

**SECOND PROTOCOL AMENDING THE TREATY ON EXTRADITION BETWEEN THE
GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED STATES OF
AMERICA**

Signed at Washington on December 3, 1971, as amended by an Exchange of Notes at
Washington on June 28 and July 9, 1974, and by a Protocol signed at Ottawa on January 11,
1988

THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED STATES OF
AMERICA (hereinafter "the Parties");

RECOGNIZING the close bilateral relationship which exists between them, reflected in numerous
instruments and mechanisms of legal cooperation;

COMMITTED to strengthening legal cooperation in the fight against crime; and

DESIRING to make more effective the Extradition Treaty between the Parties, signed at
Washington on December 3, 1971 (hereinafter "the Extradition Treaty"), as amended by an
exchange of notes of June 28 and July 9, 1974, and the Protocol to the Extradition Treaty
between the Parties, signed at Ottawa on January 11, 1988 (hereinafter "the Protocol");

HAVE AGREED as follows:

ARTICLE 1

The Extradition Treaty is amended by adding the following after Article 7:

"Article 7 bis

1. The requested State, after granting an extradition request made in accordance with the
Extradition Treaty, may temporarily surrender a person who has been convicted and sentenced in
the requested State, in order that the person sought may be prosecuted in the requesting State.
The temporary surrender of the person shall not divest the Courts in the requested State of
jurisdiction over any appeal or habeas corpus application relating to the conviction or sentence
that otherwise may be available under the laws of the requested State.

2. A person temporarily surrendered pursuant to paragraph 1 shall be kept in custody in the
requesting State. The person shall be returned to the requested State within forty-five (45) days
after the conclusion of the proceedings for which the person's presence was required in the
requesting State or at another time as specified by the requested State, in accordance with
conditions to be determined by the Parties for that purpose. The return of the person to the
requested State shall not divest the Courts in the requesting State of jurisdiction over any appeal
or habeas corpus application that otherwise may be available under the laws of that State, in
relation to the matter for which the person was temporarily surrendered.

3. The period of time spent in custody in the requesting State may be credited to the sentence in the requested State.

4. When the sentence that the person was serving in the requested State expires during the temporary surrender, the requested State may waive the return of the person and the surrender will be considered to be a final surrender. A "final surrender" is a surrender of a person pursuant to this Treaty other than as provided for by this Article.

5. Subject to paragraph 7, if a person temporarily surrendered and returned to the requested State has been sentenced to imprisonment in the requesting State for the offence for which the person was temporarily surrendered, the person shall be finally surrendered to the requesting State, in accordance with paragraph 6, without a further request for extradition.

6. Final surrender shall take place when the person has finished serving the custodial portion of the sentence in the requested State, or at an earlier time specified by the requested State.

7. Final surrender shall not take place when:

(a) the requesting State advises that final surrender is no longer required due to the expiration of the sentence imposed or for other reasons; or

(b) after the temporary surrender, the warrant or order for the final surrender of a person sought is revoked by the competent authority of the requested State."

ARTICLE 2

Article 10(2) of the Extradition Treaty is deleted and replaced by the following text:

"(2) The documentary evidence in support of a request for extradition or copies of these documents shall be admitted in evidence in the examination of the request for extradition when:

(a) in the case of a request emanating from Canada, they are authenticated by an officer of the Department of Justice of Canada and are certified by the principal diplomatic or consular officer of the United States in Canada;

(b) in the case of a request emanating from the United States for a person who is sought for prosecution, they are certified by a judicial authority or prosecutor who attests that the evidence is available for trial and is sufficient to justify prosecution under the law of the prosecuting jurisdiction. In the case of a request emanating from the United States for a person who is sought in connection with a conviction, the documents must be certified by a judicial, prosecuting or correctional authority who attests to the fact that the documents are accurate; or

(c) they are certified or authenticated in any other manner accepted by the law of the requested State."

ARTICLE 3

1. This Second Protocol shall form an integral part of the Extradition Treaty.

2. Notwithstanding paragraph (2) of Article 18 of the Extradition Treaty, this Second Protocol shall apply in all cases where the request for extradition is made after its entry into force regardless of whether the offence was committed before or after that date.

3. This Second Protocol shall be subject to ratification, and shall enter into force upon the exchange of instruments of ratification. It shall terminate upon termination of the Extradition Treaty.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Second Protocol.

DONE in duplicate at Ottawa this 12th day of January 2001 in the English and French languages, the two texts being equally authentic.

GEORGE HAYNAL

For the Government of Canada

GORDON D. GIFFIN

For the Government of the United States of America