* In determining whether dual criminality exists,
10 the Court must consider “the totality of the conduct alleged.” *Man-Seok Choe v. Torres*, 525
11 F.3d 733, 737 (9th Cir. 2008), *cert. denied*, 555 U.S. 1139 (2009) (citation and internal
12 quotations omitted). In other words, to support extradition, this Court must determine
13 whether, based on the evidence, the accused could be brought to trial for the same crime in
14 the United States.

15
16 Acevedo is sought by Mexico for alleged aggravated homicide. Acevedo does not
17 dispute that the crime of aggravated homicide is punishable under both the Treaty and
18 California law. Indeed, Acevedo stipulates that all the elements for extradition have been
19 satisfied except probable cause. (Opposition at 3.) Thus, the Court finds that the dual
20 criminality requirement is satisfied.

21
22 **VII. Limited Nature of Present Proceedings**

23
24 The Ninth Circuit has emphasized the very limited role of the court in extradition
25 proceedings:

26
27 An extradition court – in this case the magistrate judge – exercises very limited
28 authority in the overall process of extradition. As we have explained,

1 “[e]xtradition is a matter of foreign policy entirely within the discretion of the
2 executive branch, except to the extent that the statute interposes a judicial
3 function” [citations omitted]. Extradition from the United States is initiated
4 when the nation seeking extradition makes a request directly to the State
5 Department [citation]. “After the request has been evaluated by the State
6 Department to determine whether it is within the scope of the relevant
7 extradition treaty, a United States Attorney . . . files a complaint in federal
8 district court seeking an arrest warrant for the person sought to be extradited.”
9 [citation]. Upon the filing of a complaint, a judicial officer (typically a
10 magistrate judge) issues a warrant for an individual sought for extradition,
11 provided that an extradition treaty exists between the United States and the
12 country seeking extradition and the crime charged is covered by the treaty. 18
13 U.S.C. § 3184. After the warrant issues, the judicial officer conducts a hearing
14 to determine whether there is “evidence sufficient to sustain the charge under
15 the provisions of the proper treaty or convention,” *id.*, or, in other words,
16 whether there is probable cause.

17
18 *Vo v. Benov*, 447 F.3d 1235, 1937 (9th Cir.), *cert. denied*, 549 U.S. 935 (2006).

19
20
21 Because of the limited nature of the proceedings, the person whose extradition is
22 sought is not entitled to the rights available to a defendant in a criminal trial in the United
23 States. *See Neely v. Henkel*, 180 U.S. 109, 122 (1901); *In the Matter of the Extradition of*
24 *Smyth*, 61 F.3d 711, 720-21 (9th Cir.1995). Neither the Federal Rules of Criminal Procedure
25 nor the Federal Rules of Evidence apply to extradition proceedings. *See Fed. R. Crim. P.* 1(a)
26 (5) (rules not applicable to “extradition and rendition of a fugitive.”); *Fed. R. Evid. Rule*
27 1101(d)(3) (except for rules on privilege, evidence rules “do not apply to. . . extradition or
28 rendition”).

1 In determining whether the crime is extraditable and whether probable cause exists,
2 the Magistrate Judge “has no discretionary decision to make.” *Prosoprat v. Benov*, 421 F.3d
3 1009, 1012 (9th Cir. 2005), *cert. denied*, 546 U.S. 1171 (2006) (citations and internal
4 quotations omitted). “If the judge or magistrate judge concludes that ‘the crime is
5 extraditable,’ and that ‘there is probable cause to sustain the charge,’ the judge or magistrate
6 judge must certify the extradition.” *Manta v. Chertoff*, 518 F.3d 1134, 1140 (9th Cir. 2008)
7 (internal citation omitted). “Once a magistrate judge confirms that an individual is
8 extraditable, it is the Secretary of State, representing the executive branch, who determines
9 whether to surrender the fugitive.” *Blaxland v. Commonwealth Director of Public*
10 *Prosecutions*, 323 F.3d 1198, 1208 (9th Cir. 2003).

11 12 **VIII. Evidence**

13 14 **A. Government’s Evidence**

15 16 **a. Alejandro’s 2007 Sworn Witness Statement**

17
18 In support of its Request for Extradition, the Government has submitted certified
19 translations of the following documents: (1) a translation of the arrest warrant issued on
20 August 23, 2007 by the Criminal Trial Court Judge of the Judicial District for Jiquilpan de
21 Juraez, Michoacan against Acevedo for “his probable responsibility for the commission of the
22 crime of aggravated homicide” (Request for Extradition, Ex. 1, Dkt. No. 27); (2) the
23 applicable legal provisions establishing the elements of the crime of aggravated homicide,
24 along with the applicable penalties and statute of limitations based on the Criminal Code of
25 the State of Michoacán (*id.*, Ex. 2); (3) judicial certification from the Michoacan Trial Court
26 Judge indicating that the statute of limitation for the criminal action against Acevedo is July
27 20, 2037 (*id.*, Ex. 3); (4) a sworn witness statement given on July 15, 2007 by Alejandro
28 Cervantes Acevedo (“Alejandro”) (*id.*, Ex. 4; (5) witness statement given on July 17, 2007

1 by Eduardo Ceja Bañales (“E.C.B.”) (*id.*, Ex. 5); (6) a witness statement given in July 2007
2 by Tomas Ceja Valencia (“T.C.V.”) (*id.*, Ex 6); (7) a Forensic Legal Autopsy Certificate for
3 an autopsy performed on July 15, 2007 on the body of Rigoberto Prado Gonzalez and issued
4 “by the forensic medical expert assigned to the office of the Attorney general of the State of
5 Michoacan” (*id.*, Ex. 7); (8) an identification statement given by E.C.B. before a Michoacan
6 Public Prosecutor in February 2010 in which E.C.B. identified Acevedo’s photo from a 6-
7 person photo array (*id.*, Ex. 8); (9) certified copy of Acevedo’s birth certificate (*id.*, Ex. 9);
8 and (10) photographs of Acevedo (*id.*, Ex. 10).

9
10 On the day after Prado Gonzalez’s death, Alejandro gave a sworn statement to
11 Michoacan prosecutor, Garcíá Cervantes, in which he recounted the circumstances leading
12 up to Prado Gonzalez’s death as follows:

13
14 On July 14, 2007 at approximately 5:30 p.m., Alejandro ran into his cousin, Prado
15 Gonzalez. (Request for Extradition, Ex. 4 [Dkt. No. 27 at p. 9].) Alejandro and Prado
16 Gonzalez planned to go dancing but first they went to a ranch and drank beer. (*Id.*) Later the
17 same evening, they drove to the town of Jaripo. (*Id.*) At 11:00 p.m. they arrived at the corner
18 of Lazaro Cadenas and Independencia Street and planned to buy more beers but the corner
19 store was closed. (*Id.* at 9-10.) Alejandro and Prado Gonzalez then approached some guys
20 who were drinking at the corner and asked if they had beers. (*Id.* at 10.) Acevedo,
21 Alejandro’s brother, was among the group of men. (*Id.*) Acevedo asked Alejandro “what the
22 fuck was going on” and started to argue with Alejandro. (*Id.*) A friend in the group asked
23 Alejandro “how they were going to fight if they were brothers.” (*Id.*) Prado Gonzalez
24 approached and told Acevedo “what’s up cousin and Acevedo replied “do you want to know
25 who I am.” (*Id.*) Prado Gonzalez asked Acevedo to calm down, and Acevedo answered “do
26 you want to see what I have?” (*Id.*)

1 Alejandro told Garcíá Cervantes that Acevedo took out an iron-sharpened object with
2 a leather cover and started to chase Prado Gonzalez. (*Id.*) As another member of the group
3 tried to calm Acevedo, Prado Gonzalez tripped and fell. (*Id.*) While Prado Gonzalez was on
4 the ground, Acevedo stabbed him several times in the stomach. (*Id.*) Acevedo then fled on a
5 bicycle. (*Id.*) Alejandro with two other men, E.C.B. and R.A., put Prado Gonzalez in a truck
6 and took him to E.C.B.'s father who was a doctor in Jaripo. (*Id.*) The doctor told them he
7 could not help Prado Gonzalez. His injuries were too severe and they needed to take him to
8 Juquimpan. (*Id.*) While driving to Jiquilpan, they ran off the road and eventually got help from
9 a passing car driven by E.C.B.'s brother, T.C.B., who drove them the rest of the way to the
10 hospital in Jiquilpan, Mexico. (*Id.*) When they arrived at the hospital, a doctor declared
11 Prado Gonzalez dead. (*Id.* at 10-11.)

12
13 Alejandro's 2007 witness statement indicates at the conclusion that "the appearing
14 person read and expressed agreement with its content and signed at the bottom margin of the
15 present record for duly and legal Record." (*Id.* at 11.)

16
17 **b. Other Witness Statements**

18
19 E.C.B. also provided a sworn statement to Garcíá Cervantes. (Request for Extradition,
20 Ex. 5, [Dkt No. 27 at pp. 13-14].) E.C.B. saw Alejandro and the Prado Gonzalez approach
21 but was talking about soccer with Ramiro Acevedo and did not see the stabbing. (*Id.* at 13.)
22 He heard yelling for a "doctor, a doctor" and ran to get his father, who was a doctor. (*Id.*)
23 Alejandro and R.A. drove Prado Gonzalez to the doctor's home in the pickup but E.C.B. did
24 not realized Prado Gonzalez had been stabbed until the doctor told them they needed to get
25 Prado Gonzalez to a hospital. (*Id.*) After the pickup ran off the road trying to reach Jiquilpan,
26 E.C.B. did not continue on to the hospital with Alejandro and Prado Gonzalez. (*Id.* at 14.) He
27 later learned from his parents that Prado Gonzalez had died. (*Id.*) E.C.B. said, "It was until
28 the following day that I heard in the town that it had been [Acevedo] but I did not witness it

1 because I did not see anything at that moment.” (*Id.*) E.C.B. later identified Acevedo in a
2 photo lineup. (Request for Extradition, Ex. 8.)
3

4 In July 2007, T.C.V., the Jaripo doctor, gave a sworn statement to Garcia Cervantes in
5 which he confirmed that he had seen Prado Gonzalez in the pickup on the night of the
6 incident and told Alejandro to “take him to the Regional Hospital of Sahuayo Michoacan
7 because said injured person was in very bad conditions.” (Request for Extradition, Ex. 6 [Dkt.
8 No. 27 at p.16].) When he heard that his other son had helped get Prado Gonzalez to the
9 hospital, the doctor drove to the regional hospital where he learned that the victim had already
10 died. (*Id.*)
11

12 On July 15, 2007, an autopsy was conducted on Prado Gonzalez. (Request for
13 Extradition, Ex. 7 [Dkt. No. 27 at pp. 19-21].) The autopsy determined that Prado Gonzalez
14 had suffered three separate bodily injuries to the abdomen “caused by a sharp weapon” and
15 the cause of death was “hypovolemic shock after a laceration of thoracoabdominal viscera by
16 a sharp weapon.” (*Id.* at pp. 20-21.)
17

18 **c. Michoacan Prosecutor’s 2017 Supplemental Declaration**

19

20 In addition to the witness statements, photographs, and autopsy report submitted with
21 the Extradition Request, on July 19, 2017, the Government filed a Supplemental Reply in
22 Support of its Extradition Memorandum attaching a diplomatic note transmitting a certified
23 translation of a declaration by now-former Michoacan prosecutor, Garciá Cervantes, who had
24 taken the original sworn witness statements in July 2007 of Alejandro, E.C.B., and T.C.V. In
25 her 2017 declaration, Garciá Cervantes states that she took Alejandro’s statement “without
26 coercion of any type used against [Alejandro Cervantes Acevedo] since he himself stated
27 everything he knew regarding the facts . . . Thus he freely and voluntarily appeared as
28 eyewitness.” Supplemental Reply, Exhibit A [Dkt. No. 58 (redacted version)]. The

1 prosecutor further confirmed that during the 2007 interview, “the information was freely and
2 voluntarily provided by ALEJANDRO CERVANTES ACEVEDO while chatting with me.
3 Once said proceeding ended, the statement was read aloud prior to be signed at the end and
4 margin by the deponent.” (*Id.* (capitalization in original)).
5

6 **B. Acevedo’s Evidence**

7

8 Acevedo, through counsel, stipulates “that the first four requirements for extradition
9 have been met,” i.e., (1) the court’s jurisdiction to conduct the extradition proceedings; (2) the
10 court’s jurisdiction over the fugitive; (3) that the extradition treaty is in full force and effect;
11 and (4) the crime falls within the treaty. (Opposition at 3.) Acevedo opposes extradition,
12 however, arguing that sufficient probable cause has not been established to support
13 extradition by “competent legal evidence.” (Opposition at 3-5.) Specifically, Acevedo
14 contends that there is “insufficient probable cause to support a finding that Jose Manuel
15 Cervantes Acevedo is responsible for the death of Rigoberto Prada [sic] Gonzalez.” (*Id.* at 3.)
16

17 In support of his contention, Acevedo presents two declarations: the Declaration of
18 Silvester Cervantes Acevedo (“Silvester Decl.”), dated March 26, 2017; and a Declaration of
19 Alejandro Cervantes Acevedo dated March 20, 2017 at Douglasville, Georgia and translated
20 from English to Spanish by certified interpreter, Adrian Bernal (“Alejandro 2017 Decl.”).
21

22 **1. Declaration of Silvester Cervantes Acevedo**

23

24 Silvester Acevedo states that he is Acevedo’s brother and Prado Gonzalez was his
25 “second cousin.” Silvester Decl. ¶¶ 1-2. He states that his father died in Jaripo, Mexico on
26 June 20, 2007 and he and Acevedo traveled from California to Jaripo to attend their father’s
27 funeral, which took place on June 22, 2007. *Id.* at ¶¶ 5-7. Silvester and Acevedo “decided to
28 stay in Jaripo for a few additional weeks to help [their] mother maintain [the] family’s ranch.”

1 *Id.* at ¶ 8. Silvester states that “[i]n 2007, La Familia, was the dominate drug trafficker and
2 organized crime cartel in the State of Michoacan” and he “believe[s] Gonzalez was involved
3 with La Familia.” *Id.* at ¶¶9-10. Silvester goes on to state that, on July 14, 2007, “Gonzalez
4 was yelling criminal threats directed at Cervantes Acevedo. Threats such as Gonzales [sic]
5 was going to kill Cervantes Acevedo.” *Id.* at ¶12. Silvester states that someone named “Eva”
6 “called Ramon Figueroa, president of Jaripo at the time, to report those threats Gonzalez had
7 made regarding Cervantes Acevedo.” *Id.* at ¶13.

8
9 “At approximately 9 p.m. [Silvester] gave [Acevedo] and his friend a ride into town to
10 meet other persons at the local convenience store,” and while driving into town he “was
11 stopped by local law enforcement, who were searching for Alejandro and Gonzalez, both
12 allegedly were wanted for questioning and suspects in other criminal activity involving an
13 altercation with older men in the town of La Presa.” *Id.* at ¶¶14-15. Silvester “told law
14 enforcement Alejandro and Gonzalez came to [his] mother’s ranch that night, but [Silvester]
15 did not know their current location.” *Id.* at ¶ 16. “Law enforcement allowed [them] to
16 proceed into town” where Silvester says he “dropped [Acevedo] and his friend off at the local
17 convenience store” where “approximately another dozen or more men [were] present” and
18 “immediately went home.” *Id.* at ¶¶ 16-19.

19
20 Silvester states that he was awakened at 3 a.m. by local law enforcement searching for
21 Acevedo and at that time he “learned of the alleged incident” and was “informed Alejandro
22 was in custody.” *Id.* at ¶20. He says that “in the morning, my mother and I went to the jail to
23 figure out what allegedly occurred the previous evening” and he “was approached by four of
24 Gonzalez’s family members, who threatened to kill me.” *Id.* at ¶ 21-24. He says because of
25 “death threats by Gonzalez’s family, my mother and younger sister, Karina Cervantes
26 Acevedo applied for vistas to the United States” and “[a]t no time, thereafter, am I aware of
27 my brother, Alejandro telling any of my friends or family that my brother [Acevedo], stabbed
28 or killed Gonzalez or anyone.” *Id.* at ¶¶24-25.

1 **C. Admissibility Issues**
2

3 In an extradition proceeding, the accused is not entitled to introduce evidence that goes
4 to his defense, but he may offer limited evidence to explain elements in the case against him
5 that would negate a finding of probable cause. *Barapind v. Enomoto*, 400 F.3d 744, 749 (9th
6 Cir. 2005). Further, hearsay statements are competent evidence to support extradition.
7 *Emami v. U.S. Dist. Court for Northern District of California*, 834 F.2d 1444, 1451 (9th Cir.
8 1987). *In re Ryan*, 360 F. Supp. 270, 273 (E.D.N.Y. 1973), *aff'd sub nom. In re Christensen*,
9 478 F.2d 1392 (2d Cir. 1973) (“A determination of probable cause in an extradition
10 proceeding may rest entirely upon hearsay.”) Documents may be received and admitted as
11 evidence if they are “properly and legally authenticated so as to entitle them to be received
12 for similar purposes by the tribunals of the foreign country from which the accused party
13 shall have escaped.” 18 U.S.C. § 3190.
14

15 **1. Government’s Evidence**
16

17 Here, the sworn affidavits and witness statements submitted with the Request for
18 Extradition, including Garcíá Cervantes’s 2017 affidavit attached to the Government’s
19 Supplemental Reply, have been legally authenticated and the translations certified.
20 Accordingly, these documents are received into evidence.
21

22 **2. Acevedo’s Evidence**
23

24 **a. Silvester Declaration is Inadmissible**
25

26 In his declaration, Silvester Cervantes Acevedo’s assertions include: “I believe
27 Gonzalez was involved with La Familia” (Silvester Decl. ¶ 10); that “Gonzalez was yelling
28 criminal threats directed at Cervantes Acevedo” (*id.* at ¶ 12); and that “[d]ue to death threats

1 by Gonzalez’s family, my mother and younger sister, Karina Cervantes Acevedo applied for
2 visas to the United States” (*id.* at ¶ 24). Silvester admits that he “immediately went home”
3 after dropping Acevedo off at the convenience store, so he was not at the scene when
4 Gonzalez was stabbed. (*Id.* at 19.)

5
6 Silvester’s statements appear to contradict the testimony of witnesses that prosecutor
7 García Cervantes interviewed in Mexico on the day after the killing and seem designed to
8 establish a self-defense narrative to explain Acevedo’s actions. This is just the type of
9 evidence that is not admissible in an extradition proceeding. “Evidence of alibi or of facts
10 contradicting the demanding country’s proof or of a defense such as insanity may properly be
11 excluded from the Magistrate’s [extradition] hearing.” *In re: Extradition of Jose Espinoza*
12 *Chavez*, 408 F.Supp.2d 908, 911 (N.D. Cal. 2005) (*citing Shapiro v. Ferrandina*, 478 F.2d
13 894, 901 (2d Cir. 1973) (internal quotations omitted)). Consequently, the Silvester
14 Declaration is not admissible in these proceedings. *Ferrandina*, 478 F.2d at 905 (statements
15 that do not explain the government’s evidence “but would only pose a conflict of credibility”
16 not admissible in extradition proceeding).

17
18 **b. Alejandro’s 2017 Coercion Statements**

19
20 Alejandro’s 2017 declaration asserts that his 2007 statement to the Mexican
21 prosecutor, in which he identified Acevedo as the killer, was obtained by coercion.
22 (Alejandro 2017 Decl. at ¶¶8-9.) Acevedo, *citing Santos v. Thomas*, 830 F.3d 987, 1006 (9th
23 Cir. 2016), argues that Alejandro’s 2017 declaration is not contradictory evidence, but is
24 admissible as evidence that “explains away” or “obliterates” probable cause. (Opposition at
25 5.) Furthermore, Acevedo contends that if the Court accepts the evidence of coercion, then
26 this demonstrates that Alejandro’s 2007 statement is false, which means there is insufficient
27 evidence to support probable cause for Acevedo’s extradition because Alejandro is the only
28 eyewitness who positively identified Acevedo as the assailant. (*Id.*) As discussed below,

1 Alejandro's 2017 Declaration presents evidence that is both contradictory and potentially
2 explanatory, which, following *Santos*, requires a more nuanced assessment on admissibility.
3

4 Courts acknowledge that “[t]he distinction between evidence that ‘explains’ and
5 evidence that ‘contradicts’ is a murky one.” *Chavez*, 408 F. Supp. at 911. In *Santos*, the
6 Ninth Circuit held that evidence that a witness’s inculpatory statement had been obtained
7 through torture and coercion is admissible in an extradition proceeding to the extent that
8 coercion undermined the competence of such evidence. *Santos*, 830 F.3d at 1005. Acevedo
9 contends, therefore, that *Santos* requires that this Court find Alejandro’s original witness
10 statement is false and cannot support probable cause to extradite because his 2017 declaration
11 avers that the 2007 statement was coerced by Mexican authorities. (Opposition at 4-5; *and*
12 *see* Alejandro 2017 Decl. at ¶¶ 8-9.)⁴ But Acevedo reads too much into *Santos* and ignores
13 the Ninth Circuit’s narrow ruling in that case.
14

15 In *Santos*, Mexico sought extradition of a fugitive, Louis Munoz Santos (“Munoz”),
16 wanted for the 2005 kidnapping of a mother and her two young daughter in Nayarit, Mexico.
17 *Santos*, 830 F.3d at 993. The government’s evidence in support of extradition included a
18 witness statement given on March 14, 2006 by one of the alleged co-conspirators, Fausto
19 Librado Rosas Alfaro (“Rosas”) that implicated Munoz as the lookout during the kidnapping.
20 (*Id.* at 994.) At the extradition hearing, to undermine the government’s showing of probable
21 cause, Munoz sought to introduce several statements by witnesses alleging that their prior
22 statements about the circumstances surrounding the kidnapping had been obtained by torture
23

24 ⁴ Acevedo also argues that the evidence supporting probable cause is flawed because of inconsistencies between
25 the autopsy report, which indicates that Prado Gonzalez was stabbed three times, and Alejandro’s 2007 witness
26 statements that “implies that if [Acevedo] did in fact stab Gonzalez, he did so only once.” (*See* Opposition at 5, 7.) In
27 addition, Acevedo contends that the witness statement of E.C.B. (Eduardo Ceje Bañales) “suggesting that he was present
28 at the time of the stabbing is “suspect and more likely than not false.” (*Id.* at 8.) However, these arguments raise factual
disputes regarding the weight and credibility of evidence. Such determinations are beyond the scope of this extradition
proceeding and are properly reserved for trial in the requesting country. *See Collins*, 259 U.S. at 316-17 (“evidence in
defense” that merely “contradict[s] the testimony for the prosecution” may be excluded); *Barapind*, 400 F.3d at 750
 (“extradition courts ‘do[] not weigh conflicting evidence’ in making their probable cause determinations.”)

1 or coercion. (*Id.* at 997.) In particular, Munoz sought to introduce: (1) a statement by Rosas,
2 given on May 25, 2006 two months after his original statement, in which Rosas retracted his
3 original statement; and (2) another statement by Rosas, made on June 20, 2006 where Rosas
4 “denied the parts of his preliminary statement in which he implicated himself” and alleged
5 that police threatened his family and that “he was beaten and threatened on several occasions
6 while in custody.” (*Id.*) The June 20, 2006 statement detailed the alleged torture, including
7 that “he was tied to a chair, had a bag placed over his head, and was struck repeatedly in the
8 chest while being asked what he knew about the kidnapping,” and that he was “held
9 incommunicado for two days” during which time he was periodically beaten. (*Id.*) Another
10 co-conspirator gave a similar statement on March 22, 2006, alleging that his initial statement
11 was “false and had been obtained under torture.” (*Id.* at 998.)
12

13 The extradition court considered the government’s evidence and Munoz’s evidence
14 offered to rebut the showing of probable cause and concluded that Munoz was extraditable
15 and declined to consider the additional evidence Munoz sought to admit concerning the
16 alleged torture and coercion. *Id.* at 999. Relying on the Ninth Circuit’s analysis in *Barapind*
17 concerning recantation evidence, the extradition court concluded that the statements were
18 inadmissible “contradictory” evidence. *Id.* (*quoting Barapind*, 400 F.3d at 749).
19

20 Munoz challenged the extradition order in a petition for habeas corpus. *Id.* The district
21 court affirmed, but distinguished between “‘recantation’ statements that directly contradict a
22 previously offered version of the facts . . . and evidence that a statement was procured by
23 torture.” *Id.* (internal citation omitted). The district court nonetheless concluded that “it was
24 impossible to distinguished between [the co-conspirators’] statements regarding torture, and
25 their recantation of their previous incriminating statements” and found that the torture
26 statements could not be considered, *Id.* A Ninth Circuit panel affirmed that decision in
27 *Munoz Santos v. Thomas*, 779 F.3d 1021, 1026-28 (9th Cir. 2015), but, after *en banc* review,
28 vacated the panel opinion. *Id.* at 1000 (*citing Munoz Santos v. Thomas*, 804 F.3d 998 (9th Cir.

1 2015). In the *en banc* opinion, the circuit court held that “[t]he extradition court should have
2 considered the evidence of coercion because a coerced statement is not competent evidence
3 and cannot support probable cause.” *Id.* at 1001.
4

5 The Ninth Circuit distinguished the recantation statements from those alleging
6 coercion. It reasoned that the co-conspirators’ recantations of their previous admissions were
7 contradictory, because such statements challenge the *credibility* of the original statements,
8 presenting a different version of the facts or offering reasons why the government’s evidence
9 should not be believed.” *Id.* at 1003. But “[r]eliable evidence that the government’s evidence
10 was obtained by torture or correction . . . goes to the *competence* of the government’s
11 evidence.” *Id.* (emphasis in original). Even so, the circuit court concluded it could not
12 resolve the question of whether, after excluding the co-conspirators’ confessions, there was
13 sufficient evidence of probable cause to affirm extradition. *Id.* Therefore, the Ninth Circuit
14 remanded the case to the district court for further proceedings in the extradition court “to
15 address the competency and the sufficiency of the government’s evidence.” *Id.*
16

17 Applying this analysis here, Alejandro’s 2017 statements about coercion are
18 admissible. But his new statements asserting Prado Gonzalez’s alleged involvement in a
19 criminal gang, La Familia, and recasting Gonzalez as the aggressor in the attack, are
20 essentially recantations of his 2007 witness statement and, under *Santos*, these contradictory
21 statements are not admissible. *Santos*, 830 F.3d at 1003. Alejandro’s 2017 assertions of
22 coercion, given some ten years after his original witness statement to the Michoacan
23 prosecutor, do not provide the kind of detailed evidence of torture that the Ninth Circuit
24 considered in *Santos*, but Alejandro nonetheless asserts, albeit in conclusory fashion, that his
25 original 2007 witness statement was coerced. (Alejandro 2017 Decl., ¶¶8-9.) Even so, the
26 2017 declaration does not necessarily explain away or “obliterate” a finding of probable
27 cause in this case.
28

1 *Santos* simply requires that the extradition court *consider* evidence of coercion. As
2 noted, *Santos* did not reach the ultimate issue of probable cause but only ruled on the
3 *admissibility* of the subsequent witness statements containing the allegations of torture.
4 *Santos*, 830 F.3d at 1008 (“Our holding today is narrow: Evidence that a statement was
5 obtained by coercion may be treated as ‘explanatory’ evidence that is admissible in an
6 extradition hearing.”).

7
8 **IX. Probable Cause Determination**

9
10 “An extradition proceeding is not a trial; the relevant determination is confined to
11 whether a prima facie case of guilt exists that is sufficient to make it proper to hold the
12 extraditee for trial.” *Emanmi v. United States District Court for the Northern District of*
13 *California*, 834 F.2d at 1452. “The function of the committing magistrate is to determine
14 whether there is competent evidence to justify holding the accused to await trial, and not to
15 determine whether the evidence is sufficient to justify a conviction.” *Collins v. Loisel*, 259
16 U.S. 309, 316 (1922) (internal citations and quotations omitted). An extradition proceeding
17 thus “makes no determination of guilt or innocence,” but is “designed only to trigger the start
18 of criminal proceedings against an accused,” and “guilt remains to be determined in the
19 courts of the demanding country.” *Sainez v. Venables*, 588 F.3d 713, 717 (9th Cir. 2009),
20 *cert. denied*, 560 U.S. 958 (2010) (citation and internal quotations omitted). The country
21 seeking extradition need not produce all of its evidence, and the Magistrate Judge does not
22 determine whether there exists sufficient evidence to convict. *Id.* at 717; *Quinn v. Robinson*,
23 783 F.2d 776, 815 n.41 (9th Cir.) *cert. denied*, 479 U.S. 882 (1986) (noting well established
24 rule that extradition proceedings are “not to be converted into a dress rehearsal for a trial”)
25 (citation and internal quotations omitted). “[T]he magistrate’s function is to determine
26 whether there is any evidence sufficient to establish reasonable or probable cause.” *Sainez*,
27 588 F.3d at 717 (citation omitted).

1 Acevedo contends that, under *Santos*, Alejandro's 2017 declaration establishes that
2 Alejandro's 2007 statements to the Mexican prosecutor on the night of the killing and
3 implicating Acevedo as the killer was coerced, therefore, the alleged coercion is sufficient
4 prevent a finding of probable cause sufficient to support extradition. (Opposition at 4-6;
5 Alejandro Decl., ¶8.) The Government, citing *Santos*, responds that Alejandro's 2017
6 Declaration raises credibility issues that cannot be resolved in the limited nature of these
7 extradition proceedings. (Reply at 3-5.) Further, the Government presents its own recently
8 obtained evidence in the form of prosecutor García Cervantes's affidavit in which she states
9 that Alejandro's 2007 eyewitness statement was not obtained through coercion. The
10 Government argues that these competing declarations require the Court to weigh the
11 credibility of Alejandro 2017 coercion statements against the credibility of the Mexican
12 prosecutor, and because an extradition court cannot engage in such credibility determinations,
13 such conflicting evidence does not undermine probable cause for extradition. (*See Gov't's*
14 *Supp. Reply* at 1.) *Santos* fully supports the Government's position.

15
16 *Santos* requires that the extradition court *consider* evidence of coercion, but recognizes
17 that the extradition court must still "weigh whether the allegations of coercion are credible,
18 and if so, whether probable cause still exists once the tainted evidence is excluded from the
19 analysis." *Santos*, 830 F.3d at 1004. When, as here, the issue of coercion is contested, *Santos*
20 counsels that

21
22 [t]he extradition court does not have to determine which party's evidence
23 represents the truth where the facts are contested. Where an extradition court
24 first considers evidence that a statement was improperly obtained, but
25 concludes that it is impossible to determine the credibility of the allegations
26 without exceeding the scope of an extradition court's limited review, the court
27 has fulfilled its obligation . . . If the court cannot determine the credibility of the
28

1 allegations (or other evidence) once it has examined them, the inquiry ends.
2 Probable cause is not undermined, and the court must certify the extradition.

3
4 *Id.* at 1007.

5
6 Here, Garcíá Cervantes’s authenticated 2017 affidavit states that Alejandro gave his
7 July 15, 2017 statement voluntarily and “without coercion of any type.” (Supplemental
8 Reply, Exhibit A.)⁵ Even with the admission of Alejandro’s 2017 assertions of coercion, the
9 evidence before the Court regarding possible coercion is at best conflicting, i.e., there are two
10 clearly disputed versions of facts regarding the circumstances under which Alejandro gave his
11 2007 witness statement implicating Acevedo in the Gonzalez murder. After a careful review
12 of the record as a whole, *Santos*, and the oral argument by the parties, the Court finds that
13 Alejandro’s 2017 statements about alleged coercion in 2007, while admissible, do not prevent
14 a finding of probable cause sufficient to support extradition under the Treaty.

15
16 Alejandro’s 2017 Declaration presents a question of the credibility and weight of the
17 conflicting evidence. As noted, in assessing probable cause, the Court does not weigh
18 conflicting evidence and make factual determinations, but determines only whether there is
19 competent evidence to support the belief that the accused committed the charged offense.
20 *Quinn*, 783 F.3d at 815. Here, the Government has presented competent evidence sufficient
21 to support a belief that Acevedo committed the offense of aggravated homicide. Acevedo has
22 presented evidence contradicting the Government’s evidence with respect to the
23 circumstances under which Alejandro gave his 2007 account implicating Acevedo in Prado
24 Gonzalez’s murder, but the Court cannot determine the credibility of the evidence offered by

25
26 _____
27 ⁵ Acevedo does not identify anything in the Treaty prohibiting supplementation of the government’s evidence and
28 does not challenge the supplementation, only its credibility and/or admissibility. Acevedo’s Supp. Response at 4-5.
Consequently, the Court exercises its discretion to allow supplementation. *See e.g., Yordanov v. Milusnic*, No. CV17-
2034-CAS, ___F.Supp.3d___, 2017 WL 1405154, *5 (C.D. Cal. April 18, 2017) (“whether to permit such
supplementation was a question committed to the sound discretion of the extradition court.”)

1 Acevedo against the evidence offered by the Mexican government. That is a matter for trial
2 in Mexico. *See Man-seok Choe v. Torres*, 525 F.3d at 740 (witness’s alleged lack of
3 credibility was “merely a weakness” in the Government’s case, and did not “completely
4 obliterate the evidence of probable cause”) (citations and quotations omitted); *Barapind*, 400
5 F.3d at 749-50 (same); *and see Shapiro v. Ferrandina*, 478 F.2d 894, 905 (2d Cir.), *cert.*
6 *dism’d*, 414 U.S. 884 (1973) (evidence that would poses conflict of credibility “should
7 properly await trial in Israel.”) (Friendly, J.). Because the Court has admitted and considered
8 the allegations of coercion but cannot determine the credibility of the allegations, this, under
9 *Santos*, ends the inquiry and “the court must certify the extradition.” *Santos*, 830 F.3d. at
10 1007.

11
12 Accordingly, the Court finds that the evidence establishes probable cause to believe
13 that Acevedo committed the crime charged against him in Mexico.

14 15 **ORDERS AND CERTIFICATION**

16
17 Based on the above findings, and pursuant to 18 U.S.C. section 3184, this Court
18 certifies that it has found Jose Manuel Cervantes Acevedo extraditable to Mexico with
19 respect to the charge pending against him in Mexico.

20
21 A warrant may issue for the surrender of Jose Manuel Cervantes Acevedo upon the
22 requisition of the proper authorities of the Government of Mexico, according to the terms of
23 the Treaty.

24
25 IT IS FURTHER ORDERED that Jose Manuel Cervantes Acevedo shall remain
26 committed to the custody of the United States Marshal, to be confined without bail until he is
27 surrendered to the Government of Mexico pursuant to the applicable provisions of the Treaty.
28

