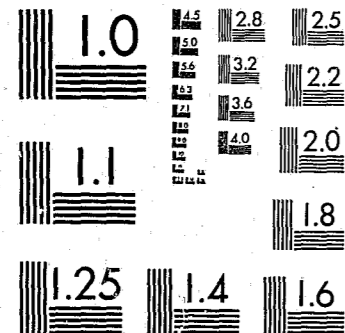


National Criminal Justice Reference Service



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National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

DATE FILMED

JULY 1, 1981

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X
PRISONER TRANSFER

X
Treaty Between the
UNITED STATES OF AMERICA
and MEXICO

Signed at México November 25, 1976

U.S. Department of Justice
National Institute of Justice

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MEXICO

Prisoner Transfer

*Treaty signed at México November 25, 1976;
Ratification advised by the Senate of the United States of America,
subject to a declaration,^[1] July 21, 1977;
Ratified by the President of the United States of America August 2,
1977;
Ratified by Mexico October 24, 1977;
Ratifications exchanged at Washington October 31, 1977;
Proclaimed by the President of the United States of America
November 12, 1977;
Entered into force November 30, 1977.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Treaty between the United States of America and the United Mexican States on the Execution of Penal Sentences was signed at Mexico City on November 25, 1976, the text of which Treaty, in the English and Spanish languages, is hereto annexed;

The Senate of the United States of America by its resolution of July 21, 1977, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Treaty;

The Treaty was ratified by the President of the United States of America on August 2, 1977, in pursuance of the advice and consent of the Senate, and was duly ratified on the part of the United Mexican States;

It is provided in Article X of the Treaty that the Treaty shall enter into force thirty days after the exchange of instruments of ratification;

The instruments of ratification of the Treaty were exchanged at Washington on October 31, 1977; and accordingly the Treaty will enter into force on November 30, 1977;

¹ The declaration reads: "That the United States Government declares that it will not deposit its instrument of ratification until after the implementing legislation referred to in article IV has been enacted."

Now, THEREFORE, I, Jimmy Carter, President of the United States of America, proclaim and make public the Treaty, to the end that it shall be observed and fulfilled with good faith on and after November 30, 1977, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this twelfth day of November in the year of our Lord one thousand nine hundred [SEAL] seventy-seven and of the Independence of the United States of America the two hundred second.

JIMMY CARTER

By the President:
CYRUS VANCE
Secretary of State

TREATY BETWEEN
THE UNITED STATES OF AMERICA AND
THE UNITED MEXICAN STATES
ON THE EXECUTION OF PENAL SENTENCES

The United States of America and the United Mexican States, desiring to render mutual assistance in combating crime insofar as the effects of such crime extend beyond their borders and to provide better administration of justice by adopting methods furthering the offender's social rehabilitation, have resolved to conclude a Treaty on the execution of penal sentences and, to that end, have named their plenipotentiaries Joseph John Jova, Ambassador Extraordinary and Plenipotentiary by the President of the United States of America and Alfonso Garcia Robles, Secretary of Foreign Relations by the President of the United Mexican States,

Who, having exchanged their full powers and having found them in proper and due form, have agreed on the following Articles:

Article I

(1) Sentences imposed in the United Mexican States on nationals of the United States of America may be served in penal institutions or subject to the supervision of the authorities of the United States of America in accordance with the provisions of this Treaty.

(2) Sentences imposed in the United States of America on nationals of the United Mexican States may be served in penal institutions or subject to the supervision of the authorities of the United Mexican States in accordance with the provisions of this Treaty.

Article II

This Treaty shall apply only subject to the following conditions:

- (1) That the offense for which the offender was convicted and sentenced is one which would also be generally punishable as a crime in the Receiving State, provided, however, that this condition shall not be interpreted so as to require that the crimes described in the laws of the two States be identical in such matters not affecting the character of the crimes such as the quantity of property or money taken or possessed or the presence of interstate commerce.
- (2) That the offender must be a national of the Receiving State.
- (3) That the offender not be a domiciliary of the Transferring State.

- (4) That the offense not be a political offense within the meaning of the Treaty of Extradition of 1899 ^[1] between the parties, nor an offense under the immigration or the purely military laws of a party.
- (5) That at least six months of the offender's sentence remains to be served at the time of petition; and
- (6) That no proceeding by way of appeal or of collateral attack upon the offender's conviction or sentence be pending in the Transferring State and that the prescribed time for appeal of the offender's conviction or sentence has expired.

Article III

Each State shall designate an authority to perform the functions provided in this Treaty.

Article IV

(1) Every transfer under the Treaty shall be commenced by the Authority of the Transferring State. Nothing in this Treaty shall prevent an offender from submitting a request to the Transferring State for consideration of his transfer.

(2) If the Authority of the Transferring State finds the transfer of an offender appropriate, and if the offender gives his express consent for his transfer, said Authority shall transmit a request for transfer, through diplomatic channels, to the Authority of the Receiving State.

(3) If the Authority of the Receiving State approves the request, it shall promptly so inform the Transferring State and shall initiate the necessary procedures to effect the transfer of the offender. If it does not approve the request, it shall so notify promptly the Authority of the Transferring State.

¹ TS 242; 31 Stat. 1818.

(4) In deciding upon the transfer of an offender the Authority of each Party shall bear in mind all factors bearing upon the probability that the transfer will contribute to the social rehabilitation of the offender, including the nature and severity of his offense and his previous criminal record, if any, his medical condition, the strength of his connections by residence, presence in the territory, family relations and otherwise to the social life of the Transferring State and the Receiving State.

(5) If the offender was sentenced by the courts of a state of one of the Parties, the approval of the authorities of that state, as well as that of the Federal Authority, shall be required. The Federal Authority of the Receiving State shall, however, be responsible for the custody of the transferred offender.

(6) No offender shall be transferred unless either the sentence which he is serving has a specified duration, or such a duration has subsequently been fixed by the appropriate administrative authorities.

(7) The Transferring State shall furnish the Receiving State a statement showing the offense of which the offender was convicted, the duration of the sentence, the length of time already served by the prisoner and any credits to which the offender is entitled, such as, but not limited to, work done, good behavior or pretrial confinement. Such statement shall be translated into the language of the Receiving State and duly authenticated. The Transferring State shall also furnish the Receiving State a certified copy of the sentence handed down by the competent judicial authority and any modifications thereof. It shall also furnish additional information that might be useful to the Authority of the Receiving State in determining the treatment of the convict with a view to his social rehabilitation.

(8) If the Receiving State considers that the documents supplied by the Transferring State do not enable it to implement this Treaty, it may request additional information.

(9) Each Party shall take the necessary legislative measures and, where required, shall establish adequate procedures, to give for the purposes of this Treaty, legal effect, within its territory to sentences pronounced by courts of the other Party.

Article V

(1) Delivery of the offender by the authorities of the Transferring State to those of the Receiving State shall occur at a place agreed upon by both parties. The Transferring State shall afford an opportunity to the Receiving State, if it so desires, to verify, prior to the transfer, that the offender's consent to the transfer is given voluntarily and with full knowledge of the consequences thereof, through the officer designated by the laws of the Receiving State.

(2) Except as otherwise provided in this Treaty, the completion of a transferred offender's sentence shall be carried out according to the laws and procedures of the Receiving State, including the application of any provisions for reduction of the term of confinement by parole, conditional release or otherwise. The Transferring State shall, however, retain the power to pardon or grant amnesty to the offender and the Receiving State shall, upon being advised of such pardon or amnesty release the offender.

(3) No sentence of confinement shall be enforced by the Receiving State in such a way as to extend its duration beyond the date at which it would have terminated according to the sentence of the court of the Transferring State.

(4) The Receiving State shall not be entitled to any reimbursement for the expenses incurred by it in the completion of the offender's sentence.

(5) The Authorities of each party shall, every six months, exchange reports indicating the status of confinement of all offenders transferred under this Treaty, including in particular the parole or release of any offender. Either Party may, at any time, request a special report on the status of the execution of an individual sentence.

(6) The fact that an offender has been transferred under the provisions of this Treaty shall not prejudice his civil rights in the Receiving State in any way beyond those ways in which the fact of his conviction in the Transferring State by itself effects such prejudice under the laws of the Receiving State or any State thereof.

Article VI

The Transferring State shall have exclusive jurisdiction over any proceedings, regardless of their form, intended to challenge, modify or set aside sentences handed down by its courts. The Receiving State shall, upon being advised by the Transferring State of action affecting the sentence, take the appropriate action in accordance with such advice.

Article VII

An offender delivered for execution of a sentence under this Treaty may not be detained, tried or sentenced in the Receiving State for the same offense upon which the sentence to be executed is based. For purposes of this Article, the Receiving State will not prosecute for any offense the prosecution of which would have been barred under the law of that State, if the sentence had been imposed by one of its courts, federal or state.

Article VIII

(1) This Treaty may also be applicable to persons subject to supervision or other measures under the laws of one of the Parties relating to youthful offenders. The Parties shall, in accordance with their laws, agree to the type of treatment to be accorded such individuals upon transfer. Consent for the transfer shall be obtained from the legally authorized person.

(2) By special agreement between the Parties, persons accused of an offense but determined to be of unsound mental condition may be transferred for care in institutions in the country of nationality.

(3) Nothing in this Treaty shall be interpreted to limit the ability which the Parties may have, independent of the present Treaty, to grant or accept the transfer of youthful or other offenders.

Article IX

For the purposes of this Treaty, --

(1) "Transferring State" means the party from which the offender is to be transferred.

(2) "Receiving State" means the party to which the offender is to be transferred; and

(3) "Offender" means a person who, in the territory of one of the parties, has been convicted of a crime and sentenced either to imprisonment or to a term of probation, parole, suspended sentence, or any other form of supervision or conditional sentence without confinement.

(4) A "domiciliary" means a person who has been present in the territory of one of the parties for at least five years with an intent to remain permanently therein.

Article X

(1) This Treaty is subject to ratification. The exchange of ratifications shall take place in Washington.

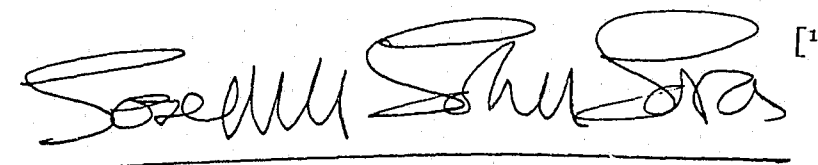
(2) This Treaty shall enter into force thirty days after the exchange of ratifications and shall remain in force for three years. ^[1]

(3) Should neither contracting party have notified the other ninety days before the three-year period mentioned in the preceding paragraph has expired of its intention to let the Treaty terminate, the Treaty shall remain in force for another three years, and so on every three years.

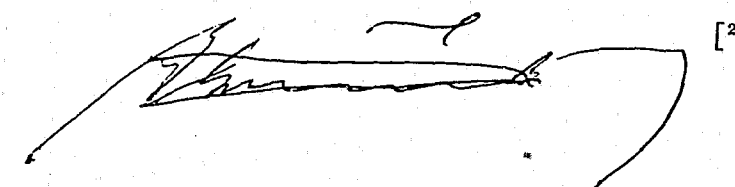
¹Nov. 30, 1977.

DONE at Mexico City in duplicate, this twenty-fifth day of November, one thousand nine hundred seventy six, in the English and Spanish languages, each text of which shall be equally authentic.

FOR THE UNITED STATES OF AMERICA:

 [1]

FOR THE UNITED MEXICAN STATES:

 [2]

¹ Joseph John Jova
² Alfonso García Robles

TRATADO ENTRE LOS ESTADOS UNIDOS DE AMERICA Y LOS
ESTADOS UNIDOS MEXICANOS SOBRE LA EJECUCION DE SENTENCIAS
PENALES

Los Estados Unidos de América y los Estados Unidos Mexicanos, animados por el deseo de prestarse mutuamente asistencia en la lucha contra la criminalidad en la medida en que los efectos de esta trascienden sus fronteras y de proveer a una mejor administración de la justicia mediante la adopción de métodos que faciliten la rehabilitación social del reo, han resuelto concluir un Tratado sobre la Ejecución de Sentencias Penales y, con tal fin, han nombrado sus plenipotenciarios:

El Presidente de los Estados Unidos de América, al señor Joseph John Jova, Embajador Extraordinario y Plenipotenciario de los Estados Unidos de América en México y

El Presidente de los Estados Unidos Mexicanos, al señor licenciado Alfonso García Robles, Secretario de Relaciones Exteriores quienes, después de haberse comunicado sus plenos poderes y haberlos encontrado en buena y debida forma, han convenido en los Artículos siguientes:

ARTICULO I

1. Las penas impuestas en los Estados Unidos Mexicanos a nacionales de los Estados Unidos de América podrán ser extinguidas en establecimientos penales de los Estados Unidos de América o bajo la vigilancia de sus autoridades, de conformidad con las disposiciones del presente Tratado.

2. Las penas impuestas en los Estados Unidos de América a nacionales de los Estados Unidos Mexicanos podrán ser extinguidas en establecimientos penales de los Estados Unidos Mexicanos o bajo la vigilancia de sus autoridades, de conformidad con las disposiciones del presente Tratado.

ARTICULO II

El presente Tratado se aplicará únicamente bajo las siguientes condiciones:

- 1) Que el delito por el cual el reo fue declarado culpable y sentenciado sea también generalmente punible en el Estado Receptor, en la inteligencia que, sin embargo, esta condición no será interpretada en el sentido de requerir que los delitos tipificados en las leyes de ambos estados sean idénticos en aquellos aspectos que no afectan a la índole del delito como, por ejemplo, la cantidad de los bienes o del numerario sustraído o en posesión del reo, o la presencia de factores relativos al comercio interestatal.
- 2) Que el reo sea nacional del Estado Receptor.
- 3) Que el reo no esté domiciliado en el Estado Trasladante.
- 4) Que el delito no sea político en el sentido del Tratado de Extradición de 1899 entre las Partes, ni tampoco un delito previsto en las leyes de migración o las leyes puramente militares.

- 5) Que la parte de la sentencia del reo que quede por cumplirse en el momento de la solicitud sea de por lo menos seis meses.
- 6) Que ningún procedimiento de apelación, recurso o juicio en contra de la sentencia o de la pena esté pendiente de resolución en el Estado Trasladante y que el término prescrito para la apelación de la condena del reo haya vencido.

ARTICULO III

Cada Estado designará una autoridad que se encargará de ejercer las funciones previstas en el presente Tratado.

ARTICULO IV

- 1) Todo traslado conforme al presente Tratado se iniciará por la Autoridad del Estado Trasladante. Nada de lo dispuesto en el presente Tratado impedirá a un reo presentar una solicitud al Estado Trasladante para que considere su traslado.
- 2) Si la Autoridad del Estado Trasladante considera procedente el traslado de un reo y si éste da su consentimiento expreso para su traslado, dicha Autoridad transmitirá una solicitud en ese sentido, por los conductos diplomáticos, a la Autoridad del Estado Receptor.
- 3) Si la Autoridad del Estado Receptor acepta la solicitud, lo comunicará sin demora al Estado Trasladante e iniciará los procedimientos necesarios para efectuar el traslado del reo. Si no la acepta, lo hará saber sin demora a la Autoridad del Estado Trasladante.

4) Al decidir respecto del traslado de un reo, la Autoridad de cada una de las Partes tendrá en cuenta todos los factores pertinentes a la probabilidad de que el traslado contribuya a la rehabilitación social del reo, incluyendo la índole y gravedad del delito y los antecedentes penales del reo, si los tuviere; las condiciones de su salud; los vínculos que, por residencia, presencia en el territorio, relaciones familiares u otros motivos, pueda tener con la vida social del Estado Trasladante y del Estado Receptor.

5) Si el reo fue sentenciado por los tribunales de un Estado de una de las Partes, será necesario tanto la aprobación de las autoridades de dicho Estado, como la de la Autoridad Federal. No obstante, la Autoridad Federal del Estado Receptor será responsable de la custodia del reo.

6) No se llevará a cabo el traslado de reo alguno a menos que la pena que esté cumpliendo tenga una duración determinada o que las autoridades administrativas competentes hayan fijado posteriormente su duración.

7) El Estado Trasladante proporcionará al Estado Receptor una certificación que indique el delito por el cual fue sentenciado el reo, la duración de la pena, el tiempo ya cumplido por el reo y el tiempo que deba abonársele por motivos tales como, entre otros, trabajo, buena conducta o prisión preventiva. Dicha certificación será traducida al idioma del Estado Receptor y debidamente legalizada. El Estado Trasladante también proporcionará al Estado Receptor una copia certificada de la sentencia dictada por la Autoridad Judicial competente y de cualesquiera modificaciones que haya tenido. El Estado Trasladante también proporcionará toda información adicional que pueda ser útil a la Autoridad del Estado Receptor para determinar el tratamiento del reo con vistas a su rehabilitación social.

8) Si el Estado Receptor considera que los informes proporcio-

nados por el Estado Trasladante no son suficientes para permitirle la aplicación del presente Tratado, podrá solicitar información complementaria.

9) Cada una de las Partes tomará las medidas legislativas necesarias y, en su caso, establecerá los procedimientos adecuados, para que, para los fines del presente Tratado, surtan efectos legales en su territorio las sentencias dictadas por los tribunales de la otra Parte.

ARTICULO V

1) La entrega del reo por las autoridades del Estado Trasladante a las del Estado Receptor se efectuará en el lugar en que convengan ambas Partes. Antes del traslado, el Estado Trasladante dará al Estado Receptor la oportunidad, si éste la solicita, de verificar, por conducto del funcionario competente conforme a las leyes del Estado Receptor, que el consentimiento del reo para su traslado fue otorgado voluntariamente y con pleno conocimiento de las consecuencias inherentes.

2) Salvo disposición en contrario del presente Tratado, el cumplimiento de la sentencia de un reo trasladado se sujetará a las leyes y procedimientos del Estado Receptor, incluyendo la aplicación de toda disposición relativa a la condena condicional y a la reducción del período de prisión mediante libertad preparatoria o cualquier otra forma de preliberación. El Estado Trasladante conservará, sin embargo, la facultad de indultar al reo o concederle amnistía y el Estado Receptor, al recibir aviso de tal indulto o amnistía, pondrá al reo en libertad.

3) Ninguna sentencia de prisión será ejecutada por el Estado Receptor de manera a prolongar la duración de la pena más allá de la fecha en

que quedaría extinguida de acuerdo con la sentencia del tribunal del Estado Trasladante.

4) El Estado Receptor no podrá reclamar el reembolso de los gastos en que incurra con motivo de la ejecución de la sentencia del reo.

5) Las Autoridades de las Partes intercambiarán, cada seis meses, informes sobre el estado que guarde la ejecución de las sentencias de todos los reos trasladados conforme al presente Tratado, incluyendo en particular los relativos a la excarcelación (libertad preparatoria o libertad absoluta) de cualquier reo. Cualquiera de las Partes podrá solicitar, en cualquier momento, un informe especial sobre el estado que guarde la ejecución de una sentencia individual.

6) El hecho de que un reo haya sido trasladado conforme a las disposiciones del presente Tratado no afectará sus derechos civiles en el Estado Receptor más allá de lo que pueda afectarlos, conforme a las leyes del Estado Receptor o de cualquiera de sus entidades federativas, el hecho mismo de haber sido objeto de una condena en el Estado Trasladante.

ARTICULO VI

El Estado Trasladante tendrá jurisdicción exclusiva respecto de todo procedimiento, cualquiera que sea su índole, que tenga por objeto impugnar, modificar o dejar sin efectos las sentencias dictadas por sus tribunales. El Estado Receptor, al recibir aviso del Estado Trasladante de cualquier decisión que afecte a una sentencia, deberá adoptar las medidas que correspondan, conforme a dicho aviso.

ARTICULO VII

Un reo entregado para la ejecución de una sentencia conforme al presente Tratado no podrá ser detenido, procesado ni sentenciado en el Estado Receptor por el mismo delito que motivó la sentencia a ser ejecutada. Para los fines de este Artículo, el Estado Receptor no ejercitará acción penal en contra del reo por cualquier delito respecto del cual el ejercicio de la acción penal no sería posible conforme a las leyes de ese Estado, en el caso de que la sentencia hubiere sido impuesta por uno de sus tribunales, federal o estatal.

ARTICULO VIII

1) El presente Tratado podrá también aplicarse a personas sujetas a supervisión u otras medidas conforme a las leyes de una de las Partes relacionadas con menores infractores. Las Partes, de conformidad con sus leyes, acordarán el tipo de tratamiento que se aplicará a tales personas una vez trasladadas. Para el traslado se obtendrá el consentimiento de quien esté legalmente facultado para otorgarlo.

2) Por acuerdo especial entre las Partes, las personas acusadas de un delito, respecto de las cuales se haya comprobado que sufren una enfermedad o anomalía mental podrán ser trasladadas para ser atendidas en instituciones en el país de su nacionalidad.

3) Ninguna disposición de este Tratado se interpretará en el sentido de limitar la facultad que las Partes puedan tener, independientemente del presente Tratado, para conceder o aceptar el traslado de un menor infractor u otra clase de infractor.

ARTICULO IX

Para los fines del presente Tratado:

1) "Estado Trasladante" significa la Parte de la cual el reo habrá de ser trasladado.

2) "Estado Receptor" significa la Parte a la que el reo habrá de ser trasladado.

3) "Reo" significa una persona que, en el territorio de una de las Partes ha sido declarada responsable de un delito y se encuentra sujeta, en virtud de una sentencia o de cualquier medida legal adoptada en ejecución de dicha sentencia, ya sea a prisión ya sea al régimen de condena condicional, de libertad preparatoria o de cualquier otra forma de libertad sujeta a vigilancia.

4) Un "domiciliado" significa una persona que ha radicado en el territorio de una de las Partes por lo menos cinco años con el propósito de permanecer en él.

ARTICULO X

1) El presente Tratado estará sujeto a ratificación. El Canje de ratificaciones tendrá lugar en Washington.

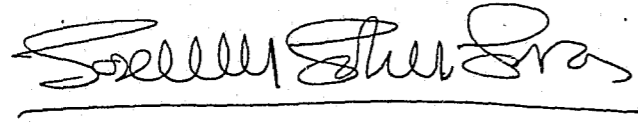
2) El presente Tratado entrará en vigor treinta días después del canje de ratificaciones y tendrá una duración de tres años.

3) Si ninguna de las Partes Contratantes hubiere notificado a la otra noventa días antes de la expiración del período de tres años a que

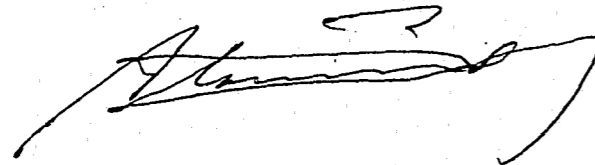
se refiere el Apartado anterior, su intención de dejar que el Tratado termine, éste continuará en vigor por otros tres años y así sucesivamente de tres en tres años.

Hecho en la Ciudad de México, en duplicado, a los veinticinco días del mes de noviembre del año mil novecientos setenta y seis, en los idiomas inglés y español, siendo cada uno de los textos igualmente auténticos.

Por los Estados Unidos de América:



Por los Estados Unidos Mexicanos:



END