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TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND RELATING TO EXTRADITION

The Government of the United States of America and the Government of the Kingdom of Thailand

Recalling that the Treaty of Extradition between the United States of America and the Kingdom of Thailand, signed at Bangkok December 30, 1922, has enhanced the administration of criminal [8] justice in both States; and

Desiring to provide for more effective cooperation between the two States in the suppression of crime; and

Desiring to conclude a new Treaty for the reciprocal extradition of offenders;

Have agreed as follows:

ARTICLE 1

Obligation To Extradite

(1) The Contracting Parties agree to extradite to each other, subject to the provisions described in this Treaty, persons found in the territory of one of the Contracting Parties who have been proceeded against for, have been charged with, have been found guilty of, or are wanted for the enforcement of a judicially pronounced penalty for committing an extraditable offense, by the judicial authority of the Requesting State. The term "judicial authority" shall include the police and public prosecution authority for the purpose of proceeding against or charging such persons in accordance with the laws of each Contracting Party.

(2) With respect to an extraditable offense committed outside the territory of the Requesting State, the Requested State shall grant extradition, subject to the provisions of this Treaty, if its laws would provide for the punishment of such an offense in comparable circumstances.

ARTICLE 2 [9]

Extraditable Offenses (1) An offense shall be an extraditable offense for prosecution or for the imposition of a penalty or detention order only if it is punishable under the laws of both Contracting Parties by imprisonment or other form of detention for a period of more than one year or by any greater punishment.

For the enforcement of a penalty or detention order for such an extraditable offense, extradition shall be granted if the duration of the penalty or detention order still to be served amounts to at least six months.

(2) An offense shall be an extraditable offense if it consists of preparing or attempting to commit, aiding or abetting, assisting, counselling or procuring the commission of, or being an accessory before or after the fact to, an offense described in paragraph (1) of this Article provided that such are punishable under the laws of both Contracting Parties by imprisonment or other form of detention for a period of more than one year or by any greater punishment.

(3) Extradition shall also be granted for illicit or criminal association, as provided by the laws of Thailand, to commit any offense described in paragraph (1) of this Article, and for conspiring, [10] as provided by the laws in the United States of America, to commit any such offense.

(4) For the purposes of this Article, an offense shall be an extraditable offense:

(a) whether or not the laws of the Contracting Parties place the offense within the same category of offenses or denominate the offense by the same terminology; or

(b) whether or not the offense is one for which United States federal law requires proof of interstate transportation or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court.

(5) When extradition has been granted with respect to an extraditable offense, it may also be granted in respect to any other offense specified in the extradition request that meets all other requirements for extradition except for periods of penalty or detention order set forth in paragraph (1) of this Article.

ARTICLE 3

Political and Military Offenses

(1) Extradition shall not be granted when:

(a) the offense for which extradition is sought is a political offense; or

(b) it is established that extradition is requested for political purposes; [11] or

(c) the offense for which extradition is sought is exclusively a military offense.

(2) For the purpose of this Treaty a murder or willful crime against the life or physical integrity of a Head of State of one of the Contracting Parties or of a member of that person's family, including attempts to commit such offenses, shall not be deemed to be offenses within the meaning of paragraph (1) of this Article.

ARTICLE 4

Dual Jurisdiction

The Requested State may refuse to extradite a person claimed for a crime which is requested by its laws as having been committed in whole or in part in its territory or in a place treated as its territory, provided it shall proceed against the person for that crime according to its laws.

ARTICLE 5

Prior Jeopardy for the Same Offense

(1) Extradition shall not be granted when the person sought has been tried and convicted or acquitted in the Requested State for the offense for which extradition is requested.

(2) Extradition may be denied when the person sought is being or has been proceeded against in the Requested State for the offense for which extradition is requested.

(3) Extradition may be granted even if the competent authorities of the [12] Requested State have decided not to prosecute the person sought for the acts for which extradition is requested.

ARTICLE 6

Capital Punishment

When the offense for which extradition is sought is punishable by death under the laws of the Requesting State and is not punishable by death under the laws of the Requested State, the competent authority of the Requested State may refuse extradition unless:

- (a) the offense is murder as defined under the laws of the Requested State; or
- (b) the competent authority of the Requesting State provides assurances that it will recommend to the pardoning authority of the Requesting State that the death penalty be commuted if it is imposed.

In the case of the United States of America, the competent authority is the Executive Authority.

ARTICLE 7

Lapse of Time

Extradition shall not be granted when the prosecution or the enforcement of the penalty for the offense for which extradition has been sought has become barred by lapse of time according to the laws of the Requesting State.

ARTICLE 8

Nationality

- (1) Neither Contracting Party shall be bound to extradite its own nationals.

In a case in which the United States of America is the Requested [13] State, the Executive Authority shall have the power to extradite its nationals if, in its discretion, it is deemed proper to do so.

In a case in which Thailand is the Requested State, the competent authority may extradite its nationals if not prevented from doing so.

- (2) If extradition is not granted pursuant to paragraph (1) of this Article, the Requested State shall, at the request of the Requesting State, submit the case to its competent authority for prosecution. For this purpose, the Requesting State shall submit the files, information, and exhibits relating to the case of the Requested State. If the Requested State requires additional documents or evidence, such documents or evidence shall be submitted without charge to that State.

- (3) Notwithstanding paragraph (2) of this Article, the Requested State shall not be required to submit the case to its competent authority for prosecution if the Requested State has no jurisdiction over the offense.

ARTICLE 9

Extradition Procedures and Required Documents

- (1) The request for extradition shall be made through the diplomatic channel.
- (2) The request for extradition shall be accompanied by:
 - (a) documents, statements, or other evidence [14] which describe the identity and probable location of the person sought;
 - (b) a statement of the facts of the case, including, if possible, the time and location of the crime;

- (c) the provisions of the law describing the essential elements and the designation of the offense for which extradition is requested;
- (d) the provisions of the law describing the punishment for the offense; and
- (e) the provisions of the law describing any time limit on the prosecution or the execution of punishment for the offense.

(3) A request for extradition relating to a person who is sought for prosecution also shall be accompanied by:

- (a) a copy of the warrant of arrest issued by a judge or other competent authority of the Requesting State;
- (b) such evidence as, according to the law of the Requested State, would justify that person's arrest and committal for trial, including evidence establishing that the person sought is the person to whom the warrant of arrest refers.

(4) When the request for extradition relates to a convicted person, in addition to the items required by paragraph (2) of this Article, it shall be accompanied by:

- (a) a copy of the judgment of conviction by a court of the Requesting [15] State; and
- (b) evidence providing that the person sought is the person to whom the conviction refers.

If the person has been convicted but not sentenced, the request for extradition shall also be accompanied by a statement to that effect. If the convicted person has been sentenced, the request for extradition shall also be accompanied by a copy of the sentence imposed and a statement showing to what extent the sentence has been carried out.

(5) All documents submitted by the Requesting State shall be translated into the language of the Requested State.

(6) Documents transmitted through the diplomatic channel shall be admissible in extradition proceedings in the Requested State without further authentication, or other legalization.

ARTICLE 10

Provisional Arrest

(1) In case of urgency, either Contracting Party may request the provisional arrest of any accused or convicted person. Application for provisional arrest shall be made through the diplomatic channel or directly between the Department of Justice in the United States of America and the Ministry of Interior in Thailand, in which case the communication facilities of Interpol may be used.

(2) The application shall contain: [16] a description of the person sought; the location of that person, if known; a brief statement of the facts of the case including, if possible, the time and location of the offense; a statement of the existence of a warrant of arrest or a judgment of conviction against that person, as referred to in Article 9; and a statement that a request for extradition of the person sought will follow.

(3) The Requesting State shall be notified without delay of the result of its application.

(4) Provisional arrest shall be terminated if, within a period of 60 days after the arrest of the person sought, the competent authority of the Requested State has not received the formal request for extradition and the supporting documents required by Article 9.

(5) The termination of provisional arrest pursuant to paragraph (4) of this Article shall not prejudice the extradition of the person sought if the extradition request and the supporting documents mentioned in Article 9 are delivered at a later date.

ARTICLE 11

Decision and Surrender

(1) The Requested State shall communicate without delay through the diplomatic channel to the Requesting State its decision on the request for extradition.

(2) The [17] Requested State shall provide reasons for any partial or complete rejection of the request for extradition.

(3) If the extradition has been granted, surrender of the person sought shall take place within such time as may be prescribed by the laws of the Requested State. The competent authorities of the Contracting Parties shall agree on the time and place of the surrender of the person sought. If, however, that person is not removed from the territory of the Requested State within the prescribed time, that person may be set at liberty and the Requested State may subsequently refuse extradition for the same offense.

ARTICLE 12

Deferred Surrender

If the extradition request is granted in the case of a person who is being proceeded against or is serving a sentence in the territory of the Requested State for a different offense, the Requested State may defer the surrender of the person sought until the conclusion of the proceedings against that person, or the full execution of any punishment that may be or may have been imposed.

ARTICLE 13

Requests for Extradition Made by Several States

(1) If the Requested State receives requests from the other Contracting Party and from one or [18] more third States for the extradition of the same person, either for the same offense or for different offenses, it shall determine to which State it will extradite that person. In making its decision it shall consider all relevant factors, including but not limited to:

(a) the State in which the offense was committed;

(b) in cases involving different offenses, the State seeking the individual for the offense which is punishable by the most severe penalty in accordance with the law of the Requested State;

(c) in cases involving different offenses that the Requested State considers of equal gravity, the order in which requests were received from the Requesting States;

(d) the nationality of the offender; and

(e) the possibility of reextradition between the Requesting States.

(2) In the case of a request from Thailand, the decision described in paragraph (1) of this Article shall be made by the Executive Authority in the United States of America. In the case of a request from the United States of America, the decision shall be made by the competent authority in Thailand.

ARTICLE 14

Rule of Speciality

(1) A person extradited under this Treaty shall not be detained, tried, or [19] punished in the territory of the Requesting State for an offense other than that for which extradition has been granted, nor be extradited by that State to a third State, unless:

(a) that person has left the territory of the Requesting State after extradition and has voluntarily returned to it;

(b) that person has not left the territory of the Requesting State within 45 days after being free to do so; or

(c) the Requested State has consented to detention, trial, or punishment of that person for an offense other than that for which extradition was granted, or to extradition to a third State. For this purpose, the Requested State may require the submission of any document or statement mentioned in Article 9, including any statement made by the extradited person with respect to the offense concerned.

These stipulations shall not apply to offenses committed after extradition.

(2) If the charge for which the person was extradited is legally altered in the course of proceedings by virtue of a new statute, or the charging, pleading, or finding of a lesser offense, that person may be prosecuted or sentenced accordingly, provided the altered charge is:

(a) based on the same set of facts [20] contained in the extradition request and its supporting documents; and

(b) punishable by the same maximum penalty as, or a lesser maximum penalty than, the offense for which that person was extradited.

ARTICLE 15

Simplified Procedure

If the person sought irrevocably agrees in writing to extradition after personally being advised by the competent authority of his right to formal extradition proceedings and the protection afforded by them, the Requested State may grant extradition without formal extradition proceedings.

ARTICLE 16

Handing Over of Property

(1) The Requested State shall, insofar as its law permits and at the request of the Requesting State, seize and upon the granting of the extradition hand over property:

(a) which may be required as evidence; or

(b) which has been acquired as a result of the crime and which, at the time of the arrest, is found in the possession of the person claimed or is subsequently discovered.

(2) The property mentioned in paragraph (1) of this Article shall be handed over even if extradition, having been granted, cannot be carried out due to the death, disappearance, or escape of the person claimed.

(3) When the said property is liable [21] to seizure or confiscation in the territory of the Requested State, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it be returned.

(4) Any right which the Requested State or any State or individual may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the Requested State at its request as soon as possible after the trial.

ARTICLE 17

Transit

(1) Either Contracting Party may authorize transit through its territory of a person surrendered to the other by a third State. The Contracting Party requesting transit shall provide the transit State, through diplomatic channels, with a request for transit which shall contain a description of the person being transited and a brief statement of the facts of the case. No such authorization is required where air transportation is used and no landing is scheduled on the territory of the other Contracting Party.

(2) If an unscheduled landing on the territory of the other Contracting Party occurs, transit shall be subject to the provisions of paragraph (1) of this Article. That Contracting Party [22] may detain the person to be transited for a period up to 96 hours while awaiting the request for transit.

ARTICLE 18

Expenses and Assistance

(1) Expenses incurred in the territory of the Requested State by reason of extradition, up to the moment of surrender of the person to be extradited, shall be borne by that State.

(2) The Requested State shall appear on behalf of the Requesting State and conduct and carry out any proceedings arising out of a request for extradition.

(3) No pecuniary claim arising out of the arrest, detention, examination, and surrender of persons sought under the terms of this Treaty shall be made by the Requested State against the Requesting State.

ARTICLE 19

Scope of Application

This Treaty shall apply to extraditable offenses under this Treaty committed before as well as after the date this Treaty enters into force.

ARTICLE 20

Ratification and Entry into Force

(1) This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged at Bangkok as soon as possible.

(2) This Treaty shall enter into force 30 days after the exchange of the instruments of ratification.

(3) On entry into force of this Treaty, the Treaty of [23] Extradition between the United States of America and the Kingdom of Thailand signed at Bangkok December 30, 1922, shall cease to have effect, provided that any extradition proceedings pending in the Requested State at the time this Treaty enters into force shall remain effective thereafter.

ARTICLE 21

Denunciation

Either Contracting Party may terminate this treaty at any time by giving written notice to the other Party, and the termination shall be effective six months after the date of receipt of such notice. Such termination shall not prejudice any extradition proceedings commenced prior to the giving of such notice.

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

DONE in duplicate at Washington, on December 14, 1983, in the English and Thai languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND

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