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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ISRAEL RAMIREZ LUNA,
Petitioner,
v.
DONALD O'KEEFE,
Respondent.

Case No. 17-CV-02129-LHK

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS**

Re: Dkt. No. 1

Petitioner Israel Ramirez Luna (“Petitioner”), a naturalized citizen of the United States who is awaiting extradition to Mexico, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. ECF No. 1 (“Pet.”). In his petition, Petitioner argues that the Magistrate Judge’s decision to certify Petitioner’s extradition was erroneous because (1) Petitioner’s extradition “is time-barred under the applicable treaty”; and (2) “the government failed to satisfy its burden of establishing probable cause to believe that [Petitioner] committed the offense for which extradition is sought.” *Id.* at 1. The government has filed an opposition to the petition. ECF No. 4 (“Opp.”). Having considered the submissions of the parties, the relevant law, and the record in this case, the Court hereby DENIES the petition.

I. BACKGROUND

A. Factual Background

Petitioner became a naturalized United States citizen in 2001, *In re Extradition of Luna*, No. 16-xr-90095 NC (N.D. Cal.), ECF No. 1 ¶ 13,¹ but he is originally from Salvatierra, Guanajuato, Mexico. *See* Pet. at 1; XR ECF No. 41-1. Petitioner has lived in Willits, California with his wife for over fifteen years. XR ECF No. 41-1 ¶ 3. However, Petitioner has been charged by Mexican authorities for the aggravated homicide of Omar Garcia (“Omar” or “Omar Garcia”), which allegedly took place in Guanajuato, Mexico on January 4, 2009.

Specifically, according to the complaint for Petitioner’s provisional arrest, Petitioner was at a party in Santa Tomas Huatzindeo, a town in Guanajuato, on the night of January 4, 2009. XR ECF No. 1 ¶ 7. At some point that evening, Petitioner and Omar Garcia began fighting one another outside the party venue, and had to be separated. *Id.* Shortly thereafter, Omar was about to leave the party with Rodolfo Villegas Villafuerte (“Rodolfo”) when Petitioner returned to the parking lot with his brother, Mauricio Ramirez Luna (“Mauricio”). *Id.* ¶ 8. Petitioner was holding a machete, and Mauricio was brandishing a firearm. *Id.* Then, while Rodolfo was driving his pickup truck out of the parking lot, Mauricio shot Rodolfo, and Rodolfo’s truck subsequently traveled about twenty or thirty meters before hitting the main gate of the parking lot. *Id.* Omar approached the now-stopped pickup truck, but then began running back towards the interior of the parking lot. *Id.* ¶ 9. As Omar attempted to escape, Mauricio shot Omar several times, which caused Omar to fall to the ground face up. *Id.* The extradition complaint alleges that after this, Petitioner “stabbed Omar Garcia twice in the neck with a machete, killing him.” *Id.*

Two eyewitnesses identified Petitioner as the man who fought with Omar Garcia and later struck him with a machete. *Id.* ¶¶ 9–10. As a result, Petitioner was charged with two counts of “Aggravated Homicide, as defined by Articles 138, 140, and 153 of the Penal Code of the State of Guanajuato,” and a judge of the “Criminal Court in the State of Guanajuato” issued an arrest

¹ *In re Extradition of Luna*, No. 16-xr-90095 NC (N.D. Cal.), is Petitioner’s underlying extradition proceeding. Hereinafter, the Court denotes docket entries and documents from Petitioner’s underlying extradition proceeding with an “XR.” For example, “XR ECF No. 1” refers to *In re Extradition of Luna*, No. 16-xr-90095 NC (N.D. Cal.), ECF No. 1, which is the first docket entry in Petitioner’s underlying extradition proceeding.

1 warrant for Petitioner on May 8, 2009. *Id.* ¶ 5; XR Bates Stamp Number (“BSN”) 55–85.

2 **B. Procedural History**

3 On February 8, 2016, the government filed a complaint for the provisional arrest of
4 Petitioner with a view towards extradition. XR ECF No. 1. Petitioner was arrested and made an
5 initial appearance before a Magistrate Judge on February 12, 2016. XR ECF No. 2. On April 7,
6 2016, the Magistrate Judge granted Petitioner’s request for bail and found that Petitioner had
7 established “special circumstances” for release. XR ECF No. 20.

8 On May 10, 2016, the government submitted formal extradition documents on behalf of
9 Mexico and in support of extradition. XR ECF No. 27. Then, on September 29, 2016, Petitioner
10 filed a motion to dismiss the extradition request. XR ECF No. 41. In that motion, Petitioner
11 argued that his extradition was time-barred under Article 7 of the Mexico-United States
12 Extradition Treaty of 1978. *Id.* The government opposed Petitioner’s motion on October 11,
13 2016, XR ECF No. 42, and Petitioner filed a reply on October 19, 2016. XR ECF No. 43. On
14 December 23, 2016, the Magistrate Judge denied Petitioner’s motion to dismiss the extradition
15 request. XR ECF No. 51.

16 Subsequently, on January 30, 2017, Petitioner filed a motion to deny the extradition due to
17 lack of probable cause. XR ECF No. 52. The government filed an opposition on February 13,
18 2017. XR ECF No. 53. Then, on March 17, 2017, the Magistrate Judge denied Petitioner’s
19 motion to deny the extradition and certified Petitioner’s extradition. XR ECF No. 56.

20 On March 22, 2017, Petitioner filed an unopposed motion to stay the certification of his
21 extradition pending the filing of a habeas petition. XR ECF No. 59. The Magistrate Judge
22 granted Petitioner’s unopposed motion to stay on the same day. XR ECF No. 60. Then, on March
23 23, 2017, the government moved for reconsideration of the Magistrate Judge’s April 7, 2016 order
24 granting Petitioner’s release on bail. XR ECF No. 61. Petitioner opposed the government’s
25 motion for reconsideration on March 29, 2017. XR ECF No. 62. On March 30, 2017, the
26 Magistrate Judge denied the government’s motion for reconsideration of bail. XR ECF No. 64.

27 On April 11, 2017, Petitioner filed a motion to reopen the evidence and reconsider the

1 certification of Petitioner’s extradition. XR ECF No. 65. Petitioner’s motion was based on two
2 death certificates issued for Omar Garcia; Petitioner argued that the Magistrate Judge “could have
3 reached a different decision had [he] been given the opportunity to consider” the death certificates
4 because the certificates indicate that “bullet wounds were the sole cause of” Omar’s death. *Id.* at
5 1–2. On April 13, 2017, the Magistrate Judge denied the motion. XR ECF No. 67.

6 Petitioner filed the instant petition for writ of habeas corpus on April 17, 2017. *See* Pet.
7 On May 9, 2017, the government filed an opposition to Petitioner’s petition. *See* Opp. Then, on
8 May 12, 2017, the parties filed a Joint Motion Requesting Reassignment of Case to District Court
9 Judge. ECF No. 6. As a result, on May 16, 2017, this case was assigned to the undersigned judge.
10 ECF No. 8.

11 **II. LEGAL STANDARD**

12 A district court or Magistrate Judge’s “decision to certify a person as extraditable is not
13 subject to direct appeal but may be challenged collaterally through habeas corpus review”
14 pursuant to 28 U.S.C. § 2241. *Prasoprat v. Benov*, 421 F.3d 1009, 1013 (9th Cir. 2005). In an
15 international extradition, the district court’s habeas review of an extradition order is limited to: (1)
16 whether the extradition court had jurisdiction to conduct the proceedings as well as personal
17 jurisdiction over the individual sought; (2) whether the extradition treaty was in force and whether
18 the crime is an extraditable offense under the relevant treaty’s terms; (3) whether there was
19 probable cause that the individual committed the crime; and (4) whether the crime fell within the
20 political offense exception. *Id.* The extradition court’s conclusions of law are reviewed de novo,
21 while its factual findings are reviewed for clear error. *Vo v. Benov*, 447 F.3d 1235, 1240 (9th Cir.
22 2006). Further, because the extradition court’s “probable cause determination serves only the
23 narrow function of indicating those items of submitted evidence on which the decision to certify
24 extradition is based,” the extradition court’s finding “must be upheld if there is any competent
25 evidence in the record to support it.” *Quinn v. Robinson*, 783 F.2d 776, 791 (9th Cir. 1986)
26 (citations and internal quotations omitted).

27 **III. DISCUSSION**

28

1 As discussed above, Petitioner argues in his petition that the Magistrate Judge’s decision to
2 certify Petitioner’s extradition was erroneous because (1) Petitioner’s extradition “is time-barred
3 under the applicable treaty”; and (2) “the government failed to satisfy its burden of establishing
4 probable cause to believe that [Petitioner] committed the offense for which extradition is sought.”
5 Pet. at 1. The Court addresses each of Petitioner’s arguments in turn.

6 **A. Time Bar**

7 Article 7 of the extradition treaty between the United States and Mexico states that
8 “[e]xtradition shall not be granted when the prosecution or the enforcement of the penalty for the
9 offense for which extradition has been sought has become barred by lapse of time according to the
10 laws of the requesting or requested party.” Extradition Treaty Between the United States of
11 America and the United Mexican States, May 4, 1978, 31 U.S.T. 5059, art. 7 (“Treaty Article 7”).
12 In his motion to dismiss the request for his extradition, Petitioner raised two arguments for why
13 his extradition is barred “by lapse of time according to the laws of the . . . requested party,” the
14 United States. *Id.*; see XR ECF No. 41. First, Petitioner argued that “the applicable United States
15 statute of limitations has run.”² *Id.* at 4. Second, Petitioner argued that Article 7 of the extradition
16 treaty incorporates the Speedy Trial Clause of the Sixth Amendment, and the Speedy Trial Clause
17 “bars extradition in this case.” *Id.* at 8–14. In denying Petitioner’s motion to dismiss the
18 extradition, the Magistrate Judge rejected both of these arguments. XR ECF No. 51. However, in
19 the instant petition, Petitioner raises the same two time bar arguments and asserts that the
20 Magistrate Judge erroneously rejected them. Pet. at 6–14. The Court considers each of
21 Petitioner’s time bar arguments in turn.

22 **1. Statute of Limitations**

23 The Ninth Circuit has recognized that Article 7 of the extradition treaty between the United
24 States and Mexico “preclude[s] extradition of a person whose prosecution in the United States
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26 ² In his motion to dismiss the request for his extradition, Petitioner conceded that the 30-year
27 Mexican statute of limitations had not run. XR ECF No. 41 at 4 n.5. Petitioner does not argue
28 otherwise in the instant petition.

1 would offend our national statutes of limitations if he had committed his criminal conduct here.”
2 *Sainez v. Venables*, 588 F.3d 713, 716 (9th Cir. 2009) (quoting *Clarey v. Gregg*, 138 F.3d 764,
3 767 (9th Cir. 1998)). Further, the Ninth Circuit has stated that “[i]n determining what United
4 States statute of limitations is applicable,” courts must “look[] to the substantive offense under
5 United States law which is most closely analogous to the charged offense, and applies the statute
6 of limitations applicable to that offense.” *Id.* at 716 (citation omitted).

7 In the instant case, Petitioner states that he has been charged with two counts of
8 “aggravated homicide” “under Article 138 and Article 153(I) of the Guanajuato Criminal Code.”
9 Pet. at 7. The Magistrate Judge found that the federal crime that is most analogous to the offenses
10 charged against Petitioner is second-degree murder, which has a statute of limitations of five
11 years. XR ECF No. 51 at 4 (citing 18 U.S.C. §§ 1111(a)–(b), 3282). Petitioner agrees with this
12 finding, Pet. at 7, but argues that his five-year statute of limitations has already run because no
13 indictment or information was ever issued against Petitioner, and Mexico did not request
14 Petitioner’s extradition within the five-year limitations period. *Id.* at 8–9. For its part, the
15 government argues that “regardless of whether the five-year period or a longer period applies” in
16 the instant case, the issuance of an arrest warrant for Petitioner by a Mexican court on May 8,
17 2009—less than five months after the alleged offense occurred on January 4, 2009—“tolled the
18 U.S. statute of limitations for purposes of Article 7.” Opp. at 4.

19 Under binding Ninth Circuit law, the government is correct. The Ninth Circuit held in
20 *Sainez* that “for the purpose of a civil proceeding such as an extradition, a Mexican arrest warrant
21 is the equivalent of a United States indictment and may toll the United States statute of
22 limitations.” 588 F.3d at 717. Thus, even assuming Petitioner is correct that the applicable
23 limitations period is five years, the issuance of a Mexican arrest warrant less than five months
24 after Petitioner’s alleged offense tolled the statute of limitations. As a result, Petitioner’s
25 extradition is not “preclude[d]” by any statute of limitations under United States law. *Clarey*, 138
26 F.3d at 767.

27 Petitioner acknowledges that this Court is bound by *Sainez*’s holding that a Mexican arrest
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1 warrant “may toll [a] United States statute of limitations” for purposes of an extradition, 588 F.3d
2 at 717, but “respectfully submits that *Sainez* was wrongly decided.” Pet. at 8. This Court must
3 apply *Sainez*’s holding unless and until it is overturned or abrogated by the Ninth Circuit or the
4 United States Supreme Court. Thus, Petitioner’s statute of limitations argument is unavailing, and
5 the Magistrate Judge did not err by rejecting it.

6 **2. Speedy Trial Clause**

7 Petitioner’s second time bar argument is that his extradition is barred “by lapse of time
8 according to the laws of the” United States, Treaty Article 7, because the United States would bar
9 the prosecution of Petitioner on the ground that his Sixth Amendment right to a speedy trial would
10 have been violated. Petitioner’s second time bar argument proceeds in two parts. First, Petitioner
11 asserts that the “lapse of time” provision in Article 7 of the Mexico-United States extradition
12 treaty incorporates the Sixth Amendment. Pet. at 9–11. Second, Petitioner argues that the Speedy
13 Trial Clause of the Sixth Amendment would bar the prosecution of Petitioner in the instant case.
14 *Id.* at 11–14.

15 In response, the government argues that, as numerous courts in this district and within the
16 Ninth Circuit have held, the “lapse of time” provision in the extradition treaty between Mexico
17 and the United States does not incorporate the Sixth Amendment’s Speedy Trial Clause. Opp. at
18 7–8. Further, the government argues that “the extent, if any, to which a delay in filing an
19 extradition request should factor into an extradition decision is a determination that should be left
20 to the Secretary of State.” *Id.* at 8.

21 The Court agrees with the government’s argument that the “lapse of time” provision does
22 not incorporate the Sixth Amendment’s Speedy Trial Clause. Although Petitioner is correct that
23 “[t]he Ninth Circuit has not addressed the question whether [the ‘lapse of time’ provision]
24 incorporates the Sixth Amendment,” Pet. at 10, several courts in this district, including this Court,
25 have ruled against such incorporation. *See United States v. Cruz Garfias*, 2009 WL 2580641, *3
26 (N.D. Cal. Aug. 20, 2009); *In re Gonzalez*, 2011 WL 5190047, *2 (N.D. Cal. Oct. 31, 2011);
27 *Gonzalez v. O’Keefe*, 2014 WL 6065880 (N.D. Cal. Nov. 20, 2014); *United States v. Matter of*

1 *Extradition of Gonzalez*, 2015 WL 1409327 (N.D. Cal. Mar. 27, 2015). As the Magistrate Judge
 2 observed in his order denying Petitioner’s motion to dismiss the government’s extradition request,
 3 “[m]ost of these opinions cite *Causbie Gullers v. Bejarano*, 293 F. App’x 488, 489 (9th Cir.
 4 2008), an unpublished Ninth Circuit opinion, which discussed the treaty’s ‘lapse of time’
 5 provision as only implicating statutes of limitations.” XR ECF No. 51 at 5; *see also Clarey*, 138
 6 F.3d at 766 (“The object of Article 7 of the Treaty is to preclude extradition of a person whose
 7 prosecution in the United States would offend our national statute of limitations if he had
 8 committed his criminal conduct here.”). Moreover, other courts within the Ninth Circuit have also
 9 found that Article 7’s “lapse of time” provision does not incorporate the Sixth Amendment. *See In*
 10 *re Silva-Peralta*, 2016 WL 4987483, *10 (S.D. Cal. Sep. 19, 2016); *In re Flores Ortiz*, 2011 WL
 11 3441618, *5 (S.D. Cal. Feb. 9, 2011); *In re Extradition of Salazar*, 2010 WL 2925444, *6–7 (S.D.
 12 Cal. July 23, 2010).

13 Further, even though no Ninth Circuit case squarely addresses the issue of whether the
 14 “lapse of time” provision in the Mexico-United States extradition treaty incorporates the Sixth
 15 Amendment, the Court finds the reasoning against such incorporation in both *Kamrin v. United*
 16 *States*, 725 F.2d 1225 (9th Cir. 1984), and *In re Extradition of Kraiselburd*, 786 F.2d 1395 (9th
 17 Cir. 1986), persuasive. In *Kamrin*, one of the treaty provisions at issue was Article X of the
 18 extradition treaty between Australia and the United States, which provided that “the person whose
 19 extradition is sought shall have the right to use such remedies and recourses as are provided by the
 20 law of the requested state.” 725 F.2d at 1227 (alteration adopted). Despite the text of this
 21 “remedies and recourses” provision, the Ninth Circuit rejected the petitioner’s argument that the
 22 provision “entitle[d] him to the due process right that underlies United States statutes of
 23 limitations: the right to a trial in which his defense is unimpaired by the passage of time.” *Id.* at
 24 1228. In holding that the “remedies and recourses” provision in the Australia-United States
 25 extradition treaty did not incorporate due process protections that are afforded to defendants in
 26 American criminal proceedings, the Ninth Circuit relied on the long-settled rule “that United
 27 States due process rights cannot be extended extraterritorially.” *Id.* Subsequently, in *Kraiselburd*,

1 the Ninth Circuit addressed a virtually identical “remedies and recourses” provision in the
 2 extradition treaty between Argentina and the United States, which granted fugitives “the right to
 3 use such remedies and recourses as are provided by the law of the requested Party.” 786 F.2d at
 4 1398. Relying in part on *Kamrin*, the Ninth Circuit rejected the petitioner’s argument that the
 5 “remedies and recourses” provision in the Argentina-United States extradition treaty “imposes
 6 upon Argentina the duty to comply with the speedy trial and due process clauses of the United
 7 States Constitution.” *Id.* Thus, contrary to Petitioner’s argument that *Kamrin* and *Kraiselburd*
 8 provide “little guidance” to the resolution of the instant issue, Pet. at 11, the Court finds that the
 9 reasoning and conclusions in both *Kamrin* and *Kraiselburd* appear to be applicable here because
 10 both cases considered whether a treaty provision incorporated constitutional protections—
 11 including the Speedy Trial Clause—by allowing for the use of “such remedies and recourses as are
 12 provided by the law of the” United States.

13 Published decisions from other federal courts of appeal also support the Court’s conclusion
 14 that the “lapse of time” provision in the Mexico-United States extradition treaty does not
 15 incorporate the Sixth Amendment. The Sixth Circuit, sitting en banc, recently came to the same
 16 conclusion about the same “lapse of time” provision in *Martinez v. United States*, 828 F.3d 451
 17 (6th Cir. 2016). To reach its holding that Article 7’s “lapse of time” provision does not
 18 incorporate the right to a speedy trial, the Sixth Circuit looked to, inter alia, the text of the
 19 provision and the history of extradition treaties. *See id.* at 457–62. As to the text of the provision,
 20 the Sixth Circuit observed that the speedy trial right is a ““relative,”” ““amorphous,”” and
 21 ““slippery”” one that “does not create a fixed time bar on trial initiation” but instead ““depends on
 22 circumstances.”” *Id.* at 457–58 (quoting *Barker v. Wingo*, 407 U.S. 514, 521–22 (1972)). Thus,
 23 “[l]apse of time, standing alone, does not—cannot—violate the Speedy Trial Clause in the
 24 absence of at least some . . . other factors.” *Id.* at 458. The Sixth Circuit therefore concluded that
 25 “[b]ecause the Sixth Amendment does not establish a time limit, fixed or otherwise, before a trial
 26 must start, it does not create a rule that ‘bar[s]’ criminal prosecutions due to ‘lapse of time’”
 27 within the meaning of Article 7 of the Mexico-United States extradition treaty. *Id.* at 457–58.

1 Further, as to history, the Sixth Circuit relied upon “over a century of law equating ‘lapse of time’
2 [in other extradition treaties] with statutes of limitations,” and not the Sixth Amendment. *Id.* at
3 462.

4 Similarly, the Eleventh Circuit held in *Yapp v. Reno*, 26 F.3d 1562 (11th Cir. 1994), that
5 the “lapse of time” provision in an extradition treaty between the United States and the Bahamas
6 referred only to statutes of limitations and did not incorporate the Sixth Amendment right to a
7 speedy trial. *Id.* at 1567. To reach this conclusion, the Eleventh Circuit relied upon “the fact that
8 for over a century, the term ‘lapse of time’ has been commonly associated with a statute of
9 limitations violation.” *Id.* Further, after noting that interpreting the treaty provision to incorporate
10 the speedy trial right “would require a district judge or Magistrate Judge, generally unfamiliar with
11 foreign judicial systems and the problems and circumstances facing them, to assess the
12 reasonableness of a foreign government’s action in an informational vacuum,” the Eleventh
13 Circuit expressed doubt that “the parties who negotiated” the treaty “would have intended” this
14 consequence “without stating their intention to do so more explicitly.” *Id.* at 1568.

15 The only opinions that Petitioner cites to support his position are the dissenting opinions
16 from *Martinez* and *Yapp*. Pet. at 10–11. However, the Court adopts the interpretation of the
17 “lapse of time” provision that is supported by the substantial weight of authority, as described
18 above. As a result, the Court concludes that the “lapse of time” provision in Article 7 of the
19 Mexico-United States extradition treaty does not incorporate the Speedy Trial Clause of the Sixth
20 Amendment. Therefore, the Magistrate Judge correctly found that Petitioner’s extradition was not
21 barred by the Speedy Trial Clause.

22 **B. Probable Cause**

23 In order to certify an extradition, an extradition court must find that there is probable cause
24 to believe that the accused committed the charged offense. This means that an extradition court
25 may certify an extradition only if there is “evidence sufficient to cause a person of ordinary
26 prudence and caution to conscientiously entertain a reasonable belief in the accused’s guilt.” *In*
27 *re Flores Ortiz*, 2011 WL 3441618, *7 (S.D. Cal. Feb. 9, 2011) (quoting *United States v. Wiebe*,

1 733 F.2d 549, 553 (8th Cir. 1984)). Thus, the function of an extradition court is “to determine
2 whether there is competent evidence to justify holding the accused to await trial, and not to
3 determine whether the evidence is sufficient to justify a conviction.” *Collins v. Loisel*, 259 U.S.
4 309, 316 (1922) (internal citations and quotations omitted). The ultimate determination of guilt or
5 innocence “remains to be determined in the courts of the demanding country.” *Sainez*, 588 F.3d at
6 717.

7 When reviewing the extradition court’s probable cause determination, the Court does not
8 weigh the evidence presented to the extradition court—even when there are inconsistencies within
9 the evidence. *Sainez*, 588 F.3d at 718 (“Crotte invites us to weigh the witness’ statements, arguing
10 that their inconsistencies preclude a finding of probable cause. However, weighing the evidence is
11 not a function we perform when we review the magistrate’s probable cause determination.”).
12 Instead, on habeas review of an extradition order, this Court must uphold the extradition court’s
13 probable cause determination “if there is *any* competent evidence in the record to support it.”
14 *Quinn*, 783 F.2d at 791 (emphasis added).

15 As discussed above, during his extradition proceedings in front of the Magistrate Judge,
16 Petitioner filed a motion to deny the extradition due to lack of probable cause. XR ECF No. 52.
17 In that motion, Petitioner conceded that there “is probable cause to believe that [Petitioner] cut
18 Omar Garcia’s neck with a machete on the night Mr. Garcia was killed.” *Id.* at 1. However,
19 Petitioner argued that the government had “failed to establish probable cause to believe that this
20 injury is what caused [Omar] Garcia’s death” because (1) Petitioner “is not alleged to have cut Mr.
21 Garcia until *after* [Petitioner’s] brother had shot [Omar] Garcia six times at close range,” which
22 “penetrated Mr. Garcia’s thorax and abdomen”; and therefore (2) “it appears probable that Omar
23 Garcia was already dead when [Petitioner] cut him.” *Id.* Despite Petitioner’s arguments, the
24 Magistrate Judge found that there is “probable cause to believe that [Petitioner] committed the
25 offense of aggravated homicide.” XR ECF No. 56 at 14.

26 In the instant habeas petition, Petitioner once again appears to concede that there is
27 probable cause to believe that Petitioner cut Omar’s neck with a machete by stating that “[t]he

1 only issue is whether [Omar] Garcia was already dead when [Petitioner] allegedly cut him with a
 2 machete.” Pet. at 17. Nonetheless, Petitioner asserts that the Magistrate Judge erred in finding
 3 that there is probable cause to believe that Petitioner killed Omar. Petitioner’s argument proceeds
 4 in two parts. First, Petitioner argues that the Magistrate Judge erred by excluding some of
 5 Petitioner’s proffered evidence, specifically: (1) an expert report by Dr. Katherine Raven, a
 6 forensic pathologist; and (2) “the death certificates issued by the Guanajuato Department of the
 7 Civil Registry and Department of Health.” Pet. at 16–20. Second, Petitioner argues that after
 8 taking into account the excluded pieces of evidence, the totality of the evidence “fails to establish
 9 probable cause” to believe that Petitioner killed Omar. *Id.* at 20–24.

10 For the reasons stated below, the Court concludes that the Magistrate Judge did not err in
 11 finding that there is probable cause to believe that Petitioner committed aggravated homicide.
 12 First, the Court explains the applicable legal standard for admissibility of evidence offered by the
 13 accused in an extradition proceeding. Second, the Court details the Magistrate Judge’s probable
 14 cause determination and the underlying admissibility rulings. Third and finally, the Court
 15 addresses Petitioner’s two-part argument.

16 **1. Legal Standard for Admissibility of Evidence Offered by the Accused**

17 “Given the limited nature of extradition proceedings, neither the Federal Rules of Evidence
 18 nor the Federal Rules of Criminal Procedure apply.” *Santos v. Thomas*, 830 F.3d 987, 992 (9th
 19 Cir. 2016). Instead, under 18 U.S.C. § 3190, evidence is admissible so long as it is authenticated
 20 and would “be received for similar purposes by the tribunals of the foreign country from which the
 21 accused party shall have escaped.” However, it is well-established that “the accused . . . does not
 22 have the right to introduce evidence in defense because that would require the government seeking
 23 his extradition ‘to go into a full trial on the merits in a foreign country.’” *Santos*, 830 F.3d at 992
 24 (quoting *Collins*, 259 U.S. at 316). Thus, evidence that “merely controverts the existence of
 25 probable cause,” *Mainero v. Gregg*, 164 F.3d 1199, 1207 n.7 (9th Cir. 1999), or “contradict[s] the
 26 testimony for the prosecution,” *Collins*, 259 U.S. at 316 (quoting *Charlton v. Kelly*, 229 U.S. 447,
 27 461 (1913), is inadmissible. *See also Barapind v. Enamoto*, 400 F.3d 744, 750 (9th Cir. 2005)

1 (stating that “extradition courts ‘do not weigh conflicting evidence’ in making their probable cause
2 determinations”) (alteration adopted) (quoting *Quinn*, 783 F.2d at 815). On the other hand,
3 “evidence that ‘explains matters referred to by the witnesses for the government’” is admissible.
4 *Santos*, 830 F.3d at 992 (quoting *Charlton*, 229 U.S. at 461).

5 The Ninth Circuit has observed that “[t]he federal courts have struggled to distinguish
6 between” “explanatory” evidence (which is admissible) and “contradictory” evidence (which is
7 not). *Santos*, 830 F.3d at 992. However, the Ninth Circuit has “described ‘contradictory’
8 evidence as evidence ‘the credibility of which could not be assessed without a trial.’” *Id.* at 993
9 (quoting *Barapind*, 400 F.3d at 749–50); *see also Eain v. Wilkes*, 641 F.2d 504, 511 (7th Cir.
10 1981) (“An accused in an extradition hearing has no right to contradict the demanding country’s
11 proof or to pose questions of credibility as in an ordinary trial, but only to offer evidence which
12 explains or clarifies that proof.”). “In practice, this means that an individual contesting extradition
13 may not, for example, present alibi evidence, facts contradicting the government’s proof, or
14 evidence of defenses like insanity, as this tends to call into question the credibility of the
15 government’s offer of proof.” *Santos*, 830 F.3d at 993. Nor can the accused “impeach
16 government witnesses or produce witnesses whose testimony contradicts evidence already offered
17 by the government.” *Id.* However, “the accused may testify ‘to things which might have
18 explained ambiguities or doubtful elements’ in the government’s case.” *Id.* (quoting *Collins*, 259
19 U.S. at 315–16).

20 **2. The Magistrate Judge’s Probable Cause Determination and Admissibility Rulings**

21 **a. Evidentiary Basis of Probable Cause Determination**

22 As discussed above, the Magistrate Judge rejected Petitioner’s challenge to probable cause,
23 which was premised on the argument that “it appears probable that Omar Garcia was already dead
24 when [Petitioner] cut him.” XR ECF No. 52 at 1. The Magistrate Judge based his probable cause
25 finding on statements from four witnesses and Omar Garcia’s’s autopsy report. XR ECF No. 56 at
26 8–10. The first witness, Pablo Murillo Ramirez (“Pablo”), gave one witness statement on January
27 5, 2009, the day after Petitioner allegedly committed aggravated homicide, and another witness

1 statement on October 8, 2012. In his 2009 statement, Pablo recounts that shortly after Petitioner
 2 and Omar fought in the parking lot of the party venue and were separated, Pablo heard gunshots,
 3 noticed a black Ford pickup truck, and saw Petitioner’s brother, Mauricio, walk alongside the
 4 truck with a black pistol. XR ECF No. 52-3 at MX000032. Pablo further states that he saw Omar
 5 go into the parking lot and “fall sideways to the ground,” and that immediately afterwards, Pablo
 6 saw Mauricio fire shots toward the ground “in the direction where Omar was lying.” *Id.* at
 7 MX000033. Next, Pablo saw the black truck drive by “approximately 20 meters” away, and then
 8 observed Mauricio “holding the gun, and [Petitioner] with a machete in his right hand; both of
 9 them were walking out of the parking lot where Omar was lying.” *Id.* In his 2012 statement,
 10 Pablo states that immediately after seeing Omar fall in the parking, he saw Mauricio approach
 11 Omar and fire “several times at [Omar] on the neck.” XR BSN 188. Subsequently, Pablo saw
 12 Petitioner approach Omar “carrying a big machete” and then “stab[] Omar with it several times,
 13 being one in the head and another one in the neck forming a cross.” *Id.*

14 The second witness, Luis Angel Garcia Sanchez (“Luis”), also gave two witness
 15 statements—one on January 5, 2009 and another on October 8, 2012. In his 2009 statement, Luis
 16 recounts that after exiting the party venue to observe the fight between Petitioner and Omar, and
 17 after the two fighters were separated, Luis saw Petitioner “with a machete in his right hand”
 18 outside of Petitioner’s house, which was nearby. XR ECF No. 52-2 at MX000050. Luis states
 19 that he then saw Mauricio walk out of Petitioner’s house with a gun in his right hand towards the
 20 party venue. *Id.* at MX000051. Next, just as a man named Rodolfo Villegas Villafuerte
 21 (“Rodolfo”) was “exiting the parking lot in a black Ford truck” and “going to start driving
 22 forward,” Mauricio “walked up to the left side door of the truck and fired 3 to 4 shots in Rodolfo’s
 23 direction,” which caused the truck to continue “moving on its own 20 or 30 meters toward the
 24 other entrance to the parking lot, scraping its right side as it went until it stopped in front of a
 25 white gate through which one can also access said parking lot.” *Id.* Luis says that he then
 26 “noticed Omar standing by that gate” while Mauricio approached Omar with a gun, and explains
 27 that “upon seeing [Mauricio] approaching,” Omar ran first toward the truck and then into the

1 parking lot, but “fell to the ground after managing to run a distance of barely 1 meter.” *Id.* Luis
2 further states that he saw Mauricio fire his gun at Omar from behind five times, that Omar fell
3 down and somehow “ended up positioned face up,” and that Mauricio subsequently fired 3 more
4 shots at Omar’s chest “with Omar already lying on the ground, screaming to [Mauricio], ‘Drop the
5 piece, mother fucker.’” *Id.* Then, Luis saw Petitioner come up to Omar with the machete and hit
6 Omar “somewhere around the right side of the neck, while Omar was lying on the ground.” *Id.*
7 Finally, Luis affirms that “Omar was still alive when [Petitioner] hit him with the machete”
8 because Luis “could see [Omar] was groaning, and [Omar] began bleeding profusely,” and he also
9 notes that he observed all of this happen from “about 7 meters away” with the help of “plenty of
10 light from several lampposts.” *Id.*

11 In his 2012 statement, Luis states that he was already outside when he saw Petitioner and
12 Omar begin fighting and later be broken up. XR BSN 183. Luis also says that he spoke with
13 Omar shortly after the fight and urged Omar to leave the party with Rodolfo, and that soon
14 thereafter, he observed “a lot of persons on the street running and yelling” and heard people saying
15 ‘here they come! And they have something.’” *Id.* Then, Luis recounts that he saw Mauricio shoot
16 Omar and Petitioner strike Omar in the neck with a machete. *Id.* Luis further states that after
17 Mauricio and Petitioner walked away from the scene, Luis approached Omar and “could see that
18 he was dying, since he was really fucked up.” *Id.*

19 The third witness, Miguel Angel Yerena Vera (“Miguel”), provided one witness statement
20 on January 5, 2009. In that statement, Miguel states that he saw Petitioner and Omar fighting
21 from inside the party venue, and that shortly thereafter, he observed a “black pickup truck” driven
22 by Rodolfo that “was exiting the parking lot in reverse.” XR ECF No. 52-9 at MX000035.
23 Miguel then saw Mauricio approach the truck from the driver’s side holding a gun, reach in
24 through the truck’s left window, and shoot Rodolfo “almost point-blank.” *Id.* at MX000036.
25 While the truck continued to move “for another 20 meters” before stopping, Miguel noticed Omar
26 running into the parking lot and then heard “3 to 5 more shots.” *Id.* Miguel further recounts that
27 shortly after hearing the gun shots, he saw Mauricio and Petitioner running out of the parking lot,

1 with Petitioner holding a machete. *Id.* Miguel then walked to the truck to see Rodolfo and
2 thought that Rodolfo was “already dead because he wasn’t moving, and had lots of blood around
3 the chest and neck area.” *Id.* Next, Miguel recalls that he “went to the parking lot to check what
4 had happened to Omar,” “saw [Omar] lying face up,” and saw that Omar “was still alive, but had a
5 big wound in his neck, and was bleeding a lot.” *Id.* Then, “[u]pon noticing [Omar] was still
6 alive,” Miguel and some other bystanders “proceeded to pick [Omar] up and move him closer to
7 the pickup” in order “to take him in the truck to seek medical attention.” *Id.*

8 The fourth witness, Victor Alfonso Hernandez Ramirez (“Victor”), provided a witness
9 statement on March 10, 2009. Victor’s statement indicates that Victor did not see the initial fight
10 between Omar and Petitioner, but that he did see Mauricio shoot both Rodolfo (while Rodolfo was
11 driving a black truck) and Omar. XR ECF No. 52-5 at MX000204–05. In his statement, Victor
12 recounts that after Mauricio shot Omar several items in the back and chest, Victor saw Petitioner
13 “walk[] up holding a machete in his right hand” to Omar. *Id.* at MX00205. Then, Victor says that
14 “while Omar lay on the ground, still alive because he was groaning a lot, [Petitioner] hit him with
15 [the machete] somewhere along the right side of the neck.” *Id.* Also in his statement, Victor notes
16 that he “saw all this from a distance of about 4 meters” while he “was standing at the entrance to
17 the parking lot,” and that he “could see everything well because there are a lot of lamps inside and
18 outside the parking lot.” *Id.*

19 As to the autopsy results, Omar Garcia’s autopsy was completed on January 5, 2009 by
20 Diana Cuevas Saldana and Ubaldo De Jesus Aguilar Aguilera. XR BSN 111. The autopsy report
21 identified eight firearm wounds, one wound “with characteristics of those produced by a sharp
22 weapon, lineal form, found in chin and right parotid-mastoidal areas,” and wounds to Omar
23 Garcia’s hands caused by a knife. XR BSN 113–14. The autopsy classified as lethal “EITHER
24 SEPARATELY OR IN CONJUNCTION” (1) injuries caused by a sharp weapon penetrating
25 Omar Garcia’s neck; and (2) injuries caused by firearm projectiles penetrating his thorax and
26 abdomen. XR BSN 117. Finally, the autopsy report found that Omar Garcia’s “immediate” cause
27 of death was: “WOUND PRODUCED BY SHARP-EDGED INSTRUMENT AND WOUNDS

1 OF PROJECTILES FIRED FROM A GUN WHICH PENETRATED THORAX AND
2 ABDOMEN AND DOUBLE PENETRATION IN THORAX AND ABDOMEN.” XR BSN 118
3 (caps in original).

4 The Magistrate Judge found that this evidence was sufficient to support probable cause to
5 believe that Omar Garcia was still alive when Petitioner struck him in the neck with a machete,
6 and thus that Petitioner’s machete strike was a cause of Omar’s death. Although Petitioner argued
7 that the 2012 witness statements from Luis and Pablo were unreliable because those statements
8 were inconsistent with their 2009 statements, XR ECF No. 52 at 10–12, the Magistrate Judge
9 concluded that “[t]hough there are some inconsistencies in the testimonies of Pablo Murillo
10 Ramirez and Luis Angel Garcia Sanchez, those inconsistencies are not so great, and they do not
11 bear on the key contested facts: that [Petitioner] struck Omar with the machete, and that Omar was
12 still alive when this happened.” XR ECF No. 56 at 9. Further, the Magistrate Judge pointed out
13 that “[e]ven if the Court were to accept the challenges to Pablo and Luis’ testimonies, which it
14 does not, that still leaves the eyewitness testimony of Miguel [] and Victor [] unchallenged.” *Id.*
15 Because Victor saw that Omar Garcia was still alive when Petitioner struck Omar with the
16 machete, and because Miguel saw that Omar was still alive *after* being shot and struck with the
17 machete, the Magistrate Judge concluded that “[t]hese two eyewitness statements” from Miguel
18 and Victor “would support a probable cause finding in this case” on their own. *Id.* at 9–10.

19 **b. Admissibility Rulings**

20 Petitioner offered an expert report by Dr. Katherine Raven, a forensic pathologist, in
21 support of his motion to deny extradition for lack of probable cause. XR ECF No. 52 at 11–12;
22 XR ECF No. 52-7 (“Raven Report”). To construct her report, Dr. Raven relied on the exhibits
23 submitted in support of the extradition, and did not personally examine Omar Garcia’s body.
24 Raven Report at 1. In her report, Dr. Raven states that she could not determine “[f]rom the
25 autopsy alone” whether Petitioner’s machete strike to Omar Garcia’s neck “truly contributed to
26 Mr. Garcia’s death.” *Id.* at 2. Dr. Raven further notes that “[i]ncluding all significant injuries in a
27 cause of death [autopsy report] is not an uncommon practice in cases where there are multiple

1 modalities of injury,” and reasoned that although independent fatal wounds “are grouped together
2 collectively for purposes of a cause of death statement,” “it should not be inferred from such a
3 statement which injury was specifically fatal.” *Id.* Dr. Raven’s report then provides reasons why
4 the machete wounds were not the cause of Omar Garcia’s death. Specifically, Dr. Raven states
5 that if Omar had “been alive when he sustained the machete wound to the neck,” there likely
6 would have been “significant blood at the scene, and likely an arterial spurting pattern from the
7 injury to the right carotid artery,” such that witnesses would likely have “described vigorous blood
8 loss and even spurting from the neck.” *Id.* However, Dr. Raven notes that none of the
9 photographs or witness statements documented any “arterial spurting,” and that the autopsy “did
10 not report any soft tissue hemorrhages in the neck associated with the sharp force injury which
11 would certainly have been expected had Mr. Garcia been alive at the time the [machete] injury
12 was sustained.” *Id.* Beyond that, Dr. Raven’s report states that some of the “movement,”
13 “twitching,” and “noises and deep sounds coming from the back of the throat” that witnesses
14 might have observed from Omar Garcia’s body before Petitioner struck Omar “can occur for
15 various reasons in the early postmortem period and should not be considered proof of life.” *Id.*
16 Thus, Dr. Raven concludes in her report that “the cause of [Omar Garcia’s] death can
17 appropriately [be] certified as a consequence of multiple gunshot wounds.” *Id.*

18 However, the Magistrate Judge ruled that Dr. Raven’s report was inadmissible in
19 Petitioner’s extradition proceedings. In excluding Dr. Raven’s report, the Magistrate Judge
20 highlighted the fact that “the Mexican autopsy for Omar Garcia stated that his immediate cause of
21 death was both the machete and gun wounds.” XR ECF No. 56 at 11. The Magistrate Judge then
22 explained that under the legal standard governing admissibility of evidence in extradition
23 proceedings, Petitioner could not present evidence contradicting the Mexican autopsy’s findings
24 on Omar Garcia’s cause of death. *Id.* (citing *Mainero*, 164 F.3d at 1207 n.7). Further, the
25 Magistrate Judge found that because Dr. Raven stated in her report that she “was asked to
26 specifically review the autopsy protocol and photographs pertaining to Mr. Omar Garcia to see if
27 Mr. Garcia was still alive at the time the machete wound was inflicted,” *id.* (quoting Raven Report

1 at 2), “the reason [Dr. Raven] was retained as an expert” was not “merely . . . to explain away
2 some of the government’s evidence,” but rather “to negate the specific finding of” Omar’s cause
3 of death, according to the autopsy report. *Id.* In sum, because Dr. Raven’s report contradicted the
4 cause of death finding in Omar Garcia’s autopsy, the Magistrate Judge found that the report was
5 inadmissible. *Id.*

6 The Magistrate Judge then concluded that “[e]ven if the Raven Report were considered in
7 these extradition proceedings, it would not negate probable cause.” *Id.* Specifically, the
8 Magistrate Judge pointed out that while Dr. Raven’s report concludes that Omar Garcia’s cause of
9 death “can be appropriately certified” as being caused by the gunshots, it also states that Dr. Raven
10 “cannot determine if the sharp force injury truly contributed to” Omar’s death. *Id.*; Raven Report
11 at 2. The Magistrate Judge emphasized that there is “no certainty to these findings.” XR ECF No.
12 56 at 11. Beyond that, the Magistrate Judge also highlighted Dr. Raven’s observations that
13 “[p]hotographs of the scene and autopsy were of poor quality and minimal” and that no “close-
14 up photographs of blood depositions at the scene were provided.” *Id.* (quoting Raven Report at
15 2). The Magistrate Judge stated that the lack of certainty in Dr. Raven’s findings, combined with
16 the acknowledged deficiencies in the photographic evidence upon which Dr. Raven relied,
17 “undermine[d] [Dr. Raven’s] conclusion that the gunshot wounds, and not the machete wounds, or
18 a combination thereof, caused Omar’s death.” *Id.* at 12. Finally, and more generally, the
19 Magistrate Judge explained that “evidence presented to the court in support of extradition may be
20 contradictory,” *id.* (citing *Sainez*, 588 F.3d at 718), so long as “there is enough evidence to
21 ‘conscientiously entertain’ the reasonable belief that [Petitioner] committed the crime.” *Id.*
22 (quoting *In re Flores Ortiz*, 2011 WL 3441618, at *7). In light of this standard, the Magistrate
23 Judge concluded that, even considering Dr. Raven’s report, “the combination of the witness
24 statements and the autopsy, which was performed on the body the day after Omar’s death, support
25 a finding of probable cause that [Petitioner] committed the murder of Omar Garcia.” *Id.*

26 Shortly after the Magistrate Judge found probable cause and certified Petitioner’s
27 extradition, Petitioner filed a motion to reopen the evidence and reconsider the certification of

1 extradition. XR ECF No. 65. In that motion, Petitioner asked the Magistrate Judge to consider
 2 two additional documents: (1) a certified death certificate for Omar Garcia issued by the
 3 Guanajuato Department of the Civil Registry; and (2) “a form entitled Department of Health Death
 4 Certificate with regard to the death of Omar Garcia.” *Id.* at 2–4. The former document states that
 5 Omar Garcia’s death was caused by “wounds produced by projectiles discharged from a firearm,
 6 penetrating wound to face and neck, abdomen, and thorax-abdomen double-penetrating wound.”
 7 XR ECF No. 66-1 at 4. The latter document states that Omar’s “death resulted from the impact of
 8 a projectile discharged from a firearm” and, in another section, identifies Omar’s “cause/s of
 9 death” as “[w]ounds produced by a projectile” that was “[d]ischarged by a firearm penetrating”
 10 “[of] face [] abdomen and” “thoracic-abdominal.” XR ECF No. 66-2 at 3. Petitioner asserted that
 11 these documents indicate “that the bullet wounds were the sole cause” of Omar Garcia’s death,
 12 and argued that the documents should be admitted into evidence because they amounted to
 13 “evidence that explains away or completely obliterates probable cause.” XR ECF No. 65 at 2
 14 (quoting *Mainero*, 164 F.3d at 1207 n.7).

15 The Magistrate Judge disagreed with Petitioner’s argument and denied his motion to
 16 reopen the evidence. XR ECF No. 67. Specifically, the Magistrate Judge observed that because
 17 the government offered Omar Garcia’s autopsy—which listed the knife wound as a cause of
 18 Omar’s death—to support probable cause, and because Petitioner’s offer of Omar’s death
 19 certificates amounted to an assertion that “the Court should prefer the stated cause of death on the
 20 death certificate rather than the discussion in the autopsy,” the death certificates constituted
 21 “evidence contradicting the government’s offer of proof.” *Id.* at 2. As a result, the Magistrate
 22 Judge concluded that the death certificates were inadmissible “contradictory” evidence, and
 23 therefore found “no grounds to reopen the evidence . . . and disturb [the] March 17, 2017
 24 certificate of extradition.” *Id.*

25 **3. Petitioner’s Two-Part Argument**

26 As discussed above, in the instant habeas petition, Petitioner concedes that “[t]he only
 27 issue is whether [Omar] Garcia was already dead when [Petitioner] allegedly cut him with a

1 machete,” Pet. at 17, but nonetheless asserts a two-part argument for why the Magistrate Judge
2 erred in finding that there is probable cause to believe that Petitioner killed Omar. Petitioner’s
3 argument proceeds as follows: (1) the Magistrate Judge erred by excluding Dr. Raven’s report and
4 the death certificates issued by the Guanajuato Department of the Civil Registry and Department
5 of Health; and (2) after taking these excluded pieces of evidence into account, the totality of the
6 evidence “fails to establish probable cause” to believe that Petitioner killed Omar Garcia. *Id.* at
7 16–24. The Court addresses each part of Petitioner’s argument in turn.

8 **a. Admissibility of Evidence**

9 As an initial matter, Petitioner asserts that the Magistrate Judge erred by failing to allow
10 Dr. Raven’s report and the death certificates into evidence. First, as to Dr. Raven’s report,
11 Petitioner argues that contrary to the Magistrate Judge’s conclusion, “Dr. Raven did not challenge
12 the autopsy report or its finding[.]” that the machete wound was a cause of Omar Garcia’s death,
13 and her “description of how a body behaves after death was not meant to counter the testimony of
14 witnesses who saw bleeding and heard groaning.” Pet. at 19. Instead, according to Petitioner, Dr.
15 Raven’s report seeks only to explain “that [autopsy] reports frequently list all injuries that could
16 have independently caused the death, even though not all of those injuries actually did cause the
17 death,” and to “provide context to enable the court in evaluating the credibility of the witnesses’
18 claims.” *Id.*

19 Petitioner’s argument regarding the admissibility of Dr. Raven’s report is not well-taken.
20 As the Magistrate Judge explained, the autopsy report expressly states that an “immediate” cause
21 of Omar’s death was a “WOUND PRODUCED BY SHARP-EDGED INSTRUMENT.” XR
22 ECF No. 56 at 10 (quoting XR BSN 118 (caps in original)). Dr. Raven’s report does more than
23 attempt to “explain away” this finding in the autopsy report. Rather, Dr. Raven’s report provides
24 reasons for why Omar was already dead before the machete strike and affirmatively concludes that
25 Omar’s “cause of death can appropriately [be] certified as a consequence of multiple gunshot
26 wounds.” Raven Report at 2. Therefore, the central finding of Dr. Raven’s report squarely
27 contradicts the autopsy report’s cause of death finding. Further, although Petitioner insists that Dr.

1 Raven’s description of “how a body behaves after death” was meant only to “provide context” for
2 “evaluating the credibility of the witnesses’ claims,” the Ninth Circuit has stated that evidence that
3 “tends to call into question the credibility of the government’s offer of proof” may not be
4 introduced by “an individual contesting extradition.” *Santos*, 830 F.3d at 993. Thus, evaluating
5 Dr. Raven’s report as a whole, and keeping in mind Dr. Raven’s statement that she was “asked [by
6 Petitioner] to specifically review [the evidence] to see if [Omar] Garcia was still alive at the time
7 the machete wound was inflicted,” the Court agrees with the Magistrate Judge that Dr. Raven’s
8 report amounts to inadmissible “contradictory” evidence.

9 Second, as to the death certificates, Petitioner argues that “the purpose of the death
10 certificates is not to contradict the government’s offer of proof, but rather to explain ‘ambiguities
11 and doubtful elements in the government’s case.’” Pet. at 20 (quoting *Santos*, 830 F.3d at 993
12 (internal quotation marks omitted)). Petitioner’s argument is unavailing. As explained above,
13 unlike the autopsy report, the death certificates list the gunshot wounds, but not the machete
14 wound, as the cause of Omar Garcia’s death. Thus, the Court agrees with the Magistrate Judge
15 that Petitioner’s proffering of the death certificates amounts to an argument that “the Court should
16 prefer the stated cause of death on the death certificate[s] rather than the discussion in the
17 autopsy.” XR ECF No. 67 at 2. In other words, the death certificates directly “contradict[] the
18 government’s proof.” *Santos*, 830 F.3d at 993. As a result, the Magistrate Judge did not err by
19 excluding the death certificates from Petitioner’s extradition proceedings.

20 **b. Probable Cause Under the Totality of the Evidence**

21 Contrary to the second part of Petitioner’s argument, even if it were proper to consider Dr.
22 Raven’s report and the death certificates, the Court finds that there would still be sufficient
23 evidence to support probable cause to believe that Petitioner committed aggravated homicide. As
24 explained above, probable cause means “‘evidence sufficient to cause a person of ordinary
25 prudence and caution to conscientiously entertain a reasonable belief in the accused’s guilt.’” *In*
26 *re Flores Ortiz*, 2011 WL 3441618 at *7 (quoting *Wiebe*, 733 F.2d at 553). Moreover, an
27 extradition court’s probable cause finding must be upheld “if there is *any* competent evidence in

1 the record to support it.” *Quinn*, 783 F.2d at 791 (emphasis added).

2 As the Magistrate Judge explained, probable cause is supported in the instant case by an
3 autopsy report and witness statements from four eyewitnesses. *See* XR ECF No. 56 at 7–10. The
4 autopsy report concludes that a “WOUND PRODUCED BY SHARP-EDGED INSTRUMENT”
5 was a cause of Omar Garcia’s death. XR BSN 118 (caps in original). Additionally, two of the
6 witnesses—Luis and Victor—expressly state that Omar was still alive immediately before
7 Petitioner struck Omar with the machete, XR ECF No. 52-2 at MX000051; XR ECF No. 52-5 at
8 MX00205, while one of the witnesses—Miguel—states that Omar was still alive *after* the machete
9 strike. XR ECF No. 52-9 at MX000036. Indeed, in his statement, Miguel recounts that (1) in
10 contrast to Rodolfo, who appeared to be dead, Omar appeared to Miguel and other bystanders to
11 be alive even after Mauricio and Petitioner departed from the parking lot; and (2) because Omar
12 appeared to be alive, Miguel and the other bystanders “proceeded to pick [Omar] up and move
13 him closer to the pickup” in order “to take him in the truck to seek medical attention.” *Id.*

14 Further, although there are some minor inconsistencies between the statements that two of
15 the witnesses—Pablo and Luis—gave in 2009 and the statements they gave in 2012, the
16 Magistrate Judge correctly found that (1) none of those inconsistencies “bear on the key contested
17 fact[.]” of whether “Omar was still alive when” Petitioner allegedly struck Omar with the machete;
18 and (2) even setting aside Pablo and Luis’s statements as unreliable, the eyewitness accounts from
19 Miguel and Victor are sufficient to support probable cause to believe that Omar Garcia was still
20 alive immediately before sustaining the knife wound. XR ECF No. 56 at 9. Moreover, even
21 taking into consideration Dr. Raven’s cautionary statements that any “movement,” “twitching,”
22 and “noises and deep sounds coming from the back of the throat” that witnesses might have
23 observed from Omar Garcia’s body “should not be considered proof of life,” Raven Report at 2,
24 Miguel cited none of these characteristics as reasons for why Omar appeared to be alive when
25 recounting how he and several other bystanders moved Omar “to take him in the truck to seek
26 medical attention.” XR ECF No. 52-9 at MX000036.

27 More generally, with regards to Dr. Raven’s report as a whole, the Court agrees with the

28

1 Magistrate Judge that there is “no certainty to” Dr. Raven’s findings, XR ECF No. 56 at 11, as Dr.
2 Raven expressly states that she “cannot determine if the sharp force injury truly contributed to”
3 Omar’s death. Raven Report at 2. The Court also agrees that this lack of certainty, when
4 combined with Dr. Raven’s own observations about the “poor quality” and “minimal”
5 photographic evidence from the crime scene and the absence of “close-up photographs of blood
6 depositions at the scene,” at least partially undermines Dr. Raven’s “conclusion that the gunshot
7 wounds, and not the machete wounds, or a combination thereof, caused Omar’s death.” XR ECF
8 No. 56 at 12 (quoting Raven Report at 2).

9 As a result, even taking into consideration the evidence that the Magistrate Judge excluded,
10 the Court finds that the witness statements and the autopsy report provide sufficient evidence “to
11 cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief”
12 that Petitioner committed aggravated homicide. *In re Flores Ortiz*, 2011 WL 3441618 at *7
13 (quoting *Wiebe*, 733 F.2d at 553). Again, the Court must uphold the Magistrate Judge’s probable
14 cause determination so long as there is “any competent evidence in the record” to support it.
15 *Quinn*, 784 F.2d at 791 (emphasis added). In other words, “weighing the evidence is not a
16 function we perform when we review the magistrate’s probable cause determination.” *Sainez*, 588
17 F.3d at 718. In the instant case, the Court concludes that even in the face of contradictory
18 evidence presented by Dr. Raven’s report and the death certificates, the autopsy report and the
19 witness statements—and especially Miguel’s statement—are sufficient to cross the “any
20 competent evidence” threshold and to justify a reasonable belief that Omar Garcia was still alive
21 when Petitioner allegedly struck him in the neck with a machete. Accordingly, the Magistrate
22 Judge did not err by finding that there is probable cause to believe that Petitioner committed
23 aggravated homicide.³

24
25 ³ Petitioner also points to an article entitled *Mexico’s Deathly Data*, Stanford Magazine 28
26 (Nov./Dec. 2016). Mot. at 20 n.10 (citing XR ECF No. 52-8). That article discusses, inter alia,
27 how well-funded criminal organizations in Mexico frequently “buy off local officials as well as
28 municipal, state and federal police officers.” XR ECF No. 52-8. Based on this article, Petitioner
urges the Court to “apply particular scrutiny to all of the statements obtained by the Mexican
authorities in light of the widespread corruption of law enforcement.” *Id.* However, the Court

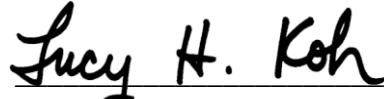
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IV. CONCLUSION

For the foregoing reasons, the petition for writ of habeas corpus is DENIED.

IT IS SO ORDERED.

Dated: February 8, 2018



LUCY H. KOH
United States District Judge

agrees with the Magistrate Judge’s determinations that (1) Petitioner’s request to “distrust all evidence obtained from the Mexican government” based on one magazine article is a “sweeping request” that “is poorly supported”; and (2) “the article is irrelevant” in the instant case “because no one alleges a criminal organization was in any way involved in Omar’s murder.” XR ECF No. 56 at 10 n.2. As a result, the Court finds that the Stanford Magazine article falls well short of defeating probable cause in the instant case.