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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE TRINIDAD MARTINEZ  
SANTOYO,

Petitioner,

v.

LASHA BOYDEN, et al.,

Respondents.

No. 2:23-cv-00447 DJC JDP

ORDER

Petitioner is represented by counsel and has filed this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 9, 2023, the Magistrate Judge issued Findings and Recommendations herein which were served on both parties and which contained notice that any objections to the Findings and Recommendations were to be filed within fourteen days. (ECF No. 16.) Petitioner has filed objections to the Findings and Recommendations (ECF No. 17) and Respondents have filed a response (ECF No. 18).

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this Court has conducted a *de novo* review. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis.

## BACKGROUND

1  
2 A complaint for Petitioner's arrest and extradition to Mexico was originally filed  
3 on August 1, 2021. (Compl. (*United States v. Martinez Santoyo*, 2:22-cr-00141-TLN-  
4 KJN, ECF No. 1); see *In re Extradition of Jose Trinidad Martinez Santoyo*, 2:21-mj-  
5 00125-KJN, ECF No. 1.) The complaint sought Petitioner's arrest pending possible  
6 extradition based on a warrant for Petitioner's arrest issued in Colotlan, Jalisco,  
7 Mexico for a charge of "Aggravated Intention Homicide with Advantage". (*Id.* at 2.)  
8 Mexican officials allege that Petitioner shot and killed the Decedent, Vela Miranda, on  
9 December 20, 2013, "outside of a pool hall called 'Billar Tenzompa,' located in the  
10 community of Tenzompa, Huejuquilla el Alto, Jalisco, Mexico." (*Id.*)

11 Following Petitioner's arrest, Petitioner was ordered detained pending trial by  
12 Magistrate Judge Kendall J. Newman but was subsequently ordered released on bail  
13 by District Judge Troy L. Nunley pending extradition proceedings. (Order Granting  
14 Mot. for Bail (*United States v. Martinez Santoyo*, 2:22-cr-00141-TLN-KJN, ECF No. 37).)  
15 During extradition proceedings, Petitioner sought to compel production of evidence  
16 related to the Decedent. (Mot. to Compel (*In re Extradition of Jose Trinidad Martinez*  
17 *Santoyo*, 2:21-mj-00125-KJN, ECF No. 37).) Judge Newman, as the extradition court,  
18 granted that request for evidence "regarding whether the witness statements were  
19 obtained by coercion, duress, or torture" but denied the motion as it related to  
20 evidence of the Decedent's alleged ties to drug trafficking and the Los Zetas cartel.  
21 (Order Granting in Part Mot. to Compel (*In re Extradition of Jose Trinidad Martinez*  
22 *Santoyo*, 2:21-mj-00125-KJN, ECF No. 49).)

23 On February 22, 2023, Judge Newman held an extradition hearing. (Minutes of  
24 2/22/23 Hr'g (*In re Extradition of Jose Trinidad Martinez Santoyo*, 2:21-mj-00125-KJN,  
25 ECF No. 54).) At that hearing, Judge Newman found the Government had met its  
26 burden of proof and subsequently issued an order certifying the extradition of  
27 Petitioner. (*Id.*; Order Granting Mot. for Certification of Extradition (*In re Extradition of*  
28 *Jose Trinidad Martinez Santoyo*, 2:21-mj-00125-KJN, ECF No. 54).) Judge Newman

1 also denied the Government's request for Petitioner to be remanded into custody.  
2 (Minutes of 2/22/23 Hr'g; see Order Denying Mot. for Recons. of Pre-Extradition  
3 Release (*In re Extradition of Jose Trinidad Martinez Santoyo*, 2:21-mj-00125-KJN, ECF  
4 No. 58).)

5 Petitioner brought the present Petition for Writ of Habeas Corpus to challenge  
6 Magistrate Judge Newman's February 24, 2023 Order finding that Petitioner could be  
7 extradited to Mexico to be prosecuted for aggravated homicide as well as Judge  
8 Newman's partial denial of Petitioner's Motion to Compel. (ECF No. 1.) Petitioner  
9 subsequently filed a First Amended Petition that challenges these orders on five  
10 grounds: (1) the extradition court erred by denying Petitioner's motion to compel; (2)  
11 there is insufficient and competent reliable evidence to support probable cause; (3)  
12 there is insufficient evidence supporting probably cause for the element of "undue  
13 advantage"; (4) the extradition court erred in excluding Petitioner's explanatory  
14 evidence; and (5) Petitioner's extradition was time-barred under the relevant treaty.  
15 (First Amended Petition (ECF No. 11).) On September 28, 2023, Magistrate Judge  
16 Jeremy D. Peterson, as the referral judge in the present habeas action, issued  
17 Findings and Recommendations recommending that the habeas petition be denied.  
18 (Findings and Recommendations ("F. & R.") (ECF No. 16).) Petitioner has objected to  
19 portions of those Findings and Recommendations. (Pet'r's Obj. (ECF No. 17).)

### 20 **PETITIONER'S OBJECTIONS**

21 Petitioner objects to the Findings and Recommendation on five bases: (1) the  
22 Magistrate Judge erred in finding that the United States does not hold exculpatory  
23 evidence arising from its own investigation of the decedent; (2) the Magistrate Judge  
24 erred in holding that it was Petitioner's burden to enforce the extradition court's clear  
25 order; (3) exclusion of the gunshot residue report from Mexican authorities denied  
26 due process; (4) the Magistrate Judge erred in finding that the decedent was not  
27 armed; and (5) the Magistrate Judge erred in holding that the Sixth Amendment  
28

1 speedy trial right does not apply in this case.<sup>1</sup> (See Pet'r's Obj.)

2 The Court reviews *de novo* "those portions of the report or specified proposed  
3 findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C).

4 On a habeas petition from extradition proceedings, habeas review is limited to  
5 whether "(1) the extradition magistrate had jurisdiction over the individual sought, (2)  
6 the treaty was in force and the accused's alleged offense fell within the treaty's terms,  
7 and (3) there is 'any competent evidence' supporting the probable cause  
8 determination of the magistrate." *Vo v. Benov*, 447 F.3d 1235, 1240 (9th Cir. 2006).

9 **I. Exculpatory Evidence Regarding the Decedent**

10 The Magistrate Judge in the habeas action, Judge Peterson, correctly found  
11 that the Magistrate Judge in the extradition action, Judge Newman, did not abuse his  
12 discretion in ruling that evidence regarding the decedent's alleged connections to  
13 drug dealing and the Los Zetas cartel was not explanatory for purposes of probable  
14 cause.

15 The decision of an extradition court to deny discovery can be reviewed by a  
16 habeas court. See *Quinn v. Robinson*, 783 F.2d 776, 817 n.41 (9th Cir. 1986).

17 However, such a review only examines whether "the magistrate's decision to deny  
18 discovery constituted an abuse of discretion that deprived the accused of due  
19 process." *Id.*

20 During extradition proceedings "neither the Federal Rules of Evidence nor the  
21 Federal Rules of Criminal Procedure apply" and the accused may only admit evidence  
22 that "explain[s] matters referred to by the witnesses for the government[.]" *Santos v.*

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23  
24 <sup>1</sup> The phrasing of Petitioner's objections can lead to confusion as they often do not specify whether the  
25 Magistrate Judge being referenced is Judge Peterson, the Magistrate Judge to whom the present  
26 Habeas Petition was referred, or Judge Newman, the Magistrate Judge who presided over the  
27 extradition proceedings. Where possible, the Court will specify the court or judge in question to avoid  
28 this issue. The Court also notes that the titles of Petitioner's objections do not always accurately reflect  
the actual order of the extradition court. For example, one of Petitioner's objections is that "the  
Magistrate Judge erred in holding that it was Petitioner's burden to enforce the extradition court's clear  
order" despite the Findings and Recommendations making no such holding. (See F. & R. at 3 n.1.) This  
order addresses the actual substance of Petitioner's objection.

1 *Thomas*, 830 F.3d 987, 992 (9th Cir. 2016). Such “explanatory” evidence, evidence  
2 that “might [explain] ambiguities or doubtful elements’ in the government’s case[,]”  
3 differs from “contradictory” evidence, which is evidence that simply contradicts the  
4 evidence of probable cause presented by the government. *Id.* at 993 (citing *Collins v.*  
5 *Loisel*, 259 U.S. 309, 315-16 (1922) and *Carlton v. Kelly*, 229 U.S. 447, 461 (1913)).

6 Here, the extradition court ruled that while evidence related to the use of  
7 torture, duress, or coercion in collecting witness statements needed to be disclosed as  
8 it could potentially be explanatory, evidence related to the decedent’s alleged  
9 involvement in drug trafficking and the Los Zetas drug cartel was, at best,  
10 contradictory and thus not admissible. (Order Granting in Part Mot. to Compel at 7-8.)  
11 Judge Newman reasoned that involvement with the cartel could not negate probable  
12 cause for the incident in question as, unlike the usage of torture or coercion in  
13 obtaining witness statements, the decedent’s involvement in the drug trade did not  
14 have any bearing on “the manner of collection of the witness statements.” (*Id.*)  
15 Further, Judge Newman found that any argument by Petitioner that the evidence must  
16 be disclosed as it could indicate the corruption of Mexican officials would violate “the  
17 diplomatic principle of non-inquiry . . . .” (*Id.* at 8.)

18 Judge Newman did not abuse his discretion in reaching this conclusion and  
19 thus Judge Peterson’s finding to that effect was correct. Unlike concerns about the  
20 manner and method of statement collection, information about a decedent’s cartel  
21 ties cannot properly be considered explanatory as it does not seek to resolve  
22 ambiguities or doubtful elements of the government’s case establishing probable  
23 cause. As suggested by the extradition court, it is not even clear that such evidence  
24 could even be considered contradictory evidence absent some indication of the  
25 relevance of the decedent’s alleged cartel ties.

26 In Petitioner’s original motion to compel as well as in subsequent motions, he  
27 does not provide a clear statement of how such evidence will be relevant, instead  
28 asserting that *Brady* is applicable in extradition actions and arguing the evidence may

1 be relevant by broadly suggesting the evidence could go to the general credibility of  
2 witnesses and the possibility for corruption of Mexican officials. (Motion to Compel at  
3 9-12.) For purposes of extradition proceedings, Petitioner was not permitted to  
4 “impeach government witnesses or produce witnesses whose testimony contradicts  
5 evidence already offered by the government.” *Santos*, 830 F.3d at 993. As such,  
6 Judge Newman made an appropriate determination that this evidence was not  
7 relevant as even if it went to credibility, it would not be explanatory. The possibility  
8 that the evidence might provide some indication of corruption is also similarly not  
9 relevant or explanatory as they have no direct bearing on the existence of probable  
10 cause. See *Prasoprat v. Benov*, 421 F.3d 1009, 1015-16 (9th Cir. 2005).

11 Judge Newman also correctly found (and Judge Peterson correctly confirmed)  
12 that Petitioner was incorrect in contending that the requested evidence must be  
13 provided as *Brady* material. The Ninth Circuit has previously expressly stated that due  
14 process does not require that principles set forth in *Brady* apply to the determination  
15 of probable cause during extradition proceedings. *Merino v. United States Marshal*,  
16 326 F.2d 5, 13 (9th Cir. 1963). Though Petitioner indicates there is a Sixth Circuit case,  
17 *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993), which suggests *Brady* applies in  
18 situations where the government has conducted its own investigation, the Ninth  
19 Circuit’s decision in *Merino* is binding on this Court where the Sixth Circuit’s in  
20 *Demjanjuk* is not.

21 Accordingly, on *de novo* review, the reasoning in the Findings and  
22 Recommendations on this point is correct and the Court will adopt them over  
23 Petitioner’s objections.

## 24 **II. Exculpatory Evidence in the Possession of Other Agencies**

25 The Magistrate Judge correctly decided that the Petitioner had not provided  
26 any legal basis for the argument that the extradition court’s order compelling  
27 discovery should apply to the entire United States Government. Just as in the First  
28 Amended Petition, Petitioner’s objections fail to cite any authority for this position.

1 In the extradition proceedings, Judge Newman originally ordered the  
2 production of evidence in the position of “the U.S.” (Order Granting in Part Mot. to  
3 Compel at 8.) In a later filing confirming that the “United States” was “not in  
4 possession of any evidence regarding whether the witness statements were obtained  
5 by coercion, duress, or torture, and is mindful of its continuing duty to report”, the  
6 United States Attorney’s Office (“USAO”) included the following footnote:

7 Like the definition of the term “government” used in the  
8 United States’ Opposition to the Motion to Compel (ECF  
9 46 at n. 1) and at oral argument on the Motion to Compel,  
10 this memo uses “United States” to refer to the United States  
11 Attorney’s Office for the Eastern District of California  
12 (“USAO E.D. Cal.”) and the Department of Justice’s Office  
13 of International Affairs (“OIA”). The United States  
14 understands that this too is the definition of “U.S.” as used  
15 in the Court’s Order (ECF 49, at 8), and that the Court’s  
16 Order is limited to documents and materials in the  
17 possession of the USAO E.D. Cal. and OIA, with no  
18 obligation to request information from Mexico or seek out  
19 new material not within the USAO E.D. Cal.’s or OIA’s  
20 possession from other U.S. agencies or offices. See, e.g.,  
21 Order at 7 (“As a reminder, the U.S. is under no obligation  
22 to request evidence from Mexico or seek out new material  
23 not within its possession.”) (citation omitted).

24 (Suppl. Mem. Regarding Evid. of Coercion, Duress, or Torture (*In re Extradition of Jose*  
25 *Trinidad Martinez Santoyo*, 2:21-mj-00125-KJN, ECF No. 50) at 1-2 & n.1.)

26 The choice to define the “U.S.” to mean only the USAO for the Eastern District  
27 of California and the Department of Justice’s Office of Internal Affairs was seemingly a  
28 unilateral decision of the USAO as to the proper interpretation of the extradition

1 court's order. Given that the Motion to Compel specifically discussed material related  
2 to a proceeding in the District Court for the Western District of Pennsylvania,  
3 Magistrate Judge Newman's order granting that motion in part would seem unlikely  
4 to have been limited to information in possession and control of the United States  
5 Attorney's Office for the Eastern District of California and the Department of Justice's  
6 Office of International Affairs. The USAO elected not to file a motion for clarification  
7 or otherwise seek approval to limit the scope of the court's order and instead made  
8 this decision without the court's input. In apparent recognition by the USAO that this  
9 was not an action approved by the extradition court, the USAO included the above  
10 disclosure as a footnote in a supplemental memorandum. (*Id.*)

11 While the USAO's actions appear to be improper, this issue is ultimately outside  
12 of the bounds of what Magistrate Judge Peterson or this Court can consider on  
13 extradition habeas review. As noted above, the habeas court for extradition  
14 proceedings is limited to reviewing "(1) the extradition magistrate had jurisdiction  
15 over the individual sought, (2) the treaty was in force and the accused's alleged  
16 offense fell within the treaty's terms, and (3) there is 'any competent evidence'  
17 supporting the probable cause determination of the magistrate." *Vo*, 447 F.3d at  
18 1240. Though the habeas court can review the decision of an extradition court to  
19 deny discovery, *see Quinn*, 783 F.2d at 817 n.41, here, the extradition court made no  
20 such decision. Despite Petitioner being aware that the USAO had limited the scope of  
21 the discovery provided (see Opp'n to Gov't Req. for Extradition (*In re Extradition of*  
22 *Jose Trinidad Martinez Santoyo*, 2:21-mj-00125-KJN, ECF No. 51) at 4 (acknowledging  
23 the USAO's interpretation of the Court's order)), Petitioner did not raise an objection  
24 or make a motion to the court. As a result, the extradition was never presented to the  
25 extradition court and no decision on this discovery issue was rendered. Thus, it is  
26 outside the scope of extradition habeas review as the extradition court did not "deny  
27 discovery". *See Quinn*, 783 F.2d at 817 n.41.

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1           Given the above, a *de novo* review shows the reasoning in Judge Peterson's  
2 Findings and Recommendations is well founded on this point and shall be adopted.

### 3           **III.     Exclusion of Gunshot Residue**

4           Judge Peterson was correct in finding that the extradition court did not abuse  
5 its discretion in excluding evidence related to the possible presence of gunshot  
6 residue on the decedent's hand. Petitioner argues that excluding this evidence was  
7 improper as it was explanatory. The extradition court found that the only apparent  
8 reason for including this evidence would be to establish that the decedent was also  
9 armed but that this could only go to the "unfair advantage" (also referred to as "undue  
10 advantage") element of the aggravated homicide charge and was not relevant for any  
11 other purpose. (Order Granting U.S.'s Mot. for Certification of Extradition (*In re*  
12 *Extradition of Jose Trinidad Martinez Santoyo*, 2:21-mj-00125-KJN, ECF No. 55) at 12-  
13 13.) The court excluded this evidence as not relevant to the existence of probable  
14 cause and ruled that whether there was ultimately undue advantage is an issue for a  
15 jury to decide. (*Id.*)

16           The magistrate judge in extradition proceedings is granted substantial  
17 deference in the determination of the admissibility of evidence. *Collins v. Loisel*, 259  
18 U.S. 309, 317 (1922) ("Whether evidence offered on an issue before the committing  
19 magistrate is relevant is a matter which the law leaves to his determination, unless his  
20 action is so clearly unjustified as to amount to a denial of the hearing prescribed by  
21 law."). While an accused party may present explanatory evidence related to probable  
22 cause at extradition proceedings, evidence not related to probable cause is not  
23 admissible. *Id.* at 315-16.

24           Judge Newman's decision to not admit evidence related to the gunshot residue  
25 as it only went to the unfair advantage element was not an abuse of discretion. Judge  
26 Newman reasoned that the gunshot residue evidence could serve as the basis from  
27 which a jury could find that the decedent was armed and that the unfair advantage  
28 element was thus unsatisfied, but that "[a] jury could just as easily believe [the

1 Decedent] had residue on his hand because he reached for [Petitioner]’s gun just  
2 before Petitioner pulled the trigger.” (Order Granting U.S.’s Mot. for Certification of  
3 Extradition at 12-13.) Given this, Judge Newman found that this evidence was not  
4 admissible as it did not go to probable cause. (*Id.*) This is a reasonable and justified  
5 determination of the relevance of the gunshot residue evidence and not an abuse of  
6 discretion. See *Collins*, 259 U.S. at 317.

7 As such, Judge Peterson’s finding in the Findings and Recommendations that  
8 Judge Newman did not abuse his discretion is correct and the Court will adopt the  
9 Findings and Recommendations on this point.

#### 10 **IV. Unfair Advantage**

11 Judge Peterson also accurately determined that the extradition court had  
12 properly found that there was evidence of undue advantage sufficient to support  
13 probable cause.

14 During extradition proceedings, the magistrate judge’s limited purpose is “to  
15 determine whether there is any evidence sufficient to establish reasonable or  
16 probable cause.” *United States ex rel. Sakaguchi v. Kaulukukui*, 520 F.2d 726, 730-31  
17 (9th Cir. 1975) (citation omitted). On habeas review, a probable cause determination  
18 “must be upheld if there is any competent evidence in the record to support it.”  
19 *Sainez v. Venables*, 588 F.3d 713, 717 (9th Cir. 2009) (quoting *Quinn v. Robinson*, 783  
20 F.2d 776, 791 (9th Cir. 1986)).

21 Here, the extradition court based its determination of unfair advantage on the  
22 eyewitness statements from Baudelio Oronia Conchas, Pedro Oronia Conchas, and  
23 Manuel Miranda Miranda, all of whom stated that Petitioner was armed and none of  
24 whom stated that the Decedent was armed. (See Order Granting U.S.’s Motion for  
25 Certification of Extradition at 6-8.) While Judge Newman recognized that there were  
26 theoretically “multiple ways to treat the witnesses’ statements” and that other contrary  
27 evidence might exist (such as the possible gunshot residue evidence addressed  
28 above), he found that these issues went to the credibility of the eyewitness’s

1 statements and thus was suited for presentation to a jury, not the extradition court,  
2 who has no role in determining guilt or innocence and only determines whether  
3 probable cause exists. (*Id.* at 12-13.)

4 The statements of the three eyewitnesses are sufficient competent evidence to  
5 support Judge Newman’s finding of probable cause. While it is possible that  
6 Petitioner will successfully argue at trial that the undue advantage element was not  
7 satisfied (whether based on the credibility of witnesses, the presence of contradictory  
8 evidence such as the gunshot residue discussed previously, or some other argument),  
9 the Magistrate Judge’s determination of probable cause related to the undue  
10 advantage element shall be upheld as there is competent evidence that supports a  
11 reasonable inference that Petitioner had undue advantage when he allegedly shot the  
12 decedent. See *Sainez*, 588 F.3d at 717.

13 Accordingly, Judge Peterson’s Findings and Recommendations are correctly  
14 reasoned and shall be adopted despite Petitioner’s objections.

#### 15 **V. Speedy Trial Rights**

16 Finally, the Findings and Recommendations are correct in finding that  
17 Petitioner was not entitled to speedy trial rights during the extradition proceedings.  
18 Petitioner argues that he was entitled to speedy trial rights under the relevant treaty  
19 and that those rights were violated as Mexico did not request Petitioner’s extradition  
20 until 2022 despite the Mexican warrant for Petitioner’s arrest being issued in 2014.  
21 Magistrate Judge Peterson found that speedy trial rights do not apply to extradition  
22 proceedings. (F. & R. at 6-7.) In doing so, Judge Peterson cited cases from the First,  
23 Second, Fifth, and Eleventh Circuit that explicitly found that the speedy trial right  
24 guarantees of the Sixth Amendment did not apply to extradition proceedings. (*Id.*)  
25 He also noted that the Ninth Circuit has previously stated that “[w]hen the United  
26 States is the requested country, delay in seeking extradition may be relevant to the  
27 Secretary of State’s final determination as to whether extradition may go forward. . . .

28 ////

1 The delay may not, however, serve as a defense to judicial extradition proceedings.”  
2 (*Id.* at 6 n.2 (citing *Kamrin v. United States*, 725 F.2d 1225, 1227 (9th Cir. 1984)).)

3 In his objection to the Findings and Recommendations, Petitioner argues that  
4 even if the Sixth Amendment speedy trial rights do not generally apply to extradition  
5 proceedings, the treaty between Mexico and the United States effectively re-applies  
6 speedy trial rights by stating that “[e]xtradition shall not be granted when the  
7 prosecution or the enforcement of the penalty for the offense for which extradition has  
8 been sought has become barred by lapse of time according to the laws of the  
9 requesting or requested Party.” (Pet’r’s Obj. at 4-5.) Petitioner argues that the “lapse  
10 of time” language must include speedy trial rights. (*Id.* (citing Extradition Treaty art. 7,  
11 U.S.-Mex., May 4, 1978, 31 U.S.T. 5059).)

12 This same argument has been expressly rejected by numerous other courts,  
13 including other courts in this district and the Sixth and Eleventh Circuit Courts of  
14 Appeals. See *Martinez v. United States*, 828 F.3d 451, 457-58 (6th Cir. 2016) (finding  
15 that the “lapse of time” language in the US-Mexico treaty did not apply to Sixth  
16 Amendment speedy trial rights as those rights do not create a fixed time bar); *Yapp v.*  
17 *Reno*, 26 F.3d 1562, 1567 (11th Cir. 1994) (finding similar “lapse of time” language in  
18 a treaty with the Bahamas was a reference to the statute of limitation, not to speedy  
19 trial rights); see also *Gonzalez v. O’Keefe*, No. 12-cv-2681-LHK, 2014 WL 6065880, at  
20 \*4 (N.D. Cal. Nov. 20, 2014) (finding a “lapse of time” provision refers to statutes of  
21 limitations and did not include speedy trial rights); *Cerda v. Jenkins*, 2023 WL  
22 8845145 (C.D. Cal. Dec. 20, 2023) (same). Moreover, the Ninth Circuit has previously  
23 interpreted this “lapse” language as an incorporation of the applicable statute of  
24 limitations. *Causbie Gullers v. Bejarano*, 293 Fed. Appx. 488, 489 (9th Cir. 2008). It  
25 has also rejected an argument that a treaty containing a provision providing for “the  
26 right to use such remedies and recourses as are provided by the law of the requested  
27 Party,” entitled the accused to speedy trial rights the treaty. *In re Extradition of*  
28 *Kraiselburd*, 786 F.2d 1395, 1398 (9th Cir. 1986). That treaty, which also included a

1 “lapse of time” provision similar to the one at issue here, only required that the country  
2 requesting extradition “comply with the applicable statute of limitations” and the  
3 accused was not entitled to “constitutional protections that the United States  
4 Constitution affords defendants in American criminal prosecutions.” *Id.*

5 In support of his position, Petitioner only cites a single case from the District  
6 Court for the Northern District of Alabama where that court found that speedy trial  
7 rights should apply based on the “lapse of time” language. (Pet’r’s Obj. at 4 (citing *In*  
8 *re Mylonas*, 187 F. Supp. 716, 721 (N.D. Ala. 1960)).) However, as the Sixth Circuit  
9 noted while addressing that same district court case in deciding *Martinez*, that case  
10 “was hardly a landmark extradition decision” and contains no actual analysis of the  
11 issue. *Martinez*, 828 F.3d at 465. Further, the Eleventh Circuit has since expressly  
12 adopted a different position on this same issue and, in doing so, noted that it had  
13 “expressly disapproved of *Mylonas*.”<sup>2</sup> *Yapp*, 26 F.3d at 1566-67.

14 Petitioner’s main argument appears to be that the “lapse of time” language, as  
15 it is contained in a treaty, should be considered under a plain language analysis and  
16 that under such analysis, speedy trial rights should have been extended to Petitioner’s  
17 extradition proceedings. (Pet’r’s Obj. at 3-4.) Even applying such an analysis,  
18 Petitioner’s argument is unpersuasive. Petitioner is correct that “[t]he interpretation of  
19 a treaty, like the interpretation of a statute, begins with its text.” *Medellín v. Texas*, 552  
20 U.S. 491, 506-07 (2008) (citing *Air France v. Saks*, 470 U.S. 392, 396-397 (1985)).  
21 However, interpretation of the plain text of Article 7 from the treaty does not support  
22 Petitioner’s position. The treaty bars extradition where “prosecution or the  
23 enforcement of the penalty” for the charged offense “become barred by a lapse of

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24 \_\_\_\_\_  
25 <sup>2</sup> In his objections, Petitioner says that the Eleventh Circuit disapproved of *Mylonas* on the basis that the  
26 Sixth Amendment generally does not apply to extradition proceedings and “said nothing about  
27 the *Mylonas* court’s holding that the ‘lapse of time’ language in the United States-Greece treaty  
28 includes the Sixth Amendment Speedy Trial Clause.” (Pet’r’s Obj. at 5 n.1.) To the contrary, the  
Eleventh Circuit’s discussion of *Mylonas* in *Yapp* appears to expressly recognize this distinction and  
reject *both* the general Sixth Amendment and the treaty-based arguments. *Yapp*, 26 F.3d at 1566-67  
 (“Whether the holding in *Mylonas* is construed as interpretation of the Constitution or interpretation of  
a treaty, we do not find it persuasive.”)

1 time according to the laws of the requesting or requested Party.” Extradition Treaty  
2 art. 7, U.S.-Mex., May 4, 1978, 31 U.S.T. 5059. The plain text of this treaty, with its  
3 references to “prosecution or . . . enforcement” as well as to “bars” that result from a  
4 lapse of time seems to only incorporate statutes of limitations. *Id.* Petitioner seeks to  
5 look outside the text of the treaty himself, arguing that at the time the treaty was  
6 ratified “a federal court had interpreted the ‘lapse of time’ phrase in a different treaty  
7 to include the Sixth Amendment speedy trial rights[.]” and that the treaty’s drafters  
8 would be aware of that fact. (Pet’r’s Obj. at 5.) Such evidence is far outside the scope  
9 of the text of the treaty and Petitioner does not provide citations to any “aids” for  
10 interpretation that might support such a reading, such as “the negotiation and drafting  
11 history of the treaty as well as ‘the postratification understanding’ of signatory  
12 nations.” *Medellín*, 552 U.S. at 506-07.

13 Given the above, the Findings and Recommendations issued by Judge  
14 Peterson are well reasoned and will be adopted by this Court.

### 15 CONCLUSION

16 In accordance with the above, IT IS HEREBY ORDERED that:

- 17 1. The Findings and Recommendations signed September 28, 2023 (ECF No. 16)
- 18 are ADOPTED IN FULL;
- 19 2. The First Amended Petition (ECF No. 11) is DENIED;
- 20 3. The Clerk of the Court is directed to close this case.

21 IT IS SO ORDERED.

22 Dated: March 27, 2024

  
Hon. Daniel J. Calabretta

UNITED STATES DISTRICT JUDGE

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26 DJC1 - MartinezSantoyo23cv00447.JO